
STATUTORY INSTRUMENTS

2010 No. 154

**TERMS AND CONDITIONS OF
EMPLOYMENT SOCIAL SECURITY**

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

Made - - - - *28th January 2010*
Laid before Parliament *1st February 2010*
Coming into force - - *6th April 2010*

The Secretary of State makes these Regulations in the exercise of powers conferred by sections 7, 8, 10 and 51(1) of the Employment Act 2002⁽¹⁾ and sections 8(1)(f) and (ga) and 25 of the Social Security Contributions (Transfer of Functions, etc.) Act 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 2010 and shall come into force on 6th April 2010.

Interpretation

2.—(1) In these Regulations—

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992⁽⁴⁾;

“the 1996 Act” means the Employment Rights Act 1996⁽⁵⁾;

“the 2002 Act” means the Employment Act 2002;

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- (1) 2002 c. 22. Section 7, section 8(1) and section 10 were amended by the Work and Families Act 2006 (c. 18), section 11 and Schedule 1, paragraphs 50, 51 and 52 respectively.
- (2) 1999 c. 2. Section 8(1)(f) was amended by and section 8(1)(ga) was inserted by section 9(1) and (2) of the Employment Act 2002 and these provisions were further amended by the Work and Families Act 2006, section 11 and Schedule 1, paragraph 46.
- (3) Regulations made by the Secretary of State pursuant to sections 7, 8 and 10 of the Employment Act 2002 and section 8(1)(f) of the Social Security Contributions (Transfer of Functions etc.) Act 1999 must, by virtue of those sections, 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 enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.
- (4) 1992 c. 4.
- (5) 1996 c. 18.

“additional statutory paternity pay period” means the period determined in accordance with section 171ZEE(2) of the 1992 Act, or section 171ZEE(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 171ZEA or section 171ZEB of the 1992 Act(7), or under section 171ZEB of the 1992 Act as it applies to adoptions from overseas(8);

“adoption from overseas” means the adoption of a child who enters Great Britain 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 section 7 of the 2002 Act;

“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
- (b) if the payment qualifies for small employer’s relief by virtue of section 7(3) of the 2002 Act—
 - (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 167(2)(b) of the 1992 Act had the payment been a payment of statutory maternity pay.

(6) Section 171ZEE was inserted into Part 12ZA of the Social Security Contributions and Benefits Act 1992 by section 10 of the Work and Families Act 2006. Section 171ZEE(2) applies to adoptions from overseas by virtue of the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (S.I. 2003/499), as amended by S.I. 2010/153.

(7) Section 171ZEA and 171ZEB were inserted into the Social Security Contributions and Benefits Act 1992 by sections 6 and 7 respectively of the Work and Families Act 2006.

(8) Section 171ZEB applies to adoptions overseas by virtue of the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003, as amended by S.I. 2010/153.

(9) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.

(10) 1999 c. 16.

(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⁽¹¹⁾ 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 section 22(5) of the Teaching and Higher Education Act 1998⁽¹²⁾ or section 73B of the Education (Scotland) Act 1980⁽¹³⁾ or in accordance with article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998⁽¹⁴⁾,
- (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⁽¹⁵⁾ 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.

(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.

(11) S.I. 2003/2682.

(12) 1998 c. 30.

(13) 1980 c. 44. Section 73B was inserted by section 29 of the Teaching and Higher Education Act 1998 (c. 30).

(14) S.I. 1998/1760 (N.I. 14).

(15) 2004 c. 12.

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 section 7(5) of the 2002 Act (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—

- (a) for any one income tax month or income tax quarter, or more than one income tax month or income tax quarter, in a tax year, and
- (b) in respect of a class or classes of employees specified in the decision notice (without naming the individual employees), or in respect of one or more employees named in the decision notice.

(4) Subject to the following provisions of this regulation, Part 6 of the Taxes Management Act 1970(16) (collection and recovery) shall apply with any necessary modifications to a decision under this regulation as if it were an assessment and as if the amount of funds determined were income tax charged on the employer.

(5) Where an amount of funds determined under this regulation relates to more than one employee, proceedings may be brought for the recovery of that amount without distinguishing the amounts making up that sum which the employer is liable to repay in respect of each employee and without specifying the employee in question, and the amount determined under this regulation shall be one cause of action or one matter of complaint for the purposes of proceedings under section 65, 66 or 67 of the Taxes Management Act 1970(17).

(6) Nothing in paragraph (5) prevents the bringing of separate proceedings for the recovery of any amount which the employer is liable to repay in respect of each employee.

Records to be maintained by employers

9. Every employer shall maintain for three years after the end of a tax year in which the employer made payments of additional statutory paternity pay to any employee a record of—

- (a) if the employee's additional statutory paternity pay period began in that year—
 - (i) the date on which that period began, and
 - (ii) the evidence of entitlement to additional statutory paternity pay provided by the employee pursuant to regulations made under section 171ZEC(3)(c) of the 1992 Act or under section 171ZEC(3)(c) of the 1992 Act as it applies to adoptions from overseas(18);
- (b) the weeks in that tax year in which additional statutory paternity pay was paid to the employee and the amount paid in each week; and
- (c) any week in that tax year which was within the employee's additional statutory paternity pay period but for which no payment of additional statutory paternity pay was made to the employee and the reason no payment was made.

Inspection of employers' records

10.—(1) Every employer, whenever called upon to do so by any authorised officer of Revenue and Customs, shall produce the documents and records specified in paragraph (2) to that officer for inspection, at such time as that officer may reasonably require, at the prescribed place.

- (2) The documents and records specified in this paragraph are—
 - (a) all wages sheets, deductions working sheets, records kept in accordance with regulation 9 and other documents and records whatsoever relating to the calculation or payment of additional statutory paternity pay to employees in respect of the years specified by such officer; or
 - (b) such of those wages sheets, deductions working sheets, or other documents and records as may be specified by the authorised officer.
- (3) The “prescribed place” mentioned in paragraph (1) means—

(16) 1970 c. 9.

(17) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998. Section 66 was amended by section 57(2) of the Finance Act 1984, section 137(2) of the Finance Act 2008 (c.9) and the Schedule to S.I. 1991/724, and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001 (c. 9); section 67 was amended by section 58 of the Finance Act 1976 (c. 14) and partly repealed by Schedule 15 to that Act, further amended by section 156 of the Finance Act 1995 (c. 4) and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001.

(18) Section 171ZEC(3)(c) applies to adoptions from overseas by virtue of the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (S.I. 2003/499) as amended by S.I. 2010/153.

- (a) such place in Great Britain as the employer and the authorised officer may agree upon; or
 - (b) in default of such agreement, the place in Great Britain at which the documents and records referred to in paragraph (2)(a) are normally kept; or
 - (c) in default of such agreement and if there is no such place as is referred to in subparagraph (b), the employer's principal place of business in Great Britain.
- (4) The authorised officer may—
- (a) take copies of, or make extracts from, any document or record produced to the authorised officer for inspection in accordance with paragraph (1);
 - (b) remove any document or record so produced if it appears to the authorised officer to be necessary to do so, at a reasonable time and for a reasonable period.
- (5) Where any document or record is removed in accordance with paragraph (4)(b), the authorised officer shall provide—
- (a) a receipt for the document or record so removed; and
 - (b) a copy of the document or record, free of charge, within seven days, to the person by whom it was produced or caused to be produced where the document or record is reasonably required for the proper conduct of a business.
- (6) Where a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) shall not be regarded as breaking the lien.
- (7) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.

Provision of information relating to entitlement to additional statutory paternity pay

11.—(1) Where an employer, who has been given evidence of entitlement to additional statutory paternity pay pursuant to regulations made under section 171ZEC(3)(c) of the 1992 Act or under section 171ZEC(3)(c) of the 1992 Act as it applies to adoptions from overseas by a person who is or has been an employee, decides that they have no liability to make payments of additional statutory paternity pay to the employee, the employer shall furnish the employee with details of the decision and the reasons for it.

(2) Where an employer who has been given such evidence of an entitlement to additional statutory paternity pay has made one or more payments of additional statutory paternity pay to the employee but decides, before the end of the additional statutory paternity pay period, that they have no liability to make further payments to the employee because the employee has been detained in legal custody or sentenced to a term of imprisonment which was not suspended, the employer shall furnish the employee with—

- (a) details of the employer's decision and the reasons for it; and
 - (b) details of the last week in respect of which a liability to pay additional statutory paternity pay arose and the total number of weeks within the additional statutory paternity pay period in which such a liability arose.
- (3) The employer shall—
- (a) return to the employee any evidence provided by the employee as referred to in paragraph (1) or (2); and
 - (b) comply with the requirements imposed by paragraph (1) within 28 days of the day the employee gave notice of intended absence; and
 - (c) comply with the requirements imposed by paragraph (2) within seven days of being notified of the employee's detention or sentence.

Application for the determination of any issue arising as to, or in connection with, entitlement to additional statutory paternity pay

12.—(1) An application for the determination of any issue arising as to, or in connection with, entitlement to additional statutory paternity pay may be submitted to an officer of Revenue and Customs by the employee concerned.

(2) Such an issue shall be decided by an officer of Revenue and Customs only on the basis of such an application or on their own initiative.

Applications in connection with additional statutory paternity pay

13.—(1) An application for the determination of any issue referred to in regulation 12 shall be made in a form approved for the purpose by the Commissioners.

(2) Where such an application is made by an employee, it shall—

- (a) be made to an officer of Revenue and Customs within six months of the earliest day in respect of which entitlement to additional statutory paternity pay is in issue;
- (b) state the period in respect of which entitlement to additional statutory paternity pay is in issue; and
- (c) state the grounds (if any) on which the applicant's employer had denied liability for additional statutory paternity pay in respect of the period specified in the application.

Provision of information

14.—(1) Any person specified in paragraph (2) shall, where information or documents are reasonably required from the person to ascertain whether additional statutory paternity pay is or was payable, furnish that information or those documents within 30 days of receiving a notification from an officer of Revenue and Customs requesting such information or documents.

(2) The requirement to provide such information or documents applies to—

- (a) any person claiming to be entitled to additional statutory paternity pay;
- (b) any person who is, or has been, the spouse, civil partner or partner of such a person as is specified in paragraph (a);
- (c) any person who is, or has been, an employer of such a person as is specified in paragraph (a);
- (d) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services; and
- (e) any person who is a servant or agent of any such person as is specified in paragraphs (a) to (d).

28th January 2010

28th January 2010

Pat McFadden
Minister of State for Business, Innovation and Skills
Department for Business, Innovation and Skills
Melanie Dawes
Bernadette Kenny
Two of the Commissioners for Her Majesty's Revenue and Customs

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the funding of employers' liabilities to make payments of additional statutory paternity pay; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners").

Under regulation 3, an employer is entitled to an amount equal to 92 per cent. of payments made by the employer of additional statutory paternity pay, or the whole of such payments if the employer is a small employer. Regulations 4 to 7 provide for employers to be reimbursed through deductions from income tax, national insurance and other payments that they would otherwise make to the Commissioners, and for the Commissioners to fund payments to the extent that employers cannot be fully reimbursed in this way. Regulation 8 enables the Commissioners to recover overpayments to employers.

Regulation 9 requires employers to maintain records relevant to the payment of additional statutory paternity pay to employees or former employees, and regulation 10 empowers officers of Revenue and Customs to inspect, copy or remove employers' payment records.

Regulation 11 requires an employer who decides not to make any, or any further, payments of additional statutory paternity pay to an employee or former employee to give that person the details of the decision and the reasons for it. Regulations 12 and 13 provide for officers of Revenue and Customs to determine issues relating to a person's entitlement to additional statutory paternity pay. Regulation 14 provides for employers, employment agencies, persons claiming additional statutory paternity pay and others to furnish information or documents to an officer of Revenue and Customs on request.

An Impact Assessment of the effect that these Regulations will have on the costs to business is available from the Employment Relations Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.