

2002 No. 2689

SOCIAL SECURITY

**The Social Security (Paternity and Adoption) Amendment
Regulations 2002**

Made - - - - - 29th October 2002

Laid before Parliament 1st November 2002

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(a), (d) and (e), 124(1)(e), 136(3) and (5)(b), 137(1) and (2)(d) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 1(2C), 12(1) and (4)(b), 35(1), 36(2) and (4) of, and paragraph 1 of Schedule 1 to, the Jobseekers Act 1995(b) and of all other powers enabling him in that behalf, after consultation in respect of provisions in these Regulations relating to housing benefit and council tax benefit with organisations appearing to him to be representative of the authorities concerned(c) and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(d), hereby makes the following Regulations:

Citation and interpretation

1.—(1) These Regulations may be cited as the Social Security (Paternity and Adoption) Amendment Regulations 2002 and shall come into force—

- (a) for the purposes of regulations 2(5)(a) and 3(3), on 24th November 2002;
- (b) for all other purposes, on the date on which Chapter 1 of Part 1 of the Employment Act 2002(e) comes into force.

(2) In these Regulations—

- (a) “the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(f);
- (b) “the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(g);
- (c) “the Income Support Regulations” means the Income Support (General) Regulations 1987(h); and
- (d) “the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(i).

(a) 1992 c. 4; section 123(1)(e) was substituted by the Local Government Finance Act 1992 (c.14), Schedule 9, paragraph 1(1); section 137(1) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.

(b) 1995 c. 18; section 35(1) is an interpretation provision and is cited because of the meaning ascribed to the words “prescribed” and “regulations”.

(c) See section 176(1) of the Social Security Administration Act 1992 c. 5.

(d) See sections 170 and 173(1)(b) of the Social Security Administration Act 1992; paragraph 67 of Schedule 2 to the Jobseekers Act 1995 added that Act to the list of “relevant enactments” in respect of which regulations must normally be referred to the Committee.

(e) 2002 c. 22.

(f) S.I. 1992/1814.

(g) S.I. 1987/1971.

(h) S.I. 1987/1967.

(i) S.I. 1996/207.

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the Act” there shall be inserted the following definition—
““adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(a);”;

(b) after the definition of “partner” there shall be inserted the following definition—
““paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996(b);”.

(3) In regulation 5 (persons treated as engaged in remunerative work), in paragraph (3A)(c) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”.

(4) In regulation 35 (earnings of employed earners), in paragraph (2)(b)(d) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”.

(5) In Schedule 1B (prescribed categories of person)(e)—

(a) in sub-paragraph 14(b) after the word “ends” there shall be inserted the words—
“where the expected week of confinement begins prior to 6th April 2003 or fifteen weeks after the date on which her pregnancy ends where the expected week of confinement begins on or after 6th April 2003”;

(b) after paragraph 14A(f) there shall be inserted the following paragraph—

“Paternity Leave

14B.—(1) A person who is entitled to, and is taking, paternity leave and who satisfies either or both of the conditions set out in sub-paragraph (2) below.

(2) The conditions for the purposes of sub-paragraph (1) are—

- (a) he is not entitled to statutory paternity pay by virtue of Part 12ZA of the Contributions and Benefits Act(g), or to any remuneration from his employer in respect of that leave for the period to which his claim for income support relates;
- (b) he is entitled to working families’ tax credit, disabled person’s tax credit, housing benefit or council tax benefit on the day before that leave begins.

(3) In this paragraph “remuneration” means payment of any kind.”.

(6) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 4—

(i) after “Part V of the Act” there shall be inserted “, statutory paternity pay under Part 12ZA of the Contributions and Benefits Act, statutory adoption pay under Part 12ZB of the Contributions and Benefits Act(h);”;

(ii) after the words “unable to work due to illness or maternity” there shall be added the words “or who is taking paternity leave or adoption leave”;

(b) in paragraph 4A(i) for “or statutory maternity pay under Part VI of the Social Security (Northern Ireland) Order 1986” there shall be substituted “, statutory maternity pay under Part XII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(j) or a payment under any enactment having effect in Northern Ireland corresponding to a payment of statutory paternity pay or statutory adoption pay”.

(a) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(b) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002.

(c) Paragraph (3A) was inserted by S.I. 1993/2119.

(d) Sub-paragraph (2)(b) was amended by S.I. 1993/2119.

(e) Schedule 1B was inserted by S.I. 1996/206.

(f) Paragraph 14A was inserted by S.I. 1999/3329.

(g) 1982 c. 4. Part 12ZA was inserted by section 2 of the Employment Act 2002.

(h) Part 12ZB was inserted by section 4 of the Employment Act 2002.

(i) Paragraph 4A was inserted by S.I. 1988/663.

(j) 1992 c. 7.

Amendment of the Jobseeker's Allowance Regulations

3.—(1) The Jobseeker's Allowance Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 1(3) (interpretation)—

(a) after the definition of “the Act” there shall be inserted the following definition—

““adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996(a);”;

(b) after the definition of “part-time student” there shall be inserted the following definition—

““paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996(b);”.

(3) In paragraph (2)(i) of regulation 3E(c) (entitlement of a member of a joint-claim couple to a jobseeker's allowance without a claim being made jointly by the couple) after the word “ends” there shall be inserted—

“where the expected week of confinement begins prior to 6th April 2003 or fifteen weeks after the date on which her pregnancy ends where the expected week of confinement begins on or after 6th April 2003”.

(4) In regulation 52 (persons treated as engaged in remunerative work), in paragraph (1) after “maternity leave” there shall be inserted “, paternity leave, adoption leave”.

(5) In regulation 98 (earnings of employed earners), in sub-paragraph (2)(c) after “maternity leave” there shall be inserted “, paternity leave, adoption leave”.

(6) In Schedule 7 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 4—

(i) before “statutory sick pay” there shall be inserted “statutory paternity pay by virtue of Part 12ZA of the Benefits Act, statutory adoption pay by virtue of Part 12ZB of the Benefits Act,”;

(ii) after the words “unable to work due to illness or maternity” there shall be added the words “or who is taking paternity leave or adoption leave”;

(b) in paragraph 5 after “Social Security Contributions and Benefits (Northern Ireland) Act 1992” there shall be inserted “, or a payment under any enactment having effect in Northern Ireland corresponding to a payment of statutory paternity pay or statutory adoption pay”.

Amendment of the Housing Benefit Regulations

4.—(1) The Housing Benefit Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the Act” there shall be inserted the following definition—

““adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996;” and

(b) after the definition of “partner” there shall be inserted the following definition –

““paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996;”.

(3) In regulation 4 (remunerative work), in paragraph (6)(d) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”.

(4) In regulation 21A (treatment of child care charges)(e)—

(a) in paragraph (7)—

(a) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(b) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002 (c. 22).

(c) Regulation 3E was inserted by S.I. 2000/1978.

(d) Paragraph (6) was inserted in regulation 4 by S.I. 1993/2118.

(e) Regulation 21A was inserted by S.I. 1994/1924; the relevant amending instrument (which inserted paragraphs (7) and (8)) is S.I. 2001/1864.

- (i) in sub-paragraph (a) for “woman on maternity leave” there shall be substituted “person on maternity leave, paternity leave or adoption leave”;
- (ii) in sub-paragraph (a)(i) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”;
- (iii) in sub-paragraph (a)(iii) for the words from “or maternity” to the end, there shall be substituted “, statutory paternity pay by virtue of section 171ZA or 171ZB of that Act(a), statutory adoption pay by virtue of section 171ZL of that Act(b), maternity allowance under section 35 of that Act(c) or qualifying support,”;
- (iv) in sub-paragraph (b) for “woman’s maternity leave” there shall be substituted “person’s maternity leave, paternity leave or adoption leave”;
- (v) in sub-paragraph (b)(ii) and (iii) for “statutory maternity pay” there shall be substituted “, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay”; and
- (vi) in sub-paragraph (c) for the words from “in this” to “means” there shall be substituted “in this paragraph—
 - (i) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B of the Income Support (General) Regulations 1987; and
 - (ii) “tax credit” means”; and
- (b) in paragraph (8)—
 - (i) for “woman on maternity leave” there shall be substituted “person on maternity leave, paternity leave or adoption leave”; and
 - (ii) for “the maternity leave” there shall be substituted “such leave”.
- (5) In regulation 28(1) (earnings of employed earners)(d)—
 - (a) in sub-paragraph (i) for “or statutory maternity pay” there shall be substituted, “statutory maternity pay, statutory paternity pay or statutory adoption pay”; and
 - (b) in sub-paragraph (j) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”.
- (6) In paragraph (3) of regulation 29 (calculation of net earnings of employed earners)(e), in sub-paragraph (d), for “or statutory maternity pay” there shall be substituted, “statutory maternity pay, statutory paternity pay or statutory adoption pay”.

Amendment of the Council Tax Benefit Regulations

- 5.—(1) The Council Tax Benefit Regulations shall be amended in accordance with the following paragraphs of this regulation.
- (2) In regulation 2(1) (interpretation)—
 - (a) after the definition of “the Administration Act 1992” there shall be inserted the following definition—
 - ““adoption leave” means a period of absence from work on ordinary or additional adoption leave by virtue of section 75A or 75B of the Employment Rights Act 1996;”;
 - and
 - (b) after the definition of “partner” there shall be inserted the following definition—
 - ““paternity leave” means a period of absence from work on leave by virtue of section 80A or 80B of the Employment Rights Act 1996;”.
- (3) In regulation 4 (remunerative work), in paragraph (6)(f) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”.
- (4) In regulation 13A (treatment of child care charges)(g)—
 - (a) in paragraph (7)—

(a) Sections 171ZA and 171ZB were inserted in the Social Security Contributions and Benefits Act 1992 (c. 4) by section 2 of the Employment Act 2002.

(b) Section 171ZL was inserted by section 4 of the Employment Act 2002.

(c) Section 35 was amended by section 53 of the Welfare Reform and Pensions Act 1999 (c. 30).

(d) Regulation 28(1) was amended (to substitute sub-paragraphs (h) to (j)) by S.I. 1993/2118.

(e) Regulation 29(3) was amended (to substitute sub-paragraphs (b) to (d)) by S.I. 1994/2137.

(f) Paragraph (6) was inserted by S.I. 1993/2118.

(g) Regulation 13A was inserted by S.I. 1994/1924: the relevant amending instrument (which inserted paragraphs (7) and (8)) is S.I. 2001/1864.

- (i) in sub-paragraph (a) for “woman on maternity leave” there shall be substituted “person on maternity leave, paternity leave or adoption leave”;
- (ii) in sub-paragraph (a)(i) after “maternity leave” there shall be inserted “, paternity leave or adoption leave”;
- (iii) in sub-paragraph (a)(iii) for the words from “or maternity” to the end, there shall be substituted “, statutory paternity pay by virtue of section 171ZA or 171ZB of that Act, statutory adoption pay by virtue of section 171ZL of that Act, maternity allowance under section 35 of that Act or qualifying support,”;
- (iv) in sub-paragraph (b) for “woman’s maternity leave” there shall be substituted “person’s maternity leave, paternity leave or adoption leave”; and
- (v) in sub-paragraph (b)(ii) and (iii) for “statutory maternity pay” there shall be substituted “, qualifying support, statutory maternity pay, statutory paternity pay or statutory adoption pay”; and
- (vi) in sub-paragraph (c) for the words from “in this” to “means” there shall be substituted “in this paragraph—
 - (i) “qualifying support” means income support to which that person is entitled by virtue of paragraph 14B of Schedule 1B of the Income Support (General) Regulations 1987; and
 - (ii) “tax credit” means”; and
- (b) in paragraph (8)—
 - (i) for “woman on maternity leave” there shall be substituted “person on maternity leave, paternity leave or adoption leave”; and
 - (ii) for “the maternity leave” there shall be substituted “such leave”.
- (5) In regulation 19(1) (earnings of employed earners)(a)—
 - (a) in sub-paragraph (i) for “or statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”; and
 - (b) in sub-paragraph (j) after “maternity leave” there shall be inserted “, paternity leave or adoption leave,”.
- (6) In paragraph (3) of regulation 20 (calculation of net earnings of employed earners)(b), in sub-paragraph (d), for “or statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

Signed by authority of the Secretary of State for Work and Pensions.

P Hollis
Parliamentary Under-Secretary of State,
Department for Work and Pensions

29th October 2002

(a) Regulation 19(1) was amended (to substitute sub-paragraphs (i) and (j)) by S.I. 1993/2118.
(b) Regulation 20(3) was amended (to substitute sub-paragraphs (b) to (d)) by S.I. 1994/2137.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971) and the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814) ("the principal Regulations").

Regulation 2(5)(a) extends entitlement to income support, where a woman is or has been pregnant and has an expected week of confinement beginning on or after 6th April 2003, to a period commencing 11 weeks before her expected week of confinement and ending fifteen weeks after the date on which her pregnancy ends. Regulation 3(3) makes similar provision in respect of joint-claim couples under the Jobseeker's Allowance Regulations 1996.

Regulation 2(5)(b) extends entitlement to income support to a person who is entitled to and taking paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1986 and who satisfies the prescribed conditions.

Regulations 2(3), 3(4), 4(3) and 5(3) amend the principal Regulations to provide that a person on statutory paternity leave or statutory adoption leave shall not be treated as engaged in remunerative work for the purposes of the principal Regulations.

Regulations 2(4) and 3(5) amend the Income Support (General) Regulations 1987 and the Jobseeker's Allowance Regulations 1996 to provide that remuneration received while on statutory paternity or statutory adoption leave is not counted as earnings for the purposes of calculating entitlement to income support or jobseeker's allowance.

Regulations 2(6), 3(6), 4(6) and 5(6) amend the principal Regulations to add statutory adoption pay and statutory paternity pay to those payments in respect of which prescribed sums are to be disregarded in the calculation of income for the purposes of those regulations.

Regulations 4(4) and 5(4) amend the Council Tax Benefit (General) Regulations 1992 and the Housing Benefit (General) Regulations 1987 to provide that—

- for the purposes of child care charges, a parent on statutory adoption leave or statutory paternity leave is to be treated as being in remunerative work when receiving housing benefit or council tax benefit;
- statutory adoption pay and statutory paternity pay are to be treated as earnings for the purposes of council tax benefit and housing benefit.

These Regulations do not impose a charge on business.

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