
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Statutory Shared Parental Pay (General) Regulations 2014

PART 5

PAYMENT OF STATUTORY SHARED PARENTAL PAY

Weekly rate of payment of statutory shared parental pay

40.—(1) The weekly rate of payment of statutory shared parental pay is the smaller of the following two amounts—

- (a) £138.18;
- (b) 90% of the normal weekly earnings of the individual claiming statutory shared parental pay determined in accordance with section 171ZZ4(6) of the 1992 Act and regulation 32).

(2) Where the amount of any payment of statutory shared parental pay is calculated by reference to—

- (a) the weekly rate specified in paragraph (1)(b), or
- (b) the daily rate of one-seventh of the weekly rate specified in paragraph (1)(a) or (b),

and that amount includes a fraction of a penny, the payment shall be rounded up to the nearest whole number of pence.

Statutory shared parental pay and contractual remuneration

41. For the purposes of section 171ZZ1(1) and (2) (payment of contractual remuneration to go towards discharging liability to pay statutory shared parental pay and payment of statutory shared parental pay to go towards discharging liability to pay contractual remuneration) the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

- (a) by way of remuneration;
- (b) for incapacity for work due to sickness or injury; and
- (c) by reason of birth, adoption or care of a child.

Avoidance of liability for statutory shared parental pay

42.—(1) A former employer is liable to make payments of statutory shared parental pay to a former employee in any case where the employee has been employed for a continuous period of at least eight weeks and the employee's contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory shared parental pay.

(2) In a case falling within paragraph (1)—

- (a) the employee shall be treated as if the employee had been employed for a continuous period ending with the period of seven days beginning with Sunday before the first week falling within the relevant period relating to that employee under section 171ZY(2) of the 1992 Act; and

- (b) regulation 32(2) (relevant period for the purpose of the calculation of normal weekly earnings) shall apply as if it read—

“(2) The relevant period is the period—

- (a) ending on the last day of payment under the former contract of employment; and
(b) beginning with the day following the day of payment under that contract to fall at least 8 weeks earlier than the day of payment mentioned in sub-paragraph (a).”.

Payment of statutory shared parental pay

43. Payments of statutory shared parental pay may be made in like manner to payments of remuneration but shall not include payment in kind or by way of the provision of board and lodgings.

Time when statutory shared parental pay is to be paid

44.—(1) In any case where—

- (a) a decision has been made by an officer of Revenue and Customs under section 8(1) (decisions by officers) of the Social Security Contributions (Transfer of Functions, etc) Act 1999⁽¹⁾ as a result of which a person is entitled to an amount of statutory shared parental pay; and
(b) the time for bringing an appeal against the decision has expired and either—
(i) no such appeal has been brought; or
(ii) such appeal has been brought and has been finally disposed of;

that amount of statutory shared parental pay shall be paid within the time specified in paragraph (2).

(2) The employer or former employer shall pay the amount not later than the first pay day after the following days (but see paragraphs (3) and (4))—

- (a) where an appeal has been brought, the day on which the employer or former employer receives notification that it has been finally disposed of;
(b) where leave to appeal has been refused, and there remains no further opportunity to apply for leave, the day on which the employer or former employer receives notification of the refusal; and
(c) in any other case, the day on which the time for bringing an appeal expires.

(3) Where it is impracticable, in view of the employer’s or former employer’s methods of accounting for and paying remuneration, for the requirement of payment referred to in paragraph (2) to be met by the pay day referred to in that paragraph, it shall be met not later than the next following pay day (but see paragraph (4)).

(4) Where the employer or former employer would not have remunerated the employee for their work in the week in respect of which statutory shared parental pay is payable as early as the pay day specified in paragraph (2) or (if it applies) paragraph (3), the requirement of payment shall be met on the first day on which the employee would have been remunerated for his work in that week.

(5) In this regulation “pay day” means a day on which it has been agreed, or it is the normal practice between an employer or former employer to agree and a person who is or was an employee of theirs, that payments by way of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a calendar month.

(1) 1999 c.2. Section 8(1) was amended by the Work and Families Act 2006 (c.18), Schedule 1, paragraph 46(1) and (2) and by the Children and Families Act 2014 (c.6), Schedule 7, paragraph 44 and 45.

Liability of the Commissioners to pay statutory shared parental pay

45.—(1) Despite section 171ZX(1) of the 1992 Act (liability to make payments of statutory shared parental pay is liability of the employer) where the conditions in paragraph (2) are satisfied, liability to make payments of statutory shared parental pay to a person is to be liability of the Commissioners and not the employer for—

- (a) any week in respect of which the employer was liable to pay statutory shared parental pay to that person but did not do so; and
- (b) for any subsequent weeks that person is entitled to payments of statutory shared parental pay.

(2) The conditions in this paragraph are that—

- (a) an officer of the Revenue and Customs has decided under section 8(1) of the Social Security Contributions (Transfer of Functions, etc) Act 1999 that an employer is liable to make payments of statutory shared parental pay;
- (b) the time for appealing against the decision has expired; and
- (c) no appeal against the decision has been lodged or leave to appeal against the decision is required and has been refused.

(3) Despite section 171ZX(1) of the 1992 Act, liability to make payments of statutory shared parental pay to a person is to be a liability of the Commissioners and not the employer as from the week in which the employer first becomes insolvent (see paragraphs 4 and 5) until the last week that person is entitled to payment of statutory shared parental pay.

(4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if, in England and Wales—

- (a) the employer has been adjudged bankrupt or has made a composition or arrangement with its creditors;
- (b) the employer has died and the employer's estate falls to be administered in accordance with an order made under section 421 Insolvency Act 1986(2); or
- (c) where an employer is a company or a limited liability partnership—
 - (i) a winding-up order is made or a resolution for a voluntary winding-up is passed (or, in the case of a limited liability partnership, a determination for voluntary winding-up has been made) with respect to it,
 - (ii) it enters administration,
 - (iii) a receiver or manager of its undertaking is duly appointed,
 - (iv) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company or limited liability partnership comprised in or subject to the charge, or
 - (v) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986 is approved under that Part.

(5) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if, in Scotland—

- (a) an award of sequestration is made on the employer's estate;
- (b) the employer executes a trust deed for its creditors;
- (c) the employer enters into a composition contract;

- (d) the employer has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889⁽³⁾ is required by that section to divide the employer's insolvent estate among the employer's creditors; or
- (e) where the employer is a company or a limited liability partnership—
 - (i) a winding-up order is made or a resolution for voluntary winding-up is passed (or in the case of a limited liability partnership, a determination for a voluntary winding-up is made) with respect to it,
 - (ii) it enters administration,
 - (iii) a receiver of its undertaking is duly appointed, or
 - (iv) a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

Liability of the Commissioners to pay statutory shared parental pay in case of legal custody or imprisonment

46. Where there is liability to pay statutory shared parental pay—

- (a) in respect of a period which is subsequent to the last week falling within paragraph (1)(c) of regulations 14 and 26 (cases where there is no liability to pay statutory shared parental pay); or
- (b) during a period of detention in legal custody by virtue of paragraph (2) of those regulations;

that liability, despite section 171ZX(1) of the 1992 Act, shall be that of the Commissioners and not the employer.

Payments by the Commissioners

47. Where the Commissioners become liable in accordance with regulation 45 (liability of the Commissioners to pay statutory shared parental pay) or regulation 46 (liability of the Commissioners to pay statutory shared parental pay in case of legal custody or imprisonment) then—

- (a) the first payment is to be made as soon as reasonably practicable after they become so liable; and
- (b) subsequent payments are to be made at weekly intervals;

by means of an instrument of payment or by such other means as appear to the Commissioners to be appropriate in the circumstances of any particular case.

Persons unable to act

48.—(1) This regulation applies where—

- (a) statutory shared parental pay is payable to a person or it is alleged that statutory shared parental pay is payable to a person;
- (b) that person is unable for the time being to act;
- (c) no deputy has been appointed by the Court of Protection with power to receive additional statutory paternity pay on their behalf or, in Scotland, their estate is not being administered by a guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000⁽⁴⁾; and

⁽³⁾ 1889 c.39. Section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c.66), Schedule 7, paragraph 4.

⁽⁴⁾ 2000 asp 4.

- (d) a written application has been made to the Commissioners by a person, who, if a natural person, is over the age of 18 to exercise any right, or deal with any sums payable, under Part 12ZC of the 1992 Act on behalf of the person unable to act.
- (2) Where this regulation applies the Commissioners may appoint the person referred to in paragraph (1)(d)—
 - (a) to exercise, on behalf of the person unable to act, any right which the person unable to act may be entitled under Part 12ZC of the 1992 Act; and
 - (b) to deal, on behalf of the person unable to act, with any sums payable to the person unable to act under Part 12ZC of the 1992 Act.
- (3) Where the Commissioners have made an appointment under paragraph (2)—
 - (a) they may at any time revoke it;
 - (b) the person appointed may resign their office after having given one month's notice in writing to the Commissioners of that person's intention to do so; and
 - (c) the appointment shall end when the Commissioners are notified that a deputy or other person to whom paragraph (1)(c) applies has been appointed.
- (4) Anything required by Part 12ZC of the 1992 Act to be done by or to the person who is unable to act may be done by or to the person appointed under this regulation to act on behalf of the person unable to act, and the receipt of the person so appointed shall be a good discharge to the employer or former employer of the person unable to act for any sum paid.

Service of notices

- 49.**—(1) Where a notice is to be given under these Regulations, it may be given—
- (a) where paragraph (2) applies, by electronic communication;
 - (b) by post; or
 - (c) by personal delivery.
- (2) This paragraph applies where the person who is to receive the notice has agreed that the notice may be given to the person by being transmitted to an electronic address and in an electronic form specified by the person for that purpose.
- (3) Where a notice is to be given under these Regulations it is to be taken to have been given—
- (a) if sent by electronic communication, on the day of transmission;
 - (b) if sent by post in an envelope which is properly addressed and sent by prepaid post, on the day on which it is posted;
 - (c) if delivered personally, on the day of delivery.