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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

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

**PART 3**

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

**Entitlement of adopter to statutory shared parental pay (adoption)**

**17.**—(1) A is entitled to statutory shared parental pay (adoption) if A satisfies the conditions specified in paragraph (2) and AP satisfies the conditions specified in paragraph (3).

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

- (a) A satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 31 (conditions as to claimant's continuity of employment and normal weekly earnings);
- (b) A has at the date of C's placement for adoption the main responsibility for the care of C (apart from the responsibility of AP);
- (c) A has complied with the requirements specified in regulation 19 (notification and evidential requirements);
- (d) A became entitled to statutory adoption pay by reference to the placement for adoption of C;
- (e) the adoption pay period that applies as a result of A's entitlement to statutory adoption pay is, and continues to be, reduced under section 171ZN(2A) of the 1992 Act<sup>(1)</sup>;
- (f) it is A's intention to care for C during each week in respect of which statutory shared parental pay (adoption) is paid to A;
- (g) A is absent from work during each week in respect of which statutory shared parental pay is paid to A (except in the cases referred to in regulation 27 (entitlement to statutory shared parental pay (adoption): absence from work); and
- (h) where A is an employee (within the meaning of the Employment Rights Act 1996) A's absence from work as an employee during each week that statutory shared parental pay is paid to A is absence on shared parental leave in respect of C.

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

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

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<sup>(1)</sup> Section 171ZN(2A) was inserted by section 120(6) of the Children and Families Act 2014.

### **Entitlement of partner to statutory shared parental pay (adoption)**

**18.**—(1) AP is entitled to statutory shared parental pay (adoption) if AP satisfies the conditions specified in paragraph (2) and A satisfies the conditions specified in paragraph (3).

(2) The conditions specified in paragraph (1) are that—

- (a) AP satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 31 (conditions as to continuity of employment and normal weekly earnings);
- (b) AP has at the date of C's placement for adoption the main responsibility for the care of C (apart from the responsibility of A);
- (c) AP has complied with the requirements specified in regulation 20 (notification and evidential requirements);
- (d) it is AP's intention to care for C during each week in respect of which statutory shared parental pay (adoption) is paid to AP;
- (e) AP is absent from work during each week in respect of which statutory shared parental pay (adoption) is paid to AP (except in the cases referred to in regulation 27 (entitlement to statutory shared parental pay: absence from work)); and
- (f) where AP is an employee (within the meaning of the Employment Rights Act 1996) AP's absence from work as an employee during each week that statutory shared parental pay is paid to AP is absence on shared parental leave in respect of C.

(3) The conditions specified in paragraph (1) are that—

- (a) A has at the date of C's placement for adoption the main responsibility for the care of C (apart from any responsibility of AP);
- (b) A satisfies the employment and earnings conditions in regulation 29;
- (c) A became entitled to statutory adoption pay by reference to the placement for adoption of C; and
- (d) the adoption pay period that applies as a result A's entitlement to statutory adoption pay is, and continues to be, reduced under section 171ZN(2A) of the 1992 Act.

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

**19.**—(1) The notification and evidential requirements referred to in regulation 17(2)(c) are that A gives the employer who will be liable to pay statutory shared parental pay (adoption) to A 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 A pursuant to paragraph (2)(d);
- (b) paragraph (3)(c) at least 8 weeks before the beginning of the first period specified by A pursuant to paragraph (2)(d) or, if C is not placed for adoption by that time, as soon as reasonably practicable after the placement 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 A would be entitled to claim statutory shared parental pay (adoption) in respect of C if entitlement were fully exercised disregarding any intention of AP to claim statutory shared parental pay (adoption) in respect of C;

- (b) the number of weeks (out of those specified under paragraph (2)(a)) in respect of which A intends to claim statutory shared parental pay (adoption) in respect of C;
  - (c) the number of weeks (out of those specified under paragraph (2)(a)) in respect of which AP intends to claim statutory shared parental pay (adoption) in respect of C; and
  - (d) the period or periods during which A intends to claim statutory shared parental pay (adoption) in respect of C.
- (3) The information specified in this paragraph is—
- (a) a written declaration signed by AP who in connection with A's claim is required to satisfy the conditions specified in regulation 17(3)—
    - (i) that AP consents to A's intended claim for statutory shared parental pay;
    - (ii) that AP meets or will meet the conditions in regulation 17(3) (conditions to be satisfied by AP);
    - (iii) specifying AP's name, address and national insurance number or, if AP has no national insurance number, stating that AP has no such number; and
    - (iv) providing AP's consent as regards the processing by the employer who will be liable to pay statutory shared parental pay (adoption) to A of the information in the written declaration;
  - (b) the date on which A was notified that A had been matched with C;
  - (c) the date of C's placement for adoption;
  - (d) A's name; and
  - (e) a written declaration signed by A—
    - (i) that the information given by A under paragraph (2) and (3) is correct;
    - (ii) that A meets or will meet the conditions in regulation 17(2); and
    - (iii) that A will immediately inform the person who will be liable to pay statutory shared parental pay (adoption) if A ceases to meet the condition in regulation 17(2)(e); and
    - (iv) specifying the date on which A's adoption pay 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) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—
    - (i) the name and address of the adoption agency;
    - (ii) the date on which A was notified that A had been matched with C; and
    - (iii) the date on which the adoption agency was expecting to place C with A; and
  - (b) the name and address of AP's employer or, if AP has no employer, a written declaration signed by A that AP has no employer.

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

**20.—**(1) The notification and evidential conditions referred to in regulation 18(2)(c) are that AP gives the employer who will be liable to pay statutory shared parental pay (adoption) to AP 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 AP pursuant to paragraph (2)(d);

- (b) paragraph (3)(c) at least 8 weeks before the beginning of the first period specified by AP pursuant to paragraph (2)(d) or if C is not placed for adoption by that time, as soon as reasonably practicable after the placement of C but in any event before that first period; and
  - (c) paragraph (4) (where applicable) within 14 days of that employer requesting this information where the employer requests it within 14 days of receiving all 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 AP would be entitled to claim statutory shared parental pay (adoption) in respect of C if entitlement were fully exercised disregarding any intention of A to claim statutory shared parental pay (adoption) in respect of C;
  - (b) the number of weeks (out of those specified under paragraph (2)(a)) in respect of which AP intends to claim statutory shared parental pay (adoption) in respect of C;
  - (c) the number of weeks (out of those specified under paragraph (2)(a)) in respect of which A intends to claim statutory shared parental pay (adoption) in respect of C;
  - (d) the period or periods during which AP intends to claim statutory shared parental pay (adoption) in respect of C.
- (3) The information specified in this paragraph is—
- (a) a written declaration signed by A who in connection with AP's claim is required to satisfy the conditions in regulation 18(3)—
    - (i) that A consents to AP's intended claim for statutory shared parental pay (adoption);
    - (ii) that A meets, or will meet, the conditions in regulation 18(3) (conditions to be satisfied by A);
    - (iii) that A will immediately inform AP if A ceases to meet the conditions in regulation 18(3)(d);
    - (iv) specifying A's name, address and national insurance number or, if A has no national insurance number, stating that A has no such number;
    - (v) specifying the date on which A's adoption pay period in respect of C began and the number of weeks by which it is, or will be, reduced; and
    - (vi) providing A's consent as regards the processing by the employer who is, or will be, liable to pay statutory shared parental pay (adoption) to AP of the information in the written declaration;
  - (b) the date on which A was notified that A had been matched with C;
  - (c) the date of C's placement for adoption;
  - (d) AP's name;
  - (e) a written declaration signed by AP—
    - (i) that the information given by AP is correct;
    - (ii) that AP meets, or will meet, the conditions in regulation 18(2); and
    - (iii) that AP will immediately inform the person who will be liable to pay statutory shared parental pay (adoption) if A ceases to meet the condition 18(3)(d) .
- (4) The information specified in this paragraph is—
- (a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of —
    - (i) the name and address of the adoption agency;
    - (ii) the date on which A was notified that A had been matched with C; and

- (iii) the date on which the adoption agency was expecting to place C for adoption with A; and
- (b) the name and address of A's employer or, if A has no employer, a written declaration signed by AP that A has no employer.

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

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

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

- (a) of the number of weeks during which A and AP have exercised, or intend to exercise, an entitlement to statutory shared parental pay in respect of C; and
- (b) which contains a written declaration signed by AP who in connection with A's claim is required to satisfy the conditions in regulation 17(3) that AP consents to that variation.

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

- (a) of the number of weeks during which AP and A have exercised, or intend to exercise, an entitlement to statutory shared parental pay (adoption) in respect of C; and
- (b) which is accompanied by a written declaration by A who in connection with AP's claim is required to satisfy the conditions in regulation 18(3) that A consents to that variation.

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

**22.**—(1) The number of weeks in respect of which A or, as the case may be, AP is entitled to payments of statutory shared parental pay (adoption) in respect of C is 39 weeks less—

- (a) the number of weeks—
  - (i) in respect of which statutory adoption pay is payable to A in respect of C up to the time that person has returned to work (where that person has returned to work without satisfying the conditions in regulations 17(2)(e) or 18(3)(d)) (condition as to reduction in adoption pay period); or
  - (ii) in any other case, to which the adoption pay period is reduced by virtue of section 171ZN(2A) of the 1992 Act; and
- (b) the number of weeks of statutory shared parental pay (adoption) in respect of C which—
  - (i) in the case of A, AP has notified AP's intention to claim under regulation 20 or 21; or
  - (ii) in the case of AP, A has notified A's intention to claim under regulation 19 or 21.

(2) In the case where A has more than one entitlement to statutory adoption pay in respect of C and in relation to all those entitlements A returns to work without satisfying the conditions in regulation 17(2)(e) or 18(3)(d), paragraph (1)(a)(i) shall apply as though it read—

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

(3) In the case where A has more than one entitlement to statutory adoption pay in respect of C and the adoption pay periods which apply as a result of those entitlements are all reduced by virtue

of section 171ZN(2A) of the 1992 Act before A 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 adoption pay period which is the earliest to begin and ending with the last day of the adoption pay period which is the last to end;”.

(4) In a case where A has more than one entitlement to statutory adoption pay in respect of C and—

- (a) A returns to work in relation to one or more of those entitlements without satisfying the conditions in regulation 17(2)(e) or 18(3)(d), and
- (b) in relation to one or more of the adoption pay periods which apply as a result of those entitlements that period or those periods are reduced by virtue of section 171ZN(2A) of the 1992 Act before A 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 adoption pay period which is the earliest to begin and ending with the later of—

- (i) the last day of the adoption pay period which is reduced by virtue of section 171ZN(2A) of the 1992 Act before A returns to work (or, where there is more than one such period, the last of those periods); and
- (ii) the day on which A returned to work without satisfying the conditions in regulation 17(2)(e) or 18(3)(d) in relation to that period (or, where there is more than one such period, the last of those periods);”.

(5) In the case where AP 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 A, AP has notified AP’s intention to claim under regulation 20 or 21 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;”.

(6) In the case where A 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 AP, A has notified A’s intention to claim under regulation 19 or 21 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;”.

(7) In this regulation a person is treated as returning to work if statutory adoption pay is not payable to A in accordance with section 171ZN(3) or (5) of the 1992 Act<sup>(2)</sup>.

(8) In paragraph (1)(a)(ii), (4), (5) and (6) part of a week is to be treated as a whole week.

(9) In paragraph (1)(a) “week” has the meaning given by section 171ZN(8) of the 1992 Act.

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

**23.—**(1) Statutory shared parental pay (adoption) is not payable after the day before the first anniversary of the date on which C was placed for adoption (or where more than one child is placed for adoption through a single placement, the first anniversary of the date of placement of the first child).

(2) Statutory shared parental pay (adoption) is not payable to A before the end of A’s adoption pay period.

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(2) Section 171ZN was inserted by section 2 of the Employment Act 2002 (c.22) and amended by the Work and Families Act 2006, Schedule 1, paragraph 21(2) and (3).

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

**24.**—(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 person works for any employer) statutory shared parental pay (adoption) is payable to A or, as the case may be, AP—

- (a) in respect of a statutory pay week during any part of which A or, as the case may be, AP 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 the placement for adoption; or
- (b) where A or, as the case may be, AP 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 (adoption) in respect of C and where that day and any previous days so worked do not exceed 20.

(2) Where statutory shared parental pay (adoption) is paid to A or AP in respect of any week falling within a period specified in a notice under regulation 19, 20 or 21 during which A or AP works for an employer falling within paragraph (1)(a)(i) but not paragraph (1)(a)(ii) A or, as the case may be, AP shall notify the employer liable to pay statutory shared parental pay 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 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 (adoption).

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

**25.** 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 (adoption) is payable in the cases set out in paragraph 12 of the Schedule (disrupted placement or death of child).

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

**26.**—(1) There is no liability to pay statutory shared parental pay (adoption) to A or, as the case may be, AP 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 has died; or
- (c) during any part of which the person who is entitled to it 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 to A or, as the case may be, AP in respect of any week during any part of which the person 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**

27.—(1) The condition in regulations 17(2)(g) and 18(2)(e) does not apply are where A or, as the case may be, AP—

- (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 24 (work during period payment of statutory shared parental pay);
- (c) works in circumstances where paragraph (1)(b) of regulation 24 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 (adoption).

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

28. Part 2 of the Schedule (statutory shared parental pay in special circumstances) has effect.