

Status: Point in time view as at 15/03/2015. This version of this cross heading contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Work and Families Act (Northern Ireland) 2015, Cross Heading: Statutory shared parental pay. (See end of Document for details)



2015 CHAPTER 1

PART 2

SHARED RIGHTS TO LEAVE AND PAY

Statutory shared parental pay

Statutory shared parental pay

- 5.—(1) The Contributions and Benefits Act is amended as follows.
(2) After section 167ZT insert—

“PART 12ZC

STATUTORY SHARED PARENTAL PAY

167ZU Entitlement: birth

(1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person who is the mother of a child (“the claimant mother”), the claimant mother is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.

- (2) The conditions are—
- (a) that the claimant mother and another person (“P”) satisfy prescribed conditions as to caring or intending to care for the child,
 - (b) that P satisfies prescribed conditions—
 - (i) as to employment or self-employment,

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- (ii) as to having earnings of a prescribed amount for a prescribed period, and
 - (iii) as to relationship either with the child or with the claimant mother,
- (c) that the claimant mother has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (d) that the claimant mother's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (e) if regulations so provide, that the claimant mother continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time,
- (f) that the claimant mother became entitled to statutory maternity pay by reference to the birth of the child,
- (g) that the claimant mother satisfies prescribed conditions as to the reduction of the duration of the maternity pay period,
- (h) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of—
 - (i) the number of weeks in respect of which she would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of P to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which she intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which P intends to claim statutory shared parental pay,
- (i) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of the period or periods during which she intends to claim statutory shared parental pay in respect of the child,
- (j) that a notice under paragraph (h) or (i)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,
- (k) that P consents to the extent of the claimant mother's intended claim for statutory shared parental pay,

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- (l) that it is the claimant mother's intention to care for the child during each week in respect of which statutory shared parental pay is paid to her,
 - (m) that the claimant mother is absent from work during each week in respect of which statutory shared parental pay is paid to her,
 - (n) that, where she is an employee within the meaning of the Employment Rights Order, the claimant mother's absence from work during each such week is absence on shared parental leave.
- (3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person (“the claimant”), the claimant is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (4) The conditions are—
- (a) that the claimant and another person (“M”) who is the mother of a child satisfy prescribed conditions as to caring or intending to care for the child,
 - (b) that the claimant satisfies—
 - (i) prescribed conditions as to relationship with the child, or
 - (ii) prescribed conditions as to relationship with M,
 - (c) that M satisfies prescribed conditions—
 - (i) as to employment or self-employment, and
 - (ii) as to having earnings of a prescribed amount for a prescribed period,
 - (d) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
 - (e) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
 - (f) if regulations so provide, that the claimant continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (d) is satisfied) until a prescribed time,
 - (g) that M became entitled, by reference to the birth of the child, to—
 - (i) a maternity allowance, or
 - (ii) statutory maternity pay,
 - (h) that M satisfies prescribed conditions as to—

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- (i) the reduction of the duration of the maternity allowance period,
or
- (ii) the reduction of the duration of the maternity pay period, as the case may be,
- (i) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of—
 - (i) the number of weeks in respect of which the claimant would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of M to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which the claimant intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which M intends to claim statutory shared parental pay,
- (j) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of the period or periods during which the claimant intends to claim statutory shared parental pay in respect of the child,
- (k) that a notice under paragraph (i) or (j)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,
- (l) that M consents to the extent of the claimant's intended claim for statutory shared parental pay,
- (m) that it is the claimant's intention to care for the child during each week in respect of which statutory shared parental pay is paid to the claimant,
- (n) that the claimant is absent from work during each week in respect of which statutory shared parental pay is paid to the claimant,
- (o) that, where the claimant is an employee within the meaning of the Employment Rights Order, the claimant's absence from work during each such week is absence on shared parental leave.

167ZV Extent of entitlement and when payable: birth

- (1) Regulations may provide for—
 - (a) the determination of the extent of a person's entitlement, by virtue of section 167ZU, to statutory shared parental pay in respect of a child,
 - (b) when statutory shared parental pay by virtue of that section is to be payable.

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(2) Provision under subsection (1)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental pay in respect of a child does not exceed the number of weeks of the maternity pay period reduced by—

(a) where the mother of the child takes action that is treated by regulations as constituting for the purposes of section 167ZU and this section her return to work without satisfying conditions prescribed under subsection (2)(h) or, as the case may be, (4)(i) of section 167ZU—

(i) the number of relevant weeks in respect of which maternity allowance or statutory maternity pay is payable to the mother, or

(ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or

(b) except where paragraph (a) applies, the number of weeks to which the maternity allowance period is reduced by virtue of section 35(3A) or, as the case may be, the maternity pay period is reduced by virtue of section 161(3A).

(3) For the purposes of subsection (2)(a), a relevant week is—

(a) where maternity allowance is payable to a mother, a week or part of a week falling before the time at which the mother takes action that is treated by regulations as constituting for the purposes of this section her return to work,

(b) where statutory maternity pay is payable to a mother, a week falling before the week in which the mother takes action that is so treated.

(4) For the purposes of subsections (2)(a) and (3), “week” has—

(a) the same meaning as in section 121(1), in relation to maternity allowance, or

(b) the same meaning as in section 161(8), in relation to statutory maternity pay.

(5) In determining the number of weeks for the purposes of subsection (2) (b)—

(a) “week” has the same meaning as in subsection (4), and

(b) a part of a week is to be treated as a week.

(6) Provision under subsection (1)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one's entitlement and the extent of the other's entitlement do not, taken together, exceed what would be available to one person (see subsection (2)).

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(7) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.

(8) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who is the mother of the child before the end of the mother's maternity pay period.

(9) Regulations may provide that, where the conditions in subsection (10) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZU(1) or (3) ("V"), V may vary the period or periods during which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (11) where that is relevant.

(10) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay,
- (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content.

(11) Regulations may provide that, where the conditions in subsection (12) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZU(1) or (3) ("V"), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.

(12) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
 - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
 - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
 - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
 - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child,
- (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,
- (c) that the person who is P or, as the case may be, M in relation to V consents to that variation.

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(13) A person's entitlement to statutory shared parental pay under section 167ZU and this section is not affected by the birth of more than one child as a result of the same pregnancy.

167ZW Entitlement: adoption

(1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom (“claimant A”), claimant A is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.

(2) The conditions are—

- (a) that claimant A and another person (“X”) satisfy prescribed conditions as to caring or intending to care for the child,
- (b) that X satisfies prescribed conditions—
 - (i) as to employment or self-employment,
 - (ii) as to having earnings of a prescribed amount for a prescribed period, and
 - (iii) as to relationship either with the child or with claimant A,
- (c) that claimant A has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (d) that claimant A's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (e) if regulations so provide, that claimant A continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time,
- (f) that claimant A became entitled to statutory adoption pay by reference to the placement for adoption of the child,
- (g) that claimant A satisfies prescribed conditions as to the reduction of the duration of the adoption pay period,
- (h) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of—
 - (i) the number of weeks in respect of which claimant A would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of X to claim statutory shared parental pay in respect of the child),

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- (ii) the number of weeks in respect of which claimant A intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which X intends to claim statutory shared parental pay,
 - (i) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of the period or periods during which claimant A intends to claim statutory shared parental pay in respect of the child,
 - (j) that a notice under paragraph (h) or (i)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,
 - (k) that X consents to the extent of claimant A's intended claim for statutory shared parental pay,
 - (l) that it is claimant A's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant A,
 - (m) that claimant A is absent from work during each week in respect of which statutory shared parental pay is paid to claimant A,
 - (n) that, where claimant A is an employee within the meaning of the Employment Rights Order, claimant A's absence from work during each such week is absence on shared parental leave.
- (3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person (“claimant B”), claimant B is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (4) The conditions are—
- (a) that claimant B and another person (“Y”) who is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom satisfy prescribed conditions as to caring or intending to care for the child,
 - (b) that claimant B satisfies—
 - (i) prescribed conditions as to relationship with the child, or
 - (ii) prescribed conditions as to relationship with Y,
 - (c) that Y satisfies prescribed conditions—
 - (i) as to employment or self-employment, and
 - (ii) as to having earnings of a prescribed amount for a prescribed period,

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- (d) that claimant B has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (e) that claimant B's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (f) if regulations so provide, that claimant B continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (d) is satisfied) until a prescribed time,
- (g) that Y became entitled to statutory adoption pay by reference to the placement for adoption of the child,
- (h) that Y satisfies prescribed conditions as to the reduction of the duration of the adoption pay period,
- (i) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of—
 - (i) the number of weeks in respect of which claimant B would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of Y to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which claimant B intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which Y intends to claim statutory shared parental pay,
- (j) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of the period or periods during which claimant B intends to claim statutory shared parental pay in respect of the child,
- (k) that a notice under paragraph (i) or (j)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,
- (l) that Y consents to the extent of claimant B's intended claim for statutory shared parental pay,
- (m) that it is claimant B's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant B,
- (n) that claimant B is absent from work during each week in respect of which statutory shared parental pay is paid to claimant B,

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- (o) that, where claimant B is an employee within the meaning of the Employment Rights Order, claimant B's absence from work during each such week is absence on shared parental leave.

167ZX Extent of entitlement and when payable: adoption

(1) Regulations may provide for—

- (a) the determination of the extent of a person's entitlement, by virtue of section 167ZW, to statutory shared parental pay in respect of a child,
- (b) when statutory shared parental pay by virtue of that section is to be payable.

(2) Provision under subsection (1)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental pay in respect of a child does not exceed the number of weeks of the adoption pay period reduced by—

- (a) where the person who became entitled to receive statutory adoption pay takes action that is treated by regulations as constituting for the purposes of section 167ZW and this section the person's return to work without satisfying conditions prescribed under subsection (2)(h) or, as the case may be, (4)(i) of section 167ZW—

- (i) the number of relevant weeks in respect of which statutory adoption pay is payable to the person, or
 - (ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or

- (b) except where paragraph (a) applies, the number of weeks to which the adoption pay period has been reduced by virtue of section 167ZN(2A).

(3) In subsection (2)(a) “relevant week” means a week falling before the week in which a person takes action that is treated by regulations as constituting for the purposes of this section the person's return to work, and for these purposes “week” has the meaning as in section 167ZN(8).

(4) In determining the number of weeks for the purposes of subsection (2)(b)—

- (a) “week” has the same meaning as in subsection (3), and
- (b) a part of a week is to be treated as a week.

(5) Provision under subsection (1)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one's entitlement and the extent of the other's entitlement do not, taken together, exceed what would be available to one person (see subsection (2)).

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(6) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.

(7) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who became entitled to receive statutory adoption pay in respect of the child before the end of the person's adoption pay period.

(8) Regulations may provide that, where the conditions in subsection (9) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZW(1) or (3) ("V"), V may vary the period or periods during which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (10) where that is relevant.

(9) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay,
- (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content.

(10) Regulations may provide that, where the conditions in subsection (11) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZW(1) or (3) ("V"), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.

(11) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
 - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
 - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
 - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
 - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child,
- (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content,

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(c) that the person who is X or, as the case may be, Y in relation to V consents to that variation.

(12) A person's entitlement to statutory shared parental pay under this section is not affected by the placement for adoption of more than one child as part of the same arrangement.

167ZY Entitlement etc.: prospective adopters with whom looked after children are placed

(1) Regulations are to provide for statutory shared parental pay in respect of a child who is looked after by an authority and who is, or is expected to be, placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.

(2) The circumstances are that—

(a) the authority—

(i) is considering adoption for the child, or

(ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and

(b) such conditions as may be prescribed are satisfied.

(3) Sections 167ZW and 167ZX have effect, in relation to provision made by virtue of subsection (1) as if references to a child being placed for adoption under the law of any part of the United Kingdom and to placement for adoption were such references as may be prescribed.

(4) In this section, “approved foster parent”, “approved prospective adopter”, “authority” and “child who is looked after by an authority” have the same meaning as in section 167ZBA.”.

167ZZ Entitlement: general

(1) Regulations may—

(a) provide that the following do not have effect, or have effect subject to prescribed modifications, in such cases as may be prescribed—

(i) section 167ZU(2)(a) to (o),

(ii) section 167ZU(4)(a) to (p),

(iii) section 167ZV(10)(a) and (b),

(iv) section 167ZV(12)(a) to (c),

(v) section 167ZW(2)(a) to (o),

(vi) section 167ZW(4)(a) to (p),

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- (vii) section 167ZX(9)(a) and (b), and
 - (viii) section 167ZX(11)(a) to (c),
 - (b) impose requirements about evidence of entitlement and procedures to be followed,
 - (c) specify in what circumstances employment is to be treated as continuous for the purposes of section 167ZU or 167ZW,
 - (d) provide that a person is to be treated for the purposes of those sections as being employed for a continuous period of at least the prescribed period where—
 - (i) the person has been employed by the same employer for at least the prescribed period under two or more separate contracts of service, and
 - (ii) those contracts were not continuous,
 - (e) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 167ZU or 167ZW,
 - (f) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of the person's earnings to be treated as comprised in any payment made to the person or for the person's benefit,are to be calculated or estimated for the purposes of section 167ZU or 167ZW in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person are, to such extent as may be prescribed, to be disregarded or, as the case may be, to be deducted from the amount of the person's earnings.
- (2) The persons upon whom requirements may be imposed by virtue of subsection (1)(b) include—
- (a) a person who, in connection with another person's claim to be paid statutory shared parental pay, is required to satisfy conditions prescribed under section 167ZU(2)(b) or (4)(c) or 167ZW(2)(b) or (4)(c),
 - (b) an employer or former employer of such a person.
- (3) In subsection (1)(d) “the prescribed period” means the period of the length prescribed by regulations under section 167ZU(2)(c) or (4)(d) or 167ZW(2)(c) or (4)(d), as the case may be.

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167ZZ1 Liability to make payments

(1) The liability to make payments of statutory shared parental pay by virtue of sections 167ZU and 167ZV or, as the case may be, 167ZW and 167ZX is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 167ZU(2)(c) or (4)(d) or, as the case may be, 167ZW(2)(c) or (4)(d).

(2) Regulations must make provision as to a former employer's liability to pay statutory shared parental pay to a person in any case where the former employee's contract of service with the person has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory shared parental pay.

(3) The Department may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory shared parental pay is to be a liability of the Commissioners.

167ZZ2 Rate and period of pay

(1) Statutory shared parental pay is payable at such fixed or earnings related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.

(2) Subject to the following provisions of this section, statutory shared parental pay is payable to a person in respect of each week falling within a relevant period, up to the number of weeks determined in the case of that person in accordance with regulations under section 167ZV(1) or 167ZX(1).

(3) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period if it is not the person's intention at the beginning of the week to care for the child by reference to whom the person satisfies—

- (a) the condition in section 167ZU(2)(a) or (4)(a), or
- (b) the condition in section 167ZW(2)(a) or (4)(a).

(4) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period during any part of which week the person works for any employer.

(5) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory shared parental pay in respect of a week falling within a relevant period.

(6) Where for any purpose of this Part or of regulations it is necessary to calculate the daily rate of statutory shared parental pay, the amount payable by way of statutory shared parental pay for any day shall be taken as one seventh of the weekly rate.

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(7) For the purposes of this section a week falls within a relevant period if it falls within a period specified in a notice under—

- (a) section 167ZU(2)(j) or (4)(k) or 167ZV(10)(a), or
- (b) section 167ZW(2)(j) or (4)(k) or 167ZX(9)(a),

and is not afterwards excluded from such a period by a variation of the period or periods during which the person in question intends to claim statutory shared parental pay.

(8) In this section “week”, in relation to a relevant period, means a period of seven days beginning with the day of the week on which the relevant period starts.

167ZZ3 Restrictions on contracting out

(1) An agreement is void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part, or
- (b) to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person's employer or former employer under this Part.

(2) For the avoidance of doubt, an agreement between an employer and an employee, authorising deductions from statutory shared parental pay which the employer is liable to pay to the employee in respect of any period, is not void by virtue of subsection (1)(a) if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which the employer is liable to pay in respect of the same period, or
- (b) would be so authorised if the employer were liable to pay contractual remuneration in respect of that period.

167ZZ4 Relationship with contractual remuneration

(1) Subject to subsections (2) and (3), any entitlement to statutory shared parental pay is not to affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).

(2) Subject to subsection (3)—

- (a) any contractual remuneration paid to a person by an employer of that person in respect of any period is to go towards discharging any liability of that employer to pay statutory shared parental pay to that person in respect of that period, and
- (b) any statutory shared parental pay paid by an employer to a person who is an employee of that employer in respect of any period is to go

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towards discharging any liability of that employer to pay contractual remuneration to that person in respect of that period.

(3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2).

167ZZ5 Crown employment: Part 12ZC

167ZZ5 The provisions of this Part apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

167ZZ6 Special classes of person

(1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part in such manner as the Department thinks proper in its application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft,
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances, or
- (c) in prescribed employment in connection with continental shelf operations.

(2) Regulations under subsection (1) may, in particular, provide—

- (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply,
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply,
- (c) for excepting any such person from the application of any such provision where the person neither is domiciled nor has a place of residence in any part of Northern Ireland,
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

(3) In this section, “continental shelf operations” has the same meaning as in sections 166(3), 167ZI(3) and 167ZR(3).

167ZZ7 Part 12ZC: supplementary

(1) In this Part—

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“adoption pay period” has the same meaning as in section 167ZN(2),
“employer”, in relation to a person who is an employee, means a person who—

- (a) under section 6 is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, or
- (b) would be liable to pay such contributions but for—
 - (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16,

“maternity allowance period” has the meaning given in section 35(2),

“maternity pay period” has the meaning given in section 161(1),

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly,

“prescribed” means prescribed by regulations.

(2) In this Part, “employee” means a person who is gainfully employed in Northern Ireland either under a contract of service or in an office(including elective office) with general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003).

(3) Regulations may provide—

- (a) for cases where a person who falls within the definition in subsection (2) is not to be treated as an employee for the purposes of this Part, and
- (b) for cases where a person who would not otherwise be an employee for the purposes of this Part is to be treated as an employee for those purposes.

(4) Without prejudice to any other power to make regulations under this Part, regulations may specify cases in which, for the purposes of this Part or of such provisions of this Part as may be prescribed—

- (a) two or more employers are to be treated as one,
- (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(5) In this Part, except where otherwise provided, “week” means a period of seven days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part, a person's normal weekly earnings are, subject to subsection (8), to be taken to be the average weekly earnings which in the relevant period have been paid to the person or paid for the person's benefit under the contract of service with the employer in question.

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(7) For the purposes of subsection (6) “earnings” and “relevant period” have the meanings given to them by regulations.

(8) In such cases as may be prescribed, a person's normal weekly earnings are to be calculated in accordance with regulations.

(9) Where in consequence of the establishment of one or more Health and Social Care trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person's contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part or such provisions of this Part as may be prescribed.

(10) Regulations under subsection (9) may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election,
- (b) the manner in which, and the time within which, such an election is to be made,
- (c) the persons to whom, and the manner in which, notice of such an election is to be given,
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, the person is to provide it,
- (e) the time for which such an election is to have effect,
- (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory shared parental pay as the person's employer under the contract.

(11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part.

(12) In this Part, “regulations” means regulations made by the Department for Employment and Learning, and in relation to any such regulations sections 171 and 172 have effect as if references there to “the Department” were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) must be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs.

167ZZ8 Power to apply Part 12ZC to other cases

(1) The Department may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

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(2) The Department may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.

(3) Where section 167ZZ(1)(b) has effect in relation to such cases as are described in subsection (2), regulations under section 167ZZ(1)(b) may impose requirements to make statutory declarations as to—

- (a) eligibility to apply for a parental order,
- (b) intention to apply for such an order.”.

(3) In section 172 (Assembly etc. control of regulations and orders), in subsection (2) (regulations and orders to which confirmatory procedure applies), in paragraph (a), after “167ZN(1)” insert “ or any of sections 167ZU to 167ZZ2 ”.

Commencement Information

II S. 5 in operation at 15.3.2015 by S.R. 2015/86, art. 3(1)(d)

Exclusion or curtailment of other statutory rights to pay

6.—(1) The Contributions and Benefits Act is amended as follows.

(2) In section 35 (entitlement to maternity allowance), after subsection (3) insert—

“(3A) Regulations may provide for the duration of the maternity allowance period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

- (a) after a prescribed period beginning with the day on which the woman is confined; and
- (b) when at least a prescribed part of the maternity allowance period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of the woman's entitlement to maternity leave;
- (b) the doing of work by the woman;
- (c) the taking of prescribed steps by the woman or another person as regards leave under Article 107E of the Employment Rights Order in respect of the child;

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(d) the taking of prescribed steps by a person other than the woman as regards statutory shared parental pay in respect of the child.

(3D) Regulations may provide for a reduction in the duration of the maternity allowance period as it applies to a woman to be revoked, subject to prescribed restrictions and conditions.”.

(3) In section 35, after subsection (3D) (as inserted by subsection (2)) insert—

“(3E) A woman who would, but for the reduction in duration of a maternity pay period by virtue of section 161(3A), be entitled to statutory maternity pay for a week is not entitled to a maternity allowance for that week.”.

(4) In section 161 (the maternity pay period), after subsection (3) insert—

“(3A) Regulations may provide for the duration of the maternity pay period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

- (a) after a prescribed period beginning with the day on which the woman is confined; and
- (b) when at least a prescribed part of the maternity pay period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of the woman's entitlement to maternity leave;
- (b) the doing of work by the woman;
- (c) the taking of prescribed steps by the woman or another person as regards leave under Article 107E of the Employment Rights Order in respect of the child;
- (d) the taking of prescribed steps by the woman or another person as regards statutory shared parental pay in respect of the child.

(3D) Regulations may provide for a reduction in the duration of the maternity pay period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”.

(5) In section 167ZE (rate and period of statutory paternity pay), after subsection (3) insert—

“(3A) Statutory paternity pay is not payable to a person in respect of a statutory pay week if—

- (a) statutory shared parental pay is payable to that person in respect of any part of that week or that person takes shared parental leave in any part of that week; or

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(b) statutory shared parental pay was payable to that person or that person has taken shared parental leave in respect of the child before that week.”.

(6) In section 167ZN (rate and period of statutory adoption pay), after subsection (2) insert—

“(2A) Regulations may provide for the duration of the adoption pay period as it applies to a person (“A”) to be reduced, subject to prescribed restrictions and conditions.

(2B) Regulations under subsection (2A) are to secure that the reduced period ends at a time—

- (a) after a prescribed part of the adoption pay period has expired; and
- (b) when at least a prescribed part of the adoption pay period remains unexpired.

(2C) Regulations under subsection (2A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of A's entitlement to adoption leave;
- (b) the doing of work by A;
- (c) the taking of prescribed steps by A or another person as regards leave under Article 107G of the Employment Rights Order in respect of the child;
- (d) the taking of prescribed steps by A or another person as regards statutory shared parental pay in respect of the child.

(2D) Regulations may provide for a reduction in the duration of the adoption pay period as it applies to a person to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”.

Commencement Information

I2 S. 6 in operation at 15.3.2015 by S.R. 2015/86, art. 3(1)(e)

VALID FROM 05/04/2015

Abolition of additional paternity pay

7 In Part 12ZA of the Contributions and Benefits Act, omit sections 167ZEA to 167ZEE (additional statutory paternity pay: birth and adoption).

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Changes to legislation:

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