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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 93**

**The Shared Parental Leave Regulations (Northern Ireland) 2015**

**PART 2**

**ENTITLEMENT TO SHARED PARENTAL LEAVE (BIRTH)**

**CHAPTER 1**

Entitlement to leave – general

**Mother's entitlement to shared parental leave**

4.—(1) M is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if she satisfies the conditions specified in paragraph (2) and P satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

- (a) M satisfies the continuity of employment test (see regulation 35);
- (b) M has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of P);
- (c) M is entitled to statutory maternity leave in respect of C;
- (d) M has ended any entitlement to statutory maternity leave by curtailing that leave under Article 103(3)(ba) or 105(3)(a) of the 1996 Order (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave;
- (e) M has complied with regulation 8 (notice to employer of entitlement to shared parental leave);
- (f) M has complied with regulation 10(3) to (5) (evidence for employer); and
- (g) M has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that—

- (a) P satisfies the employment and earnings test (see regulation 36); and
- (b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M).

(4) Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.

**Father's or partner's entitlement to shared parental leave**

5.—(1) P is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if P satisfies the conditions specified in paragraph (2) and M satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

- (a) P satisfies the continuity of employment test (see regulation 35);
  - (b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M);
  - (c) P has complied with regulation 9 (notice to employer of entitlement to shared parental leave);
  - (d) P has complied with regulation 10(3) to (5) (evidence for employer); and
  - (e) P has given a period of leave notice in accordance with regulation 12.
- (3) The conditions are that—
- (a) M satisfies the employment and earnings test (see regulation 36);
  - (b) M has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of P);
  - (c) M is entitled to statutory maternity leave, statutory maternity pay, or maternity allowance in respect of C; and
  - (d) where—
    - (i) M is entitled to statutory maternity leave, she has ended any entitlement to statutory maternity leave by curtailing that leave under Article 103(3)(ba) or Article 105(3)(a) of the 1996 Order (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave;
    - (ii) M is not entitled to statutory maternity leave but is entitled to statutory maternity pay, she has curtailed the maternity pay period under section 161(3A) of the 1992 Act (and that period remains curtailed); or
    - (iii) M is not entitled to statutory maternity leave but is entitled to maternity allowance, she has curtailed the maternity allowance period under section 35(3A) of that Act (and that period remains curtailed).
- (4) Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.

#### **Calculation of total amount of shared parental leave available (birth)**

- 6.—(1) Where M is entitled to statutory maternity leave, subject to paragraph (10), the total amount of shared parental leave available to M and P in relation to C is 52 weeks less—
- (a) where there is a leave curtailment date, the number of weeks of statutory maternity leave beginning with the first day of statutory maternity leave taken by M and ending with the leave curtailment date (irrespective of whether or not M returns to work before that date); or
  - (b) where M's statutory maternity leave ends without her curtailing that leave under Article 103(3) or Article 105(3) of the 1996 Order, the number of weeks of statutory maternity leave taken.
- (2) Where M is not entitled to statutory maternity leave, but is entitled to statutory maternity pay, subject to paragraph (11), the total amount of shared parental leave available to P in relation to C is 52 weeks less—
- (a) where M returns to work without reducing her statutory maternity pay period under section 161(3A) of the 1992 Act, the number of weeks of statutory maternity pay payable to M in respect of C before M returns to work; or
  - (b) in any other case, the number of weeks of statutory maternity pay payable to M in respect of C up to the pay curtailment date.

(3) Where M is not entitled to statutory maternity leave, but is entitled to maternity allowance, the total amount of shared parental leave available to P in relation to C is 52 weeks less—

- (a) where M returns to work without reducing her maternity allowance period under section 35(3A) of the 1992 Act, the number of weeks of maternity allowance payable to M in respect of C before M returns to work; or
- (b) in any other case, the number of weeks of maternity allowance payable to M in respect of C up to the allowance curtailment date.

(4) The total amount of shared parental leave which M is entitled to take in relation to C is the product of the calculation in paragraph (1) less—

- (a) any shared parental leave which P has notified under regulation 12 (as varied by any notice under regulation 15);
- (b) any period of leave which is required to be taken in accordance with paragraph (2) of regulation 18; and
- (c) any weeks of statutory shared parental pay to which P is entitled and during which P is not absent on shared parental leave.

(5) The total amount of shared parental leave which P is entitled to take in relation to C is the product of the calculation in paragraph (1), (2) or (3), as the case may be, less—

- (a) any shared parental leave which M has notified under regulation 12 (as varied by any notice under regulation 15);
- (b) any period of leave which is required to be taken in accordance with paragraph (1) of regulation 18; and
- (c) any weeks of statutory shared parental pay to which M is entitled and during which M is not absent on shared parental leave.

(6) For the purposes of paragraphs (4)(a) and (5)(a), any leave notified but, as a result of M giving a revocation notice, not taken must be disregarded.

(7) For the purposes of paragraph (1), a part of a week in which maternity leave is taken is to be treated as a whole week.

(8) For the purposes of paragraph (2) and (3)—

- (a) a part of a week in respect of which statutory maternity pay or maternity allowance is payable is to be treated as a whole week; and
- (b) “week” has the meaning given by section 161(8) of the 1992 Act(1), in relation to statutory maternity pay, and the meaning given by section 121(1) of that Act(2), in relation to maternity allowance.

(9) For the purposes of paragraphs (4) and (5), any week of leave or pay notified by M or P, as the case may be, to be taken concurrently from more than one employer is to be treated as one week.

(10) Where M is entitled to take statutory maternity leave from more than one employment, any calculation under paragraph (1) of the total amount of shared parental leave available must be calculated using—

- (a) the first day of statutory maternity leave taken by M in relation to C from any employment; and
- (b) the later of—
  - (i) the leave curtailment date; or

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(1) Section 161(8) was inserted by the Work and Families (Northern Ireland) Order 2006, Schedule 1, paragraph 6(4).

(2) Section 121(1) was amended for relevant purposes by the Tax Credits Act 2002 (c. 21), Schedule 6.

(ii) the last day of statutory maternity leave taken by M from any employment in relation to C where that leave ends without her curtailing it under Article 103(3) or Article 105(3) of the 1996 Order.

(11) Where M is not entitled to statutory maternity leave, but has more than one entitlement to statutory maternity pay—

(a) paragraph (2)(a) is to apply as though it read—

“(a) where M returns to work for all of her employers without reducing her statutory maternity pay periods under section 161(3A) of the 1992 Act, the number of weeks of statutory maternity pay payable to M in respect of C before the last date on which M returns to work, or”; and

(b) paragraph (2)(b) is to apply as though it read—

“(b) in any other case, the number of weeks of statutory maternity pay payable to M in respect of C up to the latest pay curtailment date.”.

### **Periods when shared parental leave may be taken**

7.—(1) 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 the result of the same pregnancy, the date on which the first child is born) and ends the day before C’s first birthday.

(2) Shared parental leave must be taken in complete weeks.

(3) Shared parental leave may be taken as one continuous period or in discontinuous periods.

(4) The minimum period of shared parental leave which may be taken is one week.

(5) An employee may be absent on shared parental leave in relation to C at the same time that another employee is—

(a) absent on leave provided for in Part 9 of the 1996 Order in relation to C;

(b) in receipt of pay under section 35 or Part 12, 12ZA, or 12ZC of the 1992 Act(3) in relation to C.

### **Mother’s notice of entitlement and intention to take shared parental leave**

8.—(1) M must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by M, give her employer a written notice which contains the information specified in paragraph (2) and is accompanied by the declarations specified in paragraph (3).

(2) The specified information is—

(a) M’s name;

(b) P’s name;

(c) the start and end dates of any period of statutory maternity leave taken or to be taken by M;

(d) the total amount of shared parental leave available (in accordance with regulation 6(1));

(e) C’s expected week of birth and C’s date of birth (except as provided for in paragraph (5));

(f) how much shared parental leave M and P each intend to take;

(g) an indication as to when M intends to take shared parental leave (including the start and end dates for each period of leave).

(3) The specified declarations are—

(a) a declaration signed by M that—

(3) Part 12ZA was inserted by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I.2)), Article 5.

- (i) M satisfies, or will satisfy, the conditions in regulation 4(2);
- (ii) the information given by M in the notice is accurate;
- (iii) M will immediately inform her employer if she ceases to care for C;
- (b) a declaration signed by P—
  - (i) specifying P's name, address, and national insurance number (or a declaration that P does not have a national insurance number);
  - (ii) that P satisfies, or will satisfy, the conditions in regulation 4(3);
  - (iii) that P is the father of C, or the person who is married to, or the civil partner or the partner of, M;
  - (iv) that P consents to the amount of leave which M intends to take (as set out in the notice for the purposes of paragraph (2)(f));
  - (v) that P consents to M's employer processing the information in P's declaration.
- (4) The references to P in paragraphs (2) and (3) are references to the individual who satisfies paragraph (3) of regulation 4.
- (5) Where a notice is given under paragraph (1) before C is born, M must give C's date of birth to her 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 M.
- (6) The indication provided in accordance with paragraph (2)(g) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

#### **Father's or partner's notice of entitlement and intention to take shared parental leave**

9.—(1) P must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by P, give P's employer a written notice which contains the information specified in paragraph (2) and is accompanied by the declarations specified in paragraph (3).

- (2) The specified information is—
  - (a) P's name;
  - (b) M's name;
  - (c) the start and end dates of any—
    - (i) period of statutory maternity leave taken or to be taken by M;
    - (ii) period in respect of which statutory maternity pay received or to be received by M (where statutory maternity leave was not taken or is not to be taken in relation to that period) is payable; or
    - (iii) period in respect of which maternity allowance received or to be received by M (where statutory maternity leave was not taken or is not to be taken in relation to that period) is payable;
  - (d) the total amount of shared parental leave available (in accordance with regulation 6(1), (2) or (3));
  - (e) C's expected week of birth and C's date of birth (except as provided for in paragraph (4));
  - (f) how much shared parental leave P and M each intend to take;
  - (g) an indication as to when P intends to take shared parental leave (including the start and end dates for each period of leave).
- (3) The specified declarations are—
  - (a) a declaration signed by P that—

- (i) P satisfies, or will satisfy, the conditions in regulation 5(2);
- (ii) the information given by P in the notice is accurate;
- (iii) that P is the father of C, or the person who is married to, or the civil partner or the partner of, M;
- (iv) P will immediately inform P's employer if P ceases to care for C or if M informs P that she has ceased to satisfy the condition in regulation 5(3)(d);
- (b) a declaration signed by M—
  - (i) specifying M's name, address, and national insurance number (or a declaration that M does not have a national insurance number);
  - (ii) that M satisfies, or will satisfy, the conditions in regulation 5(3);
  - (iii) that M consents to the amount of leave which P intends to take (as set out in the notice for the purposes of paragraph (2)(f));
  - (iv) that M will immediately inform P if she ceases to satisfy the conditions in regulation 5(3)(d);
  - (v) that M consents to P's employer processing the information in M's declaration.

(4) Where a notice is given under paragraph (1) before C is born, P must give C's date of birth to P'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 P.

(5) The indication provided in accordance with paragraph (2)(g) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

### **Supplementary evidence requirements (birth)**

**10.—(1)** Where M gives a notice under regulation 8 (excluding any notice given under regulation 8(5)), her employer may request within 14 days beginning with the date on which that notice was given—

- (a) a copy of C's birth certificate;
- (b) the name and address of P's employer.

(2) Where P gives a notice under regulation 9 (excluding any notice given under regulation 9(4)), P's employer may request within 14 days beginning with the date on which that notice was given—

- (a) a copy of C's birth certificate;
- (b) the name and address of M's employer.

(3) Where an employer makes a request under paragraph (1)(a) or (2)(a) after C's birth, M or P, as the case may be, must, within 14 days beginning with the date on which that request was made, send the employer—

- (a) a copy of C's birth certificate, where one has been issued; or
- (b) if the birth certificate has yet to be issued, a declaration signed by M or P, as the case may be, which states the date and location of C's birth and states that a birth certificate has not yet been issued.

(4) Where an employer makes a request under paragraph (1)(a) or (2)(a) before C's birth, M or P, as the case may be, must, within 14 days beginning on the date on which C is born, send the employer—

- (a) a copy of C's birth certificate, where one has been issued; or

- (b) if the birth certificate has yet to be issued, a declaration signed by M or P, as the case may be, which states the date and location of C's birth and states that a birth certificate has not yet been issued.
- (5) Where an employer makes a request under paragraph (1)(b) or (2)(b), M or P, as the case may be, must, within 14 days beginning on the date on which that request was made, send the employer—
  - (a) the name and address requested; or
  - (b) a declaration that M or P, as the case may be, has no employer.

**Variation of notice of intention to take shared parental leave (birth)**

**11.**—(1) M may give M's employer a written notice to vary a notice given under regulation 8 to vary how much shared parental leave M and P each intend to take.

(2) P may give P's employer a written notice to vary a notice given under regulation 9 to vary how much shared parental leave M and P each intend to take.

(3) A notice under paragraph (1) or (2) must contain—

- (a) an indication as to when M or P, as the case may be, intends to take shared parental leave (including the start and end dates for each period of leave);
- (b) a description of the periods of shared parental leave that have been notified by M and P under regulation 12 or 15 in relation to C;
- (c) a description of the periods of statutory shared parental pay that have been notified by M and P under Regulations made under Part 12ZC of the 1992 Act in relation to C (where that pay was notified in relation to a period in which shared parental leave was not to be taken);
- (d) a declaration signed by M and P that they agree the variation.

(4) The indication provided in accordance with paragraph (3)(a) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

(5) For the purposes of any notices given by M, the reference to P in paragraph (3)(d) is a reference to the individual who satisfies paragraph (3) of regulation 4.

(6) There is no limit on the number of notices that may be given under this regulation.