STATUTORY RULES OF NORTHERN IRELAND

2010 No. 299

EMPLOYMENT

WORK AND FAMILIES

The Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations (Northern Ireland) 2010

Made - - - -	*9th September 2010*
Coming into operation	*3rd October 2010*

The Department for Employment and Learning makes these Regulations in exercise of powers conferred by Articles 8, 9, 11 and 16(1) of the Employment (Northern Ireland) Order 2002(**1**) and Articles 7(1)(fa) and (ga) and 23 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999(**2**), and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs(**3**).

Citation and commencement

1. These Regulations may be cited as the Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations (Northern Ireland) 2010 and shall come into operation on 3rd October 2010.

Interpretation

2.—(1) In these Regulations—

(**1**) S.I. 2002/2836 (N.I. 2). Articles 8, 9 and 11 were amended by the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), Article 13 and Schedule 1, paragraphs 46, 47 and 48 respectively.

(**2**) S.I. 1999/671; Articles 7(1)(fa) and (ga) were inserted by Article 10(1) and (2) of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and these provisions were further amended by the Work and Families (Northern Ireland) Order 2006, Article 13 and Schedule 1, paragraph 43. Article 23 was amended by paragraph 7 of Schedule 2 to the Employment (Northern Ireland) Order 2002.

(**3**) Regulations made by the Department for Employment and Learning pursuant to Articles 8, 9 and 11 of the Employment (Northern Ireland) Order 2002 and Article 7(1)(fa) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 must, by virtue of those Articles, be made with the concurrence of the Commissioners of Inland Revenue. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) references to the Commissioners of Inland Revenue in statutory provisions are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

"the 1992 Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**4**);

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996(**5**);

"the 2002 Order" means the Employment (Northern Ireland) Order 2002;

"additional statutory paternity pay period" means the period determined in accordance with section 167ZEE(2) of the 1992 Act, or section 167ZEE(2) of the 1992 Act as it applies to adoptions from overseas(**6**), as the period in respect of which additional statutory paternity pay is payable to a person;

"additional statutory paternity pay" means any payment under section 167ZEA or section 167ZEB of the 1992 Act(**7**), or under section 167ZEB of the 1992 Act as it applies to adoptions from overseas(**8**);

"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 placement of the child for adoption under the law of any part of the United Kingdom;

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

"contributions payments" has the same meaning as in Article 8 of the 2002 Order;

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001(**9**);

"income tax month" means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

"income tax quarter" means the period beginning on the 6th day of April and ending on the 5th day of July, the period beginning on the 6th day of July and ending on the 5th day of October, the period beginning on the 6th day of October and ending on the 5th day of January or the period beginning on the 6th day of January and ending on the 5th day of April;

"tax year" means the 12 months beginning with 6th April in any year;

"writing" includes writing delivered by means of electronic communications approved by directions issued by the Commissioners pursuant to regulations under section 132 of the Finance Act 1999(**10**).

(2) Any reference in these Regulations to the employees of an employer includes the employer's former employees.

Funding of employers' liabilities to make payments of additional statutory paternity pay

3.—(1) An employer who has made any payment of additional statutory paternity pay shall be entitled—

(a) to an amount equal to 92% of such payment; or

(**4**) 1992 c. 7.
(**5**) S.I. 1996/1919 (N.I. 16).
(**6**) Section 167ZEE was inserted into Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by Article 12 of the Work and Families (Northern Ireland) Order 2006. Section 167ZEE(2) applies to adoptions from overseas by virtue of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 221), as amended by S.R. 2010 No. 305.
(**7**) Sections 167ZEA and 167ZEB were inserted into the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by Articles 8 and 9 respectively of the Work and Families (Northern Ireland) Order 2006.
(**8**) Section 167ZEB applies to adoptions from overseas by virtue of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003, as amended by S.R. 2010 No. 305.
(**9**) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.
(**10**) 1999 c. 16.

(b) if the payment qualifies for small employers' relief by virtue of Article 8(3) of the 2002 Order—

(i) to an amount equal to such payment; and

(ii) to an additional payment equal to the amount to which the employer would have been entitled under section 163(2)(b) of the 1992 Act(**11**) had the payment been a payment of statutory maternity pay.

(2) The employer shall be entitled in either case (a) or case (b) to apply for advance funding in respect of such payment in accordance with regulation 4, or to deduct it in accordance with regulation 5 from amounts otherwise payable by the employer.

Application for funding from the Commissioners

4.—(1) If an employer is entitled to a payment determined in accordance with regulation 3 in respect of additional statutory paternity pay which the employer is required to pay to an employee or employees for an income tax month or income tax quarter, and the payment exceeds the aggregate of—

(a) the total amount of tax which the employer is required to pay to the collector of taxes in respect of the deductions from the emoluments of employees in accordance with the Income Tax (Pay as You Earn) Regulations 2003(**12**) for the same income tax month or income tax quarter,

(b) the total amount of the deductions made by the employer from the emoluments of employees for the same income tax month or income tax quarter in accordance with regulations under Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998(**13**), section 22(5) of the Teaching and Higher Education Act 1998(**14**) or section 73B of the Education (Scotland) Act 1980(**15**),

(c) the total amount of contributions payments which the employer is required to pay to the collector of taxes in respect of the emoluments of employees (whether by means of deduction or otherwise) in accordance with the Contributions Regulations for the same income tax month or income tax quarter, and

(d) the total amount of payments which the employer is required to pay to the collector of taxes in respect of the deductions made on account of tax from payments to sub-contractors in accordance with section 61 of the Finance Act 2004(**16**) for the same income tax month or income tax quarter,

the employer may apply to the Commissioners in accordance with paragraph (2) for funds to pay the additional statutory paternity pay (or so much of it as remains outstanding) to the employee or employees.

(2) Where—

(a) the condition in paragraph (1) is satisfied, or

(b) the employer considers that the condition in paragraph (1) will be satisfied on the date of any subsequent payment of emoluments to one or more employees who are entitled to payment of additional statutory paternity pay,

the employer may apply to the Commissioners for funding in a form approved for that purpose by the Commissioners.

(**11**) Section 163 was amended by section 21(2) of the Employment Act 2002 (c. 22).
(**12**) S.I. 2003/2682.
(**13**) S.I. 1998/1760 (N.I. 14).
(**14**) 1998 c. 30.
(**15**) 1980 c. 44. Section 73B was inserted by section 29 of the Teaching and Higher Education Act 1998 (c. 30).
(**16**) 2004 c. 12.

(3) An application by an employer under paragraph (2) shall be for an amount up to, but not exceeding, the amount of the payment to which the employer is entitled in accordance with regulation 3 in respect of additional statutory paternity pay which the employer is required to pay to an employee or employees for the income tax month or income tax quarter to which the payment of emoluments relates.

Deductions from payments to the Commissioners

5. An employer who is entitled to a payment determined in accordance with regulation 3 may recover such payment by making one or more deductions from the aggregate of the amounts specified in sub-paragraphs (a) to (d) of regulation 4(1) except where and in so far as—

(a) those amounts relate to earnings paid before the beginning of the income tax month or income tax quarter in which the payment of additional statutory paternity pay was made;

(b) those amounts are paid by the employer later than six years after the end of the tax year in which the payment of additional statutory paternity pay was made;

(c) the employer has received payment from the Commissioners under regulation 4; or

(d) the employer has made a request in writing under regulation 4 that the payment to which the employer is entitled in accordance with regulation 3 be paid and the employer has not received notification by the Commissioners that the request is refused.

Payments to employers by the Commissioners

6. If the total amount which an employer is or would otherwise be entitled to deduct under regulation 5 is less than the payment to which the employer is entitled in accordance with regulation 3 in an income tax month or income tax quarter, and the Commissioners are satisfied that this is so, then provided that the employer has in writing requested them to do so, the Commissioners shall pay the employer such amount as the employer was unable to deduct.

Date when certain contributions are to be treated as paid

7. Where an employer has made a deduction from a contributions payment under regulation 5, the date on which it is to be treated as having been paid for the purposes of Article 8(5) of the 2002 Order (when amount deducted from contributions payment to be treated as paid and received by the Commissioners) is—

(a) in a case where the deduction did not extinguish the contributions payment, the date on which the remainder of the contributions payment or, as the case may be, the first date on which any part of the remainder of the contributions payment was paid; and

(b) in a case where the deduction extinguished the contributions payment, the 14th day after the end of the income tax month or income tax quarter during which there were paid the earnings in respect of which the contributions payment was payable.

Overpayments

8.—(1) This regulation applies where funds have been provided to the employer pursuant to regulation 4 in respect of one or more employees and it appears to an officer of Revenue and Customs that the employer has not used the whole or part of those funds to pay additional statutory paternity pay.

(2) An officer of Revenue and Customs shall decide to the best of the officer's judgement the amount of funds provided pursuant to regulation 4 and not used to pay additional statutory paternity pay and shall serve notice in writing of this decision on the employer.

(3) A decision under this regulation may cover funds provided pursuant to regulation 4—