STATUTORY RULES OF NORTHERN IRELAND

2003 No. 223

EMPLOYMENT

Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoption from Overseas) Regulations (Northern Ireland) 2003

Made - - - -	*8th April 2003*
Coming into operation	*9th April 2003*

The Department for Employment and Learning(**1**) in exercise of the powers conferred on it by sections 167ZB(2)(a), 167ZC(3)(a) to (d), (f) and (g), 167ZD(2) and (3), 167ZE(2)(a), (b)(i), (3)(b), (7) and (8), 167ZG(3), 167ZJ(1), (3), (4), (7) and (8), 167ZL(8)(b) to (d), (f) and (g), 167ZM(2) and (3), 167ZN(2), (5) and (6), 167ZP(6), 167ZS(1), (3), (4), (7) and (8), and section 171(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**2**), section 5(1)(g), (j) and (q) of the Social Security Administration (Northern Ireland) Act 1992(**3**) and of every other power enabling it in that behalf and with the concurrence of the Commissioners of Inland Revenue(**4**) insofar as such concurrence is required for this Statutory Rule, which contains only regulations made by virtue of and consequential upon Articles 5, 6 and 17 and paragraph 2(1) of Schedule 2 to the Employment (Northern Ireland) Order 2002(**5**) and is made before the end of the period of 6 months beginning with the coming into operation of that statutory provision(**6**), 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 (Northern Ireland) 2003 and shall come into operation on 9th April 2003.

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)

(**2**) 1992 c. 7; sections 167ZA to 167ZK (Part XIIZA) were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), and sections 167ZL to 167ZT (Part XIIZB) by Article 6 of that Order. Parts XIIZA and XIIZB are, by regulations made under sections 167ZK and 167ZT, namely the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts XIIZA and XIIZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 221), 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 167ZB(2)(a) and 167ZE(3)(b).

(**3**) 1992 c. 8; section 5(4) concerning the applicability of section 5(1)(g), (j) and (q) was amended by paragraph 2(1) of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(**4**) *See* section 167ZJ(13) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)

(**5**) S.I. 2002/2836 (N.I. 2)

(**6**) *See* section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

Interpretation and scope

2.—(1) In these Regulations –

"the Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**7**);

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

"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;

"the Application Regulations" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts XIIZA and XIIZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003(**8**);

"enter Northern Ireland" means enter Northern Ireland 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 (Northern Ireland) 2002(**9**);

"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 (Northern Ireland) 2003(**10**) apply, the Department of Health, Social Services and Public Safety; and

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

"statutory paternity pay (adoption)" means statutory paternity pay payable in accordance with the provisions of Part XIIZA of the Act, as modified by the Application Regulations, where the conditions specified in section 167ZB(2) of the Act, as modified by the Application Regulations, are satisfied.

(2) References in these Regulations to the provisions of Parts XIIZA and XIIZB 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, insofar 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 XIIZA or XIIZB 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.

(**7**) 1992 c. 7
(**8**) S.R. 2003 No. 221
(**9**) S.R. 2002 No. 378
(**10**) S.R. 2003 No. 16

(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 (Northern Ireland) 2003(**11**)".

Application

4.—(1) Subject to the provisions of Part XIIZA 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 Northern Ireland on or after 9th April 2003.

(2) Subject to the provisions of Part XIIZB 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 Northern Ireland on or after 9th 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 167ZB(2)(a) of the Act are that a person –

(a) is married to or to the partner of a child's 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 167ZC(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 –

(**11**) S.R. 2003 No. 223

(a) the date on which the child enters Northern Ireland 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 Northern Ireland.

(2) In a case where statutory paternity pay (adoption) is payable in respect of a child where the adopter has received official notification before 9th 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 167ZC(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 167ZC(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 167ZC(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 Northern Ireland, within 28 days of entry.

(2) Where the child has not entered Northern Ireland 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 statutory 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 Northern Ireland, 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 167ZE(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 Northern Ireland.

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 167ZB(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 167ZE(4) of the Act;

(b) that he has elected to receive statutory paternity pay (adoption), and not statutory adoption pay under Part XIIZB 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 Northern Ireland or, where the child has already entered Northern Ireland, 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 employer 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 Northern Ireland;

(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 167ZL(6) of the Act and paragraph (2), a person entitled to statutory adoption pay may choose the adoption pay period to begin –