
Changes to legislation: There are currently no known outstanding effects for the Parental Bereavement (Leave and Pay) Act 2018, PART 2. (See end of Document for details)

SCHEDULE

PARENTAL BEREAVEMENT LEAVE AND PAY

PART 2

PARENTAL BEREAVEMENT PAY

4 The Social Security Contributions and Benefits Act 1992 is amended as follows.

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Commencement Information

II Sch. para. 4 in force at 18.1.2020 by S.I. 2020/45, reg. 2

5 After section 171ZZ5 insert—

“PART 12ZD

STATUTORY PARENTAL BEREAVEMENT PAY

171ZZ6 Entitlement

- (1) A person who satisfies the conditions in subsection (2) is entitled in accordance with the following provisions of this Part to payments to be known as “statutory parental bereavement pay”.
- (2) The conditions are—
 - (a) that the person is a bereaved parent,
 - (b) that the person has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week,
 - (c) that at the end of the relevant week the person was entitled to be in that employment (but see subsection (7)),
 - (d) that the person's normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week, and
 - (e) that the person has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child dies.
- (3) For the purposes of subsection (2) an employee is a “bereaved parent” if the employee satisfies prescribed conditions as to relationship with a child who has died.
- (4) The conditions prescribed under subsection (3) may be framed, in whole or in part, by reference to the employee's care of the child before the child's death.

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- (5) In subsection (2) “relevant week” means the week immediately before the one in which the child dies.
- (6) Where a person satisfies the conditions in subsection (2) as a result of the death of more than one child, the person is entitled to statutory parental bereavement pay in respect of each child.
- (7) In relation to a bereaved parent whose child dies before the day on which section 63(3) of the Welfare Reform Act 2012 comes fully into force, subsection (2) above is to be read as if paragraph (c) were omitted.

171ZZ7 Entitlement: supplementary

- (1) A person is entitled to payments of statutory parental bereavement pay in respect of any period only if the person gives notice to whoever is liable to make the payments stating the week or weeks in respect of which they are to be made.
- (2) Regulations may provide for the time by which notice under subsection (1) must be given.
- (3) The notice must be in writing if the person who is liable to pay the statutory parental bereavement pay so requests.
- (4) The Secretary of State may by regulations—
 - (a) provide that section 171ZZ6(2)(b), (d) or (e) has effect subject to prescribed modifications in such cases as may be prescribed;
 - (b) provide for circumstances in which section 171ZZ6(2)(c) does not have effect;
 - (c) provide that subsection (1) of this section does not have effect, or has effect subject to prescribed modifications, in such cases as may be prescribed;
 - (d) impose requirements about evidence of entitlement;
 - (e) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZZ6;
 - (f) provide that a person is to be treated for the purposes of section 171ZZ6 as being employed for a continuous period of at least 26 weeks where—
 - (i) the person has been employed by the same employer for at least 26 weeks under two or more separate con-tracts of service, and
 - (ii) those contracts were not continuous;
 - (g) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZZ6;
 - (h) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of the person's earnings to be treated as comprised in any payment made to the person or for the person's benefit,
 is to be calculated or estimated for the purposes of section 171ZZ6 in such manner and on such basis as may be prescribed and that for

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that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of the person's earnings.

171ZZ8 Liability to make payments

- (1) The liability to make payments of statutory parental bereavement pay under section 171ZZ6 is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (e) of that section.
- (2) The Secretary of State must by regulations make provision as to a former employer's liability to pay statutory parental bereavement pay to a former employee in any case where the employee's contract of service with the employer has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory parental bereavement pay.
- (3) The Secretary of State may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory parental bereavement pay is to be a liability of the Commissioners.

171ZZ9 Rate and period of pay

- (1) Statutory parental bereavement pay is payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory parental bereavement pay is payable in respect of—
 - (a) such week within the qualifying period, or
 - (b) such number of weeks, not exceeding the prescribed number of weeks, within the qualifying period,as the person entitled may choose in accordance with regulations.
- (3) Provision under subsection (2)(b) must secure that the prescribed number of weeks is not less than two.
- (4) Regulations under subsection (2)(b) may permit a person entitled to receive statutory parental bereavement pay to choose to receive such pay in respect of non-consecutive periods each of which is a week or a number of weeks.
- (5) For the purposes of subsection (2), the qualifying period is to be determined in accordance with regulations, which must secure that it is a period of at least 56 days beginning with the date of the child's death.
- (6) A person is not liable to pay statutory parental bereavement pay to another in respect of any statutory pay week during any part of which the other works under a contract of service with the person.
- (7) It is immaterial for the purposes of subsection (6) whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.

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- (8) Except in such cases as may be prescribed, statutory parental bereavement pay is not payable to a person in respect of a statutory pay week during any part of which the person works for any employer who is not liable to pay the person statutory parental bereavement pay.
- (9) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory parental bereavement pay in respect of a statutory pay week.
- (10) Where for any purpose of this Part or of regulations it is necessary to calculate the daily rate of statutory parental bereavement pay, the amount payable by way of statutory parental bereavement pay for any day is to be taken as one seventh of the weekly rate.
- (11) In this section—
 - “statutory pay week”, in relation to a person entitled to statutory parental bereavement pay, means a week chosen by the person as a week in respect of which statutory parental bereavement pay is to be payable;
 - “week” means any period of seven days.

171ZZ10 Restrictions on contracting out

- (1) An agreement is void to the extent that it purports—
 - (a) to exclude, limit or otherwise modify any provision of this Part, or
 - (b) to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person's employer or former employer under this Part.
- (2) An agreement between an employer and an employee, authorising any deductions from statutory parental bereavement pay which the employer is liable to pay to the employee in respect of any period, is not void by virtue of subsection (1)(a) if the employer—
 - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which the employer is liable to pay in respect of the same period, or
 - (b) would be so authorised if the employer were liable to pay contractual remuneration in respect of that period.

171ZZ11 Relationship with contractual remuneration

- (1) Subject to subsections (2) and (3), any entitlement to statutory parental bereavement pay does not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3)—
 - (a) any contractual remuneration paid to a person by an employer of that person in respect of any period is to go towards discharging any liability of that employer to pay statutory parental bereavement pay to that person in respect of that period; and
 - (b) any statutory parental bereavement pay paid by an employer to a person who is an employee of that employer in respect of any period

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is to go towards discharging any liability of that employer to pay contractual remuneration to that person in respect of that period.

- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2).

171ZZ12 Crown employment

The provisions of this Part apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

171ZZ13 Special classes of person

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part in such manner as the Secretary of State thinks proper in its application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
 - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
 - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2).
- (2) Regulations under subsection (1) may, in particular, provide—
- (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
 - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
 - (c) for excepting any such person from the application of any such provision where the person neither is domiciled nor has a place of residence in any part of Great Britain;
 - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

171ZZ14 Supplementary

- (1) In this Part—
- “child” means a person under the age of 18 (see also section 171ZZ15 for the application of this Part in relation to stillbirths);
- “employer”, in relation to a person who is an employee, means a person who—
- (a) under section 6 is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, or
 - (b) would be liable to pay such contributions but for—

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- (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16;
- “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
- “prescribed” means prescribed by regulations.
- (2) In this Part, “employee” means a person who is gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with earnings (within the meaning of Parts 1 to 5).
- (3) Regulations may provide—
- (a) for cases where a person who falls within the definition in subsection (2) is not to be treated as an employee for the purposes of this Part, and
 - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part, regulations may specify cases in which, for the purposes of this Part or of such provisions of this Part as may be prescribed—
- (a) two or more employers are to be treated as one;
 - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part, except section 171ZZ9, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part, a person's normal weekly earnings are, subject to subsection (8), to be taken to be the average weekly earnings which in the relevant period have been paid to the person or paid for the person's benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6), “earnings” and “relevant period” have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person's normal weekly earnings are to be calculated in accordance with regulations.
- (9) Where in consequence of the establishment of one or more National Health Service trusts under the National Health Service (Wales) Act 2006, a person's contract of employment is treated by a scheme under that Act as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part or such provisions of this Part as may be prescribed.
- (10) Regulations under subsection (9) may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
 - (b) the manner in which, and the time within which, such an election is to be made;

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- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
 - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, the person is to provide it;
 - (e) the time for which such an election is to have effect;
 - (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory parental bereavement pay as the person's employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part.
- (12) Regulations under any of subsections (4) to (10) must be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs.

171ZZ15 Application in relation to stillbirths

In this Part—

- (a) references to a child include a child stillborn after twenty-four weeks of pregnancy, and
- (b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.”.

Commencement Information

I2 Sch. para. 5 in force at 18.1.2020 by S.I. 2020/45, reg. 2

- 6 In section 176(1) of that Act (instruments subject to affirmative procedure), in paragraph (a), at the appropriate place insert— “ any of sections 171ZZ6 to 171ZZ9; ”.

Commencement Information

I3 Sch. para. 6 in force at 18.1.2020 by S.I. 2020/45, reg. 2

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