
DRAFT STATUTORY INSTRUMENTS

2020 No.

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

PART 4

PAYMENT OF STATUTORY PARENTAL BEREAVEMENT PAY

Weekly rate of payment

20.—(1) The weekly rate of payment of statutory parental bereavement pay is the smaller of the following two amounts—

- (a) £151.20;
- (b) 90% of the normal weekly earnings of the person claiming statutory parental bereavement pay determined in accordance with section 171ZZ14(6) of the 1992 Act and regulation 19.

(2) Where the amount of any payment of statutory parental bereavement pay is calculated by reference to—

- (a) the weekly rate specified in paragraph (1)(b), or
- (b) the daily rate of one-seventh of the weekly rate specified in paragraph (1)(a) or (b),

and that amount includes a fraction of a penny, the payment shall be rounded up to the nearest whole number of pence.

Statutory parental bereavement pay and contractual remuneration

21. For the purposes of section 171ZZ11(1) and (2) of the 1992 Act (payment of contractual remuneration to go towards discharging liability to pay statutory parental bereavement pay and payment of statutory parental bereavement pay to go towards discharging liability to pay contractual remuneration), the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

- (a) by way of remuneration,
- (b) for incapacity for work due to sickness or injury, or
- (c) by reason of the birth, adoption, care or death of a child.

Avoidance of liability for statutory parental bereavement pay

22.—(1) A former employer shall be liable to make payments of statutory parental bereavement pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and the employee's contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory parental bereavement pay.

(2) In a case falling within paragraph (1)—

- (a) the employee shall be treated as if the employee had been employed for a continuous period ending with C's death, and
- (b) regulation 19(4) (relevant period for the purpose of the calculation of normal weekly earnings) shall apply as if it read—
 - “(4) The relevant period is the period—
 - (a) ending on the last day of payment under the former contract of employment, and
 - (b) beginning with the day following the day of payment under that contract to fall at least 8 weeks earlier than the day of payment mentioned in sub-paragraph (a).”

Payment of statutory parental bereavement pay

23. Payments of statutory parental bereavement pay may be made in like manner to payments of remuneration but shall not include payment in kind or by way of the provision of board and lodgings.

Time when statutory parental bereavement pay is to be paid

24.—(1) In any case where—

- (a) a decision has been made by an officer of Revenue and Customs under section 8(1) (decisions by officers) of the Social Security Contributions (Transfer of Functions, etc) Act 1999(1) as a result of which a person is entitled to an amount of statutory parental bereavement pay, and
- (b) the time for bringing an appeal against the decision has expired and either—
 - (i) no such appeal has been brought,
 - (ii) leave to appeal against the decision is required and has been refused, or
 - (iii) such appeal has been brought and has been finally disposed of,

that amount of statutory parental bereavement pay shall be paid within the time specified in paragraph (2).

(2) The employer or former employer shall pay the amount not later than the first pay day after the following days (but see paragraphs (3) and (4))—

- (a) where an appeal has been brought, the day on which the employer or former employer receives notification that it has been finally disposed of,
- (b) where leave to appeal has been refused, and there remains no further opportunity to apply for leave, the day on which the employer or former employer receives notification of the refusal, and
- (c) in any other case, the day on which the time for bringing an appeal expires.

(3) Where it is impracticable, in view of the employer's or former employer's methods of accounting for and paying remuneration, for the requirement of payment referred to in paragraph (2) to be met by the pay day referred to in that paragraph, it shall be met not later than the next following pay day (but see paragraph (4)).

(4) Where the employer or former employer would not have remunerated the employee for their work in the week in respect of which statutory parental bereavement pay is payable as early as the pay day specified in paragraph (2) or (if it applies) paragraph (3), the requirement of payment shall be met on the first day on which the employee would have been remunerated for work in that week.

(1) Section 8(1) was amended by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 46, the Children and Families Act 2014, Schedule 7, paragraphs 44 and 45 and the Parental Bereavement (Leave and Pay) Act 2018, Schedule Part 3, paragraphs 29 and 30.

(5) In this regulation “pay day” means a day on which it has been agreed, or it is the normal practice between an employer or former employer and a person who is or was an employee of theirs, that payments by way of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a calendar month.

Liability of the Commissioners to pay statutory parental bereavement pay

25.—(1) Despite section 171ZZ8(1) of the 1992 Act (liability to make payments of statutory parental bereavement pay is liability of the employer), where the conditions in regulation 24(1)(a) and (b) are satisfied, liability to make payments of statutory parental bereavement pay to a person is to be the liability of the Commissioners and not the employer for—

- (a) any week in respect of which the employer was liable to pay statutory parental bereavement pay to that person but did not do so, and
- (b) for any subsequent week that person is entitled to payments of statutory parental bereavement pay.

(2) Despite section 171ZZ8(1) of the 1992 Act, liability to make payments of statutory parental bereavement pay to a person is to be a liability of the Commissioners and not the employer as from the week in which the employer first becomes insolvent (see paragraphs (3) and (4)) until the last week that person is entitled to payment of statutory parental bereavement pay.

(3) For the purposes of paragraph (2) an employer shall be taken to be insolvent if, and only if, in England and Wales—

- (a) the employer has been adjudged bankrupt or has made a composition or arrangement with its creditors,
- (b) the employer has died and the employer’s estate falls to be administered in accordance with an order made under section 421 of the Insolvency Act 1986(2), or
- (c) where an employer is a company or a limited liability partnership—
 - (i) a winding-up order is made or a resolution for a voluntary winding-up is passed (or, in the case of a limited liability partnership, a determination for voluntary winding-up has been made) with respect to it,
 - (ii) it enters administration,
 - (iii) a receiver or manager of its undertaking is duly appointed,
 - (iv) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company or limited liability partnership comprised in or subject to the charge, or
 - (v) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986 is approved under that Part.

(4) For the purposes of paragraph (2) an employer shall be taken to be insolvent if, and only if, in Scotland—

- (a) an award of sequestration is made on the employer’s estate,
- (b) the employer executes a trust deed for its creditors,
- (c) the employer enters into a composition contract,

(2) 1986 c. 45; section 421 was amended by the Insolvency Act 2000 (c. 39), section 12, the Constitutional Reform Act 2005 (c. 4), Schedule 4, Part 1, paragraphs 185 and 192 and S.I. 2002/1037, 2017/702 and 2019/146.

- (d) the employer has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889(3) is required by that section to divide the employer's insolvent estate among the employer's creditors, or
- (e) where the employer is a company or a limited liability partnership—
 - (i) a winding-up order is made or a resolution for voluntary winding-up is passed (or in the case of a limited liability partnership, a determination for a voluntary winding-up is made) with respect to it,
 - (ii) it enters administration,
 - (iii) a receiver of its undertaking is duly appointed, or
 - (iv) a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

Liability of the Commissioners to pay statutory parental bereavement pay in cases of legal custody or imprisonment

- 26.** Where there is liability to pay statutory parental bereavement pay—
- (a) in respect of a period which is subsequent to the period mentioned in paragraph (1)(c) of regulation 9 (cases where there is no liability to pay statutory parental bereavement pay), or
 - (b) during a period of detention in legal custody by virtue of paragraph (2) of that regulation,
- that liability, despite section 171ZZ8(1) of the 1992 Act, shall be that of the Commissioners and not the employer.

Payments by the Commissioners

27. Where the Commissioners become liable in accordance with regulation 25 (liability of the Commissioners to pay statutory parental bereavement pay) or regulation 26 (liability of the Commissioners to pay statutory parental bereavement pay in case of legal custody or imprisonment) then payment is to be made as soon as reasonably practicable after they become so liable, by means of an instrument of payment or by such other means as appear to the Commissioners to be appropriate in the circumstances of any particular case.

Persons unable to act

- 28.—**(1) This regulation applies where—
- (a) statutory parental bereavement pay is payable to a person or it is alleged that statutory parental bereavement pay is payable to a person,
 - (b) that person is unable for the time being to act,
 - (c) no deputy has been appointed by the Court of Protection with power to receive statutory parental bereavement pay on their behalf or, in Scotland, their estate is not being administered by a guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000(4), and
 - (d) a written application has been made to the Commissioners by a person, who, if a natural person, is over the age of 18, to exercise any right, or deal with any sums payable, under Part 12ZD of the 1992 Act on behalf of the person unable to act.

(3) 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), Schedule 7, paragraph 4 and amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), Schedule 5, paragraph 5 and Schedule 6, and the Bankruptcy (Scotland) Act 2016 (asp 21), Schedule 8, paragraph 1.

(4) 2000 asp 4.

(2) Where this regulation applies the Commissioners may appoint the person referred to in paragraph (1)(d)—

- (a) to exercise, on behalf of the person unable to act, any right to which the person unable to act may be entitled under Part 12ZD of the 1992 Act, and
- (b) to deal, on behalf of the person unable to act, with any sums payable to the person unable to act under Part 12ZD of the 1992 Act.

(3) Where the Commissioners have made an appointment under paragraph (2)—

- (a) they may at any time revoke it,
- (b) the person appointed may resign their office after having given one month's notice in writing to the Commissioners of that person's intention to do so, and
- (c) the appointment shall end when the Commissioners are notified that a deputy or other person to whom paragraph (1)(c) refers has been appointed.

(4) Anything required by Part 12ZD of the 1992 Act to be done by or to the person who is unable to act may be done by or to the person appointed under this regulation to act on behalf of the person unable to act, and the receipt of the person so appointed shall be a good discharge to the employer or former employer of the person unable to act for any sum paid.

Service of notices

29.—(1) Where a notice is to be given under these Regulations, it may be given—

- (a) where paragraph (2) applies, by electronic communication,
- (b) by post, or
- (c) by personal delivery.

(2) This paragraph applies where the person who is to receive the notice has agreed that the notice may be given to the person by being transmitted to an electronic address and in an electronic form specified by the person for that purpose.

(3) Where a notice is to be given under these Regulations it is to be taken to have been given—

- (a) if sent by electronic communication, on the day of transmission;
- (b) if sent by post in an envelope which is properly addressed and sent by prepaid post, on the day on which it is posted;
- (c) if delivered personally, on the day of delivery.