

*These notes refer to the Work and Families Act (Northern Ireland)  
2015 (c.1) which received Royal Assent on 8th January 2015*

# Work and Families Act (Northern Ireland) 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Shared Rights to Leave and Pay**

##### ***Section 5: Statutory shared parental pay***

*Section 5* inserts a new Part 12ZC into the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“SSCBA”), enabling regulations to be made to create new entitlements to shared parental pay for qualifying birth parents, adopters and intended parents in surrogacy arrangements.

##### **Section 167ZU: Entitlement: birth**

*Subsections (1)* and *(3)* confer power to make regulations to provide that where the respective conditions in *subsections (2)* and *(4)* are satisfied, the mother of a child (the “claimant mother”) and another person (the “claimant”) are entitled to payments to be known as “statutory shared parental pay”.

*Subsection (2)* deals with the conditions the claimant mother must meet.

*Subsection (2)(a)* is that the claimant mother and another person (“P”) must satisfy certain prescribed conditions as to caring or intending to care for the child.

*Subsection (2)(b)* specifies that P must meet certain prescribed conditions as to employment status, earnings and relationship with the claimant mother or child.

The conditions in *subsection (2)(c)* and *(2)(d)* require the claimant mother to have met prescribed conditions regarding length of service and earnings. The condition in *subsection (2)(e)* is that, if regulations so provide, the claimant mother continues in employed earner’s employment until such a time as specified.

The condition in *subsection (2)(f)* is that the claimant mother became entitled to receive statutory maternity pay in respect of the child.

*Subsection (2)(g)* relates to the reduction of the maternity pay period.

The condition in *subsection (2)(h)* and *(2)(i)* is that the claimant mother has given notice of the total number of weeks for which she would be entitled to claim statutory shared parental pay, the number of weeks she intends to claim the pay and the number of weeks P intends to claim the pay and the periods during which the claimant mother intends to claim the pay. *Subsection (2)(j)* relates to the timing, form and content of such notices.

P's consent to the amount of statutory shared parental pay the claimant mother intends to claim is the condition in *subsection (2)(k)*.

The condition in *subsection (2)(l)* is that it must be the claimant mother's intention to care for the child during each week in which statutory shared parental pay is paid to her.

The conditions in *subsections (2)(m)* and *(2)(n)* are that the claimant mother must be absent from work for each week that statutory shared parental pay is paid to her. Where she is an employee, she must be absent from work on shared parental leave.

*Subsection (4)* deals with the conditions that the claimant must meet.

The condition in *subsection (4)(a)* is that the claimant and another person who is the mother of a child satisfy certain prescribed conditions as to caring or intending to care for the child.

*Subsection (4)(b)* requires that the claimant must satisfy certain conditions as to the relationship with the child or the child's mother.

*Subsection (4)(c)* provides that the child's mother must meet certain employment status and earnings criteria.

The conditions in *subsection (4)(d)* and *(4)(e)* relate to continuous service and earnings. The condition in *subsection (4)(f)* is that the claimant, if so prescribed, must continue in employed earner's employment until such a time as specified in regulations.

The condition in *subsection (4)(g)* is that the mother of the child must have been entitled as a result of the birth of the child to receive either maternity allowance or statutory maternity pay. The condition in *subsection (4)(h)* relates to the reduction of the maternity pay period or the maternity allowance period applying to the mother.

In accordance with *subsection (4)(i)* and *(4)(j)*, the claimant must have given notice of the number of weeks for which he or she would be entitled to claim statutory shared parental pay, the number of weeks he or she intends to claim the pay and the number of weeks the child's mother intends to claim the pay and the periods during which the claimant intends to claim the pay. *Subsection (4)(k)* relates to the timing, form and content of such notices.

The condition in *subsection 4(l)* is that the mother of the child must consent to the amount of statutory shared parental pay that the claimant intends to claim.

*Subsection (4)(m)* provides that it must be the claimant's intention to care for the child during each week in which statutory shared parental pay is paid to the claimant.

The condition in *subsection (4)(n)* and *(4)(o)* is that the claimant must be absent from work for each week that statutory shared parental pay is paid to the claimant. If the claimant is an employee, the claimant must be absent from work on shared parental leave.

### **Section 167ZV: Extent of entitlement and when payable: birth**

*Subsection (1)* of *section 167VZ* provides for the Department to make regulations to determine the extent of a person's entitlement to statutory shared parental pay in respect of a child, and when it is to be paid.

Under *subsections (2)* and *(3)*, the extent of a person's entitlement to statutory shared parental pay cannot exceed the length of the maternity pay period (currently 39 weeks) less the number of weeks that maternity allowance or maternity pay is payable until the mother's return to work or the number of weeks by which the maternity pay period or maternity allowance period has been reduced (where the mother reduces these periods before returning to work).

*Subsection (6)* is to ensure that where two people are both entitled to statutory shared parental pay in respect of the same child, the total number of weeks taken by both does not exceed the number of weeks calculated under *subsection (2)*.

*Subsection (7)* is to ensure that payments of statutory shared parental pay cannot be made to a person after a prescribed period. *Subsection (8)* secures that no payment of statutory shared parental pay may be made before the end of the mother's maternity pay period.

*Subsection (9)* allows for provision enabling a person who is entitled to statutory shared parental pay to vary the period or periods during which that person intends to claim the pay without varying the overall amount the person intends to take, provided certain conditions are satisfied. These conditions are specified in *subsection (10)*. They require the intending claimant to give notice of intention to vary to the person who will be liable to make the payment. The notice must satisfy certain prescribed conditions as to time, form and content.

*Subsection (11)* makes clear that regulations may provide for a person who is entitled to statutory shared parental pay to vary the number of weeks for which he or she intends to claim. In order to do so he or she must, in accordance with *paragraph (12)*, notify the person liable to make the payment of the extent to which he or she and another person have used pay entitlement to date and the extent to which both individuals plan to use it in future. The consent of the other person must be obtained and the notice must adhere to certain conditions as to timing, form and content.

*Subsection (13)* specifies that a person's entitlement to statutory shared parental pay under *sections 167ZU and 167ZV* is not affected by the birth of more than one child as a result of the same pregnancy.

### **Section 167ZW: Entitlement: adoption**

*Subsections (1) and (3)* confer power to make regulations to provide that where the respective conditions in *subsections (2) and (4)* are satisfied, a person with whom a child is, or is expected to be, placed for adoption ("claimant A", the primary adopter) and another person ("claimant B") are to be entitled to payments to be known as "statutory shared parental pay".

*Subsection (2)* deals with the conditions claimant A must meet.

*Subsection (2)(a)* specifies that claimant A and another person ("X") must satisfy certain prescribed conditions as to caring or intending to care for the child.

*Subsection (2)(b)* specifies that X must meet certain prescribed conditions as to employment status, earnings and relationship with claimant A or the child. In practice, X may also be the person who is claimant B for the purposes of *subsection (3)*.

The conditions in *subsection (2)(c) and (2)(d)* require claimant A to have met certain prescribed conditions regarding length of service and earnings. The condition in *subsection (2)(e)* is that, if regulations so provide, claimant A must continue in employed earner's employment until such a time as specified.

The condition in *subsection (2)(f)* is that claimant A became entitled to receive statutory adoption pay in respect of the child.

*Subsection (2)(g)* relates to the reduction of the adoption pay period.

The condition in *subsection (2)(h) and (2)(i)* is that claimant A has given notice of the total number of weeks for which he or she would be entitled to claim statutory shared parental pay, the number of weeks for which he or she intends to claim the pay, the number of weeks X intends to claim the pay and the periods during which claimant A intends to claim the pay. *Subsection (2)(j)* relates to the timing, form and content of such notices.

X's consent to the amount of statutory shared parental pay claimant A intends to claim is the condition in *subsection (2)(k)*.

The condition in *subsection (2)(l)* is that it must be claimant A's intention to care for the child during each week in which statutory shared parental pay is paid to claimant A.

The conditions in *subsection (2)(m) and (2)(n)* are that claimant A must be absent from work for each week that statutory shared parental pay is paid to him or her. Where claimant A is an employee, that person must be absent from work on shared parental leave.

*Subsection (4)* deals with the conditions that claimant B must meet.

The condition in *subsection (4)(a)* is that *claimant B* and another person (“Y”) who is a person with whom a child is, or is expecting to be, placed for adoption satisfy certain prescribed conditions as to caring or intending to care for the child.

*Subsection (4)(b)* requires that *claimant B* must satisfy certain conditions as to the relationship with the child or Y. In practice, Y may also be the same person who is *claimant A* for the purposes of *subsection (1)*.

*Subsection (4)(c)* provides that Y must meet certain employment status and earnings criteria, the details of which will be prescribed in regulations.

The conditions in *subsection (4)(d)* and *(4)(e)* relate to continuous service and earnings. The condition in *subsection (4)(f)* is that *claimant B*, if so prescribed, must continue in employed earner’s employment until such a time as specified in regulations.

The condition in *subsection (4)(g)* is that Y must have been entitled to receive statutory adoption pay by reference to the child. The condition in *subsection (4)(h)* relates to the reduction of the adoption pay period applying to Y.

In accordance with *subsection (4)(i)* and *(4)(j)*, *claimant B* must have given notice of the number of weeks for which *claimant B* would be entitled to claim statutory shared parental pay, the number of weeks *claimant B* intends to claim pay and the number of weeks Y intends to claim the pay and the periods during which *claimant B* intends to claim the pay. *Subsection (4)(k)* relates to the timing, form and content of such notices.

The condition in *subsection (4)(l)* is that Y must consent to the amount of statutory shared parental pay that *claimant B* intends to claim.

*Subsection (4)(m)* provides that it must be *claimant B*’s intention to care for the child during each week in which statutory shared parental pay is paid to *claimant B*.

The condition in *subsection (4)(n)* and *(4)(o)* is that *claimant B* must be absent from work for each week that statutory shared parental pay is paid to *claimant B*. If *claimant B* is an employee, *claimant B* must be absent from work on shared parental leave.

### **Section 167ZX: Extent of entitlement and when payable: adoption**

*Subsection (1)* provides for the Department to make regulations to determine the extent of a person’s entitlement to statutory shared parental pay in respect of a child, and when it is to be paid.

Under *subsections (2)* and *(3)*, the extent of a person’s entitlement to statutory shared parental pay cannot exceed the length of the adoption pay period (currently 39 weeks) less the number of weeks that adoption pay is payable until the *claimant*’s return to work or the number of weeks by which the adoption

pay period has been reduced (where the claimant reduces these periods before returning to work). *Subsection (3)* defines the meaning of “relevant week”.

*Subsection (5)* is to ensure that when two people are entitled to statutory shared parental pay in respect of the same child, the total number of weeks taken by both cannot exceed the number of weeks calculated under *subsection (2)*.

*Subsection (6)* is to ensure that payments of statutory shared parental pay cannot be made to a person after a prescribed period. *Subsection (7)* secures that no payment of statutory shared parental pay may be made before the end of a person’s adoption pay period.

*Subsection (8)* allows for provision enabling a person who is entitled to statutory shared parental pay to vary the period(s) during which that person intends to claim the pay without varying the overall amount the person intends to take, provided certain conditions are satisfied. These conditions are specified in *subsection (9)*. They require the intending claimant to give notice of intention to vary to the person who will be liable to make the payment. The notice must satisfy certain prescribed conditions as to time, form and content.

*Subsection (10)* makes clear that regulations may provide for a person who is entitled to statutory shared parental pay to vary the number of weeks for which he or she intends to claim. In order to do so he or she must, in accordance with *subsection (11)*, notify the person liable to make the payment of the extent to which he or she and another person have used pay entitlement to date and the extent to which both individuals plan to use it in future. The consent of the other person must be obtained and the notice must adhere to certain conditions as to timing, form and content.

*Subsection (12)* specifies that if a person adopts more than one child as part of the same arrangement, he or she will not be entitled to take any more shared parental pay than that to which he or she would have been entitled if only one child was adopted.

### **Section 167ZY: Entitlement etc.: prospective adopters with whom looked after children are placed**

*Section 167ZY* provides for the making of regulations extending entitlement to statutory shared parental pay to FFA arrangements.

*Subsection (1)* specifies that regulations are to provide for statutory shared parental pay in respect of a child placed by a competent authority (a Health and Social Care Trust) with an approved foster parent who is also an approved prospective adopter.

In accordance with *subsection (2)*, such provision is to be made in circumstances where either a decision is pending or has already been taken that adoption is in the child’s best interests. Regulations may specify that certain further conditions must also be satisfied, allowing the regulations to set a specific point at which entitlement will be triggered.

*Subsection (3)* provides for regulations to include adaptations to appropriate references in relevant provision to placements for adoption made under the law of any part of the United Kingdom; this will convert references in relevant provisions to fit FFA cases.

### **Section 167ZZ: Entitlement: general**

*Section 167ZZ* makes further provision about a person's entitlement to statutory shared parental pay (whether in relation to birth or adoption).

*Subsection (1)(a)* empowers the Department to provide that the entitlement conditions for statutory shared parental pay do not have effect, or have effect subject to prescribed modifications in such cases as may be prescribed. *Subsection (1)(b)* deals with requirements about evidence of entitlement and *subsection (2)* specifies persons on whom those requirements may be imposed. *Subsection (1)(c) to (f)* provides power for the Department to make provision relating to continuous employment and the calculation of earnings.

### **Section 167ZZ1: Liability to make payments**

*Subsection (1)* provides for employers to be liable for the payment of statutory shared parental pay. (However, under *Article 8* of the Employment (Northern Ireland) Order 2002, as amended by *Schedule 1*, provision is made for the funding of employers' liabilities to pay statutory shared parental pay).

*Subsection (2)* requires the Department to make regulations about the liability of a former employer to pay statutory shared parental pay where the employee has been dismissed by the employer to avoid liability for payment.

*Subsection (3)* provides power for the Department, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, to specify in regulations circumstances in which liability for paying statutory shared parental pay is to fall on the Commissioners.

### **Section 167ZZ2: Rate and period of pay**

*Section 167ZZ2* deals with the rate at which statutory shared parental pay is payable and the period for which it is payable (whether in relation to birth or adoption).

*Subsection (1)* provides for the weekly rate to be set by regulations. *Subsection (2)* provides for payments on a weekly basis. *Subsection (3)* provides that statutory shared parental pay is not generally payable except in connection with a person's intention to care for the child; and *subsection (4)* provides that it is not generally payable during a week in which a person works. *Subsection (5)* empowers the Department to specify when there is no liability to pay. *Subsection (6)* specifies how the daily rate can be calculated. *Subsection (7)* specifies when a week falls within the pay period.

### **Section 167ZZ3: Restrictions on contracting out**

*Subsection (1)* provides that an agreement is void to the extent that it purports to exclude, limit or otherwise modify any provision of the Part of the Act dealing with statutory shared *parental* pay, or to require a person to contribute (whether directly or indirectly) towards any relevant costs incurred by that person's employer or former employer.

*Subsection (2)* contains a provision which ensures that certain agreements with an employee authorising deductions from shared parental pay are not void.

### **Section 167ZZ4: Relationship with contractual remuneration**

*Section 167ZZ4* deals with the way in which statutory shared parental pay interacts with contractual remuneration.

*Subsection (1)* provides that, subject to *subsections (2)* and *(3)*, any entitlement to statutory shared parental pay is not to affect any right of any person in relation to contractual remuneration. *Subsection (2)* specifies that payment of contractual remuneration can be counted as discharging a liability of the employer to pay statutory shared parental pay. Also payment of statutory shared parental pay can be counted as discharging an obligation of the employer to pay contractual remuneration. *Subsection (3)* makes provision for regulations to provide which payments are to be treated as contractual remuneration for the purposes of *subsections (1)* and *(2)*.

### **Section 167ZZ5: Crown employment - Part 12ZC**

*Section 167ZZ5* ensures that the remaining provisions of this Part of the Act, namely those dealing with statutory shared parental pay, apply to those in Crown employment as well as those not in Crown employment.

### **Section 167ZZ6: Special classes of person**

*Section 167ZZ6* provides a regulation making power for modifying any provision of the Part of the Act dealing with statutory shared parental pay as it applies to special classes of person, namely those employed on board any ship, vessel, hovercraft or aircraft; persons outside Northern Ireland in prescribed situations; and in prescribed employment in connection with continental shelf operations.

### **Section 167ZZ7: Part 12ZC: supplementary**

*Subsection (3)* allows regulations to modify application of the definition of "employee" contained in *subsection (2)*. *Subsection (4)* provides that, in accordance with regulations, two or more employers and two or more contracts of service in respect of the same employee may be treated as one. *Subsection (6)* deals with the calculation of weekly earnings and *subsection (8)* provides as to calculation of a person's normal weekly earnings. *Subsections (9)* to *(11)*

make special provision as to the treatment of contracts of employment within the Northern Ireland Health and Social Care trusts.

**Section 167ZZ8: Power to apply Part 12ZC to other cases**

*Subsection (1)* enables provision to be made so that shared parental pay regulations may have effect in relation to cases involving the adoption of a child from outside the United Kingdom. *Subsection (2)* makes like provision in relation to intended parents in surrogacy arrangements who meet certain conditions. *Subsection (3)* enables regulations to require that intended parents in surrogacy arrangements who wish to take shared parental pay must make statutory declarations as to their eligibility and intention to apply for a parental order.