
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Shared Parental Leave Regulations 2014

PART 3

ENTITLEMENT TO SHARED PARENTAL LEAVE (ADOPTION)

CHAPTER 1

Entitlement to leave – general

Adopter's entitlement to shared parental leave

20.—(1) A is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if A satisfies the conditions specified in paragraph (2) and AP satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

- (a) A satisfies the continuity of employment test (see regulation 35);
- (b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);
- (c) A is entitled to statutory adoption leave in respect of C;
- (d) A has ended any entitlement to statutory adoption leave by curtailing that leave under section 75A(2A) or 75B(3)(a) of the 1996 Act⁽¹⁾ (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave;
- (e) A has complied with regulation 24 (notice to employer of entitlement to shared parental leave);
- (f) A has complied with regulation 26(3) and (4) (evidence for employer); and
- (g) A has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

- (a) AP satisfies the employment and earnings test (see regulation 36); and
- (b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A).

(4) The entitlement under paragraph (1) is not affected by the number of children placed for adoption through a single placement.

⁽¹⁾ Sections 75A and 75B were inserted by the Employment Act 2002 (c. 22), section 3. Section 75A(2A) was inserted by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 33. Sections 75A(2A) and 75B(3) were amended by the Children and Families Act 2014 (c. 6), section 118(4) and (5) (respectively).

Adopter's partner's entitlement to shared parental leave

21.—(1) AP is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if AP satisfies the conditions specified in paragraph (2) and A satisfies the conditions specified in paragraph (3).

(2) The conditions are that—

- (a) AP satisfies the continuity of employment test (see regulation 35);
- (b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A);
- (c) AP has complied with regulation 25 (notice to employer of entitlement to shared parental leave);
- (d) AP has complied with regulation 26(3) and (4) (evidence for employer); and
- (e) AP has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

- (a) A satisfies the employment and earnings test (see regulation 36);
- (b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);
- (c) A is entitled to statutory adoption leave or statutory adoption pay in respect of C; and
- (d) where—
 - (i) A is entitled to statutory adoption leave, A has ended any entitlement to statutory adoption leave by curtailing that leave under section 75A(2A) or 75B(3)(a) of the 1996 Act (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave, or
 - (ii) where A is not entitled to statutory adoption leave but is entitled to statutory adoption pay, A has curtailed the adoption pay period under section 171ZN(2A) of the 1992 Act⁽²⁾ (and that period remains curtailed).

(4) The entitlement under paragraph (1) is not affected by the number of children placed for adoption through a single placement.

Calculation of total amount of shared parental leave available (adoption)

22.—(1) Where A is entitled to statutory adoption leave, subject to paragraph (9), the total amount of shared parental leave available to A and AP in relation to C is 52 weeks less—

- (a) where there is a leave curtailment date, the number of weeks of statutory adoption leave beginning with the first day of statutory adoption leave taken by A and ending with the leave curtailment date (irrespective of whether or not A returns to work before that date), or
- (b) where A's statutory adoption leave ends without A curtailing that leave under section 75A(2A) or section 75B(3) of the 1996 Act, either—
 - (i) the number of weeks of statutory adoption leave taken; or
 - (ii) 2 weeks,
 whichever is greater.

(2) Where A is not entitled to statutory adoption leave, but is entitled to statutory adoption pay, subject to paragraph (10), the total amount of shared parental leave available to AP in relation to C is 52 weeks less—

(2) Section 171ZN was inserted by the Employment Act 2002, section 4. Section 171N(2A) was inserted by the Children and Families Act 2014, section 120(6).

- (a) where A returns to work without reducing A's statutory adoption pay period under section 171ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to A in respect of C before A returns to work, or
 - (b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the pay curtailment date.
- (3) The total amount of shared parental leave which A is entitled to take is the product of the calculation in (1) less—
- (a) any shared parental leave which AP has notified under regulation 28 (as varied by any notice under regulation 31),
 - (b) any period of leave which is required to be taken in accordance with paragraph (2) of regulation 33, and
 - (c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.
- (4) The total amount of shared parental leave which AP is entitled to take is the product of the calculation in (1) or (2), as the case may be, less—
- (a) any shared parental leave which A has notified under regulation 28 (as varied by any notice under regulation 31),
 - (b) any period of leave which is required to be taken in accordance with paragraph (1) of regulation 33, and
 - (c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.
- (5) For the purposes of paragraphs (3)(a) and (4)(a), any leave notified but, as a result of A giving a revocation notice, not taken must be disregarded.
- (6) For the purposes of paragraph (1), a part of a week in which statutory adoption leave is taken is to be treated as a whole week.
- (7) For the purposes of paragraph (2)—
- (a) a part of a week in respect of which statutory adoption pay is payable is to be treated as a whole week, and
 - (b) “week” has the meaning given by section 171ZN(8) of the 1992 Act.
- (8) For the purposes of paragraphs (3) and (4), any week of leave or pay notified by A or AP, as the case may be, to be taken concurrently from more than one employer is to be treated as one week.
- (9) Where A is entitled to take statutory adoption leave from more than one employment, any calculation under paragraph (1) of the total amount of shared parental leave available must be calculated using—
- (a) the first day of statutory adoption leave taken by A in relation to C from any employment; and
 - (b) the later of—
 - (i) the leave curtailment date, or
 - (ii) the last day of statutory adoption leave taken by M from any employment in relation to C where that leave ends without A curtailing it under section 75A(2A) or section 75B(3) of the 1996 Act.
- (10) Where A is not entitled to statutory adoption leave, but has more than one entitlement to statutory adoption pay—
- (a) paragraph (2)(a) is to apply as though it read—

- “(a) where A returns to work for all of A’s employers without reducing the statutory adoption pay periods under section 171ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to M in respect of C before the last date on which A returns to work, or”, and
- (b) paragraph (2)(b) is to apply as though it read—
 - “(b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the latest pay curtailment date.”.

Periods when shared parental leave may be taken (adoption)

23.—(1) Shared parental leave may be taken at any time within the period which begins on the date C is placed for adoption with A (or, where more than one child is placed for adoption through a single placement, the date of the placement of the first child) and ends the day before the first anniversary of the date on which C was placed for adoption.

- (2) Shared parental leave must be taken in complete weeks.
- (3) Shared parental leave may be taken as one continuous period or in discontinuous periods.
- (4) The minimum period of shared parental leave which may be taken is one week.
- (5) An employee may be absent on shared parental leave in relation to C at the same time that another employee is—
 - (a) absent on leave provided for in Part 8 of the 1996 Act in relation to C;
 - (b) in receipt of pay under section 35 or Part 12, 12ZA, 12ZB, or 12ZC of the 1992 Act⁽³⁾ in relation to C.

Adopter’s notice of entitlement and intention to take shared parental leave

24.—(1) A must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by A, give A’s employer a written notice which contains the information specified in paragraph (2) and is accompanied by the declarations specified in paragraph (3).

- (2) The specified information is—
 - (a) A’s name;
 - (b) AP’s name;
 - (c) the date that A was notified of having been matched for adoption with C;
 - (d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (5));
 - (e) the start and end dates of any period of statutory adoption leave taken or to be taken by A;
 - (f) the total amount of shared parental leave available (in accordance with the regulation 22(1));
 - (g) how much shared parental leave A and AP each intend to take;
 - (h) an indication as to when A intends to take shared parental leave (including the start and end dates for each period of leave).
- (3) The specified declarations are—
 - (a) a declaration signed by A that—
 - (i) A satisfies, or will satisfy, the conditions in regulation 20(2);

(3) Part 12ZA was inserted by the Employment Act 2002, section 2. Part 12ZB was inserted by the Employment Act 2002, section 4.

- (ii) the information given by A in the notice is accurate;
- (iii) A will immediately inform A's employer if A ceases to care for C;
- (b) a declaration signed by AP—
 - (i) specifying AP's name, address, and national insurance number (or a declaration that AP does not have a national insurance number);
 - (ii) that AP satisfies, or will satisfy the conditions in regulation 20(3);
 - (iii) that AP is married to, or the civil partner or partner of, A;
 - (iv) that AP consents to the amount of leave which A intends to take (as set out in the notice for the purposes of paragraph (2)(g));
 - (v) that AP consents to A's employer processing the information in AP's declaration.

(4) The references to AP in paragraphs (2) and (3) are references to the individual who satisfies paragraph (3) of regulation 20.

(5) Where a notice is given under paragraph (1) before the date that C is placed for adoption, A must give the date of placement for adoption to A's employer as soon as reasonably practicable after the placement and, in any event, before the first period of shared parental leave to be taken by A.

(6) The indication in the notice provided in accordance with paragraph (2)(h) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

Adopter's partner's notice of entitlement and intention to take shared parental leave

25.—(1) AP must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by AP, give AP's employer a written notice which contains the information specified in paragraph (2) and is accompanied by the declarations specified in paragraph (3).

- (2) The specified information is—
 - (a) AP's name;
 - (b) A's name;
 - (c) the date that A was notified of having been matched for adoption with C;
 - (d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (4));
 - (e) the start and end dates of any—
 - (i) period of statutory adoption leave taken or to be taken by A; or
 - (ii) period in respect of which statutory adoption pay received or to be received by A (where statutory adoption leave was not taken or is not to be taken in relation to that period) is payable;
 - (f) the total amount of shared parental leave available (in accordance with the regulation 22(1) or (2));
 - (g) how much shared parental leave AP and A each intend to take;
 - (h) an indication as to when AP intends to take shared parental leave (including the start and end dates for each period of leave).
- (3) The specified declarations are—
 - (a) a declaration signed by AP that—
 - (i) AP satisfies, or will satisfy, the conditions in regulation 21(2);
 - (ii) the information given by AP in the notice is accurate;
 - (iii) that AP is married to, or the civil partner or partner of, A;

- (iv) AP will immediately inform AP's employer if AP ceases to care for C or if A informs AP that A has ceased to satisfy the condition in regulation 21(3)(d);
- (b) a declaration signed by A—
 - (i) specifying A's name, address, and national insurance number (or a declaration that A does not have a national insurance number);
 - (ii) that A satisfies, or will satisfy, the conditions in regulation 21(3);
 - (iii) that A consents to the amount of leave which AP intends to take (as set out in the notice for the purposes of paragraph (2)(g));
 - (iv) that A will immediately inform AP if A ceases to satisfy the conditions in regulation 21(3)(d);
 - (v) that A consents to AP's employer processing the information in A's declaration.

(4) Where a notice is given under paragraph (1) before the date that C is placed for adoption, AP must give the date of placement for adoption to AP's employer as soon as reasonably practicable after the placement and, in any event, before the first period of shared parental leave to be taken by AP.

(5) The indication provided in accordance with paragraph (2)(h) is non-binding and must not be treated as a period of leave notice unless otherwise indicated in the notice.

Supplementary evidence (adoption)

26.—(1) Where A gives a notice under regulation 24 (excluding any notice given under regulation 24(5)), A's employer may request within 14 days beginning with the date on which that notice was given—

- (a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—
 - (i) the name and address of the adoption agency;
 - (ii) the date that A was notified of having been matched for adoption with C;
 - (iii) the date on which the adoption agency expects to place C with A; and
- (b) the name and address of AP's employer.

(2) Where AP gives a notice under regulation 25 (excluding any notice given under regulation 25(4)), AP's employer may request within 14 days beginning with the date on which that notice was given—

- (a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—
 - (i) the name and address of the adoption agency;
 - (ii) the date that A was notified of having been matched for adoption with C;
 - (iii) the date on which the adoption agency expects to place C with A; and
- (b) the name and address of A's employer.

(3) Where an employer makes a request under paragraph (1)(a) or (2)(a), A or AP, as the case may be, must send the employer the evidence requested within 14 days beginning with the date on which that request was made.

(4) Where an employer makes a request under paragraph (1)(b) or (2)(b), A or AP, as the case may be, must, within 14 days beginning with the date on which that request was made, send the employer—

- (a) the name and address requested, or
- (b) a declaration that A or AP, as the case may be, has no employer.

Variation of notice of intention to take shared parental leave (adoption)

27.—(1) A may give A's employer a written notice to vary a notice given under regulation 24 to vary how much shared parental leave A and AP each intend to take.

(2) AP may give AP's employer a written notice to vary a notice given under regulation 25 to vary how much shared parental leave AP and A each intend to take.

(3) A notice under paragraph (1) or (2) must contain—

(a) an indication as to when A or AP, as the case may be, intends to take shared parental leave (including the start and end dates for each period of leave);

(b) a description of the periods of shared parental leave that have been notified by A and AP under regulation 28 or 31 in relation to C;

(c) a description of the periods of statutory shared parental pay that have been notified by A and AP under Regulations made under Part 12ZC of the 1992 Act in relation to C (where that pay was notified in relation to a period in which shared parental leave was not to be taken);

(d) a declaration signed by A and AP that they agree the variation.

(4) The indication in the notice provided in accordance with paragraph (3)(a) is non-binding and must not to be treated as a period of leave notice unless otherwise indicated in the notice.

(5) For the purposes of any notices given by A, the reference to AP in paragraph (3)(d) is a reference to the individual who satisfies paragraph (3) of regulation 20.

(6) There is no limit on the number of notices that may be given under this regulation.