

2002 No. 2821

TERMS AND CONDITIONS OF EMPLOYMENT

**The Statutory Paternity Pay and Statutory Adoption Pay
(Persons Abroad and Mariners) Regulations 2002**

Made - - - - - 13th November 2002
Laid before Parliament 15th November 2002
Coming into force - - 8th December 2002

The Secretary of State, in exercise of the powers conferred upon her by virtue of sections 171ZI, 171ZJ(1), 171ZR and 171ZS(1) of the Social Security Contributions and Benefits Act 1992(a) and with the concurrence of the Treasury, by this instrument, which contains only provision made by virtue of sections 2 and 4 of the Employment Act 2002(b) and is made before the end of the period of 6 months from the coming into force of those enactments, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 and shall come into force on 8th December 2002.

(2) In these Regulations—

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

“adopter”, in relation to a child, has the same meaning as it has in the General Regulations;

“the Contributions Regulations” means the Social Security Contributions Regulations 2001(c);

“EEA” means European Economic Area;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(d) as adjusted by Protocol signed at Brussels on 17th March 1993(e);

“EEA State” means a State which is a contracting party to the EEA Agreement;

“the General Regulations” means the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(f);

“statutory paternity pay (birth)” and “statutory paternity pay (adoption)” have the same meaning as they have in the General Regulations;

“week” means a period of 7 days beginning with Sunday.

(a) 1992 c. 4. Sections 171ZI and 171ZJ were inserted by section 2 of the Employment Act 2002 (c. 22) and sections 171ZR and 171ZS by section 4 of that Act. Sections 171ZJ(1) and 171ZS(1) are cited because of the meaning ascribed to the word “prescribed”.

(b) 2002 c. 22.

(c) S.I. 2001/1004.

(d) Cm. 2073 and OJ No. L 1, 3.1.1994, p. 3.

(e) Cm. 2183 and OJ No. L 1, 3.1.1994, p. 572.

(f) S.I. 2002/2822.

(3) For the purposes of these Regulations, a person is notified of having been matched with a child for the purposes of adoption on the date on which he receives notification, under regulation 11(2) of the Adoption Agencies Regulations 1983^(a) or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996^(b), that an adoption agency has decided that the person would be a suitable adoptive parent for the child, either individually or jointly with another person.

Restriction on scope

2. A person who would not be treated under regulation 32 of the General Regulations as an employee for the purposes of Parts 12ZA (statutory paternity pay) and 12ZB (statutory adoption pay) of the Act if his employment were in Great Britain shall not be treated as an employee under these Regulations.

Treatment of persons in other EEA States as employees

3. A person who is—

- (a) gainfully employed in an EEA State other than the United Kingdom in such circumstances that, if his employment were in Great Britain, he would be an employee for the purposes of Parts 12ZA and 12ZB of the Act, or a person treated as such an employee under regulation 32 of the General Regulations; and
- (b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No. 1408/71^(c),

notwithstanding that he is not employed in Great Britain, shall be treated as an employee for the purposes of Parts 12ZA and 12ZB of the Act.

Treatment of certain persons absent from Great Britain as employees

4. Subject to regulation 8(3), where a person, while absent from Great Britain for any purpose, is gainfully employed by an employer who is liable to pay secondary Class 1 contributions in respect of his employment under section 6 of the Act or regulation 146 of the Contributions Regulations, he shall be treated as an employee for the purposes of Parts 12ZA and 12ZB of the Act.

Entitlement to statutory paternity pay where person has worked in an EEA State

5.—(1) A person who is an employee or treated as an employee under regulation 3 and who—

- (a) in the week immediately preceding the 14th week before the expected week of the child's birth was in employed earner's employment with an employer in Great Britain; and
- (b) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in another EEA State,

shall be treated for the purposes of section 171ZA of the Act (entitlement to statutory paternity pay (birth)) as having been employed in employed earner's employment in those weeks in which he was so employed in the other EEA State.

(2) A person who is an employee or treated as an employee under regulation 3 and who—

- (a) in the week in which the adopter is notified of being matched with the child for purposes of adoption was in employed earner's employment with an employer in Great Britain; and
- (b) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in another EEA State,

shall be treated for the purposes of section 171ZB of the Act (entitlement to statutory paternity pay (adoption)) as having been employed in employed earner's employment in those weeks in which he was so employed in the other EEA State.

(a) S.I. 1983/1964.

(b) S.I. 1996/3266.

(c) See OJ No. L 28, 30.1.1997, p. 1.

Entitlement to statutory adoption pay where person has worked in an EEA State

6. A person who is an employee or treated as an employee under regulation 3 and who—
- (a) in the week in which he is notified that he has been matched with the child for the purposes of adoption was in employed earner's employment with an employer in Great Britain; and
 - (b) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in another EEA State,

shall be treated for the purposes of section 171ZL of the Act (entitlement to statutory adoption pay) as having been employed in employed earner's employment in those weeks in which he was so employed in the other EEA State.

Time for compliance with Parts 12ZA and 12ZB of the Act or regulations made under them

7. Where—
- (a) a person is outside the United Kingdom;
 - (b) Parts 12ZA or 12ZB of the Act or regulations made under them require any act to be done forthwith or on the happening of a certain event or within a specified time; and
 - (c) because the person is outside the United Kingdom he or his employer cannot comply with the requirement,

the person or the employer, as the case may be, shall be deemed to have complied with it if the act is performed as soon as reasonably practicable.

Mariners

8.—(1) In this regulation, “foreign-going ship”, “home-trade ship” and “mariner” have the same meanings as in Case C of Part 9 of the Contributions Regulations (mariners) and the expressions “ship” and “ship or vessel”, except in paragraph (3), include hovercraft.

(2) A mariner engaged in employment on board a home-trade ship with an employer who has a place of business within the United Kingdom shall be treated as an employee for the purposes of Parts 12ZA and 12ZB of the Act, notwithstanding that he may not be employed in Great Britain.

- (3) A mariner who is engaged in employment—
- (a) on a foreign-going ship; or
 - (b) on a home-trade ship with an employer who does not have a place of business within the United Kingdom,

shall not be treated as an employee for the purposes of Parts 12ZA and 12ZB of the Act, notwithstanding that he may have been employed in Great Britain.

Continental shelf

- 9.—(1) In this regulation—

“designated area” means any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(a) as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“prescribed employment” means any employment (whether under a contract of service or not) in a designated area in connection with continental shelf operations, as defined in section 120(2) of the Act.

(a) 1964 c. 29.

(2) A person in prescribed employment shall be treated as an employee for the purposes of Parts 12ZA and 12ZB of the Act notwithstanding that he may not be employed in Great Britain.

Alan Johnson,
Minister of State for Employment Relations,
Industry and the Regions,
Department of Trade and Industry

11th November 2002

We concur in the making of these Regulations.

John Heppell,
Philip Woolas,

13th November 2002

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument contains only regulations made by virtue of sections 2 and 4 of the Employment Act 2002, which come into force on 8th December 2002. The instrument is made before the end of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempted by section 173(5)(b) of the Social Security Administration Act 1992 from the requirement under section 172 of that Act to refer the proposals to make the regulations to the Social Security Advisory Committee and they are made without reference to the Committee.

These Regulations modify Parts 12ZA (statutory paternity pay) and 12ZB (statutory adoption pay) of the Social Security Contributions and Benefits Act 1992 ("the Act") in relation to persons abroad, persons who work as mariners and persons who work on the continental shelf.

Regulation 2 limits the application of the Regulations to cases where the person would be treated as an employee under Parts 12ZA or 12ZB of the Act if the employment were in Great Britain.

Regulation 3 provides for a person employed in another State of the European Economic Area but subject to the legislation of the United Kingdom to be treated as an employee for the purposes of statutory paternity pay and statutory adoption pay.

Regulation 4 provides for a person who is absent from Great Britain but in respect of whom an employer has secondary Class 1 national insurance contribution liability to be treated as an employee for the purposes of statutory paternity pay and statutory adoption pay.

Where a person has worked for the same employer both in Great Britain and in another State of the European Economic Area, regulation 5 provides, in specified circumstances, for employment in the member State to be treated as employed earner's employment for the purposes of statutory paternity pay, and regulation 6 makes similar provision for the purposes of statutory adoption pay.

Regulation 7 relaxes any time limit imposed by Parts 12ZA and 12ZB of the Act and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 in relation to a person who, because he is outside the United Kingdom, cannot comply with it.

Regulation 8 treats certain classes of mariners as employees for the purposes of entitlement to statutory paternity pay and statutory adoption pay and regulation 9 makes corresponding provision for persons working on the continental shelf.

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