2003 No. 500

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) Regulations 2003

Made - - - - -	*11th March 2003*
Laid before Parliament	*13th March 2003*
Coming into force - -	*6th April 2003*

The Secretary of State, in exercise of the powers conferred on her by sections 171ZB(2)(a), 171ZC(3)(a) to (d), (f) and (g), 171ZD(2) and (3), 171ZE(2)(a), (b)(i), (3)(b), (7) and (8), 171ZG(3), 171ZJ(1), (3), (4), (7) and (8), 171ZL(8)(b) to (d), (f) and (g), 171ZM(2) and (3), 171ZN(2), (5) and (6), 171ZP(6), 171ZS(1), (3), (4), (7) and (8), and 175(4) of the Social Security Contributions and Benefits Act 1992(**a**), section 5(1)(g), (i) and (p) of the Social Security Administration Act 1992(**b**) and with the concurrence of the Commissioners of Inland Revenue in so far as such concurrence is required, by this instrument, which contains only provision made by virtue of sections 2, 4 and 53 of and paragraphs 8 and 11 of Schedule 7 to the Employment Act 2002 and is made before the end of the period of six months from the coming into force of those enactments(**c**), hereby makes the following Regulations—

General

Citation and commencement

1. These Regulations may be cited as the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) Regulations 2003 and shall come into force on 6th April 2003.

Interpretation and scope

2.—(1) In these Regulations—

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

"adopter", in relation to a child, means a person by whom the child has been or is to be adopted;

(**a**) 1992 c. 4. Sections 171ZA to 171ZK (Part 12ZA) were inserted by section 2 of the Employment Act 2002 (c. 22), and sections 171ZL to 171ZT (Part 12ZB) by section 4 of that Act. Parts 12ZA and 12ZB are, by regulations made under sections 171ZK and 171ZT, namely the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (S.I. 2003/499), 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 171ZB(2)(a) and 171ZE(3)(b). Sections 171ZJ(1) and 171ZS(1) are cited because of the meaning ascribed to the word "prescribed".

(**b**) 1992 c. 5. Section 5(5), concerning the applicability of section 5(1)(g), (i) and (p), was amended by paragraph 11 of Schedule 7 to the Employment Act 2002.

(**c**) See section 173(5)(b) of the Social Security Administration Act 1992.

"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;

"the Application Regulations" means the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003(**a**);

"the Board" means the Commissioners of Inland Revenue;

"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 Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**b**);

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

"relevant domestic authority" means—

(a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations 2003(**c**) apply and who is habitually resident in Wales, the National Assembly for Wales;

(b) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) (Scotland) Regulations(**d**) apply and who is habitually resident in Scotland, the Scottish Ministers;

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

"statutory paternity pay (adoption)" means statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act, as modified by the Application Regulations, where the conditions specified in section 171ZB(2) of the Act, as modified by the Application Regulations, are satisfied.

(2) References in these Regulations to the provisions of Parts 12ZA and 12ZB of the Act are to be construed as references to those provisions as modified by the Application Regulations.

(3) These Regulations apply to statutory paternity pay (adoption) and statutory adoption pay 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 statutory paternity pay (adoption) and statutory adoption pay, apply to adoptions from overseas.

(2) Any references to the provisions of Parts 12ZA or 12ZB of the Act in the regulations of the General Regulations mentioned in paragraph (3) shall be construed as references to those provisions as modified by the Application Regulations.

(3) The provisions of the General Regulations referred to in paragraph (1) are regulations 17 to 19, 26 to 28, 31 to 39, 41 to 47 and, subject to paragraph (4), regulation 40.

(4) In the General Regulations, the provisions of regulation 40 shall apply as if—

(a) in paragraph (2)(b), for "the adopter is notified of being matched with the child for the purposes of adoption" there were substituted "the adopter receives official notification";

(b) at the end of paragraph (2), there were added ""official notification" has the same meaning as in the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay Adoption from Overseas) Regulations 2003(**e**)".

(**a**) S.I. 2003/499.
(**b**) S.I. 2002/2822.
(**c**) S.I. 2003/118.
(**d**) S.S.I. 2003/19.
(**e**) S.I. 2003/500.

Application

4.—(1) Subject to the provisions of Part 12ZA of the Act (statutory paternity pay), the provisions of the General Regulations mentioned in paragraph (3) of regulation 3 and these Regulations, there is entitlement to statutory paternity pay (adoption) in respect of children who enter Great Britain on or after 6th April 2003.

(2) Subject to the provisions of Part 12ZB of the Act (statutory adoption pay), the provisions of the General Regulations mentioned in paragraph (3) of regulation 3 and these Regulations, there is entitlement to statutory adoption pay in respect of children who enter Great Britain on or after 6th April 2003.

Statutory paternity pay (adoption)

Conditions of entitlement to statutory paternity pay (adoption) in respect of adoptions from overseas: relationship with child and with adopter

5.—(1) The conditions prescribed under section 171ZB(2)(a) of the Act are that a person—

(a) is married to or the partner of a child's adopter (or in a case where there are two adopters, married to or the partner of the other adopter), and

(b) has, or expects to have, the main responsibility (apart from the responsibility of the child's adopter, or in a case where there are two adopters, together with the other adopter) for the upbringing of the child.

(2) For the purposes of paragraph (1), "partner" 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 (3).

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

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

(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.

Period of payment of statutory paternity pay (adoption) in respect of adoptions from overseas

6.—(1) Subject to notice under section 171ZC(1) of the Act, paragraph (2) and regulation 8, a person entitled to statutory paternity pay (adoption) may choose the statutory paternity pay period to begin on—

(a) the date on which the child enters Great Britain or, where the person is at work on that day, the following day;

(b) a predetermined date, specified by the person, which is later than the date on which the child enters Great Britain.

(2) In a case where statutory paternity pay (adoption) is payable in respect of a child where the adopter has received official notification before 6th April 2003, the statutory paternity pay period shall begin on a predetermined date, later than the date of entry, specified by the person entitled to such pay in a notice under section 171ZC(1) of the Act, which is at least 28 days after the date on which that notice was given, unless the person liable to pay statutory paternity pay (adoption) agrees to the period beginning earlier.

(3) A person may choose for statutory paternity pay (adoption) to be paid in respect of a period of a week.

(4) A choice made in accordance with paragraph (1) or a date specified in accordance with paragraph (2) is not irrevocable, but where a person subsequently makes a different choice or specifies a different date in relation to the beginning of the statutory paternity pay period, section 171ZC(1) of the Act shall, subject to paragraph (2), apply to it.

Additional notice requirements for statutory paternity pay (adoption) in respect of adoptions from overseas

7.—(1) Where a person gives notice under section 171ZC(1) of the Act he shall give further notice of the following matters to the person liable to pay him statutory paternity pay (adoption)—

(a) the date on which official notification was received, within 28 days of that date, or within 28 days of his completion of 26 weeks of continuous employment with that person, whichever is the later;

(b) the date on which the child enters Great Britain, within 28 days of entry.

(2) Where the child has not entered Great Britain on the expected date, the person shall, if he wishes to claim statutory paternity pay (adoption), give notice to the person liable to pay it, as soon as is reasonably practicable, that the period in respect of which stautory paternity pay is to be paid shall begin on a date different from that originally chosen by him.

(3) That date may be any date chosen in accordance with paragraph (1) of regulation 6 or specified in accordance with paragraph (2) of that regulation.

(4) Where it becomes known to the person that the child will not enter Great Britain, he shall notify the person who would have been liable to pay statutory paternity pay (adoption), as soon as is reasonably practicable.

Qualifying period for statutory paternity pay (adoption) in respect of adoptions from overseas

8. The qualifying period for the purposes of section 171ZE(2) of the Act (period within which the statutory pay period must occur) is a period of 56 days beginning with the date the child enters Great Britain.

Evidence of entitlement for statutory paternity pay (adoption) in respect of adoptions from overseas

9.—(1) A person shall produce evidence of his entitlement to statutory paternity pay (adoption) in respect of adoptions from overseas by providing in writing to the person who will be liable to pay him statutory paternity pay (adoption) the declarations specified in paragraph (2) and the information specified in paragraph (3).

(2) The declarations referred to in paragraph (1) are as follows—

(a) that he meets the conditions prescribed under section 171ZB(2)(a) of the Act and that it is not the case that statutory paternity pay (adoption) is not payable to him by virtue of the provisions of section 171ZE(4) of the Act;

(b) that he has elected to receive statutory paternity pay (adoption), and not statutory adoption pay under Part 12ZB of the Act;

(c) that official notification has been received.

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

(a) the name of the person claiming statutory paternity pay (adoption);

(b) the date on which it is expected that the child will enter Great Britain or, where the child has already entered Great Britain, that date;

(c) the date from which it is expected that the liability to pay statutory paternity pay (adoption) will begin;

(d) whether the period chosen in respect of which statutory paternity pay (adoption) is to be payable is a week.

(4) The declarations mentioned in paragraph (2) and information mentioned in paragraph (3) shall be provided to the person liable to pay statutory paternity pay (adoption) at least 28 days before the date mentioned in sub-paragraph (c) of paragraph (3) or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter.

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

10. Statutory paternity pay (adoption) shall be payable to a person in respect of a statutory pay week during any part of which he works only for an employer—

(a) who is not liable to pay him statutory paternity pay (adoption); and

(b) for whom he has worked in the week in which the adopter receives official notification.

Avoidance of liability for statutory paternity pay (adoption) in respect of adoptions from overseas

11.—(1) A former employee shall be liable to make payments of statutory paternity pay (adoption) to a former employee in any case where the employee has been employed for a continuous period of at least 8 weeks and his contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory paternity pay (adoption).

(2) In a case falling within paragraph (1)—

(a) the employee shall be treated as if he had been employed for a continuous period ending with the day the child enters Great Britain;

(b) his normal weekly earnings shall be calculated by reference to his normal weekly earnings for the period of 8 weeks ending with the last day in respect of which he was paid under his former contract of service.

Statutory adoption pay

Adoption pay period in respect of adoptions from overseas

12.—(1) Subject to notice under section 171ZL(6) of the Act and paragraph (2), a person entitled to statutory adoption pay may choose the adoption pay period to begin—

(a) on the date on which the child enters Great Britain or, where the person is at work on that day, on the following day;

(b) on a predetermined date, specified by him, which is no later than 28 days after the date the child enters Great Britain.

(2) In a case where statutory adoption pay is payable in respect of a child where the adopter has received official notification before 6th April 2003, the statutory adoption pay period shall begin on a predetermined date, later than the date of entry, specified by the person entitled to such pay in a notice under section 171ZL(6) of the Act, which is at least 28 days after the date on which that notice was given, unless the person liable to pay statutory adoption pay agrees to the period commencing earlier.

(3) Where the choice made is that mentioned in sub-paragraph (b) of paragraph (1), the adoption pay period shall, unless the employer agrees to the adoption pay period beginning earlier, begin no earlier than 28 days after notice under section 171ZL(6) of the Act has been given.

(4) Subject to regulation 13, the duration of any adoption pay period shall be a continuous period of 26 weeks.

(5) A choice made under paragraph (1), or a date specified under paragraph (2), is not irrevocable, but where a person subsequently makes a different choice or specifies a different date in relation to the beginning of the statutory adoption pay period, section 171ZL(6) of the Act shall, subject to paragraph (2), apply to it.

Adoption pay period in respect of adoptions from overseas where adoption is disrupted

13.—(1) Where after a child enters Great Britain the child—

(a) dies; or

(b) ceases to live with the adopter,

the adoption pay period shall terminate in accordance with the provisions of paragraph (2).

(2) The adoption pay period shall, in a case falling within paragraph (1), terminate 8 weeks after the end of the week specified in paragraph (3).

(3) The 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 ceases to live with the adopter.

(4) For the purposes of paragraph (3), "week" means a period of seven days beginning with Sunday.

Additional notice requirements for statutory adoption pay in respect of adoptions from overseas

14.—(1) Where a person gives notice under section 171ZL(6) of the Act he shall give further notice of the following matters to the person liable to pay him statutory adoption pay—

(a) the date on which official notification was received, within 28 days of that date, or within 28 days of his completion of 26 weeks of continuous employment, whichever is the later;

(b) the date on which the child enters Great Britain, within 28 days of entry.

(2) Where the child has not entered Great Britain on the expected date, the person shall, if he wishes to claim statutory adoption pay, give notice to the person liable to pay it, as soon as is reasonably practicable, that the period in respect of which statutory adoption pay is to be paid shall begin on a date different from that originally chosen by him.

(3) That date may be any date chosen in accordance with paragraph (1) of regulation 12 or specified in accordance with paragraph (2) of that regulation.

(4) Where it becomes known to the adopter that the child will not enter Great Britain, he shall notify the person who would have been liable to pay statutory adoption pay as soon as is reasonably practicable.

Evidence of entitlement to statutory adoption pay in respect of adoptions from overseas

15.—(1) A person shall provide evidence of his entitlement to statutory adoption pay by providing, to the person who will be liable to pay it, a copy of the official notification and, in writing—

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

(b) a declaration that he has elected to receive statutory adoption pay, and not statutory paternity pay (adoption) under Part 12ZA of the Act;

(c) evidence, to be provided within 28 days of the child's entry into Great Britain, as to that date.

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

(a) the name and address of the person claiming statutory adoption pay;

(b) the date on which it is expected that the child will enter Great Britain or, where he has already done so, that date.

(3) The information and declaration referred to in paragraph (1), other than that mentioned in sub-paragraph (c) of paragraph (1), shall be provided to the person liable to pay statutory adoption pay at least 28 days before the date chosen as the beginning of the adoption pay period in accordance with paragraph (1) of regulation 12 or specified in accordance with paragraph (2) of that regulation or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter.

Entitlement to statutory adoption pay in respect of adoptions from overseas where there is more than one employer

16. Statutory adoption pay shall be payable to a person in respect of a week during any part of which he works only for an employer—

(a) who is not liable to pay him statutory adoption pay; and

(b) for whom he has worked in the week in which he receives official notification.

Termination of employment and liability to pay statutory adoption pay in respect of adoptions from overseas

17.—(1) Where the employment of a person who satisfies the conditions of entitlement to statutory adoption pay in respect of adoptions from overseas terminates for whatever reason (including dismissal) before the adoption pay period chosen or specified by that person in accordance with regulation 12 has begun, the period shall begin on a date chosen by that person which is at least 28 days after notice has been given and within 28 days of the date of the child's entry into Great Britain.

(2) Where the statutory adoption pay period has not commenced within a period of six months of the adopter's leaving his employer, liability to pay statutory adoption pay shall, notwithstanding section 171ZM(1) of the Act, pass to the Board.

(3) Where liability to pay statutory adoption pay has passed to the Board in accordance with paragraph (2) and the adopter, having started employment as an employed earner, becomes entitled to statutory adoption pay by virtue of that employment, the liability of the Board shall cease and section 171ZM(1) of the Act shall apply.

Avoidance of liability for statutory adoption pay in respect of adoptions from overseas

18.—(1) A former employer shall be liable to make payments of statutory adoption pay to a former employee in any case where the employee had been employed for a continuous period of at least eight weeks and his contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.

(2) In a case falling within paragraph (1)—

(a) the employee shall be treated as if he has been employed for a continuous period ending with the week in which he received official notification; and

(b) his normal weekly earnings shall be calculated by reference to his normal weekly earnings for the period of eight weeks ending with the last day in respect of which he was paid under his former contract of service.

Signed by authority of the Secretary of State for Trade and Industry

Alan Johnson,
Minister of State for Employment Relations,
Industry and the Regions,
Department of Trade and Industry

11th March 2003

The Commissioners of Inland Revenue hereby concur

Tim Flesher,
Dave Hartnett,
Two of the Commissioners of Inland Revenue

11th March 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument contains only regulations made by virtue of sections 2, 4 and 53 of, and paragraphs 8 and 11 of Schedule 7 to, the Employment Act 2002, which came into force on 8th December 2002. The instrument is made before the end of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempted by section 173(5)(b) of the Social Security Administration Act 1992 from the requirement under section 172 of that Act to refer the proposals to make the regulations to the Social Security Advisory Committee and they are made without reference to the Committee.

These Regulations, made under provisions inserted into the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") by the Employment Act 2002, make provision relating to statutory paternity pay in respect of adoptions from overseas and statutory adoption 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.

The Regulations should be read together with the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003, which provide for Parts 12ZA and 12ZB of the 1992 Act to have effect, with the modifications prescribed in the Regulations, 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 Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 apply to adoptions from overseas.

Regulation 4 is an application provision.

Regulations 5 to 11 relate to statutory paternity pay in respect of adoptions:

Regulation 5 sets out the entitlement conditions as regards the child and the (or the other) adopter;

Regulation 6 specifies the period of payment for statutory paternity pay (adoption) for adoptions from overseas;

Regulation 7 sets out additional notice requirements;

Regulation 8 specifies the period within which the statutory paternity pay period must occur ("the qualifying period");

Regulation 9 sets out the evidence of entitlement that is required;

Regulation 10 provides for exceptional circumstances in which statutory paternity pay (adoption) is payable to a person even though he is working for another employer;

Regulation 11 provides for liability to make payments of statutory paternity pay in cases where an employee's contract of service is brought to an end solely or mainly for the purpose of avoiding liability to pay statutory paternity pay.

Regulations 12 to 18 relate to statutory adoption pay:

Regulation 12 specifies the period of payment for statutory adoption pay;

Regulation 13 specifies how the adoption pay period is to be terminated where the adoption is disrupted;

Regulation 14 sets out additional notice requirements;

Regulation 15 sets out the evidence of entitlement that is required;

Regulation 16 provides for exceptional circumstances in which statutory adoption pay is payable to a person even though he is working for another employer;

Regulation 17 makes provision for liability for payment of statutory adoption pay where the adopter ceases to work for his employer prior to the start of the adoption pay period, including the circumstances in which liability for payment passes to the Commissioners of Inland Revenue and the circumstances in which that liability ceases;

Regulation 18 provides for liability to make payments of statutory adoption pay in cases where an employee's contract of service is brought to an end solely or mainly for the purpose of avoiding liability to pay statutory adoption pay.

STATUTORY INSTRUMENTS

2003 No. 500

TERMS AND CONDITIONS OF EMPLOYMENT

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ISBN 0-11-045672-6

9 780110 456720

£2.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0431 4/2003 130431 19585