

2015 No. 101

EMPLOYMENT

WORK AND FAMILIES

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015

Made - - - - - *2nd March 2015*

Coming into operation- - - - - *15th March 2015*

Approved by resolution of the Assembly on 12th May 2015

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by Articles 70C(2)(a), 107A(1), (2), (2A), (2B), (3), (6), and (7), 107B(1), (2), (3), (3A), (4), (7) and (8), 107C(1) and (2), 107D(b), 107G(1) to (6), 107I(1), (4), (7) to (14) and (16), 107J(2) and (3), 107K(1), (4) and (5), 107L, 107M(1)(c), 112A(5)(aa), 112B(1), (2), (4A) and (5), 112C(1) and (6), 112D(1), 112E(d) and 131(e) of the Employment Rights (Northern Ireland) Order 1996(f).

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- (a) S.I. 1996/1919 (N.I. 16). Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), Schedule 4, paragraph 3. Sub-paragraphs (ba) and (ca) were inserted into Article 70C(2) by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), Schedule 2, paragraphs 6 and 7, and sub-paragraph (ca) was substituted by the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), Schedule 1, paragraph 29, and amended by the Work and Families Act (Northern Ireland) 2015 (c. 1 (N.I.)), Schedule 1, paragraph 4(5). Sub-paragraph (bb) was inserted into Article 70C(2) by 2015 c. 1 (N.I.), Schedule 1, paragraph 4(5). There are other amendments which are not relevant.
- (b) Articles 107A to 107D were inserted by S.I. 2002/2836 (N.I. 2), Article 3. Article 107A(2A) was inserted by S.I. 2006/1947 (N.I. 16), Schedule 1, paragraph 32. Article 107A(2A) was amended by, and Article 107A(2B) was inserted by, 2015 c. 1 (N.I.), section 3(4). There are other amendments which are not relevant. Article 107B(3) was substituted by S.I. 2006/1947 (N.I. 16), Schedule 1, paragraph 33 and amended by 2015 c. 1 (N.I.), section 3(5). Articles 107A and 107B are applied to parental order parents and modified by S.R. 2015 No.100. Article 107D(1A) was inserted by 2015 c. 1 (N.I.), section 10(4).
- (c) Articles 107G to 107M were inserted by 2015 c. 1 (N.I.), section 2. Articles 107G and 107I are applied to parental order parents and modified by S.R. 2015 No.100.
- (d) Articles 112A to 112E were inserted by S.I. 2002/2836 (N.I. 2), Article 4. Article 112B(4A) was inserted by 2015 c. 1 (N.I.), section 3(7). Articles 112A and 112B are applied to parental order parents and modified by S.R. 2015 No. 97.
- (e) Article 131 was substituted by S.I. 1996/1919 (N.I. 16), Schedule 4, paragraph 8. Paragraph (3)(aa) was inserted by 2015 c. 1 (N.I.), section 15(5). Sub-paragraphs (ba) and (ca) were inserted into Article 131(3) by S.I. 2002/2836 (N.I. 2), Schedule 2, paragraph 4(13) and (14), and sub-paragraph (ca) was substituted by S.I. 2006/1947 (N.I. 16), Schedule 1, paragraph 40, and amended by 2015 c. 1 (N.I.), Schedule 1, paragraph 4(16)(b). Sub-paragraph (bb) was inserted into Article 131(3) by 2015 c. 1 (N.I.), Schedule 1, paragraph 4(16)(a).
- (f) S.I. 1996/1919 (N.I. 16).

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015 and come into operation on 15th March 2015.

Interpretation

2. In these Regulations—

“Curtilment Regulations” means the Maternity and Adoption Leave (Curtilment of Statutory Rights to Leave) Regulations (Northern Ireland) 2015(a);

“intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child; and

(b) expects the court to make a parental order on that application in respect of the child;

“Leave Regulations” means the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(b);

“parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008(c);

“parental order parent” means a person—

(a) on whose application the court has made a parental order in respect of a child; or

(b) who is an intended parent of a child;

“paternity leave (adoption)” means paternity leave under regulation 8 of the Leave Regulations;

“statutory adoption leave” means ordinary adoption leave under Article 107A of the Employment Rights (Northern Ireland) Order 1996 or additional adoption leave under Article 107B of that Order;

“SPL Regulations” means the Shared Parental Leave Regulations (Northern Ireland) 2015(d).

Application of the Leave Regulations to parental order parents

3. The provisions of the Leave Regulations, in so far as they apply to paternity leave (adoption) and statutory adoption leave, apply to parental order parents with the modifications set out in Part 2.

Application of the Curtilment Regulations to parental order parents

4. The provisions of the Curtilment Regulations, in so far as they apply to the curtilment of statutory adoption leave, apply to parental order parents with the modifications set out in Part 3.

(a) S.R. 2015 No.95.

(b) S.R. 2002 No.377; as amended by S.R. 2005 No. 48 (C. 5); S.R. 2005 No. 520; S.R. 2006 No. 373; S.R. 2008 No. 374; S.I. 2011/1740; and S.R. 2015 No.87.

(c) 2008 c.22.

(d) S.R. 2015 No.93.

Application of the SPL Regulations to Parental Order Parents

5. The provisions of the SPL Regulations, in so far as they apply to shared parental leave (adoption), apply to parental order parents with the modifications set out in Part 4.

PART 2

PARENTAL ORDER PARENTS: PATERNITY AND ADOPTION LEAVE

6. Regulation 2 (interpretation) of the Leave Regulations as they apply to parental order parents shall read as if—

- (a) in paragraph (1)—
 - (i) the definitions of “adopter” and “child” were omitted;
 - (ii) in the definition of “partner”, “Parent A” were substituted (in each case) for the words “a child’s mother or adopter”, “the mother or adopter” and “the mother or the adopter”;
 - (iii) there were, in the appropriate places alphabetically, the following definitions—
 - ““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—
 - (a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child; and
 - (b) expects the court to make a parental order on that application in respect of the child;”;
 - ““Parent A”, in relation to a child, means the parental order parent who has elected to be Parent A;”;
 - ““parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008;”;
 - ““parental order parent” means a person—
 - (a) on whose application the court has made a parental order in respect of the child; or
 - (b) who is an intended parent of the child;”;
 - ““parental statutory declaration” means a statutory declaration stating that the person making the declaration—
 - (a) has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008 with another person for a parental order in respect of the child within the time limit for making such an application; and
 - (b) expects the court to make a parental order on that application in respect of the child;”.
- (b) in paragraph (2)—
 - (i) the words “a child’s mother or adopter” were “Parent A”;
 - (ii) the words “the mother’s or adopter’s” were “Parent A’s”;
- (c) the words of paragraph (4) were—

“A parental order parent elects to be Parent A in relation to a child if he agrees with the other parental order parent of the child that he, and not the other parental order parent, will be Parent A.”.

7. Regulation 3 (application) of the Leave Regulations as they apply to parental order parents shall read as if—

- (a) paragraph (1) were omitted;
- (b) the words of paragraph (2) were—

“The provisions in relation to paternity leave under regulation 8 and in relation to adoption leave under regulation 15 have effect in relation to children whose expected week of birth begins on or after 5th April 2015.”;

(c) in paragraphs (3) and (6), the words “8th December 2002” were “15th March 2015”.

8. In regulation 4 (entitlement to paternity leave: birth), paragraph (1A)(a) of the Leave Regulations, as they apply to parental order parents, shall read as if the words of that paragraph were—

“An employee is not entitled to be absent from work under paragraph (1) if the employee—

- (a) has taken any shared parental leave in respect of the child;
- (b) meets the criteria for entitlement to paternity leave under regulation 8; or
- (c) meets the criteria for entitlement to adoption leave under regulation 15.”.

9. In regulation 8 (entitlement to paternity leave: adoption) of the Leave Regulations as they apply to parental order parents—

- (a) paragraph (1) shall read as if the words “the child’s adopter” were “Parent A”;
- (b) paragraph (2)(a) shall read as if the words after “the week” to the end were “immediately preceding the 14th week before the expected week of the child’s birth”;
- (c) paragraph (2)(b) shall read as if—
 - (i) the words “the child’s adopter” were “Parent A”;
 - (ii) for “, and” there was substituted a semi-colon;
- (d) paragraph (2)(c) shall read as if—
 - (i) the words “the adopter” were “Parent A”;
 - (ii) the full stop were omitted;
 - (iii) there were inserted after sub-paragraph (c)—
 - “; and
 - (d) is a parental order parent of the child.”;
- (e) paragraph (4) shall read as if the words of that paragraph were—

“An employee shall be treated as having satisfied the condition in paragraph (2)(b) if he would have satisfied it but for the fact that Parent A has died.”;
- (f) paragraph (5) shall read as if the words of that paragraph were—

“An employee shall be treated as having satisfied the condition in paragraph (2)(c) if he would have satisfied it but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.”;
- (g) paragraph (6) shall read as if the words of that paragraph were—

“An employee’s entitlement to leave under this regulation shall not be affected by the birth or expected birth of more than one child as a result of the same pregnancy.”;
- (h) it shall read as if the following paragraph were inserted after paragraph (6)—

“(7) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child’s birth notwithstanding the fact that he has not then been continuously employed for a period of not less than 26 weeks, where—

 - (a) the date on which the child is born is earlier than the 14th week before the week in which its birth is expected, and
 - (b) the employee would have been continuously employed for such a period if his employment had continued until that 14th week.”.

(a) Inserted by. S.R. 2015 No.87, regulation 4(d).

10. In regulation 9 (options in respect of leave under regulation 8) of the Leave Regulations as they apply to parental order parents—

- (a) paragraph (2) shall read as if the words “the child is placed with the adopter” were “the child is born”;
- (b) paragraph (3) shall read as if the words of that paragraph were—

“Subject to paragraph (2), an employee may choose to begin a period of leave under regulation 8 on—

 - (a) the date on which the child is born;
 - (b) the date falling such number of days after the date on which the child is born as the employee may specify in a notice under regulation 10; or
 - (c) a predetermined date, specified in a notice under that regulation, which is later than the first day of the expected week of the child’s birth.”.

11. Regulation 10 (notice and evidential requirements for leave under regulation 8) of the Leave Regulations as they apply to parental order parents shall read as if the words of that regulation were—

“**10.**—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 8, specifying—

- (a) the expected week of the child’s birth;
- (b) the length of the period of leave that the employee has chosen to take in accordance with regulation 9(1); and
- (c) the date on which, in accordance with regulation 9(3), the employee has chosen as the date on which the period of paternity leave should begin.

(2) The notice provided for in paragraph (1) must be given to the employer in or before the 15th week before the expected week of the child’s birth.

(3) Where the employer requests it, an employee must give the employer, within 14 days of receipt of a request, a written declaration, signed by the employee, to the effect that—

- (a) the purpose of the employee’s absence from work will be that specified in regulation 8(1);
- (b) the employee satisfies the conditions of entitlement in sub-paragraphs (b) and (c) of regulation 8(2); and
- (c) the employee and Parent A are the parental order parents of the child.

(4) An employee who has given notice under paragraph (1) may vary the date chosen as the date on which the period of leave will begin provided that the employee has given the employer notice of the variation—

- (a) where the variation is to provide for the employee’s period of leave to begin on the date on which the child is born, at least 28 days before the first day of the expected week of the child’s birth;
- (b) where the variation is to provide for the employee’s period of leave to begin on the date that is a specified number of days (or a different specified number of days), after the date on which the child is born, at least 28 days before that date falling that number of days after the first day of the expected week of the child’s birth;
- (c) where the variation is to provide for the employee’s period of leave to begin on a predetermined date (or a different predetermined date) at least 28 days before that date.

(5) The employee must vary the choice of date by substituting a later predetermined date or exercising an alternative option under paragraph (3)(a) or (3)(b) of regulation 9 in a case where—

- (a) the employee has chosen to begin the period of leave on a particular predetermined date, and

(b) the child is not born on or before that date.

(6) Where an employee varies the date on which the period of paternity leave is to begin in accordance with paragraph (5) the employee must give the employer notice of the variation as soon as is reasonably practicable.

(7) An employee must give his employer a further notice, as soon as reasonably practicable after the child's birth, of the date on which the child was born.

(8) Any notice under paragraph (1), (4), (6) or (7) must be given in writing, if the employer so requests.”.

12. In regulation 11 (commencement of leave under regulation 8) of the Leave Regulations, as they apply to parental order parents—

(a) paragraph (1) shall read as if the words “10(4) or (6)” were “10(4) or (5)”;

(b) paragraph (2)(a) shall read as if the words “the child is placed with the adopter” were “the child is born”.

13. In regulation 15 (entitlement to ordinary adoption leave) of the Leave Regulations, as they apply to parental order parents—

(a) paragraph (2) shall read as if the words of that paragraph were—

“The conditions referred to in paragraph (1) are that the employee—

(a) is one of the child's parental order parents; and

(b) has elected to be Parent A.”;

(b) paragraph (4) shall read as if the words of that paragraph were—

“An employee's entitlement to leave under this regulation shall not be affected by the birth or expected birth of more than one child as a result of the same pregnancy.”.

14. Regulations 16 (options in respect of ordinary adoption leave) and 17 (notice and evidential requirements for ordinary adoption leave) of the Leave Regulations as they apply to parental order parents shall read as if the wording of those regulations were—

“Commencement of ordinary adoption leave

16.—(1) Except in a case referred to in paragraph (2), an employee's period of ordinary adoption leave begins on the day on which the child is born.

(2) In a case where the employee is at work on the date on which the child is born the employee's leave begins on the day after that date.

Notice and evidential requirements for ordinary adoption leave

17.—(1) An employee must give the employer notice of their intention to take ordinary adoption leave in respect of a child specifying the expected week of the child's birth.

(2) The notice provided for in paragraph (1) must be given to the employer in or before the 15th week before the expected week of the child's birth.

(3) Where an employer requests it, an employee must also provide the employer with a parental statutory declaration.

(4) An employer who is given notice under paragraph (1) of the employee's intention to take ordinary adoption leave must notify the employee within 28 days of the receipt of the notice of the date on which the period of additional adoption leave to which the employee will be entitled (if the employee satisfies the conditions in regulation 20(1)) after the employee's period of ordinary adoption leave ends.

(5) The notification provided for in paragraph (4) must be given to the employee within 28 days of the date on which the employer received that notice.

(6) An employee must give the employer a further notice, as soon as reasonably practicable after the child's birth, of the date on which the child was born.

(7) Notices under paragraphs (1) and (6) must be given in writing, if the employer so requests.”.

15. In regulation 18 (duration and commencement of ordinary adoption leave) of the Leave Regulations as they apply to parental order parents, it shall read as if—

- (a) in the heading, the words “and commencement” were omitted;
- (b) paragraph (1) was unnumbered; and
- (c) paragraphs (2) and (3) were omitted.

16. In regulation 20 (additional adoption leave: entitlement, duration and commencement) of the Leave Regulations as they apply to parental order parents, sub-paragraph (a) of paragraph (1) shall read as if the words of that sub-paragraph were “the employee is Parent A,”.

17. In regulation 22 (disrupted placement in the course of adoption leave) of the Leave Regulations as they apply to parental order parents—

- (a) paragraph (1) shall read as if the words of that paragraph were—

“This regulation applies where—

- (a) the employee does not apply for a parental order within the time limit set in section 54(3) of the Human Fertilisation and Embryology Act 2008, or
- (b) the employee’s application for a parental order for the child is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired, or
- (c) the child dies.”;

- (b) paragraph (3) shall read as if—

- (i) in paragraph (a) the words from “the person with whom” to the end were “the time limit in section 54(3) of the Human Fertilisation and Embryology Act 2008 for an application for a parental order for the child expires;”;
- (ii) in paragraph (b) the words “paragraph (1)(b)(i)” to the end were “paragraph (1)(b), the week in which the employee’s application for a parental order is refused, withdrawn or otherwise terminated without the order being granted;”;
- (iii) in paragraph (c) the words “paragraph (1)(b)(ii)” to the end were “paragraph (1)(c), the week during which the child dies.”;

- (c) paragraph (3A) is omitted in relation to any time on or after the date on which that paragraph comes into operation^(a).

PART 3

PARENTAL ORDER PARENTS: CURTAILMENT

18. Regulation 2(2) (application) of the Curtailment Regulations as they apply to parental order parents shall read as if the words in that regulation were—

“Part 3 of these Regulations has effect only in relation to children whose expected week of birth begins on or after 5th April 2015.”.

19. Regulation 3 (interpretation) of the Curtailment Regulations as they apply to parental order parents shall read as if in paragraph (1)—

- (a) the definition of “A” read—

(a) Paragraph (3A) was inserted by S.R. 2015 No.87.

“means in relation to C, the parental order parent of C who has elected to be Parent A in respect of C in accordance with regulation 2(4) of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(a);”;

(b) the definition of “AP” read—

“means the parental order parent of C who is married to, or is the civil partner or partner of, A;”;

(c) there were, in the appropriate places alphabetically, the following definitions—

““intended parent”, in relation to a child, means a person who, on the day of the child’s birth—

(a) applies, or intends to apply during the period of 6 months beginning with that day, with another person for a parental order in respect of the child; and

(b) expects the court to make a parental order on that application in respect of the child;”;

““parental order” means an order under section 54(1) of the Human Fertilisation and Embryology Act 2008;” and

““parental order parent” means a person—

(a) on whose application the court has made a parental order in respect of the child; or

(b) who is an intended parent of a child;”.

PART 4

PARENTAL ORDER PARENTS: SHARED PARENTAL LEAVE

20. In regulation 2 (application) of the SPL Regulations as they apply to parental order parents—

(a) paragraph (1) is omitted;

(b) paragraph (2) shall read as if the words in that paragraph were—

“The provisions relating to shared parental leave in Part 3 have effect only in relation to children whose expected week of birth begins on or after 5th April 2015.”.

21. Regulation 3 (interpretation) of the SPL Regulations as they apply to parental order parents shall read as if in paragraph (1)—

(a) the definition of “A” read—

“means in relation to C, the parental order parent of C who has elected to be Parent A in respect of C in accordance with regulation 2(4) of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(b);”;

(b) the definition of “AP” read—

“means the parental order parent of C who at the date of C’s birth is married to, or the civil partner or the partner of, A;”;

(c) there were, in the appropriate places alphabetically, the following definitions—

““parental order parent” means a person—

(a) on whose application the court has made a parental order(c) in respect of the child; or

(b) who is an intended parent(d) of a child;” and

(a) Regulation 2(4) as modified by regulation 6(c) of these Regulations.

(b) Regulation 2(4) as modified by regulation 6 of these Regulations.

(c) “Parental order” is defined in Article 107G(6A) of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), as modified by S.R. 2015 No.100.

(d) “Intended parent” is defined in section 107G(6A) of S.I. 1996/1919 (N.I. 16), as modified by S.R. 2015 No.100.

““parental statutory declaration” means a statutory declaration stating that the person making the declaration—

- (a) has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008 with another person for a parental order in respect of the child within the time limit for making such an application; and
- (b) expects the court to make a parental order on that application in respect of the child;”.

22. In regulation 20 (adopter’s entitlement to shared parental leave) of the SPL Regulations as they apply to parental order parents—

- (a) paragraphs (2)(b) and (3)(b) shall each read as if the words “at the date of the placement for adoption of C” were “at the date of C’s birth”;
- (b) paragraph (4) shall read as if the words of that paragraph were—
“Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.”.

23. In regulation 21 (adopter’s partner’s entitlement to shared parental leave) of the SPL Regulations as they apply to parental order parents—

- (a) paragraphs (2)(b) and (3)(b) shall each read as if the words “at the date of the placement for adoption of C” were “at the date of C’s birth”;
- (b) paragraph (4) shall read as if the words of that paragraph were—
“Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.”.

24. Regulation 23 (periods when shared parental leave may be taken (adoption)) of the SPL Regulations as they apply to parental order parents shall read as if the words of paragraph (1) were—

“Shared parental leave may be taken at any time within the period which begins on the date C is born (or where more than one child is born as a result of the same pregnancy, the date on which the first child is born) and ends on the day before C’s first birthday.”.

25. In regulation 24 (adopter’s notice of entitlement and intention to take shared parental leave) of the SPL Regulations as they apply to parental order parents—

- (a) paragraph (2) shall read as if—
 - (i) the words of sub-paragraph (c) were—
“the expected week of birth for C and C’s date of birth (except as provided for in paragraph (5));”;
 - (ii) the words of sub-paragraph (d) were—
“if the parental order has been granted, the date on which it was granted;”;
- (b) paragraph (3) shall read as if there were substituted for the full stop at the end of sub-paragraph (b) a semi-colon and inserted after that sub-paragraph—
“(c) a parental statutory declaration signed by A.”;
- (c) paragraph (5) shall read as if the words in that paragraph were—
“(5) Where a notice is given under paragraph (1) before C is born, A must give notice of C’s date of birth as soon as reasonably practicable after the birth of C and in any event before the first period of shared parental leave to be taken by A.”;
- (d) it shall read as if after paragraph (6) there were inserted—
“(7) A is only required to supply a parental statutory declaration in accordance with paragraph (3)(c) if—
 - (a) A has not obtained a parental order for C; and
 - (b) A has not already supplied such a declaration to his employer.”.

26. In regulation 25 (adopter’s partner’s notice of entitlement and intention to take shared parental leave) of the SPL Regulations, as they apply to parental order parents—

- (a) paragraph (2) shall read as if—
 - (i) the words in sub-paragraph (c) were—

“C’s expected week of birth and, where known, C’s date of birth (except as provided for in paragraph (4));”;
 - (ii) the words of sub-paragraph (d) were—

“if the parental order has been granted, the date on which it was granted;”;
- (b) paragraph (3) shall read as if there were inserted after sub-paragraph (a)(iv)—

“(v) A and AP are the parental order parents of the child;”;
- (c) paragraph (4) shall read as if the words of that paragraph were—

“Where a notice is given under paragraph (1) before C is born, AP must give C’s date of birth to AP’s employer as soon as reasonably practicable after the birth of C and, in any event, before the first period of shared parental leave to be taken by AP.”.

27. In regulation 26 (supplementary evidence (adoption)) of the SPL Regulations as they apply to parental order parents—

- (a) paragraph (1)(a) shall read as if the words in that paragraph were replaced by—

“if available, evidence in the form of a parental order; and”;
- (b) paragraph (2)(a) shall read as if the words of that paragraph were replaced by—

“if available, evidence in the form of a parental order;”;

28. In regulation 28 (period of leave notice (adoption)) of the SPL Regulations as they apply to parental order parents, paragraph (4)(c) shall read as if the words in that paragraph were—

- “if given before C is born—
 - (i) contain a start date for the leave which is the day on which C is born or which is expressed as a number of days following the date of C’s birth;
 - (ii) contain an end date expressed as a number of days following the date of C’s birth.”.

29. In regulation 32 (limit on number of period of leave notices or variations (adoption)) of the SPL Regulations as they apply to parental order parents, paragraph (2)(b) shall read as if the words “being placed earlier or later than the date expected” in that paragraph were “being born earlier or later than the expected week of birth”.

30. In regulation 34 (entitlement to shared parental leave in the event of a disrupted placement or the death of adopter, adopter’s partner or child) of the SPL Regulations as they apply to parental order parents—

- (a) paragraph (a) shall read as if the word “or” were omitted;
- (b) paragraph (b) shall read as if the words of that paragraph were—

“A and AP do not apply for a parental order for C within the time limit in section 54(3) of the Human Fertilisation and Embryology Act 2008 for making such an application;”;
- (c) it shall read as if at the end of paragraph (b) there was substituted for the full stop a semi-colon and after it inserted—

“or

 - (c) A and AP’s application for a parental order for C is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired.”.

31. In regulation 35 (continuity of employment test) of the SPL Regulations as they apply to parental order parents—

(a) it shall read as if after paragraph (2) there were inserted—

“(2A) Where Part 3 applies and C is born earlier than the relevant week and an employee would have satisfied the condition in sub-paragraph (a) of paragraph (1) if the employee’s employment had continued until the end of the week immediately preceding that week, the employee must be treated as having satisfied that condition.”;

(b) paragraph (3) shall read as if the words of that paragraph were—

“In this regulation “relevant week” means the week immediately preceding the 14th week before the expected week of birth.”.

32. Regulation 36 (employment and earnings test) of the SPL Regulations as they apply to parental order parents shall read as if the definition of “calculation week” in paragraph (5) were—

““calculation week” means the expected week of birth;”.

33. In the Schedule (shared parental leave in special circumstances) of the SPL Regulations as they apply to parental order parents—

(a) paragraph 10 (entitlement to shared parental leave in the event of a disrupted placement or the death of a child) shall read as if—

(i) in each of sub-paragraphs (1) and (2)—

(aa) the words “is returned after being placed for adoption” were “the parental order does not proceed”;

(bb) the words “C’s return or” were omitted;

(ii) in the amendment of regulation 32(1) set out in paragraph (6), the words “is returned after being placed for adoption” were replaced by “the parental order does not proceed”;

(b) it shall read as if after paragraph (6) there was inserted—

“(6A) In this paragraph a parental order does not proceed if—

(a) A and AP have not made an application for a parental order for C within the time limit for such an application under section 54(3) of the Human Fertilisation and Embryology Act 2008; or

(b) an application made for a parental order in respect of C is refused, withdrawn or otherwise terminated and any time limit for an appeal or new application has expired.”;

(c) paragraph (7) shall read as if the words of that sub-paragraph were—

“Where more than one child is born of the same pregnancy, a reference in this paragraph relating to the death of C must be construed as a reference to the last of those children to die.”.

Sealed with the Official Seal of the Department for Employment and Learning on 2nd March 2015.



Dr Stephen Farry
Minister for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide new rights to paternity and adoption leave, to curtail adoption leave and to shared parental leave in respect of cases which involve a person who has applied with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 or intends to apply for such an order. Under this section a court may make an order providing for a child of a surrogate mother to be treated as the child of the applicants for the order if certain conditions are satisfied.

These Regulations should be read in conjunction with the Employment Rights (Northern Ireland) Order 1996 (Application of sections 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015 No.100). They should also be read in conjunction with the following regulations, which they modify:

- the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (S.R. 2002 No.377);
- the Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations (Northern Ireland) 2015 (S.R. 2015 No.95); and
- the Shared Parental Leave Regulations (Northern Ireland) 2015 (S.R. 2015 No.93).

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impacts were assessed within the document ‘Sharing parental rights, extending flexibility at work – public consultation’, published in May 2013 (www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm), and supplemented by a further publication in April 2014 (www.delni.gov.uk/index/publications/equality-good-relations/shared-parental-leave-and-pay.htm).

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£6.00

N6680 05/2015 456680T 19585

ISBN 978-0-337-99808-9



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