



Statutory Document No. 77/07

THE EMPLOYMENT ACT 2006

THE ADOPTION LEAVE 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, 91, 92, 93, 94, 95, 96, 97, 98 and 175(1) of the Employment Act 2006¹, 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 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;

"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 1984²;

"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;

¹ 2006 c.21

² 1984 c.14

Price £ 2.50

"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 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 1985³;

(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 30th September 2007, or

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

³ GC 284/85

- (2) Regulation 25 (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.
- (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 1st 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.

(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 30th 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 30th 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 —

- (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 —

- (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,

- (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 additional adoption leave period must give his employer at least 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 his additional 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 at least 28 days' notice of the employee's return.

(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 employee's additional 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 additional adoption leave period would end.

(6) In a case where an employee's ordinary adoption leave or additional adoption leave is curtailed because regulation 12 applies, the references in this regulation to the end of an employee's additional adoption leave period are references to the date on which that period would have ended had that regulation not applied, irrespective of whether it was the employee's ordinary adoption leave period or his additional adoption leave period that was curtailed.

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)⁴, as it has effect in the Island⁵.

(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

⁴ 1989 c.24

⁵ GC 422/89

- (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 30th 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 30th 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 30th 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 30th 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.
 - (3) In paragraph (2)(b), "week" means the period of 7 days beginning with Sunday.

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(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 30th 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).

(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.

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(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".

MADE 20th February 2007

David Cretney MHK

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 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 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 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.



Statutory Document No.96/07

THE EMPLOYMENT ACT 2006

THE FLEXIBLE WORKING REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 99, 100, 101(3) and 102(3) 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 Flexible Working Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 2007.

2. Interpretation

In these Regulations —

"the Act" means the Employment Act 2006;

"application" means an application under section 99 of the Act (statutory right to request flexible working);

"contract variation" means a change in the terms and conditions of a contract of employment of a kind specified in section 99(1)(a) of the Act;

"electronic communication" has the same meaning as in the Electronic Transactions Act 2000²;

"the Tribunal" means the Employment Tribunal;

"writing" includes writing delivered by means of electronic communication.

(2) For the purpose of these Regulations, unless the contrary is proved, a notice is taken as being given —

¹ 2006 c.21

² 2000 c.8

Price £1.35

- (a) in relation to a notice transmitted by electronic communication, on the day on which it is transmitted,
- (b) in relation to a notice sent by post, the day on which the notice would be delivered in the ordinary course of post.

Entitlement to make application

3. Duration of employment

(1) The condition as to duration of employment which an employee must satisfy in order to make an application for a contract variation is that he has been continuously employed for a period of not less than 26 weeks.

(2) The reference in paragraph (1) to a period of continuous employment is to a period computed in accordance with Schedule 5 to the Act, as if that paragraph were a provision of that Act.

Form of application etc.

4. Form of application

An application shall —

- (a) be made in writing,
- (b) state whether a previous application has been made by the employee to the employer and, if so, when, and
- (c) be dated.

5. Date when application is taken as made

(1) Unless the contrary is proved, an application is taken as having been made on the day the application is received.

(2) The reference in paragraph (1) to the day on which an application is received is a reference —

- (a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted,
- (b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

6. Withdrawal of application by the employee

(1) An employer shall treat an application as withdrawn where the employee has —

- (a) notified to him whether orally or in writing that he is withdrawing the application,
- (b) without reasonable cause, failed to attend a meeting under regulation 7(1) or 10(1) more than once, or

- (c) without reasonable cause, refused to provide the employer with information the employer requires in order to assess whether the contract variation should be agreed to.
- (2) An employer shall confirm the withdrawal of the application to the employee in writing unless the employee has provided him with written notice of the withdrawal under paragraph (1)(a).

Meeting to discuss application with employee

7. Duty to hold meeting

(1) Subject to paragraphs (2) and (4), an employer to whom an application for a contract variation is made shall hold a meeting to discuss the application with the employee within 28 days after the date on which the application is made.

(2) Paragraph (1) does not apply where the employer agrees to the application and notifies the employee accordingly in writing within the period referred to in that paragraph.

(3) A notice under paragraph (2) shall specify —

- (a) the contract variation agreed to, and
- (b) the date from which the variation is to take effect.

(4) Where the individual who would ordinarily consider an application is absent from work on annual leave or on sick leave on the day on which the application is made, the period referred to in paragraph (1) commences on the day the individual returns to work or 28 days after the application is made, whichever is the sooner.

8. Notice of decision

(1) Where a meeting is held to discuss an application the employer shall give the employee notice of his decision on the application within 14 days after the date of the meeting.

(2) A notice under paragraph (1) shall —

- (a) be in writing,
- (b) where the employer's decision is to agree to the application, specify the contract variation agreed to and state the date on which the variation is to take effect,
- (c) where the decision is to refuse the application, state which of the grounds for refusal specified in section 100(1)(b) of the Act are considered by the employer to apply, contain a sufficient explanation as to why those grounds apply in relation to the application, and set out the appeal procedure, and
- (d) be dated.

Appeals

9. Right of appeal

(1) An employee is entitled to appeal against his employer's decision to refuse an application by giving notice in accordance with paragraph (2) within 14 days after the date on which notice of the decision is given.

- (2) A notice of appeal under paragraph (1) shall —
- (a) be in writing,
 - (b) set out the grounds of appeal, and
 - (c) be dated.

10. Meeting to discuss appeal

(1) Subject to paragraph (2), the employer shall hold a meeting with the employee to discuss the appeal within 14 days after the employee's notice under regulation 9(1) is given.

- (2) Paragraph (1) does not apply where, within 14 days after the date on which notice under regulation 9(1) is given, the employer —
- (a) upholds the appeal, and
 - (b) notifies the employee in writing of his decision, specifying the contract variation agreed to and stating the date from which the contract variation is to take effect.

11. Notice of decision on appeal

(1) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his decision on the appeal within 14 days after the date of the meeting.

- (2) Notice under paragraph (1) shall —
- (a) be in writing,
 - (b) where the employer upholds the appeal, specify the contract variation agreed to and state the date from which the variation is to take effect,
 - (c) where the employer dismisses the appeal, state the grounds for the decision and contain a sufficient explanation as to why those grounds apply, and
 - (d) be dated.

Meetings: general

12. Time and place of meeting

The time and place of a meeting under regulation 7(1) or 10(1) shall be convenient to the employer and the employee.

13. Right to be accompanied

- (1) This regulation applies where —
 - (a) a meeting is held under regulation 7(1) or 10(1), and
 - (b) the employee reasonably requests to be accompanied at the meeting.
- (2) Where this regulation applies the employer must permit the employee to be accompanied at the meeting by a single companion who —
 - (a) is chosen by the employee, and
 - (b) a worker of the same employer as the employee.
- (3) The companion shall be permitted —
 - (a) to address the meeting (but not to answer questions on behalf of the employee), and
 - (b) to confer with the employee during the meeting.
- (4) If —
 - (a) an employee has a right under this regulation to be accompanied at a meeting,
 - (b) his chosen companion will not be available at the time proposed for the meeting by the employer, and
 - (c) the employee proposes an alternative time which satisfies paragraph (5),

the employer must postpone the meeting to the time proposed by the employee.

- (5) An alternative time must —
 - (a) be convenient for the employer, employee and companion, and
 - (b) fall before the end of the period of 7 days beginning with the first day after the day proposed by the employer.
- (6) The employer shall permit a worker to take time off during working hours for the purpose of accompanying an employee in accordance with a request under paragraph (1)(b).
- (7) Section 35(3) to (6) (payment for time off for carrying out trade union duties) shall apply in respect of a person to whom paragraph (6) applies as if he were an official of a registered trade union.
- (8) Sections 68, 104 and 105 of the Act apply to the right to be accompanied under this regulation as they apply to the right to be accompanied under section 103(2), (3) or (6) of the Act.

Supplemental

14. Extension of time

- (1) An employer and an employee may agree to an extension of any of the periods referred to in regulations 7(1) and (4), 8(1), 9(1), 10(1) and 11(1).

(2) An agreement under paragraph (1) must be recorded in writing by the employer.

(3) The employer's record referred to in paragraph (2) must —

(a) specify what period the extension relates to,

(b) specify the date on which the extension is to end, and

(c) be dated;

and the employer shall send a copy of it to the employee.

15. Breaches of regulations by employer entitling employee to make complaint to Tribunal

The breaches of regulations under section 100(1)(a) of the Act which entitle an employee to make a complaint to the Tribunal under section 101 of the Act even though his application has not been disposed of by agreement or withdrawn are —

(a) failure to hold a meeting in accordance with regulation 7(1) or 10(1),

(b) failure to notify a decision in accordance with regulation 8(1) or 11(1).

16. Compensation

The maximum amount of compensation that the Tribunal may award under section 102 of the Act where it finds a complaint by an employee under section 101 of the Act well-founded is 8 weeks' pay.

MADE 20th February 2007

David Cretney MHK

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 supplemental to section 99 of the Act, which entitles an employee to request flexible working in certain cases. The entitlement is conferred on an employee who has been continuously employed for 26 weeks (regulation 3).

Regulations 4, 5 and 6 make provision for the making and withdrawal of an application for flexible working, and regulations 7 and 8 for the employer's duty to hold a meeting to discuss the application and to notify the employee of his decision on it. Regulations 9, 10 and 11 provide for an appeal against the decision, a meeting to consider the appeal and the employer's decision on appeal. Regulation 12 deal with the time and place of those meetings, and regulation 13 confers a right for the employee to be accompanied by a fellow-worker.

Regulation 14 enables the parties to agree to extensions of time. Regulation 15 provides that a failure by the employer to hold a meeting or to notify the employee of his decision entitles the employee to complain to the Employment Tribunal. Regulation 16 specifies 8 weeks' pay as the maximum award.



Statutory Document No. 76/07

THE EMPLOYMENT ACT 2006

THE MATERNITY LEAVE 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, 79, 80, 81, 82, 83, 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 Maternity Leave Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 1st April 2007.

2. Interpretation

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;

"child" means a person under the age of 18;

"childbirth" means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy;

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur, and "week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which childbirth occurs;

"job", in relation to an employee returning after additional maternity leave, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed;

"ordinary maternity leave" means leave under section 79 of the Act;

¹ 2006 c. 21
Price £2.00

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

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

(2) 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) These Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 30th September 2007.

(2) Regulation 16 (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 17 (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.

Entitlement to maternity leave

4. Entitlement to ordinary maternity leave

(1) An employee is entitled to ordinary maternity leave provided that she satisfies the following conditions —

(a) at least 21 days before the date on which she intends her ordinary maternity leave period to start, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of —

(i) her pregnancy,

(ii) the expected week of childbirth, and

(iii) the date on which she intends her ordinary maternity leave period to start, and

(b) if requested to do so by her employer, she produces for his inspection a certificate from —

(i) a registered medical practitioner, or

- (ii) a registered midwife,
stating the expected week of childbirth.

(2) An employee who has notified her employer under paragraph (1)(a)(iii) of the date on which she intends her ordinary maternity leave period to start may subsequently vary that date, provided that she notifies her employer of the variation at least —

- (a) 28 days before the date varied, or
- (b) 28 days before the new date,

whichever is the earlier, or, if not reasonably practicable, as soon as it is reasonably practicable.

(3) The notification provided for in paragraph (1)(a)(iii) or (2) —

- (a) shall be given in writing, if the employer so requests, and
- (b) shall not specify a date earlier than the beginning of the 11th week before the expected week of childbirth.

(4) Where, by virtue of regulation 6(1)(b), an employee's ordinary maternity leave period commences with the day which follows the first day after the beginning of the 4th week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy —

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy and of the date on which her absence on that account began.

(5) Where, by virtue of regulation 6(2), an employee's ordinary maternity leave period commences on the day which follows the day on which childbirth occurs —

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable after the birth that she has given birth and of the date on which the birth occurred.

(6) The notification provided for in paragraphs (4)(b) and (5)(b) shall be given in writing, if the employer so requests.

5. Entitlement to additional maternity leave

An employee who satisfies the following conditions is entitled to additional maternity leave —

- (a) she is entitled to ordinary maternity leave, and

Maternity Leave Regulations 2007

- (b) she has, at the beginning of the 14th week before the expected week of childbirth, been continuously employed for a period of not less than 26 weeks.

Maternity leave periods

6. Commencement of maternity leave periods

- (1) Subject to paragraph (2), an employee's ordinary maternity leave period commences with the earlier of —
 - (a) the date which she notifies to her employer, in accordance with regulation 4, as the date on which she intends her ordinary maternity leave period to start, or, if by virtue of regulation 4(2) she has notified more than one such date, the last date she notifies, and
 - (b) the day which follows the first day after the beginning of the 4th week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.
- (2) Where the employee's ordinary maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her ordinary maternity leave period commences on the day which follows with the day on which childbirth occurs.
- (3) An employee's additional maternity leave period commences on the day after the last day of her ordinary maternity leave period.

7. Duration of maternity leave periods

- (1) Subject to paragraphs (2) and (5), an employee's ordinary maternity leave period continues for the period of 26 weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 10 if later.
- (2) Subject to paragraph (5), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period determined under paragraph (1) by reason of her having recently given birth, her ordinary maternity leave period continues until the end of that later period.
- (3) In paragraph (2), "relevant statutory provision" means a provision of —
 - (a) an enactment, or
 - (b) an instrument under an enactment,other than a provision for the time being specified in an order under section 74(2) of the Act.
- (4) Subject to paragraph (5), where an employee is entitled to additional maternity leave her additional maternity leave period continues until the end of the period of 26 weeks from the day on which it commenced.

(5) Where the employee is dismissed after the commencement of an ordinary or additional maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(6) An employer who is notified under any provision of regulation 4 of the date on which, by virtue of any provision of regulation 6, an employee's ordinary maternity leave period will commence or has commenced shall notify the employee of the date on which —

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

(7) The notification provided for in paragraph (6) shall be given to the employee —

- (a) where the employer is notified under regulation 4(1)(a)(iii), (4)(b) or (5)(b), within 28 days of the date on which he received the notification;
- (b) where the employer is notified under regulation 4(2), within 28 days of the date on which the employee's ordinary maternity leave period commenced.

Application of terms and conditions during maternity leave

8. Application of terms and conditions during ordinary maternity leave

(1) An employee who takes ordinary maternity leave —

- (a) is entitled, during the period of leave, to the benefit of all the terms and conditions of employment which would have applied if she 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 79(4)(b) of the Act.

(2) In paragraph (1)(a), "terms and conditions" has the meaning given by section 79(5) of the Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 79 of the Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

9. Application of terms and conditions during additional maternity leave

An employee who takes additional maternity leave —

- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to —

- (i) notice of the termination of the employment contract by her employer;
- (ii) compensation in the event of redundancy, or
- (iii) disciplinary or grievance procedures;
- (b) is bound, during that period, by her implied obligation to her employer of good faith and any terms and conditions of her employment relating to —
 - (i) notice of the termination of the employment contract by her;
 - (ii) the disclosure of confidential information;
 - (iii) the acceptance of gifts or other benefits, or
 - (iv) the employee's participation in any other business.

Maternity leave: supplemental

10. Compulsory maternity leave

The prohibition in section 80 of the Act, against permitting an employee who satisfies prescribed conditions to work during a particular period (referred to as a "compulsory maternity leave period"), applies —

- (a) in relation to an employee who is entitled to ordinary maternity leave, and
- (b) in respect of the period of 2 weeks which commences with the day on which childbirth occurs.

11. Redundancy during maternity leave

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

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her 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 her to do in the circumstances, and
 - (b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

12. Contractual rights to maternity leave

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

(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.

Return to work

13. Requirement to notify intention to return during a maternity leave period

(1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period or, where she is entitled to both ordinary and additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 28 days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of a maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has 28 days' notice of her return.

(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 maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she 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(6) and (7) of the date on which the relevant maternity leave period would end.

14. Right to return after maternity leave

(1) An employee who returns to work after a period of ordinary maternity 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 to the job in which she was employed before her absence.

(2) An employee who returns to work after —

- (a) a period of additional maternity leave, whether or not preceded by another period of statutory leave, or
- (b) a period of ordinary maternity leave, not falling within the description in paragraph (1)(a) or (b),

is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) The reference in paragraph (1) and (2) to the job in which an employee was employed before her absence is a reference to the job in which she was employed —

- (a) if her return is from an isolated period of statutory leave, immediately before that period began;
- (b) if her return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 11 (redundancy) applies.

15. Incidents of the right to return

(1) An employee's right to return under regulation 14(1) or (2) is a right to return —

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

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of 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)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 she had not been absent refer to her absence —

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

Employment protection

16. 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 her employer done for any of the reasons specified in paragraph (2).

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

- (a) is pregnant;
- (b) has given birth to a child;
- (c) is the subject of a relevant requirement, or a relevant recommendation, as defined by section 74(2) of the Act;
- (d) took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) took or sought to take additional maternity leave; or
- (f) failed to return after a period of ordinary or additional maternity leave in a case where —
 - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that that period had not ended, or
 - (ii) the employer gave her less than 29 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date.

(3) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 79 of the Act and regulation 8 during that period.

² 1989 c.24

³ GC 422/89

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

(5) Paragraph (2)(b) only applies where the act or failure to act takes place during the employee's ordinary or additional maternity leave period.

(6) For the purposes of paragraph (5) —

(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.

(7) For the purposes of paragraph (6), 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 were to be done.

17. Unfair dismissal

(1) An employee who is dismissed is entitled under section 114 of the Act to be regarded for the purposes 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 11 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 held 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 paragraphs (1) and (2) are reasons connected with —

(a) the pregnancy of the employee;

(b) the fact that the employee has given birth to a child;

(c) the application of a relevant requirement, or a relevant recommendation, as defined by section 74(2) of the Act;

(d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave;

- (e) the fact that she took or sought to take additional maternity leave; or
- (f) the fact that she failed to return after a period of ordinary or additional maternity leave in a case where —
 - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that the period had not ended, or
 - (ii) the employer gave her less than 28 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date.
- (4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.
- (5) For the purposes of paragraph (3)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 79 of the Act and regulation 8 during that period.
- (6) Paragraph (1) does not apply in relation to an employee if —
 - (a) immediately before the end of her additional maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, 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 her to return to a job which is both suitable for her and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind.
- (7) 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 her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
 - (b) an associated employer offers her a job of that kind, and
 - (c) she accepts or unreasonably refuses that offer.
- (8) 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 (6) or (7), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

18. 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

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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 or additional maternity leave or parental leave, and
- (c) remuneration is payable to the employee in respect of that week under her contract of employment, but the amount payable is less than the amount that would be payable if she 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.

MADE 20th February 2007

David Cretney MHK

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 maternity leave (in place of the right to return to work under Part III of the Employment Act 1991). 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).

Regulations 4 to 7 confer a right to take "ordinary maternity leave" of 26 weeks, and (in the case of an employee with 26 weeks' qualifying service) "additional maternity leave" of 26 weeks. Regulation 8 provides that an employee is entitled during her absence on ordinary maternity leave to the benefit of all of her terms and conditions of employment (apart from the right to remuneration, which is excluded by section 79(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. Regulation 9 confers more limited rights during a period of additional maternity leave.

Regulation 10 specifies the employees to whom, and the period during which, the prohibition on working in section 80 of the Act applies. Regulation 11 entitles an employee who is made redundant while on maternity leave to be offered suitable alternative employment. Regulation 12 entitles an employee who has contractual maternity rights to claim whichever of those rights and the statutory rights is more advantageous.

Regulations 13 to 15 make provision for the employee's return to work after maternity leave. Under regulations 16 and 17 an employee entitled to maternity leave is protected against detriment or dismissal attributable to the fact that she took or sought to take such leave. Regulation 18 makes special provision for the calculation of a week's pay while an employee is on maternity leave.



Statutory Document No. 97/07

THE EMPLOYMENT ACT 2006

THE PARENTAL LEAVE (DISABLED CHILD) REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 65, 84(1), 86, 87, 88 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 Parental Leave (Disabled Child) Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 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;

"child" means a person under the age of 18;

"disability living allowance" means the disability living allowance provided for in Part III of the Social Security Contributions and Benefits Act 1992 (an Act of Parliament)², as it has effect in the Island³;

"job", in relation to an employee returning after or parental leave, means the nature of the work which he is employed to do in accordance with his contract and the capacity and place in which he is so employed;

"ordinary maternity leave" means leave under section 79 of the Act;

¹ 2006 c.21

² 1992 c.4

³ SD 505/94

Price £1.50

"parental leave" means leave under regulation 3(1);

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

(2) 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.

Entitlement to parental leave

3. Entitlement to parental leave

- (1) An employee who —
 - (a) has been continuously employed for a period of not less than a year; and
 - (b) has, or expects to have, responsibility for a child who is entitled to a disability living allowance,

is entitled, in accordance with these Regulations, to be absent from work on parental leave for the purpose of caring for that child.

(2) An employee has responsibility for a child, for the purposes of paragraph (1)(b), if —

- (a) he has parental responsibility for the child; or
- (b) he has been registered as the child's father under section 12(1) or 13(1) of the Civil Registration Act 1984⁴.

4. Extent of entitlement

(1) An employee is entitled to 18 weeks' leave in respect of any individual child.

(2) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week does not vary, a week's leave for the employee is a period of absence from work which is equal in duration to the period for which he is normally required to work.

(3) Where the period for which an employee is normally required, under his contract of employment, to work in the course of a week varies from week to week or over a longer period, or where he is normally required under his contract to work in some weeks but not in others, a week's leave for the employee is a period of absence from work which is equal in duration to the period calculated by dividing the total of the periods for which he is normally required to work in a year by 52.

(4) Where an employee takes leave in periods shorter than the period which constitutes, for him, a week's leave under whichever of paragraphs (2) and (3) is applicable in his case, he completes a week's leave when the aggregate of the periods of leave he has taken equals the period constituting a week's leave for him under the applicable paragraph.

⁴ 1984 c.12

5. Conditions of entitlement

(1) Any entitlement to parental leave may not be exercised on or after the date of the child's 18th birthday.

(2) An employee may not exercise any entitlement to parental leave unless —

- (a) he has complied with any request made by his employer to produce for the employer's inspection evidence of his entitlement, of the kind described in paragraph (3);
- (b) he has given his employer notice in accordance with paragraph (4) of the period of leave he proposes to take, and
- (c) in a case where regulation 6 applies, his employer has not postponed the period of leave in accordance with that paragraph.

(3) The evidence to be produced for the purpose of paragraph (2)(a) is such evidence as may reasonably be required of —

- (a) the employee's responsibility for the child in respect of whom the employee proposes to take parental leave;
- (b) the child's date of birth and, in the case of a child who was placed with the employee for adoption, the date on which the placement began, and
- (c) the child's entitlement to a disability living allowance.

(4) The notice required for the purpose of paragraph (2)(b) is notice which —

- (a) specifies the dates on which the period of leave is to begin and end, and
- (b) is given to the employer at least 21 days before the date on which that period is to begin.

6. Postponement of leave

An employer may postpone a period of parental leave where —

- (a) the employee has given the employer notice in accordance with regulation 5(4);
- (b) the employer considers that the operation of his business would be unduly disrupted if the employee took leave during the period identified in his notice;
- (c) the employer agrees to permit the employee to take a period of leave —
 - (i) of the same duration as the period identified in the employee's notice,
 - (ii) beginning on a date determined by the employer after consulting the employee, which is no later than 6 months after the commencement of that period; and

- (iii) ending before the date of the child's 18th birthday.
- (d) the employer gives the employee notice in writing of the postponement which —
 - (i) states the reason for it, and
 - (ii) specifies the dates on which the period of leave the employer agrees to permit the employee to take will begin and end, and
- (e) that notice is given to the employee not more than 7 days after the employee's notice was given to the employer.

7. Maximum annual leave allowance

- (1) An employee may not take more than 4 weeks' leave in respect of any individual child during a particular year.
- (2) For the purposes of paragraph (1), a year is the period of 12 months beginning —
 - (a) except where sub-paragraph (b) applies, on the date on which the employee first became entitled to take parental leave in respect of the child in question, or
 - (b) in a case where the employee's entitlement has been interrupted at the end of a period of continuous employment, on the date on which the employee most recently became entitled to take parental leave in respect of that child,

and each successive period of 12 months beginning on the anniversary of that date.

8. Contractual rights to parental leave

- (1) This regulation applies where an employee is entitled to parental leave (in paragraph (2) referred to 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.

Application of terms and conditions during parental leave

9. Application of terms and conditions during parental leave

An employee who takes parental 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 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;
- (b) is bound, during that period, by his implied obligation to his employer of good faith and any terms and conditions of his employment relating to —
 - (i) notice of the termination of the employment contract by him;
 - (ii) the disclosure of confidential information;
 - (iii) the acceptance of gifts or other benefits, or
 - (iv) the employee's participation in any other business.

Return to work

10. Right to return after parental leave

(1) An employee who returns to work after a period of parental leave of 4 weeks or less, 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 to the job in which he was employed before his absence.

(2) An employee who returns to work after —

- (a) a period of parental leave of more than 4 weeks, whether or not preceded by another period of statutory leave, or
- (b) a period of parental leave of 4 weeks or less, 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 paragraph (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 statutory leave, immediately before that period began;
- (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

11. Incidents of the right to return

- (1) An employee's right to return under regulation 10(1) or (2) is a right to return —
 - (a) with his seniority, pension rights and similar rights 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.
- (3) The provisions in paragraph (1)(a) 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 statutory 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.

Employment protection

12. 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 done for the reason that the employee took or sought to take parental leave.
- (2) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the Act.

13. Unfair dismissal

- (1) An employee who is dismissed is entitled under section 114 of the Act to be regarded for the purposes of Part X of the Act as unfairly dismissed if the reason or principal reason for the dismissal is a reason connected with the fact that he took or sought to take parental leave.
- (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 held positions similar to that held by the employee and who have not been dismissed by the employer, and

Parental Leave (Disabled Child) Regulations 2007

- (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 (1).
- (3) 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 him to return to a job which is both suitable for him and appropriate for him to do in the circumstances;
 - (b) an associated employer offers him a job of that kind, and
 - (c) he accepts or unreasonably refuses that offer.
- (4) 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 (3), it is for the employer to show that those provisions were satisfied in relation to the complainant.

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 parental leave, 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.

MADE 20th February 2007

David Cretney MHK

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 leave for the purpose of caring for a child with a disability.

Regulations 3 to 7 confer the right to take periods of "parental leave", up to 4 weeks in any year and up to 18 weeks in total, on an employee with one year's qualifying service who has responsibility for a child entitled to a disability living allowance. Regulation 8 entitles an employee who has contractual rights to leave to claim whichever of those rights and the statutory rights is more advantageous. Regulation 9 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 86(2)(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 10 and 11 provide for an employee's right to return to work after taking leave.

Under regulations 12 and 13 an employee entitled to parental leave is protected against detriment or dismissal attributable to the fact that he took or sought to take such leave. Regulation 14 makes special provision for the calculation of a week's pay while an employee is on parental leave.



Statutory Document No. 104/07

THE EMPLOYMENT ACT 2006

THE PART-TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by section 165 of the Employment Act 2006¹, and of all other enabling powers, the following Regulations are hereby made:—

General

1. Citation, commencement and interpretation

(1) These Regulations may be cited as the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 2007.

(2) In these Regulations —

"the Act" means the Employment Act 2006;

"agency worker" means an individual who —

- (a) is supplied by a person ("the agent") to do work for another ("the principal") under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker (as defined in section 173(1) of the Act), because of the absence of a worker's contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual;

"worker" means —

- (a) a worker (as defined in section 173(1) of the Act), or
- (b) an agency worker.

¹ 2006 c.21
Price £1.65

(3) For the purpose of these Regulations "the pro rata principle" is the principle that, where a comparable full-time worker receives or is entitled to receive pay or any other benefit, a part-time worker is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time worker.

(4) In paragraph (3) and regulations 4 and 5 "weekly hours" means the number of hours a worker is required to work under his contract of employment in a week in which he has no absences from work and does not work any overtime or, where the number of such hours varies according to a cycle, the average number of such hours.

(5) For the purposes of these Regulations, the holding, otherwise than under a contract of employment, of the office of constable or an appointment as a police cadet shall be treated as employment, under a contract of employment, by the Chief Constable.

2. Meaning of "full-time worker", "part-time worker" and "comparable full-time worker"

(1) A worker is a full-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the employer under the same type of contract, is identifiable as a full-time worker.

(2) A worker is a part-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is not identifiable as a full-time worker.

(3) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place —

(a) both workers are —

(i) employed by the same employer under the same type of contract, and

(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and

(b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of subparagraph (a), works or is based at a different establishment and satisfies those requirements.

(4) For the purposes of paragraphs (1), (2) and (3), the following shall be regarded as being employed under different types of contract —

(a) employees employed under a contract that is neither for a limited term nor a contract of apprenticeship;

- (b) employees employed under a contract for a limited term that is not a contract of apprenticeship;
- (c) employees employed under a contract of apprenticeship;
- (d) workers who are neither employees nor employed under a contract for a limited term;
- (e) workers who are not employees but are employed under a contract for a limited term;
- (f) any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.

3. Liability of employers and principals

(1) Anything done by a person in the course of his employment shall be treated for the purposes of these Regulations as also done by his employer, whether or not it was done with the employer's knowledge or approval.

(2) Anything done by a person as agent for the employer with the authority of the employer shall be treated for the purposes of these Regulations as also done by the employer.

(3) In proceedings under these Regulations against any person in respect of an act alleged to have been done by a worker of his, it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the worker —

- (a) doing that act; or
- (b) doing, in the course of his employment, acts of that description.

Application of Regulations

4. Workers becoming part-time

(1) This regulation applies to a worker who —

- (a) was identifiable as a full-time worker in accordance with regulation 2(1); and
- (b) following a termination or variation of his contract, continues to work under a new or varied contract, whether of the same type or not, that requires him to work for a number of weekly hours that is lower than the number he was required to work immediately before the termination or variation.

(2) Notwithstanding regulation 2(3), regulation 7 shall apply to a worker to whom this regulation applies as if he were a part-time worker and as if there were a comparable full-time worker employed under the terms which applied to him immediately before the variation or termination.

(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(3).

5. Workers returning part-time after absence

- (1) This regulation applies to a worker who —
 - (a) was identifiable as a full-time worker in accordance with regulation 2(1) immediately before a period of absence (whether the absence followed a termination of the worker's contract or not);
 - (b) returns to work for the same employer within a period of less than 12 months beginning with the day on which the period of absence started;
 - (c) returns to the same job or to a job at the same level under a contract, whether it is a different contract or a varied contract and regardless of whether it is of the same type, under which he is required to work for a number of weekly hours that is lower than the number he was required to work immediately before the period of absence.
- (2) Notwithstanding regulation 2(3), regulation 7 shall apply to a worker to whom this regulation applies ("the returning worker") as if he were a part-time worker and as if there were a comparable full-time worker employed under -
 - (a) the contract under which the returning worker was employed immediately before the period of absence; or
 - (b) where it is shown that, had the returning worker continued to work under the contract mentioned in sub-paragraph (a), a variation would have been made to its term during the period of absence, the contract mentioned in that sub-paragraph including that variation.
- (3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(3).

6. Exclusions

- (1) These Regulations do not apply to service as a member of any of the naval, military and air forces of the Crown.
- (2) These Regulations do not apply to any individual in his capacity as the holder of a judicial office if he is remunerated on a daily fee-paid basis.

Rights of part-time workers

7. Less favourable treatment of part-time workers

- (1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker —
 - (a) as regards the terms of his contract; or
 - (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.
- (2) The right conferred by paragraph (1) applies only if —
 - (a) the treatment is on the ground that the worker is a part-time worker, and
 - (b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.

8. Right to receive written statement of reasons for less favourable treatment

(1) If a worker who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 7 requests in writing from his employer a written statement giving particulars of the reasons for the treatment, the worker is entitled to be provided with such a statement within 21 days of his request.

(2) A written statement under this regulation is admissible as evidence in any proceedings under these Regulations.

(3) If it appears to the Tribunal in any proceedings under these Regulations —

- (a) that the employer deliberately, and without reasonable excuse, omitted to provide a written statement, or
- (b) that the written statement is evasive or equivocal,

it may draw any inference which it considers it just and equitable to draw, including an inference that the employer has infringed the right in question.

(4) This regulation does not apply where the treatment in question consists of the dismissal of an employee, and the employee is entitled to a written statement of reasons for his dismissal under section 110 of the Act.

9. Unfair dismissal and right not to be subjected to detriment

(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are —

- (a) that the worker has —
 - (i) brought proceedings against the employer under these Regulations;
 - (ii) requested from his employer a written statement of reasons under regulation 8;

- (iii) given evidence or information in connection with such proceedings brought by any worker;
 - (iv) otherwise done anything under these Regulations in relation to the employer or any other person;
 - (v) alleged that the employer had infringed these Regulations; or
 - (vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or
- (b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).
- (4) Where the reason or principal reason for dismissal or, as the case may be, ground for subjection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or paragraph (3)(b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the worker is false and not made in good faith.
- (5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part X of the Act.

Remedies

10. Complaint to Tribunal

- (1) Subject to regulation 9(5), a worker may present a complaint to the Tribunal that his employer has infringed a right conferred on him by regulation 7 or 9(2).
- (2) Subject to paragraph (3), the Tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of 3 months beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.
- (3) The Tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.
- (4) For the purposes of calculating the date of the less favourable treatment or detriment under paragraph (2) —
- (a) where a term in a contract is less favourable, that treatment shall be treated, subject to sub-paragraph (b), as taking place on each day of the period during which the term is less favourable;
 - (b) where an application relies on regulation 4 or 5, the less favourable treatment shall be treated as occurring on, and only on, in the case of regulation 4, the first day on which the applicant worked under the new or varied contract and, in the case of regulation 5, the day on which the applicant returned; and
 - (c) a deliberate failure to act contrary to regulation 7 or 9(2) shall be treated as done when it was decided on.
- (5) In the absence of evidence establishing the contrary, a person shall be taken for the purposes of paragraph (4)(c) to decide not 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 have done the failed act if it was to be done.
- (6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.
- (7) Where the Tribunal finds that a complaint presented to it under this regulation is well founded, it shall take such of the following steps as it considers just and equitable —
- (a) making a declaration as to the rights of the complainant and the employer in relation to the matters to which the complaint relates;
 - (b) ordering the employer to pay compensation to the complainant;
 - (c) recommending that the employer take, within a specified period, action appearing to the Tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.
- (8) If the employer fails, without reasonable justification, to comply with a recommendation made by the Tribunal under paragraph (7)(c), the Tribunal may, if it thinks it just and equitable to do so —
- (a) increase the amount of compensation required to be paid to the complainant in respect of the complaint, where an order was made under paragraph (7)(b); or
 - (b) make an order under paragraph (7)(b).

11. Compensation

- (1) Where the Tribunal orders compensation under regulation 10(7)(b), the amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
- (a) the infringement to which the complaint relates, and
 - (b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 7, to the pro rata principle except where it is inappropriate to do so.
- (2) The loss shall be taken to include —
- (a) any expenses reasonably incurred by the complainant in consequence of the infringement, and
 - (b) loss of any benefit which he might reasonably be expected to have had but for the infringement.
- (3) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.
- (4) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the

complainant, it shall reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

Amendments of the Act

12. Amendments

- (1) The Act is amended as follows.
- (2) In section 128—
 - (a) in subsection (1)(b) (redundancy as unfair dismissal), for "(14)" substitute "(15)";
 - (b) at the end insert —

"(15) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one specified in paragraph (3) of regulation 9 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007 (unless the case is one to which paragraph (4) of that regulation applies)."

- (3) In section 132(2) (unfair dismissal: no qualifying period) —
 - (a) in paragraph (n), omit "and";
 - (b) at the end insert "and"
 - (p) regulation 9(1) of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2007."

MADE 20th February 2007

David Cretney MHK
Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, made under section 165 of the Employment Act 2006, make provision for securing that persons in part-time employment are treated no less favourably than persons in full-time employment.

A part-time worker has the right not to be treated by his employer less favourably than a comparable full-time worker, as regards the term of his contract or by being subjected to any other detriment, because he is a part-time worker, unless the treatment is justified on objective grounds (regulation 7). ("Part-time worker" and "comparable full-time worker" are defined by regulation 2.) Whether a part-time worker is treated less favourably is to be determined by applying the "pro rata principle" (see regulation 1(3)). Special provisions apply to workers who go from full-time to part-time work, or go on part-time work after an absence from full-time work (regulations 4 and 5).

A worker has the right not to suffer detriment for seeking to enforce the above right, assisting another worker to do so, or alleging that the employer has infringed that right (regulation 9). This does not cover dismissal of an employee, but dismissal for any of those reasons is automatically unfair for the purposes of Part X of the Act (regulations 9 and 12).

The above rights may be enforced by complaint to the Employment Tribunal within 3 months of the treatment or detriment (or the last of them), but the Tribunal can allow a complaint out of time if there was a good reason for the delay (regulation 10). Where the claim is successful the Tribunal makes a declaration, and may award compensation of an amount which the Tribunal considers just and equitable having regard to the employer's infringement and the worker's loss. It may also make a recommendation as to action to be taken by the employer to remove or reduce the adverse effect on the claimant; if the employer fails to comply with the recommendation it may make or increase an award of compensation.



Statutory Document No. 98/07

THE EMPLOYMENT ACT 2006

**THE SUSPENSION FROM WORK ON MATERNITY GROUNDS ORDER
2007**

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by section 74(2) of the Employment Act 2006¹, and of all other enabling powers, the following Order is hereby made:—

1. Citation, commencement and interpretation

(1) This Order may be cited as the Suspension from Work on Maternity Grounds Order 2007 and, subject to section 174(1) of the Act, shall come into operation on the 30th September 2007.

(2) In this Order "the Act" means the Employment Act 2006.

2. Specified provision under section 74(2) of the Act

The following provision is specified for the purpose of the definition of "relevant requirement" in section 74(2) of the Act, namely regulation 15(2) of the Management of Health and Safety at Work Regulations 2003².

MADE 20th February 2007

David Cretney MHK

Minister for Trade and Industry

¹ 2006 c.21

² SD 877/03

Price 50p

EXPLANATORY NOTE

(This note is not part of the Order)

Part VI of the Employment Act 2006, in certain cases, gives a woman who is suspended from work on maternity grounds the right to alternative work or remuneration in lieu. One such case is where she is suspended in compliance with a requirement imposed by a statutory provision specified for the purpose in an order made by the Department of Trade and Industry.

This Order specifies for that purpose regulation 15(2) of the Management of Health and Safety at Work Regulations 2003 (SD 877/03), which requires an employer to implement such measures identified in a risk assessment under those Regulations as are reasonable to avoid a risk to the health and safety of a new or expectant mother or her baby.