
STATUTORY INSTRUMENTS

2002 No. 2822

**The Statutory Paternity Pay and Statutory
Adoption Pay (General) Regulations 2002**

PART 5

Statutory adoption pay

Adoption pay period

21.—(1) Subject to paragraph (2), a person entitled to statutory adoption pay may choose the adoption pay period to begin—

- (a) on the date on which the child is placed with him for adoption or, where he is at work on that day, on the following day;
- (b) subject to paragraph (2), on a predetermined date, specified by him, which is no more than 14 days before the date on which the child is expected to be placed with him and no later than that date.

(2) In a case where statutory adoption pay is payable in respect of a child matched with an adopter who is notified of having been matched before 6th April 2003, the statutory adoption pay period shall begin on a predetermined date which is—

- (a) on or after 6th April 2003, and
- (b) no more than 14 days before the date on which the child is expected to be placed with the adopter.

(3) Subject to paragraph (4), where the choice made is that mentioned in sub-paragraph (b) of paragraph (1) or in a case where paragraph (2) applies, the adoption pay period shall, unless the employer agrees to the adoption pay period beginning earlier, begin no earlier than 28 days after notice under section 171ZL(6) of the Act has been given.

(4) Where the beginning of the adoption pay period determined in accordance with paragraph (3) is later than the date of placement, it shall be the date of placement.

(5) Subject to regulation 22, the duration of any adoption pay period shall be a continuous period of 26 weeks.

(6) A choice made under paragraph (1), or a date specified under paragraph (2), is not irrevocable, but where a person subsequently makes a different choice, section 171ZL(6) of the Act shall apply to it.

Adoption pay period in cases where adoption is disrupted

22.—(1) Where—

- (a) after a child has been placed for adoption—
 - (i) the child dies;

(ii) the child is returned to the adoption agency under section 30(3) of the Adoption Act 1976 or section 30(3) of the Adoption (Scotland) Act 1978, or

(b) the adoption pay period has begun prior to the date the child has been placed for adoption, but the placement does not take place,

the adoption pay period shall terminate in accordance with the provisions of paragraph (2).

(2) The adoption pay period shall, in a case falling within paragraph (1), terminate 8 weeks after the end of the week specified in paragraph (3).

(3) The week referred to in paragraph (2) is—

- (a) in a case falling within paragraph (1)(a)(i), the week during which the child dies;
- (b) in a case falling within paragraph (1)(a)(ii), the week during which the child is returned;
- (c) in a case falling within paragraph (1)(b), the week during which the person with whom the child was to be placed for adoption is notified that the placement will not be made.

(4) For the purposes of paragraph (3), “week” means a period of seven days beginning with Sunday.

Additional notice requirements for statutory adoption pay

23.—(1) Where a person gives notice under section 171ZL(6) of the Act he shall at the same time give notice of the date on which the child is expected to be placed for adoption.

(2) Where the choice made in accordance with paragraph (1) of regulation 21 and notified in accordance with section 171ZL(6) of the Act is that mentioned in sub-paragraph (a) of that paragraph, the person shall give further notice to the person liable to pay him statutory adoption pay as soon as is reasonably practicable of the date the child is placed for adoption.

Evidence of entitlement to statutory adoption pay

24.—(1) A person shall provide evidence of his entitlement to statutory adoption pay by providing to the person who will be liable to pay it—

- (a) the information specified in paragraph (2), in the form of one or more documents provided to him by an adoption agency, containing that information;
- (b) a declaration that he has elected to receive statutory adoption pay, and not statutory paternity pay (adoption) under Part 12ZA of the Act.

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

- (a) the name and address of the adoption agency and of the person claiming payment of statutory adoption pay;
- (b) the date on which the child is expected to be placed for adoption or, where the child has already been placed for adoption, the date of placement; and
- (c) the date on which the person claiming payment of statutory adoption pay was informed by the adoption agency that the child would be placed for adoption with him.

(3) The information and declaration referred to in paragraph (1) shall be provided to the person liable to pay statutory adoption pay at least 28 days before the date chosen as the beginning of the adoption pay period in accordance with paragraph (1) of regulation 21, or, if that is not reasonably practicable, as soon as is reasonably practicable thereafter.

Entitlement to statutory adoption pay where there is more than one employer

25. Statutory adoption pay shall be payable to a person in respect of a week during any part of which he works only for an employer—

- (a) who is not liable to pay him statutory adoption pay; and
- (b) for whom he has worked in the week in which he is notified of being matched with the child.

Work during an adoption pay period

26.—(1) Where, in a case where statutory adoption pay is being paid to a person who works during the adoption pay period for an employer who is not liable to pay him statutory adoption pay and who does not fall within paragraph (b) of regulation 25, there shall be no liability to pay statutory adoption pay in respect of any remaining part of the adoption pay period.

(2) In a case falling within paragraph (1), the person shall notify the person liable to pay statutory adoption pay within 7 days of the first day during which he works during the adoption pay period.

(3) The notification contained in paragraph (2) shall be in writing if the person who has been liable to pay statutory adoption pay so requests.

Cases where there is no liability to pay statutory adoption pay

27.—(1) There shall be no liability to pay statutory adoption pay in respect of any week—

- (a) during any part of which the person entitled to it is entitled to statutory sick pay under Part 11 of the Act;
- (b) following that in which the person claiming it has died; or
- (c) subject to paragraph (2), during any part of which the person entitled to it is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended).

(2) There shall be liability to pay statutory adoption pay in respect of any week during any part of which the person entitled to it is detained in legal custody where that person—

- (a) is released subsequently without charge;
- (b) is subsequently found not guilty of any offence and is released; or
- (c) is convicted of an offence but does not receive a custodial sentence.

Statutory adoption pay and contractual remuneration

28. For the purposes of section 171ZP(4) and (5) of the Act, the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

- (a) by way of remuneration;
- (b) for incapacity for work due to sickness or injury;
- (c) by reason of the adoption of a child.

Termination of employment before start of adoption pay period

29.—(1) Where the employment of a person who satisfies the conditions of entitlement to statutory adoption pay terminates for whatever reason (including dismissal) before the adoption pay period chosen in accordance with regulation 21 has begun, the period shall begin 14 days before the expected date of placement or, where the termination occurs on, or within 14 days before, the expected date of placement, on the day immediately following the last day of his employment.

(2) In a case falling within paragraph (1), the notice requirements set out in section 171ZL(6) of the Act and these Regulations shall not apply.

Avoidance of liability for statutory adoption pay

30.—(1) A former employer shall be liable to make payments of statutory adoption pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and his contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.

(2) In a case falling within paragraph (1)—

- (a) the employee shall be treated as if he had been employed for a continuous period ending with the week in which he was notified of having been matched with the child for adoption; and
- (b) his normal weekly earnings shall be calculated by reference to his normal weekly earnings for the period of 8 weeks ending with the last day in respect of which he was paid under his former contract of service.