



Statutory Document No. 78/07

THE EMPLOYMENT ACT 2006

THE PATERNITY LEAVE (BIRTH) REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

1st April 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 65, 90, 92, 93, 94, 114 and 174 of the Employment Act 2006¹, and of all other enabling powers, the following Regulations are hereby made:—

Preliminary

1. Citation and commencement

These Regulations may be cited as the Paternity Leave (Birth) Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 1st April 2007.

2. Interpretation

(1) In these Regulations —

"the Act" means the Employment Act 2006;

"additional adoption leave" means leave under section 96 of the Act;

"additional maternity leave" means leave under section 81 of the Act;

"adoption leave" means ordinary adoption leave or additional adoption leave;

"expected week", in relation to the birth of a child, means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born;

"ordinary adoption leave" means leave under section 95 of the Act;

"parental leave" means leave under section 84 or 85 of the Act;

"partner", in relation to a child's mother, means a person (whether of a different sex or the same sex) who lives with the mother and the child in an enduring family relationship but is not a relative of the mother of a kind specified in paragraph (2);

¹ 2006 c. 21
Price £1.80

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"paternity leave (birth)" means leave under regulation 4;

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

(2) The relatives of a child's mother referred to in the definition of "partner" in paragraph (1) are the mother's parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2) —

(a) 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

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

but do not include any other adoptive relationships.

(4) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Schedule 5 to the Act, as if that provision were a provision of the Act.

3. Application

(1) The provisions of these Regulations relating to paternity leave (birth) have effect only in relation to children —

(a) born on or after 30th September 2007, or

(b) whose expected week of birth begins on or after that date.

(2) Regulation 11 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 1st April 2007.

(3) For the purposes of paragraph (2) —

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and

(b) a failure to act is to be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act —

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(5) Regulation 12 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 112 of the Act) falls on or after 1st April 2007.

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Entitlement to paternity leave (birth)

4. Entitlement to paternity leave (birth)

- (1) An employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's mother if he —
- (a) satisfies the conditions specified in paragraph (2), and
 - (b) has complied with the notice requirements in regulation 6 and, where applicable, the evidential requirements in that regulation.
- (2) The conditions referred to in paragraph (1) are that the employee —
- (a) has been continuously employed for a period of not less than 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth;
 - (b) is either —
 - (i) the father of the child or;
 - (ii) married to or the partner of the child's mother, but not the child's father;
 - (c) has, or expects to have —
 - (i) if he is the child's father, responsibility for the upbringing of the child;
 - (ii) if he is the mother's husband or partner but not the child's father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.
- (3) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child's birth even though he has not then been continuously employed for a period of not less than 26 weeks, where —
- (a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and
 - (b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b)(ii) if he would have satisfied it but for the fact that the child's mother has died.
- (5) An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.
- (6) An employee's entitlement to leave under this regulation shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

5. Options in respect of paternity leave (birth)

- (1) An employee may choose to take either one week's paternity leave (birth) or 2 consecutive weeks' paternity leave (birth) in respect of a child.

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(2) The leave may only be taken during the period which begins with the date on which the child is born and ends —

- (a) except in the case referred to in sub-paragraph (b), 56 days after that date;
- (b) in a case where the child is born before the first day of the expected week of its birth, 56 days after that day.

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin his period of leave on —

- (a) the date on which the child is born;
- (b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 6, or
- (c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expected week of the child's birth.

(4) In a case where the leave is in respect of a child whose expected week of birth begins before 30th September 2007, an employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 6, which is at least 28 days after the date on which that notice is given.

6. Notice and evidential requirements for paternity leave (birth)

(1) An employee must give his employer notice of his intention to take paternity leave (birth) in respect of a child, specifying —

- (a) the expected week of the child's birth;
- (b) the length of the period of leave which, in accordance with regulation 5(1), the employee has chosen to take, and
- (c) the date on which, in accordance with regulation 5(3) or (4), the employee has chosen that his period of leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer —

- (a) in or before the 15th week before the expected week of the child's birth, or
- (b) in a case where it was not reasonably practicable for the employee to give the notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where the employer requests it, an employee must also give his employer a declaration, signed by the employee, to the effect that the purpose of his absence from work will be that specified in regulation 4(1) and that he satisfies the conditions of entitlement in regulation 4(2)(b) and (c).

(4) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, subject to paragraph (5) and provided that he gives his employer notice of the variation —

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- (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is born, at least 28 days before the first day of the expected week of the child's birth;
- (b) where the variation is to provide for the employee's period of leave to begin on a date that is a specified number of days (or a different specified number of days) after the date on which the child is born, at least 28 days before the date falling that number of days after the first day of the expected week of the child's birth;
- (c) where the variation is to provide for the employee's period of leave to begin on a predetermined date (or a different predetermined date), at least 28 days before that date,

or, if it is not reasonably practicable to give the notice at least 28 days before whichever day or date is relevant, as soon as is reasonably practicable.

(5) In a case where regulation 5(4) applies, an employee may only vary the date which he has chosen as the date on which his period of leave will begin by substituting a different predetermined date.

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

the employee must vary his choice of date, by substituting a later predetermined date or (except in a case where regulation 5(4) applies) exercising an alternative option under regulation 5(3), and give his employer notice of the variation as soon as is reasonably practicable.

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

(8) Notice under paragraph (1), (4), (6) or (7) shall be given in writing, if the employer so requests.

7. Commencement of paternity leave (birth)

(1) Except in the case referred to in paragraph (2), an employee's period of paternity leave (birth) begins on the date specified in his notice under regulation 6(1), or, where he has varied his choice of date under regulation 6(4) or (6), on the date specified in his notice under that provision (or the last such notice if he has varied his choice more than once).

- (2) In a case where —
 - (a) the employee has chosen to begin his period of leave on the date on which the child is born, and
 - (b) he is at work on that date,

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

Application of terms and conditions during paternity leave (birth)

8. Application of terms and conditions during paternity leave (birth)

- (1) An employee who takes paternity leave (birth) —
 - (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent, and
 - (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 92(1)(b) of the Act.
- (2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 92(5) of the Act, and accordingly does not include terms and conditions about remuneration.
- (3) For the purposes of section 92 of the Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Return to work

9. Right to return after paternity leave (birth)

- (1) An employee who returns to work after a period of paternity leave (birth) which was —
 - (a) an isolated period of leave, or
 - (b) the last of 2 or more consecutive periods of statutory leave, which did not include any period of additional maternity leave or additional adoption leave or a period of parental leave of more than 4 weeks,is entitled to return from leave to the job in which he was employed before his absence.
- (2) An employee who returns to work after a period of paternity leave (birth) not falling within paragraph (1)(a) or (b) is entitled to return from leave —
 - (a) to the job in which he was employed before his absence, or
 - (b) if it is not reasonably practicable for the employer to permit him to return to that job, to another job which is both suitable for him and appropriate for him to do in the circumstances.
- (3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before his absence is a reference to the job in which he was employed —
 - (a) if his return is from an isolated period of paternity leave (birth), immediately before that period began;
 - (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

10. Incidents of the right to return after paternity leave (birth)

- (1) An employee's right to return under regulation 9 is a right to return —
- (a) with his seniority, pension rights and similar rights —
- (i) in a case where the employee is returning from consecutive periods of statutory leave which included a period of additional adoption leave or additional maternity leave, as they would have been if the period or periods of his employment prior to the additional adoption leave or (as the case may be) additional maternity leave were continuous with the period of employment following it;
- (ii) in any other case, as they would have been if he had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if he had not been absent.

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional maternity leave or additional adoption leave is subject to the requirements of paragraphs 5, 5B and 6 (equal treatment under pension schemes: maternity absence, adoption leave and family leave) of Schedule 5 to the Social Security Act 1989 (an Act of Parliament)², as it has effect in the Island³.

(3) The provisions in paragraph (1)(a)(ii) and (b) for an employee to be treated as if he had not been absent refer to his absence —

- (a) if his return is from an isolated period of paternity leave (birth), since the beginning of that period;
- (b) if his return is from consecutive periods of statutory leave, since the beginning of the first such period.

Employment protection

11. Protection from detriment

(1) An employee is entitled under section 65 of the Act not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer because the employee took or sought to take paternity leave (birth).

(2) Paragraph (1) does not apply where the detriment in question amounts to dismissal within the meaning of Part X of the Act.

12. Unfair dismissal

(1) An employee who is dismissed is entitled under section 114 of the Act to be regarded for the purpose of Part X of the Act as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

² 1989 c.24

³ GC 422/89

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

- (a) the reason (or, if more than one, the 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, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraph (1) and (2) are reasons connected with the fact that the employee took, or sought to take, paternity leave (birth).

(4) Paragraph (1) does not apply in relation to an employee if —

- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit the employee to return to a job which is both suitable for the employee and appropriate for him to do in the circumstances;
- (b) an associated employer offers the employee a job of that kind, and
- (c) the employee accepts or unreasonably refuses that offer.

(5) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (4), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

13. Contractual rights to paternity leave (birth)

(1) This regulation applies where an employee is entitled to paternity leave (birth) (referred to in paragraph (2) as a "statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.

(2) In a case where this regulation applies —

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the 2 rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of the 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.

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14. Calculation of a week's pay

Where —

- (a) under Schedule 6 to the 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 paternity leave (birth), and
- (c) remuneration is payable to the employee in respect of that week under his contract of employment, but the amount payable is less than the amount that would be payable if he were working,

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

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Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, made under the Employment Act 2006, make provision for an employee's right to take unpaid paternity leave for the purpose of caring for a new-born child or the child's mother. The right applies where the child is born or expected to be born on or after 30th September 2007, and the protection against detriment or dismissal because the right is exercised arises where the detriment or dismissal occurs on or after 1st April 2007 (regulation 3).

The right to take leave (referred to as "paternity leave (birth)") is conferred by regulation 4, and is available to employees with 26 weeks' qualifying service. Regulation 5 gives an employee the option of taking either one week's leave or 2 consecutive weeks' leave, and also options concerning the date on which the leave will begin (provided it is taken within 56 days of the child's birth). Regulation 6 requires an employee to notify his employer of his intention to take leave and of his choices in respect of the options available, and regulation 7 specifies the date when the leave is taken to begin.

Regulation 8 provides that an employee is entitled during his absence on leave to the benefit of all of his terms and conditions of employment (apart from the right to remuneration, which is excluded by section 92(5)(b) of the Act), and is subject to all of the obligations under those terms and conditions except where inconsistent with the right to leave. Regulations 9 and 10 provide for an employee's right to return to work after taking leave.

Under regulations 11 and 12 an employee entitled to paternity leave (birth) is protected against detriment or dismissal attributable to the fact that he took or sought to take such leave.