

2015 No. 102

EMPLOYMENT

WORK AND FAMILIES

**The Statutory Shared Parental Pay (Parental Order Cases)
Regulations (Northern Ireland) 2015**

Made - - - - *2nd March 2015*

Coming into operation - *15th March 2015*

Approved by resolution of the Assembly on 12th May 2015

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by sections 167ZW(1), (2), (3), (4), 167ZX(1), (8), (9), (10) and (11), 167ZZ(1), 167ZZ1(2) and (3), 167ZZ2(1), (3), (4) and (5), 167ZZ4(3), 167ZZ7(3), (4), (7) and (8) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and by section 5(1)(g), (j), (m) and (q) of the Social Security Administration (Northern Ireland) Act 1992(b) and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, in so far as such concurrence is required.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Statutory Shared Parental Pay (Parental Order Cases) Regulations (Northern Ireland) 2015 and come into operation on 15th March 2015.

Interpretation

2. In these Regulations—

“A” and “AP” have the same meanings as in the Pay Regulations as modified by these Regulations;

“C”, “expected week of birth” and “statutory shared parental pay (adoption)” have the same meanings as under the Pay Regulations;

(a) 1992 c. 7. Sections 167ZW to 167ZZ7 were inserted by the Work and Families Act (Northern Ireland) 2015 (c. 1 (N.I.)), section 5(2). Section 167ZW(1), (2) and (4) are modified in so far as they apply to intended and parental order parents by S.R. 2015 No. 90.

(b) 1992 c. 8; section 5(4A)(a) was amended by 2015 c. 1 (N.I.), Schedule 1, paragraph 3(2).

“parental order parent” means a person on whose application the court has made a parental order(a) in respect of C;

“parental statutory declaration” means a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008(b) with another person for a parental order in respect of C within the time limit for making such an application; and

(b) expects the court to make a parental order on that application in respect of C;

“Pay Regulations” means the Statutory Shared Parental Pay (General) Regulations (Northern Ireland) 2015(c).

Application of the Pay Regulations to an intended parent or a parental order parent

3. The provisions of the Pay Regulations in so far as they apply to statutory shared parental pay (adoption) shall apply to an intended parent(d) or a parental order parent with the modifications set out in Part 2 of these Regulations.

PART 2

Modifications of the Pay Regulations as they apply to an intended parent or a parental order parent

4. Regulation 2 (definitions) of the Pay Regulations as they apply to an intended parent or a parental order parent shall read as if—

(a) in paragraph (1)—

(i) for the definition of “A” there was substituted—

““A” means the intended parent or parental order parent in relation to C who has elected to receive statutory adoption pay under section 167ZL(2)(e) of the 1992 Act(e) and to whom the conditions in section 167ZL(2) apply;”;

(ii) for the definition of “AP” there was substituted—

““AP” means the intended parent or parental order parent in relation to C who at the date of C’s birth is married to, or is the civil partner of, or is the partner of A;”;

(iii) the definitions of “adoption agency” and “child” were omitted;

(iv) there were inserted, in the appropriate places alphabetically, the following definitions—

““parental order parent” means a person on whose application the court has made an order in respect of C under section 54(1) of the Human Fertilisation and Embryology Act 2008;”;

““parental statutory declaration” means a statutory declaration stating that the person making the declaration—

(a) has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008 with another person for a parental order in respect of C within the time limit for making such an application; and

(a) “Parental order” is defined in section 167ZX(13) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as modified by S.R. 2015 No. 90.

(b) 2008 c. 22.

(c) S.R. 2015 No. 94.

(d) “Intended parent” is defined in section 167ZX(13) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as modified by S.R. 2015 No. 90.

(e) Section 167ZL of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 was inserted by the Employment (Northern Ireland) Order 2002 (S.I.2002/2836 (N.I.2)), Article 6.

- (b) expects the court to make a parental order on that application in respect of C;”;
- (v) the definition of “placed for adoption” was omitted;
- (b) paragraphs (4) and (5) were omitted.

5. In regulation 3 (application) of the Pay Regulations as they apply to an intended parent or a parental order parent paragraph (b) shall read as if for that paragraph there was substituted—

“(b) statutory shared parental pay (adoption) in respect of children whose expected week of birth begins on or after 5th April 2015.”.

6. In regulation 17 (entitlement of adopter to statutory shared parental pay (adoption)) of the Pay Regulations as they apply to an intended parent or a parental order parent, it shall read as if—

(a) paragraph (2)(b) was substituted by—

“(b) A has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of AP);”;

(b) in paragraph (2)(d), the words “to the placement for adoption of C” were “to being the intended parent or parental order parent of C”;

(c) paragraph (3)(a) was substituted by—

“(a) AP has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A); and”.

7. In regulation 18 (entitlement of partner to statutory shared parental pay (adoption)) of the Pay Regulations as they apply to an intended parent or a parental order parent, it shall read as if—

(a) paragraph (2)(b) was substituted by—

“(b) AP has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A);”;

(b) paragraph (3)(a) was substituted by—

“(a) A has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A);”;

(c) in paragraph (3)(c), the words “to the placement for adoption of C” were “to being the intended parent or parental order parent of C”.

8.—(1) In regulation 19 (notification and evidential requirements relating to the adopter) of the Pay Regulations as they apply to an intended parent or a parental order parent, it shall read as if—

(a) in paragraph (1)(a), the words “paragraphs (2) and (3)(a)” read “paragraphs (2) and (3)(za), (a)”;

(b) in paragraph (1)(b), the words “if C is not placed for adoption by that time, as soon as reasonably practicable after the placement of C” were “if C is not born by that time, as soon as reasonably practicable after the birth of C”;

(c) before sub-paragraph (3)(a), there was inserted—

“(za) unless the condition in paragraph (5) or (6) is satisfied, a parental statutory declaration by A;”;

(d) paragraph (3)(b) was substituted by—

“(b) the expected week of birth of C;”;

(e) paragraph (3)(c) was substituted by—

“(c) C’s date of birth;”;

(f) before paragraph (4)(a), there was inserted—

“(za) a copy of C’s birth certificate or, if one has not been issued, a written declaration signed by A which states that it has not been issued;

(zb) unless provided as a result of the condition in paragraph (5) being satisfied, a parental statutory declaration;”;

(g) paragraph (4)(a) did not apply;

(h) after paragraph (4), there was inserted—

“(5) The condition referred to in paragraph 3(za) and (4)(zb) is that A has given the employer^(a) who will be liable to pay statutory shared parental pay (adoption) to A a statutory declaration as evidence of A’s entitlement to statutory adoption pay in respect of C in accordance with regulation 24 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002^(b).”

(6) The condition referred to in paragraph 3(za) is that A is a parental order parent and has given the employer a copy of the order in respect of C made under section 54(1) of the Human Fertilisation and Embryology Act 2008.”.

9. In regulation 20 (notification and evidential requirements relating to the partner) of the Pay Regulations as they apply to an intended parent or a parental order parent, it shall read as if—

(a) in paragraph (1)(b), the words “if C is not placed for adoption by that time, as soon as reasonably practicable after the placement of C” were “if C is not born by that time, as soon as reasonably practicable after the birth of C”;

(b) paragraph (3)(b) was substituted by—

“(b) the expected week of birth of C;”;

(c) paragraph (3)(c) was substituted by—

“(c) C’s date of birth;”;

(d) before paragraph (3)(e)(ii), there was inserted—

“(ia) that A and AP are the intended parents or the parental order parents of C;”;

(e) before paragraph (4)(a), there was inserted—

“(za) a copy of C’s birth certificate or, if one has not been issued, a written declaration signed by AP which states that it has not been issued;”;

(f) paragraph (4)(a) did not apply.

10.—(1) It shall read as if, after regulation 21 there was inserted—

“**21A.—(1)** These Regulations apply to an intended parent or a parental order parent with the modification provided for in paragraph (2) where—

(a) one or more of the periods specified in a notice under regulation 19, 20 or 21 during which A or, as the case may be, AP intends to claim statutory shared parental pay (adoption) start in the 8 weeks following the first day of C’s expected week of birth;

(b) C’s date of birth is before the first day of the expected week of birth; and

(c) A or, as the case may be, AP varies by notice under regulation 21(1) the period or periods referred to in sub-paragraph (a) so that that period or those periods start the same length of time following C’s date of birth as that period or those periods would have started after the first day of the expected week of birth.

(2) The modification in this paragraph is that regulation 21(1) shall read as though at the end there was added—

“The requirement to give notice at least 8 weeks before the first period specified in the notice is satisfied if such notice is given as soon as reasonably practicable after C’s date of birth.”.

(3) These Regulations apply to an intended parent or a parental order parent with the modifications provided for in paragraph (4) where—

(a) “Employer” is construed in accordance with section 167ZZ7(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(b) S.R. 2002 No. 378; regulation 24 is modified as it applies to intended and parental order parents by S.R. 2015 No. 92; there are other amendments but none are relevant.

- (a) C is born more than 8 weeks before the first day of the expected week of birth;
 - (b) A or, as the case may be, AP has not given the notice and information under regulations 19 or 20 before the date of C’s birth; and
 - (c) A or, as the case may be, AP specifies in a notice under regulations 19 or 20 a period or periods of statutory shared parental pay (adoption) which start in the 8 weeks following C’s date of birth.
- (4) The modifications in this paragraph are—
- (a) in regulation 19—
 - (i) paragraph (1)(a) shall read—
 - “paragraphs (2) and (3) as soon as reasonably practicable after the date of C’s birth but in any event before the first period specified by A pursuant to paragraph (2)(d);”;
 - (ii) paragraph (1)(b) and (c) shall not apply;
 - (iii) paragraph (4) shall not apply.
 - (b) in regulation 20—
 - (i) paragraph (1)(a) shall read—
 - “paragraphs (2) and (3) as soon as reasonably practicable after the date of C’s birth but in any event before the first period specified by AP pursuant to paragraph (2)(d);”;
 - (ii) paragraph (1)(b) and (c) shall not apply;
 - (iii) paragraph (4) shall not apply.”.

11. In regulation 23 (when statutory shared parental pay (adoption) is not to be paid) of the Pay Regulations as they apply to an intended parent or a parental order parent, paragraph (1) shall read as if substituted by—

“(1) Statutory shared parental pay (adoption) is not payable after the day before the date of C’s first birthday (or, where more than one child is born of the same pregnancy, the birthday of the first child so born).”.

12. In regulation 24 (work during period of payment of statutory shared parental pay) of the Pay Regulations as they apply to an intended parent or a parental order parent, paragraph (1)(a)(ii) shall read as if the words “the expected week of the placement for adoption” were “the expected week of birth”.

13. In regulation 29 (conditions relating to employment and earnings of a claimant’s partner) of the Pay Regulations as they apply to an intended parent or a parental order parent, the definition of “calculation week” in paragraph (5) shall read as if substituted by—

““calculation week” means the expected week of birth of C;”.

14. Regulation 31 (conditions as to continuity of employment and normal weekly earnings in relation to a claimant) of the Pay Regulations as they apply to an intended parent or a parental order parent, shall read as if—

- (a) for paragraph (2) there was substituted—
 - “(2) Where C’s birth occurs earlier than the 14th week before C’s expected week of birth paragraph (1) shall have effect as if, for the conditions set out there, there were substituted conditions that—
 - (a) the person would have been in employed earner’s employment for a continuous period of at least 26 weeks ending with the relevant week had C been born after the relevant week;
 - (b) the person’s normal weekly earnings for the period of eight weeks ending with the week immediately preceding C’s actual week of birth are not less than the lower

earnings limit in force under section 5(1)(a) of the 1992 Act immediately before the commencement of C's actual week of birth; and

- (c) the person continues in employed earner's employment with the employer by reference to whom the condition in sub-paragraph (a) is satisfied for a continuous period beginning with the date of C's birth and ending with the week before the first week falling within the relevant period relating to that person under section 167ZZ2(2) of the 1992 Act.”.

(b) after paragraph (2), there were inserted—

“(3) The references in this regulation to the relevant week are to the week immediately preceding the 14th week before C's expected week of birth.

(4) Where more than one child is born as a result of the same pregnancy the date the first child is born is to be used to determine C's actual week of birth or the date of C's birth.”.

15. In regulation 32 (normal weekly earnings of a claimant for statutory shared parental pay) of the Pay Regulations as they apply to an intended parent or a parental order parent, the definition of “the appropriate date” in paragraph (9)(a) shall read as if substituted by—

““the appropriate date” means the first day of the 14th week before the expected week of the child's birth or the first day in the week in which the child is born, whichever is earlier (but see paragraph (10)).”.

16. In the Schedule (statutory shared parental pay in special circumstances) to the Pay Regulations as they apply to an intended parent or a parental order parent, in paragraph 12, it shall read as if—

- (a) in sub-paragraphs (1) and (2), the words “is returned after being placed” (in each place where they occur) were “the parental order does not proceed”;

(b) sub-paragraph (4) was substituted by—

“(4) Where more than one child is born of the same pregnancy—

(a) sub-paragraphs (1) and (2) only apply where all the children die or the parental order does not proceed in respect of all the children; and

(b) a reference in this paragraph relating to the death of C (however expressed) is to the death of the last of those children to die.”.

(c) sub-paragraph (5) was substituted by—

“(5) For the purpose of this paragraph a parental order does not proceed if—

(a) A and AP have not made an application for an order in respect of C under section 54(1) of the Human Fertilisation and Embryology Act 2008 within the time limit for such an application under section 54(3) of that Act; or

(b) an application made for such an order in respect of C is refused, withdrawn or otherwise terminated and any time limit for an appeal or a new application has expired.”.

Sealed with the Official Seal of the Department for Employment and Learning on 2nd March 2015.



Dr Stephen Farry
Minister for Employment and Learning

Two of the Commissioners of Her Majesty's Revenue and Customs concur

Jim Harra
Edward Troup

10th March 2015

Two of the Commissioners of Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide an entitlement to statutory shared parental pay in respect of cases which involve a person who has applied with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008. Under that section a court may make an order providing for a child of a surrogate mother to be treated as the child of the applicants for the order if certain conditions are satisfied.

These Regulations should be read in conjunction with the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations (Northern Ireland) 2015. They should also be read in conjunction with the Statutory Shared Parental Pay (General) Regulations (Northern Ireland) 2015 which they apply with modifications.

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impacts were assessed within the document ‘Sharing parental rights, extending flexibility at work – public consultation’, published in May 2013 (www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm), and supplemented by a further publication in April 2014 (www.delni.gov.uk/index/publications/equality-good-relations/shared-parental-leave-and-pay.htm).

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