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STATUTORY RULES OF NORTHERN IRELAND

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**2002 No. 382**

**EMPLOYMENT**

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

*Made* - - - - *6th December 2002*

*Coming into operation* *8th December 2002*

The Department for Employment and Learning, in exercise of the powers conferred on it by sections 167ZI and 167ZR of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1) and with the concurrence of the Treasury(2), and of every other power enabling it in that behalf, hereby, by this Statutory Rule, which contains only regulations made by virtue of Articles 5 and 6 of the Employment (Northern Ireland) Order 2002(3) and is made before the end of the period of 6 months beginning with the coming into operation of that statutory provision(4), 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 (Northern Ireland) 2002 and shall come into operation on 8th December 2002.

(2) In these Regulations—

“the Act” means the Social Security Contributions and Benefits (Northern Ireland) 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(5);

“EEA” means European Economic Area;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(6) as adjusted by Protocol signed at Brussels on 17th March 1993(7);

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

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(1) 1992 c. 7; section 167ZI was inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I.2002/2836(N.I. 2)) and section 167ZR was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2))

(2) See sections 167ZI and 167ZR of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)

(3) S.I. 2002/2836 (N.I. 2)

(4) See section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

(5) S.I. 2001/1004

(6) Cm. 2073 and O.J. No. L1, 3.1.1994, p. 3

(7) Cm. 2183 and O.J. No. L1, 3.1.1994, p. 572

“the General Regulations” means the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002<sup>(8)</sup>;

“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.

(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 (Northern Ireland) 1989<sup>(9)</sup> or regulation 11(2) of the Adoption Agencies Regulations 1983<sup>(10)</sup> or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996<sup>(11)</sup>, 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 XIIZA (statutory paternity pay) and XIIZB (statutory adoption pay) of the Act if his employment were in Northern Ireland 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 Northern Ireland, he would be an employee for the purposes of Parts XIIZA and XIIZB 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<sup>(12)</sup>,

notwithstanding that he is not employed in Northern Ireland, shall be treated as an employee for the purposes of Parts XIIZA and XIIZB of the Act.

### **Treatment of certain persons absent from Northern Ireland as employees**

4. Subject to regulation 8(3), where a person, while absent from Northern Ireland 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 XIIZA and XIIZB 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 Northern Ireland; 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,

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<sup>(8)</sup> S.R. 2002 No. 378

<sup>(9)</sup> S.R. 1989 No. 253

<sup>(10)</sup> S.I. 1983/1964

<sup>(11)</sup> S.I. 1996/3266

<sup>(12)</sup> See O.J. No. L28, 30.1.1997, p. 1

shall be treated for the purposes of section 167ZA 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 Northern Ireland; 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 167ZB 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.

#### **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 Northern Ireland; 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 167ZL 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 XIIZA and XIIZB of the Act or regulations made under them**

7. Where—
- (a) a person is outside the United Kingdom;
  - (b) Parts XIIZA or XIIZB 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 XIIZA and XIIZB of the Act, notwithstanding that he may not be employed in Northern Ireland.

- (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 XIIZA and XIIZB of the Act, notwithstanding that he may have been employed in Northern Ireland.

**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(13) 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 167ZI(3) of the Act.

(2) A person in prescribed employment shall be treated as an employee for the purposes of Parts XIIZA and XIIZB of the Act notwithstanding that he may not be employed in Northern Ireland.

Sealed with the Official Seal of the Department for Employment and Learning on 6th December 2002.

L.S.

*R. B. Gamble*  
A senior officer of the  
Department for Employment and Learning

We concur in the making of these Regulations

*J. Heppell*  
*J. Fitzpatrick*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

11th December 2002

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

This statutory rule contains only regulations made by virtue of Articles 5 and 6 of the Employment (Northern Ireland) Order 2002, which come into operation on 8th December 2002. The statutory rule is made before the end of the period of 6 months beginning with the coming into operation of those provisions. The regulations in it are therefore exempted by section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 from the requirement under section 149 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 XIIZA (statutory paternity pay) and XIIZB (statutory adoption pay) of the Social Security Contributions and Benefits (Northern Ireland) 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 XIIZA or XIIZB of the Act if the employment were in Northern Ireland.

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 Northern Ireland 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 Northern Ireland 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 XIIZA and XIIZB of the Act and the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 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.