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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

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

**PART 3**

**CONDITIONS OF ENTITLEMENT RELATING  
TO EMPLOYMENT AND EARNINGS**

**Normal weekly earnings**

**19.**—(1) For the purposes of section 171ZZ14(6) (which defines normal weekly earnings for the purposes of Part 12ZD of the 1992 Act) “earnings” and “relevant period” have the meanings given in this regulation.

(2) The expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a person’s employment except any amount which is—

- (a) excluded from the computation of a person’s earnings under regulation 25 (payments to be disregarded) of, and Schedule 3 to, the Social Security (Contributions) Regulations 2001 or regulation 27 (payments to directors to be disregarded)(1) of those Regulations (or would have been so excluded had they not been made under the age of 16), or
- (b) a chargeable emolument under section 10A (class 1B contributions) of the 1992 Act(2) except where, in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory parental bereavement pay (or where such a payment or amount would have been so excluded and in consequence the person would not have been entitled to statutory parental bereavement pay had they not been aged under the age of 16).

(3) The expression “earnings” includes—

- (a) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the 1992 Act(3);
- (b) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the Employment Rights Act 1996(4);

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(1) Schedule 3 was amended by S.I. 2001/2412, 2001/3629, 2002/307, 2002/2924, 2003/1059, 2003/2085, 2003/2340, 2003/2985, 2004/173, 2004/770, 2004/2096, 2005/728, 2005/778, 2005/2422, 2005/3130, 2006/576, 2006/883, 2006/2003, 2006/2829, 2007/2091, 2007/2401, 2007/2905, 2008/607, 2008/1431, 2008/2624, 2009/600, 2010/188, 2011/225, 2011/797, 2011/1000, 2011/2700, 2012/817, 2013/622, 2013/1142, 2013/1907, 2014/608, 2014/3159, 2014/3228, 2015/478, 2015/543, 2016/352, 2016/647, 2016/1067, 2017/307, 2017/373, 2018/120; regulation 27 was amended by S.I. 2004/770, 2005/3130.

(2) Section 10A was inserted by the Social Security Act 1998 (c. 14), section 53 and amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, Part 2, paragraphs 169 and 177, the National Insurance Contributions and Statutory Payments Act 2004 (c. 3), Schedule 1, paragraph 1 and the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2), Schedule 3, paragraph 11; there are other amendments but none is relevant.

(3) Section 4B was inserted by the National Contributions Act 2006 (c. 10), section 1(1) and amended by the National Insurance Act 2014 (c. 7), section 14.

(4) 1996 c. 18.

- (c) any sum payable by way of pay in pursuance of an order made under the Employment Rights Act 1996 for the continuation of a contract of employment;
  - (d) any sum payable by way of remuneration in pursuance of a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(5)</sup>;
  - (e) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 151(6) of the 1992 Act<sup>(6)</sup>;
  - (f) any sum payable by way of statutory maternity pay;
  - (g) any sum payable by way of statutory paternity pay;
  - (h) any sum payable by way of statutory shared parental pay;
  - (i) any sum payable by way of statutory adoption pay;
  - (j) any sum payable by way of statutory parental bereavement pay.
- (4) The relevant period is the period—
- (a) ending on the last normal pay day to fall before the appropriate date, and
  - (b) beginning with the day following the last normal pay day to fall at least eight weeks earlier than the normal pay day mentioned in sub-paragraph (a).
- (5) In a case where a person has no identifiable normal pay day, paragraph (4) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.
- (6) In a case where a person has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) that person’s normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.
- (7) In a case to which paragraph (6) does not apply and the relevant period is not an exact number of weeks, the person’s normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of days in the relevant period and multiplying the result by seven.
- (8) In any case where a person receives a back-dated pay increase which includes a sum in respect of a relevant period, normal weekly earnings shall be calculated as if such a sum was paid in that relevant period even though received after that period.
- (9) In paragraphs (4) to (6)—
- (a) “the appropriate date” means the first day of the week in which C dies;
  - (b) “day of payment” means a day on which a person is paid;
  - (c) “normal pay day” means a day on which the terms of a person’s contract of service require the person to be paid, or the practice in that person’s employment is for that person to be paid if any payment is due to them.

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(5) 1992 c. 52; section 189(1) was substituted, subsections 189(1A) and (1B) were inserted, and subsection (4) was amended by S.I. 1999/1925; subsection (5) was amended by S.I. 1995/2587 and by the Employment Rights (Dispute Resolution) Act 1998, section 1; subsection (5A) was inserted by the Enterprise and Regulatory Reform Act 2013, Schedule 2, paragraphs 1 and 11 and was amended by S.I. 2014/431.

(6) Section 151(6) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 1, paragraph 9.