



# Employment Act 2002

## 2002 CHAPTER 22

### PART 1

#### STATUTORY LEAVE AND PAY

### CHAPTER 1

#### PATERNITY AND ADOPTION

#### *Rights to leave and pay*

## 2 Statutory paternity pay

In the Social Security Contributions and Benefits Act 1992 (c. 4), after Part 12 (statutory maternity pay) there is inserted—

### “PART 12ZA

#### STATUTORY PATERNITY PAY

#### **171ZA Entitlement: birth**

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “statutory paternity pay”.
- (2) The conditions are—
  - (a) that he satisfies prescribed conditions—
    - (i) as to relationship with a newborn child, and
    - (ii) as to relationship with the child’s mother;

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- (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 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
  - (d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is born.
- (3) The references in subsection (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child's birth.
- (4) A person's entitlement to statutory paternity pay under this section shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.
- (5) In this section, "newborn child" includes a child stillborn after twenty-four weeks of pregnancy.

#### **171ZB Entitlement: adoption**

- (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as "statutory paternity pay".
- (2) The conditions are—
- (a) that he satisfies prescribed conditions—
    - (i) as to relationship with a child who is placed for adoption under the law of any part of the United Kingdom, and
    - (ii) as to relationship with a person with whom the child is so placed for adoption;
  - (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 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) at the end of the relevant week;
  - (d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is placed for adoption; and
  - (e) where he is a person with whom the child is placed for adoption, that he has elected to receive statutory paternity pay.
- (3) The references in subsection (2) to the relevant week are to the week in which the adopter is notified of being matched with the child for the purposes of adoption.
- (4) A person may not elect to receive statutory paternity pay if he has elected in accordance with section 171ZL below to receive statutory adoption pay.

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- (5) Regulations may make provision about elections for the purposes of subsection (2)(e) above.
- (6) A person's entitlement to statutory paternity pay under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.
- (7) In this section, "adopter", in relation to a person who satisfies the condition under subsection (2)(a)(ii) above, means the person by reference to whom he satisfies that condition.

### **171ZC Entitlement: general**

- (1) A person shall be entitled to payments of statutory paternity pay in respect of any period 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 paternity 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.
- (2) The notice shall be in writing if the person who is liable to pay the statutory paternity pay so requests.
- (3) The Secretary of State may by regulations—
  - (a) provide that subsection (2)(b), (c) or (d) of section 171ZA or 171ZB above shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (1) 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 section 171ZA or 171ZB above;
  - (e) provide that a person is to be treated for the purposes of section 171ZA or 171ZB above 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 section 171ZA or 171ZB above;
  - (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 section 171ZA or 171ZB above 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

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may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

### **171ZD Liability to make payments**

- (1) The liability to make payments of statutory paternity pay under section 171ZA or 171ZB above is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (d) of that section.
- (2) Regulations shall make provision as to a former employer's liability to pay statutory paternity 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 paternity pay.
- (3) The Secretary of State may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory paternity pay is to be a liability of the Board.

### **171ZE Rate and period of pay**

- (1) Statutory paternity pay shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory paternity pay shall be payable in respect of—
  - (a) a period of two consecutive weeks within the qualifying period beginning on such date within that period as the person entitled may choose in accordance with regulations, or
  - (b) if regulations permit the person entitled to choose to receive statutory paternity pay in respect of—
    - (i) a period of a week, or
    - (ii) two non-consecutive periods of a week,such week or weeks within the qualifying period as he may choose in accordance with regulations.
- (3) For the purposes of subsection (2) above, the qualifying period shall be determined in accordance with regulations, which shall secure that it is a period of at least 56 days beginning—
  - (a) in the case of a person to whom the conditions in section 171ZA(2) above apply, with the date of the child's birth, and
  - (b) in the case of a person to whom the conditions in section 171ZB(2) above apply, with the date of the child's placement for adoption.
- (4) Statutory paternity pay shall not be payable to a person in respect of a statutory pay week if it is not his purpose at the beginning of the week—
  - (a) to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 171ZA(2)(a) or 171ZB(2)(a) above, or
  - (b) to support the person by reference to whom he satisfies the condition in sub-paragraph (ii) of that provision.

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- (5) A person shall not be liable to pay statutory paternity pay to another in respect of a statutory pay week during any part of which the other works under a contract of service with him.
- (6) It is immaterial for the purposes of subsection (5) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.
- (7) Except in such cases as may be prescribed, statutory paternity pay shall not be payable to a person in respect of a statutory pay week during any part of which he works for any employer who is not liable to pay him statutory paternity pay.
- (8) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory paternity pay in respect of a statutory pay week.
- (9) Where more than one child is born as a result of the same pregnancy, the reference in subsection (3)(a) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.
- (10) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (3)(b) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.
- (11) In this section—
  - “statutory pay week”, in relation to a person entitled to statutory paternity pay, means a week chosen by him as a week in respect of which statutory paternity pay shall be payable;
  - “week” means any period of seven days.

### **171ZF Restrictions on contracting out**

- (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 paternity 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.

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### **171ZG Relationship with contractual remuneration**

- (1) Subject to subsections (2) and (3) below, any entitlement to statutory paternity pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3) below—
  - (a) any contractual remuneration paid to a person by an employer of his in respect of any period shall go towards discharging any liability of that employer to pay statutory paternity pay to him in respect of that period; and
  - (b) any statutory paternity pay paid by an employer to a person who is an employee of his in respect of any period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that period.
- (3) 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 (1) and (2) above.

### **171ZH Crown employment-Part 12ZA**

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.

### **171ZI Special classes of person**

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as he 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 Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.
- (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 any part of Great Britain;
  - (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 Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

### **171ZJ Part 12ZA: supplementary**

- (1) In this Part of this Act—
  - “the Board” means the Commissioners of Inland Revenue;
  - “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 Great Britain 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, except section 171ZE, “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 normal 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—
  - (a) in consequence of the establishment of one or more National Health Service trusts under Part 1 of the National Health Service and

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Community Care Act 1990 (c. 19) or the National Health Service (Scotland) Act 1978 (c. 29), a person's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, or

- (b) an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977 (c. 49) provides that a person's contract of employment is so divided,

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 paternity pay as his employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part of this Act.
- (12) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

**171ZK Power to apply Part 12ZA to adoption cases not involving placement**

The Secretary of State may by regulations provide for this Part 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.”