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STATUTORY INSTRUMENTS

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**2003 No. 1194**

**The Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (No. 2) Regulation 2003**

*Statutory adoption pay*

**Adoption pay period in respect of adoptions from overseas**

**12.**—(1) Subject to paragraph (2), a person entitled to statutory adoption pay may choose the adoption pay period to begin—

- (a) on the date on which the child enters Great Britain or, where the person is at work on that day, on the following day;
- (b) on the predetermined date, specified by him, which is no later than 28 days after the date the child enters Great Britain.

(2) In a case where statutory adoption pay is payable in respect of a child where the adopter has received official notification before 6th April 2003, the statutory adoption pay period shall begin on a predetermined date, later than the date of entry, specified by the person entitled to such pay in a notice under section 171ZL(6) of the Act, which is at least 28 days after the date on which that notice was given, unless the person liable to pay statutory adoption pay agrees to the period commencing earlier.

(3) Where the choice made is that mentioned in sub-paragraph (b) of paragraph (1) or in a case where paragraph (2) applies, the adoption pay period shall, unless the employer agrees to the adoption pay period beginning earlier, begin no earlier than 28 days after notice under section 171ZL(6) of the Act has been given.

(4) Subject to regulation 13, the duration of any adoption pay period shall be a continuous period of 26 weeks.

(5) A choice made under paragraph (1), or a date specified under paragraph (2), is not irrevocable, but where a person subsequently makes a different choice or specifies a different date in relation to the beginning of the statutory adoption pay period, section 171ZL(6) of the Act shall apply to it.

**Adoption pay period in respect of adoptions from overseas where adoption is disrupted**

**13.**—(1) Where after a child enters Great Britain the child—

- (a) dies; or
- (b) ceases to live with the adopter,

the adoption pay period shall terminate in accordance with the provisions of paragraph (2).

(2) The adoption pay period shall, in a case falling within paragraph (1), terminate 8 weeks after the end of the week specified in paragraph (3).

(3) The week referred to in paragraph (2) is—

- (a) in a case falling within paragraph (1)(a), the week during which the child dies;

(b) in a case falling within paragraph (1)(b), the week during which the child ceases to live with the adopter.

(4) For the purposes of paragraph (3), “week” means a period of seven days beginning with Sunday.

#### **Additional notice requirements for statutory adoption pay in respect of adoptions from overseas**

**14.**—(1) Where a person gives notice under section 171ZL(6) of the Act he shall give further notice of the following matters to the person liable to pay statutory adoption pay—

(a) the date on which official notification was received, within 28 days of that date, or within 28 days of his completion of 26 weeks of continuous employment, whichever is the later;

(b) the date on which the child enters Great Britain, within 28 days of entry.

(2) Where the child has not entered Great Britain on the expected date, the person shall, if he wishes to claim statutory adoption pay, give notice to the person liable to pay it, as soon as is reasonably practicable, that the period in respect of which statutory adoption pay is to be paid shall begin on a date different from that originally chosen by him.

(3) That date may be any date chosen in accordance with paragraph (1) of regulation 12 or specified in accordance with paragraph (2) of that regulation.

(4) Where it becomes known to the adopter that the child will not enter Great Britain, he shall notify the person who would have been liable to pay statutory adoption pay as soon as is reasonably practicable.

#### **Evidence of entitlement to statutory adoption pay in respect of adoptions from overseas**

**15.**—(1) A person shall provide evidence of his entitlement to statutory adoption pay by providing, to the person who will be liable to pay it, a copy of the official notification and, in writing—

(a) the information specified in paragraph (2);

(b) a declaration that he has elected to receive statutory adoption pay, and not statutory paternity pay (adoption) under Part 12ZA of the Act;

(c) evidence, to be provided within 28 days of the child’s entry into Great Britain, as to that date.

(2) The information referred to in paragraph (1) is—

(a) the name and address of the person claiming statutory adoption pay;

(b) the date on which it is expected that the child will enter Great Britain or, where he has already done so, the date of entry.

(3) The information and declaration referred to in paragraph (1) shall be provided to the person liable to pay statutory adoption pay at least 28 days before the date chosen as the beginning of the adoption pay period in accordance with paragraph (1) of regulation 12 or specified in accordance with paragraph (2) of that regulation or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter.

#### **Entitlement to statutory adoption pay in respect of adoptions from overseas where there is more than one employer**

**16.** Statutory adoption pay shall be payable to a person in respect of a week during any part of which he works for an employer—

(a) who is not liable to pay him statutory adoption pay and

- (b) for whom he has worked in the week in which he receives official notification.

### **Termination of employment and liability to pay statutory adoption pay in respect of adoptions from overseas**

17.—(1) Where the employment of a person who satisfies the conditions of entitlement to statutory adoption pay in respect of adoptions from overseas terminates for whatever reason (including dismissal) before the adoption pay period chosen or specified by that person in accordance with regulation 12 has begun, the period shall begin on a date chosen by that person which is at least 28 days after notice has been given and within 28 days of the date of the child's entry into Great Britain.

(2) Where the statutory adoption pay period has not commenced within a period of 6 months of the adopter's leaving his employer, liability to pay statutory adoption pay shall, notwithstanding section 171ZM(1) of the Act, pass to the Board.

(3) Where liability to pay statutory adoption pay has passed to the Board in accordance with paragraph (2) and the adopter, having started employment as an employed earner, becomes entitled to statutory adoption pay by virtue of that employment, the liability of the Board shall cease and section 171ZM(1) of the Act shall apply.

### **Avoidance of liability for statutory adoption pay in respect of adoptions from overseas**

18.—(1) A former employer shall be liable to make payments of statutory adoption pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and his contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.

(2) In a case falling within paragraph (1)—

- (a) the employee shall be treated as if he had been employed for a continuous period ending with the week in which he received official notification; and
- (b) his normal weekly earnings shall be calculated by reference to his normal weekly earnings for the period of 8 weeks ending with the last day in respect of which he was paid under his former contract of service.

### **Revocation**

19. The Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) Regulations 2003(1) are hereby revoked.