*Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2010 No.0000

# TERMS AND CONDITIONS OF EMPLOYMENT

## The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010

| | |
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| *Made - - - -* | *** |
| *Coming into force - -* | *6th April 2010* |

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 171ZEB(1), (2) and (3), 171ZEC(1) and (3), 171ZED(2) and (3), 171ZEE(2), (4) and (7), 171ZG(3), 171ZJ (3), (4), (7) and (8) and 175(4), of the Social Security Contributions and Benefits Act 1992(**a**), and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs in so far as such concurrence is required.

This instrument contains only regulations made by virtue of, or consequential upon, sections 7 to 10 of the Work and Families Act 2006 and is made before the end of the period of six months beginning with the coming into force of those enactments(**b**).

In accordance with section 176(1) of the Social Security Contributions and Benefits Act 1992, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

**1.** These Regulations may be cited as the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010 and come into force on 6th April 2010.

(**a**) 1992 (c. 4). Part 12ZA of the Social Security Contributions and Benefits Act 1992 was inserted by section 2 of the Employment Act 2002 (c. 22). Sections 171ZEA to 171ZEE were inserted by the Work and Families Act 2006 (c.18). Part 12ZA (in so far as it concerns additional statutory paternity pay) is, by regulations made under section 171ZK, namely the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010 [ ], applied to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with the modifications prescribed by those Regulations. The sections cited in the preamble that are so modified are sections 171ZEB(2) and 171ZEE(4).

(**b**) See section 173(5) of the Social Security Administration Act 1992 (c. 5). Pursuant to section 172 of that Act, where the Secretary of State proposes to make regulations under the Social Security Contributions and Benefits Act 1992, the Secretary of State is required to refer such proposals, normally in the form of draft regulations, to the Social Security Advisory Committee. This requirement does not apply where the regulations are contained in a statutory instrument made before the end of a period of six months beginning with the coming into force of the enactments by virtue or as a consequence of which the regulations are being made.

**Interpretation and scope**

**2.**—(1) In these Regulations—

"the Act" means the Social Security Contributions and Benefits Act 1992;

"additional statutory paternity pay (adoption)" means additional statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 171ZEB(2) of the Act are satisfied;

"additional statutory paternity pay period (adoption)" means the period in respect of which additional statutory paternity pay (adoption) is payable;

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

"adoption from overseas" means the adoption of a child who enters Great Britain from outside 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 any part of the United Kingdom;

"adoption leave" means ordinary adoption leave under section 75A of the Employment Rights Act 1996(**a**) or additional adoption leave under section 75B of that Act;

"adoption pay period" has the meaning given by regulation 12 of the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (No.2) Regulations 2003(**b**);

"the Application Regulations" means the Social Security Contributions and Benefits Act 1992 (Application of Part 12ZA to Adoptions from Overseas) Regulations 2010(**c**);

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

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

"the General Regulations" means the Additional Statutory Paternity Pay (General) Regulations 2010(**d**);

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

"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);

"processing", in relation to information, has the meaning given by section 1(1) of the Data Protection Act 1998(**e**); and

"relevant central authority" means—

(a) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element Regulations 2005(**f**) apply and who is habitually resident in Wales, the Welsh Ministers;

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(**a**) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).
(**b**) S.I. 2003/1194.
(**c**) [ ]
(**d**) [ ]
(**e**) 1998 c. 29.
(**f**) S.I. 2005/392.

(b) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element (Scotland) Regulations 2009(**a**) apply and who is habitually resident in Scotland, the Scottish Ministers; and

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

(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) References in these Regulations to Part 12ZA of the Act are references to sections 171ZEA to 171ZEE and, in so far as they concern additional statutory paternity pay, to sections 171ZF to 171ZJ of the Act.

(5) References in these Regulations to any of the provisions referred to regulation 1(4) are to be construed as references to those provisions as modified, where appropriate, by the Application Regulations.

(6) These Regulations apply to additional statutory paternity pay (adoption) in respect of adoptions from overseas.

**Application of the General Regulations to these Regulations**

**3.**—(1) Subject to paragraph (2), the provisions of the General Regulations mentioned in paragraph (3) shall, in so far as they apply to additional statutory paternity pay (adoption), apply to adoptions from overseas.

(2) Any references to the provisions of Part 12ZA of the Act in the provisions of the General Regulations mentioned in paragraph (3) shall be construed as references to the provisions of Part 12ZA as modified, where appropriate, by the Application Regulations.

(3) The provisions of the General Regulations referred to in paragraph (1) are regulations 20 to 22, 24 to 31, 33 to 39 and, subject to paragraph (4), regulation 32.

(4) In the General Regulations, the provisions of regulation 32 shall apply as if—

(a) in paragraph (2)(b), for "the week in which the adopter is notified of being matched with the child for the purposes of adoption" there were substituted—

"(b) the week in which—

(i) official notification is sent to the adopter, or

(ii) the person satisfies the condition in regulation 5(3)(a) of the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010 (26 weeks' continuous employment),

whichever is the later"; and

(b) at the end of paragraph (2), there were added ""official notification" has the same meaning as in the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010".

**Application**

**4.** Subject to the provisions of Part 12ZA of the Act and of these Regulations, there is entitlement to additional statutory paternity pay (adoption) in respect of adoptions from overseas of children who enter Great Britain on or after 3rd April 2011.

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(**a**) S.S.I. 2009/182.

**Entitlement to additional statutory paternity pay (adoption) in respect of adoptions from overseas**

**5.**—(1) A person ("P") is entitled to additional statutory paternity pay (adoption) in respect of an adoption from overseas if—

(a) P satisfies the conditions—

(i) as to relationship with a child ("C") and the child's adopter ("A") specified in paragraph (2); and

(ii) as to continuity of employment and normal weekly earnings specified in paragraph (3);

(b) A satisfies the conditions specified in regulation 6;

(c) P intends to care for C during the additional statutory paternity pay period (adoption) in respect of C:

(d) A has signed the declaration referred to in regulation 8(1)(c); and

(e) P has complied with the requirements in regulation 8, including, where applicable, the requirements in regulation 8(3).

(2) The conditions referred to in paragraph (1)(a)(i) are that—

(a) P is married to, or is the civil partner or the partner of, A; and

(b) P has, or expects to have, the main responsibility (apart from any responsibility of A) for the upbringing of C.

(3) The conditions referred to in paragraph (1)(a)(ii) are that—

(a) P has been in employed earner's employment with an employer for a continuous period of at least 26 weeks prior to the date C enters Great Britain;

(b) P's normal weekly earnings for the period of eight weeks ending with the prescribed week are not less than the lower earnings limit in force under section 5(1)(a) of the Act at the end of the prescribed week; and

(c) P continues in employed earner's employment with the employer by reference to whom the condition in sub-paragraph (a) above is satisfied for a continuous period beginning with the prescribed week and ending with the week before the additional statutory paternity pay period (adoption) in respect of C begins.

(4) The references in paragraph (3) to the "prescribed week" are to the week in which—

(a) official notification is sent to A; or

(b) P satisfies the condition in paragraph (3)(a) (26 weeks' continuous employment)

whichever is the later.

**Conditions to be satisfied by the child's adopter**

**6.** The conditions referred to in regulation 5(1)(b) are that A—

(a) became entitled, by reference to the adoption of C, to statutory adoption pay;

(b) has taken action constituting a return to work within the meaning of regulation 12;

(c) has taken the action referred to in paragraph (b) not less than two weeks after the date C enters Great Britain; and

(d) has at least two weeks of their adoption pay period which remain unexpired.

**Additional statutory paternity pay period (adoption) in respect of adoptions from overseas**

**7.**—(1) For the purposes of section 171ZEE(2)(a) of the Act, the date on which the additional statutory paternity pay period (adoption) in respect of C begins is—

(a) the date specified by P in accordance with regulation 8(2)(d) or last varied in accordance with regulation 8(6); or

(b) if later, the date of A's taking action constituting a return to work within the meaning of regulation 12

being, in either case, a date which falls no earlier than 20 weeks after the date on which C enters Great Britain.

(2) For the purposes of section 171ZEE(2)(b)(ii) of the Act, the date on which the additional statutory paternity pay period (adoption) in respect of C ends is the date specified by P in accordance with regulation 8(2)(e) or last varied in accordance with 8(6).

(3) For the purposes of section 171ZEE(4)(a) of the Act, the additional statutory paternity pay period (adoption) in respect of C shall not last longer than 26 weeks.

(4) This paragraph applies instead of paragraph (2) where—

(a) A dies after the beginning but before the end of the additional statutory paternity pay period (adoption) in respect of C; and

(b) as soon as reasonably practicable after A's death, P gives the person paying P additional statutory paternity pay (adoption) notice in writing of A's death.

(5) Where paragraph (4) applies, the date on which the additional statutory paternity pay period (adoption) in respect of C ends is the date—

(a) on which the adoption pay period in respect of C, which would have applied but for A's death, would have ended; or

(b) if earlier, such date which, for the purposes of section 171ZEE(2)(b)(ii) of the Act, P may specify in the notice given under paragraph (4)(b).

**Application for, and evidence of entitlement to, additional statutory paternity pay (adoption) in respect of adoptions from overseas**

**8.**—(1) P shall apply for additional statutory paternity pay (adoption) to the person ("E") who will be liable to pay P such pay by providing to E—

(a) the information, in writing, specified in paragraph (2);

(b) a written declaration, signed by P—

(i) that that information is correct;

(ii) that P intends to care for C during the additional statutory paternity pay period (adoption) in respect of C; and

(iii) that P meets the conditions in regulation 5(2);

(c) a written declaration, signed by A—

(i) that they have given notice to their employer that they are returning to work;

(ii) that they satisfy the condition in regulation 6(a);

(iii) specifying their name, address and National Insurance Number;

(iv) specifying the start date of their adoption pay period in respect of C;

(v) specifying the date on which they intend to return to work;

(vi) confirming that, in relation to C, P is, to A's knowledge, the sole applicant for additional statutory paternity pay; and

(vii) providing A's consent as regards the processing by E of the information provided pursuant to sub-paragraphs (i) to (vi)..

(2) The information referred to in paragraph (1)(a) is as follows—

(a) P's name ;

(b) the date the official notification in respect of C was sent to A;

(c) the date of C's entry into Great Britain;

(d) the date on which P expects that E's liability to pay additional statutory paternity pay (adoption) will begin; and

(e) the date on which P expects that E's liability to pay additional statutory paternity pay (adoption) will end.

(3) P shall also provide, if E so requests within 28 days of receiving the information and declarations referred to in paragraph (1)-

(a) a copy of the official notification in respect of C; and

(b) evidence of the date that C entered Great Britain; and

(c) the name and business address of A's employer (or, if A is self-employed, A's business address).

(4) The information and declarations referred to in paragraph (1) must be provided to E at least eight weeks before the date specified by P pursuant to paragraph (2)(d).

(5) P must give E what is requested under paragraph (3) within 28 days of E requesting it.

(6) P may, after applying for additional statutory paternity pay (adoption) under paragraph (1), withdraw that application, vary the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will begin, or (before the additional statutory paternity pay period (adoption) in respect of C has begun), vary the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will end, by notice in writing to E given—

(a) if withdrawing an application, at least six before the date specified by P pursuant to paragraph 2(d), or

(b) if varying the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will begin, at least six weeks before the earlier of the date varied or the new date, or

(c) if varying the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will end, at least six weeks before the earlier of the date varied or the new date, or

(d) in a case where it was not reasonably practicable to give notice in accordance with sub-paragraph (a), (b) or (c), as soon as is reasonably practicable.

(7) When P has applied for additional statutory paternity pay (adoption) under paragraph (1), P must give E written notice as soon as reasonably practicable if at any time—

(a) P no longer satisfies the conditions in regulation 5(2); or

(b) A no longer intends to take action constituting a return to work within the meaning of regulation 12.

(8) When E has been provided with all of the information and the declarations referred to in paragraph (1) (together with, if applicable, what E has requested under paragraph (3)), E must, within 28 days, confirm the start and end dates of E's liability to pay P additional statutory paternity pay (adoption), by notice in writing to P.

**Entitlement to additional statutory paternity pay (adoption) in respect of adoptions from overseas in the event of the death of the adopter**

**9.**—(1) In a case where A dies before the end of their adoption pay period in respect of C (but before the additional statutory paternity pay period (adoption) in respect of C has begun —

(a) the provisions in regulations 5 and 6 shall apply, subject to the following modifications—

(i) regulation 5(1)(d) shall not apply;

(ii) regulation 5(1)(e) shall apply—

(aa) as if the references to regulation 8 were references to regulation 10; and

(bb) in a case where the date of which P informs E pursuant to regulation 10(1)(a) is earlier than the date by which P has complied with the other requirements of regulation 10, as if such other requirements had been complied with on such earlier date provided that they are complied with as soon as reasonably practicable thereafter;

(iii) the condition in regulation 5(2)(a) shall be taken to be satisfied if it would have been satisfied but for the fact that A had died;

(iv) the condition in regulation 6(a) shall be taken to be satisfied if A would have satisfied it but for the fact that A had died; and

(v) regulation 6(b), (c) and (d) shall not apply;

(b) regulation 7 shall not apply;

(c) for the purposes of section 171ZEE(2)(a) of the Act, the date on which the additional statutory paternity pay (adoption) in respect of C begins is such date, being the date of A's death or a later date, as P informs E of in accordance with regulation 10(1)(a) or as is last varied in accordance with regulation 10(7) or 10(8);

(d) for the purposes of section 171ZEE(2)(b)(ii) of the Act, the date on which the additional statutory paternity pay period (adoption) in respect of C ends is, where earlier than the relevant date, the date specified by P in accordance with regulation 10(2)(d) or last varied in accordance with regulation 10(7) or 10(8);

(e) for the purposes of section 171ZEE(4)(a) of the Act, the additional statutory paternity pay period (adoption) in respect of C shall not last longer than 39 weeks; and

(f) regulation 8 shall be replaced by regulation 10.

(2) In paragraph 2(d), "the relevant date" means the date on which the adoption pay period in respect of C which would have applied but for A's death, would have ended.

(3) References in this regulation to A's adoption pay period in respect of C include, where A's death occurred before A's adoption pay period in respect of C started, references to such period as would have existed but for the fact that A had died.

**Application for, and evidence of entitlement to, additional statutory paternity pay (adoption) in respect of adoptions from overseas in the event of the death of the adopter**

**10.**—(1) P shall apply for additional statutory paternity pay (adoption) to the person ("E") who will be liable to pay P such pay by—

(a) informing E of the date on which P wishes the additional statutory paternity pay period (adoption) in respect of C to begin or the date (if in the past) on which P wishes such period to have begun;

(b) providing E with the information, in writing, specified in paragraph (2); and

(c) by providing E with a written declaration, signed by P—

(i) that the information referred to in sub-paragraph (b) is correct;

(ii) that P intends to care for C during the additional statutory paternity pay period (adoption) in respect of C; and

(iii) that P meets the conditions in regulation 5(2) (as modified by regulation 9(1)(a)(iii));

(2) The information referred to in paragraph (1)(a) is as follows—

(a) P's name;

(b) the date the official notification in respect of C sent to A;

(c) the date of C's entry into Great Britain;

(d) the date on which P expects that E's liability to pay additional statutory paternity pay (adoption) will end;

(e) A's name, address, and National Insurance number;

(f) the start date of A's adoption pay period in respect of C or, in a case where A's death occurred before A's adoption pay period in respect of C started, the date that that period would have started but for the fact that A had died; and

(g) the date of A's death.

(3) P shall also provide, if E so requests within 28 days of receiving the information and declaration referred to in paragraph (1)—

(a) a copy of the official notification in respect of C;

(b) evidence of the date that C entered Great Britain; and

(c) the name and business address of A's employer (or, if A was self-employed, A's business address).

(4) Subject to paragraph (5), the information and declaration referred to in paragraph (1) must be provided to E as soon as reasonably practicable after, and in any event within eight weeks of, the date of A's death.

(5) If provided at least six weeks before the date of which P informs E pursuant to paragraph (1)(a), the information and evidence referred to in paragraph (1)(b) and (c) may be provided eight or more weeks after the date of A's death.

(6) P must give E what is requested under paragraph (3) within 28 days of E requesting it.

(7) Within eight weeks of the date of A's death, P may, after applying for additional statutory paternity pay (adoption) under paragraph (1) and by giving E notice in writing, withdraw that application, vary the date (if in the future) on which P wishes the additional statutory paternity pay period (adoption) in respect of C to begin, or (either before or after such period has begun) vary the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will end, with immediate effect.

(8) Eight or more weeks after the date of A's death, P may, after applying for additional statutory paternity pay (adoption) under paragraph (1), withdraw that application, vary the date (if in the future) on which P wishes the additional statutory paternity pay period (adoption) in respect of C to begin, or (before such period has begun), vary the date on which it is expected that E's liability to pay additional statutory paternity pay (adoption) will end, by notice in writing to E given—

(a) if withdrawing an application, at least six weeks before the of which P informs E pursuant to paragraph (1)(a), or

(b) if varying the date on which P wishes the additional statutory paternity pay period (adoption) in respect of C to begin, at least six weeks before the earlier of the date varied or the new date, or

(c) if varying the date on which it expected that E's liability to pay additional statutory paternity pay (adoption) will end, at least six weeks before the earlier of the date varied or the new date, or

(d) in a case where it was not reasonably practicable to give notice in accordance with sub-paragraph (a), (b) or (c), as soon as is reasonably practicable.

(9) When E has been provided with all of the information and the declaration referred to paragraph (1) (together with, if applicable, what E has requested under paragraph (3)), E must, within 28 days, confirm the date on which the additional statutory paternity pay period (adoption) in respect of C begins or begun and the date on which E's liability to pay P additional statutory paternity pay (adoption) ends, by notice in writing to P.

**Entitlement to additional statutory paternity pay (adoption) in respect of adoptions from overseas where there is more than one employer**

**11.**—(1) Additional statutory paternity pay (adoption) shall be payable to a person in respect of a statutory pay week during any part of which that person works only for an employer—

(a) who is not liable to pay that person additional statutory paternity pay (adoption); and

(b) for whom that person worked in the week in which the adopter of a child from overseas received the relevant official notification.

(2) In this regulation "statutory pay week" means a week that person has chosen in respect of which additional statutory paternity pay (adoption) shall be payable.

**Return to work**

**12.** For the purposes of these Regulations, an adopter entitled to statutory adoption pay is treated as returning to work if that payment is not payable to that person in accordance with section 171ZN(3) or (5) of the Act.

*Name*
Title
Date Department for Business, Innovation and Skills

The Commissioners for Her Majesty's Revenue and Customs concur

*Name*
*Name*
Two of the Commissioners for Her Majesty's Revenue and Customs

## EXPLANATORY NOTE

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

These Regulations, made under provisions inserted into the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") by the Work and Families Act 2006, make provision relating to additional statutory paternity pay in respect of adoptions from overseas. An adoption from overseas is defined in the Regulations as an adoption of a child who enters Great Britain from outside 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 any part of the United Kingdom.

These Regulations should be read in conjunction with the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010, which provide for the provisions of Part 12ZA (in so far as they concern additional statutory paternity pay) to have effect, with prescribed modifications, in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom.

Regulation 3 sets out the extent to which and the manner in which the Additional Statutory Paternity Pay (General) Regulations 2010 apply to adoptions from overseas.

Regulation 4 is an application provision: there is an entitlement to additional statutory paternity pay where the relevant provisions of Part 12ZA of the 1992 Act (as modified) and the provisions of the Regulations are satisfied.

Regulation 5(2) sets out the conditions regarding relationship with a child and the adopter (which where two people are adopting together is the person who will be taking adoption leave in respect of the child) which the applicant for additional statutory paternity pay must satisfy in order for his or her entitlement to arise. Regulation 5(3) sets out the conditions which the applicant must satisfy as regards employment before the expected week of the child's entry into Great Britain and employment in the period immediately preceding the period in respect of which additional statutory paternity pay will be payable. Regulation 6 sets out conditions which the adopter must satisfy and these include the requirement that he or she has returned to work. Regulation 7 concerns the period in respect of which additional statutory paternity pay is payable. In broad terms (and subject to various conditions set out in regulation 7 and at section 171ZEE of the 1992 Act, as modified), the applicant may choose the dates on which this period is to begin and end. Regulation 8 provides for the process of applying for additional statutory paternity pay and sets out various requirements as to information and evidence which the applicant must provide to his or her employer.

Provision is also made for the payment of additional statutory paternity pay in connection with the adoption of a child from overseas where the adopter dies. Regulation 7(4) and (5) applies to a case in which the adopter dies after the beginning of the period in respect of which additional statutory paternity pay is payable. It allows for a longer period in many such cases. Regulations 9 and 10 concern cases where the period in respect of which additional statutory paternity pay is payable has not already commenced when the adopter dies. Regulation 9 concerns the various conditions which must be satisfied by the applicant in such circumstances and, also, the different pay period which will invariably apply in such cases.

Regulation 11 provides for the exceptional circumstances in which additional statutory paternity pay (in connection with the adoption of a child from overseas) will be payable to a person even though he is working, albeit for another employer. Regulation 12 sets out what is meant by an adopter's "returning to work".

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£5.50

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