

STATUTORY RULES OF NORTHERN IRELAND

2015 No. 93

The Shared Parental Leave Regulations (Northern Ireland) 2015

PART 3 N.I.

ENTITLEMENT TO SHARED PARENTAL LEAVE (ADOPTION)

CHAPTER 1 N.I.

Entitlement to leave – general

Adopter's entitlement to shared parental leave N.I.

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

(2) The conditions are that—

- (a) A satisfies the continuity of employment test (see regulation 35);
- (b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);
- (c) A is entitled to statutory adoption leave in respect of C;
- (d) A has ended any entitlement to statutory adoption leave by curtailing that leave under Article 107A(2A) or 107B(3)(a) of the 1996 Order^{M1} (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave;
- (e) A has complied with regulation 24 (notice to employer of entitlement to shared parental leave);
- (f) A has complied with regulation 26(3) and (4) (evidence for employer); and
- (g) A has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

- (a) AP satisfies the employment and earnings test (see regulation 36); and
- (b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A).

(4) The entitlement under paragraph (1) is not affected by the number of children placed for adoption through a single placement.

Marginal Citations

M1 Articles 107A and 107B 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) and Article 107B(3) were amended by 2015 c. 1 (N.I.), section 3(4) and (5) (respectively).

Adopter's partner's entitlement to shared parental leave **N.I.**

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

(2) The conditions are that—

- (a) AP satisfies the continuity of employment test (see regulation 35);
- (b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A);
- (c) AP has complied with regulation 25 (notice to employer of entitlement to shared parental leave);
- (d) AP has complied with regulation 26(3) and (4) (evidence for employer); and
- (e) AP has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

- (a) A satisfies the employment and earnings test (see regulation 36);
- (b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);
- (c) A is entitled to statutory adoption leave or statutory adoption pay in respect of C; and
- (d) where—
 - (i) A is entitled to statutory adoption leave, A has ended any entitlement to statutory adoption leave by curtailing that leave under Article 107A(2A) or 107B(3)(a) of the 1996 Order (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave, or
 - (ii) where A is not entitled to statutory adoption leave but is entitled to statutory adoption pay, A has curtailed the adoption pay period under section 167ZN(2A) of the 1992 Act ^{M2} (and that period remains curtailed).

(4) The entitlement under paragraph (1) is not affected by the number of children placed for adoption through a single placement.

Marginal Citations

M2 Section 167ZN was inserted by the Employment (Northern Ireland) Order 2002, Article 6. Section 167ZN(2A) was inserted by the Work and Families Act 2015, section 6(6).

Calculation of total amount of shared parental leave available (adoption) **N.I.**

22.—(1) Where A is entitled to statutory adoption leave, subject to paragraph (9), the total amount of shared parental leave available to A and AP in relation to C is 52 weeks less—

- (a) where there is a leave curtailment date, the number of weeks of statutory adoption leave beginning with the first day of statutory adoption leave taken by A and ending with the leave curtailment date (irrespective of whether or not A returns to work before that date), or
- (b) where A's statutory adoption leave ends without A curtailing that leave under Article 107A(2A) or Article 107B(3) of the 1996 Order, either—
 - (i) the number of weeks of statutory adoption leave taken; or
 - (ii) 2 weeks,
 whichever is greater.

(2) Where A is not entitled to statutory adoption leave, but is entitled to statutory adoption pay, subject to paragraph (10), the total amount of shared parental leave available to AP in relation to C is 52 weeks less—

- (a) where A returns to work without reducing A's statutory adoption pay period under section 167ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to A in respect of C before A returns to work, or
- (b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the pay curtailment date.

(3) The total amount of shared parental leave which A is entitled to take is the product of the calculation in paragraph (1) less—

- (a) any shared parental leave which AP has notified under regulation 28 (as varied by any notice under regulation 31),
- (b) any period of leave which is required to be taken in accordance with paragraph (2) of regulation 33, and
- (c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.

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

- (a) any shared parental leave which A has notified under regulation 28 (as varied by any notice under regulation 31),
- (b) any period of leave which is required to be taken in accordance with paragraph (1) of regulation 33, and
- (c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.

(5) For the purposes of paragraphs (3)(a) and (4)(a), any leave notified but, as a result of A giving a revocation notice, not taken must be disregarded.

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

(7) For the purposes of paragraph (2)—

- (a) a part of a week in respect of which statutory adoption pay is payable is to be treated as a whole week, and
- (b) “week” has the meaning given by section 167ZN(8) of the 1992 Act.

(8) For the purposes of paragraphs (3) and (4), any week of leave or pay notified by A or AP, as the case may be, to be taken concurrently from more than one employer is to be treated as one week.

(9) Where A is entitled to take statutory adoption 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 adoption leave taken by A in relation to C from any employment; and
- (b) the later of—
 - (i) the leave curtailment date, or
 - (ii) the last day of statutory adoption leave taken by A from any employment in relation to C where that leave ends without A curtailing it under Article 107A(2A) or Article 107B(3) of the 1996 Order.

(10) Where A is not entitled to statutory adoption leave, but has more than one entitlement to statutory adoption pay—

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

“(a) where A returns to work for all of A's employers without reducing the statutory adoption pay periods under section 167ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to A in respect of C before the last date on which A 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 adoption pay payable to A in respect of C up to the latest pay curtailment date.”.

Periods when shared parental leave may be taken (adoption) N.I.

23.—(1) Shared parental leave may be taken at any time within the period which begins on the date C is placed for adoption with A (or, where more than one child is placed for adoption through a single placement, the date of the placement of the first child) and ends the day before the first anniversary of the date on which C was placed for adoption.

(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, 12ZB, or 12ZC of the 1992 Act^{M3} in relation to C.

Marginal Citations

M3 Parts 12ZA and 12ZB were inserted by the Employment (Northern Ireland) Order 2002, Articles 5 and 6 respectively.

Adopter's notice of entitlement and intention to take shared parental leave N.I.

24.—(1) A must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by A, give A'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) A's name;

(b) AP's name;

(c) the date that A was notified of having been matched for adoption with C;

(d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (5));

(e) the start and end dates of any period of statutory adoption leave taken or to be taken by A;

(f) the total amount of shared parental leave available (in accordance with the regulation 22(1));

(g) how much shared parental leave A and AP each intend to take;

- (h) an indication as to when A 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 A that—
 - (i) A satisfies, or will satisfy, the conditions in regulation 20(2);
 - (ii) the information given by A in the notice is accurate;
 - (iii) A will immediately inform A's employer if A ceases to care for C;
 - (b) a declaration signed by AP—
 - (i) specifying AP's name, address, and national insurance number (or a declaration that AP does not have a national insurance number);
 - (ii) that AP satisfies, or will satisfy the conditions in regulation 20(3);
 - (iii) that AP is married to, or the civil partner or partner of, A;
 - (iv) that AP consents to the amount of leave which A intends to take (as set out in the notice for the purposes of paragraph (2)(g));
 - (v) that AP consents to A's employer processing the information in AP's declaration.
- (4) The references to AP in paragraphs (2) and (3) are references to the individual who satisfies paragraph (3) of regulation 20.
- (5) Where a notice is given under paragraph (1) before the date that C is placed for adoption, A must give the date of placement for adoption to A's employer as soon as reasonably practicable after the placement and, in any event, before the first period of shared parental leave to be taken by A.
- (6) The indication in the notice provided in accordance with paragraph (2)(h) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

Adopter's partner's notice of entitlement and intention to take shared parental leave **N.I.**

- 25.**—(1) AP must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by AP, give AP'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) AP's name;
 - (b) A's name;
 - (c) the date that A was notified of having been matched for adoption with C;
 - (d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (4));
 - (e) the start and end dates of any—
 - (i) period of statutory adoption leave taken or to be taken by A; or
 - (ii) period in respect of which statutory adoption pay received or to be received by A (where statutory adoption leave was not taken or is not be taken in relation to that period) is payable;
 - (f) the total amount of shared parental leave available (in accordance with the regulation 22(1) or (2));
 - (g) how much shared parental leave AP and A each intend to take;
 - (h) an indication as to when AP 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 AP that—
 - (i) AP satisfies, or will satisfy, the conditions in regulation 21(2);
 - (ii) the information given by AP in the notice is accurate;
 - (iii) that AP is married to, or the civil partner or partner of, A;
 - (iv) AP will immediately inform AP's employer if AP ceases to care for C or if A informs AP that A has ceased to satisfy the condition in regulation 21(3)(d);
 - (b) a declaration signed by A—
 - (i) specifying A's name, address, and national insurance number (or a declaration that A does not have a national insurance number);
 - (ii) that A satisfies, or will satisfy, the conditions in regulation 21(3);
 - (iii) that A consents to the amount of leave which AP intends to take (as set out in the notice for the purposes of paragraph (2)(g));
 - (iv) that A will immediately inform AP if A ceases to satisfy the conditions in regulation 21(3)(d);
 - (v) that A consents to AP's employer processing the information in A's declaration.
- (4) Where a notice is given under paragraph (1) before the date that C is placed for adoption, AP must give the date of placement for adoption to AP's employer as soon as reasonably practicable after the placement and, in any event, before the first period of shared parental leave to be taken by AP.
- (5) The indication provided in accordance with paragraph (2)(h) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

Supplementary evidence (adoption) **N.I.**

- 26.**—(1) Where A gives a notice under regulation 24 (excluding any notice given under regulation 24(5)), A's employer may request within 14 days beginning with the date on which that notice was given—
- (a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—
 - (i) the name and address of the adoption agency;
 - (ii) the date that A was notified of having been matched for adoption with C;
 - (iii) the date on which the adoption agency expects to place C with A; and
 - (b) the name and address of AP's employer.
- (2) Where AP gives a notice under regulation 25 (excluding any notice given under regulation 25(4)), AP's employer may request within 14 days beginning with the date on which that notice was given—
- (a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—
 - (i) the name and address of the adoption agency;
 - (ii) the date that A was notified of having been matched for adoption with C;
 - (iii) the date on which the adoption agency expects to place C with A; and
 - (b) the name and address of A's employer.
- (3) Where an employer makes a request under paragraph (1)(a) or (2)(a), A or AP, as the case may be, must send the employer the evidence requested within 14 days beginning with the date on which that request was made.

(4) Where an employer makes a request under paragraph (1)(b) or (2)(b), A or AP, as the case may be, must, within 14 days beginning with the date on which that request was made, send the employer—

- (a) the name and address requested, or
- (b) a declaration that A or AP, as the case may be, has no employer.

Variation of notice of intention to take shared parental leave (adoption) N.I.

27.—(1) A may give A's employer a written notice to vary a notice given under regulation 24 to vary how much shared parental leave A and AP each intend to take.

(2) AP may give AP's employer a written notice to vary a notice given under regulation 25 to vary how much shared parental leave AP and A each intend to take.

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

- (a) an indication as to when A or AP, 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 A and AP under regulation 28 or 31 in relation to C;
- (c) a description of the periods of statutory shared parental pay that have been notified by A and AP 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 A and AP that they agree the variation.

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

(5) For the purposes of any notices given by A, the reference to AP in paragraph (3)(d) is a reference to the individual who satisfies paragraph (3) of regulation 20.

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

CHAPTER 2 N.I.

Entitlement to particular periods of leave

Period of leave notice (adoption) N.I.

28.—(1) A may only be absent from work to take a period of shared parental leave if A gives A's employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(2) AP may only be absent from work to take a period of shared parental leave if AP gives AP's employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(3) A notice given under paragraph (1) or (2) must be given not less than eight weeks before the start date of the first period of shared parental leave requested in the notice.

(4) A notice under this regulation may—

- (a) be given at the same time as a notice under regulation 24, 25 or 27 is given to the employer;
- (b) provide notice of more than one period of leave;
- (c) if given before C is placed for adoption —

- (i) contain a start date for the leave which is the day on which C is placed for adoption or which is expressed as a number of days following the date of C's placement for adoption;
 - (ii) contain an end date expressed as a number of days following the date of C's placement for adoption.
- (5) A notice under this regulation may not—
- (a) be given before a notice is given to the employer under regulation 24 or 25, as the case may be;
 - (b) request leave with a start or end date which is outside of the period in which shared parental leave may be taken (see regulation 23(1)).

Continuous period of shared parental leave (adoption) N.I.

29. Where an employee gives a notice under regulation 28 which requests one continuous period of shared parental leave, the employee is entitled to take that period of leave.

Discontinuous periods of shared parental leave (adoption) N.I.

30.—(1) This regulation applies where an employee gives a notice under regulation 28 which requests discontinuous periods of shared parental leave.

(2) In the two weeks beginning with the date the notice was given the employer who received the notice may—

- (a) consent to the periods of leave requested;
- (b) propose alternative dates for the periods of leave; or
- (c) refuse the periods of leave requested without proposing alternative dates.

(3) Where in the two weeks beginning with the date the notice was given the employer—

- (a) agrees to the periods of leave requested in that notice, or
- (b) agrees with the employee alternative dates for the periods of leave,

the employee is entitled to take the leave on the dates agreed.

(4) Where in the two weeks beginning with the date that notice was given no agreement has been reached, the employee is entitled to take the total amount of leave requested in the notice as a continuous period of leave.

(5) Where the employee is entitled to take a continuous period of leave under paragraph (4)—

- (a) the employee must choose a start date for that leave which is a date after the period of eight weeks beginning with the date on which the period of leave notice was given and must notify the employer of that date within 5 days of the end of the two week period referred to in paragraph (4); or
- (b) if the employee does not choose a start date under sub-paragraph (a), that leave must start on the start date of the first period of leave requested in the period of leave notice.

(6) An employee may withdraw a notice which requests discontinuous periods of shared parental leave on or before the 15th day after the notice was given unless the employee and employer have agreed to periods of leave.

Variation of period of leave (adoption) N.I.

31.—(1) Where an employee is entitled to a period of leave under regulation 29 or 30, the employee may give a written notice to request a variation of that period of leave.

- (2) A notice under paragraph (1) may—
- (a) vary the start date or end date of any period of shared parental leave provided that the notice is given not less than eight weeks before the date varied and the new date;
 - (b) request that a single period of leave become discontinuous periods of leave or vice versa;
 - (c) cancel the leave requested provided that the notice is given not less than eight weeks before the leave cancelled by the notice is due to commence.
- (3) A notice under paragraph (1) must state what periods of shared parental leave the employee is entitled to under regulation 29 or 30.
- (4) A notice under paragraph (1) may not request leave with a start or end date which is outside the period in which shared parental leave may be taken (see regulation 23(1)).
- (5) Regulations 29 and 30 apply to a notice under paragraph (1) as they apply to a period of leave notice given in accordance with regulation 28; and for these purposes a reference in those regulations to a notice under regulation 28 (however expressed) is to be read as a reference to a notice under paragraph (1).

Limit on number of period of leave notices or variations (adoption) N.I.

32.—(1) An employee may give a combined total of up to three notices under regulations 28 and 31.

- (2) Any notice which is—
- (a) withdrawn under regulation 30(6),
 - (b) given under regulation 31 as a result of C being placed earlier or later than the date expected,
 - (c) given under regulation 31 in response to a request from the employer that the employee vary a period of leave,

is to be disregarded for the purposes of paragraph (1).

(3) Where an employee has more than one employer, the limit in paragraph (1) applies in respect of each employer.

(4) The limit in paragraph (1) may be waived by agreement between the employee and the employer.

Change of circumstances (adoption) N.I.

33.—(1) Where less than 8 weeks before A is due to take a period of shared parental leave or during a period of such leave—

- (a) A informs A's employer that A has ceased to care for C (and therefore A will not be absent from work on shared parental leave); and
 - (b) it is not reasonably practicable for A's employer to accommodate the change in circumstances by allowing A to work during the planned period of shared parental leave,
- A's employer may require A to take a period of leave.

(2) Where less than 8 weeks before AP is due to take a period of shared parental leave or during a period of such leave—

- (a) AP informs AP's employer that AP has ceased to care for C or that A has informed AP that A has ceased to satisfy the condition in regulation 21(3)(d) (and therefore AP will not be absent from work on shared parental leave); and
- (b) it is not reasonably practicable for AP's employer to accommodate the change in circumstances by allowing AP to work during the planned period of shared parental leave,

AP's employer may require AP to take a period of leave.

(3) This regulation does not apply where regulation 34 applies.

(4) Leave that is required to be taken under paragraph (1) or (2) must be treated as shared parental leave for the purposes of these Regulations.

(5) Where A or AP, as the case may be, is not on a period of shared parental leave at the time the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

- (a) start on the date on which the next period of shared parental leave was due to start; and
- (b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing A or AP, as the case may be, to work and, in any event, end no later than—
 - (i) the date on which the next period of shared parental leave was due to end, or
 - (ii) eight weeks after the employer is informed of the change in circumstances,whichever is the earlier.

(6) Where A or AP, as the case may be, is on a period of shared parental leave at the time the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

- (a) start on the date that the employer is informed of the change of circumstances; and
- (b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing A or AP, as the case may be, to work and, in any event, end no later than—
 - (i) the date on which that period of shared parental leave was due to end, or
 - (ii) eight weeks after the employer is informed of the change in circumstances,whichever is the earlier.

Entitlement to shared parental leave in the event of a disrupted placement or the death of adopter, adopter's partner or child N.I.

34. Part 2 of the Schedule applies where before the end of the period during which shared parental leave may be taken (see regulation 23(1))—

- (a) A, AP or C dies; or
- (b) C is returned after being placed for adoption.

Changes to legislation:

There are currently no known outstanding effects for the The Shared Parental Leave Regulations (Northern Ireland) 2015, PART 3.