

**2010 No. 152**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Additional Statutory Paternity Pay (National Health Service Employees) Regulations 2010**

<i>Made</i> - - - -	<i>28th 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 in exercise of the powers conferred by section 171ZJ(9) and (10) of the Social Security Contributions and Benefits Act 1992(a) and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs(b), by this instrument, which contains only provision consequential upon sections 6 to 10 of the Work and Families Act(c) and is made before the end of the period of six months beginning with the coming into force of those enactments(d), makes the following Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Additional Statutory Paternity Pay (National Health Service Employees) Regulations 2010 and come into force on 6th April 2010.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006(e);

“the 2006 (Wales) Act” means the National Health Service (Wales) Act 2006(f);

“the Act” means the Social Security Contributions and Benefits Act 1992;

“additional statutory paternity pay” 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) or 171ZEB(2) are satisfied;

“additional statutory paternity pay period” means the period, determined in accordance with section 171ZEE of the Act(g) and with regulations(h) made under that section, as the period in respect of which additional statutory paternity pay is payable;

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- (a) 1992 c.4. Section 171ZJ was inserted by section 2 of the Employment Act 2002 (c. 22).  
(b) By virtue of section 171ZJ(12) of the Social Security Contributions and Benefits Act 1992, regulations made by the Secretary of State pursuant to section 171ZJ(9) and (10) of that Act must be made with the concurrence of the Commissioners of Inland Revenue. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11), references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.  
(c) 2006 c. 18.  
(d) See section 173(5) of the Social Security Administration Act 1992 (c. 5).  
(e) 2006 c. 41.  
(f) 2006 c. 42.  
(g) Section 171ZEE was inserted by section 10 of the Work and Families Act 2006.  
(h) The regulations referred to are the Additional Statutory Paternity Pay (General) Regulations (S.I. 2010/xxxx) and the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations (S.I. 2010/yyyy).

“Local Health Board” means a Local Health Board established under section 11 of the 2006 (Wales) Act;

“Primary Care Trust” means a Primary Care Trust continuing in existence or established under section 18 of the 2006 Act;

“Special Health Authority” means, in relation to England, a Special Health Authority established under section 28 of the 2006 Act and, in relation to Wales, a Special Health Authority established under section 22 of the 2006 (Wales) Act; and

“Strategic Health Authority” means a Strategic Health Authority continuing in existence or established under section 13 of the 2006 Act.

(3) References in these Regulations to Part 12ZA of the Act are references to sections 171ZEA to 171ZEE and, in so far as they concern additional statutory paternity pay, to sections 171ZF to 171ZJ of the Act.

### **Treatment of more than one contract of employment as one contract**

#### **2. Where—**

- (a) in consequence of the establishment of one or more National Health Service trusts under section 25 of the 2006 Act or section 18 of the 2006 (Wales) Act, a person’s contract of employment is treated by a scheme under paragraph 8 of Schedule 4 to the 2006 Act or paragraph 8 of Schedule 3 to the 2006 (Wales) Act as divided so as to constitute two or more contracts, or
- (b) an order under paragraph 26(1) of Schedule 3 to the 2006 Act provides that a person’s contract is so divided, that person may elect for all those contracts to be treated as one contract for the purposes of Part 12ZA of the Act.

### **Notification of election**

3. A person who makes an election under regulation 2 above shall give written notification of that election to each of their employers under the two or more contracts of employment mentioned in that regulation at least 28 days before the beginning of the additional statutory paternity pay period or, if in the particular circumstances that is not practicable, as soon as is reasonably practicable.

### **Provision of information**

4. A person who makes an election under regulation 2 above shall, within 28 days of giving notification of that election or, if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter, provide each of their employers under the two or more contracts of employment mentioned in that regulation with the following information—

- (a) the name and address of each of those employers;
- (b) the date their employment with each of those employers commenced; and
- (c) details of their normal weekly earnings during the relevant period from each employer, and for this purpose the expressions “normal weekly earnings” and “relevant period” have the same meanings as they have for the purposes of Part 12ZA of the Act<sup>(a)</sup>.

### **Treatment of two or more employers as one**

5. The employer to be regarded for the purposes of additional statutory paternity pay as the employer under the one contract where two or more contracts of employment are treated as one in accordance with regulation 2 shall be—

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(a) See regulation 32 of the Additional Statutory Paternity Pay (General) Regulations 2010 and regulation 3(4) of the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010.

- (a) in the case of a person whose contract of employment is treated by a scheme under paragraph 8 of Schedule 4 to the 2006 Act or paragraph 8 of Schedule 3 to the 2006 (Wales) Act as divided—
  - (i) the Special Health Authority, Primary Care Trust or Local Health Board from which the person was transferred, in a case where any one of the contracts is with such a body; or
  - (ii) the first NHS trust to which a contract was transferred in a case where none of the contracts is with such a body; or
- (b) in the case of a person whose contract of employment is divided as provided by an order under paragraph 26(1) of Schedule 3 to the 2006 Act—
  - (i) the Strategic Health Authority, NHS trust or Primary Care Trust from which the person was transferred, in a case where any one of the contracts is with such a body; or
  - (ii) the first Primary Care Trust to which a contract was transferred in a case where none of the contracts is with the body from which the person was transferred.

**Time for which an election is to have effect**

6. An election made under regulation 2 shall lapse at the end of the additional statutory paternity pay period.

28th January 2010

*Pat McFadden*  
Minister of State for Business, Innovation and Skills  
Department for Business, Innovation and Skills

The Commissioners for Her Majesty's Revenue and Customs concur.

28th January 2010

*Melanie Dawes*  
*Bernadette Kenny*  
Two of the Commissioners for Her Majesty's Revenue and Customs

## EXPLANATORY NOTE

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

This instrument contains only regulations consequential upon sections 6 to 10 of the Work and Families Act 2006 (c. 18), which came into force on 6th April 2010. The instrument is made before the end of the period of six months beginning with the coming into force of those provisions. The regulations in it are therefore exempt, by virtue of section 173(5)(b) of the Social Security Administration Act 1992 (c. 5), from the requirement under section 172 of that Act to refer the same to the Social Security Advisory Committee. They are therefore made without reference to that committee.

These Regulations, made under a provision inserted into the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) by section 2 of the Employment Act 2002 (c. 22), allow certain employees of the National Health Service with two or more contracts of employment to elect, for the purposes of the additional statutory paternity pay provisions of Part 12ZA of the 1992 Act, to treat those contracts as one contract.

Regulation 2 provides for employees whose contract of employment has been divided into two or more contracts with different bodies, as a consequence of the National Health Service Act 2006 (c. 18) or the National Health Service (Wales) Act 2006 (c. 42), to elect to have those contracts treated as one contract for the purposes of entitlement to additional statutory paternity pay. Additionally, regulation 2 allows this where employees’ contracts of employment have been so divided because of a staff order under paragraph 26(1) of Schedule 3 to the National Health Service Act 2006.

Regulation 3 provides for the manner in which, and the time within which, such an election is to be made.

Regulation 4 makes provision for the information that an employee making such an election is to provide to his or her employers.

Regulation 5 provides for one of a person’s employers under the two or more contracts to be regarded for the purposes of additional statutory paternity pay as his or her employer under the one contract.

Regulation 6 provides for the time within which an election is to have effect.

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

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