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STATUTORY INSTRUMENTS

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**2002 No. 2820**

**TERMS AND CONDITIONS OF  
EMPLOYMENTSOCIAL SECURITY**

**The Statutory Paternity Pay and Statutory  
Adoption Pay (Administration) 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 sections 7(1), (2)(a) and (b), (4)(a), (b) and (c) and (5), 8(1) and (2)(a), (b) and (c), 10(1) and (2) and 51(1) of the Employment Act 2002<sup>(1)</sup> and sections 8(1)(f) and (ga) and 25 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999<sup>(2)</sup> and with the concurrence of the Commissioners of Inland Revenue, hereby makes the following Regulations—

**Citation and commencement**

1. These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 and shall come into force on 8th December 2002.

**Interpretation**

2.—(1) In these Regulations—

“adopter”, in relation to a child, means a person with whom the child is matched for adoption;

“adoption leave” means leave under section 75A of the Employment Rights Act 1996<sup>(3)</sup>;

“adoption pay period” means the period prescribed under section 171ZN(2) of the Contributions and Benefits Act<sup>(4)</sup> as the period in respect of which statutory adoption pay is payable to a person;

“the Board” means the Commissioners of Inland Revenue;

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(1) 2002 c. 22.

(2) 1999 c. 2; paragraph (f) of section 8(1) was amended, and paragraph (ga) inserted, by section 9(2) of the Employment Act 2002.

(3) 1996 c. 18; section 75A was inserted by section 3 of the Employment Act 2002.

(4) Sections 171ZA–171ZK of the Contributions and Benefits Act were inserted by section 2 of the Employment Act 2002, and sections 171ZL–171ZT by section 4 of that Act.

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992<sup>(5)</sup>;

“contributions payments” has the same meaning as in section 7 of the Employment Act;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001<sup>(6)</sup>;

“the Employment Act” means the Employment Act 2002;

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“income tax quarter” means the period beginning on the 6th day of April and ending on the 5th day of July, the period beginning on the 6th day of July and ending on the 5th day of October, the period beginning on the 6th day of October and ending on the 5th day of January or the period beginning on the 6th day of January and ending on the 5th day of April;

“paternity leave” means leave under section 80A or section 80B of the Employment Rights Act 1996<sup>(7)</sup>;

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

“statutory adoption pay” means any payment under section 171ZL of the Contributions and Benefits Act;

“statutory paternity pay” means any payment under section 171ZA or section 171ZB of the Contributions and Benefits Act;

“tax year” means the 12 months beginning with 6th April in any year;

“writing” includes writing delivered by means of electronic communications approved by directions issued by the Board pursuant to regulations under section 132 of the Finance Act 1999<sup>(8)</sup>

(2) Any reference in these Regulations to the employees of an employer includes former employees of his.

### **Funding of employers' liabilities to make payments of statutory paternity or statutory adoption pay**

3.—(1) An employer who has made any payment of statutory paternity pay or statutory adoption pay shall be entitled—

- (a) to an amount equal to 92 per cent. of such payment; or
- (b) if the payment qualifies for small employer’s relief by virtue of section 7(3) of the Employment Act—
  - (i) to an amount equal to such payment; and
  - (ii) to an additional payment equal to the amount to which the employer would have been entitled under section 167(2)(b) of the Contributions and Benefits Act had the payment been a payment of statutory maternity pay.

(2) The employer shall be entitled in either case (a) or case (b) to apply for advance funding in respect of such payment in accordance with regulation 4, or to deduct it in accordance with regulation 5 from amounts otherwise payable by him.

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(5) 1992 c. 4.

(6) S.I.2001/1004.

(7) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002.

(8) 1999 c. 16.

### **Application for funding from the Board**

**4.—(1)** If an employer is entitled to a payment determined in accordance with regulation 3 in respect of statutory paternity pay or statutory adoption pay which he is required to pay to an employee or employees for an income tax month or income tax quarter, and the payment exceeds the aggregate of—

- (a) the total amount of tax which the employer is required to pay to the collector of taxes in respect of the deductions from the emoluments of his employees in accordance with the Income Tax (Employments) Regulations 1993<sup>(9)</sup> for the same income tax month or income tax quarter,
- (b) the total amount of the deductions made by the employer from the emoluments of his employees for the same income tax month or income tax quarter in accordance with regulations under section 22(5) of the Teaching and Higher Education Act 1998<sup>(10)</sup> or section 73B of the Education (Scotland) Act 1980<sup>(11)</sup> or in accordance with article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998<sup>(12)</sup>,
- (c) the total amount of contributions payments which the employer is required to pay to the collector of taxes in respect of the emoluments of his employees (whether by means of deduction or otherwise) in accordance with the Contributions Regulations for the same income tax month or income tax quarter, and
- (d) the total amount of payments which the employer is required to pay to the collector of taxes in respect of the deductions made on account of tax from payments to sub-contractors in accordance with section 559 of the Income and Corporation Taxes Act 1988<sup>(13)</sup> for the same income tax month or income tax quarter,

the employer may apply to the Board in accordance with paragraph (2) for funds to pay the statutory paternity pay or statutory adoption pay (or so much of it as remains outstanding) to the employee or employees.

(2) Where—

- (a) the condition in paragraph (1) is satisfied, or
- (b) the employer considers that the condition in paragraph (1) will be satisfied on the date of any subsequent payment of emoluments to one or more employees who are entitled to payment of statutory paternity pay or statutory adoption pay,

the employer may apply to the Board for funding in a form approved for that purpose by the Board.

(3) An application by an employer under paragraph (2) shall be for an amount up to, but not exceeding, the amount of the payment to which the employer is entitled in accordance with regulation 3 in respect of statutory paternity pay and statutory adoption pay which he is required to pay to an employee or employees for the income tax month or income tax quarter to which the payment of emoluments relates.

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(9) S.I. 1993/744; regulation 40 (concerning monthly payments) was amended by regulation 6 of S.I. 1993/2276; regulation 41 (concerning quarterly payments) was amended by regulation 7 of S.I. 1993/2276, regulation 2 of S.I. 2000/1152 and regulation 3 of S.I. 2000/2742.

(10) 1998 c. 30.

(11) 1980 c. 44.

(12) S.I. 1998/1760 (N.I. 14).

(13) 1988 c. 1; section 559 was amended by section 139 of, and paragraph 1 of Schedule 27 to, the Finance Act 1995 (c. 4) and partly repealed by Part 8(21) of Schedule 29 to that Act; also amended by section 54(5) of the Finance Act 1997 (c. 16) and by section 55(2) of, and paragraph 2 of Schedule 8 to, the Finance Act 1998 (c. 36), and partly repealed by Part 3(1) of Schedule 40 to the Finance Act 2002 (c. 23).

### **Deductions from payments to the Board**

5. An employer who is entitled to a payment determined in accordance with regulation 3 may recover such payment by making one or more deductions from the aggregate of the amounts specified in sub-paragraphs (a) to (d) of regulation 4(1) except where and in so far as—

- (a) those amounts relate to earnings paid before the beginning of the income tax month or income tax quarter in which the payment of statutory paternity pay or statutory adoption pay was made;
- (b) those amounts are paid by him later than six years after the end of the tax year in which the payment of statutory paternity pay or statutory adoption pay was made;
- (c) the employer has received payment from the Board under regulation 4; or
- (d) the employer has made a request in writing under regulation 4 that the payment to which he is entitled in accordance with regulation 3 be paid to him and he has not received notification by the Board that the request is refused.

### **Payments to employers by the Board**

6. If the total amount which an employer is or would otherwise be entitled to deduct under regulation 5 is less than the payment to which the employer is entitled in accordance with regulation 3 in an income tax month or income tax quarter, and the Board are satisfied that this is so, then provided that the employer has in writing requested them to do so, the Board shall pay the employer such amount as the employer was unable to deduct.

### **Date when certain contributions are to be treated as paid**

7. Where an employer has made a deduction from a contributions payment under regulation 5, the date on which it is to be treated as having been paid for the purposes of section 7(5) of the Employment Act (when amount deducted from contributions payment to be treated as paid and received by the Board) is—

- (a) in a case where the deduction did not extinguish the contributions payment, the date on which the remainder of the contributions payment or, as the case may be, the first date on which any part of the remainder of the contributions payment was paid; and
- (b) in a case where the deduction extinguished the contributions payment, the 14th day after the end of the income tax month or income tax quarter during which there were paid the earnings in respect of which the contributions payment was payable.

### **Overpayments**

8.—(1) This regulation applies where funds have been provided to the employer pursuant to regulation 4 in respect of one or more employees and it appears to an officer of the Board that the employer has not used the whole or part of those funds to pay statutory paternity pay or statutory adoption pay.

(2) An officer of the Board shall decide to the best of his judgement the amount of funds provided pursuant to regulation 4 and not used to pay statutory paternity pay or statutory adoption pay and shall serve notice in writing of his decision on the employer.

(3) A decision under this regulation may cover funds provided pursuant to regulation 4—

- (a) for any one income tax month or income tax quarter, or more than one income tax month or income tax quarter, in a tax year, and

- (b) in respect of a class or classes of employees specified in the decision notice (without naming the individual employees), or in respect of one or more employees named in the decision notice.

(4) Subject to the following provisions of this regulation, Part 6 of the Taxes Management Act 1970(14) (collection and recovery) shall apply with any necessary modifications to a decision under this regulation as if it were an assessment and as if the amount of funds determined were income tax charged on the employer.

(5) Where an amount of funds determined under this regulation relates to more than one employee, proceedings may be brought for the recovery of that amount without distinguishing the amounts making up that sum which the employer is liable to repay in respect of each employee and without specifying the employee in question, and the amount determined under this regulation shall be one cause of action or one matter of complaint for the purposes of proceedings under section 65, 66 or 67 of the Taxes Management Act 1970(15).

(6) Nothing in paragraph (5) prevents the bringing of separate proceedings for the recovery of any amount which the employer is liable to repay in respect of each employee.

#### **Records to be maintained by employers**

9. Every employer shall maintain for three years after the end of a tax year in which he made payments of statutory paternity pay or statutory adoption pay to any employee of his a record of—

- (a) if the employee's paternity pay period or adoption pay period began in that year—
  - (i) the date on which that period began, and
  - (ii) the evidence of entitlement to statutory paternity pay or statutory adoption pay provided by the employee pursuant to regulations made under section 171ZC(3)(c) or section 171ZL(8)(c) of the Contributions and Benefits Act;
- (b) the weeks in that tax year in which statutory paternity pay or statutory adoption pay was paid to the employee and the amount paid in each week; and
- (c) any week in that tax year which was within the employee's paternity pay period or adoption pay period but for which no payment of statutory paternity pay or statutory adoption pay was made to him and the reason no payment was made.

#### **Inspection of employers' records**

10.—(1) Every employer, whenever called upon to do so by any authorised officer of the Board, shall produce the documents and records specified in paragraph (2) to that officer for inspection, at such time as that officer may reasonably require, at the prescribed place.

- (2) The documents and records specified in this paragraph are—
  - (a) all wages sheets, deductions working sheets, records kept in accordance with regulation 9 and other documents and records whatsoever relating to the calculation or payment of statutory paternity pay or statutory adoption pay to his employees in respect of the years specified by such officer; or
  - (b) such of those wages sheets, deductions working sheets, or other documents and records as may be specified by the authorised officer.

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(14) 1970 c. 9.

(15) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998; section 66 was amended by section 57(2) of the Finance Act 1984 and the Schedule to S.I. 1991/724, and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001 (c. 9); section 67 was amended by section 58 of the Finance Act 1976 (c. 14) and partly repealed by Schedule 15 to that Act, further amended by section 156 of the Finance Act 1995 and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001.

- (3) The “prescribed place” mentioned in paragraph (1) means—
- (a) such place in Great Britain as the employer and the authorised officer may agree upon; or
  - (b) in default of such agreement, the place in Great Britain at which the documents and records referred to in paragraph (2)(a) are normally kept; or
  - (c) in default of such agreement and if there is no such place as is referred to in subparagraph (b) above, the employer’s principal place of business in Great Britain.
- (4) The authorised officer may—
- (a) take copies of, or make extracts from, any document or record produced to him for inspection in accordance with paragraph (1);
  - (b) remove any document or record so produced if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period.
- (5) Where any document or record is removed in accordance with paragraph (4)(b), the authorised officer shall provide—
- (a) a receipt for the document or record so removed; and
  - (b) a copy of the document or record, free of charge, within seven days, to the person by whom it was produced or caused to be produced where the document or record is reasonably required for the proper conduct of a business.
- (6) Where a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) shall not be regarded as breaking the lien.
- (7) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.

**Provision of information relating to entitlement to statutory paternity pay or statutory adoption pay**

**11.—**(1) Where an employer who has been given evidence of entitlement to statutory paternity pay or statutory adoption pay pursuant to regulations made under section 171ZC(3)(c) or section 171ZL(8)(c) of the Contributions and Benefits Act by a person who is or has been an employee decides that he has no liability to make payments of statutory paternity pay or statutory adoption pay to the employee, the employer shall furnish the employee with details of the decision and the reasons for it.

(2) Where an employer who has been given such evidence of entitlement to statutory adoption pay has made one or more payments of statutory adoption pay to the employee but decides, before the end of the adoption pay period, that he has no liability to make further payments to the employee because he has been detained in legal custody or sentenced to a term of imprisonment which was not suspended, the employer shall furnish the employee with—

- (a) details of his decision and the reasons for it; and
  - (b) details of the last week in respect of which a liability to pay statutory adoption pay arose and the total number of weeks within the adoption pay period in which such a liability arose.
- (3) The employer shall—
- (a) return to the employee any evidence provided by him as referred to in paragraph (1) or (2); and
  - (b) comply with the requirements imposed by paragraph (1) within 28 days of—
    - (i) in the case of entitlement to statutory paternity pay under section 171ZA(1) of the Contributions and Benefits Act, the day the employee gave notice of his intended

absence or the end of the fifteenth week before the expected week of birth, whichever is the later, or

(ii) in the case of entitlement to statutory paternity pay under section 171ZB(1) or of statutory adoption pay under section 171ZL(1) of the Contributions and Benefits Act, the end of the seven-day period that starts on the date on which the adopter is notified of having been matched with the child;

(c) comply with the requirements imposed by paragraph (2) within seven days of being notified of the employee's detention or sentence.

(4) For the purposes of paragraph (3)(b)(ii), an adopter is notified of having been matched with a child on the date on which he receives notification, under regulation 11(2) of the Adoption Agencies Regulations 1983(16) or regulation 12(3) of the Adoption Agencies (Scotland) Regulations 1996(17) that an adoption agency has decided that he would be a suitable adoptive parent for the child.

#### **Application for the determination of any issue arising as to, or in connection with, entitlement to statutory paternity pay or statutory adoption pay**

12.—(1) An application for the determination of any issue arising as to, or in connection with, entitlement to statutory paternity pay or statutory adoption pay may be submitted to an officer of the Board by the employee concerned.

(2) Such an issue shall be decided by an officer of the Board only on the basis of such an application or on his own initiative.

#### **Applications in connection with statutory paternity pay or statutory adoption pay**

13.—(1) An application for the determination of any issue referred to in regulation 12 shall be made in a form approved for the purpose by the Board.

(2) Where such an application is made by an employee, it shall—

- (a) be made to an officer of the Board within six months of the earliest day in respect of which entitlement to statutory paternity pay or statutory adoption pay is in issue;
- (b) state the period in respect of which entitlement to statutory paternity pay or statutory adoption pay is in issue; and
- (c) state the grounds (if any) on which the applicant's employer had denied liability for statutory paternity pay or statutory adoption pay in respect of the period specified in the application.

#### **Provision of information**

14.—(1) Any person specified in paragraph (2) shall, where information or documents are reasonably required from him to ascertain whether statutory paternity pay or statutory adoption pay is or was payable, furnish that information or those documents within 30 days of receiving a notification from an officer of the Board requesting such information or documents.

(2) The requirement to provide such information or documents applies to—

- (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 specified in paragraph (a);
- (c) any person who is, or has been, an employer of such a person as is specified in paragraph (a);

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(16) SI 1983/1964.

(17) SI 1996/3266.

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- (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).

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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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the funding of employers' liabilities to make payments of statutory paternity or statutory adoption pay; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners of Inland Revenue ("the Board").

Under regulation 3, an employer is entitled to an amount equal to 92 per cent. of payments made by him of statutory paternity pay ("s.p.p.") or statutory adoption pay ("s.a.p."), or the whole of such payments if he is a small employer. Regulations 4–7 provide for employers to be reimbursed through deductions from income tax, national insurance and other payments that they would otherwise make to the Board, and for the Board to fund payments to the extent that employers cannot be fully reimbursed in this way. Regulation 8 enables the Board to recover overpayments to employers.

Regulation 9 requires employers to maintain records relevant to the payment of s.p.p. or s.a.p. to employees or former employees, and regulation 10 empowers officers of the Board to inspect, copy or remove employers' payment records.

Regulation 11 requires an employer who decides not to make payments of s.p.p. or s.a.p., or not to make further payments of s.a.p., to an employee or former employee to give that person details of the decision and the reasons for it. Regulations 12 and 13 provide for officers of the Board to determine issues relating to a person's entitlement to s.p.p. or s.a.p. Regulation 14 provides for employers, employment agencies, persons claiming s.p.p. or s.a.p. and others to furnish information or documents to an officer of the Board on request.