

2004 No. 488

TERMS AND CONDITIONS OF EMPLOYMENT

**The Statutory Paternity Pay and Statutory Adoption Pay
(Amendment) Regulations 2004**

Made - - - - - *26th February 2004*

Laid before Parliament *1st March 2004*

Coming into force - - - *6th April 2004*

The Secretary of State, in exercise of the powers conferred on her by sections 171ZB(2)(a)(ii), 171ZJ(1) and (7), 171ZK, 171ZS(1) and (7), 171ZT and 175(1) of the Social Security Contributions and Benefits Act 1992(a), with the concurrence of the Commissioners of Inland Revenue in so far as such concurrence is required and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(b), 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 (Amendment) Regulations 2004, and shall come into operation on 6th April 2004.

(2) In these Regulations—

“the General Regulations” means the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(c);

“the Modification Regulations” means the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003(d);

“the Overseas Adoptions Regulations” means the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (No. 2) Regulations 2003(e).

Amendment of the General Regulations

2.—(1) The General Regulations shall be amended as follows.

(2) In regulation 11 (conditions of entitlement to statutory paternity pay (adoption): relationship with child and with person with whom the child is placed for adoption)—

(a) at the end of paragraph (2) (definition of “partner”), for “(3)” substitute “(2A)”;

(a) 1992 c.4; sections 171ZB, 171ZJ and 171ZK were inserted by section 2 of the Employment Act 2002 (c.22) and sections 171ZS and 171ZT were inserted by section 4 of that Act; sections 171ZJ(1) and 171ZS(1) are cited for the definition of “prescribed”.

(b) See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).

(c) S.I. 2002/2822.

(d) S.I. 2003/499.

(e) S.I. 2003/1194.

- (b) after paragraph (2), insert the following paragraph—
 - “(2A) The relatives of the adopter referred to in paragraph (2) are the adopter’s parent, grandparent, sister, brother, aunt or uncle.”;
- (c) in paragraph (3), for “(2)” substitute “(2A)”.

Amendment of the Modification Regulations

3.—(1) The Modification Regulations shall be amended as follows.

(2) In Schedule 1 (Application of Part 12ZA of the Social Security Contributions and Benefits Act to adoptions from overseas)—

- (a) omit the first modification to section 171ZB(2) of the Act (referring to subsection (3A));
- (b) after the third modification to section 171ZB(2) (relating to paragraph (a)(ii)), insert the following modification—

“In paragraph (b), omit “ending with the relevant week””;

- (c) for the modification to section 171ZB(3) (defining the relevant week), substitute the following modification—

“For subsection (3) substitute—

“(3) The references in subsection (2)(c) and (d) to the relevant week are to—

- (a) the week in which official notification is sent to the adopter, or
- (b) the week at the end of which the person satisfies the condition in subsection (2)(b), whichever is the later.”;

- (d) omit the modification inserting section 171ZB(3A).

(3) In Schedule 2 (Application of Part 12ZB of the Social Security Contributions and Benefits Act to adoptions from overseas)—

- (a) omit the first modification to section 171ZL(2) of the Act (referring to subsection (3A));
- (b) after the second modification to subsection 171ZL(2) (relating to paragraph (a)), insert the following modification—

“In paragraph (b), omit “ending with the relevant week””;

- (c) for the modification to subsection 171ZL(3) (defining the relevant week), substitute the following modification—

“For subsection (3) substitute—

“(3) The reference in subsection (2)(d) to the relevant week is to—

- (a) the week in which official notification is sent to the adopter, or
- (b) the week at the end of which the person satisfies the condition in subsection (2)(b), whichever is the later.”;

- (d) omit the modification inserting section 171ZL(3A).

Amendment of the Overseas Adoptions Regulations

4.—(1) The Overseas Adoptions Regulations shall be amended as follows.

(2) In regulation 3(4) (application of regulation 40 of the General Regulations subject to modified definitions), for paragraph (a) (definition of the “appropriate date”) substitute—

“(a) in paragraph (2)(b), for “the week in which the adopter is notified of being matched with the child for the purposes of adoption” there were substituted—

“the week in which—

- (i) official notification is sent to the adopter or
- (ii) the person satisfies the condition in section 171ZB(2)(b) or 171ZL(2)(b) of the Act (26 weeks’ continuous employment),

whichever is the later”.”

23rd February 2004

Gerry Sutcliffe,
Parliamentary Under Secretary of Employment
Relations, Competition and Consumers,
Department of Trade and Industry

The Commissioners of Inland Revenue hereby concur

26th February 2004

Helen Ghosh,
Nick Montagu,
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions in three statutory instruments relating to statutory paternity pay and statutory adoption pay.

Regulation 2 amends regulation 11 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (“the General Regulations”), which concerns certain of the conditions of entitlement to statutory paternity pay (adoption). One of the conditions is that a person is married to or the partner of a child’s adopter. The amendment remedies an omission from the definition of “partner”, listing relatives of the adopter who are not to be regarded as his or her partner.

Regulation 3 amends provisions in the Schedules to the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (“the Modification Regulations”). The provisions in question modify the conditions of entitlement to statutory paternity pay (adoption) and statutory adoption pay contained in sections 171ZB and 171ZL of the 1992 Act, to take account of differences between the procedures for domestic adoptions and those for adoptions from overseas. The condition, in subsection (2)(b) of both sections, requiring 26 weeks’ continuous employment ending with the week in which the adopter is notified of being matched with a child for the purposes of adoption is modified – by a change in the definition of “the relevant week” – to refer to 26 weeks’ continuous employment ending with the week in which the adopter is sent official notification that he or she has been approved as a suitable adoptive parent. However, by virtue of an exception inserted as subsection (3A) of sections 171ZB and 171ZL, a person is enabled to qualify by virtue of employment partly before and partly after official notification is sent. The amendments in these Regulations remove both the requirement that a person’s 26 weeks’ employment must be prior to the week of notification and the exception to it. In consequence a person is enabled to satisfy the qualifying employment condition even where he or she was in a different employment or unemployed at the time at which official notification was received.

The amendments in regulation 3 also modify the definition of “the relevant week” for the purpose of the condition that a person’s normal weekly earnings exceed the lower earnings limit for national insurance during the 8 weeks ending with the relevant week. The relevant week becomes the later of the week in which official notification is sent and the week in which the person completes the qualifying employment condition.

Regulation 4 amends regulation 3(4) of the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (No. 2) Regulations 2003 (“the Overseas Adoptions Regulations”), which modifies regulation 40 of the General Regulations in relation to adoptions from overseas. Regulation 40 provides for the calculation of a person’s normal weekly earnings by reference to a period linked to an “appropriate date”. In relation to statutory paternity pay (adoption) and statutory adoption pay, the appropriate date is defined as meaning the first day of the week after the week in which the adopter is notified of being matched with a child for the purpose of adoption. Regulation 3(4) of the Overseas Adoptions Regulations modifies the definition to refer to the week in which the adopter receives official notification. The amendment in these Regulations corresponds to that made to the definition of the relevant week. The appropriate date becomes the first day of the week after the official notification week or the week in which the qualifying employment requirement is satisfied, whichever is the later.

A Regulatory Impact Assessment of the estimated costs and benefits of these and other technical amendments proposed to the paternity and adoption pay and leave schemes has been prepared by the Department of Trade and Industry and has been placed in the Libraries of both Houses of Parliament. Copies are available to the public free of charge from Employment Relations Directorate, Room UG129, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET and on the DTI website at www.dti.gov.uk.

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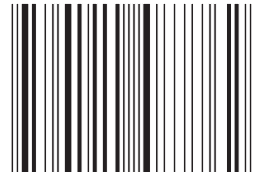
£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0287 3/2004 140287T 19585

ISBN 0-11-048776-1



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