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STATUTORY INSTRUMENTS

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**2008 No. 1966**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008**

*Made* - - - - 22nd July 2008  
*Coming into force* - - 23rd July 2008

The Secretary of State for Business, Enterprise and Regulatory Reform makes the following Regulations in exercise of the powers conferred on him by sections 47C(1) and (2), 73(4), (6) and (7), 75(2), 75B(4), (7) and (8), 75D(2) and 99(1) and (2) of the Employment Rights Act 1996<sup>(1)</sup>.

In accordance with section 236(3)(2) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 and shall come into force on the day after the day on which they are made.

**Application**

2.—(1) The amendments to the Maternity and Parental Leave etc. Regulations 1999<sup>(3)</sup> provided for in these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 5th October 2008.

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(1) 1996 c. 18. Section 47C was inserted by section 9 of and paragraphs 5 and 8 of Part III of Schedule 4 to the Employment Relations Act 1999 (c. 26) and subsection (2) was amended by section 53 of and paragraphs 24 and 26 of Schedule 7 to the Employment Act 2002 (c. 22). Sections 71 to 80 were substituted by section 7 of and Part I of Schedule 4 to the Employment Relations Act 1999. Sections 75A to 75D were inserted by section 3 of the Employment Act 2002. Section 99 was substituted by section 9 of and paragraphs 5 and 16 of Part III of Schedule 4 to the Employment Relations Act 1999 and was amended by section 53 of and paragraphs 24 and 33 of Schedule 7 to the Employment Act 2002. The word “prescribed” in section 47C is defined in subsection (2) of that section, the same word in section 73 is defined in section 75(2) and in section 99 it is defined in subsection (2) of that section. Further amendments have been made to sections 47C, 73, 75B and 99 which are not relevant to these Regulations.

(2) Section 236(3) of the Employment Rights Act 1996 was amended by paragraphs 5 and 42 of Part III of Schedule 4 to the Employment Relations Act 1999. A further relevant amendment was made by paragraph 44 of Schedule 1 to the Work and Families Act 2006 (c. 18).

(3) S.I. 1999/3312, amended by S.I. 2002/2789. There are other amending instruments, but none is relevant.

(2) The amendments to the Paternity and Adoption Leave Regulations 2002(4) provided for in these Regulations have effect only in relation to an employee with whom a child is expected to be placed for adoption, where the placement is expected to occur on or after 5th October 2008.

(3) For the purposes of paragraph (2) the date on which the child is actually placed for adoption is immaterial.

(4) The amendments to the Paternity and Adoption Leave Regulations 2002 applied to adoption from overseas by virtue of and as modified by the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(5) have effect only where the adopter's child enters Great Britain on or after 5th October 2008.

(5) For the purposes of paragraph (4)—

“adopter”, in relation to a child, means a person by whom the child has been or is to be adopted or, in a case where the child has been or is to be adopted by two people jointly, whichever of them has elected to take adoption leave in respect of the child;

“adoption from overseas” means the adoption of a child who enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom; and

“enters Great Britain” means enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption.

### **Amendments to the Maternity and Parental Leave etc. Regulations 1999**

3. The Maternity and Parental Leave etc. Regulations 1999 are amended in accordance with regulations 4 to 7.

#### **Application of terms and conditions during ordinary maternity leave and additional maternity leave**

4.—(1) In regulation 9(6) (application of terms and conditions during ordinary maternity leave)—

- (a) in the heading, after “ordinary maternity leave”, insert “and additional maternity leave”;
- (b) in paragraph (1), after “ordinary maternity leave”, insert “or additional maternity leave”;
- (c) in paragraph (1)(b), for “the exception in section 71(4)(b)”, substitute “the exceptions in sections 71(4)(b) and 73(4)(b)”;
- (d) in paragraph (2), for “section 71(5)”, substitute “sections 71(5) and 73(5)”;
- (e) in paragraph (3), for “section 71”, substitute “sections 71 and 73” ; and
- (f) after paragraph (3) insert—

“(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989(7), nothing in paragraph (1)(a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraph 5 of that Schedule.”.

(2) In regulation 17 (application of terms and conditions during periods of leave), omit “additional maternity leave or”.

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(4) S.I. 2002/2788, amended by S.I. 2005/275. There are other amending instruments, but none is relevant.

(5) S.I. 2003/921.

(6) Regulation 9 was substituted by regulations 3 and 9 of the Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789).

(7) 1989 c. 24. Schedule 5 was amended by section 265(1) of the Pensions Act 2004 (c. 35). Further amendments have been made to Schedule 5, which are not relevant to these Regulations.

### **Incidents of the right to return after ordinary maternity leave or additional maternity leave**

5. In regulation 18A(8) (incidents of the right to return)—
- (a) for paragraph (1)(a), substitute—
    - “(a) with her seniority, pension rights and similar rights as they would have been if she had not been absent, and”,
  - (b) for paragraph (2), substitute—
    - “(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989, nothing in paragraph (1) (a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraphs 5 and 6 of that Schedule.”, and
  - (c) in paragraph (3), for “in paragraph (1)(a)(ii) and (b)” substitute “in paragraph (1)”.

### **Protection from detriment**

6. In regulation 19 (protection from detriment)—
- (a) in paragraph (2)(d), after “ordinary maternity leave” insert “or additional maternity leave”,
  - (b) omit paragraph (2)(e)(i), and
  - (c) after paragraph (3) insert—
    - “(3A) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of additional maternity leave if, during her additional maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 73 of the 1996 Act and regulation 9 during that period.”.

### **Unfair dismissal**

7. In regulation 20 (unfair dismissal)—
- (a) in paragraph (3)(d), after “ordinary maternity leave” insert “or additional maternity leave”,
  - (b) omit paragraph (3)(e)(i), and
  - (c) for paragraph (5) substitute—
    - “(5) Paragraphs (3) and (3A) of regulation 19 apply for the purposes of paragraph (3) (d) as they apply for the purposes of paragraph (2)(d) of that regulation.”.

### **Amendments to the Paternity and Adoption Leave Regulations 2002**

8. The Paternity and Adoption Leave Regulations 2002 are amended in accordance with regulations 9 and 10.

### **Application of terms and conditions during ordinary adoption leave and additional adoption leave**

- 9.—(1) In regulation 19 (application of terms and conditions during ordinary adoption leave)—
- (a) in the heading, after “ordinary adoption leave”, insert “and additional adoption leave”,
  - (b) in paragraph (1), after “ordinary adoption leave”, insert “or additional adoption leave”,
  - (c) in paragraph (1)(b), for “the exception in section 75A(3)(b)”, substitute “the exceptions in sections 75A(3)(b) and 75B(4)(b)”.

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(8) Regulation 18A was inserted by regulations 3 and 12 of the Maternity and Parental Leave (Amendment) Regulations 2002 (S.I. 2002/2789).

- (d) in paragraph (2), for “section 75A(4)”, substitute “sections 75A(4) and 75B(5)”, and
- (e) in paragraph (3), for “section 75A”, substitute “sections 75A and 75B”.

(2) Regulation 21 (application of terms and conditions during additional adoption leave) is revoked.

#### **Incidents of the right to return from adoption leave**

**10.** In regulation 27(9) (incidents of the right to return from adoption leave)—

(a) for paragraph (1)(a) substitute—

“(a) with his seniority, pension rights and similar rights as they would have been if he had not been absent, and”,

(b) for paragraph (2), substitute—

“(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) concerning the treatment of additional adoption leave shall be taken to impose a requirement which exceeds the requirements of paragraphs 5, 5B(10) and 6 of that Schedule.”, and

(c) in paragraph (3), for “in paragraph (1)(a)(ii) and (b)”, substitute “in paragraph (1)”.

*Pat McFadden*

Minister of State for Employment Relations and  
Postal Affairs  
Department for Business, Enterprise and  
Regulatory Reform

22nd July 2008

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(9) Regulation 27 was amended by the Pensions Act 2004 (Commencement No. 2, Transitional Provisions and Consequential Amendments) Order 2005 (S.I. 2005/275). There are other amending instruments, but none is relevant.

(10) Paragraph 5B was inserted by section 265(1) of the Pensions Act 2004 (c.35).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend provisions in two statutory instruments relating to statutory maternity leave and adoption leave. The Regulations amended are the Maternity and Parental Leave etc. Regulations 1999 (S.I. 1999/3312) (“the 1999 Regulations”) and the Paternity and Adoption Leave Regulations 2002 (S.I. 2002/2788) (“the 2002 Regulations”).

The amendments have effect in relation to an employee whose expected week of childbirth begins on or after 5th October 2008, an employee whose child is expected to be placed with him for adoption on or after that date or, in cases of overseas adoption as defined in the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003 (S.I. 2003/921), an adopter whose child enters Great Britain on or after the same date.

Regulations 4 to 7 remove distinctions between the rights of employees on ordinary maternity leave and those of employees on additional maternity leave. Regulation 4 amends regulations 9 and 17 of the 1999 Regulations, so that an employee taking additional maternity leave is, like an employee taking ordinary maternity leave, entitled to the benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if she had not been absent. This does not include terms and conditions about remuneration, as defined in regulation 9 of the 1999 Regulations. Regulation 5 amends regulation 18A of the 1999 Regulations, so that the seniority, pension and similar rights of an employee returning from additional maternity leave are, like those of an employee returning from ordinary maternity leave, unaffected by her absence. The amendments to regulations 9, 17 and 18A do not affect the accrual of rights under employment-related benefit schemes governed by the Social Security Act 1989. Regulations 6 and 7 respectively amend regulations 19 and 20 of the 1999 Regulations to align the protection of employees taking additional maternity leave with that for employees taking ordinary maternity leave.

Regulations 9 and 10 remove distinctions between the rights of employees on ordinary adoption leave and those of employees on additional adoption leave. Regulation 9 amends regulation 19 and revokes regulation 21 of the 2002 Regulations, so that an employee taking additional adoption leave is, like an employee taking ordinary adoption leave, entitled to the benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if the employee had not been absent. This does not include terms and conditions about remuneration, as defined in regulation 19 of the 2002 Regulations. Regulation 10 amends regulation 27 of the 2002 Regulations, so that the seniority, pension and similar rights of an employee returning from additional adoption leave are, like those of an employee returning from ordinary adoption leave, unaffected by the absence. The amendments to regulations 19 and 27 and the revocation of regulation 21 do not affect the accrual of rights under employment-related benefit schemes governed by the Social Security Act 1989.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Employment Relations Directorate at the Department for Business, Enterprise and Regulatory Reform, 1 Victoria Street, London SW1H 0ET. Copies are also available on the Department’s website: [www.berr.gov.uk](http://www.berr.gov.uk).