

**2002 No. 2819**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Statutory Paternity Pay and Statutory Adoption Pay  
(National Health Service Employees) 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 on her by virtue of sections 171ZJ(9) and (10) and 171ZS(9) and (10) of the Social Security Contributions and Benefits Act 1992(a) and with the concurrence of the Commissioners of Inland Revenue(b) by this instrument, which contains only provision made by virtue of sections 2 and 4 of the Employment Act 2002(c) and is made before the end of the period of 6 months from the coming into force of those enactments(d) 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 (National Health Service Employees) 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;

“the 1977 Act” means the National Health Service Act 1977(e);

“the 1978 Act” means the National Health Service (Scotland) Act 1978(f);

“the 1990 Act” means the National Health Service and Community Care Act 1990(g);

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002(h);

“Health Authority” means, in relation to Wales, a Health Authority established under section 8 of the 1977 Act and in relation to Scotland means a Health Board established under section 2 of the 1978 Act;

“Primary Care Trust” means a Primary Care Trust established under section 16A of the 1977 Act;

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(a) 1992 c. 4. Section 171ZJ was inserted by section 2 of the Employment Act 2002 (c. 22) and section 171ZS by section 4 of that Act.

(b) See sections 171ZJ(12) and 171ZS(12) of the Social Security Contributions and Benefits Act 1992.

(c) 2002 c. 22.

(d) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

(e) 1977 c. 49. Section 8 of the 1977 Act was substituted by section 1(2) of the 2002 Act and section 16A was inserted by section 2 of the Health Act 1999 (c. 8).

(f) 1978 c. 29.

(g) 1990 c. 19.

(h) 2002 c. 17.

“statutory adoption pay period” means the period prescribed under section 171ZN(2) of the Act as the period in respect of which statutory adoption pay is payable to a person;

“statutory paternity pay period” means the period determined in accordance with section 171ZE(2) of the Act as the period in respect of which statutory paternity pay is payable to a person;

“Strategic Health Authority” means a Strategic Health Authority established under section 8 of the 1977 Act.

### **Treatment of more than one contract of employment as one contract**

2. Where, in consequence of the establishment of one or more National Health Service Trusts under section 5 of the 1990 Act or section 12A of the 1978 Act, a person’s contract of employment is treated by a scheme under section 6 of the 1990 Act or section 12B of the 1978 Act(a) as divided so as to constitute two or more contracts, or where an order under paragraph 23(1) of Schedule 5A to the 1977 Act(b) provides that a person’s contract is so divided, he may elect for all those contracts to be treated as one contract for the purposes of Parts 12ZA and 12ZB of the Act.

### **Notification of election**

3. A person who makes an election under regulation 2 above shall give written notification of that election to each of his employers under the two or more contracts of employment mentioned in that regulation at least 28 days before the beginning of the statutory paternity pay period or adoption pay period or, if in the particular circumstances that is not practicable, as soon as is reasonably practicable.

### **Provision of information**

4. A person who makes an election under regulation 2 above shall, within 28 days of giving notification of that election or, if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter, provide each of his employers under the two or more contracts of employment mentioned in that regulation with the following information—

- (a) the name and address of each of those employers;
- (b) the date his employment with each of those employers commenced, and
- (c) details of his normal weekly earnings during the relevant period from each employer, and for this purpose the expressions “normal weekly earnings” and “relevant period” have the same meanings as they have for the purposes of Parts 12ZA and 12ZB of the Act(c).

### **Treatment of two or more employers as one**

5. The employer to be regarded for the purposes of statutory paternity pay or statutory adoption pay as the employer under the one contract where two or more contracts are treated as one in accordance with regulation 2 above shall be—

- (a) in the case of a person whose contract of employment is treated by a scheme under section 6 of the 1990 Act or section 12B of the 1978 Act as divided—
  - (i) the Health Authority or Primary Care Trust from which the person was transferred in a case where any one of the contracts of employment is with that Health Authority or Primary Care Trust; or
  - (ii) the first NHS trust to which a contract of employment was transferred in a case where none of the contracts of employment is with the Health Authority or Primary Care Trust; or

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(a) Sections 12A and 12B of the 1978 Act were inserted by section 31 of the 1990 Act.

(b) Schedule 5A was inserted into the 1977 Act by Schedule 1 to the Health Act 1999, and applies only to England.

(c) See regulation 40 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (S.I. 2002/2822).

- (b) in the case of a person whose contract of employment is divided as provided by an order under paragraph 23(1) of Schedule 5A to the 1977 Act<sup>(a)</sup>—
- (i) the Strategic Health Authority, NHS trust or Primary Care Trust from which the person was transferred, in a case where any one of the contracts of employment is with that body; or
  - (ii) the first Primary Care Trust to which a contract of employment was transferred in a case where none of the contracts of employment is with the body from which he was transferred.

**Time for which an election is to have effect**

6. An election made under regulation 2 shall lapse at the end of the statutory paternity pay period or, as the case may be, the adoption pay period.

11th November 2002

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

The Commissioners of Inland Revenue hereby concur.

13th November 2002

*Nick Montagu,*  
*Ann Chant,*  
Two of the Commissioners of Inland Revenue

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<sup>(a)</sup> Paragraph 35(5) of Part 1 of Schedule 1 to the 2002 Act substituted “a Strategic Health Authority” for “a Health Authority” in paragraph 23(2) of Schedule 5A to the 1977 Act; accordingly transfer of staff orders under paragraph 23(1) of that Schedule can be made in relation to employees of a Strategic Health Authority.

## 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, made under provisions inserted into the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) by sections 2 and 4 of the Employment Act 2002, make provision for certain cases where an employee of the National Health Service has two or more contracts of employment for that employee to elect, for the purposes of Part 12ZA of the 1992 Act (statutory paternity pay) and Part 12ZB of that Act (statutory adoption pay), to treat those contracts as one contract.

Regulation 2 provides for employees whose contract of employment has been divided into two or more contracts with different bodies, either as a consequence of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, or where this is provided for by a transfer of staff order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977, to elect to have those contracts treated as one contract for the purposes of entitlement to statutory paternity pay or statutory adoption pay.

Regulation 3 provides for the manner in which, and the time within which, such an election is to be made.

Regulation 4 makes provision for the information that is to be provided by a person to his employers.

Regulation 5 provides for one of a person’s employers under the two or more contracts to be regarded for the purposes of statutory paternity pay and statutory adoption pay as his employer under the one contract.

Regulation 6 provides for the time within which an election is to have effect.

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