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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Statutory Shared Parental Pay (General) Regulations 2014**

**PART 2**

**ENTITLEMENT TO STATUTORY SHARED PARENTAL PAY (BIRTH)**

**Entitlement of mother to statutory shared parental pay (birth)**

**4.—**(1) M is entitled to statutory shared parental pay (birth) if M satisfies the conditions specified in paragraph (2) and if P satisfies the conditions specified in paragraphs (3).

(2) The conditions referred to in paragraph (1) are that—

- (a) M satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 30;
- (b) M has at the date of C's birth the main responsibility for the care of C (apart from the responsibility of P);
- (c) M has complied with the requirements specified in regulation 6 (notification and evidential requirements of M);
- (d) M became entitled by reference to the birth or expected birth of C to statutory maternity pay in respect of C;
- (e) the maternity pay period that applies as a result of M's entitlement to statutory maternity pay is, and continues to be, reduced under section 165(3A) of the 1992 Act<sup>(1)</sup>;
- (f) it is M's intention to care for C during each week in respect of which statutory shared parental pay (birth) is paid to her;
- (g) M is absent from work during each week in respect of which statutory shared parental pay (birth) is paid to her (except in the cases referred to in regulation 15 (entitlement to shared parental pay: absence from work)); and
- (h) where M is an employee (within the meaning of the Employment Rights Act 1996) M's absence from work as an employee during each week that statutory shared parental pay (birth) is paid to her is absence on shared parental leave in respect of C;

(3) The conditions referred to in paragraph (1) are that—

- (a) P has at the date of C's birth the main responsibility for the care of C (apart from the responsibility of M); and
- (b) P satisfies the conditions relating to employment and earnings in regulation 29 (conditions as to employment and earnings of claimant's partner).

**Entitlement of father or partner to statutory shared parental pay (birth)**

**5.—**(1) P is entitled to statutory shared parental pay (birth) if P satisfies the conditions specified in paragraph (2) and M satisfies the conditions specified in paragraph (3).

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(1) Section 165(3A) was inserted by section 120(4) of the Children and Families Act 2014.

- (2) The conditions specified in paragraph (1) are that—
- (a) P satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 30;
  - (b) P has at the date of C's birth the main responsibility for the care of C (apart from the responsibility of M);
  - (c) P has complied with the requirements specified in regulation 7 (notification and evidential requirements of P);
  - (d) it is P's intention to care for C during each week in respect of which statutory shared parental pay (birth) is paid to P;
  - (e) P is absent from work during each week in respect of which statutory shared parental pay (birth) is paid to P (except in the cases referred to in regulation 15 (entitlement to statutory shared parental pay: absence from work)); and
  - (f) where P is an employee (within the meaning of the Employment Rights Act 1996<sup>(2)</sup>) P's absence from work as an employee during each week that statutory shared parental pay (birth) is paid to P is absence on shared parental leave in respect of C.
- (3) The conditions specified in paragraph (1) are—
- (a) M has at the date of C's birth the main responsibility for the care of C (apart from the responsibility of P);
  - (b) M meets the conditions as to employment and earnings in regulation 29 (conditions as to employment and earnings of claimant's partner);
  - (c) M became entitled by reference to the birth, or expected birth, of C to statutory maternity pay or maternity allowance; and
  - (d) the maternity pay period or the maternity allowance period which applies to M as a result of her entitlement to statutory maternity pay or maternity allowance is, and continues to be, reduced under sections 35(3A) or 165(3A) of the 1992 Act<sup>(3)</sup>.

#### **Notification and evidential requirements relating to the mother**

6.—(1) The notice and evidential requirements referred to in regulation 4(2)(c) are that M gives the employer<sup>(4)</sup> who will be liable to pay statutory shared parental pay (birth) to M the notice and information specified in—

- (a) paragraphs (2) and (3)(a), (b), (d) and (e) at least 8 weeks before the beginning of the first period specified by M pursuant to paragraph (2)(d);
  - (b) paragraph (3)(c) at least 8 weeks before the beginning of the first period specified by M pursuant to paragraph (2)(d) or, where C is not born by that time, as soon as reasonably practicable after the birth of C but in any event before the beginning of that first period; and
  - (c) paragraph (4) within 14 days of that employer requesting that information where the employer requests it within 14 days of receiving the notice and information specified in paragraph (2) and (3)(a),(b),(d) and (e).
- (2) The notice specified in this paragraph is notice of—
- (a) the number of weeks in respect of which M would be entitled to claim statutory shared parental pay (birth) in respect of C if entitlement were fully exercised disregarding any intention of P to claim statutory shared parental pay in respect of C;

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(2) 1996 c.18.

(3) Section 35(3A) was inserted by section 120(2) of the Children and Families Act 2014.

(4) 'employer' is construed in accordance with section 171ZZ4(1) of the Social Security Contributions and Benefits Act 1992.

- (b) the number of weeks out of those specified under sub-paragraph (a) in respect of which M intends to claim statutory shared parental pay (birth) in respect of C;
  - (c) the number of weeks out of those specified under sub-paragraph (a) in respect of which P intends to claim statutory shared parental pay (birth) in respect of C;
  - (d) the period or periods during which M intends to claim statutory shared parental pay (birth) in respect of C.
- (3) The information specified in this paragraph is—
- (a) a written declaration signed by P who in connection with M's claim is required to satisfy the conditions specified in regulation 4(3)—
    - (i) that P consents to M's intended claim for statutory shared parental pay;
    - (ii) that P meets, or will meet, the conditions in regulation 4(3) (conditions to be satisfied by P);
    - (iii) specifying P's name, address and national insurance number or, if P has no national insurance number, stating that P has no such number; and
    - (iv) providing P's consent as regards the processing by the employer who will be liable to pay statutory shared parental pay (birth) to M of the information in the written declaration;
  - (b) C's expected week of birth;
  - (c) C's date of birth;
  - (d) M's name;
  - (e) a written declaration signed by M—
    - (i) that the information given by M under paragraphs (2) and (3) is correct;
    - (ii) that M meets, or will meet, the conditions in regulation 4(2);
    - (iii) that M will immediately inform the person who will be liable to pay statutory shared parental pay (birth) if M ceases to meet the condition in regulation 4(2)(e); and
    - (iv) specifying the date on which M's maternity pay period or maternity allowance period in respect of C began and the number of weeks by which it is, or will be, reduced.
- (4) The information specified in this paragraph is—
- (a) a copy of C's birth certificate or, if one has not been issued, a declaration signed by M which states that it has not been issued; and
  - (b) the name and address of P's employer or, if P has no employer, a written declaration signed by M that P has no employer.

#### **Notification and evidential requirements relating to the father or partner**

7.—(1) The notification and evidential requirements referred to in regulation 5(2)(c), are that P gives the employer who will be liable to pay statutory shared parental pay (birth) to P the notice and information specified in—

- (a) paragraphs (2) and (3)(a), (b), (d) and (e) at least 8 weeks before the beginning of the first period specified by P pursuant to paragraph (2)(d);
- (b) paragraph 3(c) at least 8 weeks before the beginning of the first period specified by P pursuant to paragraph (2)(d) or, where C is not born by that time, as soon as reasonably practicable after the birth of C but in any event before the beginning of that first period; and
- (c) paragraph (4) within 14 days of that employer requesting that information where the employer requests it within 14 days of receiving all the notices and information specified in paragraphs (2) and (3)(a), (b), (d) and (e).

- (2) The notice specified in this paragraph is notice of—
- (a) the number of weeks in respect of which P would be entitled to claim statutory shared parental pay (birth) in respect of C if entitlement were fully exercised disregarding any intention of M to claim statutory shared parental pay in respect of C;
  - (b) the number of weeks out of those specified under sub-paragraph (a) in respect of which P intends to claim statutory shared parental pay (birth) in respect of C;
  - (c) the number of weeks out of those specified under sub-paragraph (a) in respect of which M intends to claim statutory shared parental pay (birth) in respect of C;
  - (d) the period or periods during which P intends to claim statutory shared parental pay (birth) in respect of C.
- (3) The information specified in this paragraph is—
- (a) a written declaration signed by M who in connection with P's claim is required to satisfy the conditions specified in regulation 5(3)—
    - (i) that M consents to P's intended claim for statutory shared parental pay;
    - (ii) that M meets, or will meet, the conditions in regulation 5(3) (conditions to be satisfied by M);
    - (iii) that M will immediately inform P if M ceases to meet the condition in regulation 5(3) (d);
    - (iv) specifying M's name, address and national insurance number or, if M has no national insurance number, stating that M has no such number;
    - (v) specifying the date on which M's maternity pay period or maternity allowance period in respect of C began and the number of weeks by which it is, or will be, reduced; and
    - (vi) providing M's consent as regards the processing by the person who is, or will be, liable to pay statutory shared parental pay (birth) to P under section 171ZX(1) of the 1992 Act of the information in the written declaration;
  - (b) C's expected week of birth;
  - (c) C's date of birth;
  - (d) P's name;
  - (e) a written declaration signed by P—
    - (i) that the information given by P is correct;
    - (ii) that P meets, or will meet, the conditions in regulation 5(2); and
    - (iii) that P will immediately inform the person who will be liable to pay statutory shared parental pay (birth) if M ceases to meet the condition in regulation 5(3)(d).
- (4) The information specified in this paragraph is—
- (a) a copy of C's birth certificate or, if one has not been issued, a declaration signed by P which states that it has not been issued; and
  - (b) the name and address of M's employer (or, if M has no employer a written declaration signed by P that M has no employer).

**Variation of number of weeks of pay to be claimed and of periods when pay is to be claimed**

**8.—**(1) M or, as the case may be, P may vary the period or periods during which they intend to claim statutory shared parental pay (birth) by notice in writing given to the employer who will be liable to pay that pay to M or P at least 8 weeks before the beginning of the first period specified in that notice.

(2) M may vary the number of weeks in respect of which M intends to claim statutory shared parental pay (birth) by notice in writing given to the employer who will be liable to pay statutory shared parental pay (birth) to M—

- (a) of the number of weeks during which M and P have exercised, or intend to exercise, an entitlement to statutory shared parental pay (birth) in respect of C; and
- (b) which is accompanied by a written declaration signed by P who in connection with M's claim is required to satisfy the conditions specified in regulation 4(3) that P consents to that variation.

(3) P may vary the number of weeks in respect of which P intends to claim statutory shared parental pay (birth) by notice in writing given to the employer who will be liable to pay statutory shared parental pay (birth) to P—

- (a) of the number of weeks during which P and M have exercised, or intend to exercise, an entitlement to statutory shared parental pay (birth) in respect of C; and
- (b) which is accompanied by a written declaration by M who in connection with P's claim is required to satisfy the conditions specified in regulation 5(3) that M consents to that variation.

#### **Modification of notice conditions in case of early birth**

9.—(1) This paragraph applies where—

- (a) one or more of the periods specified in a notice given under regulation 6, 7, or 8 during which M or, as the case may be, P intends to claim statutory shared parental pay (birth) 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) M or, as the case may be, P varies by notice under regulation 8(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) Where paragraph (1) applies the requirement in regulation 8(1) 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) This paragraph applies where—

- (a) C is born more than 8 weeks before the first day of the expected week of birth; and
- (b) M or, as the case may be, P has not given the notice and information under regulations 6 or 7 before the date of C's birth.

(4) Where paragraph (3) applies and M, or as the case may be, P specifies in a notice under regulation 6 or 7 a period or periods of statutory shared parental pay (birth) which start in the 8 weeks following C's date of birth, then the following modifications apply—

- (a) in regulation 6—
  - (i) paragraph (1)(a) shall apply as if it read—
    - “(a) 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 M pursuant to paragraph (2)(d);”;
  - (ii) paragraph (1)(b) and (c) shall not apply;
  - (iii) paragraph (4) shall not apply.
- (b) in regulation 7—

- (i) paragraph (1)(a) shall apply as if it read—
  - “(a) 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 P pursuant to paragraph (2)(d).
- (ii) paragraph (1)(b) and (c) shall not apply;
- (iii) paragraph (4) shall not apply.

### **Extent of entitlement to statutory shared parental pay (birth)**

**10.**—(1) The number of weeks in respect of which M or P is entitled to payments of statutory shared parental pay (birth) in respect of C is 39 weeks less—

- (a) the number of weeks—
  - (i) in respect of which maternity allowance or statutory maternity pay is payable to M in respect of C up to the time M has returned to work (where M has returned to work without satisfying the condition in regulations 4(2)(e) or 5(3)(d) (condition as to reduction of the maternity pay period or the maternity allowance period)); or
  - (ii) in any other case, to which the maternity allowance period is reduced by virtue of section 35(3A) of the 1992 Act or, as the case may be, the maternity pay period is reduced by virtue of section 165(3A); and
- (b) the number of weeks of statutory shared parental pay in respect of C which—
  - (i) in the case of M, P has notified P’s intention to claim under regulation 7 or 8; or
  - (ii) in the case of P, M has notified M’s intention to claim under regulation 6 or 8.
- (2) In a case where—
  - (a) P was entitled to payments of statutory shared parental pay (birth) in respect of C; and
  - (b) P ceases to be so entitled because M ceases to satisfy the condition in regulation 5(3)(d); and
  - (c) P becomes entitled again to such payments as a result of M satisfying the condition in regulation 5(3)(d);

the number of weeks in which P claimed statutory shared parental pay (birth) up to the time P ceases to be so entitled is also to be deducted from the number of weeks specified in paragraph (1).

(3) Where paragraph (2) applies the number of weeks of statutory shared parental pay (birth) which P notified P’s intention to claim under regulation 7(2)(b) (as varied under regulation 8(3)) before P ceases to be entitled to statutory shared parental pay (birth) is to be disregarded for the purposes of this regulation.

(4) In the case where M has more than one entitlement to statutory maternity pay in respect of C and in relation to all those entitlements she returns to work without satisfying the conditions in regulation 4(2)(e) or (5)(3)(d), paragraph (1)(a)(i) shall apply as though it read—

“(i) in respect of which statutory maternity pay is payable to M in respect of C up to the last day M returns to work;”.

(5) In the case where M has more than one entitlement to statutory maternity pay in respect of C and the maternity pay periods which apply as a result of those entitlements are all reduced by virtue of section 165(3A) of the 1992 Act before she returns to work, paragraph (1)(a)(ii) shall apply as though it read—

“(ii) falling in the period beginning with the first day of the maternity pay period which is the earliest to begin and ending on the last day of the maternity pay period which is the last to end;”.

(6) In the case where M has more than one entitlement to statutory maternity pay in respect of C and—

- (a) M returns to work in relation to one or more of those entitlements without satisfying the condition regulation 4(2)(e) or 5(3)(d), and
- (b) in relation to one or more of the maternity pay periods which apply as a result of those entitlements that period or those periods are reduced by virtue of section 165(3A) before M returns to work,

paragraph (1)(a) shall apply as though it read—

- “(a) the number of weeks falling within the period beginning with the first day of the maternity pay period which is the earliest to begin and ending with the later of—
  - (i) the last day of the maternity pay period which is reduced by virtue of section 165(3A) before M returns to work (or, where there is more than one such period, the last of those periods); and
  - (ii) the day on which M returned to work without satisfying the condition in regulation 4(2)(e) or 5(3)(d) in relation to that period (or, where there is more than one such period, the last of those periods);”.

(7) In a case where P has more than one entitlement to statutory shared parental pay in respect of C, paragraph (1)(b)(i) shall apply as though it read—

- “(i) in the case of M, P has notified P’s intention to claim under regulation 7 or 8 falling within the period beginning with the first day of the earliest period so notified and ending with the last day of the latest period so notified;”.

(8) In a case where M has more than one entitlement to statutory shared parental pay in respect of C, paragraph (1)(b)(ii) shall apply as though it read—

- “(ii) in the case of P, M has notified M’s intention to claim under regulations 6 or 8 falling within the period beginning with the first day of the earliest period so notified and ending with the last day of the latest period so notified;”.

(9) In a case where P has more than one entitlement to statutory shared parental pay in respect of C, paragraph (2) shall apply as though the number of weeks referred to were the number of weeks which P claimed statutory shared parental pay in respect of C falling within the period beginning with the first day of the earliest period P claimed statutory shared parental pay and ending with the time P ceases to be so entitled.

(10) In this regulation a person is treated as returning to work if one of the following situations apply—

- (a) in a case where the person is entitled to maternity allowance, the allowance is not payable to her by virtue of regulations made under section 35(3)(a)(i) of the 1992 Act<sup>(5)</sup>;
- (b) in a case where the person is entitled to statutory maternity pay, that payment is not payable to her in accordance with section 165(4) or (6) of the 1992 Act<sup>(6)</sup>.

(11) In determining in paragraph (1)(a)(i) the number of weeks in respect of which maternity allowance is payable to M in respect of C up to the time M has returned to work, part of a week in respect of which maternity allowance is payable is to be treated as a whole week.

(12) In paragraph (1)(a)(ii), (6), (7), (8) and (9) part of a week is to be treated as a whole week.

(13) In paragraph (1)(a) “week” has the meaning given by section 122(1) of the 1992 Act, in relation to maternity allowance, or the meaning given by section 165(8) in relation to statutory maternity pay.

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(5) Section 35(3)(a)(i) was amended by the Work and Families Act 2006, Schedule 1, paragraph 6.

(6) Section 165(4) was amended by the Work and Families Act 2006, Schedule 1, paragraph 7(3).

### **When statutory shared parental pay (birth) is not to be paid**

**11.**—(1) Statutory shared parental pay (birth) is not payable after the day before C’s first birthday (or where more than one child is born as a result of the same pregnancy the first birthday of the first child so born).

(2) Statutory shared parental pay (birth) is not payable to M before the end of M’s maternity pay period.

### **Work during period of payment of statutory shared parental pay (birth)**

**12.**—(1) Despite section 171ZY(4) of the 1992 Act (statutory shared parental pay not payable to a person in respect of a week during any part of which the person works for any employer) statutory shared parental pay (birth) is payable to M or, as the case may be, P—

- (a) in respect of a statutory pay week during any part of which M or, as the case may be, P works only for an employer—
  - (i) who is not liable to pay that person statutory shared parental pay; and
  - (ii) for whom that person worked in the week immediately preceding the 14th week before the expected week of birth; or,
- (b) where M or, as the case may be, P does any work on any day under a contract of service with an employer during a statutory pay week during which that employer is liable to pay that person statutory shared parental pay (birth) in respect of C and where that day and any previous days so worked do not exceed 20.

(2) Where statutory shared parental pay (birth) is paid to M or P in respect of any week falling within a period specified in a notice under regulation 6, 7, and 8 during which M or P works for an employer falling within paragraph (1)(a)(i) but not paragraph (1)(a)(ii), M or, as the case may be, P shall notify the employer liable to pay statutory shared parental pay (birth) within seven days of the first day during which the former does such work.

(3) The notification mentioned in paragraph (2) shall be in writing, if the employer who has been liable to pay statutory shared parental pay (birth) so requests.

(4) In this regulation “statutory pay week” means a week in respect of which that person has chosen to exercise an entitlement to statutory shared parental pay (birth).

### **Care of child during period of payment of statutory shared parental pay**

**13.** Despite section 171ZY(3) of the 1992 Act (statutory shared parental pay not payable to a person in respect of a week if it is not the person’s intention at the beginning of the week to care for C) statutory shared parental pay (birth) is payable in the cases referred to in paragraph 6 of the Schedule (death of child).

### **Other cases where there is no liability to pay statutory shared parental pay**

**14.**—(1) There is no liability to pay statutory shared parental pay (birth) to M or, as the case may be, P in respect of any week—

- (a) during any part of which the person who is entitled to that pay is entitled to statutory sick pay under Part 11 of the 1992 Act;
- (b) following that in which the person who is claiming that pay has died; or
- (c) during any part of which the person who is entitled to that pay is detained in legal custody or sentenced to a term of imprisonment except where the sentence is suspended (but see paragraph (2)).



(2) There is liability to pay statutory shared parental pay (birth) to M or, as the case may be, P in respect of any week during any part of which the person who is entitled to that pay 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.

**Conditions of entitlement to statutory shared parental pay: absence from work**

**15.**—(1) The condition in regulation 4(2)(g) and 5(2)(e) does not apply where M or, as the case may be, P—

- (a) during any part of a statutory pay week works other than for an employer;
- (b) during any part of a statutory pay week works only for an employer who falls within paragraph (1)(a) of regulation 12 (work during period payment of statutory shared parental pay);
- (c) works in circumstance where paragraph (1)(b) of regulation 12 applies.

(2) In this regulation “statutory pay week” means a week in respect of which that person has chosen to exercise an entitlement to statutory shared parental pay (birth).

**Entitlement to statutory shared parental pay (birth) in cases relating to death**

**16.** The Part 1 of the Schedule (statutory shared parental pay in special circumstances) has effect.