

*Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2014 No. XXXX**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The Statutory Shared Parental Pay  
(Parental Order Cases) Regulations 2014

Made - - - - \*\*\*  
Coming into force - - - - 1st December 2014

A draft of these Regulations was laid before Parliament in accordance with section 176(1) of the Social Security Contributions and Benefits Act 1992(1) and approved by resolution of each House of Parliament.

This instrument contains only regulations made by virtue of, or consequential upon, section 119(1) of the Children and Families Act 2014(2) and is made before the end of the period 6 months beginning with the coming into force of that enactment(3).

The Secretary of State, in exercise of the powers conferred by sections 171ZV(1), (2), (3), (4), (5), (12), (13), (14) and (15), 171ZW(1)(a) to (f), 171ZX(2) and (3), 171ZY(1), (3), (4) and (5), 171ZZ1(3), 171ZZ4(3), (4), (7) and (8) and 175(3) of the Social Security Contributions and Benefits Act 1992(4) and by section 5(1)(g), (i), (l) and (p) of the Social Security Administration Act 1992(5) and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, in so far as such concurrence is required, makes the following Regulations:

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- (1) 1992 c.4; see section 171ZZ4 for the definition of “prescribed”; under section 175(1) regulations are made by the Secretary of State.
- (2) 2014 c.6.
- (3) See section 173(5) of the Social Security Administration Act 1992 (c.5). Pursuant to section 172 of that Act, where the Secretary of State proposes to make regulations under the Social Security Contributions and Benefits Act 1992, the Secretary of State is required to refer such proposals, normally in the form of draft regulations, to the Social Security Advisory Committee. This requirement does not apply where the regulations are contained in a statutory instrument made before the end of a period of six months beginning with the coming into force of the enactments by virtue or as a consequence of which the regulations are being made.
- (4) Sections 171ZV to 171ZZ4 were inserted by the Children and Families Act 2014, section 119(1). Section 171ZV(1), (2) and (4) are modified in so far as they apply to intended and parental order parents by S.I. 2014/ .
- (5) 1992 c.5; section 5(5) was amended by the Children and Families Act 2014, Schedule 7, paragraph 24.

## PART 1

### Introduction

#### Citation and commencement

1. These Regulations may be cited as the Statutory Shared Parental Pay (Parental Order Cases) Regulations 2014 and come into force on 1st December 2014.

#### Interpretation

2. In these Regulations—

“A” and “AP” have the same meanings as in the Pay Regulations as modified by these Regulations;

“C”, “expected week of birth” and “statutory shared parental pay (adoption)” have the same meanings as under the Pay Regulations;

“parental order parent” means a person on whose application the court has made a parental order<sup>(6)</sup> in respect of C;

“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<sup>(7)</sup> with another person for a parental order in respect of C 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 C;

“Pay Regulations” means the Statutory Shared Parental Pay (General) Regulations 2014<sup>(8)</sup>.

#### Application of the Pay Regulations to an intended parent or a parental order parent

3. The provisions of the Pay Regulations in so far as they apply to statutory shared parental pay (adoption) shall apply to an intended parent<sup>(9)</sup> or a parental order parent with the modifications set out in Part 2 of these Regulations.

## PART 2

### Modifications of the Pay Regulations as they apply to an intended parent or a parental order parent

4. Regulation 2 (interpretation) of the Pay Regulations as they apply to an intended parent or a parental order parent shall read as if—

(a) in paragraph (1)—

(i) the definition of “A” read “means the intended parent or parental order parent in relation to C who has elected to receive statutory adoption pay under

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<sup>(6)</sup> “parental order” is defined in section 171ZV(16A) of the Social Security Contributions and Benefits Act 1992 as modified by S.I. 2014/ .

<sup>(7)</sup> 2008 c.22. Section 54 was amended by the Crime and Courts Act 2013 (c.22), Schedule 11, Part 1, paragraph 206.

<sup>(8)</sup> S.I. 2014/ .

<sup>(9)</sup> “intended parent” is defined in section 171ZV(16A) of the Social Security Contributions and Benefits Act 1992 as modified by S.I. 2014/ .

section 171ZL(2)(e) of the 1992 Act<sup>(10)</sup> and to whom the conditions in that subsection apply;”;

(ii) the definition of “AP” read “means the intended parent or parental order parent in relation to C who at the date of C’s birth is married to, or is the civil partner of, or is the partner of A;”;

(iii) the definition of “child” were omitted;

(iv) there was the following definition—

““parental order parent” means a person on whose application the court has made an order in respect of C under section 54(1) of the Human Fertilization and Embryology Act 2008;”;

(v) the definitions of “placed for adoption” and “adoption agency” were omitted;

(b) paragraphs (4), (5) and (6) were omitted.

**5.** In regulation 3 (application) of the Pay Regulations as they apply to an intended parent or a parental order parent paragraph (b) shall read as if the words in that paragraph were—

“statutory shared parental pay (adoption) in respect of children whose expected week of birth begins on or after 5th April 2015.”.

**6.** In regulation 17 (entitlement of adopter to statutory shared parental pay (adoption)) of the Pay Regulations as they apply to an intended parent or a parental order parent—

(a) in paragraph (2)—

(i) sub-paragraph (b) shall read as if the words in that sub-paragraph were—

“A has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of AP);”;

(ii) sub-paragraph (d) shall read as if the words “to the placement for adoption of C” read “to being the intended parent or parental order parent of C”;

(b) in paragraph (3), sub-paragraph (a) shall read as if the words in that sub-paragraph were—

“AP has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A);”.

**7.** In regulation 18 (entitlement of partner to statutory shared parental pay (adoption)) of the Pay Regulations as they apply to an intended parent or a parental order parent—

(a) in paragraph (2), sub-paragraph (b) shall read as if the words in that sub-paragraph were—

“AP has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A);”;

(b) in paragraph (3)—

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

“A has, or expects to have, at the date of C’s birth the main responsibility for the care of C (apart from the responsibility of A);”;

(ii) sub-paragraph (c) shall read as if the words “to the placement for adoption of C” read “to being the intended parent or parental order parent of C”.

**8.—(1)** In regulation 19 (notification and evidential requirements relating to the adopter) of the Pay Regulations as they apply to an intended parent or a parental order parent—

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<sup>(10)</sup> Section 171ZL of the Social Security Contributions and Benefits Act 1992 was inserted by the Employment Act 2002 (c.22), section 4.

- (a) paragraph (1)(b) shall read as if the words “if C is not placed for adoption by that time as soon as reasonably practicable after the placement of C ” were “if C is not born by that time as soon as reasonably practicable after the birth of C”;
  - (b) in paragraph (3)—
    - (i) sub-paragraph (b) shall read as if the words in that sub-paragraph were “the expected week of birth of C”;
    - (ii) sub-paragraph (c) shall read as if the words in that sub-paragraph were “C’s date of birth”;
    - (iii) that paragraph shall apply as if there were also specified a parental statutory declaration by A unless the condition in paragraph (2)(a) or (b) of this regulation is satisfied;
  - (c) paragraph (4) shall apply as if—
    - (i) sub-paragraph (a) were omitted;
    - (ii) there were also specified a copy of C’s birth certificate or, if one has not been issued, a written declaration signed by A which states that it has not been issued;
    - (iii) where A has not provided a parental statutory declaration as a result of the condition in paragraph (2)(a) of this regulation being satisfied, there were specified a parental statutory declaration.
- (2) The conditions referred to in paragraph (1)(b)(iii) and (c)(iii) are—
- (a) that A has given the employer<sup>(11)</sup> who will be liable to pay statutory shared parental pay (adoption) to A a statutory declaration as evidence of A’s entitlement to statutory adoption pay in respect of C in accordance with regulation 24 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002<sup>(12)</sup>;
  - (b) that A is a parental order parent and has given the employer a copy of the order in respect of C made under section 54(1) of the Human Fertilisation and Embryology Act 2008.
- 9.** In regulation 20 (notification and evidential requirements relating to the partner) of the Pay Regulations as they apply to an intended parent or a parental order parent—
- (a) paragraph (1)(b) shall read as if the words “if C is not placed for adoption by that time as soon as reasonably practicable after the placement of C ” were “if C is not born by that time as soon as reasonably practicable after the birth of C”;
  - (b) in paragraph (3)—
    - (i) sub-paragraph (b) shall read as if the words in that sub-paragraph were “the expected week of birth of C”;
    - (ii) sub-paragraph (c) shall read as if the words in that sub-paragraph were “C’s date of birth”;
    - (iii) sub-paragraph (e) shall read as if the written declaration signed by AP was also required to contain the statement that A and AP are the intended parents or the parental order parents of C;
  - (c) paragraph (4) shall apply as if—
    - (i) sub-paragraph (a) were omitted; and
    - (ii) there were specified a copy of C’s birth certificate or, if one has not been issued, a written declaration signed by AP which states that it has not been issued.

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<sup>(11)</sup> “employer” is construed in accordance with section 171ZZ4(1) of the Social Security Contributions and Benefits Act 1992.

<sup>(12)</sup> *S.I. 2002/2822*; regulation 24 is modified as it applies to intended and parental order parents by *S.I. 2014/* ; there are other amendments but none are relevant.

**10.**—(1) The Pay Regulations apply to an intended parent or a parental order parent with the modification provided for in paragraph (2) where—

- (a) one or more of the periods specified in a notice under regulation 19, 20 or 21 of the Pay Regulations during which A or, as the case may be, AP intends to claim statutory shared parental pay (adoption) start in the 8 weeks following the first day of C’s expected week of birth;
- (b) C’s date of birth is before the first day of the expected week of birth; and
- (c) A or, as the case may be, AP varies by notice under regulation 21(1) the period or periods referred to in sub-paragraph (a) so that that period or those periods start the same length of time following C’s date of birth as that period or those periods would have started after the first day of the expected week of birth.

(2) The modification in this paragraph is that the requirement in regulation 21(1) to give notice at least 8 weeks before the first period specified in the notice is satisfied if such notice is given as soon as reasonably practicable after C’s date of birth.

(3) The Pay Regulations apply to an intended parent or a parental order parent with the modifications provided for in paragraph (4) where—

- (a) C is born more than 8 weeks before the first day of the expected week of birth;
- (b) A or, as the case may be, AP has not given the notice and information under regulations 19 or 20 of the Pay Regulations before the date of C’s birth; and
- (c) A or, as the case may be, AP specifies in a notice under regulations 19 or 20 a period or periods of statutory shared parental pay (adoption) which start in the 8 weeks following C’s date of birth.

(4) The modifications in this paragraph are—

- (a) in regulation 19—
  - (i) paragraph (1)(a) shall read as if the words in that sub-paragraph were—

“paragraphs (2) and (3) as soon as reasonably practicable after the date of C’s birth but in any event before the first period specified by A pursuant to paragraph (2)(d)
  - (ii) paragraph (1)(b) and (c) shall not apply;
  - (iii) paragraph (4) shall not apply.
- (b) in regulation 20—
  - (i) paragraph (1)(a) shall read as if the words in that sub-paragraph were—

“paragraphs (2) and (3) as soon as reasonably practicable after the date of C’s birth but in any event before the first period specified by AP pursuant to paragraph (2)(d)”;
  - (ii) paragraph (1)(b) and (c) shall not apply;
  - (iii) paragraph (4) shall not apply.

**11.** In regulation 23 (when statutory shared parental pay (adoption) is not to be paid) of the Pay Regulations as they apply to an intended parent or a parental order parent, paragraph (1) shall read—

“Statutory shared parental pay (adoption) is not payable after the day before the date of C’s first birthday (or, where more than one child is born of the same pregnancy, the birthday of the first child so born).”.

**12.** In regulation 24 (work during period of payment of statutory shared parental pay) of the Pay Regulations as they apply to an intended parent or a parental order parent, paragraph (1)(a)(ii) shall read as if the words “the expected week of placement for adoption” read “the expected week of birth”.

**13.** In regulation 29 (conditions relating to employment and earnings of a claimant’s partner) of the Pay Regulations as they apply to an intended parent or a parental order parent, in paragraph (5), the definition of “calculation week” shall read—

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

**14.** Regulation 31 (conditions as to continuity of employment and normal weekly earnings in relation to a claimant) of the Pay Regulations as they apply to an intended parent or a parental order parent, shall read as if—

(a) the words in paragraph (2) were—

“Where C’s birth occurs earlier than the 14th week before C’s expected week of birth paragraph (1) shall have effect as if, for the conditions set out there, there were substituted conditions that—

- (a) the person would have been in employer earner’s employment for a continuous period of at least 26 weeks ending with the relevant week had C been born after the relevant week;
- (b) the person’s normal weekly earnings for the period of eight weeks ending with the week immediately preceding C’s actual week of birth are not less than the lower earnings limit in force under section 5(1)(a) of the 1992 Act immediately before the commencement of C’s actual week of birth; and
- (c) the person continues in employed earner’s employment with the employer by reference to whom the condition in sub-paragraph (a) is satisfied for a continuous period beginning with the date of C’s birth and ending with the week before the first week falling within the relevant period relating to that person under section 171ZY(2) of the 1992 Act.”.

(b) the following paragraphs were added—

“(3) The references in this regulation to the relevant week are to the week immediately preceding the 14th week before C’s expected week of birth.

(4) Where more than one child is born as a result of the same pregnancy the date the first child is born is to be used to determine C’s actual week of birth or the date of C’s birth.”.

**15.** In regulation 32 (normal weekly earnings of a claimant for statutory shared parental pay) of the Pay Regulations as they apply to an intended parent or a parental order parent, in paragraph (9), sub-paragraph (a), the definition of “the appropriate date” shall read—

““the appropriate date” means the first day of the 14th week before the expected week of the child’s birth or the first day in the week in which the child is born, whichever is earlier (but see paragraph (10)).”.

**16.** In the Schedule (statutory shared parental pay in special circumstances) to the Pay Regulations as they apply to an intended parent or a parental order parent, in paragraph 12—

(a) sub-paragraphs (1) and (2) shall read as if the words “is returned after being placed” (in each place where they occur) read “the parental order does not proceed”;

(b) sub-paragraph (4) shall read as if the words in that sub-paragraph were—

“Where more than one child is born of the same pregnancy—

- (a) sub-paragraphs (1) and (2) only apply where all the children die or the parental order does not proceed in respect of all the children; and
- (b) a reference in this paragraph relating to the death of C (however expressed) is to the death of the last of those children to die.”.

(c) sub-paragraph (5) shall read as if the words in that sub-paragraph were—

“For the purpose of this paragraph a parental order does not proceed if—

- (a) A and AP have not made an application for an order in respect of C under section 54(1) of the Human Fertilisation and Embryology Act 2008 within the time limit for such an application under section 54(3) of that Act; or
- (b) an application made for such an order in respect of C is refused, withdrawn or otherwise terminated and any time limit for an appeal or a new application has expired.”.

The Commissioners for Her Majesty’s Revenue and Customs concur

Date Two of the Commissioners for Her Majesty’s Revenue and Customs

Date *Name*  
Parliamentary Under Secretary of State for  
Employment relations and Consumer Affairs  
Department for Business Innovation and Skills

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide an entitlement to statutory shared parental pay 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. Under that 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 Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA, 12ZB and 12ZC to Parental Order Cases) Regulations 2014 (S.I. 2014/ ). They should also be read in conjunction with the Statutory Shared Parental Pay (General) Regulations 2014 (S.I. 2014/ ) which they apply with modifications.

A separate impact assessment has not been prepared for these Regulations. The Regulations are part of a package of legislative measures and the relevant impact assessment is *the Modern Workplaces: shared parental leave and pay administration consultation impact assessment* which was published in February 2013. A copy of that impact assessment can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.