



Employment Act 2002

2002 CHAPTER 22

PART 1

STATUTORY LEAVE AND PAY

CHAPTER 1

PATERNITY AND ADOPTION

Administration and enforcement: pay

5 General functions of the Board

- (1) For the purposes of the Inland Revenue Regulation Act 1890 (c. 21), except sections 21, 22 and 35, everything that relates to statutory paternity pay or statutory adoption pay shall be taken to relate to inland revenue; and the expressions “in relation to inland revenue”, “Collector of Inland Revenue” and “Officer of Inland Revenue” are to be read accordingly.
- (2) The reference in section 4(1) of that Act (appointment of collectors, officers and other persons) to collecting, receiving, managing and accounting for inland revenue shall be taken to include a reference to paying and managing statutory paternity pay and statutory adoption pay.
- (3) In any declaration for the purposes of section 6 of the Taxes Management Act 1970 (c. 9) (declarations on taking office), whether made before or after the commencement of this section, the reference to an offence relating to inland revenue shall be taken to include a reference to an offence relating to statutory paternity pay or statutory adoption pay.

Status: This is the original version (as it was originally enacted).

6 Financial arrangements

- (1) In section 163(1) of the Social Security Administration Act 1992 (c. 5) (sums payable out of National Insurance Fund), for paragraph (d) there is substituted—
- “(d) any sum which, under regulations relating to statutory sick pay, statutory maternity pay, statutory adoption pay or statutory paternity pay, falls to be paid by or on behalf of the Inland Revenue or to be set off against sums payable to the Inland Revenue otherwise than on account of contributions;”.
- (2) In section 165 of that Act (adjustments between National Insurance Fund and Consolidated Fund)—
- (a) in subsection (1)(b) (adjustments in respect of the operation of legislation relating to statutory sick pay and maternity pay)—
- (i) the word “and” at the end of sub-paragraph (i) is omitted, and
- (ii) after sub-paragraph (ii) there is inserted—
- “(iii) statutory paternity pay; and
- (iv) statutory adoption pay.”; and
- (b) in subsection (5)(a) (adjustments in respect of certain administrative expenses of the Board), after “above” there is inserted “, or in carrying into effect any other legislation relating to statutory paternity pay or statutory adoption pay.”.
- (3) In section 1(5) of the Social Security Contributions and Benefits Act 1992 (c. 4) (which provides for payment by way of additional contributions out of money provided by Parliament of an annual amount equal to statutory sick pay and maternity pay recovered by employers and others), for “and statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay and statutory adoption pay”.

7 Funding of employers' liabilities

- (1) The Secretary of State shall by regulations make provision for the payment by employers of statutory paternity pay and statutory adoption pay to be funded by the Board to such extent as the regulations may specify.
- (2) Regulations under subsection (1) shall—
- (a) make provision for a person who has made a payment of statutory paternity pay or statutory adoption pay to be entitled, except in such circumstances as the regulations may provide, to recover an amount equal to the sum of—
- (i) the aggregate of such of those payments as qualify for small employers' relief; and
- (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
- (b) include provision for a person who has made a payment of statutory paternity pay or statutory adoption pay qualifying for small employers' relief to be entitled, except in such circumstances as the regulations may provide, to recover an additional amount equal to the amount to which the person would have been entitled under section 167(2)(b) of the Social Security Contributions and Benefits Act 1992 (corresponding provision for statutory maternity pay) had the payment been a payment of statutory maternity pay.

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- (3) For the purposes of subsection (2), a payment of statutory paternity pay or statutory adoption pay qualifies for small employers' relief if it would have so qualified were it a payment of statutory maternity pay, treating the period for which the payment is made, in the case of statutory paternity pay, or the payee's adoption pay period, in the case of statutory adoption pay, as the maternity pay period.
- (4) Regulations under subsection (1) may, in particular—
- (a) make provision for funding in advance as well as in arrear;
 - (b) make provision for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Board as the regulations may provide, or otherwise;
 - (c) make provision for the recovery by the Board of any sums overpaid to employers under the regulations.
- (5) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as the Secretary of State may by regulations provide) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
 - (b) as having been received by the Board,
- towards discharging the employer's liability in respect of such contributions.
- (6) Regulations under this section must be made with the concurrence of the Board.
- (7) In this section, "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.

8 Regulations about payment

- (1) The Secretary of State may make regulations with respect to the payment by employers of statutory paternity pay and statutory adoption pay.
- (2) Regulations under subsection (1) may, in particular, include provision—
- (a) about the records to be kept by employers in relation to payments of statutory paternity pay and statutory adoption pay, including the length of time for which they are to be retained;
 - (b) for the production of wages sheets and other documents and records to officers of the Board for the purpose of enabling them to satisfy themselves that statutory paternity pay and statutory adoption pay have been paid and are being paid, in accordance with the regulations, to employees who are entitled to them;
 - (c) for requiring employers to provide information to employees (in their itemised pay statements or otherwise);
 - (d) for requiring employers to make returns to the Board containing such particulars with respect to payments of statutory paternity pay and statutory adoption pay as the regulations may provide.
- (3) Regulations under subsection (1) must be made with the concurrence of the Board.

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9 Decisions and appeals

- (1) Part 2 of the Social Security Contributions (Transfer of Functions, Etc.) Act 1999 (c. 2) (decisions and appeals) is amended as follows.
- (2) In section 8(1) (which lists social security matters in relation to which decisions shall be for an officer of the Board)—
 - (a) in paragraph (f) (issues relating to entitlement to statutory sick pay or statutory maternity pay), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”,
 - (b) in paragraph (g) (other issues relating to those matters) for the words from “under Part” to the end there is substituted “under Parts 11 to 12ZB of the Social Security Contributions and Benefits Act 1992 (statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay)”, and
 - (c) after that paragraph there is inserted—
 - “(ga) to make any decision that falls to be made under regulations under section 7 of the Employment Act 2002 (funding of employers' liabilities to make payments of statutory paternity or adoption pay),”.
- (3) In section 8(3)(b) (which excludes certain decisions from section 8(1)(g)) for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.
- (4) In section 11 (appeals against decisions of the Board), in subsection (2)(a) (right of employer and employee in the case of statutory sick pay and statutory maternity pay to appeal to tax appeal Commissioners), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.
- (5) In section 14 (matters arising as respects decisions)—
 - (a) in subsection (1)(a)(i) (power to make regulations as respects such matters relating to statutory sick pay or statutory maternity pay), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”, and
 - (b) in subsection (3) (regulations relating to statutory sick pay or statutory maternity pay to be made with the concurrence of the Secretary of State), for “or statutory maternity pay” there is substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

10 Powers to require information

- (1) The Secretary of State may by regulations make provision enabling an officer of the Board authorised by the Board for the purposes of this section to require persons of a description specified in the regulations to provide, or produce for inspection, within such period as the regulations may require, such information or documents as the officer may reasonably require for the purpose of ascertaining whether statutory paternity pay or statutory adoption pay is or was payable to or in respect of any person.
- (2) The descriptions of person which may be specified by regulations under subsection (1) include, in particular—

- (a) any person claiming to be entitled to statutory paternity pay or statutory adoption pay,
 - (b) any person who is, or has been, the spouse or partner of such a person as is mentioned in paragraph (a),
 - (c) any person who is, or has been, an employer of such a person as is mentioned in paragraph (a),
 - (d) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services, and
 - (e) any person who is a servant or agent of any such person as is specified in paragraphs (a) to (d).
- (3) Regulations under subsection (1) must be made with the concurrence of the Board.

11 Penalties: failures to comply

- (1) Where a person—
- (a) fails to produce any document or record, provide any information or make any return, in accordance with regulations under section 8, or
 - (b) fails to provide any information or document in accordance with regulations under section 10,
- he shall be liable to the penalties mentioned in subsection (2) below (subject to subsection (4)).
- (2) The penalties are—
- (a) a penalty not exceeding £300, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (3) Where a person fails to keep records in accordance with regulations under section 8, he shall be liable to a penalty not exceeding £3,000.
- (4) Subject to subsection (5), no penalty shall be imposed under subsection (2) or (3) at any time after the failure concerned has been remedied.
- (5) Subsection (4) does not apply to the imposition of a penalty under subsection (2)(a) in respect of a failure within subsection (1)(a).
- (6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of statutory paternity pay or statutory adoption pay in accordance with any regulations under section 8, the employer shall be liable to a penalty not exceeding £3,000.
- (7) Section 118(2) of the Taxes Management Act 1970 (c. 9) (extra time for compliance etc) shall apply for the purposes of subsections (1), (3) and (6) as it applies for the purposes of that Act.
- (8) Schedule 1 to this Act (penalties: procedure and appeals) has effect in relation to penalties under this section.

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12 Penalties: fraud etc.

- (1) Where a person fraudulently or negligently—
 - (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory paternity pay, or
 - (b) provides any incorrect information or document of a kind mentioned in regulations under section 10(1) so far as relating to statutory paternity pay,he shall be liable to a penalty not exceeding £300.
- (2) Where a person fraudulently or negligently—
 - (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory adoption pay, or
 - (b) provides any incorrect information or document of a kind mentioned in regulations under section 10(1) so far as relating to statutory adoption pay,he shall be liable to a penalty not exceeding £3,000.
- (3) Where an employer fraudulently or negligently makes incorrect payments of statutory paternity pay, he shall be liable to a penalty not exceeding £300.
- (4) Where an employer fraudulently or negligently makes incorrect payments of statutory adoption pay, he shall be liable to a penalty not exceeding £3,000.
- (5) Where an employer fraudulently or negligently—
 - (a) produces any incorrect document or record, provides any incorrect information or makes any incorrect return, of a kind mentioned in regulations under section 8E, or
 - (b) receives incorrect payments in pursuance of regulations under section 7,he shall be liable to a penalty not exceeding £3,000 or, if the offence relates only to statutory paternity pay, £300.
- (6) Schedule 1 (penalties: procedure and appeals) has effect in relation to penalties under this section.

13 Supply of information held by the Board

- (1) This section applies to information which is held for the purposes of functions relating to statutory paternity pay or statutory adoption pay—
 - (a) by the Board, or
 - (b) by a person providing services to the Board, in connection with the provision of those services.
- (2) Information to which this section applies may be supplied—
 - (a) to the Secretary of State or the Department, or
 - (b) to a person providing services to the Secretary of State or the Department, for use for the purposes of functions relating to social security, child support or war pensions.

14 Supply of information held by the Secretary of State

- (1) This section applies to information which is held for the purposes of functions relating to statutory paternity pay or statutory adoption pay—
 - (a) by the Secretary of State or the Department, or

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(b) by a person providing services to the Secretary of State or the Department, in connection with the provision of those services.

(2) Information to which this section applies may be supplied—

- (a) to the Board, or
- (b) to a person providing services to the Board,

for use for the purposes of functions relating to statutory paternity pay or statutory adoption pay.

15 Use of information by the Board

(1) Information which is held—

- (a) by the Board, or
- (b) by a person providing services to the Board, in connection with the provision of those services,

for the purposes of any functions specified in any paragraph of subsection (2) below may be used for the purposes of, or for any purposes connected with, the exercise of any functions specified in any other paragraph of that subsection, and may be supplied to any person providing services to the Board for those purposes.

(2) The functions referred to in subsection (1) above are—

- (a) the functions of the Board in relation to statutory paternity pay;
- (b) their functions in relation to statutory adoption pay; and
- (c) their functions in relation to tax, contributions, statutory sick pay, statutory maternity pay or tax credits, or functions under Part 3 of the Pension Schemes Act 1993 (c. 48) (certification of pension scheme, etc.) or Part 3 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (corresponding provisions for Northern Ireland).

(3) In subsection (2)(c) above, “contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

16 Interpretation

In sections 5 to 15—

“the Board” means the Commissioners of Inland Revenue;

“the Department” means the Department for Social Development or the Department for Employment and Learning;

“employer” and “employee” have the same meanings as in Parts 12ZA and 12ZB of the Social Security Contributions and Benefits Act 1992.