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STATUTORY INSTRUMENTS

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**2010 No. 151**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The Statutory Paternity Pay and Statutory  
Adoption Pay (Persons Abroad and Mariners)  
Regulations 2002 (Amendment) Regulations 2010

<i>Made</i>	- - - -	<i>27th January 2010</i>
<i>Laid before Parliament</i>		<i>1st February 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 171ZI, 171ZJ(1), 171ZR and 171ZS(1) of the Social Security Contributions and Benefits Act 1992(1).

The Secretary of State makes these Regulations with the concurrence of the Treasury(2) and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations shall not be referred to it(3).

**Citation and commencement**

1. These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (Amendment) Regulations 2010 and shall come into force on 6th April 2010.

**Amendment of the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002**

2. The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002(4) shall be amended in accordance with regulations 3 to 7.

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- (1) 1992 c. 4. Sections 171ZI and 171ZJ were inserted by section 2 of the Employment Act 2002 (c.22), and sections 171ZR and 171ZS were inserted by section 4 of that Act. Sections 171ZJ(1) and 171ZS(1) are cited because of the meaning ascribed to the word "prescribed".
- (2) See sections 171ZI(1) and 171ZR(1) of the Social Security Contributions and Benefits Act 1992.
- (3) Section 173(1)(b) of the Social Security Administration Act 1992 (c.5) provides that proposals in respect of regulations which would otherwise be referable to the Social Security Advisory Committee may not be so referred with the agreement of that Committee. These Regulations would otherwise be referable to that committee by virtue of section 172(1) of that Act.
- (4) S.I. 2002/2821.

**Amendment of regulation 1 (citation, commencement and interpretation)**

3.—(1) Regulation 1 is amended as follows—

(2) In paragraph (2), after the definition of “the Act”, insert the following definitions—

““additional statutory paternity pay (adoption)” means additional statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 171ZEB(2) of the Act are satisfied;

“additional statutory paternity pay (birth)” means additional statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 171ZEA(2) of the Act are satisfied;”.

(3) In paragraph (2), for the definition of “adopter” substitute—

““adopter”, in relation to a child, means—

- (a) in the context of ordinary statutory paternity pay, a person who has been matched with the child for adoption,
- (b) in the context of additional statutory paternity pay, a person who has been matched with the child for adoption and who has elected to take adoption leave under section 75A or 75B of the Employment Rights Act 1996 in order to care for the child;”.

(4) In paragraph (2), after the definition of “EEA State”, insert the following definition—

““foreign-going ship” means any ship or vessel which is not a home-trade ship;”.

(5) In paragraph (2), after the definition of “the General Regulations”, omit the definitions of “statutory paternity pay (birth)” and “statutory paternity pay (adoption)” and insert the following definitions—

““home-trade ship” includes—

- (a) every ship or vessel employed in trading or going within the following limits, that is to say, the United Kingdom (including for this purpose the Republic of Ireland), the Channel Islands, the Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive;
- (b) every fishing vessel not proceeding beyond the following limits—
  - on the South, Latitude 48°30’N,
  - on the West, Longitude 12°W, and
  - on the North, Latitude 61°N;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person in so far as their employment is as a serving member of the forces;

“ordinary statutory paternity pay (adoption)” means statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 171ZB(2) of the Act are satisfied;

“ordinary statutory paternity pay (birth)” means statutory paternity pay payable in accordance with the provisions of Part 12ZA of the Act where the conditions specified in section 171ZA(2) of the Act are satisfied;

“serving member of the forces” means a person, other than one mentioned in Part 2 of the Schedule, who, being over the age of 16, is a member of any establishment or organisation specified in Part 1 of that Schedule (being a member who gives full pay service) but does not include any such person while absent on desertion;”.

(6) For paragraph (3), substitute—

“(3) For the purposes of these Regulations—

- (a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child;
- (b) a person is notified of having been matched with a child on the date on which the person receives notification of the agency’s decision, under regulation 33(3) (a) of the Adoption Agencies Regulations 2005, regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005 or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009.”.

(7) After paragraph (3), insert—

“(4) For the purposes of these Regulations, the expressions “ship” and “ship or vessel” include hovercraft, except in regulation 8(3).”.

#### **Amendment of regulation 2 (restriction on scope)**

4. In regulation 2, for “(statutory paternity pay)” substitute “(ordinary and additional statutory paternity pay)”.

#### **Substitution of regulation 5 (entitlement to statutory paternity pay where person has worked in an EEA State)**

5. For regulation 5, substitute—

##### **“Entitlement to ordinary statutory paternity pay and additional statutory paternity pay where person has worked in an EEA State**

5.—(1) A person who is an employee or treated as an employee under regulation 3 and who—

- (a) in the week immediately preceding the 14th week before the expected week of the child’s birth was in employed earner’s employment with an employer in Great Britain; and
- (b) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in another EEA State,

shall be treated for the purposes of section 171ZA of the Act (entitlement to ordinary statutory paternity pay (birth)) and section 171ZEA of the Act (entitlement to additional statutory paternity pay (birth)) as having been employed in employed earner’s employment in those weeks in which the person was so employed in the other EEA State.

(2) A person who is an employee or treated as an employee under regulation 3 and who—

- (a) in the week in which the adopter is notified of being matched with the child for purposes of adoption was in employed earner’s employment with an employer in Great Britain; and
- (b) had in any week within the period of 26 weeks immediately preceding that week been employed by the same employer in another EEA State,

shall be treated for the purposes of section 171ZB of the Act (entitlement to ordinary statutory paternity pay (adoption)) and section 171ZEB of the Act (entitlement to

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additional statutory paternity pay (adoption)) as having been employed in employed earner's employment in those weeks in which the person was so employed in the other EEA State."

**Amendment of regulation 8 (mariners)**

6. Omit paragraph (1).

**Insertion of Schedule**

7. Insert the Schedule set out in the Schedule to these Regulations.

27th January 2010

*Pat McFadden*  
Minister of State for Business, Innovation and  
Skills  
Department for Business, Innovation and Skills  
*Tony Cunningham*  
*Dave Watts*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

27th January 2010

SCHEDULE

Regulation 7

“SCHEDULE

PART 1

**Establishments and organisations**

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Naval Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2

**Establishments and organisations of which Her Majesty’s Forces shall not consist**

10. Her Majesty’s forces shall not be taken to consist of any of the establishments or organisations specified in Part 1 of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty’s forces and who (not having been an insured person under the National Insurance Act 1965 and not being a contributor under the Social Security Act 1975 or the Social Security Contributions and Benefits Act 1992) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty’s forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty’s forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of his engagement to serve only in a specified part of the world outside the United Kingdom.”

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## EXPLANATORY NOTE

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

These Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 ([SI 2002/2821](#)) (the “Persons Abroad and Mariners Regulations”). The Persons Abroad and Mariners Regulations provide for certain special classes of person to benefit from certain provisions in Parts 12ZA and 12ZB of the Social Security and Contributions Act 1992 relating to ordinary paternity pay and statutory adoption pay.

Regulations 3, 4 and 5 make the changes necessary for the scope of the Persons Abroad and Mariners Regulations to be extended to provide for certain special classes of person to benefit from the provisions in Part 12ZA of the Social Security and Contributions Act 1992 that relate to additional paternity pay.

In addition, Regulations 3, 6 and 7 introduce certain definitions into the Persons Abroad and Mariners Regulations that were previously defined by cross-reference to Case C of the Social Security Contributions Regulations 2001.

The Social Security Advisory Committee has agreed, under section 173(1) of the Social Security Administration Act 1992, that these Regulations need not be referred to it under section 172(1) of that Act.

A full impact assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.