

2010 No. 306

EMPLOYMENT

WORK AND FAMILIES

**The Statutory Paternity Pay and Statutory Adoption Pay
(Persons Abroad and Mariners) Regulations (Northern Ireland)
2002 (Amendment) Regulations (Northern Ireland) 2010**

Made - - - - - *9th September 2010*

Coming into operation - - - - - *3rd October 2010*

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by sections 167ZI, 167ZJ(1), 167ZR and 167ZS(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and with the concurrence of the Treasury(b).

Citation and commencement

1. These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (Amendment) Regulations (Northern Ireland) 2010 and shall come into operation on 3rd October 2010.

Amendment of the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002

2. The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002(c) shall be amended in accordance with regulations 3 to 7.

Amendment of regulation 1 (citation, commencement and interpretation)

3.—(1) Regulation 1 is amended as follows—

(2) In paragraph (2), after the definition of “the Act”, insert the following definitions—

““additional statutory paternity pay (adoption)” means additional statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 167ZEB(2) of the Act are satisfied;

(a) 1992 c. 7. Sections 167ZI and 167ZJ were inserted by Article 5 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), and sections 167ZR and 167ZS were inserted by Article 6 of that Order. Sections 167ZJ(1) and 167ZS(1) are cited because of the meaning ascribed to the word “prescribed”.

(b) See sections 167ZI(1) and 171ZR(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(c) S.R. 2002 No. 382.

“additional statutory paternity pay (birth)” means additional statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 167ZEA(2) of the Act are satisfied;”.

(3) In paragraph (2), for the definition of “adopter” substitute—

““adopter”, in relation to a child, means—

- (a) in the context of ordinary statutory paternity pay, a person who has been matched with the child for adoption,
- (b) in the context of additional statutory paternity pay, a person who has been matched with the child for adoption and who has elected to take adoption leave under Article 107A or 107B of the Employment Rights (Northern Ireland) Order 1996(a) in order to care for the child;”.

(4) In paragraph (2), after the definition of “EEA State”, insert the following definition—

““foreign-going ship” means any ship or vessel which is not a home-trade ship;”.

(5) In paragraph (2), after the definition of “the General Regulations”, omit the definitions of “statutory paternity pay (birth)” and “statutory paternity pay (adoption)” and insert the following definitions—

““home-trade ship” includes—

- (a) every ship or vessel employed in trading or going within the following limits, that is to say, the United Kingdom (including for this purpose the Republic of Ireland), the Channel Islands, the Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive;
- (b) every fishing vessel not proceeding beyond the following limits—
 - on the South, Latitude 48°30’N,
 - on the West, Longitude 12°W, and
 - on the North, Latitude 61°N;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person in so far as their employment is as a serving member of the forces;

“ordinary statutory paternity pay (adoption)” means statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 167ZB(2) of the Act are satisfied;

“ordinary statutory paternity pay (birth)” means statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 167ZA(2) of the Act are satisfied;

“serving member of the forces” means a person, other than one mentioned in Part 2 of the Schedule, who, being over the age of 16, is a member of any establishment or organisation specified in Part 1 of that Schedule (being a member who gives full pay service) but does not include any such person while absent on desertion;”.

(6) For paragraph (3), substitute—

“(3) For the purposes of these Regulations—

(a) S.I. 1996/1919 (N.I. 16). Articles 107A and 107B were inserted by Article 3 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)).

- (a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child;
- (b) a person is notified of having been matched with a child on the date on which the person receives notification of the agency’s decision, under regulation 11(2) of the Adoption Agencies Regulations (Northern Ireland) 1989(a), regulation 33(3)(a) of the Adoption Agencies Regulations 2005(b), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(c) or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(d).”.

(7) After paragraph (3), insert—

“(4) For the purposes of these Regulations, the expressions “ship” and “ship or vessel” include hovercraft, except in regulation 8(3).”.

Amendment of regulation 2 (restriction on scope)

4. In regulation 2, for “(statutory paternity pay)” substitute “(ordinary and additional statutory paternity pay)”.

Substitution of regulation 5 (entitlement to statutory paternity pay where person has worked in an EEA State)

5. For regulation 5, substitute—

“Entitlement to ordinary statutory paternity pay and additional 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,

shall be treated for the purposes of section 167ZA of the Act (entitlement to ordinary statutory paternity pay (birth)) and section 167ZEA of the Act (entitlement to additional statutory paternity pay (birth)) as having been employed in employed earner’s employment in those weeks in which the person 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 ordinary statutory paternity pay (adoption)) and section 167ZEB of the Act (entitlement to additional statutory paternity pay (adoption)) as having been employed in employed earner’s employment in those weeks in which the person was so employed in the other EEA State.”.

(a) S.R. 1989 No. 253.
 (b) S.I. 2005/389.
 (c) S.I. 2005/2689 (W. 189).
 (d) S.S.I. 2009/154.

Amendment of regulation 8 (mariners)

6. In regulation 8, omit paragraph (1).

Insertion of Schedule

7. Insert the Schedule set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department for Employment and Learning on 9th September 2010.



Sir Reg Empey
Minister for Employment and Learning

We concur in making these Regulations.

Michael Fabricant
Angela Watkinson

Date 15th September 2010

Two of the Lords Commissioners of Her Majesty's Treasury

“SCHEDULE

PART 1

Establishments and organisations

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Naval Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2

Establishments and organisations of which Her Majesty's forces shall not consist

10. Her Majesty's forces shall not be taken to consist of any of the establishments or organisations specified in Part 1 of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act (Northern Ireland) 1966 and not being a contributor under the Social Security (Northern Ireland) Act 1975 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of his engagement to serve only in a specified part of the world outside the United Kingdom.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 382) (the “Persons Abroad and Mariners Regulations”). The Persons Abroad and Mariners Regulations provide for certain special classes of person to benefit from certain provisions in Parts 12ZA and 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 relating to ordinary paternity pay and statutory adoption pay.

Regulations 3, 4 and 5 make the changes necessary for the scope of the Persons Abroad and Mariners Regulations to be extended to provide for certain special classes of person to benefit from the provisions in Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 that relate to additional paternity pay.

In addition, Regulations 3, 6 and 7 introduce certain definitions into the Persons Abroad and Mariners Regulations that were previously defined by cross-reference to Case C of the Social Security Contributions Regulations 2001.

The Social Security Advisory Committee has agreed, under section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992, that these Regulations need not be referred to it under section 149(2) of that Act.

A full impact assessment has not been produced for this Statutory Rule as a negligible impact on the private or voluntary sectors is foreseen.

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