

**2024 No. 329**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Paternity Leave (Amendment) Regulations 2024**

*Made* - - - - *7th March 2024*

*Coming into force* *8th March 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 80A(1), (2), (3), (4) and (5), 80B(1), (2), (3), (4), (5), (6A) and (6B), 80E(1) and 236(5) of the Employment Rights Act 1996.

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

**PART 1**

**General**

**Citation, commencement and extent**

1. These Regulations may be cited as the Paternity Leave (Amendment) Regulations 2024.
2. Parts 1 and 2 come into force on 8th March 2024 and Parts 3 and 4 come into force immediately after Parts 1 and 2 have come into force.
3. These Regulations extend to England and Wales and Scotland.

**Interpretation**

4.—(1) In this Part—

“the 2002 Regulations” means the Paternity and Adoption Leave Regulations 2002(b);

“the 2003 Regulations” means the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(c);

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(a) 1996 c. 18. Sections 80A, 80B and 80E were inserted by the Employment Act 2002 (c. 22), section 1. Section 80A was amended by the Children and Families Act 2014 (c. 6), Schedule 7 paragraph 32; section 80B was amended by the Children and Families Act 2014, section 121, 122 and Schedule 7, paragraph 33 and S.I. 2016/413; section 80E was amended by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 38 and the Children and Families Act 2014, Schedule 7 paragraph 36. Sections 80A, 80B and 80E were applied, with modifications, by S.I. 2003/920 to adoptions from overseas and by S.I. 2014/3095 to parental order cases. Section 236(3) was amended by the Employment Act 2002, Schedule 7, paragraph 49, the Work and Families Act 2006, Schedule 1, paragraph 44 and the Children and Families Act 2014, Schedule 7 paragraph 43. There are other amendments but none is relevant.

(b) S.I. 2002/2788, amended by S.I. 2005/2114, 2005/275, 2011/1740, 2014/2112, 2014/3206; there are other amendments but none is relevant. Provisions in S.I. 2002/2788 are applied, with modifications, to adoptions from overseas by S.I. 2003/921 and to parental order parents by S.I. 2014/3096.

(c) S.I. 2003/921, amended by S.I. 2005/2114, 2011/1740, 2014/3092 and S.S.I. 2011/159.

“the 2014 Regulations” means the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014<sup>(a)</sup>.

(2) For the purposes of this Part—

- (a) “adopter”—
  - (i) in relation to children who are placed for adoption, has the same meaning as in regulation 2(1) of the 2002 Regulations;
  - (ii) in relation to adoption from overseas, has the same meaning as in regulation 4(2) of the 2003 Regulations;
- (b) the following expressions have the same meanings as in regulation 2(1) of the 2002 Regulations —
  - (i) “expected week”;
  - (ii) “paternity leave”;
  - (iii) “placed for adoption”;
- (c) the following expressions have the same meanings as in regulation 4(2) of the 2003 Regulations—
  - (i) “adoption from overseas”;
  - (ii) “enter Great Britain”;
  - (iii) “official notification”;
- (d) the following expressions have the same meanings as in regulation 6(a)(iii) of the 2014 Regulations—
  - (i) “Parent A”;
  - (ii) “section 54 parental order parent”;
- (e) a person is matched with a child for adoption in the circumstances specified in regulation 2(4) of the 2002 Regulations.

### **Application**

5.—(1) The amendments to the 2002 Regulations in Part 2 have effect only in respect of—

- (a) children whose expected week of birth begins after 6th April 2024;
- (b) children who are expected to be placed for adoption with the adopter on or after 6th April 2024.

(2) The amendments to the 2003 Regulations in Part 3 have effect only where the date on which the adopter’s child is expected to enter Great Britain is on or after 6th April 2024.

(3) The amendments to the 2014 Regulations in Part 4 have effect only in relation to children whose expected week of birth begins after 6th April 2024.

### **Transitional provisions**

6.—(1) This regulation applies where, prior to the coming into force of these Regulations, an employee has provided any information, notice or declaration required to exercise an entitlement to paternity leave under the 2002, 2003 or 2014 Regulations.

(2) Where this regulation applies, the employee is deemed to have complied with any similar requirement to provide such information, notice or declaration under the 2002, 2003 or 2014 Regulations as amended by these Regulations.

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(a) S.I. 2014/3096, amended by S.I. 2018/1413.

## PART 2

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

7. The Paternity and Adoption Leave Regulations 2002 are amended as set out in regulations 8 to 16.

8. In regulation 2(1), insert at the appropriate place—

“returned after being placed for adoption means—

- (a) returned under sections 31 to 35 of the Adoption and Children Act 2002(a);
- (b) in Scotland, returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007(b); or
- (c) where the child is placed in accordance with section 22C of the Children Act 1989, returned to the adoption agency following a termination of the placement(c).”

9. In regulation 5 (options in respect of leave under regulation 4)—

(a) for paragraph (1) substitute—

“(1) An employee may choose to take either—

- (a) a single period of leave of either one week or two weeks, or
- (b) two non-consecutive periods of leave of a week each

in respect of a child under regulation 4.”;

(b) in paragraph (2), for “56 days”, in both places those words occur substitute “52 weeks”.

10. For regulation 6 (notice and evidential requirements for leave under regulation 4) substitute—

#### “Notice and evidential requirements for leave under regulation 4

6.—(1) An employee must give their employer—

- (a) notice of their entitlement to take leave in respect of a child under regulation 4 which specifies the expected week of the child’s birth, and
- (b) a declaration in writing that the employee satisfies the conditions in regulation 4(2)(b) and (c).

(2) The employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 5—

- (a) a notice that specifies the start day or date of the period of leave and its duration, and
- (b) a declaration in writing that the purpose of that period of leave will be that specified in regulation 4(1).

(3) The notice and declaration in paragraph (1) must be given in or before the 15th week before the expected week of the child’s birth or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(4) The notice and declaration in paragraph (2) must be given at least 28 days before—

- (a) the first day of the expected week of the child’s birth, where the option in regulation 5(3)(a) is chosen;

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(a) 2002 c. 38. Sections 32, 34 and 35 were amended by the Children and Families Act 2014 (c. 6), Schedule 2, Part 2, paragraphs 63 and 64 and by S.I. 2016/413 and 2018/195 and applied, with modifications, by S.I. 2005/392.

(b) 2007 asp 4. Section 25 was applied, with modifications, and disapplied in certain circumstances by S.S.I. 2009/182.

(c) 1989 c. 41. Section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), section 8 and amended by the Children and Families Act 2014 (c. 6), section 2 and Schedule 2, Part 1, paragraph 29, S.I. 2016/413 and S.I. 2018/195, and disapplied in certain circumstances by S.I. 2012/2813.

- (b) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) is chosen;
- (c) the predetermined date, where the option in regulation 5(3)(c) is chosen;

or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) An employee who has previously given notice under paragraph (2)(a) or (8) or this paragraph may—

- (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
- (b) cancel the period of leave chosen,

provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (6).

(6) A notice under paragraph (5) must be given by whichever is the earlier of at least 28 days before—

- (a) the original day or date referred to in paragraph (7)(a), or
- (b) the new day or date referred to in paragraph (7)(b),

or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) For the purposes of—

- (a) paragraph (6)(a), where a notice has previously been given under paragraph (2)(a), (5) or (8), the original day or date is—
  - (i) the first day of the expected week of the child's birth, where the option in regulation 5(3)(a) was chosen in that notice;
  - (ii) the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) was chosen in that notice;
  - (iii) the predetermined date specified in that notice, where the option in regulation 5(3)(c) was chosen;
- (b) paragraph (6)(b), the new day or date is—
  - (i) the first day of the expected week of the child's birth, where the option in regulation 5(3)(a) is chosen in the notice of variation;
  - (ii) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 5(3)(b) is chosen in the notice of variation;
  - (iii) the predetermined date specified in the notice of variation, where the option in regulation 5(3)(c) is chosen.

(8) In a case where—

- (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
- (b) the child is not born on or before that date,

the employee must vary the choice of date by substituting a later predetermined date, or exercising an alternative option under regulation 5(3), and must give the employer notice of the variation as soon as is reasonably practicable.

(9) Where a notice is given under paragraph (5) or (8) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.

(10) An employee must give their employer a further notice, as soon as is reasonably practicable after the child's birth, of the date on which the child was born.

(11) Notice under paragraphs (1)(a), (2)(a), (5), (8) or (10) must be given in writing, if the employer so requests.”.

**11.** In regulation 7 (commencement of leave under regulation 4), for paragraph (1) substitute—

“(1) Except in the case referred to in paragraph (2), a period of paternity leave under regulation 4 begins and ends—

- (a) on the days or dates specified in a notice under regulation 6(2)(a), or
- (b) where the employee has given a notice of variation under regulation 6(5) or (8), on the days or dates specified in that notice (or the last such notice if the employee has varied the choice more than once).”.

**12.** In regulation 9 (options in respect of leave under regulation 8)—

(a) for paragraph (1) substitute—

“(1) An employee may choose to take either—

- (a) a single period of leave of either one week or two weeks, or
- (b) two non-consecutive periods of leave of a week each,

in respect of a child under regulation 8.”;

(b) in paragraph (2) for “56 days” substitute “52 weeks”.

**13.** For regulation 10 (notice and evidential requirements for leave under regulation 8) substitute—

**“Notice and evidential requirements for leave under regulation 8**

**10.—**(1) An employee must give their employer—

- (a) notice of their entitlement to take leave in respect of a child under regulation 8 which specifies—
  - (i) the date on which the adopter was notified of having been matched with the child, and
  - (ii) the date on which the child is expected to be placed with the adopter or, where the child has already been placed for adoption, the date of placement, and
- (b) a declaration in writing that the employee satisfies the conditions in regulation 8(2)(b) and (c).

(2) The employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 9—

- (a) a notice that specifies the start day or date of the period of leave and its duration, and
- (b) a declaration in writing that the purpose of the period of leave will be that specified in regulation 8(1).

(3) The notices and declarations in paragraphs (1) and (2) must be given no more than seven days after the date on which the adopter is notified of having been matched with the child or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(4) An employee who has previously given notice under paragraph (2)(a) or (7) or this paragraph may—

- (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
- (b) cancel the period of leave chosen,

provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (5).

(5) A notice under paragraph (4) must be given by whichever is the earlier of at least 28 days before—

- (a) the original day or date referred to in paragraph (6)(a), or
- (b) the new day or date referred to in paragraph (6)(b),

or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(6) For the purposes of—

- (a) paragraph (5)(a), where a notice has previously been given under paragraph (2)(a), (4) or (7), the original day or date is—
  - (i) the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(a) was chosen in that notice;
  - (ii) the date falling the specified number of days after the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(b) was chosen in that notice;
  - (iii) the predetermined date specified in that notice, where the option in regulation 9(3)(c) was chosen;
- (b) paragraph (5)(b), the new day or date is—
  - (i) the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(a) is chosen in the notice of variation;
  - (ii) the date falling the specified number of days after the date provided under paragraph (1)(a)(ii) as the date on which the child is expected to be placed with the adopter, where the option in regulation 9(3)(b) chosen in the notice of variation;
  - (iii) the predetermined date specified in the notice of variation, where the option in regulation 9(3)(c) is chosen.

(7) In a case where—

- (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
- (b) the child is not placed with the adopter on or before that date,

the employee must vary the choice of date by substituting a later predetermined date or exercising an alternative option under regulation 9(3) and must give the employer notice of the variation as soon as is reasonably practicable.

(8) Where a notice is given under paragraph (4) or (7) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.

(9) An employee must give their employer a further notice, as soon as is reasonably practicable after the child's placement, of the date on which the child was placed, unless that information has already been provided under paragraph (1)(a)(ii).

(10) Notice under paragraphs (1)(a), (2)(a), (4), (7) or (9) must be given in writing, if the employer so requests.”.

**14.** In regulation 11 (commencement of leave under regulation 8), for paragraph (1) substitute—

“(1) Except in the case referred to in paragraph (2), a period of paternity leave under regulation 8 begins and ends—

- (a) on the days or dates specified in a notice given under regulation 10(2)(a), or
- (b) where the employee has given a notice of variation under regulation 10(4) or (7), on the days or dates specified in that notice (or the last such date if the employee has varied the choice more than once).”.

**15.** After regulation 11, insert—

**“Change in circumstances**

**11A.—**(1) This regulation applies where an employee is otherwise entitled to paternity leave in respect of a child but a relevant event, as specified in paragraph (2), occurs.

- (2) A relevant event as referred to in paragraph (1) occurs when—
- (a) the employee is notified that the child will no longer be placed with the person with whom the child was to be placed for adoption, or
  - (b) the child—
    - (i) dies, or
    - (ii) is returned after being placed for adoption.

(3) In a case where this regulation applies, an employee is not entitled to be absent from work on paternity leave after the end of a period of eight weeks following the end of the relevant week specified in paragraph (4), except in the circumstances mentioned in paragraph (5).

- (4) The relevant week referred to in paragraph (3) is—
- (a) in a case falling within paragraph (2)(a), the week during which the person with whom the child was to be placed for adoption is notified that the placement will not be made;
  - (b) in a case falling within paragraph (2)(b)(i), the week during which the child dies;
  - (c) in a case falling within paragraph (2)(b)(ii), the week during which the child is returned.

(5) Where the employee has complied with the requirements in regulation 6 (notice and evidential requirements for leave under regulation 4 (birth)) or regulation 10 (notice and evidential requirements for leave under regulation 8 (adoption)), as the case may be, the employee will remain entitled to any period of leave which has been specified in a notice given, before the day on which the relevant event occurs, under whichever of those regulations is relevant.

(6) Where paragraph (5) applies, no further notices may be served under regulation 6 or 10, other than a notice under regulation 6(5)(b) or 10(4)(b), as the case may be.

- (7) In this regulation—
- (a) “week” means the period of seven days beginning with Sunday;
  - (b) references to the death of a child are to be read, in relation to a child stillborn after twenty-four weeks of pregnancy, as references to the birth of the child.”.

**16.** In regulation 22 (disrupted placement in the course of adoption leave), omit paragraph (3A)(a).

## PART 3

### Amendments to the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003

**17.** The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(b) are amended in accordance with regulations 18 to 20.

**18.** In regulation 7 (entitlement to paternity leave: adoption from overseas)—

- (a) for the modification to paragraph (1) of regulation 9, substitute—

“(1) An employee may choose to take either—

  - (a) a single period of leave of either one week or two weeks, or
  - (b) two non-consecutive periods of leave of a week each

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(a) Paragraph (3A) was inserted by S.I. 2014/3206.

(b) S.I. 2003/921, which applies the Paternity and Adoption Leave Regulations 2002, with modifications, to adoptions from overseas.

- in respect of a child under regulation 8.”;
- (b) in the modification to paragraph (2) of regulation 9, for the words “56 days” substitute “52 weeks”;
  - (c) for the modification to regulation 10, substitute—

**“Notice and evidential requirements for leave under regulation 8**

- 10.**—(1) An employee must give their employer—
- (a) notice of their entitlement to take leave in respect of a child under regulation 8 which specifies—
    - (i) the date on which the adopter of the child received an official notification, and
    - (ii) the date on which the child is expected to enter Great Britain or, where the child has already entered Great Britain, the date of entry, and
  - (b) a declaration in writing that—
    - (i) the employee satisfies the conditions in regulation 8(2)(c) and (d), and
    - (ii) the adopter of the child has received an official notification.
- (2) An employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 9—
- (a) a notice that specifies the start day or date of that period of leave and its duration, and
  - (b) a declaration in writing that the purpose of the period of leave will be that specified in regulation 8(1).
- (3) The notice and declaration in paragraph (1) must be given to the employer—
- (a) no more than 28 days after whichever is the later of—
    - (i) the date on which the adopter of the child receives the official notification, or
    - (ii) the date on which the employee completes 26 weeks’ continuous employment with the employer, or
  - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (4) The notice and declaration in paragraph (2) must be given to the employer at least 28 days before—
- (a) the date which the employee has notified in accordance with paragraph (1)(a)(ii) as the date on which the child is expected to enter Great Britain, where the option in regulation 9(3)(a) is chosen;
  - (b) the predetermined date, where the option in regulation 9(3)(b) is chosen;
- or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (5) An employee who has previously given notice under paragraph (2)(a) or (8) or this paragraph may—
- (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
  - (b) cancel the period of leave chosen,
- provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (6).
- (6) A notice under paragraph (5) must be given by whichever is the earlier of at least 28 days before—
- (a) the original day or date referred to in paragraph (7)(a), or
  - (b) the new day or date referred to in paragraph (7)(b),
- or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.
- (7) For the purposes of—



- (a) paragraph (6)(a), where a notice has previously been given under either paragraph (2)(a), (5) or (8), the original day or date is—
  - (i) the date provided under paragraph (4)(a) as the date on which the child is expected to enter Great Britain, where the option in regulation 9(3)(a) was chosen in that notice;
  - (ii) the predetermined date specified in that notice, where the option in regulation 9(3)(b) was chosen;
- (b) paragraph (6)(b), the new day or date is—
  - (i) the date provided under paragraph (4)(a) as the date on which the child is expected to enter Great Britain, where the option in regulation 9(3)(a) is chosen in the notice of variation;
  - (ii) the predetermined date specified in the notice of variation, where the option in regulation 9(3)(b) is chosen.

(8) In a case where—

- (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
- (b) the child has not entered Great Britain on or before that date,

the employee must vary the choice of date, by substituting a later predetermined date or exercising an alternative option under regulation 9, and must give the employer notice of the variation as soon as is reasonably practicable.

(9) Where a notice is given under paragraph (5) or (8) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.

(10) An employee must give their employer a further notice of the date on which the child enters Great Britain, within 28 days of that date or, if that is not reasonably practicable, as soon as is reasonably practicable, unless that information has already been provided under paragraph (1)(a)(ii).

(11) Notice under paragraph (1)(a), (2)(a), (5), (8) and (10) must be given in writing, if the employer so requests.

(12) Where it becomes known to the employee that the child will not enter Great Britain, the employee must notify the employer of the fact as soon as is reasonably practicable.”

**19.** For regulation 8 substitute—

**“Commencement of leave under regulation 8**

**8.—**(1) In regulation 11 of the Leave Regulations—

- (a) in sub-paragraph (b) of paragraph (1), for “regulation 10(4) or (7)”, substitute “regulation 10(5) or (8)”;
- (b) in sub-paragraph (a) of paragraph (2), for “is placed with the adopter” substitute “enters Great Britain”;
- (c) in paragraph (6), for “10(4)(b)” substitute “10(5)(b)”.

**20.** After regulation 8, insert—

**“Change in circumstances**

**8A.** In regulation 11A—

- (a) in paragraph (2), for sub-paragraphs (a) and (b) substitute—
  - “(a) the child ceases to live with the adopter, or
  - (b) the child dies.”;

- (b) in paragraph (4), for sub-paragraphs (a), (b) and (c) substitute—
  - “(a) in a case falling within paragraph (2)(a), the week during which the child ceased to live with the adopter;
  - (b) in a case falling within paragraph (2)(b), the week during which the child dies.”;
- (c) in paragraph (6), for “10(4)(b)” substitute “10(5)(b)”.

## PART 4

### Amendments to the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014

**21.** The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014(a) are amended in accordance with regulations 22 to 25.

**22.** In regulation 10 (modifications to regulation 9), for paragraph (a) substitute—

“(a) paragraph (2) shall read as if the words of that paragraph were—

“The leave may only be taken during the period which begins on the date on which the child was born and ends—

- (a) except in the case referred to in sub-paragraph (b), 52 weeks after that date;
- (b) in a case where the child is born before the first day of the expected week of its birth, 52 weeks after that day.”;

**23.** For regulation 11 (modifications to regulation 10) substitute—

“**11.** Regulation 10 (notice and evidential requirements for leave under regulation 8) of the Leave Regulations as they apply to section 54 parental order parents shall read as if the words of that regulation were—

“**10.**—(1) An employee must give their employer—

- (a) notice of their entitlement to take leave in respect of a child under regulation 8 which specifies the expected week of the child’s birth, and
- (b) a declaration in writing that—
  - (i) the employee satisfies the conditions in regulation 8(2)(b) and(c), and
  - (ii) the employee and Parent A are section 54 parental order parents of the child.

(2) The employee must also give their employer, on each occasion that a period of leave is chosen in accordance with regulation 9—

- (a) a notice that specifies the start day and date of the period of leave and its duration, and
- (b) a declaration in writing that the purpose of that period of leave will be that specified in regulation 8(1).

(3) The notice and declaration in paragraph (1) must be given in or before the 15th week before the expected week of the child’s birth or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(4) The notice and declaration in paragraph (2) must be given at least 28 days before—

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(a) S.I. 2014/3096, which applies the Paternity and Adoption Leave Regulations 2002, with modifications, to parental order cases.

- (a) the first day of the expected week of the child's birth, where the option in regulation 9(3)(a) is chosen;
  - (b) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 9(3)(b) is chosen;
  - (c) the predetermined date, where the option in regulation 9(3)(b) is chosen;
- or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) An employee who has previously given notice under paragraph (2)(a) or (8) or this paragraph may—

- (a) vary the day or date chosen as the day or date on which a period of leave will begin or end, or
- (b) cancel the period of leave chosen,

provided that notice of the variation or cancellation is given to the employer in accordance with paragraph (6).

(6) A notice under paragraph (5) must be given by whichever is the earlier of at least 28 days before—

- (a) the original day or date referred to in paragraph (7)(a), or
- (b) the new day or date referred to in paragraph (7)(b),

or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) For the purposes of—

- (a) paragraph (6)(a), where a notice has previously been given under either paragraph (2)(a), (5) or (8), the original day or date is—
  - (i) the first day of the expected week of the child's birth, where the option in regulation 9(3)(a) was chosen in that notice;
  - (ii) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 9(3)(b) was chosen in that notice;
  - (iii) the predetermined date specified in that notice, where the option in regulation 9(3)(c) was chosen;
- (b) paragraph (6)(b), the new day or date is—
  - (i) the first day of the expected week of the child's birth, where the option in regulation 9(3)(a) is chosen in the notice of variation;
  - (ii) the date falling the specified number of days after the first day of the expected week of the child's birth, where the option in regulation 9(3)(c) is chosen in the notice of variation;
  - (iii) the predetermined date specified in the notice of variation, where the option in regulation 9(3)(c) is chosen.

(8) In a case where—

- (a) the employee has chosen to begin a period of leave on a particular predetermined date, and
- (b) the child is not born on or before that date,

the employee must vary the choice of date by substituting a later predetermined date or exercising an alternative option under regulation 9(3) and must give the employer notice of the variation as soon as is reasonably practicable.

(9) Where a notice is given under paragraph (5) or (8) which varies the days or dates of a period of leave, a declaration under paragraph (2)(b) in relation to that period must be given at the same time as that notice.

(10) An employee must give their employer a further notice, as soon as reasonably practicable after the child's birth, of the date on which the child was born.

(11) Any notice under paragraph (1)(a), (2)(a), (5), (8) or (10) must be given in writing, if the employer so requests.””

24. In regulation 12 (modifications to regulation 11), in the modification to paragraph (1) of regulation 11, for “10(4) or (6)” substitute “10(5) or (8)”.

25. After regulation 12, insert—

“12A. In regulation 11A (change in circumstances) of the Leave Regulations as they apply to section 54 parental order parents—

(a) in paragraph (2), for sub-paragraphs (a), (b) and (c) substitute—

“(a) the employee does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 within the time limit set by subsection (3) of that section,

(b) the employee’s application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time for an appeal or a new application has expired, or

(c) the child dies.”;

(b) in paragraph (4), for sub-paragraphs (a), (b) and (c) substitute—

“(a) in a case falling within paragraph (2)(a), the week during which the time limit in section 54(3) of the Human Fertilisation and Embryology Act 2008 for an application for an order under that section for the child expires;

(b) in a case falling within paragraph (2)(b), the week in which the employee’s application for an order under that section is refused, withdrawn or otherwise terminated without the order being granted;

(c) in a case falling within paragraph (2)(c), the week during which the child dies.”;

(c) in paragraph (6), for “10(4)(b)” substitute “10(5)(b)”.”.

*Kevin Hollinrake*

Parliamentary Under Secretary of State  
Department for Business and Trade

7th March 2024

### **EXPLANATORY NOTE**

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

These Regulations make changes to the way in which the statutory entitlement to paternity leave is exercised, by amending the Paternity and Adoption Leave Regulations 2002 (“the 2002 Regulations”); the Paternity and Adoption (Adoption from Overseas) Regulations 2003 (“the 2003 Regulations”); and the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 (“the 2014 Regulations”).

The 2002 Regulations provide for paternity leave in ‘birth’ cases (where an employee qualifies for paternity leave by virtue of their relationship with the birth mother) and ‘adoption’ cases (where an employee qualifies by virtue of their relationship with someone who is adopting a child).

The 2003 Regulations apply, with modifications, the 2002 Regulations to ‘overseas adoption’ cases (where the employee has a qualifying relationship with someone who is adopting a child who enters Great Britain from outside the United Kingdom, but where there is no placement for adoption under the law of any part of the United Kingdom).

The 2014 Regulations apply, with modifications, the 2002 Regulations to ‘parental order’ cases (where the employee and their partner are the intended parents in surrogacy arrangements under the Human Fertilisation and Embryology Act 2008).

The amendments in these Regulations make changes to requirements relating to notice and evidence, the period within which paternity leave must be taken, and the existing requirement that paternity leave be taken in one continuous period. They come into force on 8th March 2024.

Regulation 5 provides for these amendments to take effect in relation to children whose expected week of childbirth is after 6th April 2024, and children whose expected date of placement for adoption, or expected date of entry into Great Britain for adoption, is on or after 6th April 2024.

Regulation 6 makes provision for situations where an employee has served a notice or provided information or a declaration under the provisions in force prior to the coming into force of these Regulations. The employee will be deemed to have complied with any requirement in the amendments in these regulations to provide that information, declaration or notice.

Part 2 of these Regulations amends the 2002 Regulations.

Regulation 9 amends regulation 5 of the 2002 Regulations to allow an employee to choose to take either two non-consecutive weeks' paternity leave (birth), or a single period of either one week or two weeks. It also extends the period in which paternity leave (birth) must be taken from 56 days after the birth of the child, to 52 weeks after the birth. Regulation 12 makes similar amendments to regulation 9 of the 2002 Regulations in respect of paternity leave (adoption).

Regulation 10 substitutes regulation 6 of the 2002 Regulations. It sets out what notices and evidence of entitlement an employee must give to an employer in order to take paternity leave (birth). This includes provision for an employee to vary any leave dates notified previously. Similar provision is made in relation to paternity leave (adoption) in regulation 13.

Regulations 11 and 14 amend regulations 7 and 11, respectively, to make provision for when a period of paternity leave commences and ends.

Regulation 15 makes provision for entitlement to paternity leave where a child dies, is no longer to be placed for adoption, or is returned after being placed.

Part 3 amends the 2003 Regulations and makes similar provision to Part 2 in relation to cases of 'adoptions from overseas'.

Part 4 amends the 2014 Regulations and makes similar provision to Part 2 in relation to 'parental order' cases.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary sector or community bodies is foreseen.

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