STATUTORY RULES OF NORTHERN IRELAND

2002 No. 379

EMPLOYMENT

Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002

Made - - - -	*6th December 2002*
Coming into operation	*8th December 2002*

The Department for Employment and Learning, in exercise of the powers conferred on it by Articles 8(1), (2), (4) and (5), 9(1) and (2), 11(1) and (2) 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 of every other power enabling it in that behalf, with the concurrence of the Commissioners of Inland Revenue, hereby makes the following Regulations–

Citation and commencement

1. These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002 and shall come into operation on 8th December 2002.

Interpretation

2.—(1) In these Regulations–

"adopter", in relation to a child, means a person with whom the child is matched for adoption;

"adoption leave" means leave under Article 107A of the Employment Rights (Northern Ireland) Order 1996(**3**);

"adoption pay period" means the period prescribed under section 167ZN(2) of the Contributions and Benefits Act(**4**) as the period in respect of which statutory adoption pay is payable to a person;

(**1**) S.I.2002/2836 (N.I. 2)
(**2**) S.I. 1999/671; Articles 7(1)(fa) and (ga) were inserted by Article 10(2) of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) Article 23 was amended by paragraph 7 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**3**) S.I. 1996/1919 (N.I. 16); Article 107A was inserted by Article 3 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**4**) 1992 c. 7; section 167ZN(2) was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

"the Board" means the Commissioners of Inland Revenue;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**5**);

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

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001(**6**);

"the Employment Order" means the Employment (Northern Ireland) Order 2002(**7**);

"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, or beginning on the 6th day of July and ending on the 5th day of October, or beginning on the 6th day of October and ending on the 5th day of January or beginning on the 6th day of January and ending on the 5th day of April;

"paternity leave" means leave under Article 112A or Article 112B of the Employment Rights (Northern Ireland) Order 1996(**8**);

"paternity pay period" means the period determined in accordance with section 167ZE(2) of the Contributions and Benefits Act(**9**) as the period in respect of which statutory paternity pay is payable to a person;

"statutory adoption pay" means any payment under section 167ZL of the Contributions and Benefits Act(**10**);

"statutory paternity pay" means any payment under section 167ZA or section 167ZB of the Contributions and Benefits Act(**11**);

"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 Board pursuant to regulations under section 132 of the Finance Act 1999(**12**).

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

Funding of employers' liabilities to make payments of statutory paternity or statutory adoption pay

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

(a) to an amount equal to 92 per cent. of such payment; or

(b) if the payment qualifies for small employer's relief by virtue of Article 8(3) of the Employment Order–

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

(**5**) 1992 c. 7
(**6**) S.I. 2001/1004
(**7**) S.I. 2002/2836 (N.I. 2)
(**8**) S.I. 1996/1919 (N.I. 16); Articles 112A and 112B were inserted by Article 4 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**9**) 1992 c. 7; section 167ZE was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**10**) 1992 c. 7; section 167ZL was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**11**) 1992 c. 7; sections 167ZA and 167ZB were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**12**) 1999 c. 16

(ii) to an additional payment equal to the amount to which the employer would have been entitled under section 163(2)(b) of the Contributions and Benefits Act(**13**) 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 him.

Application for funding from the Board

4.—(1) If an employer is entitled to a payment determined in accordance with regulation 3 in respect of statutory paternity pay or statutory adoption pay which he 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 his employees in accordance with the Income Tax (Employments) Regulations 1993(**14**) 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 his employees for the same income tax month or income tax quarter in accordance with regulations under section 22(5) of the Teaching and Higher Education Act 1998(**15**) or section 73B of the Education (Scotland) Act 1980(**16**) or in accordance with Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998(**17**),

(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 his 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 559 of the Income and Corporation Taxes Act 1988(**18**) for the same income tax month or income tax quarter,

the employer may apply to the Board in accordance with paragraph (2) for funds to pay the statutory paternity pay or statutory adoption 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 statutory paternity pay or statutory adoption pay,

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

(**13**) 1992 c. 7; section 163(2)(b) was substituted by section 21(2) of the Employment Act 2002 (c. 22)
(**14**) S.I. 1993/744; regulation 40 (concerning monthly payments) was amended by regulation 6 of S.I. 1993/2276; regulation 41 (concerning monthly payments) was amended by regulation 7 of S.I. 1993/2276, regulation 2 of S.I. 2000/1152 and by regulation 3 of S.I. 2000/2742
(**15**) 1998 c. 30
(**16**) 1980 c. 44
(**17**) S.I. 1998/1760 (N.I. 14)
(**18**) 1988 c. 1; section 559 was amended by section 139 of, and paragraph 1 of Schedule 27 to, the Finance Act 1995 (c. 4) and partly repealed by Part 8(21) of Schedule 29 to that Act; also amended by section 54(5) of the Finance Act 1997 (c. 16) and by section 55(2) of, and paragraph 2 of Schedule 8 to, the Finance Act 1998 (c. 36), and partly repealed by Part 3(1) of Schedule 40 to the Finance Act 2002 (c. 23)

(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 statutory paternity pay and statutory adoption pay which he 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 Board

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 statutory paternity pay or statutory adoption pay was made;

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

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

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

Payments to employers by the Board

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 Board are satisfied that this is so, then provided that the employer has in writing requested them to do so, the Board 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 Employment Order (when amount deducted from contributions payment to be treated as paid and received by the Board) 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 the Board that the employer has not used the whole or part of those funds to pay statutory paternity pay or statutory adoption pay.

(2) An officer of the Board shall decide to the best of his judgement the amount of funds provided pursuant to regulation 4 and not used to pay statutory paternity pay or statutory adoption pay and shall serve notice in writing of his decision on the employer.