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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**The Statutory Parental Bereavement  
Pay (General) Regulations 2020**

**PART 2**

**ENTITLEMENT**

**Conditions of entitlement to statutory parental bereavement pay**

**4.—(1)** The conditions prescribed under section 171ZZ6(3) of the 1992 Act (conditions as to relationship with a child who has died) are that, at the date of C's death, the person is—

- (a) C's parent;
  - (b) C's natural parent and named in an order made pursuant to section 51A(2)(a) of the Adoption and Children Act 2002(1) or section 11(3)(aa) of the Children (Scotland) Act 1995(2), provided that such an order has not subsequently been revoked or discharged;
  - (c) a person with whom C has been placed for adoption, for so long as that placement has not been disrupted as mentioned in paragraph (2);
  - (d) an adopter—
    - (i) with whom C was living, following C's entry into Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of C for adoption under the law of any part of the United Kingdom, and
    - (ii) who has received official notification in respect of C;
  - (e) an intended parent of C;
  - (f) C's parent in fact; or
  - (g) the partner of P.
- (2) For the purposes of paragraph (1)(c), a placement has been disrupted—
- (a) when C has been returned under sections 31 to 35 of the Adoption and Children Act 2002(3),
  - (b) in Scotland, when C has been returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007, or
  - (c) when C's placement—

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(1) Section 51A was inserted by the Children and Families Act 2014, section 9.

(2) Section 11(3)(aa) was inserted by the Adoption and Children (Scotland) Act 2007, section 107.

(3) Sections 32, 34 and 35 were amended by the Children and Families Act 2014, Schedule 2, Part 2, paragraphs 63 and 64 and by S.I. 2016/413.

- (i) with a local authority foster parent who is also a prospective adopter in accordance with section 22C of the Children Act 1989 following consideration in accordance with subsection (9B)(c) of that section, or
- (ii) with a prospective adopter in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014,

has been terminated.

(3) Subject to paragraph (5), a person is C's parent in fact if that person, for a continuous period of at least four weeks ending with the day on which C dies—

- (a) lived with C in the person's own home, and
- (b) had day to day responsibility for C's care.

(4) For the purposes of the continuous period mentioned in paragraph (3), no account is to be taken of any absences of a temporary or intermittent nature.

(5) A person is not to be regarded as C's parent in fact if—

- (a) C is in the care of that person in premises in which any parent of C's, or any person who is not a parent of C's but who has responsibility for C, is living, or
- (b) that person was or is entitled to receive remuneration, whether by way of wages or otherwise, in respect of the care of C.

(6) A person has responsibility for C, for the purposes of paragraph (5)(a), if the person—

- (a) has parental responsibility, within the meaning of section 3 of the Children Act 1989, or
- (b) in Scotland, has parental responsibilities or parental rights, within the meaning of sections 1 and 2 of the Children (Scotland) Act 1995<sup>(4)</sup>.

(7) For the purposes of paragraph (5)(b), the following payments are not to be regarded as remuneration—

- (a) any fee or allowance paid by a local authority to a foster parent;
- (b) payments wholly or mainly intended to reimburse the person for expenses which arise from, or are expected to arise from, the person's care of C;
- (c) amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of C's care.

(8) In this regulation—

- (a) "P" means any person who satisfies one of the conditions in paragraphs (1)(a) to (f);
- (b) "partner" means a person (whether of a different sex or the same sex) who lives with C and P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (c);
- (c) the relatives of P referred to in sub-paragraph (b) are P's parent, grandparent, sister, brother, aunt or uncle;
- (d) references to relationships in sub-paragraph (c)—
  - (i) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
  - (ii) include the relationship of a child with his adoptive, or former adoptive, parents, but do not include any other adoptive relationships.

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(4) 1995 c. 36; sections 1 and 2 were amended by the Human Fertilisation and Embryology Act 2008, Schedule 6, Part 2, paragraphs 48 and 49.

### **Number of weeks of pay**

5. The number of weeks in respect of which a person is entitled to payments of statutory parental bereavement pay is two weeks.

### **Options in respect of payment of statutory parental bereavement pay**

6. A person may choose for statutory parental bereavement pay to be paid in respect of—
- (a) a single period of either one week or two weeks, or
  - (b) discontinuous periods of a week each.

### **Qualifying period**

7. The qualifying period for the purposes of section 171ZZ9(5) of the 1992 Act (period within which statutory parental bereavement pay is payable) is a period of 56 weeks beginning with the date of C's death.

### **Notice and evidence requirements for statutory parental bereavement pay**

8.—(1) The notice provided for in section 171ZZ7(1) of the 1992 Act (notice to be given stating the week or weeks in respect of which payments are to be made) must be given to whoever will be liable to pay statutory parental bereavement pay—

- (a) before the end of the period of 28 days beginning with the first day of the period in respect of which payment of statutory parental bereavement pay is to be made, or
- (b) in a case where it is not reasonably practicable for the person to give the notice in accordance with sub-paragraph (a), as soon as reasonably practicable.

(2) A person must provide evidence of entitlement to statutory parental bereavement pay by providing in writing to whoever will be liable to pay statutory parental bereavement pay—

- (a) the information specified in paragraph (3), and
- (b) a declaration that the person meets one of the conditions prescribed in regulation 4(1).

(3) The information referred to in paragraph (2)(a) is as follows—

- (a) the name of the person claiming the statutory parental bereavement pay, and
- (b) the date of C's death.

(4) The information referred to in paragraph (3) must be provided at the same time as a notice is given under paragraph (1).

(5) The declaration referred to in paragraph (2)(b) must be provided at the same time as a notice is first given under paragraph (1) in respect of C's death.

(6) Where notice under paragraph (1) is given prior to the start of the week or weeks specified in that notice, the person may withdraw that notice by giving notice of withdrawal in writing to the person who will be liable to pay statutory parental bereavement pay in the manner specified in paragraphs (7) and (8).

(7) Where the notice under paragraph (1) states two weeks in respect of which statutory parental bereavement pay is to be paid, notice of withdrawal may be given in relation to either one or both of those weeks, regardless of whether those weeks are consecutive or non-consecutive.

(8) Where the notice of withdrawal relates to a week which begins—

- (a) in Period A, it must be given no later than on the first day of that week, and
- (b) in Period B, it must be given no later than one week before the start of that week.

(9) In this regulation—

“Period A” means the period of 56 days beginning with the date of C’s death;

“Period B” means the period beginning the day after the end of Period A and ending with the end of the period specified in regulation 7.

### **Cases where there is no liability to pay statutory parental bereavement pay**

**9.**—(1) There is no liability to pay statutory parental bereavement pay to a person in respect of any week—

- (a) during any part of which the person who is entitled to that pay is entitled to statutory sick pay under Part 11 of the 1992 Act,
- (b) following that in which the person entitled to it has died, or
- (c) during any part of which the person who is entitled to that pay is detained in legal custody (unless one of the circumstances in paragraph (2) applies) or sentenced to a term of imprisonment (except where the sentence is suspended).

(2) There is liability to pay statutory parental bereavement pay in respect of any week during any part of which the person who is entitled to that pay is detained in legal custody where that person—

- (a) is released subsequently without charge,
- (b) is subsequently found not guilty of any offence and is released, or
- (c) is convicted of an offence but does not receive a custodial sentence.

### **Work during period of payment of statutory parental bereavement pay**

**10.**—(1) Despite section 171ZZ9(8) of the 1992 Act (statutory parental bereavement pay not payable to a person in respect of a week during any part of which the person works for any employer who is not liable to pay the person statutory parental bereavement pay), statutory parental bereavement pay is payable to a person in respect of a statutory pay week<sup>(5)</sup> during any part of which the person works only for an employer—

- (a) who is not liable to pay the person statutory parental bereavement pay, and
- (b) for whom the person has worked in the week immediately preceding the week of C’s death.

(2) Where a person works for an employer falling within paragraph (1)(a) but not paragraph (1)(b) for any part of a period which is specified by that person in a notice under regulation 8(1), the person must notify the employer liable to pay statutory parental bereavement pay of the fact of that work within seven days of the first day during which the person does such work.

(3) The notification mentioned in paragraph (2) must be in writing, if the employer who has been liable to pay statutory parental bereavement pay so requests.

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(5) For the definition of “statutory pay week”, see section 171ZZ9 of the 1992 Act.