

SCHEDULE

Regulations 16 and 28

STATUTORY SHARED PARENTAL PAY IN SPECIAL CIRCUMSTANCES

PART 1

STATUTORY SHARED PARENTAL PAY (BIRTH)

**Entitlement of father or partner to statutory shared parental pay (birth) in the event of the death of M before curtailment**

1.—(1) In a case where M dies—

- (a) before the end of her maternity allowance period in respect of C and without reducing that period under section 35(3A) of the 1992 Act<sup>(1)</sup>, or
- (b) before the end of her maternity pay period in respect of C and without reducing that period under section 165(3A) of the 1992 Act<sup>(2)</sup>,

then these Regulations shall apply, in respect of any period after M dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 2(1) a person is to be regarded as falling within the definition of P if that person would have done so but for the fact that M had died.

(3) In regulation 5 (entitlement of father or partner)—

- (a) paragraph (3)(d) shall not apply;
- (b) in a case where M dies before her maternity allowance period or maternity pay period in respect of C starts then the condition in paragraph (3)(c) shall be taken to be satisfied if it would have been satisfied but for the fact that M had died.

(4) In regulation 7 (notification and evidential requirements relating to father or mother's partner)

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

“(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by P pursuant to paragraph (2)(d) or, where it is not reasonably practicable for P to satisfy this requirement, as soon as reasonably practicable after the death of M, but in any event before that period;”;

(b) paragraph (1)(b) and (c) shall not apply;

(c) in paragraph (2)—

(i) sub-paragraph (a) shall apply as if the words “disregarding any intention of M to claim statutory shared parental pay (birth) in respect of C” were omitted; and

(ii) sub-paragraph (c) shall not apply;

(d) in paragraph (3)—

(i) sub-paragraph (a) shall not apply;

(ii) sub-paragraph (d) shall apply as if it read—

“(d) the following information relating to P and M—

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

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

- (i) P’s name, M’s name and national insurance number (where this number is known to P), M’s address immediately before she died and the date of M’s death; and
- (ii) the start date of M’s maternity pay period or maternity allowance period in respect of C or, where M’s death occurred before her maternity allowance period or maternity pay period in respect of C started, the date that period would have started but for the fact that M had died;” and
- (iii) sub-paragraph (e)(iii) shall not apply;
- (e) paragraph (4) shall not apply.
- (5) In regulation 8(3) (variation)—
  - (a) sub-paragraph (a) shall apply as if the reference to M were omitted; and
  - (b) sub-paragraph (b) shall not apply.
- (6) In regulation 10 (extent of entitlement), paragraph (1)(a) shall apply as if the number of weeks referred to is the number of weeks in which maternity allowance or statutory maternity pay was payable to M in respect of C up to the time of M’s death.

**Notification and variation: death of mother or partner after curtailment**

2.—(1) In the case where—

- (a) P, who in connection with a claim by M would be required to satisfy the conditions specified in regulation 4(3), dies after M has reduced her maternity allowance period in respect of C under section 35(3A) of the 1992 Act or her maternity pay period in respect of C under section 165(3A) of the 1992 Act; and
- (b) before P dies M has not given the notices and information specified in regulation 6 (notice and evidential requirements relation to the mother),

then these Regulations apply in respect of any period after P dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 6 (notification and evidential requirements relating to the mother)—

- (a) paragraph (1)(a) shall apply as if it read—
  - “(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by M pursuant to paragraph (2)(d) or where it is not reasonably practicable for M to satisfy this requirement as soon as reasonably practicable after the death of P, but in any event before that period;”;
- (b) paragraph (1)(b) and (c) shall not apply;
- (c) in paragraph (2)—
  - (i) sub-paragraph (a) shall apply as if the words “disregarding any intention of P to claim statutory shared parental pay in respect of C” were omitted;
  - (ii) sub-paragraph (c) shall not apply;
- (d) in paragraph (3)—
  - (i) sub-paragraph (a) shall not apply;
  - (ii) sub-paragraph (d) shall apply as if it read—
    - “(d) M’s name, P’s name and national insurance number (where this number is known to M), P’s address immediately before P died and the date of P’s death”;

- (e) paragraph (4) shall not apply.
- (3) In regulation 8 (variation)—
  - (a) paragraph (2)(a) shall apply as if it read—
    - “(a) of the number of weeks during which M and P have exercised, and the number of weeks M intends to exercise, an entitlement to statutory shared parental pay (birth) in respect of C”;
  - (b) paragraph (2)(b) shall not apply.
- (4) In regulation 10 (extent of entitlement)—
  - (a) paragraph (1)(b)(i) shall apply as if the words “P has notified P’s intention to claim” to the end read “the number of weeks in which P claimed statutory shared parental pay (birth) in respect of C up to the time of P’s death.”;
  - (b) paragraph (7) shall apply as if the words “the last day of the latest period so notified” were “the time of P’s death”.

**3.—(1)** In the case where—

- (a) P, who in connection with M’s claim is required to satisfy the conditions specified in regulation 4(3), dies after M has reduced her maternity allowance period in respect of C under section 35(3A) of the 1992 Act or her maternity pay period in respect of C under section 165(3A) of the 1992 Act, and
- (b) before P dies M has given the notices and information specified in regulation 6 (notification and evidential requirements relating to the mother),

then these Regulations apply in respect of any period after P dies, subject to the modifications in the following provisions of this paragraph.

- (2) In regulation 8 (variation)—
  - (a) paragraph (1) shall apply in relation to the first notice made under that paragraph following P’s death as if at the end of that paragraph there is added—
    - “or, where it is not reasonably practicable for M to satisfy this requirement, by notice in writing given to that employer as soon as reasonably practicable after the death of P, but in any event before that period and which states the date of P’s death”;
  - (b) paragraph (2)(a) shall apply as if it read—
    - “(a) of the number of weeks during which M and P have exercised, and the number of weeks M intends to exercise, an entitlement to statutory shared parental pay (birth) in respect of C”;
  - (c) paragraph (2)(b) shall not apply.
- (3) In regulation 10—
  - (a) paragraph (1)(b)(i) shall apply as if the words “P has notified P’s intention to claim” to the end read—
    - “the number of weeks in which P claimed statutory shared parental pay (birth) in respect of C up to the time of P’s death”;
  - (b) paragraph (7) shall apply as if the words “the last day of the latest period so notified” were “the time of P’s death”.

**4.—(1)** In the case where—

- (a) M dies after she has reduced her maternity allowance period in respect of C under section 35(3A) of the 1992 Act or her maternity pay period in respect of C under section 165(3A) of the 1992 Act, and

- (b) before M dies P has not given the notices and information specified in regulation 7 (notification and evidential requirements relating to father or partner),

then these Regulations apply in respect of any period after M dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 2(1) (definitions) a person is to be regarded as falling within the definition of P if that person would have done so but for the fact that M has died.

(3) In regulation 7 (notification and evidential requirements relating to P)—

(a) in paragraph (1)—

(i) sub-paragraph (a) shall apply as if it read—

“(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by P pursuant to paragraph (2)(d) or where it is not reasonably practicable for P to satisfy this requirement as soon as reasonably practicable after the death of M, but in any event before that period;”;

(ii) sub-paragraphs (b) and (c) shall not apply;

(b) in paragraph (2)—

(i) sub-paragraph (a) shall apply as if the words “disregarding any intention of M to claim statutory shared parental pay in respect of C” were omitted;

(ii) sub-paragraph (c) shall not apply;

(c) in paragraph (3)—

(i) sub-paragraph (a) shall not apply;

(ii) sub-paragraph (d) shall apply as if it read—

“(d) P’s name, M’s name and national insurance number (where this number is known to P), M’s address immediately before she died and the date of M’s death”;

(iii) sub-paragraph (e)(iii) shall not apply;

(d) paragraph (4) shall not apply.

(4) In regulation 8(variation), in paragraph (3)—

(a) sub-paragraph (a) shall apply as if it read—

“(a) of the number of weeks during which P and M have exercised, and the number of weeks P intends to exercise, an entitlement to statutory shared parental pay (birth) in respect of C”;

(b) sub-paragraph (b) shall not apply.

(5) In regulation 10 (extent of entitlement)—

(a) paragraph (1)(b)(ii) shall apply as if the words “M has notified M’s intention to claim” to the end read—

“the number of weeks in which M claimed statutory shared parental pay (birth) in respect of C up to the time of M’s death;”;

(b) paragraph (8) shall apply as if the words “the last day of the latest period” were “the time of M’s death”.

5.—(1) In the case where—

- (a) M dies after she has reduced her maternity allowance period in respect of C under section 35(3A) of the 1992 Act or her maternity pay period in respect of C under section 165(3A) of the 1992 Act, and
- (b) before M dies P has given the notice and information specified in regulation 7 (notification and evidential requirements relating to father or mother’s partner),

then these Regulations apply in respect of any period after M dies subject to the modifications in the following provisions of this paragraph.

(2) In regulation 8 (variation)—

- (a) paragraph (1) shall apply in relation to the first notice made under that regulation following M’s death as if at the end of that paragraph there is added—

“or, where it is not reasonably practicable for P to satisfy this requirement, by notice in writing given to that employer as soon as reasonably practicable after the death of M, but in any event before that period and which states the date of M’s death”;

- (b) paragraph (3)(a) shall apply as if it read—

“(a) of the number of weeks during which P and M have exercised, and the number of weeks P intends to exercise, an entitlement to statutory shared parental pay (birth) in respect of C”;

- (c) paragraph (3)(b) shall not apply.

(3) In regulation 10 (extent of entitlement)—

- (a) paragraph (1)(b)(ii) shall apply as if the words “M has notified M’s intention to claim” to the end read—

“the number of weeks in which M claimed statutory shared parental pay (birth) in respect of C up to the time of M’s death”;

- (b) paragraph (8) shall apply as if the words “the last day of the latest period” were “the time of M’s death”.

## Death of child

**6.—(1)** In the case where M has given the notice and information in accordance with regulation 6(1) and then C dies, then in respect of any period after C dies paragraph (2)(f) of regulation 4 (entitlement of mother to statutory shared parental pay), shall not apply, and regulation 8 shall apply in accordance with sub-paragraph (3).

(2) In the case where P has given the notices and information in accordance with regulation 7(1) and then C dies, then in respect of any period after C dies paragraph (2)(d) of regulation 5 (entitlement of father or partner to statutory shared parental pay) shall not apply and regulation 8 shall apply in accordance with sub-paragraph (3).

(3) Where paragraph (1) or (2) applies, regulation 8 (variation) shall apply as if it read—

“(1) M, or as the case may be, P may cancel the period or periods during which they intend to claim statutory shared parental pay (birth) by notice in writing which is given at least 8 weeks before the first period to be cancelled, or, if this is not reasonably practicable, as soon as reasonably practicable after the death of C, but in any event before that period to the employer who will be liable to pay statutory shared parental pay (birth) to M or P.

(2) M and P may each only give one notice under paragraph (1).”.

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

- (a) sub-paragraphs (2) and (3) only apply where all the children die; 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.

## PART 2

### STATUTORY SHARED PARENTAL PAY (ADOPTION)

#### **Entitlement of adopter’s partner to statutory shared parental pay (adoption) in the event of the death of adopter before curtailment**

7.—(1) In a case where A dies before the end of A’s adoption pay period in respect of C and without reducing that period under section 171ZN(2A) of the 1992 Act<sup>(3)</sup> then these Regulations apply in respect of any period after A dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 2 a person is to be regarded as falling within the definition of AP if that person would have done so but for the fact that A had died.

(3) In regulation 18 (entitlement of partner to statutory shared parental pay (adoption))—

- (a) paragraph (3)(d) shall not apply;
- (b) in the case where A dies before A’s adoption pay period in respect of C starts, then the condition in paragraph (3)(c) shall be taken to be satisfied if it would have been satisfied but for the fact that A had died.

(4) In regulation 20 (notification and evidential requirements relating to partner)—

- (a) paragraph (1)(a) shall apply as if it read—
  - “(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by AP pursuant to paragraph (2)(d) or, where it is not reasonably practicable for AP to satisfy this requirement, as soon as reasonably practicable after the death of A, but in any event before that week”;

(b) paragraph (1)(b) and (c) shall not apply;

(c) in paragraph (2)—

- (i) sub-paragraph (a) shall apply as if the words “disregarding any intention of A to claim statutory shared parental pay (adoption) in respect of C” were omitted,
- (ii) sub-paragraph (c) shall not apply;

(d) in paragraph (3)—

- (i) sub-paragraph (a) shall not apply,
- (ii) sub-paragraph (d) shall apply as if it read—

“(d) the following information about AP and A—

- (i) AP’s name, A’s name and national insurance number (where this number is known to AP), A’s address immediately before she died and the date of A’s death; and

(ii) the start date of A’s adoption pay period in respect of C;”,

(iii) sub-paragraph (e)(iii) shall not apply;

(e) paragraph (4) shall not apply.

(5) In regulation 21(variation), in paragraph (3)—

- (a) sub-paragraph (a) shall apply as if the reference to A were omitted;
- (b) sub-paragraph (b) shall not apply.

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(3) Section 171ZN(2A) was inserted by section 120(6) of the Children and Families Act 2014.

(6) In regulation 22 (extent of entitlement), paragraph (1)(a) shall apply as if the number of weeks referred to is the number of weeks in which statutory adoption pay was payable to A in respect of C up to the time of A's death.

#### **Notification or variation: death of adopter or adopter's partner after curtailment**

8.—(1) In the case where—

- (a) AP who in connection with a claim by A would be required to satisfy the conditions in regulation 17(3), dies after A has reduced A's adoption pay period in respect of C under section 171ZN(2A) of the 1992 Act, and
- (b) before AP dies A has not given the notice and information specified in regulation 19 (notification and evidential requirements relating to the adopter),

then these Regulations apply in respect of any period after AP dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 19 (notification and evidential requirements relating to the adopter)—

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

“(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by A pursuant to paragraph (2)(d) or, where it is not reasonably practicable for A to satisfy this requirement, as soon as reasonably practicable after the death of AP but in any event before that period;”;

(b) paragraph (1)(b) and (c) shall not apply;

(c) paragraph (2)(a) shall apply as if the words “disregarding any intention of AP to claim statutory shared parental pay (adoption) in respect of C” were omitted;

(d) paragraph (2)(c) shall not apply;

(e) paragraph (3)(a) shall not apply;

(f) paragraph (3)(d) shall apply as if it read—

“(d) A's name, AP's name and national insurance number (where this number is known to A), AP's address immediately before AP died and the date of AP's death”;

(g) paragraph (4) shall not apply.

(3) In regulation 21 (variation), in paragraph (3) sub-paragraph (a) shall apply as if it read—

“(a) of the number of weeks during which A and AP have exercised, and the number of weeks A intends to exercise, an entitlement to statutory shared parental pay (adoption) in respect of C;”;

(a) paragraph (b) shall not apply.

(4) In regulation 22 (extent of entitlement to statutory shared parental pay (adoption))—

(a) paragraph (1)(b)(i) shall apply as if the words “AP has notified AP's intention to claim” to the end read—

“the number of weeks in which AP claimed statutory shared parental pay (adoption) in respect of C up to the time of AP's death;”;

(b) paragraph (5) shall apply as if the words “the last day of the latest period so notified” were “the time of AP's death”.

9.—(1) In the case where—

- (a) AP, who in connection with A's claim is required to satisfy the conditions specified in regulation 17(3), dies after A has reduced A's adoption pay period under section 171ZN(2A) of the 1992 Act, and
- (b) before AP dies A has given the notices and information specified in regulation 19 (notification and evidential requirements relating to the adopter),

then these Regulations apply in respect of any period after AP dies, subject to the modifications in the following provisions of this paragraph.

(2) In regulation 21 (variation)—

- (a) paragraph (1) shall apply in relation to the first notice made under that paragraph following AP's death as if at the end of that paragraph there is added—

“or, where it is not reasonably practicable for A to satisfy this requirement, by notice in writing given to that employer as soon as reasonably practicable after the death of AP, but in any event before that period and which states the date of AP's death”;

- (b) paragraph (2)(a) shall apply as if it read—

“(a) of the number of weeks during which A and AP have exercised, and the number of weeks A intends to exercise, an entitlement to statutory shared parental pay (adoption) in respect of C;”;

- (c) paragraph (2)(b) shall not apply.

(3) In regulation 22 (extent of entitlement)—

- (a) paragraph (1)(b)(i) shall apply as if the words “AP has notified AP's intention to claim” to the end read “the number of weeks in which AP claimed statutory shared parental pay (adoption) in respect of C up to the time of AP's death;”;
- (b) paragraph (5) shall apply as if the words “the last day of the latest period so notified” were “the time of AP's death”.

**10.—(1)** In the case where—

- (a) A dies after A has reduced A's adoption pay period in respect of C under section 171ZN(2A) of the 1992 Act, and
- (b) before A dies AP has not given the notice and information specified in regulation 20 (notification and evidential requirements relating to adopter's partner);

then the Regulations apply in respect of any period after A dies subject to the modifications in the following provisions of this paragraph.

(2) In regulation 2(1) (definitions) a person is to be regarded as falling within the definition of AP if that person would have done so but for the fact that A has died.

(3) In regulation 20 (notification and evidential requirements relating to partner)—

- (a) paragraph (1)(a) shall apply as if it read—

“(a) paragraphs (2) and (3) at least 8 weeks before the beginning of the first period specified by AP pursuant to paragraph (2)(d) or if it is not reasonably practicable for AP to satisfy this requirement as soon as reasonably practicable after the death of A, but in any event before that period;”;

- (b) paragraph (1)(b) and (c) shall not apply;
- (c) paragraph (2)(a) shall apply as if the words “disregarding any intention of A to claim statutory shared parental pay (adoption) in respect of C” were omitted;
- (d) paragraph (2)(c) shall not apply;
- (e) paragraph (3)(a) shall not apply;



- (f) paragraph (3)(d) shall apply as if it read—
  - “(d) AP’s name, A’s name and national insurance number (where this number is known to AP), A’s address immediately before A died and the date of A’s death;”;
- (g) paragraph (4) shall not apply.
- (4) In regulation 21 (variation), in paragraph (3)—
  - (a) sub-paragraph (a) shall apply as if it read—
    - “(a) of the number of weeks during which AP and A have exercised, and the number of weeks AP intends to exercise, an entitlement to statutory shared parental pay (adoption) in respect of C”;
  - (b) sub-paragraph (b) shall not apply.
- (5) In regulation 22 (extent of entitlement)—
  - (a) paragraph (1)(b)(ii) shall apply as if the words “A has notified A’s intention to claim” to the end read—
    - “the number of weeks in which A claimed statutory shared parental pay (adoption) in respect of C up to the time of A’s death;”.
  - (b) paragraph (6) shall apply as if the words “the last day of the latest period so notified” were “the time of A’s death”.

**11.—(1)** In the case where—

- (a) A dies after A has reduced A’s adoption pay period in respect of C under section 171ZN(2A) of the 1992 Act; and
- (b) before A dies AP has given the notice and information specified in regulation 20 (notification and evidential requirements relating to the partner);

then these Regulations apply in respect of any period after A dies subject to the modifications in the following provisions of this paragraph.

- (2) In regulation 21 (variation)—
  - (a) paragraph (1) shall apply in relation to the first notice made under that regulation following A’s death as if at the end of that paragraph there is added—
    - “or, where it is not reasonably practicable for AP to satisfy this requirement, by notice in writing given to that employer as soon as reasonably practicable after the death of A, but in any event before that period and which states the date of A’s death;”;
  - (b) paragraph (3)(a) shall apply as it is read—
    - “(a) of the number of weeks during which AP and A have exercised, and the number of weeks AP intends to exercise, an entitlement to statutory shared parental pay (adoption) in respect of C”;
  - (c) paragraph (3)(b) shall not apply.
- (3) In regulation 22 (extent of entitlement)—
  - (a) paragraph (1)(b)(ii) shall apply as if the words “A has notified A’s intention to claim” to the end read—
    - “the number of weeks in which A claimed statutory shared parental pay (adoption) in respect of C up to the time of A’s death.”.
  - (b) paragraph (6) shall apply as if the words “the last day of the latest period so notified” were “the time of A’s death”.

**Death of child or disrupted placement**

**12.**—(1) In the case where A has given the notices and information specified in regulation 19(1) and then C dies or is returned after being placed then in respect of any period after C dies or is returned after being placed paragraph (2)(f) of regulation 17 (entitlement of adopter to statutory shared parental pay) shall not apply and regulation 21 shall apply in accordance with sub-paragraph (3).

(2) In the case where AP has given the notices and information specified in regulation 20(1) and then C dies or is returned after being placed then in respect of any period after C dies or is returned after being placed paragraph (2)(d) of regulation 18 (entitlement of adopter to statutory shared parental pay) shall not apply and regulation 21 shall apply in accordance with sub-paragraph (3).

(3) Where paragraph (1) or (2) applies, regulation 21 (variation) shall apply as if it read—

“(1) A or, as the case may be, AP may cancel the period or periods during which they intend to claim statutory shared parental pay (adoption) by notice in writing which is given at least 8 weeks before the first period to be cancelled or, if this is not reasonably practicable, as soon as reasonably practicable after the death of C or after C is returned after being placed, but in any event before that period to the employer who will be liable to pay statutory shared parental pay (adoption) to A or AP.

(2) A and AP may each only give one notice under paragraph (1).”.

(4) Where more than one child is placed for adoption as a result of the same placement—

- (a) sub-paragraphs (1) and (2) only apply where all the children die or, as the case may be, all the children are returned after being placed;
- (b) a reference in this paragraph to the death of C or to the return of C after being placed (however expressed) is to the death of the last of those children to die or is to the last of those children to be returned after being placed.

(5) In this paragraph “returned after being placed” means—

- (a) returned to the adoption agency under sections 31 to 35 of the Adoption and Children Act 2002<sup>(4)</sup>;
- (b) in Scotland, returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007<sup>(5)</sup>; or
- (c) where the child is placed in accordance with section 22C of the Children Act 1989<sup>(6)</sup>, returned to the adoption agency following termination of the placement.

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<sup>(4)</sup> 2002 c.38.

<sup>(5)</sup> 2007 asp. 4.

<sup>(6)</sup> 1989 c.41; section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c.23).