

SCHEDULE

SHARED PARENTAL LEAVE IN SPECIAL CIRCUMSTANCES

PART 1

SHARED PARENTAL LEAVE (BIRTH)

Entitlement of father or partner to shared parental leave in the event of death of mother before curtailment

1.—(1) Where before P has given a notice under regulation 9 M dies—

- (a) without curtailing her statutory maternity leave under section 71(3) or 73(3) of the 1996 Act;
- (b) before the end of her maternity pay period and without curtailing that period under section 165(3A) of the 1992 Act; or
- (c) before the end of her maternity allowance period and without curtailing that period under section 35(3A) of the 1992 Act,

sub-paragraph (2) applies in relation to the entitlement of P to shared parental leave.

(2) The provisions of the Regulations apply in respect of any period after M dies with the modifications specified in paragraphs (a) to (l)—

- (a) a person is to be regarded as falling within the definition of “P” in regulation 3(1) if that person fell within that definition immediately before M died;
- (b) regulation 5(2)(d) does not have effect;
- (c) in regulation 5(3)(a) for “M satisfies” substitute “immediately before her death M satisfied”;
- (d) in regulation 5(3)(c) for “M is entitled” substitute “immediately before her death, M was entitled”;
- (e) regulation 5(3)(d) does not have effect;
- (f) in regulation 6—

(i) for paragraph (1) substitute—

“(1) Where M was entitled to statutory maternity leave, subject to paragraph (10), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory maternity leave taken by M before M died.”;

(ii) for paragraph (2) substitute—

“(2) Where M was not entitled to statutory maternity leave, but was entitled to statutory maternity pay, subject to paragraph (11), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory maternity pay payable to M in respect of C before M died.”;

(iii) for paragraph (3) substitute—

“(3) Where M was not entitled to statutory maternity leave, but was entitled to maternity allowance, the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of maternity allowance payable to M in respect of C before M died.”;

- (g) in regulation 9(2)(f) for “and M each intend” substitute “intends”;
- (h) in regulation 9(2) after sub-paragraph (g) insert—

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- “(h) the date of M’s death.”;
- (i) regulation 9(3)(b) is omitted;
- (j) regulation 10 is omitted;
- (k) regulation 11(3)(d) is omitted;
- (l) where under regulation 9 or 12 a notice is required to be given not less than eight weeks before a start date and it is not reasonably practicable for P to satisfy that requirement, the notice may be given as soon as is reasonably practicable after the death of M and before the start date of the leave. The modification of regulation 12 applies only to the first notice given under regulation 12 following the death of M.

Entitlement of father or partner to shared parental leave in the event of death of mother after curtailment and before notice of entitlement given

2. Where M dies after curtailing her statutory maternity leave under section 71(3) or 73(3) of the 1996 Act or her statutory maternity pay period under section 165(3A) of the 1992 Act or her maternity allowance period under section 35(3A) of that Act, or after returning to work, as the case may be, and before P gives a notice under regulation 9, sub-paragraphs (2)(a) to (e) and (g) to (l) in paragraph 1 of this Schedule apply in relation to the entitlement of P to shared parental leave.

Entitlement of father or partner to shared parental leave in the event of death of mother after notice of entitlement given

3.—(1) Where M dies after P has given a notice under regulation 9, the provisions of the Regulations apply in respect of any period after M dies with the modifications in sub-paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) in relation to the entitlement of P to shared parental leave.

- (2) Sub-paragraphs (2)(a) to (e) in paragraph 1 of this Schedule apply.
- (3) Regulation 11(3)(d) does not have effect.

(4) Where by reason of M’s death it is not reasonably practicable for P to satisfy a requirement under regulation 9, 12 or 15 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required P to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulations 12 and 15 applies only to the first notice given under either regulation 12 or 15 following the death M.

(5) The first notice given under either regulation 12 or 15 following the death of M must include the date of M’s death.

(6) Where at the time of M’s death P has given a combined total of three notices under regulations 12 and 15, in regulation 16(1) for “three” substitute “four”.

- (7) Where an employer—
 - (a) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or
 - (b) has not made a request under regulation 10,

before M dies, regulation 5(2)(d) does not have effect and regulation 10 is omitted.

Entitlement of mother to shared parental leave in the event of death of father or partner

4.—(1) Where P dies after M has given a notice under regulation 8, the provisions of the Regulations apply in respect of any period after P dies with the modifications in sub-paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) apply.

(2) The following modifications apply—

- (a) a person is to be regarded as falling within the definition of “P” in regulation 3(1) if that person fell within that definition immediately before that person died;
- (b) regulation 4(2)(f) does not have effect;
- (c) in regulation 4(3)(a) for “P satisfies” substitute “immediately before P’s death P satisfied”.

(3) Regulation 11(3)(d) does not have effect.

(4) Where by reason of P’s death it is not reasonably practicable for M to satisfy a requirement under regulation 8, 12 or 15 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required M to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulation 12 or 15 applies only to the first notice given under either regulation 12 or 15 following the death P.

(5) The first notice given under either regulation 12 or 15 following the death of P must include the date of P’s death.

(6) Where at the time of P’s death M has given a combined total of three notices under regulations 12 and 15, in regulation 16(1) for “three” substitute “four”.

(7) Where an employer—

- (a) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or
- (b) has not made a request under regulation 10,

before P dies, regulation 4(2)(f) does not have effect and regulation 10 is omitted.

Entitlement to shared parental leave in the event of death of child (birth)

5.—(1) Where after a notice of entitlement has been given under regulation 8 C dies following birth, the modifications set out in paragraphs (3), (5) and (6) below apply in relation to the entitlement of M to shared parental leave after C’s death.

(2) Where after a notice of entitlement has been given under regulation 9 C dies following birth, the modifications set out in paragraphs (4) to (6) below apply in relation to the entitlement of P to shared parental leave after C’s death.

(3) In regulation 4(1) omit “to care for C”.

(4) In regulation 5(1) omit “to care for C”.

(5) In regulation 15 for paragraph (2) substitute—

“(2) A notice under paragraph (1) may—

- (a) vary the end date of any period of shared parental leave to reduce the period of leave to be taken provided that the notice is given at least eight weeks before the new end date;
- (b) cancel a period or periods of leave.”

(6) In regulation 16 for paragraph (1) substitute—

“(1) After C dies, no notice may be given under regulation 12 and only one notice may be given under regulation 15.”.

(7) Where more than one child is born of the same pregnancy, a reference in this paragraph relating to the death of C must be construed as a reference to the last of those children to die.