
STATUTORY INSTRUMENTS

2002 No. 2836

The Employment (Northern Ireland) Order 2002

Statutory paternity pay and statutory adoption pay

Statutory adoption pay

6. In the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) after Part XIIZA (inserted by Article 5) there shall be inserted—

“PART XIIZB

STATUTORY ADOPTION PAY

Entitlement

167ZL.—(1) Where a person who is, or has been, an employee satisfies the conditions in subsection (2), he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as “statutory adoption pay”.

(2) The conditions are—

- (a) that he is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;
- (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that he has ceased to work for the employer;
- (d) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and
- (e) that he has elected to receive statutory adoption pay.

(3) The references in subsection (2)(b) and (d) above to the relevant week are to the week in which the person is notified that he has been matched with the child for the purposes of adoption.

(4) A person may not elect to receive statutory adoption pay if—

- (a) he has elected in accordance with section 167ZB above to receive statutory paternity pay; or
- (b) where the child is, or is expected to be, placed for adoption with him as a member of a married couple and his spouse is a person to whom the conditions in subsection (2) above apply, his spouse has elected to receive statutory adoption pay.

(5) A person's entitlement to statutory adoption pay shall not be affected by the placement, or expected placement, for adoption of more than one child as part of the same arrangement.

Status: Point in time view as at 01/01/2006.

Changes to legislation: There are currently no known outstanding effects for the The Employment (Northern Ireland) Order 2002, Section 6. (See end of Document for details)

- (6) A person shall be entitled to payments of statutory adoption pay only if—
- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory adoption pay to begin; and
 - (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (7) The notice shall be in writing if the person who is liable to pay the statutory adoption pay so requests.
- (8) The Department may by regulations—
- (a) provide that subsection (2)(b), (c) or (d) above shall have effect subject to prescribed modifications in such cases as may be prescribed;
 - (b) provide that subsection (6) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
 - (c) impose requirements about evidence of entitlement;
 - (d) specify in what circumstances employment is to be treated as continuous for the purposes of this section;
 - (e) provide that a person is to be treated for the purposes of this section as being employed for a continuous period of at least 26 weeks where—
 - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
 - (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of this section;
 - (g) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
 shall be calculated or estimated for the purposes of this section in, such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings;
 - (h) make provision about elections for statutory adoption pay.

Liability to make payments

167ZM.—(1) The liability to make payments of statutory adoption pay is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 167ZL(2)(b) above.

(2) Regulations shall make provision as to a former employer's liability to pay statutory adoption pay to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.

(3) The Department may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory adoption pay is to be a liability of the Board.

Rate and period of pay

167ZN.—(1) Statutory adoption pay shall be payable at such fixed or earnings-related weekly rate as the Department may prescribe by regulations, which may prescribe different kinds of rate for different cases.

(2) Statutory adoption pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the adoption pay period”) of a duration not exceeding 26 weeks.

(3) A person shall not be liable to pay statutory adoption pay to another in respect of any week during any part of which the other works under a contract of service with him.

(4) It is immaterial for the purposes of subsection (3) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the adoption pay period or a contract of service which did not so exist.

(5) Except in such cases as may be prescribed statutory adoption pay shall not be payable to a person in respect of any week during any part of which he works for any employer who is not liable to pay him statutory adoption pay.

(6) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory adoption pay in respect of a week.

(7) In subsection (2) above, “week” means any period of seven days.

(8) In subsections (3), (5) and (6) above, “week” means a period of seven days beginning with the day of the week on which the adoption pay period begins.

Restrictions on contracting out

167ZO.—(1) Any agreement shall be void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.

(2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory adoption pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period; or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

Relationship with benefits and other payments, etc.

167ZP.—(1) Except as may be prescribed, a day which falls within the adoption pay period shall not be treated as a day of incapacity for work for the purposes of determining, for this Act, whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.

(2) Regulations may provide that in prescribed circumstances a day which falls within the adoption pay period shall be treated as a day of incapacity for work for the purposes of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.

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(3) Regulations may provide that an amount equal to a person's statutory adoption pay for a period shall be deducted from any such benefit in respect of the same period and a person shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(4) Subject to subsections (5) and (6) below, any entitlement to statutory adoption pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).

(5) Subject to subsection (6) below—

- (a) any contractual remuneration paid to a person by an employer of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay statutory adoption pay to him in respect of that week; and
- (b) any statutory adoption pay paid by an employer to a person who is an employee of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that week.

(6) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (4) and (5) above.

(7) In subsection (5) above, “week” means a period of seven days beginning with the day of the week on which the adoption pay period begins.

Crown employment—Part XIIIB

167ZQ. The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Special classes of person

167ZR.—(1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as the Department thinks proper in its application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations.

(2) Regulations under subsection (1) above may, in particular, provide—

- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

(3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (8) of section 11 of the Petroleum Act 1998 (application

of civil law to certain offshore activities) were omitted would nevertheless fall within subsection (2) of that section.

Part XIIIB: supplementary

167ZS.—(1) In this part of this Act—

“adoption pay period” has the meaning given by section 167ZN(2) above;

“the Board” means the Commissioners of Inland Revenue

“the Department” means the Department for Employment and Learning;

“employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;

“prescribed” means prescribed by regulations.

(2) In this Part of this Act, “employee” means a person who is—

(a) gainfully employed in Northern Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) over the age of 16.

(3) Regulations may provide—

(a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act; and

(b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.

(4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

(a) two or more employers are to be treated as one;

(b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(5) In this Part of this Act, except sections 167ZN and 167ZP, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part of this Act, a person's nominal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.

(7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.

(8) In such cases as may be prescribed, a person's normal weekly earnings shall be calculated in accordance with regulations.

(9) Where in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person's contract of employment is treated by a scheme under that Order as divided so as

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to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.

(10) Regulations under subsection (9) above may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory adoption pay as his employer under the contract.

(11) The powers under subsections (9) and (10) above are without prejudice to any other power to make regulations under this Part of this Act.

(12) In this Part of this Act, except section 167ZP(1) to (3), “regulations” means regulations made by the Department; and in relation to any such regulations sections 171 and 172 below have effect as if references to the Department were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

Power to apply Part XIIIZB to adoption cases not involving placement

167ZT. The Department may by regulations provide for this Part of this Act to have effect in relation 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 such modifications as the regulations may prescribe.”.

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