Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Additional Statutory Paternity Pay (General) Regulations 2010 ISBN 978-0-11-149366-3*

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 (General) Regulations 2010

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

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 171ZEA(1), (2), and (3), 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(**1**) and by section 5(1)(g)(i) and (p) of the Social Security Administration Act 1992(**2**) 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 6 to 10 of the Work and Families Act 2006 and is made before the end of the period of 6 months beginning with the coming into force of those enactments(**3**).

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.

(**1**) 1992 c. 4. Part 12ZA was inserted by section 2 of the Employment Act 2002 (c.22). Sections 171ZEA to 171ZEE were inserted into Part 12ZA by the Work and Families Act 2006 (c.18).
(**2**) 1992 c. 5.
(**3**) 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.

PART 1

INTRODUCTION

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

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

"actual week of birth", in relation to a child, means the week beginning with midnight between Saturday and Sunday, in which the child is born;

"additional statutory paternity pay" means additional statutory paternity pay (adoption) or additional statutory paternity pay (birth);

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

"additional statutory paternity pay period" means an additional statutory paternity pay period (adoption) or an additional statutory paternity pay period (birth);

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

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

"adopter", in relation to a child, means a person who has been matched with a child for adoption and who has elected to take adoption leave in order to care for the child;

"adoption agency" has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002(**4**) and, in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007(**5**);

"adoption leave" means ordinary adoption leave under section 75A of the Employment Rights Act 1996(**6**) or additional adoption leave under section 75B of that Act;

"adoption pay period" has the meaning given by regulation 21 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**7**);

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

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

(**4**) 2002 c. 38.
(**5**) 2007 asp 4.
(**6**) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22) and were amended by paragraphs 33 and 34 respectively of Schedule 1 to the Work and Families Act 2006.
(**7**) S.I. 2002/2822, amended by S.I. 2006/2236; there are other amending instruments, but none is relevant.

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001(**8**);

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

"maternity allowance period" means the period for which maternity allowance is payable under section 35 of the Act;

"maternity pay period" has the meaning given by regulation 2 of the Statutory Maternity Pay (General) Regulations 1986(**9**);

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

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

"processing", in relation to information, has the meaning given by section 1(1) of the Data Protection Act 1998(**10**).

(2) The relatives of a child's mother or adopter referred to in the definition of "partner" in paragraph (1) are the mother's or 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 to Part 12ZA of the Act in these Regulations 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) 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, and

(b) a person is notified of having been matched with a child on the date on which that person receives notification of the agency's decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005(**11**), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**12**) or regulation 24 of the Adoption Agencies (Scotland) Regulations 2009(**13**).

Application

3. Subject to the provisions of Part 12ZA of the Act and of these Regulations, there is entitlement to—

(a) additional statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 3rd April 2011;

(**8**) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.
(**9**) S.I. 1986/1960, amended by S.I. 2006/2379; there are other amending instruments, but none is relevant.
(**10**) 1998 c. 29.
(**11**) S.I. 2005/389, to which there are amendments not relevant to these Regulations.
(**12**) S.I. 2005/1313.
(**13**) S.S.I. 2009/154.

(b) additional statutory paternity pay (adoption) in respect of children matched with a person who is notified of having been matched on or after 3rd April 2011.

PART 2

ADDITIONAL STATUTORY PATERNITY PAY (BIRTH)

Entitlement to additional statutory paternity pay (birth)

4.—(1) A person ("P") is entitled to additional statutory paternity pay (birth) if—

(a) P satisfies the conditions–

(i) as to relationship with a child ("C") and with C's mother ("M") specified in paragraph (2); and

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

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

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

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

(e) P has complied with the requirements of 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 either—

(i) C's father; or

(ii) is married to, or is the civil partner or the partner of, M but is not C's father; and

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

(3) Subject to regulation 5, 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 ending with the relevant week;

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

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

(4) The references in paragraph (3) to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

Modification of entitlement conditions: early birth

5.—(1) Where C's birth occurs earlier than the 14th week before C's expected week of birth, regulation 4(3) shall have effect as if, for the conditions set out there, there were susbstituted the conditions that—

(a) P would have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week had C been born after the relevant week;

(b) P's normal weekly earnings for the period of eight weeks ending with the week immediately preceding C's actual week of birth are not less than the lower earnings limit in force under section 5(1)(a) of the Act immediately before the commencement of C's actual week of birth; and

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

(2) The references in paragraph 5(1)(a) to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

Conditions to be satisfied by the child's mother

6. The conditions referred to in regulation 4(1)(b) are that M—

(a) became entitled, by reference to becoming pregnant with C, to—

(i) a maternity allowance, or

(ii) statutory maternity pay;

(b) has taken action constituting a return to work within the meaning of regulation 19;

(c) has taken the action referred to in paragraph (b) not less than two weeks after the birth of C; and

(d) has at least two weeks of her maternity allowance period or maternity pay period which remain unexpired.

Additional statutory paternity pay period (birth)

7.—(1) For the purposes of section 171ZEE(2)(a) of the Act, the date on which the additional statutory paternity pay period (birth) 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 M's taking action constituting a return to work within the meaning of regulation 19,

being, in either case, a date which falls no earlier than 20 weeks after the date of C's birth.

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

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

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

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

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

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