STATUTORY RULES OF NORTHERN IRELAND

2002 No. 378

EMPLOYMENT

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

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

The Department for Employment and Learning(**1**) in exercise of the powers conferred on it by sections 167ZA(2)(a), 167ZB(2)(a), 167ZC(3)(a), (c), (d), (f) and (g), 167ZD(2) and (3), 167ZE(2)(a), (b)(i), (3), (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 in so far 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 of Schedule 2 to the Employment (Northern Ireland) Order 2002(**4**) and is made before the end of the period of 6 months beginning with the coming into operation of that statutory provision(**5**), hereby makes the following Regulations–

PART I

INTRODUCTION

Citation and commencement

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

(**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 167ZJ were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), and sections 167ZL to 167ZT by Article 6 of that Order.
(**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**) S.I. 2002/2836 (N.I. 2)
(**5**) *See* section 150(5)(b) of the social Security Administration (Northern Ireland) Act 1992

Interpretation

2.—(1) In these Regulations–

"the Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**6**);

"adopter", in relation to a child, means a person who has been matched with the child for adoption;

"adoption agency" has the meaning given by Article 3(3) of the Adoption (Northern Ireland) Order 1987(**7**) and, in relation to England and Wales, by section 1(4) of the Adoption Act 1976(**8**) and, in relation to Scotland, by section 1(4) of the Adoption (Scotland) Act 1978(**9**);

"the Board" means the Commissioners of Inland Revenue;

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001(**10**);

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

"statutory paternity pay (adoption)" means statutory paternity pay payable in accordance with the provisions of Part XIIZA of the Act where the conditions specified in section 167ZB(2) of the Act are satisfied;

"statutory paternity pay (birth)" means statutory paternity pay payable in accordance with the provisions of Part XIIZA of the Act where the conditions specified in section 167ZA(2) of the Act are satisfied;

(2) 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, either individually or jointly with another person, and

(b) a person is notified of having been matched with a child for adoption on the date on which he receives notification of the adoption agency's decision, under regulation 11(2) of the Adoption Agencies Regulations (Northern Ireland) 1989(**11**) or regulation 11(2) of the Adoption Agencies Regulations 1983(**12**) or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996(**13**).

Application

3.—(1) Subject to the provisions of Part XIIZA of the Act (statutory paternity pay) and of these Regulations, there is entitlement to–

(a) statutory paternity pay (birth) in respect of children–

(i) born on or after 6th April 2003; or

(ii) whose expected week of birth begins on or after that date;

(b) statutory paternity pay (adoption) in respect of children–

(**6**) 1992 c. 7
(**7**) S.I. 1987/2203 (N.I. 22); Article 3(3) was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))
(**8**) 1976 c. 36; section 1(4) was amended by paragraph 5 of Schedule 4 to the Care Standards Act 2000 (c. 14)
(**9**) 1978 c. 28
(**10**) S.I. 2001/1004
(**11**) S.R. 1989 No. 253
(**12**) S.I. 1983/1964
(**13**) S.I. 1996/3266

(i) matched with a person who is notified of having been matched on or after 6th April 2003; or

(ii) placed for adoption on or after that date.

(2) Subject to the provisions of Part XIIZB of the Act (statutory adoption pay) and of these Regulations, there is entitlement to statutory adoption pay in respect of children–

(a) matched with a person who is notified of having been matched on or after 6th April 2003; or

(b) placed for adoption on or after that date.

PART II

STATUTORY PATERNITY PAY (BIRTH)

Conditions of entitlement to statutory paternity pay (birth): relationship with newborn child and child's mother

4. The conditions prescribed under section 167ZA(2)(a) of the Act are those prescribed in regulation 4(2)(b) and (c) of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(**14**).

Modification of entitlement conditions: early birth

5. Where a person does not meet the conditions specified in section 167ZA(2)(b) to (d) of the Act because the child's birth occurred earlier than the 14th week before the expected week of the birth, it shall have effect as if for the conditions there set out, there was substituted the conditions that–

(a) the person would, but for the date on which the birth occurred, have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth;

(b) his normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week in which the child is born are not less than the lower earnings limit in force under section 5(1)(a) of the Act immediately before the commencement of the week in which the child is born.

Period of payment of statutory paternity pay (birth)

6.—(1) Subject to paragraph (2) and regulation 8, a person entitled to statutory paternity pay (birth) may choose the statutory paternity pay period to begin on–

(a) the date on which the child is born or, where he is at work on that day, the following day;

(b) the date falling such number of days after the date on which the child is born as the person may specify;

(c) a predetermined date, specified by the person, which is later than the first day of the expected week of the child's birth.

(2) In a case where statutory paternity pay (birth) is payable in respect of a child whose expected week of birth begins before 6th April 2003, the statutory paternity pay period shall begin on a predetermined date, specified by the person entitled to such pay in a notice under section 167ZC(1)

(**14**) S.R. 2002 No. 377

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 (birth) agrees to the period beginning earlier.

(3) A person may choose for statutory paternity pay (birth) to be paid in respect of a period of a week.

(4) A choice made in accordance with paragraph (1) or (2) is not irrevocable, but where a person subsequently makes a different choice in relation to the beginning of the statutory pay period, section 167ZC(1) of the Act shall apply to it.

Additional notice requirements for statutory paternity pay (birth)

7.—(1) Where the choice made by a person in accordance with paragraph (1) of regulation 6 and notified in accordance with section 167ZC(1) of the Act is that mentioned in sub-paragraph (a) or (b) of that paragraph, the person shall give further notice to the person liable to pay him statutory paternity pay, as soon as is reasonably practicable after the child's birth, of the date the child was born.

(2) Where the choice made by a person in accordance with paragraph (1) of regulation 6 and notified in accordance with section 167ZC(1) of the Act is that specified in sub-paragraph (c) of that paragraph, and the date of the child's birth is later than the date so specified, the person shall, if he wishes to claim statutory paternity pay (birth), 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.

Qualifying period for statutory paternity pay (birth)

8. The qualifying period for the purposes of section 167ZE(2) of the Act (period within which the statutory paternity pay period must occur) is a period which begins on the date of the child's birth and ends–

(a) except in the case referred to in paragraph (b), 56 days after that date;

(b) in a case where the child is born before the first day of the expected week of its birth, 56 days after that day.

Evidence of entitlement to statutory paternity pay (birth)

9.—(1) A person shall provide evidence of his entitlement to statutory paternity pay (birth) by providing in writing to the person who will be liable to pay him statutory paternity pay (birth)–

(a) the information specified in paragraph (2);

(b) a declaration that he meets the conditions prescribed under section 167ZA(2)(a) of the Act and that it is not the case that statutory paternity pay (birth) is not payable to him by virtue of the provisions of section 167ZE(4) of the Act.

(2) The information referred to in paragraph (1)(a) is as follows–

(a) the name of the person claiming statutory paternity pay (birth);

(b) the expected week of the child's birth and, where the birth has already occurred, the date of birth;

(c) the date from which it is expected that the liability to pay statutory paternity pay (birth) will begin;

(d) whether the period chosen in respect of which statutory paternity pay (birth) is to be payable is a week.

(3) The information and declaration referred to in paragraph (1) shall be provided at least 28 days before the date mentioned in sub-paragraph (c) of paragraph (2) or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter.

(4) Where the person who will be liable to pay statutory paternity pay (birth) so requests, the person entitled to it shall inform him of the date of the child's birth within 28 days, or as soon as is reasonably practicable thereafter.

Entitlement to statutory paternity pay (birth) where there is more than one employer

10. Statutory paternity pay (birth) 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 (birth); and

(b) for whom he has worked in the week immediately preceding the 14th week before the expected week of the child's birth.

PART III

STATUTORY PATERNITY PAY (ADOPTION)

Conditions of entitlement to statutory paternity pay (adoption): relationship with child and with person with whom the child is placed for adoption

11.—(1) The conditions prescribed under section 167ZB(2)(a) of the Act are that a person–

(a) is married to or 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) 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.

Period of payment of statutory paternity pay (adoption)

12.—(1) Subject to paragraph (2) and regulation 14, a person entitled to statutory paternity pay (adoption) may choose the statutory paternity pay period to begin on–

(a) the date on which the child is placed with the adopter or, where the person is at work on that day, the following day;

(b) the date falling such number of days after the date on which the child is placed with the adopter as the person may specify;

(c) a predetermined date, specified by the person, which is later than the date on which the child is expected to be placed with the adopter.

(2) In a case where statutory paternity pay (adoption) is payable in respect of a child matched with an adopter who is notified of having been matched before 6th April 2003, the statutory paternity