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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

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

**PART 5**

**PAYMENT OF STATUTORY SHARED PARENTAL PAY**

**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(1); 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<sup>(2)</sup> 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.

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(2) 1889 c.39. Section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c.66), Schedule 7, paragraph 4.