



## THE EMPLOYMENT ACT 2006

### THE ADOPTION LEAVE REGULATIONS 2007

(as amended by the Adoption Leave (Amendment) Regulations 2007 SD No. 470/07)

*Coming into operation*

*1st April 2007*

In exercise of the powers conferred on the Department of Trade and Industry by sections 65, 91, 92, 93, 94, 95, 96, 97, 98 and 175(1) of the Employment Act 2006<sup>1</sup>, and of all other enabling powers, the following Regulations are hereby made:—

#### PART 1

##### PRELIMINARY

#### 1. Citation and commencement

These Regulations may be cited as the Adoption Leave Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 1<sup>st</sup> 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;

"adopter", in relation to a child, means a person who has been matched with the child for adoption, or, in a case where 2 people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of these Regulations;

"adoption agency" has the same meaning as in the Adoption Act 1984<sup>2</sup>;

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

"child" means a person who is, or when placed with an adopter for adoption was, under the age of 18;

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

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<sup>1</sup> 2006 c.21

<sup>2</sup> 1984 c.14

Price £ 2.50

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

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

"paternity leave (adoption)" means leave under regulation 18;

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

(2) The relatives of a child's adopter referred to in the definition of "partner" in paragraph (1) are the adopter'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) For the purposes of these Regulations —

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person, and

(b) a person is notified of having been matched with a child on the date on which he receives notification of the agency's decision, under regulation 9(2) of the Adoption Societies Regulations 1985<sup>3</sup>;

(c) a person elects to be a child's adopter, in a case where the child is matched with him and another person jointly, if he and that person agree, at the time at which they are matched, that he and not the other person will be the adopter.

(5) 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 relating to adoption leave under regulation 5 and paternity leave (adoption) under regulation 18 have effect only in relation to children —

(a) matched with a person who is notified of having been matched on or after 30<sup>th</sup> September 2007, or

(b) placed for adoption on or after that date.

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<sup>3</sup> GC 284/85

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(2) Regulation 25 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 1<sup>st</sup> 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.

(3) For the purposes of paragraph (2), 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.

(4) Regulation 26 (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 1<sup>st</sup> April 2007.

#### **4. Overseas adoptions**

(1) In relation to an adoption from overseas, these Regulations have effect subject to the modifications in the Schedule.

(2) In paragraph (1) "adoption from overseas" means the adoption of a child who enters the Island from outside the Island and 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 the Island or any part of the United Kingdom.

## PART 2

### ADOPTION LEAVE

#### *Ordinary adoption leave*

#### **5. Entitlement to ordinary adoption leave**

(1) An employee is entitled to ordinary adoption leave in respect of a child if he —

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

(b) has complied with the notice requirements in regulation 7 and, where applicable, the evidential requirements in that regulation.

(2) The conditions referred to in paragraph (1) are that the employee —

(a) is the child's adopter; and

(b) has notified the agency that he agrees that the child should be placed with him and on the date of placement.

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(3) An employee's entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

**6. Options in respect of ordinary adoption leave**

(1) Except in the case referred to in paragraph (2), an employee may choose to begin a period of ordinary adoption leave on —

- (a) the date on which the child is placed with him for adoption, or
- (b) a predetermined date, specified in a notice under regulation 7, which is no more than 14 days before the date on which the child is expected to be placed with the employee and no later than that date.

(2) In a case where the employee was notified of having been matched with the child before 30<sup>th</sup> September 2007, the employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 7, which is after 30<sup>th</sup> September 2007 and at least 28 days after the date on which that notice is given.

**7. Notice and evidential requirements for ordinary adoption leave**

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

- (a) the date on which the child is expected to be placed with him for adoption, and
  - (b) the date on which, in accordance with regulation 6(1) or (2), 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) no more than 7 days after the date on which the employee is notified of having been matched with the child for the purposes of adoption, or
- (b) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.

(3) Where the employer requests it, an employee must also provide his employer with evidence, in the form of one or more documents issued by the adoption agency that matched the employee with the child, of —

- (a) the name and address of the agency;
- (b) the date on which the employee was notified that he had been matched with the child, and
- (c) the date on which the agency expects to place the child with the employee.

(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 placed with him for adoption, at least 28 days before the date specified in his notice under paragraph (1) as the date on which the child is expected to be placed with him;
- (b) 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 28 days before whichever date is relevant, as soon as is reasonably practicable.

(5) In a case where regulation 6(2) 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) Notice under paragraph (1) or (4) shall be given in writing, if the employer so requests.

(7) An employer who is given notice under paragraph (1) or (4) of the date on which an employee has chosen that his period of ordinary adoption leave will begin shall notify the employee, within 28 days of his receipt of the notice, of the date on which —

- (a) if the employee is entitled only to ordinary adoption leave, his ordinary adoption leave period will end, or
- (b) if the employee is entitled to both ordinary adoption leave and additional adoption leave, his additional adoption leave period will end.

**8. Duration and commencement of ordinary adoption leave**

(1) Subject to regulations 12 and 14, an employee's ordinary adoption leave period is a period of 26 weeks.

(2) Except in the case referred to in paragraph (3), an employee's ordinary adoption leave period begins on the date specified in his notice under regulation 7(1), or, where he has varied his choice of date under regulation 7(4), on the date specified in his notice under that provision (or the last such date if he has varied his choice more than once).

(3) In a case where —

- (a) the employee has chosen to begin his period of leave on the date on which the child is placed with him, and
- (b) he is at work on that date,

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

**9. Application of terms and conditions during ordinary adoption leave**

(1) An employee who takes ordinary adoption leave —



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- (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 95(3)(b) of the Act.
- (2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 95(4) of the Act, and accordingly does not include terms and conditions about remuneration.
- (3) For the purposes of section 95 of the Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

*Additional adoption leave*

**10. Additional adoption leave: entitlement, duration and commencement**

- (1) An employee is entitled to additional adoption leave in respect of a child if —
- (a) the child was placed with him for adoption;
  - (b) he was continuously employed for a period of not less than 26 weeks ending with the week in which he was notified of having been matched with the child,
  - (c) he took ordinary adoption leave in respect of the child, and
  - (d) his ordinary adoption leave period did not end prematurely under regulation 12(2)(a) or 14.
- (2) Subject to regulations 12 and 14, an employee's additional adoption leave period is a period of 26 weeks beginning on the day after the last day of his ordinary adoption leave period.

**11. Application of terms and conditions during additional adoption leave**

An employee who takes additional adoption leave -

- (a) is entitled, during the period of leave, to the benefit of his employer's implied obligation to him of trust and confidence and of any terms and conditions of his employment relating to —
  - (i) notice of the termination of the employment contract by his employer;
  - (ii) compensation in the event of redundancy, or
  - (iii) disciplinary or grievance procedures; and
- (b) is bound, during that period, by his implied obligation to his employer of good faith and of any terms and conditions of his employment relating to —
  - (i) notice of the termination of the employment contract by him,

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- (ii) the disclosure of confidential information;
- (iii) the acceptance of gifts or other benefits, or
- (iv) the employee's participation in any other business.

*Adoption leave: general*

**12. Disrupted placement in the course of adoption leave**

- (1) This regulation applies where —
  - (a) an employee has begun a period of ordinary adoption leave or additional adoption leave in respect of a child before the placement of the child with him, and the employee is subsequently notified that the placement will not be made, or
  - (b) during an employee's period of ordinary adoption leave or additional adoption leave in respect of a child placed with him —
    - (i) the child dies, or
    - (ii) the child is returned to the adoption agency under section 20(3) of the Adoption Act 1984.
- (2) Subject to regulation 14, in a case where this regulation applies —
  - (a) except in the circumstances referred to in sub-paragraphs (b) and (c), the employee's period of ordinary adoption leave or additional adoption leave ends 8 weeks after the end of the relevant week specified in paragraph (3);
  - (b) where the employee is taking ordinary adoption leave and the period of 26 weeks provided for in regulation 8 ends within 8 weeks of the end of the relevant week —
    - (i) the employee's ordinary adoption leave period ends on the expiry of the 26-week period;
    - (ii) the employee is entitled to additional adoption leave, and
    - (iii) the employee's additional adoption leave period ends 8 weeks after the end of the relevant week;
  - (c) where the employee is taking additional adoption leave and the period of 26 weeks provided for in regulation 10 ends within 8 weeks of the end of the relevant week, the employee's additional adoption leave period ends on the expiry of the 26-week period.
- (3) The relevant week referred to in paragraph (2) is —
  - (a) in a case falling within paragraph (1)(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 (1)(b)(i), the week during which the child dies;

- (c) in a case falling within paragraph (1)(b)(ii), the week during which the child is returned.
- (4) In paragraph (3), "week" means the period of 7 days beginning with Sunday.

### **13. Redundancy during adoption leave**

(1) This regulation applies where, during an employee's period of ordinary adoption leave or additional adoption leave, it is not practicable by reason of redundancy for his employer to continue to employ him under his existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of his employment under his existing contract) alternative employment with his employer or his employer's successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of his employment under the previous contract.

- (3) The new contract of employment must be such that —
  - (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for him to do in the circumstances, and
  - (b) its provisions as to the capacity and place in which he is to be employed, and as to the other terms and conditions of his employment, are not substantially less favourable to him than if he had continued to be employed under the previous contract.

### **14. Dismissal during adoption leave**

Where an employee is dismissed after a period of ordinary adoption leave or additional adoption leave has begun but before the time when (apart from this regulation) that period would end, the period ends at the time of the dismissal.

#### *Return to work*

### **15. [Requirement to notify intention to return during adoption leave period**

- (1) An employee who intends to return to work earlier than the end of his ordinary adoption leave period or, where he is entitled to both ordinary and additional adoption leave, the end of his additional adoption leave period, shall give to his employer not less than 28 days' notice of the date on which he intends to return.
- (2) If an employee attempts to return to work earlier than the end of an adoption leave period without complying with paragraph (1), his employer is entitled to postpone his return to a date such as will secure, subject to paragraph (3), that he has 28 days' notice of the employee's return.



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(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the relevant adoption leave period.

(4) If an employee whose return has been postponed under paragraph (2) has been notified that he is not to return to work before the date to which his return was postponed, the employer is under no contractual obligation to pay him remuneration until the date to which his return was postponed if he returns to work before that date.

(5) This regulation does not apply in a case where the employer did not notify the employee in accordance with regulation 7(7) of the date on which the employee's ordinary adoption period or additional adoption leave period would end.]\*

\* Substituted by the Adoption Leave (Amendment) Regulations 2007 SD No. 470/07

**16. Right to return after adoption leave**

(1) An employee who returns to work after a period of ordinary adoption leave 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) a period of additional adoption leave, whether or not preceded by another period of statutory leave, or
- (b) a period of ordinary adoption leave not falling within the description in paragraph (1)(a) or (b),

is entitled to return from leave to the job in which he was employed before his absence, or, 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 adoption leave, immediately before that period began;
  - (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.
- (4) This regulation does not apply where regulation 13 applies.

**17. Incidents of the right to return from adoption leave**

(1) An employee's right to return under regulation 16 is to return —

- (a) with his seniority, pension rights and similar rights —
  - (i) in a case where the employee is returning from additional adoption leave, or 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 his 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 been applied to him if he had not been absent.

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional adoption leave or additional maternity 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)<sup>4</sup>, as it has effect in the Island<sup>5</sup>.

(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 ordinary adoption leave, 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.

### PART 3

#### PATERNITY LEAVE (ADOPTION)

##### **18. Entitlement to paternity leave (adoption)**

- (1) An employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's adopter if he —
  - (a) satisfies the conditions specified in paragraph (2), and
  - (b) has complied with the notice requirements in regulation 20 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 in which the child's adopter is notified of having been matched with the child;
  - (b) is either married to or the partner of the child's adopter, and

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<sup>4</sup> 1989 c.24

<sup>5</sup> GC 422/89

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- (c) has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child.
- (3) In paragraph (2)(a), "week" means the period of 7 days beginning with Sunday.
- (4) An employee shall be treated as having satisfied the condition in paragraph (2)(b) if he would have satisfied it but for the fact that the child's adopter died during the child's placement.
- (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's placement with the adopter has ended.
- (6) An employee's entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

**19. Options in respect of paternity leave (adoption)**

- (1) An employee may choose to take either one week's leave or 2 consecutive weeks' leave in respect of a child under regulation 18.
- (2) The leave may only be taken during the period of 56 days beginning with the date on which the child is placed with the adopter.
- (3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin a period of paternity leave (adoption) on —
  - (a) the date on which the child is placed with the adopter;
  - (b) the date falling such number of days after the date on which the child is placed with the adopter as the employee may specify in a notice under regulation 20, or
  - (c) a predetermined date, specified in a notice under that regulation, which is later than the date on which the child is expected to be placed with the adopter.
- (4) In a case where the adopter was notified of having been matched with the child before 30<sup>th</sup> September 2007, the employee may choose to begin a period of leave only on a predetermined date, specified in a notice under regulation 20, which is at least 28 days after the date on which that notice is given.

**20. Notice and evidential requirements for paternity leave (adoption)**

- (1) An employee must give his employer notice of his intention to take paternity leave (adoption) in respect of a child, specifying —
  - (a) the date on which the adopter was notified of having been matched with the child;
  - (b) the date on which the child is expected to be placed with the adopter;
  - (c) the length of the period of leave that, in accordance with regulation 19(1), the employee has chosen to take, and

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- (d) the date on which, in accordance with regulation 19(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) no more than 7 days after the date on which the adopter is notified of having been matched with the child, or
  - (b) in a case where it was not reasonably practicable for the employee to give 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 18(1) and that he satisfies the conditions of entitlement in regulation 18(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 —
  - (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child is placed with the adopter, at least 28 days before the date specified in the employee's notice under paragraph (1) as the date on which the child is expected to be placed with the adopter;
  - (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 placed with the adopter, at least 28 days before the date falling that number of days after the date specified in the employee's notice under paragraph (1) as the date on which the child is expected to be placed with the adopter;
  - (c) where the variation is to provide for the employee's period of leave to begin on a 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 date is relevant, as soon as is reasonably practicable.
- (5) In a case where regulation 19(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 placed with the adopter 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 19(4) applies) exercising an alternative option under regulation 19(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 placement, of the date on which the child was placed.

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

## **21. Commencement of paternity leave (adoption)**

(1) Except in the case referred to in paragraph (2), an employee's period of paternity leave (adoption) begins on the date specified in his notice under regulation 20(1), or, where he has varied his choice of date under regulation 20(4) or (6), on the date specified in his notice under that provision (or the last such date 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 placed with the adopter, and

(b) he is at work on that date,

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

## **22. Application of terms and conditions during paternity leave (adoption)**

(1) An employee who takes paternity leave (adoption) —

(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.

## **23. Right to return after paternity leave (adoption)**

(1) An employee who returns to work after a period of paternity leave (adoption) 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 (adoption) not falling within the description in paragraph (1)(a) or (b) is entitled to return from leave to the job in which he was employed before his absence, or, 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 (adoption), immediately before that period began;
- (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

**24. Incidents of the right to return after paternity leave (adoption)**

(1) An employee's right to return under regulation 23 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), as it has effect in the Island.

(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 (adoption), 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.

PART 4

GENERAL PROVISIONS

**25. 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 —

- (a) the employee took or sought to take ordinary adoption leave, additional adoption leave or paternity leave (adoption);
- (b) the employer believed that the employee was likely to take ordinary adoption leave or additional adoption leave, or
- (c) the employee failed to return after a period of additional adoption leave in a case where -
  - (i) the employer did not notify him, in accordance with regulation 7(7) or otherwise, of the date on which that period ended, and he reasonably believed that the period had not ended, or
  - (ii) the employer gave him less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for him to return on that date.

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

**26. 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 —

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 13 has not been complied with.

(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 —

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- (a) the employee took, or sought to take, ordinary adoption leave, additional adoption leave or paternity leave (adoption);
  - (b) the employer believed that the employee was likely to take ordinary adoption leave or additional adoption leave, or
  - (c) the employee failed to return after a period of additional adoption leave in a case where —
    - (i) the employer did not notify him, in accordance with regulation 7(7) or otherwise, of the date on which that period would end, and he reasonably believed that the period had not ended, or
    - (ii) the employer gave him less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for him to return on that date.
- (4) Paragraph (1) does not apply in relation to an employee who took ordinary adoption leave or additional adoption leave if —
- (a) immediately before the end of his additional adoption leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by his employer, added to the number employed by any associated employer of his employer, did not exceed 5, and
  - (b) it is not reasonably practicable 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 or for an associated employer to offer the employee a job of that kind.
- (5) 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.
- (6) 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) or (5), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

**27. Contractual rights to ordinary adoption leave, additional adoption leave or paternity leave (adoption)**

- (1) This regulation applies where an employee is entitled to —
  - (a) ordinary adoption leave,
  - (b) additional adoption leave, or
  - (c) paternity leave (adoption),

(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.

**28. 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 ordinary adoption leave, additional adoption leave or paternity leave (adoption), 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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Regulation 4.

SCHEDULE

MODIFICATIONS IN RESPECT OF OVERSEAS ADOPTIONS

*Interpretation*

1. (1) In regulation 2(1) —

(a) for the definition of "adopter", substitute —

"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 2 people jointly, whichever of them has elected to take adoption leave in respect of the child;" and

(b) in the appropriate places in alphabetical order insert —

"enter the Island" means enter the Island from outside the Island and the United Kingdom in connection with or for the purposes of adoption, and cognate expressions shall be construed accordingly;"

"official notification" means written notification, issued by or on behalf of the Department of Health and Social Security, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, 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;"

"overseas adoption" has the meaning given by regulation 4(2);"

(2) For regulation 2(4) substitute —

"(4) For the purposes of these Regulations, in a case where a child is to be adopted by 2 people jointly, a person elects to be a child's adopter if he and the other person agree, at the time when the official notification is received, that he and not the other person will be the adopter."

*Application*

2. For regulation 3(1) substitute —

"(1) The provisions relating to adoption leave under regulation 5 have effect only where the adopter's child enters the Island on or after 30<sup>th</sup> September 2007.

(1A) The provisions relating to paternity leave (adoption) under regulation 18 have effect only in relation to a person who is married to or the partner of an adopter whose child enters the Island on or after 30<sup>th</sup> September 2007."

*Entitlement to ordinary adoption leave*

3. For regulations 5 to 7 substitute —

**"5 Entitlement to ordinary adoption leave**

(1) An employee is entitled to ordinary adoption leave in respect of a child if he

(a) is the child's adopter; and

(b) has complied with the notice requirements in regulation 7 and, where applicable, the evidential requirements in that regulation.

(2) An employee's entitlement to leave under this regulation shall not be affected by the fact that more than one child is the subject of adoption from overseas by the adopter as part of the same arrangement.

**6 Options in respect of ordinary adoption leave**

(1) Subject to paragraph (2), an employee may choose to begin a period of ordinary adoption leave on —

(a) the date on which the child enters the Island; or



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- (b) a predetermined date, specified in a notice under regulation 7, which is no later than 28 days after the date on which the child enters the Island.

(2) In a case where the employee receives an official notification before 30<sup>th</sup> September 2007 and the adopter's child enters the Island on or after that date, the employee may choose to begin a period of ordinary adoption leave only on a predetermined date, specified in a notice under regulation 7, which is later than the date of entry, and, unless the employer agrees to an earlier commencement of the leave period, is at least 28 days after the date on which that notice was given.

**7 Notice and evidential requirements for ordinary adoption leave**

(1) An employee intending to take ordinary adoption leave in respect of a child must give his employer notice of each of the following matters —

- (a) the date on which he received an official notification;
- (b) the date on which the child is expected to enter the Island;
- (c) the date which he has chosen as the date on which his period of adoption leave should begin; and
- (d) the date on which the child enters the Island.

(2) Notice provided for in paragraph (1)(a) and (b) must be given to the employer no more than 28 days after the date on which the employee receives the official notification.

(3) Notice provided for in paragraph (1)(c) must be given to the employer at least 28 days prior to the date which the employee has chosen as the date on which his period of adoption leave should begin.

(4) Notice provided for in paragraph (1)(d) must be given to the employer no more than 28 days after the date on which the child enters the Island.

(5) Where the employer requests it, an employee must also provide his employer with a copy of the official notification together with evidence of the date of the entry of the child into the Island.

(6) An employee who has given notice under paragraph (1)(c) may vary the date he has chosen as the date on which his leave will begin, subject to paragraph (7) and provided that he gives his employer notice of the variation —

- (a) where the variation is to provide for the employee's period of leave to begin on the date on which the child enters the Island, at least 28 days before the date specified in his notice under paragraph (1)(b) as the date on which the child is expected to enter the Island;
- (b) 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 notice 28 days before whichever date is relevant, as soon as is reasonably practicable.

(7) In a case where regulation 6(2) applies, an employee may only vary the date which he has chosen as the date on which his period of leave should begin by substituting a different predetermined date.

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

(9) An employer who is given notice under paragraph (1) or (6) of the date on which an employee has chosen that his period of ordinary adoption leave should begin shall notify the employee, within 28 days of his receipt of the notice, of the date on which the period of additional adoption leave to which the employee will be entitled (if he satisfies the conditions in regulation 10(1)) after his period of ordinary adoption leave ends.

(10) The notification provided for in paragraph (9) shall be given to the employee —

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- (a) where the employer is given notice under paragraph (1)(c), within 28 days of the date on which he received that notice;
- (b) where the employer is given notice under paragraph (6), within 28 days of the date on which the employee's ordinary adoption leave period began.
- (11) Where it becomes known to the employee that the child will not enter the Island, he shall notify the employer of the fact as soon as is reasonably practicable."

*Duration and commencement of ordinary adoption leave*

- 4. (1) In regulation 8(2), for "regulation 7(1)" substitute "regulation 7(1)(c)".
- (2) In regulation 8(3)(a), for "is placed with him" substitute "enters the Island".

*Additional adoption leave: entitlement, duration and commencement*

- 5. In regulation 10(1)(a), for "was placed with him for adoption" substitute "has entered the Island".

*Disruption in the course of adoption leave*

- 6. (1) For regulation 12(1) substitute —
  - "(1) This regulation applies where, during an employee's period of adoption leave in respect of a child, the child —
    - (a) dies, or
    - (b) ceases to live with the adopter."
- (2) For regulation 12(3) substitute —
  - "(3) The relevant week referred to in paragraph (2) is —
    - (a) in a case falling within paragraph (1)(a), the week during which the child dies;
    - (b) in a case falling within paragraph (1)(b), the week during which the child ceased to live with the adopter."

*Entitlement to paternity leave (adoption)*

- 7. For regulations 18 to 20 substitute —

**"18 Entitlement to paternity leave (adoption)**

- (1) An employee is entitled to be absent from work for the purpose of caring for a child adopted from overseas or supporting the child's adopter if he —
  - (a) satisfies the conditions in paragraph (2); and
  - (b) has complied with the notice requirements in regulation 20 and, where applicable, the evidential requirements in that regulation.
- (2) The conditions referred to in paragraph (1) are that —
  - (a) the child's adopter has received an official notification;
  - (b) the employee has been continuously employed for a period of not less than 26 weeks either —
    - (i) ending with the week in which the official notification was received, or
    - (ii) commencing with the week in which the employee's employment with the employer began;
  - (c) the employee is either married to or the partner of the child's adopter, and
  - (d) the employee has, or expects to have, the main responsibility (apart from the responsibility of the child's adopter) for the upbringing of the child.

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(3) In paragraph (2)(b), "week" means the period of 7 days beginning with Sunday.

(4) 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's adopter died during the period of 56 days commencing with the date on which the child entered the Island.

(5) An employee shall be treated as having satisfied the condition in paragraph (2)(d) if he would have satisfied it but for the fact that the child has ceased to live with the adopter.

(6) An employee's entitlement to leave under this regulation shall not be affected by the fact that more than one child is the subject of adoption from overseas by the adopter as part of the same arrangement.

### **19 Options in respect of leave under regulation 18**

(1) An employee may choose to take either one week's leave or 2 consecutive weeks' leave in respect of a child under regulation 18.

(2) The leave may only be taken during the period of 56 days beginning with the date on which the child enters the Island.

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin the period of leave under regulation 18 on —

(a) the date on which the child enters the Island; or

(b) a predetermined date, specified in a notice under regulation 20, which is later than the date on which the child enters the Island.

(4) In a case where the adopter received an official notification before 30<sup>th</sup> September and the adopter's child enters the Island on or after that date, the employee may choose to begin a period of paternity leave (adoption) only on a predetermined date, specified in a notice under regulation 20, which is later than the date of entry and, unless the employer agrees to an earlier commencement of the leave period, is at least 28 days after the date on which that notice was given.

### **20 Notice and evidential requirements for leave under regulation 18**

(1) An employee intending to take paternity leave (adoption) in respect of a child must give his employer notice of each of the following matters —

(a) the date on which the adopter of the child received an official notification;

(b) the date on which the child is expected to enter the Island;

(c) the date which the employee has chosen as the date on which his period of paternity leave (adoption) should begin, and

(d) the date on which the child enters the Island.

(2) Notice provided for in paragraph (1)(a) and (b) must be given to the employer no more than 28 days after the date on which the adopter of the child receives the official notification or the date on which he completes 26 weeks' continuous employment with the employer, whichever is later.

(3) Notice provided for in paragraph (1)(c) must be given to the employer at least 28 days prior to the date which the employee has chosen as the date on which his period of paternity leave (adoption) should begin.

(4) Notice provided for in paragraph (1)(d) must be given to the employer no more than 28 days after the date on which the child enters the Island.

(5) Where the employer requests it, an employee must give his employer, within 14 days of receipt of a request, a written declaration, signed by the employee, to the effect that his partner or spouse has received an official notification and that he satisfies the conditions of entitlement in regulation 18(2)(c) and (d).

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(6) A choice made under regulation 19(3) is not irrevocable but where an employee subsequently makes a different choice the notification requirements contained in paragraphs (1)(c) and (3) shall apply to that choice.

(7) Any notice under paragraph (1) shall be given in writing, if the employer so requests.

(8) Where it becomes known to the employee that the child will not enter the Island, he shall notify the employer of the fact as soon as is reasonably practicable."

*Commencement of leave under regulation 18*

8. In regulation 21(2)(a), for "is placed with the adopter" substitute "enters the Island".

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 leave on the occasion of the adoption of a child by the employee (Part 2) or by the employee's spouse or partner (Part 3); where 2 persons adopt a child jointly, they may choose which is to take leave under Part 2 and which under Part 3. The right applies where the child is matched or placed for adoption on or after 30<sup>th</sup> September 2007, and the protection against detriment or dismissal because the right is exercised arises where the detriment or dismissal occurs on or after 1<sup>st</sup> April 2007 (regulation 3). The Regulations are modified in relation to adoptions from overseas (regulation 4 and the Schedule).

Part 2 deals with ordinary and additional adoption leave. Regulations 5 to 8 confer a right to take "ordinary adoption leave" of 26 weeks. Regulation 9 provides that an employee is entitled during absence on ordinary adoption leave to the benefit of all of the terms and conditions of employment (apart from the right to remuneration, which is excluded by section 95(4)(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. Regulation 10 confer on an employee with 26 weeks' qualifying service a further right to "additional adoption leave" of 26 weeks. Regulation 11 confers more limited rights during a period of additional adoption leave.

Regulation 12 deals with the case where a placement for adoption is disrupted during a period of leave. Regulation 13 entitles an employee who is made redundant while on leave to be offered suitable alternative employment, and regulation 14 provides that adoption leave terminates when the employee is dismissed. Regulations 15 to 17 make provision for the employee's return to work after adoption leave.

Part 3 deals with leave which may be taken by the spouse or partner of the adopter, called "paternity leave (adoption)". Regulations 18 to 21 confer on employees with 26 weeks' qualifying service a right to take either one week's or 2 consecutive weeks' leave. Regulation 22 makes provision similar to regulation 9 as to the employee's rights and obligations while on leave. Regulations 23 and 24 provide for an employee's right to return to work after taking leave.

Part 4 makes general provisions with respect to leave under Parts 2 and 3. Under regulations 25 and 26 an employee entitled to leave is protected against detriment or dismissal attributable to the fact that he took or sought to take such leave. Regulation 27 entitles an employee who has contractual rights to adoption leave to claim whichever of those rights and the statutory rights is more advantageous. Regulation 28 makes special provision for the calculation of a week's pay while an employee is on leave.



