

2014 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

**The Statutory Shared Parental Pay (Persons Abroad and
Mariners) Regulations 2014**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - *1st December 2014*

The Secretary of State, in exercise of the powers conferred by sections 171ZZ3(1) and 171ZZ4(3)(b) of the Social Security Contributions and Benefits Act 1992(a), and with the concurrence of the Treasury, makes the following Regulations.

This instrument contains only regulations made by virtue of, or consequential upon, section 119 of the Children and Families Act 2014(b) and is made before the end of the period of 6 months beginning with the coming into force of that enactment(c).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Statutory Shared Parental Pay (Persons Abroad and Mariners) Regulations 2014 and come into force on 1st December 2014.

PART 2

Statutory Shared Parental Pay

Interpretation

2.—(1) In these Regulations—

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

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- (a) 1992 c.4. Sections 171ZZ3(1) and 171ZZ4(3) were inserted by the Children and Families Act 2014 (c.6), section 119(1).
(b) 2014 c.6.
(c) See section 173(5) of the Social Security Administration Act 1992 (c.5). Pursuant to section 172 of that Act, where the Secretary of State proposes to make regulations under the Social Security Contributions and Benefits Act 1992, the Secretary of State is required to refer such proposals normally in the form of draft regulations, to the Social Security Advisory Committee. This requirement does not apply where the regulations are contained in a statutory instrument made before the end of a period of six months beginning with the coming into force of the enactments by virtue of which the regulations are being made.

“adopter”, in relation to a child, means the person with whom a child is, or is expected to be, placed for adoption under the law of the United Kingdom;

“adoption from overseas” means the adoption of a child who enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom;

“EEA” means European Economic Area;

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

“General Regulations” means the Statutory Shared Parental Pay (General) Regulations 2014(a);

“home-trade ship” includes—

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

“placed for adoption” means—

- (a) placed for adoption under the Adoption and Children Act 2002(b) or the Adoption and Children (Scotland) Act 2007(c); or
- (b) placed in accordance with section 22C of the Children Act 1989(d) with a local authority foster parent(e) who is also a prospective adopter;

“serving member of the forces” means a person, other than one mentioned in Part 2 of Schedule 1, 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;

“statutory shared parental pay (adoption)” means statutory shared parental pay payable where entitlement to that pay arises under regulation 17 or 18 of the General Regulations;

“statutory shared parental pay (birth)” means statutory shared parental pay payable where entitlement to that pay arises under regulation 4 or 5 of the General Regulations.

(a) S.I. 2014/xxxx.

(b) 2002 c.38.

(c) 2007 asp 4.

(d) 1989 c.41; section 22C was inserted by the Children and Young Persons Act 2008 (c.23), section 8(1).

(e) “local authority foster parent” is defined in section 171ZZ4(1) of the Social Security Contributions and Benefits Act 1992.

(2) For the purposes of these regulations, the expressions “ship” and “ship or vessel” include hovercraft, except in regulation 9(2).

(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) in a case where paragraph (a) applies, a person is notified as having been matched with a child on the date that person receives notification of the agency’s decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005(a), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(b) or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(c);
- (c) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(d) and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005(e);
- (d) in a case where paragraph (c) applies, a person is notified as having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005.

(4) The reference to “prospective adopter” in the definition of “placed for adoption” in paragraph (1) means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(f).

(5) The reference to “adoption agency” in paragraph (3) has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002 and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007.

Application

3. These Regulations apply in relation to—

- (a) statutory shared parental pay (birth) in respect of children whose expected week of birth begins on or after 5th April 2015;
- (b) statutory shared parental pay (adoption) in respect of children placed for adoption on or after 5th April 2015.

Restriction on scope

4. A person who would not be treated under regulation 33 (treatment of persons as employees) of the General Regulations as an employee for the purposes of Part 12ZC (statutory shared parental pay) of the Act(g) if that person’s employment were in Great Britain shall not be treated as an employee under these Regulations.

Treatment of persons in other EEA states as employees

5. A person who is –

- (a) gainfully employed in an EEA state other than the United Kingdom in such circumstances that, if the employment were in Great Britain, the person would be an employee for the

(a) S.I. 2005/389.

(b) S.I. 2005/1313.

(c) S.S.I.2009/154.

(d) S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.

(e) Regulation 12B was inserted by S.I. 2014/1556; there are other amending instruments but none is relevant.

(f) Amended by S.I. 2015/1556; there are other amending instruments but none is relevant.

(g) Part 12ZC of the Act was inserted by the Children and Families Act 2014, section 119(1).

purposes of Part 12ZC of the Act, or a person treated as such an employee under regulation 33 of the General Regulations; and

- (b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No.1408/71(a),

notwithstanding that person not being employed in Great Britain, shall be treated as an employee for the purposes of Parts 12ZC of the Act.

Treatment of certain persons absent from Great Britain as employees

6. Subject to regulation 9(2), where a person, while absent from Great Britain for any purpose, is gainfully employed by an employer who is liable to pay secondary Class 1 contributions (within the meaning of section 1(2) of the Act) in respect of that person's employment under section 6 of the Act(b) or regulation 146 of the Social Security Contributions Regulations 2001(c), that person shall be treated as an employee for the purposes of Part 12ZC of the Act.

Entitlement to statutory shared parental pay where person has worked in an EEA state

7.—(1) A person who—

- (a) is an employee or treated as an employee under regulation 5;
- (b) 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
- (c) 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 171ZU of the Act(d) (entitlement to shared parental pay: birth) as having been employed in employed earner's employment with an employer in those weeks in which the person was so employed in the other EEA state.

(2) A person who—

- (a) is an employee or treated as an employee under regulation 5;
- (b) in the week in which the adopter is notified of having been matched with the child for the purposes of adoption was in employed earner's employment with an employer in Great Britain; and
- (c) 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 171ZV of the Act(e) (entitlement to shared parental 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.

Time for compliance with Part 12ZC of the Act or regulations made under it

8. Where—

- (a) a person is outside the United Kingdom;
- (b) Part 12ZC of the Act or regulations made under it require any act to be done forthwith or on the happening of a certain event or within a specified time; and
- (c) because the person is outside the United Kingdom that person or that person's employer cannot comply with the requirement,

(a) OJ No.L.28, 30.1.1997, p.1.

(b) Section 6 was substituted by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 9(1), paragraph 2, and by the Child Support, Pensions and Social Security Act 2000 (c.19), section 77(3).

(c) S.I. 2001/1004, amended by S.I. 2007/1838.

(d) Section 171ZU was inserted by the Children and Families Act 2014, section 119(1).

(e) Section 171ZV was inserted by the Children and Families Act 2014, section 119(1).

the person or the employer, as the case may be, shall be deemed to have complied with the requirement if the act is performed as soon as reasonably practicable.

Mariners

9.—(1) A mariner engaged in employment on board a home-trade ship with an employer who has a place of business within the United Kingdom shall be treated as an employee for the purposes of Part 12ZC of the Act, notwithstanding that he may not be employed in Great Britain.

(2) A mariner who is engaged in employment—

(a) on a foreign-going ship; or

(b) on a home-trade ship with an employer who does not have a place of business within the United Kingdom,

shall not be treated as an employee for the purposes of Part 12ZC of the Act, notwithstanding that the mariner may have been employed in Great Britain.

Continental shelf

10.—(1) In this regulation—

“designated area” means any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(a) as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

“prescribed employment” means any employment (whether under a contract of service or not) in a designated area in connection with continental shelf operations, as defined in section 120(2) of the Act(b).

(2) A person in prescribed employment shall be treated as an employee for the purposes of Part 12ZC of the Act notwithstanding that that person may not be employed in Great Britain.

Adoptions from overseas

11. Schedule 2 applies to adoptions from overseas.

PART 3

Statutory Paternity Pay and Statutory Adoption Pay

12. The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002(c) are amended as follows.

13.—(1) Paragraph (2) of regulation 1 is amended as follows

(2) For the definition “adopter” substitute—

““adopter”, in relation to a child, means the person with whom a child is, or is expected to be, placed for adoption under the law of the United Kingdom;”.

(3) Before the definition of “serving member of the forces” insert—

““placed for adoption” means—

(a) 1964 c.29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c.23), section 37, and Schedule 3, paragraph 1, and the Energy Act 2011 (c.16), section 103.

(b) Section 120(2) was amended by the Petroleum Act 1998 (c.17), Schedule 4, paragraph 30.

(c) S.I. 2002/2821; amended by S.I. 2010/151.

- (a) placed for adoption under the Adoption and Children Act 2002^(a) or the Adoption and Children (Scotland) Act 2007^(b); or
- (b) placed in accordance with section 22C of the Children Act 1989^(c) with a local authority foster parent^(d) who is also a prospective adopter;”.

14. For paragraph (3) of regulation 1 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) in a case where paragraph (a) applies, a person is notified as having been matched with a child on the date that 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;
- (c) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010 and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005;
- (d) in a case where paragraph (c) applies, a person is notified as having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005.

(3A) The reference to “prospective adopter” in the definition of “placed for adoption” in paragraph (2) means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005.

(3B) The reference to “adoption agency” in paragraph (3) has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002 and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007.”.

Jo Swinson

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

Date

We concur in making these Regulations

Name

Name

Date

Two of the Lords Commissioners for Her Majesty’s Treasury

(a) 2002 c.38.
 (b) 2007 asp 4.
 (c) 1989 c.41; section 22C was inserted by the Children and Young Persons Act 2008 (c.23), section 8(1).
 (d) “local authority foster parent” is defined in section 171ZJ(1) and 171ZS(1) of the Social Security Contributions and Benefits Act 1992. Section 171ZJ was inserted by the Employment Act 2002 (c. 22), section 2, and amended by the Children and Families Act 2014, section 121(7)(a); there are other amending instruments but none is relevant. Section 171ZS was inserted by the Employment Act 2002, section 4, and amended by the Children and Families Act 2014, section 121(7)(b); there are other amending instruments but none is relevant.

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^(a) and not being a contributor under the Social Security Act 1975^(b) 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.

(a) 1965 c.51.

(b) 1975 c.14.

Adoptions from Overseas

Interpretation

1. In this Schedule “the Application Regulations” means the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Adoptions from Overseas) Regulations 2003(a).

Application to adoptions from overseas

2.—(1) The provisions of these Regulations, in so far as they apply to statutory shared parental pay (adoption) apply to adoptions from overseas with the modifications set out in paragraphs 3 to 6 and subject to sub-paragraphs (2) and (3).

(2) Any references in these Regulations to the provisions of Part 12ZC of the Act must be construed as references to the provisions of Part 12ZC as modified by the Application Regulations.

Modifications of the Regulations for the purposes of adoptions from overseas

3. The Regulations are modified as follows.

4.—(1) Regulation 2 (interpretation) is modified as follows.

(2) In paragraph 1—

(a) for the definition of “adopter” substitute—

““adopter”, in relation to C, means the person by whom C has been or is to be adopted;”;

(b) for the definition of “statutory shared parental pay (adoption)” substitute—

““statutory shared parental pay (adoption)” means statutory shared parental pay payable where entitlement to that pay arises under regulation 17 or 18 of the General Regulations as modified by the Statutory Shared Parental Pay (Adoption from Overseas) Regulations 2014(b);”;

(c) insert the following definitions in the appropriate places alphabetically—

““enter Great Britain” means enter Great Britain from outside the United Kingdom in connection with or for the purposes of adoption;”;

““official notification” means written notification, issued by or on behalf of the relevant central authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or that it has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt, and has been assessed and approved as being a suitable adoptive parent;”;

““relevant central authority” means—

(a) in the case of an adopter to whom Part 3 of the Adoptions with a Foreign Element Regulations 2005(c) apply and who is habitually resident in Wales, the Welsh Ministers;

(b) in the case of an adopter to whom the Adoptions with a Foreign Element (Scotland) Regulations 2009(d) apply and who is habitually resident in Scotland, the Scottish Ministers; and

(a) S.I. 2003/499, as amended by S.I. 2014/xxxx; there are other amending instruments but none is relevant.

(b) S.I. 2014/XXXX.

(c) S.I. 2005/392, to which there are amendments not relevant to these Regulations.

(d) S.I. 2009/182, to which there are amendments not relevant to these Regulations.

(c) in any other case, the Secretary of State;”.

5. In Regulation 3 (application), for paragraph (1)(b) substitute—

“(b) statutory shared parental pay (adoption) in respect of children who enter Great Britain on or after 5th April 2015.”.

6.—(1) In regulation 7 (entitlement to shared parental pay where person has worked in an EEA State), for paragraph (2) substitute—

“(2) A person who—

- (a) is an employee or treated as an employee under regulation 5;
- (b) in the week in which the adopter received the official notification was in employed earner’s employment with an employer in Great Britain; and
- (c) 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 171ZV of the Act (entitlement to shared parental pay: adoption) as modified by the Application Regulations as having been employed in employed earner’s employment in those weeks in which the person was so employed in the other EEA State.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the treatment under Part 12ZC of the Social Security Contributions and Benefits Act 1992 of persons abroad, persons who work as mariners and persons who work on the continental shelf. The effect is that persons who would otherwise not fulfil the qualifying conditions for entitlement to statutory shared parental pay because of the nature of their employment or the fact that they are outside the United Kingdom will have an entitlement to such pay.

Regulation 4 limits the application of the Regulations to cases where the person would be treated as an employee under Part 12ZC of the Act if the employment were in Great Britain.

Regulation 5 provides for a person employed in another State of the European Economic Area but subject to the legislation of the United Kingdom to be treated as an employee for the purposes of Part 12ZC.

Regulation 6 provides for a person who is absent from Great Britain but in respect of whom an employer has secondary Class 1 national insurance contribution liability to be treated as an employee for the purposes of the Part 12ZC.

Where a person has worked for the same employer both in Great Britain and in another State of the European Economic Area, regulation 7 provides, in specified circumstances, for employment in the Member State to be treated as employed earner’s employment for the purposes of Part 12ZC. Regulation 8 relaxes any time limit imposed by Part 12ZC of the Act or regulations made under it in relation to a person who cannot comply with the time limit because that person is outside the United Kingdom.

Regulation 9 treats certain classes of mariners as employees for the purposes of Part 12ZC and regulation 10 makes corresponding provision for persons working on the continental shelf.

Regulations 12 to 14 make a number of small amendments to the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 to provide new rights to pay for local authority foster parents who are prospective adopters if they have been notified that child is to be placed with them under section 22C of the Children Act 1989 following consideration in accordance with section 22C(9B)(c) of that Act.

Schedule 2 applies these Regulations, with modifications, to adoptions from overseas.

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment is the *Modern Workplaces: shared parental leave and pay administration consultation impact assessment* which was published in February 2013. A copy of that impact assessment can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.