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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Shared Parental Leave Regulations 2014**

**PART 4**

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

**Continuity of employment test**

**35.**—(1) For the purposes of entitlement to shared parental leave (see regulations 4, 5, 20 and 21), an employee satisfies the continuity of employment test if the employee—

- (a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week (see paragraph (3)); and
- (b) remains in continuous employment with that employer until the week before any period of shared parental leave taken by the employee.

(2) Where Part 2 applies and C is born earlier than the relevant week and an employee would have satisfied the condition in sub-paragraph (a) of paragraph (1) if the employee's employment had continued until the end of the week immediately preceding that week, the employee must be treated as having satisfied that condition.

(3) In this regulation—

“relevant week” means—

- (a) where Part 2 applies, the week immediately preceding the 14th week before the expected week of birth;
- (b) where Part 3 applies, the week in which A was notified of having been matched for adoption with C.

**Employment and earnings test**

**36.**—(1) An individual satisfies the employment and earnings test if that individual—

- (a) has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the calculation week; and
- (b) has average weekly earnings (determined in accordance with paragraph (2)) of not less than the amount set out in section 35(6A) of the 1992 Act<sup>(1)</sup> in relation to the tax year preceding the tax year containing the calculation week.

(2) An individual's average weekly earnings are determined by dividing by 13 the specified payments made, or treated as being made, to or for the benefit of that individual, in the 13 weeks (whether or not consecutive) in the period of 66 weeks immediately preceding the calculation week in which the payments are greatest.

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(1) Section 35(6A) was inserted by the Employment Act 2002, Schedule 7, paragraph 4(4).

(3) Where an individual receives any pay after the end of the period in paragraph (2) in respect of any week falling within that period, the average weekly amount is to be determined as if such sum had been paid in that period.

(4) Where an individual is not paid weekly, the payments made, or treated as made, to or for the benefit of that individual or for that individual's benefit for the purposes of paragraph (2), must be determined by dividing the total sum paid to that individual by the nearest whole number of weeks in respect of which that sum is paid.

(5) In this regulation—

“calculation week” means—

- (a) where Part 2 applies, the expected week of birth;
- (b) where Part 3 applies, the week in which A was notified of having been matched for adoption with C.

“employed earner” has the meaning given by section 2 of the 1992 Act<sup>(2)</sup>, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act;

“self-employed earner” has the meaning given by section 2 of the 1992 Act, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act;

“specified payments”—

- (a) in relation to a self-employed earner who satisfies the conditions in paragraph (6), are to be treated as made to the self-employed earner at an amount per week equal to the amount set out in section 35(6A) of the 1992 Act that is in force at the end of the week;
- (b) in relation to an employed earner, are all payments made to the employed earner or for the employed earner's benefit as an employed earner specified in regulation 2 (specified payments for employed earners) of the Social Security (Maternity Allowance) (Earnings) Regulations 2000<sup>(3)</sup>; and

“tax year” means the 12 months beginning with the 6th April in any year.

(6) The conditions referred to in paragraph (a) of the definition of “specified payments” are that, in respect of any week, the self-employed earner—

- (a) does not hold a certificate of exception issued pursuant to regulation 44(1) of the Social Security (Contributions) Regulations 2001<sup>(4)</sup> and has paid a Class 2 contribution (within the meaning of section 1 of the 1992 Act), or
- (b) holds such a certificate of exception.

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<sup>(2)</sup> Section 2 was amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6(2), paragraph 171.

<sup>(3)</sup> S.I. 2000/688, amended by S.I. 2007/1154.

<sup>(4)</sup> S.I. 2001/1004.