

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 - Statutory Rights to Leave and Pay

Statutory shared parental pay

Section 119: Statutory shared parental pay

Section 171ZV: Entitlement: adoption

556. This section deals with entitlement to statutory shared parental pay in relation to adoption.
557. 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”) and another person (“claimant B”) are to be entitled to payments to be known as “statutory shared parental pay”.
558. Subsection (2) of the new section states the conditions claimant A must meet in order to be entitled to statutory shared parental pay. In some cases, the conditions provide for further matters to be dealt with in regulations.
559. The condition in subsection (2)(a) is that claimant A and another person (“X”) must satisfy certain prescribed conditions as to caring or intending to care for the child.
560. The condition in subsection (2)(b) specifies that the other person must have met 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).
561. The conditions in subsection (2)(c), (d) and (e) require claimant A to have met certain prescribed conditions regarding length of service, earnings and entitlement to be in employment. The condition in subsection (2)(f) is that, if regulations so provide, claimant A must continue in employed earner’s employment until such a time as specified in regulations.
562. The condition in subsection (2)(g) is that claimant A became entitled to receive statutory adoption pay in respect of the child. The condition in subsection (2)(h) relates to the reduction of the adoption pay period.
563. The condition in subsection (2)(i) and (j) is that claimant A has given notice of the total number of weeks claimant A would be entitled to claim statutory shared parental pay, the number of weeks claimant A 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.

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(c.6) which received Royal Assent on 13 March 2014*

564. The condition in subsection (2)(k) is that the notices under subsection (2)(i) or (j) are given by such a time as may be prescribed and satisfy certain prescribed conditions as to form and content.
565. The condition in subsection (2)(l) is that X must consent to the amount of statutory shared parental pay claimant A intends to claim.
566. The condition in subsection (2)(m) specifies 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.
567. The conditions in subsection (2)(n) and (o) are that claimant A must be absent from work for each week that statutory shared parental pay is paid to claimant A. Where claimant A is an employee, that person must be absent from work on shared parental leave.
568. Subsection (4) deals with the conditions that claimant B must meet in order to be entitled to statutory shared parental pay. As with the entitlement criteria for claimant A, in some cases the conditions provide for further matters to be dealt with in regulations.
569. 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 satisfy certain conditions as regards 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).
570. The condition in subsection (4)(c) is 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), (e) and (f) require that claimant B has met certain prescribed conditions relating to a continuous length of employment, earnings and entitlement to be in that employment. The condition in subsection (4)(g) is that claimant B, if so prescribed, must continue in employed earner's employment until such a time as specified in regulations.
571. The condition in subsection (4)(h) is that Y became entitled to receive statutory adoption pay by reference to the child. The condition in subsection (4)(i) relates to the reduction of the adoption pay period applying to Y.
572. The condition in subsection (4)(j) and (k) is that claimant B has given notice of the total number of weeks 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. The condition in subsection (4)(l) is that these notices be submitted by such a time as may be prescribed and satisfy prescribed conditions as to form and content. The condition in subsection (4)(m) is that Y consent to the amount of statutory shared parental pay that claimant B intends to claim.
573. The condition in subsection (4)(n) is 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 the claimant.
574. The condition in subsection (4)(o) and (p) is that claimant B must be absent from work for each week that statutory shared parental pay is paid to the claimant. If claimant B is an employee, the claimant must be absent from work on shared parental leave.
575. Subsection (5) provides for the Secretary of State to make regulations to determine the extent of a person's entitlement to statutory shared parental pay in respect of a child, and the times at which this may be paid.
576. Subsections (6) and (7) provide 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 to the claimant's return to work

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or the number of weeks by which the adoption pay period has been reduced (where the claimant reduces this period before returning to work). Subsection (7) defines the meaning of “relevant week”.

- 577. Subsection (8) further specifies that for the purposes of calculations under subsection (6)(b), part of a week is to be treated as a full week.
- 578. Subsection (9) specifies that provision under subsection (5)(a) 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 cannot exceed the number of weeks calculated under subsection (6).
- 579. Subsection (10) specifies that provision under subsection (5)(b) as to when statutory shared parental pay is payable is to secure that payments of statutory shared parental pay cannot be made to a person after a prescribed period. Subsection (11) further specifies that the provision as to when statutory shared parental pay is payable is to secure that where a person is entitled to receive statutory adoption pay, no payment of statutory shared parental pay may be made to them before the end of their adoption pay period.
- 580. Subsection (12) provides for regulations to enable a person who is entitled to statutory shared parental pay to vary the period(s) during which the person intends to claim such pay without varying the overall amount of statutory shared parental pay the person intends to take, provided certain conditions are satisfied. These conditions are specified in subsection (13). They require the person who intends to claim statutory shared parental pay to give notice of their intention to vary the period(s) during which they intend to claim the pay to the person who will be liable to pay it. This notice must satisfy certain prescribed conditions as to time, form and content.
- 581. Subsection (14) provides power to make regulations to enable a person who is entitled to statutory shared parental pay to vary the number of weeks of shared parental pay that he or she intends to claim, providing certain conditions in subsection (15) are satisfied. They require that the person must give notice in prescribed form and by a prescribed time, containing specified information to the person who will be liable to pay the statutory shared parental pay. The consent of the other person eligible for statutory shared parental pay in respect of the same child must also be obtained.
- 582. Subsection (16) has the effect 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.