
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the powers in the Work and Families Act 2006 to introduce a new entitlement for employees adopting children from overseas to take additional paternity leave in the first year after the child enters Great Britain. The provisions relating to additional paternity leave are incorporated by the Work and Families Act 2006 into the Employment Rights Act 1996 (“the 1996 Act”). [SI 2010/1058](#) extends the application of the relevant provisions to apply to overseas adoptions.

The right to take additional paternity leave under the Regulations is conferred to spouses or partners (of either sex) of adopters, or, where a child is adopted by two people jointly, spouses or partners (of either sex) of the adopter who has elected to take adoption leave (defined as “adopter” for the purpose of these Regulations). Regulation 4 sets out the conditions for entitlement. Certain conditions apply to the person claiming the entitlement (“the claimant”), others to the adopter. The claimant must satisfy substantive requirements, such as continuous employment, relationship with the adopter and with the child, as well procedural requirements such as giving appropriate notice to the claimant’s employer. The adopter must be entitled to one or more of adoption leave or statutory adoption pay, and must have returned to work for the claimant’s entitlement to arise.

Regulation 5 sets out the options as to how the leave may be taken. In particular, it provides maximum and minimum length of leave which may be taken (a maximum of 26 weeks and minimum of 2 weeks), the fact that it may only be taken in multiples of complete weeks and the period after the adoption of the child within which the leave may be taken (the period beginning 20 weeks after and ending 12 months after the child’s entry in Great Britain).

Regulation 6 sets out the notice and evidential requirements with which the claimant must comply. These include providing information regarding the claimant and the adopter, as well as declarations from the claimant and the adopter.

Regulations 7 sets out the notice and process requirements that apply if the claimant, before taking leave, wishes to cancel the leave or vary the dates previously chosen for the additional leave period to begin and end.

Regulation 8 requires that the employer must confirm the dates of the start and end of the leave within 28 days of receiving the claimant’s notice and regulation 9 sets out when the leave commences, in the event of a single notification or multiple notifications of leave.

In circumstances where the adopter of the child has died within 12 months from the date of the child’s entry into Great Britain, the provisions of the Regulations apply with various modifications.

Regulation 10 sets out the provisions of the Regulations which are modified in the case of the death of the child’s adopter. The requirements which must be satisfied by the child’s adopter under regulations 4 are modified, for example the requirement that the adopter must have returned to work for the claimant’s entitlement to arise does not apply, and the adopter is deemed to satisfy the requirement of entitlement to one or more of adoption leave or statutory adoption pay, if the adopter satisfied it before death or would have done, but for the death. Regulation 11 provides the options as to how the leave may be taken in the event of the adopter’s death. The claimant’s entitlement may be to a longer period of leave (up to 52 weeks), starting earlier than it would otherwise have done.

Regulation 14 deals with cases where the child dies or ceases to live with the adopter when the claimant is on leave or after the claimant has notified the claimant’s intention to take additional paternity leave. In such cases, the claimant’s entitlement to additional paternity leave comes to an

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end after a period of eight weeks, unless there are only eight weeks of leave remaining in which case the additional paternity leave period ends on the date notified by the claimant.

Regulation 15 defines when the adopter is deemed to have returned to work, which is a condition for the claimant's entitlement to arise. If the adopter was entitled to adoption leave, the relevant return date is when this leave ends. If the adopter was entitled to statutory adoption pay, the relevant date is when this is no longer payable. In cases where the adopter was entitled to both adoption leave and pay, then the relevant date is when both the leave has ended and the adopter is no longer entitled to pay.

Regulations 18 and 19 deal with cases in which an employee becomes redundant or is dismissed during an additional paternity leave period. Regulation 20 deals with cases where an employee who is on leave intends to return to work before the end of additional paternity leave. Regulations 21 and 22 provide for an employee's right to return to work after taking leave, distinguishing the case where the leave was an isolated period of leave or taken with other types of statutory leave from other cases.

Regulations 23 and 24 provide that an employee entitled to additional paternity leave is protected against detriment or dismissal attributable to the fact they took or sought to take such leave. Regulation 25 governs the relationship between an employee's right to additional paternity leave under these Regulations and any corresponding leave rights arising from the employment contract. Regulation 26 deals with the calculation of a week's pay for an employee on additional paternity leave.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at <http://www.berr.gov.uk/files/file54236.pdf> and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.