STATUTORY RULES OF NORTHERN IRELAND

2015 No. 103

EMPLOYMENT

WORK AND FAMILIES

The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015

Made - - - -	*2nd March 2015*
Coming into operation	*15th March 2015*

The Department for Employment and Learning, in exercise of the powers conferred by sections 167ZZ6(1) and 167ZZ7(3)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 [F1], makes the following Regulations.

F1 1992 c. 7; sections 167ZZ6 and 167ZZ7 were inserted by the Work and Families Act 2015 (c. 1 (N.I.)), **section 5(2)**.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015 and come into operation on 15th March 2015.

PART 2

Statutory shared parental pay

Interpretation

2.—(1) In these Regulations—

"the Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"adopter", in relation to a child, means the person with whom a child is, or is expected to be, placed for adoption under the law of the United Kingdom;

"adoption from overseas" means the adoption of a child who enters Northern Ireland 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;

"EEA" means European Economic Area;

"foreign-going ship" means any ship or vessel which is not a home-trade ship;

"General Regulations" means the Statutory Shared Parental Pay (General) Regulations (Northern Ireland) 2015 [F2];

"home-trade ship" includes—

(a) every ship or vessel employed in trading or going within the following limits—

(i) the United Kingdom (including for this purpose the Republic of Ireland),

(ii) the Channel Islands,

(iii) the Isle of Man, and

(iv) the continent of Europe between the river Elbe and Brest inclusive;

(b) every fishing vessel not proceeding beyond the following limits—

(i) on the South, Latitude 48°30′N,

(ii) on the West, Longitude 12°W, and

(iii) on the North, Latitude 61°N;

"mariner" means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

(a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage,

but does not include a person in so far as their employment is as a serving member of the forces;

"placed for adoption" means—

(a) placed for adoption by virtue of regulation 12 of the Adoption Agencies Regulations (Northern Ireland) 1989 [F3];

(b) placed by an authority with a person who is an approved foster parent who is also an approved prospective adopter [F4] where the authority—

(i) is considering adoption for the child, or

(ii) is satisfied that adoption is in the best interests of the child,

and is considering whether that person would be a suitable adoptive parent for that child;

(c) placed for adoption under the Adoption and Children Act 2002 [F5] or the Adoption and Children (Scotland) Act 2007 [F6]; or

(d) placed in accordance with section 22C of the Children Act 1989 [F7] with a local authority foster parent who is also a prospective adopter;

"serving member of the forces" means a person, other than one mentioned in Part 2 of Schedule 1, who, being over the age of 16, is a member of any establishment or organisation specified in Part 1 of that Schedule (being a member who gives full pay service) but does not include any such person while absent on desertion;

"statutory shared parental pay (adoption)" means statutory shared parental pay payable where entitlement to that pay arises under regulation 17 or 18 of the General Regulations;

"statutory shared parental pay (birth)" means statutory shared parental pay payable where entitlement to that pay arises under regulation 4 or 5 of the General Regulations.

(2) For the purposes of these regulations, the expressions "ship" and "ship or vessel" include hovercraft, except in regulation 9(2).

(3) 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;

(b) in a case where sub-paragraph (a) applies, a person is notified as having been matched with a child on the date that person receives notification of the agency's decision, under regulation 11(2)(d) of the Adoption Agencies Regulations (Northern Ireland) 1989, regulation 33(3)(a) of the Adoption Agencies Regulations 2005 [F8], regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005 [F9] or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009 [F10];

(c) a person is also matched with a child where each of the following conditions is met—

(i) that person is an approved foster parent and an approved prospective adopter, and the child is, or is expected to be, placed by the authority with that person under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 [F11];

(ii) the authority—

(aa) is considering adoption for the child, or

(bb) is satisfied that adoption is in the best interests of the child;

(iii) the authority is considering whether that person would be a suitable adoptive parent for that child;

(d) in a case where sub-paragraph (c) applies, a person is notified as having been matched with a child on the date on which that person receives notification from the authority that the conditions in that sub-paragraph have been met;

(e) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010 [F12] and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005 [F13];

(f) in a case where sub-paragraph (e) applies, a person is notified as having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005.

(4) In paragraph (d) of the definition of "placed for adoption" in paragraph (1)—

"local authority foster parent" means a person approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2 to the Children Act 1989 [F14];

"prospective adopter" means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005.

(5) The reference to "adoption agency" in paragraph (3) has the meaning given—

(a) in relation to Northern Ireland, by Article 3(3) of the Adoption (Northern Ireland) Order 1987 [F15];

(b) in relation to England and Wales, by section 2(1) of the Adoption and Children Act 2002 [F16]; and

(c) in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007 [F17].

F2 S.R. 2015 No. 94.
F3 S.R. 1989 No. 253.
F4 "Approved foster parent", "approved prospective adopter" and "authority" are defined in section 167ZY(4) of 1992 c. 7, as inserted by 2015 c. 1 (N.I.), **section 5(2)**.
F5 2002 c.38.
F6 2007 asp 4.
F7 1989 c. 41; section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), **section 8(1)**.
F8 S.I. 2005/389.
F9 S.I. 2005/1313.
F10 S.S.I. 2009/154.
F11 S.I. 1995/755 (N.I. 2).
F12 S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.
F13 S. I. 2005/389; amended by S.I. 2014/1556; there are other amending instruments but none is relevant.
F14 1989 c. 41; paragraph 12F was inserted by the Children and Young Persons Act 2008, Schedule 1, paragraph 4.
F15 S.I. 1987/2203 (N.I. 22); Article 3(3) was amended by S.I. 1994/429 (N.I. 2).
F16 2002 c. 38.
F17 2007 asp 4.

Modifications etc. (not altering text)
C1 Reg. 2 applied (with modifications) (15.3.2015) by The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015 (S.R. 2015/103), reg. 1, **Sch. 2 para. 4(2)**

Application

3. These Regulations apply in relation to—

(a) statutory shared parental pay (birth) in respect of children whose expected week of birth begins on or after 5th April 2015;

(b) statutory shared parental pay (adoption) in respect of children placed for adoption on or after 5th April 2015.

Modifications etc. (not altering text)
C2 Reg. 3 applied (with modifications) (15.3.2015) by The Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2015 (S.R. 2015/103), reg. 1, **Sch. 2 para. 5**

Restriction on scope

4. A person who would not be treated under regulation 33 (treatment of persons as employees) of the General Regulations as an employee for the purposes of Part 12ZC (statutory shared parental pay) of the Act [F18] if that person's employment were in Northern Ireland shall not be treated as an employee under these Regulations.

F18 Part 12ZC was inserted by 2015 c. 1 (N.I.), **s. 5**.

Treatment of persons in [F19]... EEA states as employees

5. A person who is—

(a) gainfully employed in an EEA state [F20]... in such circumstances that, if the employment were in Northern Ireland, the person would be an employee for the purposes of Part 12ZC of the Act, or a person treated as such an employee under regulation 33 of the General Regulations; and

(b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No.1408/71 [F21]**[**[F22]as amended from time to time or Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 as amended from time to time on the coordination of social security systems**]** ,

notwithstanding that person not being employed in Northern Ireland, shall be treated as an employee for the purposes of Part 12ZC of the Act.

F19 Word in reg. 5 heading omitted (31.12.2020) by virtue of The Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/537), reg. 1(1), **Sch. para. 8(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F20 Words in reg. 5(a) omitted (31.12.2020) by virtue of The Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/537), reg. 1(1), **Sch. para. 8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F21 O.J. No. L28, 30.1.1997, p.1.

F22 Words in reg. 5(b) inserted (5.3.2019) by The Employment Rights (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/537), reg. 1(2)(b)(ii), **Sch. para. 8(2)(c)**

Treatment of certain persons absent from Northern Ireland as employees

6. Subject to regulation 9(2), where a person, while absent from Northern Ireland for any purpose, is gainfully employed by an employer who is liable to pay secondary Class 1 contributions (within the meaning of section 1(2) of the Act) in respect of that person's employment under section 6 of the Act [F23] or regulation 146 of the Social Security Contributions Regulations 2001 [F24], that person shall be treated as an employee for the purposes of Part 12ZC of the Act.

F23 Section 6 was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), **Schedule 10**, paragraph 3, and by the Child Support, Pensions and Social Security Act 2000 (c. 19), **section 81(3)**.

F24 S.I. 2001/1004, amended by S.I. 2007/1838.

Entitlement to statutory shared parental pay where person has worked in an EEA state

7.—(1) A person who—

(a) is an employee or treated as an employee under regulation 5;

(b) in the week immediately preceding the 14th week before the expected week of the child's birth was in employed earner's employment with an employer in Northern Ireland; and

(c) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in **[**[F25]an**]** EEA state,