
DRAFT STATUTORY INSTRUMENTS

2010 No.

**The Additional Statutory Paternity
Pay (General) Regulations 2010**

PART 2

ADDITIONAL STATUTORY PATERNITY PAY (BIRTH)

Entitlement to additional statutory paternity pay (birth)

- 4.—(1) A person (“P”) is entitled to additional statutory paternity pay (birth) if—
- (a) P satisfies the conditions—
 - (i) as to relationship with a child (“C”) and with C’s mother (“M”) specified in paragraph (2); and
 - (ii) as to continuity of employment and normal weekly earnings specified in paragraph (3);
 - (b) M satisfies the conditions specified in regulation 6;
 - (c) P intends to care for C during the additional statutory paternity pay period (birth) in respect of C;
 - (d) M has signed the declaration referred to in regulation 8(1)(c); and
 - (e) P has complied with the requirements of regulation 8 including, where applicable, the requirements in regulation 8(3).
- (2) The conditions referred to in paragraph (1)(a)(i) are that—
- (a) P is either—
 - (i) C’s father; or
 - (ii) is married to, or is the civil partner or the partner of, M but is not C’s father; and
 - (b) P has, or expects to have, the main responsibility (apart from any responsibility of M) for the upbringing of C.
- (3) Subject to regulation 5, the conditions referred to in paragraph (1)(a)(ii) are that—
- (a) P has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
 - (b) P’s normal weekly earnings for the period of eight weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) of the Act at the end of the relevant week; and
 - (c) P continues in employed earner’s employment with the employer by reference to whom the condition in sub-paragraph (a) is satisfied for a continuous period beginning with the relevant week and ending with the week before the additional statutory paternity pay period (birth) in respect of C begins.

(4) The references in paragraph (3) to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

Modification of entitlement conditions: early birth

5.—(1) Where C's birth occurs earlier than the 14th week before C's expected week of birth, regulation 4(3) shall have effect as if, for the conditions set out there, there were substituted the conditions that—

- (a) P would have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week had C been born after the relevant week;
- (b) P's normal weekly earnings for the period of eight weeks ending with the week immediately preceding C's actual week of birth are not less than the lower earnings limit in force under section 5(1)(a) of the Act immediately before the commencement of C's actual week of birth; and
- (c) P continues in employed earner's employment with the employer by reference to whom the condition in sub-paragraph (a) is satisfied for a continuous period beginning with the date of C's birth and ending with the week before the additional statutory paternity pay period (birth) in respect of C begins.

(2) The references in paragraph 5(1)(a) to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

Conditions to be satisfied by the child's mother

6. The conditions referred to in regulation 4(1)(b) are that M—
- (a) became entitled, by reference to becoming pregnant with C, to—
 - (i) a maternity allowance, or
 - (ii) statutory maternity pay;
 - (b) has taken action constituting a return to work within the meaning of regulation 19;
 - (c) has taken the action referred to in paragraph (b) not less than two weeks after the birth of C; and
 - (d) has at least two weeks of her maternity allowance period or maternity pay period which remain unexpired.

Additional statutory paternity pay period (birth)

7.—(1) For the purposes of section 171ZEE(2)(a) of the Act, the date on which the additional statutory paternity pay period (birth) in respect of C begins is—

- (a) the date specified by P in accordance with regulation 8(2)(d) or last varied in accordance with regulation 8(6), or
- (b) if later, the date of M's taking action constituting a return to work within the meaning of regulation 19,

being, in either case, a date which falls no earlier than 20 weeks after the date of C's birth.

(2) For the purposes of section 171ZEE(2)(b)(ii) of the Act, the date on which the additional statutory paternity pay period (birth) in respect of C ends is the date specified by P in accordance with regulation 8(2)(e) or last varied in accordance with regulation 8(6).

(3) For the purposes of section 171ZEE(4)(a) of the Act, the additional statutory paternity pay period (birth) shall not last longer than 26 weeks.

- (4) This paragraph applies instead of paragraph (2) where—
 - (a) M dies after the beginning but before the end of the additional statutory paternity pay period (birth) in respect of C; and
 - (b) as soon as reasonably practicable after M's death, P gives the person paying P additional statutory paternity pay (birth) notice in writing of M's death.
- (5) Where paragraph (4) applies, the date on which the additional statutory paternity pay period (birth) in respect of C ends is the date—
 - (a) on which the maternity allowance period or maternity pay period in respect of C, which would have applied but for M's death, would have ended; or
 - (b) if earlier, such date which, for the purposes of section 171ZEE(2)(b)(ii) of the Act, P may specify in the notice given under paragraph (4)(b).

Application for, and evidence of entitlement to, additional statutory paternity pay (birth)

8.—(1) P shall apply for additional statutory paternity pay (birth) to the person (“E”) who will be liable to pay P such pay by providing to E—

- (a) the information, in writing, specified in paragraph (2);
 - (b) a written declaration, signed by P—
 - (i) that that information is correct;
 - (ii) that P intends to care for C during the additional statutory paternity pay period (birth) in respect of C; and
 - (iii) that P meets the conditions in regulation 4(2); and
 - (c) a written declaration, signed by M—
 - (i) that she has given notice to her employer that she is returning to work;
 - (ii) that she satisfies the condition in regulation 6(a);
 - (iii) specifying her name, address and National Insurance number;
 - (iv) specifying the start date of her maternity allowance period or maternity pay period in respect of C;
 - (v) specifying the date on which she intends to return to work;
 - (vi) confirming that, in relation to C, P is, to M's knowledge, the sole applicant for additional statutory paternity pay; and
 - (vii) providing M's consent as regards the processing by E of the information provided pursuant to sub-paragraphs (i) to (vi).
- (2) The information referred to in paragraph (1)(a) is as follows—
- (a) P's name;
 - (b) C's expected week of birth;
 - (c) C's date of birth;
 - (d) the date on which P expects that E's liability to pay additional statutory paternity pay (birth) will begin; and
 - (e) the date on which P expects that E's liability to pay additional statutory paternity pay (birth) will end.
- (3) P shall also provide, if E so requests within 28 days of receiving the information and declarations referred to in paragraph (1)—
- (a) a copy of C's birth certificate; and

- (b) the name and business address of M's employer (or, if M is self-employed, her business address).
- (4) The information and declarations referred to in paragraph (1) must be provided to E at least eight weeks before the date specified by P pursuant to paragraph (2)(d).
- (5) P must give E what is requested under paragraph (3) within 28 days of E requesting it.
- (6) P may, after applying for additional statutory paternity pay (birth) under paragraph (1), withdraw that application, vary the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will begin, or (before the additional statutory paternity pay period (birth) in respect of C has begun), vary the date on which it is expected that E's liability to pay additional statutory paternity pay will end, by notice in writing to E given—
 - (a) if withdrawing an application, at least six weeks before the date specified by P pursuant to paragraph (2)(d), or
 - (b) if varying the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will begin, at least six weeks before the earlier of the date varied or the new date, or
 - (c) if varying the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will end, at least six weeks before the earlier of the date varied or the new date, or
 - (d) in a case where it was not reasonably practicable to give notice in accordance with subparagraph (a), (b) or (c), as soon as is reasonably practicable.
- (7) When P has applied for additional statutory paternity pay (birth) under paragraph (1), P must give E written notice as soon as reasonably practicable if at any time—
 - (a) P no longer satisfies the conditions in regulation 4(2); or
 - (b) M no longer intends to take action constituting a return to work within the meaning of regulation 19.
- (8) When E has been provided with all of the information and the declarations referred to in paragraph (1) (together with, if applicable, what E has requested under paragraph (3)), E must, within 28 days, confirm the start and end dates of E's liability to pay P additional statutory paternity pay (birth) by notice in writing to P.

Entitlement to additional statutory paternity pay (birth) in the event of the death of the mother

- 9.—(1) In a case where M dies before the end of her maternity allowance period or maternity pay period in respect of C (but before the additional statutory paternity pay period (birth) in respect of C has begun)—
- (a) the provisions in regulations 4 to 6 shall apply, subject to the following modifications—
 - (i) regulation 4(1)(d) shall not apply;
 - (ii) regulation 4(1)(e) shall apply—
 - (aa) as if the references to regulation 8 were references to regulation 10; and
 - (bb) in a case where the date of which P informs E pursuant to regulation 10(1)(a) is earlier than the date by which P has complied with the other requirements of regulation 10, as if such other requirements had been complied with on such earlier date provided that they are complied with as soon as reasonably practicable thereafter;
 - (iii) the condition in regulation 4(2)(a)(ii) shall be taken to be satisfied if it would have been satisfied but for the fact that M had died;

- (iv) the condition in regulation 6(a) shall be taken to be satisfied if M would have satisfied it but for the fact that M had died; and
- (v) regulation 6(b), (c) and (d) shall not apply;
- (b) regulation 7 shall not apply;
- (c) for the purposes of section 171ZEE(2)(a) of the Act, the date on which the additional statutory paternity pay period (birth) in respect of C begins is such date, being the date of M's death or a later date, as P informs E of in accordance with regulation 10(1)(a) or as is last varied in accordance with regulation 10(7) or 10(8);
- (d) for the purposes of section 171ZEE(2)(b)(ii) of the Act, the date on which the additional statutory paternity pay period (birth) in respect of C ends is, where earlier than the relevant date, the date specified by P in accordance with regulation 10(2)(d) or last varied in accordance with regulation 10(7) or 10(8);
- (e) for the purposes of section 171ZEE(4)(a) of the Act, the additional statutory paternity pay period (birth) in respect of C shall not last longer than 39 weeks; and
- (f) regulation 8 shall be replaced by regulation 10.

(2) In paragraph (2)(d), "the relevant date" means the date on which the maternity allowance period or maternity pay period in respect of C which would have applied but for M's death, would have ended.

(3) References in this regulation to M's maternity allowance period or maternity pay period in respect of C include, where M's death occurred before her maternity allowance period or maternity pay period in respect of C started, references to such period as would have existed but for the fact that M had died.

Application for, and evidence of entitlement to, additional statutory paternity pay (birth) in the event of the death of the mother

10.—(1) P shall apply for additional statutory paternity pay (birth) to the person ("E") who will be liable to pay P such pay by—

- (a) informing E of the date on which P wishes the additional statutory paternity pay period (birth) in respect of C to begin or the date (if in the past) on which P wishes such period to have begun;
- (b) providing E with the information, in writing, specified in paragraph (2); and
- (c) by providing E with a written declaration, signed by P—
 - (i) that the information referred to in sub-paragraph (b) is correct;
 - (ii) that P intends to care for C during the additional statutory paternity pay period (birth) in respect of C; and
 - (iii) that P meets the conditions in regulation 4(2) (as modified by regulation 9(1)(a)(iii)).

(2) The information referred to in paragraph (1)(b) is as follows—

- (a) P's name;
- (b) C's expected week of birth;
- (c) C's date of birth;
- (d) the date on which P expects that E's liability to pay additional statutory paternity pay (birth) will end;
- (e) M's name, address, and national insurance number;
- (f) the start date of M's maternity pay period or maternity allowance period in respect of C, or, where M's death occurred before her maternity allowance period or maternity pay period

in respect of C started, the date that that period would have started but for the fact that M had died; and

(g) the date of M's death.

(3) P shall also provide, if E so requests within 28 days of receiving the information and declaration referred to in paragraph (1)—

(a) a copy of C's birth certificate; and

(b) the name and business address of M's employer (or, if M was self-employed, her business address).

(4) Subject to paragraph (5), the information and declaration referred to in paragraph (1) must be provided to E as soon as reasonably practicable after, and in any event within eight weeks of, the date of M's death.

(5) If provided at least six weeks before the date of which P informs E pursuant to paragraph (1) (a), the information and declaration referred to in paragraph (1)(b) and (c) may be provided eight or more weeks after the date of M's death.

(6) P must give E what is requested under paragraph (3) within 28 days of E requesting it.

(7) Within eight weeks of the date of M's death, P may, after applying for additional statutory paternity pay (birth) under paragraph (1) and by giving E notice in writing, withdraw that application, vary the date (if in the future) on which P wishes the additional statutory paternity pay period (birth) in respect of C to begin, or (either before or after such period has begun) vary the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will end, with immediate effect.

(8) Eight or more weeks after the date of M's death, P may, after applying for additional statutory paternity pay (birth) under paragraph (1), withdraw that application, vary the date (if in the future) on which P wishes the additional statutory paternity pay period (birth) in respect of C to begin, or (before such period has begun), vary the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will end, by notice in writing to E given—

(a) if withdrawing an application, at least six weeks before the date of which P has informed E pursuant to paragraph (1)(a), or

(b) if varying the date on which P wishes the additional statutory paternity pay period (birth) in respect of C to begin, at least six weeks before the earlier of the date varied or the new date, or

(c) if varying the date on which it is expected that E's liability to pay additional statutory paternity pay (birth) will end, at least six weeks before the earlier of the date varied or the new date, or

(d) in a case where it was not reasonably practicable to give notice in accordance with sub-paragraph (a), (b) or (c), as soon as is reasonably practicable.

(9) When E has been provided with all of the information and the declaration referred to in paragraph (1) (together with, if applicable, what E has requested under paragraph (3)), E must, within 28 days, confirm the date on which the additional statutory paternity pay period (birth) in respect of C begins or begun and the date on which E's liability to pay P additional statutory paternity pay (birth) ends, by notice in writing to P.

Entitlement to additional statutory paternity pay (birth) where there is more than one employer

11.—(1) Additional statutory paternity pay (birth) shall be payable to a person in respect of a statutory pay week during any part of which that person works only for an employer—

(a) who is not liable to pay that person additional statutory paternity pay (birth); and

- (b) for whom that person worked in the week immediately preceding the 14th week before the expected week of birth.
- (2) In this regulation, “statutory pay week” means a week that that person has chosen as a week in respect of which additional statutory paternity pay (birth) shall be payable.