S T A T U T O R Y I N S T R U M E N T S

2020 No. 249

TERMS AND CONDITIONS OF EMPLOYMENT

The Parental Bereavement Leave Regulations 2020

Made - - - - 9th March 2020

Coming into force in accordance with regulation 1

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The Secretary of State, in exercise of the powers conferred by sections 47C(1), (2) and (4), 80EA(1) to (8), 80EB(1), (4) and (5), 80EC, 80ED and 99 of the Employment Rights Act 1996(**a**), makes the following Regulations.

In accordance with section 236(3) of the Employment Rights Act 1996(**b**), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Parental Bereavement Leave Regulations 2020 and come into force on the day after the day on which they are made.

Application

2. These Regulations apply in respect of children who die on or after 6th April 2020.

Interpretation

3. In these Regulations—

"the 1996 Act" means the Employment Rights Act 1996;

"adopter" means a person who intends to adopt C;

"C" means the child in relation to whom an entitlement to parental bereavement leave arises;

"intended parent" means a person who—

(a) has applied, or intended to apply during the period of 6 months beginning with the day of C's birth—

(i) with another person for an order under section 54 (parental orders: two applicants) of the Human Fertilisation and Embryology Act 2008(**c**) in respect of C, or

(ii) as the sole applicant for an order under section 54A (parental orders: one applicant) of that Act(**d**) in respect of C, and

(b) expected the court to make such an order on that application in respect of C;

"official notification" means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of C, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

"parental bereavement leave" means leave under regulation 4;

"placed for adoption" means placed—

(**a**) 1996 c. 18; section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8 and amended by the Parental Bereavement (Leave and Pay) Act 2018 (c. 24), Schedule, Part 3, paragraphs 20 and 22; sections 80EA to 80EE were inserted by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 1, paragraphs 1 and 2; section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16 and amended by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 3, paragraphs 20 and 27.

(**b**) Section 236(3) was amended by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 1, paragraphs 1 and 3.

(**c**) 2008 c. 22; section 54 was amended by the Crime and Courts Act 2013 (c. 22), Schedule 11, Part 1, paragraph 206 and by S.I. 2018/1413.

(**d**) Section 54A was inserted by S.I. 2018/1413.

(a) for adoption under the Adoption and Children Act 2002(**a**) or the Adoption and Children (Scotland) Act 2007(**b**),

(b) in accordance with section 22C of the Children Act 1989(**c**) (ways in which looked after children are to be accommodated and maintained) with a local authority foster parent who is also a prospective adopter, following consideration in accordance with subsection (9B)(c) of that section(**d**), or

(c) in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014(**e**) with a prospective adopter, following consideration in accordance with subsection (10) of that section;

"prospective adopter" means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(**f**) or regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**g**);

"relevant domestic authority" means—

(a) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element Regulations 2005(**h**) apply and who is habitually resident in Wales, the National Assembly for Wales,

(b) in the case of an adopter to whom the Adoptions with a Foreign Element (Scotland) Regulations 2009(**i**) apply and who is habitually resident in Scotland, the Scottish Ministers, and

(c) in any other case, the Secretary of State;

"statutory leave" means leave provided for in Part 8 of the 1996 Act.

PART 2

ENTITLEMENT TO PARENTAL BEREAVEMENT LEAVE

Entitlement to parental bereavement leave

4.—(1) An employee is entitled to be absent from work to take parental bereavement leave if he or she—

(a) satisfies one of the conditions specified in paragraph (2), and

(b) complies with the notice requirements in regulation 6.

(2) The conditions referred to in paragraph (1) are that, at the date of C's death, the employee is—

(a) C's parent;

(b) C's natural parent and named in an order made pursuant to section 51A(2)(a) of the Adoption and Children Act 2002(**j**) or section 11(3)(aa) of the Children (Scotland) Act 1995(**k**), provided that such an order has not subsequently been revoked or discharged;

(**a**) 2002 c. 38.
(**b**) 2007 asp 4.
(**c**) 1989 c. 41.
(**d**) 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.
(**e**) 2014 anaw/dccc 4.
(**f**) S.I. 2005/389; regulation 30B was substituted by S.I. 2013/985.
(**g**) S.I. 2005/1313.
(**h**) S.I. 2005/392, to which there are amendments not relevant to these Regulations.
(**i**) S.S.I. 2009/182, to which there are amendments not relevant to these Regulations.
(**j**) Section 51A was inserted by the Children and Families Act 2014, section 9.
(**k**) Section 11(3)(aa) was inserted by the Adoption and Children (Scotland) Act 2007, section 107.

(c) a person with whom C has been placed for adoption, for so long as that placement has not been disrupted, as mentioned in paragraph (3);

(d) an adopter—

(i) with whom C was living, following C's entry into Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of C for adoption under the law of any part of the United Kingdom, and

(ii) who has received official notification in respect of C;

(e) an intended parent of C;

(f) C's parent in fact; or

(g) the partner of P.

(3) For the purposes of paragraph (2)(c), a placement has been disrupted—

(a) when C has been returned under sections 31 to 35 of the Adoption and Children Act 2002(**a**),

(b) in Scotland, when C has been returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007, or

(c) when C's placement—

(i) with a local authority foster parent who is also a prospective adopter in accordance with section 22C of the Children Act 1989 following consideration in accordance with subsection (9B)(c) of that section, or

(ii) with a prospective adopter in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014,

has been terminated.

(4) Subject to paragraph (6), a person is C's parent in fact if that person, for a continuous period of at least four weeks ending with the day on which C dies—

(a) lived with C in the person's own home, and

(b) had day to day responsibility for C's care.

(5) For the purposes of the continuous period mentioned in paragraph (4), no account is to be taken of any absences of a temporary or intermittent nature.

(6) A person is not to be regarded as C's parent in fact if—

(a) C is in the care of that person in premises in which any parent of C's, or any person who is not a parent of C's but who has responsibility for C, is living, or

(b) that person was or is entitled to receive remuneration, whether by way of wages or otherwise, in respect of the care of C.

(7) A person has responsibility for C, for the purposes of paragraph (6)(a), if the person—

(a) has parental responsibility, within the meaning of section 3 of the Children Act 1989, or

(b) in Scotland, has parental responsibilities or parental rights, within the meaning of sections 1 and 2 of the Children (Scotland) Act 1995(**b**).

(8) For the purposes of paragraph (6)(b), the following payments are not to be regarded as remuneration—

(a) any fee or allowance paid by a local authority to a foster parent;

(**a**) Sections 32, 34 and 35 were amended by the Children and Families Act 2014, Schedule 2, Part 2, paragraphs 63 and 64 and by S.I. 2016/413.

(**b**) 1995 c. 36; sections 1 and 2 were amended by the Human Fertilisation and Embryology Act 2008, Schedule 6, Part 2, paragraphs 48 and 49.

(b) payments wholly or mainly intended to reimburse the person for expenses which arise from, or are expected to arise from, the person's care of C;

(c) amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of C's care.

(9) In this regulation—

(a) "P" means any person who satisfies one of the conditions in paragraph (2)(a) to (f);

(b) "partner" means a person (whether of a different sex or the same sex) who lives with C and P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (c);

(c) the relatives of P referred to in sub-paragraph (b) are P's parent, grandparent, sister, brother, aunt or uncle;

(d) references to relationships in sub-paragraph (c)—

(i) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(ii) include the relationship of a child with his adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) Where an employee is eligible to take parental bereavement leave under this regulation as a result of the death of more than one child, the employee is entitled to parental bereavement leave in respect of each child.

Options in respect of parental bereavement leave

5.—(1) The minimum period of parental bereavement leave which may be taken by an employee is one week.

(2) An employee may choose to take either one or two weeks' parental bereavement leave.

(3) Where an employee chooses to take two weeks' parental bereavement leave, the weeks need not be consecutive.

(4) Parental bereavement leave may be taken at any time within the period of 56 weeks beginning with the date of C's death.

(5) Paragraphs (1), (2) and (3) of this regulation are subject to regulation 8.

Notice requirements for parental bereavement leave

6.—(1) An employee must give his or her employer notice of his or her intention to take any absence from work as parental bereavement leave specifying—

(a) the date of C's death,

(b) the date on which the employee chooses any period of absence to begin, and

(c) whether the employee intends that period of absence to be a period of one or two weeks' parental bereavement leave.

(2) Where any week which an employee intends to be treated as parental bereavement leave begins within Period A, notice provided for in paragraph (1) must be given to the employer—

(a) before the employee is due to start work on the employee's first day of absence from work in that week, or

(b) in a case where it is not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where any week which an employee intends to be treated as parental bereavement leave begins within Period B, notice provided for in paragraph (1) must be given to the employer at least one week before the start of that week.

(4) Where an employee gives notice in accordance with paragraph (2) or (3) to take a period of parental bereavement leave which includes a week which begins—

(a) in Period A, the employee may cancel that week's parental bereavement leave by giving notice to the employer no later than the time on the first day of that week at which the employee would have been due to start work if the employee was not taking parental bereavement leave;

(b) in Period B, the employee may cancel that week's parental bereavement leave by giving notice to the employer at least one week before the start of that week.

(5) An employee may not cancel any week of parental bereavement leave which has already commenced.

(6) In this regulation—

"Period A" means the period of 56 days beginning with the date of C's death;

"Period B" means the period beginning the day after the end of Period A and ending with the end of the period specified in regulation 5(4).

Commencement of parental bereavement leave

7.—(1) An employee's period of parental bereavement leave begins on the date specified in his or her notice under regulation 6(1) except where—

(a) he or she has cancelled the week or weeks of parental bereavement leave specified in that notice in accordance with regulation 6(4), or

(b) paragraph (2) applies.

(2) In a case where—

(a) the employee notifies his or her employer of the employee's intention to begin his or her parental bereavement leave on the same day as notice is given to his or her employer in accordance with regulation 6(2), and

(b) he or she is already at work on that day,

the employee's period of parental bereavement leave begins on the day after that day.

Commencement of other statutory leave

8.—(1) This regulation applies where an employee's period of parental bereavement leave has commenced in accordance with regulation 7 and, before that period is due to end, the employee begins another period of statutory leave.

(2) Where paragraph (1) applies, the period of parental bereavement leave ends immediately before the start of the other period of statutory leave and any remaining entitlement to parental bereavement leave—

(a) may be taken after the end of the other period of statutory leave (but within the period specified in regulation 5(4)), and

(b) must be taken in a single consecutive period.

(3) Where paragraph (1) applies, and the employee chooses, in accordance with paragraph (2)(a), to take his or her remaining entitlement to parental bereavement leave after the end of the other period of statutory leave, he or she must give a separate notice in respect of that remaining entitlement, in accordance with regulation 6 (other than the requirement under regulation 6(1)(c)).

(4) Where any remaining entitlement to parental bereavement leave includes part of a week as a result of paragraph (2), the portion of the remaining entitlement comprising part of a week will be deemed to be a week for the purposes of the requirements set out in regulation 6(1) to (5).

PART 3

TAKING PARENTAL BEREAVEMENT LEAVE

Application of terms and conditions during parental bereavement leave

9.—(1) An employee who takes parental bereavement leave, is, during any period of leave—

(a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent, and

(b) bound by any obligations arising under those terms and conditions, subject only to the exception in section 80EB(1)(b) of the 1996 Act(**a**).

(2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 80EB(3) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 80EB of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989(**b**), nothing in paragraph (1)(a) imposes a requirement which exceeds the requirements of paragraph 5D of that Schedule(**c**).

Right to return after parental bereavement leave

10.—(1) An employee who returns to work after a period of parental bereavement leave which was—

(a) an isolated period of parental bereavement leave, or

(b) the last of two or more consecutive periods of statutory leave which did not include any—

(i) period of parental leave of more than four weeks; or

(ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child as the period of parental bereavement leave the employee is returning from means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks,

is entitled to return from leave to the job in which the employee was employed before the absence.

(2) An employee who returns to work after a period of parental bereavement leave not falling within the description within paragraph (1)(a) or (b) is entitled to return from leave to the job in which he or she was employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable and appropriate for the employee to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which the employee was employed before the absence are references to the job in which the employee was employed—

(a) if the return is from an isolated period of parental bereavement leave, immediately before that period;

(b) if the return is from consecutive periods of statutory leave, immediately before the first such period.

(4) In this regulation, "parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999(**d**).

(**a**) Section 80EB was inserted by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 1, paragraphs 1 and 2.
(**b**) 1989 c. 24.
(**c**) Paragraph 5D was inserted by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 3, paragraph 7.
(**d**) S.I. 1999/3312.

Right to return after parental bereavement leave: supplementary

11.—(1) The right to return under regulation 10 is a right to return—

(a) with the employee's seniority, pension and similar rights as they would have been if the employee had not been absent, and

(b) on terms and conditions not less favourable than those which would have applied if the employee had not been absent.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule(**a**).

Protection from detriment

12.—(1) An employee is entitled under section 47C(**b**) of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by an employer because—

(a) the employee took, sought to take, or made use of the benefits of, parental bereavement leave, or

(b) the employer believed that the employee was likely to take parental bereavement leave.

(2) For the purposes of paragraph (1)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to a dismissal within the meaning of Part 10 of the 1996 Act.

Unfair Dismissal

13.—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act(**c**) to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

(2) An employee who is dismissed is also to be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that the reason or principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

(a) that the employee took, sought to take, or made use of the benefits of parental bereavement leave,

(b) that the employer believed that the employee was likely to take parental bereavement leave.

(**a**) Paragraphs 5A and 5B were inserted by the Pensions Act 2004 (c. 35), section 265(1), Paragraph 5C was inserted by the Children and Families Act 2014 (c. 6) Schedule 7, paragraphs 1 and 4. Paragraph 5D was inserted by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 3, paragraph 7.

(**b**) Section 47C was inserted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 8 and amended by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 3, paragraphs 20 and 22.

(**c**) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Parental Bereavement (Leave and Pay) Act 2018, Schedule, Part 3, paragraphs 20 and 27.

(4) For the purposes of paragraph (3)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

Calculation of a week's pay for the purposes of Chapter 2 of Part 14 of the 1996 Act

14. Where—

(a) under Chapter 2 of Part 14 of the 1996 Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date"),

(b) during a week in that period, the employee was absent from work on parental bereavement leave, and

(c) remuneration is payable to the employee in respect of that week under their contract of employment, but the amount payable is less than the amount that would be payable if he or she were working,

that week must be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

PART 4

CONTRACTUAL RIGHTS

Contractual rights to parental bereavement leave

15. Where an employee is entitled to parental bereavement leave (referred to in this regulation as "the statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise—

(a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and

(b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

9th March 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce a new statutory entitlement for bereaved parents who are employees to take up to two weeks' leave from their job called parental bereavement leave in the 56 weeks following the death of a child. These Regulations are made in exercise of the powers inserted into

the Employment Rights Act 1996 (c. 18) (the "1996 Act") by the Parental Bereavement (Leave and Pay Act) 2018 (c. 24).

Part 2 relates to entitlement to parental bereavement leave. The right to take parental bereavement leave is conferred by regulation 4 which sets out the conditions for entitlement which must be satisfied by the employee in order to take parental bereavement leave. These include substantive requirements, such as the employee falling within the definition of a bereaved parent (in particular, specifying the types of parental relationships in respect of which the new entitlement arises), as well as procedural requirements, such as the employee giving appropriate notices to their employer. Where an employee is entitled to parental bereavement leave under regulation 4 as the result of the death of more than one child, the employee is entitled to parental bereavement leave in respect of each child.

Regulation 5 sets out the number of weeks of parental bereavement leave that are available to a bereaved parent and gives an employee the option of taking either one or two weeks' parental bereavement leave. The weeks taken as parental bereavement leave do not need to be taken consecutively. It also provides that parental bereavement leave may only be taken within the period of 56 weeks beginning with the date of the child's death.

Regulation 6 details the notice requirements and other information the bereaved parent must provide to their employer before taking parental bereavement leave. An employee does not need to provide notice in writing to his or her employer, but the length of notice required to book and cancel parental bereavement leave will vary depending on whether the period the employee intends to take as parental bereavement leave falls within 56 days of the child's death or later. Regulations 7 and 8 respectively set out when an employee's period of bereavement leave may start and what happens when a period of parental bereavement leave is interrupted by another type of statutory leave under Part 8 of the 1996 Act.

Part 3 contains provisions applicable in relation to the taking of parental bereavement leave. Regulation 9 elaborates on the new section 80EB of the 1996 Act, by providing that an employee is entitled during his or her absence on leave to the benefit of all of his or her terms and conditions of employment apart from the right to remuneration (excluded by Section 80EB(3)(b)); also that the employee is subject to all of the obligations under those terms and conditions except in so far as they are inconsistent with the right to take parental bereavement leave (the exception appears in section 80EB(1)(b)). Regulations 10 and 11 provide for an employee's right to return to work after taking a period of parental bereavement leave, distinguishing the case where the leave was an isolated period of absence from the case where it followed another period of statutory leave. Regulations 12 and 13 provide that an employee entitled to parental bereavement leave is protected from detriment and dismissal attributable to the fact that they took or sought to take parental bereavement leave.

Part 4 contains provisions applicable where an employee has a contractual right to parental bereavement leave, in addition to the statutory right contained within these Regulations.

These Regulations are part of a package of legislative measures and the relevant impact assessment is the *Parental Bereavement (Leave and Pay) Bill impact assessment* which was published on 14 May 2018. A copy of that impact assessment can be obtained from the Department for Business, Energy and Industrial Strategy, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET.

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