



Children and Families Act 2014

2014 CHAPTER 6

PART 7

STATUTORY RIGHTS TO LEAVE AND PAY

Shared parental leave

117 Shared parental leave

(1) In Part 8 of the Employment Rights Act 1996, after section 75D there is inserted—

“CHAPTER 1B

SHARED PARENTAL LEAVE

75E Entitlement to shared parental leave: birth

- (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
 - (b) as to being, or expecting to be, the mother of a child,
 - (c) as to caring or intending to care, with another person (“P”), for the child,
 - (d) as to entitlement to maternity leave,
 - (e) as to the exercise of that entitlement and the extent of any such exercise,
 - (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
 - (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,

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to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child, and
- (d) as to relationship with the child or the employee.

(3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
- (b) how much of the entitlement to leave the employee intends to exercise;
- (c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.

(4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child or expected child or with the child's mother,
- (c) as to caring or intending to care, with the child's mother, for the child,
- (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
- (e) as to the consent of the child's mother to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(5) Regulations under subsection (4) may provide that the employee's entitlement is subject to the satisfaction by the child's mother of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child,
- (d) as to entitlement (or lack of entitlement) to maternity leave, statutory maternity pay or maternity allowance, and
- (e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of the child's mother to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);

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- (b) how much of the entitlement to leave the employee intends to exercise;
- (c) the extent to which the child’s mother intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.

75F Entitlement to leave under section 75E: further provision

- (1) Regulations under section 75E are to include provision for determining—
 - (a) the amount of leave under section 75E(1) or (4) to which an employee is entitled in respect of a child;
 - (b) when leave under section 75E(1) or (4) may be taken.
- (2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—
 - (a) in a case where the child’s mother became entitled to maternity leave, the relevant amount of time reduced by—
 - (i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of section 71(3)(ba) or 73(3)(a), the amount of maternity leave taken by the child’s mother, or
 - (ii) except where sub-paragraph (i) applies, the amount of time between the beginning of her maternity leave and the time when her ordinary or additional maternity leave period, as curtailed by virtue of section 71(3)(ba) or 73(3)(a), comes to an end;
 - (b) in a case where the child’s mother became entitled to statutory maternity pay or maternity allowance but not maternity leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZU(6) of the Social Security Contributions and Benefits Act 1992.
- (3) In subsection (2) “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under section 75E.
- (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—
 - (a) in a case where another person is entitled to leave under section 75E in respect of the child, the amount of such leave taken by the other person;
 - (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75E, the number of weeks in respect of which such pay is payable to the other person.
- (5) In reckoning for the purposes of subsection (2) the amount of maternity leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of subsection (4) the amount of leave under section 75E taken during a period of such leave, a part of a week is to be treated as a full week.

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- (7) Provision under subsection (1)(b) is to secure that leave under section 75E must be taken before the end of such period as may be specified by the regulations.
- (8) Regulations under section 75E are to provide for the taking of leave under section 75E in a single period or in non-consecutive periods.
- (9) Regulations under section 75E may—
- (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75E to take that amount of leave as a single period of leave;
 - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under section 75E may provide for the variation, subject to such restrictions as may be specified, of—
- (a) the period or periods during which an amount of leave under section 75E may be taken;
 - (b) the amount of leave under section 75E that the employee previously specified in accordance with provision under section 75E(3)(b) or (6)(b) or subsection (13)(b) of this section.
- (11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.
- (12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—
- (a) as to giving notice of an intention to vary the amount of leave under section 75E to be taken by the employee;
 - (b) if the employee proposes to vary the amount of leave under section 75E(1) to be taken by the employee, as to the consent of P to that variation;
 - (c) if the employee proposes to vary the amount of leave under section 75E(4) to be taken by the employee, as to the consent of the child's mother to that variation.
- (13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—
- (a) the extent to which the employee has exercised an entitlement to leave under section 75E(1) or (4) in respect of the child;
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75E or to statutory shared parental pay in respect of the child;
 - (d) the extent to which a person other than the employee intends to exercise such an entitlement.
- (14) Regulations under section 75E may—

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- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) make provision excluding the right to be absent on leave under section 75E in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) specify a minimum amount of leave under section 75E which may be taken;
- (d) make provision about how leave under section 75E may be taken;
- (e) specify circumstances in which an employee may work for the employer during a period of leave under section 75E without bringing the particular period of leave, or the employee's entitlement to leave under section 75E, to an end;
- (f) specify circumstances in which an employee may be absent on leave under section 75E otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 75E to an end.

(15) In this section “week” means any period of seven days.

(16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where the mother of a child dies before another person has become entitled to leave under section 75E in respect of the child—

- (a) section 75E(4)(b), (c) and (e);
- (b) section 75E(5);
- (c) section 75E(6)(c);
- (d) subsection (12)(c);
- (e) subsection (13)(c) and (d).

75G Entitlement to shared parental leave: adoption

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom,
- (c) as to caring or intending to care, with another person (“P”), for the child,
- (d) as to entitlement to adoption leave,
- (e) as to the exercise of that entitlement and the extent of any such exercise,
- (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
- (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

Status: This is the original version (as it was originally enacted).

- (a) as to employment or self-employment,
 - (b) as to having earnings of a specified amount for a specified period,
 - (c) as to caring or intending to care, with the employee, for the child, and
 - (d) as to relationship with the child or the employee.
- (3) Provision under subsection (1)(f) may require the employee to give notice to the employer about—
- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay);
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which P intends to exercise an entitlement to leave under subsection (4) or to statutory shared parental pay.
- (4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions—
- (a) as to duration of employment,
 - (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom or with a person (“A”) with whom the child is, or is expected to be, so placed,
 - (c) as to caring or intending to care, with A, for the child,
 - (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection, and
 - (e) as to the consent of A to the amount of leave under this subsection that the employee intends to take,
- to be absent from work on leave under this subsection for the purpose of caring for the child.
- (5) Regulations under subsection (4) may provide that the employee’s entitlement is subject to the satisfaction by A of specified conditions—
- (a) as to employment or self-employment,
 - (b) as to having earnings of a specified amount for a specified period,
 - (c) as to caring or intending to care, with the employee, for the child,
 - (d) as to entitlement (or lack of entitlement) to adoption leave or statutory adoption pay, and
 - (e) as to the exercise of any such entitlement and the extent of any such exercise.
- (6) Provision under subsection (4)(d) may require the employee to give notice to the employer about—
- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of A to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay);
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which A intends to exercise an entitlement to leave under subsection (1) or to statutory shared parental pay.

Status: This is the original version (as it was originally enacted).

- (7) Regulations under subsections (1) and (4) are to provide for leave in respect of a child placed, or expected to be placed, under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter.
- (8) This section and section 75H have effect in relation to regulations made by virtue of subsection (7) as if references to a child being placed for adoption under the law of any part of the United Kingdom were references to being placed under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter.

75H Entitlement to leave under section 75G: further provision

- (1) Regulations under section 75G are to include provision for determining—
 - (a) the amount of leave under section 75G(1) or (4) to which an employee is entitled in respect of a child;
 - (b) when leave under section 75G(1) or (4) may be taken.
- (2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—
 - (a) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to adoption leave, the relevant amount of time reduced by—
 - (i) where the person’s adoption leave ends without the person’s ordinary or additional adoption leave period having been curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), the amount of adoption leave taken by that person, or
 - (ii) except where sub-paragraph (i) applies, the amount of time between the beginning of the person’s adoption leave and the time when the person’s ordinary or additional adoption leave period, as curtailed by virtue of section 75A(2A)(a) or 75B(3)(a), comes to an end;
 - (b) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to statutory adoption pay but not adoption leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 171ZV(6) of the Social Security Contributions and Benefits Act 1992.
- (3) In subsection (2) “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under section 75G.
- (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—
 - (a) in a case where another person is entitled to leave under section 75G in respect of the child, the amount of such leave taken by the other person;
 - (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75G, the number of weeks in respect of which such pay is payable to the other person.

Status: This is the original version (as it was originally enacted).

- (5) In reckoning for the purposes of subsection (2) the amount of adoption leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of subsection (4) the amount of leave under section 75G taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under subsection (1)(b) is to secure that leave under section 75G must be taken before the end of such period as may be prescribed by the regulations.
- (8) Regulations under section 75G are to provide for the taking of leave under section 75G in a single period or in non-consecutive periods.
- (9) Regulations under section 75G may—
 - (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 75G to take that amount of leave as a single period of leave, and
 - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under section 75G may provide for the variation, subject to such restrictions as may be specified, of—
 - (a) the period or periods during which an amount of leave under section 75G is to be taken;
 - (b) the amount of leave under section 75G that the employee previously specified in accordance with provision under section 75G(3)(b) or (6)(b) or subsection (13)(b) of this section.
- (11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.
- (12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions—
 - (a) as to giving notice of an intention to vary the amount of leave under section 75G to be taken by the employee;
 - (b) if the employee proposes to vary the amount of leave under section 75G(1) to be taken by the employee, as to the consent of P to that variation;
 - (c) if the employee proposes to vary the amount of leave under section 75G(4) to be taken by the employee, as to the consent of A to that variation.
- (13) Provision under subsection (12)(a) may require an employee to give notice to the employer about—
 - (a) the extent to which the employee has exercised an entitlement to leave under section 75G(1) or (4) in respect of the child;
 - (b) how much of the entitlement to leave the employee intends to exercise;

Status: This is the original version (as it was originally enacted).

- (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 75G or to statutory shared parental pay in respect of the child;
 - (d) the extent to which a person other than the employee intends to exercise such an entitlement.
- (14) Regulations under section 75G may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
 - (b) make provision excluding the right to be absent on leave under section 75G in respect of a child where more than one child is placed for adoption as part of the same arrangement;
 - (c) specify a minimum amount of leave under section 75G which may be taken;
 - (d) make provision about how leave under section 75G may be taken;
 - (e) specify circumstances in which an employee may work for the employer during a period of leave under section 75G without bringing the particular period of leave, or the employee’s entitlement to leave under section 75G, to an end;
 - (f) specify circumstances in which an employee may be absent on leave under section 75G otherwise than for the purpose of caring for a child without bringing the person’s entitlement to leave under section 75G to an end.
- (15) In this section “week” means any period of seven days.
- (16) The Secretary of State may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where a person who is taking adoption leave or is entitled to be paid statutory adoption pay in respect of a child dies before another person has become entitled to leave under section 75G in respect of the child—
- (a) section 75G(4)(b), (c) and (e);
 - (b) section 75G(5);
 - (c) section 75G(6)(c);
 - (d) subsection (12)(c);
 - (e) subsection (13)(c) and (d).
- (17) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.
- (18) The Secretary of State may by regulations provide for section 75G and this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.

75I Rights during and after shared parental leave

- (1) Regulations under section 75E or 75G are to provide—

Status: This is the original version (as it was originally enacted).

- (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if the employee had not been absent;
 - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions, except in so far as they are inconsistent with section 75E(1) or (4) or 75G(1) or (4), as the case may be; and
 - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by the regulations, subject to section 75J(1).
- (2) In subsection (1)(a) “terms and conditions of employment”—
- (a) includes matters connected with an employee’s employment whether or not they arise under the employee’s contract of employment, but
 - (b) does not include terms and conditions about remuneration.
- (3) The reference in subsection (1)(c) to absence on leave under section 75E or 75G includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under one of those sections and partly to any one or more of the following—
- (a) leave under the other of those sections,
 - (b) maternity leave,
 - (c) paternity leave,
 - (d) adoption leave, and
 - (e) parental leave.
- (4) Regulations under section 75E or 75G may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) Regulations under section 75E or 75G may make provision, in relation to the right to return mentioned in subsection (1)(c), about—
- (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

75J Redundancy and dismissal

- (1) Regulations under section 75E or 75G may make provision about—
- (a) redundancy, or
 - (b) dismissal (other than by reason of redundancy),
- during a period of leave under that section.
- (2) Provision made by virtue of subsection (1) may include—
- (a) provision requiring an employer to offer alternative employment;
 - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

Status: This is the original version (as it was originally enacted).

75K Chapter 1B: supplemental

- (1) Regulations under section 75E or 75G may—
 - (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by—
 - (i) employees,
 - (ii) employers, and
 - (iii) relevant persons;
 - (b) make provision requiring such persons to keep records;
 - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
 - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
 - (e) make special provision for cases where an employee has a right which corresponds to a right under section 75E or 75G and which arises under the employee’s contract of employment or otherwise;
 - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week’s pay) in relation to an employee who is or has been absent from work on leave under section 75E or 75G;
 - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 75E or 75G.
- (2) In subsection (1) “relevant person” means—
 - (a) a person who, in connection with an employee’s claim to be entitled to leave under section 75E or 75G, is required to satisfy conditions specified in provision under section 75E(2) or (5) or 75G(2) or (5), or
 - (b) a person who is an employer or former employer of such a person.
- (3) In subsection (2)(b) “employer”, in relation to a person falling within subsection (2)(a) who is an employed earner, includes a person who is a secondary contributor as regards that employed earner.
- (4) The conditions as to employment or self-employment that may be specified in provision under section 75E(2) or (5) or 75G(2) or (5) include conditions as to being in employed or self-employed earner’s employment.
- (5) In subsections (3) and (4)—

“employed earner” and “self-employed earner” have the meaning given by section 2 of the Social Security Contributions and Benefits Act 1992, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act (persons who are to be treated as employed or self-employed earners);

“employment”, in the case of employment as an employed or self-employed earner, has the meaning given by section 122 of that Act;

“secondary contributor”, as regards an employed earner, means a person who—

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- (a) is indicated by section 7(1) of that Act, as that subsection has effect subject to section 7(2) of that Act, as being a secondary contributor as regards the earner, or
 - (b) is indicated by regulations under section 7(2) of that Act as being a person to be treated as a secondary contributor as regards the earner.
- (6) Regulations under any of sections 75E to 75H may make different provision for different cases or circumstances.
- (7) Where sections 75G and 75H have effect in relation to such cases as are described in section 75H(18), regulations under section 75G about evidence to be produced may require statutory declarations as to—
- (a) eligibility to apply for a parental order;
 - (b) intention to apply for such an order.”
- (2) In section 236 of the Employment Rights Act 1996 (orders and regulations), in subsection (3) (affirmative procedure required), after “75A, 75B,” there is inserted “75E, 75F(16), 75G, 75H(16), (17) or (18)”.

118 Exclusion or curtailment of other statutory rights to leave

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 71 (ordinary maternity leave)—
- (a) in subsection (3), after paragraph (b) there is inserted—
 - “(ba) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
 - (bb) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”;
 - (b) after subsection (3) there is inserted—
 - “(3A) Provision under subsection (3)(ba) is to secure that an employee may bring forward the date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.”
- (3) In section 73 (additional maternity leave)—
- (a) in subsection (3)(a), for the words from “to choose” to the end there is substituted “to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;”;
 - (b) after subsection (3)(a) there is inserted—
 - “(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”;
 - (c) after subsection (3) there is inserted—
 - “(3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional maternity leave period

Status: This is the original version (as it was originally enacted).

ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75E or statutory shared parental pay in respect of the child.”

(4) In section 75A (ordinary adoption leave)—

- (a) in subsection (2A), after “subsection (2)” there is inserted “—
 - (a) may allow an employee to bring forward the date on which an ordinary adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
 - (b) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”;
- (b) in subsection (2A), the words from “may specify circumstances” to the end become paragraph (c);
- (c) after subsection (2A) there is inserted—

“(2B) Provision under subsection (2A)(a) is to secure that an employee may bring forward the date on which an ordinary adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.”

(5) In section 75B (additional adoption leave)—

- (a) in subsection (3)(a), for the words from “to choose” to the end there is substituted “to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;”;
- (b) after subsection (3)(a) there is inserted—
 - “(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”;
- (c) after subsection (3) there is inserted—

“(3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 75G or statutory shared parental pay in respect of the child.”

(6) In section 80A (entitlement to ordinary paternity leave: birth), after subsection (4) there is inserted—

“(4A) Provision under subsection (2)(b) must secure that, once an employee takes leave under section 75E in respect of a child, the employee may not take leave under this section in respect of the child.”

(7) In section 80B (entitlement to ordinary paternity leave: adoption), after subsection (4) there is inserted—

“(4A) Provision under subsection (2)(b) must secure that, once an employee takes leave under section 75G in respect of a child, the employee may not take leave under this section in respect of the child.”

Status: This is the original version (as it was originally enacted).

Statutory shared parental pay

119 Statutory shared parental pay

- (1) In the Social Security Contributions and Benefits Act 1992, after section 171ZT there is inserted—

“PART 12ZC

STATUTORY SHARED PARENTAL PAY

171ZU Entitlement: birth

- (1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person who is the mother of a child (“the claimant mother”), the claimant mother is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (2) The conditions are—
- (a) that the claimant mother and another person (“P”) satisfy prescribed conditions as to caring or intending to care for the child;
 - (b) that P satisfies prescribed conditions—
 - (i) as to employment or self-employment,
 - (ii) as to having earnings of a prescribed amount for a prescribed period, and
 - (iii) as to relationship either with the child or with the claimant mother;
 - (c) that the claimant mother has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
 - (d) that at the end of that prescribed week the claimant mother was entitled to be in that employment;
 - (e) that the claimant mother’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
 - (f) if regulations so provide, that the claimant mother continues in employed earner’s employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time;
 - (g) that the claimant mother became entitled to statutory maternity pay by reference to the birth of the child;
 - (h) that the claimant mother satisfies prescribed conditions as to the reduction of the duration of the maternity pay period;
 - (i) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of—
 - (i) the number of weeks in respect of which she would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these

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- purposes any intention of P to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which she intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which P intends to claim statutory shared parental pay;
 - (j) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of the period or periods during which she intends to claim statutory shared parental pay in respect of the child;
 - (k) that a notice under paragraph (i) or (j)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (l) that P consents to the extent of the claimant mother’s intended claim for statutory shared parental pay;
 - (m) that it is the claimant mother’s intention to care for the child during each week in respect of which statutory shared parental pay is paid to her;
 - (n) that the claimant mother is absent from work during each week in respect of which statutory shared parental pay is paid to her;
 - (o) that, where she is an employee within the meaning of the Employment Rights Act 1996, the claimant mother’s absence from work during each such week is absence on shared parental leave.
- (3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person (“the claimant”), the claimant is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (4) The conditions are—
 - (a) that the claimant and another person (“M”) who is the mother of a child satisfy prescribed conditions as to caring or intending to care for the child;
 - (b) that the claimant satisfies—
 - (i) prescribed conditions as to relationship with the child, or
 - (ii) prescribed conditions as to relationship with M;
 - (c) that M satisfies prescribed conditions—
 - (i) as to employment or self-employment, and
 - (ii) as to having earnings of a prescribed amount for a prescribed period;
 - (d) that the claimant has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
 - (e) that at the end of that prescribed week the claimant was entitled to be in that employment;
 - (f) that the claimant’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
 - (g) if regulations so provide, that the claimant continues in employed earner’s employment (whether or not with the employer by reference

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- to whom the condition in paragraph (d) is satisfied) until a prescribed time;
- (h) that M became entitled, by reference to the birth of the child, to—
 - (i) a maternity allowance, or
 - (ii) statutory maternity pay;
 - (i) that M satisfies prescribed conditions as to—
 - (i) the reduction of the duration of the maternity allowance period, or
 - (ii) the reduction of the duration of the maternity pay period, as the case may be;
 - (j) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of—
 - (i) the number of weeks in respect of which the claimant would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of M to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which the claimant intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which M intends to claim statutory shared parental pay;
 - (k) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of the period or periods during which the claimant intends to claim statutory shared parental pay in respect of the child;
 - (l) that a notice under paragraph (j) or (k)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (m) that M consents to the extent of the claimant’s intended claim for statutory shared parental pay;
 - (n) that it is the claimant’s intention to care for the child during each week in respect of which statutory shared parental pay is paid to the claimant;
 - (o) that the claimant is absent from work during each week in respect of which statutory shared parental pay is paid to the claimant;
 - (p) that, where the claimant is an employee within the meaning of the Employment Rights Act 1996, the claimant’s absence from work during each such week is absence on shared parental leave.
- (5) Regulations may provide for—
- (a) the determination of the extent of a person’s entitlement to statutory shared parental pay in respect of a child;
 - (b) when statutory shared parental pay is to be payable.
- (6) Provision under subsection (5)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental pay in respect of a child does not exceed the number of weeks of the maternity pay period reduced by—
- (a) where the mother of the child takes action that is treated by regulations as constituting for the purposes of this section her return to work

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without satisfying conditions prescribed under subsection (2)(h) or, as the case may be, subsection (4)(i)—

- (i) the number of relevant weeks in respect of which maternity allowance or statutory maternity pay is payable to the mother, or
 - (ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or
- (b) except where paragraph (a) applies, the number of weeks to which the maternity allowance period is reduced by virtue of section 35(3A) or, as the case may be, the maternity pay period is reduced by virtue of section 165(3A).

(7) In subsection (6)(a) “relevant week” means—

- (a) where maternity allowance is payable to a mother, a week or part of a week falling before the time at which the mother takes action that is treated by regulations as constituting for the purposes of this section her return to work;
- (b) where statutory maternity pay is payable to a mother, a week falling before the week in which the mother takes action that is so treated.

For these purposes “week” has the meaning given by section 122(1), in relation to maternity allowance, or the meaning given by section 165(8), in relation to statutory maternity pay.

(8) In determining the number of weeks for the purposes of subsection (6)(b)—

- (a) “week” has the same meaning as in subsection (7), and
- (b) a part of a week is to be treated as a week.

(9) Provision under subsection (5)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one’s entitlement and the extent of the other’s entitlement do not, taken together, exceed what would be available to one person (see subsection (6)).

(10) Provision under subsection (5)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.

(11) Provision under subsection (5)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who is the mother of the child before the end of the mother’s maternity pay period.

(12) Regulations may provide that, where the conditions in subsection (13) are satisfied in relation to a person who is entitled to statutory shared parental pay under subsection (1) or (3) (“V”), V may vary the period or periods during which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (14) where that is relevant.

(13) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay;

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- (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content.
- (14) Regulations may provide that, where the conditions in subsection (15) are satisfied in relation to a person who is entitled to statutory shared parental pay under subsection (1) or (3) (“V”), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.
- (15) The conditions are—
 - (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
 - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
 - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
 - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
 - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child;
 - (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (c) that the person who is P or, as the case may be, M in relation to V consents to that variation.
- (16) A person’s entitlement to statutory shared parental pay under this section is not affected by the birth of more than one child as a result of the same pregnancy.

171ZV Entitlement: adoption

- (1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom (“claimant A”), claimant A is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (2) The conditions are—
 - (a) that claimant A and another person (“X”) satisfy prescribed conditions as to caring or intending to care for the child;
 - (b) that X satisfies prescribed conditions—
 - (i) as to employment or self-employment,
 - (ii) as to having earnings of a prescribed amount for a prescribed period, and
 - (iii) as to relationship either with the child or with claimant A;
 - (c) that claimant A has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;

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- (d) that at the end of that prescribed week claimant A was entitled to be in that employment;
 - (e) that claimant A's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
 - (f) if regulations so provide, that claimant A continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time;
 - (g) that claimant A became entitled to statutory adoption pay by reference to the placement for adoption of the child;
 - (h) that claimant A satisfies prescribed conditions as to the reduction of the duration of the adoption pay period;
 - (i) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of—
 - (i) the number of weeks in respect of which claimant A would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of X to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which claimant A intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which X intends to claim statutory shared parental pay;
 - (j) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of the period or periods during which claimant A intends to claim statutory shared parental pay in respect of the child;
 - (k) that a notice under paragraph (i) or (j)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (l) that X consents to the extent of claimant A's intended claim for statutory shared parental pay;
 - (m) that it is claimant A's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant A;
 - (n) that claimant A is absent from work during each week in respect of which statutory shared parental pay is paid to claimant A;
 - (o) that, where claimant A is an employee within the meaning of the Employment Rights Act 1996, claimant A's absence from work during each such week is absence on shared parental leave.
- (3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person ("claimant B"), claimant B is to be entitled in accordance with the following provisions of this Part to payments to be known as "statutory shared parental pay".
- (4) The conditions are—
- (a) that claimant B and another person ("Y") who is a person with whom a child is, or is expected to be, placed for adoption under the law of

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- any part of the United Kingdom satisfy prescribed conditions as to caring or intending to care for the child;
- (b) that claimant B satisfies—
 - (i) prescribed conditions as to relationship with the child, or
 - (ii) prescribed conditions as to relationship with Y;
 - (c) that Y satisfies prescribed conditions—
 - (i) as to employment or self-employment, and
 - (ii) as to having earnings of a prescribed amount for a prescribed period;
 - (d) that claimant B has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
 - (e) that at the end of that prescribed week claimant B was entitled to be in that employment;
 - (f) that claimant B's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
 - (g) if regulations so provide, that claimant B continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (d) is satisfied) until a prescribed time;
 - (h) that Y became entitled to statutory adoption pay by reference to the placement for adoption of the child;
 - (i) that Y satisfies prescribed conditions as to the reduction of the duration of the adoption pay period;
 - (j) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of—
 - (i) the number of weeks in respect of which claimant B would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of Y to claim statutory shared parental pay in respect of the child),
 - (ii) the number of weeks in respect of which claimant B intends to claim statutory shared parental pay, and
 - (iii) the number of weeks in respect of which Y intends to claim statutory shared parental pay;
 - (k) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of the period or periods during which claimant B intends to claim statutory shared parental pay in respect of the child;
 - (l) that a notice under paragraph (j) or (k)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (m) that Y consents to the extent of claimant B's intended claim for statutory shared parental pay;
 - (n) that it is claimant B's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant B;
 - (o) that claimant B is absent from work during each week in respect of which statutory shared parental pay is paid to claimant B;

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- (p) that, where claimant B is an employee within the meaning of the Employment Rights Act 1996, claimant B's absence from work during each such week is absence on shared parental leave.
- (5) Regulations may provide for—
 - (a) the determination of the extent of a person's entitlement to statutory shared parental pay in respect of a child;
 - (b) when statutory shared parental pay is to be payable.
- (6) Provision under subsection (5)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental pay in respect of a child does not exceed the number of weeks of the adoption pay period reduced by—
 - (a) where the person who became entitled to receive statutory adoption pay takes action that is treated by regulations as constituting for the purposes of this section the person's return to work without satisfying conditions prescribed under subsection (2)(h) or, as the case may be, subsection (4)(i)—
 - (i) the number of relevant weeks in respect of which statutory adoption pay is payable to the person, or
 - (ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or
 - (b) except where paragraph (a) applies, the number of weeks to which the adoption pay period has been reduced by virtue of section 171ZN(2A).
- (7) In subsection (6)(a) "relevant week" means a week falling before the week in which a person takes action that is treated by regulations as constituting for the purposes of this section the person's return to work, and for these purposes "week" has the meaning given by section 171ZN(8).
- (8) In determining the number of weeks for the purposes of subsection (6)(b)—
 - (a) "week" has the same meaning as in subsection (7), and
 - (b) a part of a week is to be treated as a week.
- (9) Provision under subsection (5)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one's entitlement and the extent of the other's entitlement do not, taken together, exceed what would be available to one person (see subsection (6)).
- (10) Provision under subsection (5)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.
- (11) Provision under subsection (5)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who became entitled to receive statutory adoption pay in respect of the child before the end of the person's adoption pay period.
- (12) Regulations may provide that, where the conditions in subsection (13) are satisfied in relation to a person who is entitled to statutory shared parental pay under subsection (1) or (3) ("V"), V may vary the period or periods during

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which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (14) where that is relevant.

- (13) The conditions are—
- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay;
 - (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content.
- (14) Regulations may provide that, where the conditions in subsection (15) are satisfied in relation to a person who is entitled to statutory shared parental pay under subsection (1) or (3) (“V”), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.
- (15) The conditions are—
- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
 - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
 - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
 - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
 - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child;
 - (b) that a notice under paragraph (a)—
 - (i) is given by such time as may be prescribed, and
 - (ii) satisfies prescribed conditions as to form and content;
 - (c) that the person who is X or, as the case may be, Y in relation to V consents to that variation.
- (16) A person’s entitlement to statutory shared parental pay under this section is not affected by the placement for adoption of more than one child as part of the same arrangement.
- (17) Regulations are to provide for entitlement to statutory shared parental pay in respect of a child placed, or expected to be placed, under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter.
- (18) This section has effect in relation to regulations made by virtue of subsection (17) as if—
- (a) references to a child being placed for adoption under the law of any part of the United Kingdom were references to being placed under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter;
 - (b) references to placement for adoption were references to placement under section 22C with such a person.

171ZW Entitlement: general

- (1) Regulations may—
- (a) provide that the following do not have effect, or have effect subject to prescribed modifications, in such cases as may be prescribed—
 - (i) section 171ZU(2)(a) to (o),
 - (ii) section 171ZU(4)(a) to (p),
 - (iii) section 171ZU(13)(a) and (b),
 - (iv) section 171ZU(15)(a) to (c),
 - (v) section 171ZV(2)(a) to (o),
 - (vi) section 171ZV(4)(a) to (p),
 - (vii) section 171ZV(13)(a) and (b), and
 - (viii) section 171ZV(15)(a) to (c);
 - (b) impose requirements about evidence of entitlement and procedures to be followed;
 - (c) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZU or 171ZV;
 - (d) provide that a person is to be treated for the purposes of section 171ZU or 171ZV as being employed for a continuous period of at least the prescribed period where—
 - (i) the person has been employed by the same employer for at least the prescribed period under two or more separate contracts of service, and
 - (ii) those contracts were not continuous;
 - (e) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZU or 171ZV;
 - (f) provide that—
 - (i) the amount of a person’s earnings for any period, or
 - (ii) the amount of the person’s earnings to be treated as comprised in any payment made to the person or for the person’s benefit,are to be calculated or estimated for the purposes of section 171ZU or 171ZV in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person are, to such extent as may be prescribed, to be disregarded or, as the case may be, to be deducted from the amount of the person’s earnings.
- (2) The persons upon whom requirements may be imposed by virtue of subsection (1)(b) include—
- (a) a person who, in connection with another person’s claim to be paid statutory shared parental pay, is required to satisfy conditions prescribed under section 171ZU(2)(b) or (4)(c) or 171ZV(2)(b) or (4)(c);
 - (b) an employer or former employer of such a person.
- (3) In subsection (1)(d) “the prescribed period” means the period of the length prescribed by regulations under section 171ZU(2)(c) or (4)(d) or 171ZV(2)(c) or (4)(d), as the case may be.

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171ZX Liability to make payments

- (1) The liability to make payments of statutory shared parental pay under section 171ZU or 171ZV is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 171ZU(2)(c) or (4)(d) or 171ZV(2)(c) or (4)(d), as the case may be.
- (2) Regulations must make provision as to a former employer's liability to pay statutory shared parental pay to a person in any case where the former employee's contract of service with the person has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory shared parental pay.
- (3) The Secretary of State may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory shared parental pay is to be a liability of the Commissioners.

171ZY Rate and period of pay

- (1) Statutory shared parental pay is payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Subject to the following provisions of this section, statutory shared parental pay is payable to a person in respect of each week falling within a relevant period, up to the number of weeks determined in the case of that person in accordance with regulations under section 171ZU(5) or 171ZV(5).
- (3) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period if it is not the person's intention at the beginning of the week to care for the child by reference to whom the person satisfies—
 - (a) the condition in section 171ZU(2)(a) or (4)(a), or
 - (b) the condition in section 171ZV(2)(a) or (4)(a).
- (4) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period during any part of which week the person works for any employer.
- (5) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory shared parental pay in respect of a week falling within a relevant period.
- (6) Where for any purpose of this Part or of regulations it is necessary to calculate the daily rate of statutory shared parental pay, the amount payable by way of statutory shared parental pay for any day shall be taken as one seventh of the weekly rate.
- (7) For the purposes of this section a week falls within a relevant period if it falls within a period specified in a notice under—
 - (a) section 171ZU(2)(j), (4)(k) or (13)(a), or
 - (b) section 171ZV(2)(j), (4)(k) or (13)(a),

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and is not afterwards excluded from such a period by a variation of the period or periods during which the person in question intends to claim statutory shared parental pay.

- (8) In this section “week”, in relation to a relevant period, means a period of seven days beginning with the day of the week on which the relevant period starts.

171ZZ Restrictions on contracting out

- (1) An agreement is void to the extent that it purports—
- (a) to exclude, limit or otherwise modify any provision of this Part, or
 - (b) to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person’s employer or former employer under this Part.
- (2) For the avoidance of doubt, an agreement between an employer and an employee, authorising deductions from statutory shared parental pay which the employer is liable to pay to the employee in respect of any period, is not void by virtue of subsection (1)(a) if the employer—
- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which the employer is liable to pay in respect of the same period, or
 - (b) would be so authorised if the employer were liable to pay contractual remuneration in respect of that period.

171ZZ1 Relationship with contractual remuneration

- (1) Subject to subsections (2) and (3), any entitlement to statutory shared parental pay is not to affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3)—
- (a) any contractual remuneration paid to a person by an employer of that person in respect of any period is to go towards discharging any liability of that employer to pay statutory shared parental pay to that person in respect of that period; and
 - (b) any statutory shared parental pay paid by an employer to a person who is an employee of that employer in respect of any period is to go towards discharging any liability of that employer to pay contractual remuneration to that person in respect of that period.
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2).

171ZZ2 Crown employment

The provisions of this Part apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

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171ZZ3 Special classes of person

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part in such manner as the Secretary of State thinks proper in its application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
 - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
 - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2).
- (2) Regulations under subsection (1) may, in particular, provide—
- (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
 - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
 - (c) for excepting any such person from the application of any such provision where the person neither is domiciled nor has a place of residence in any part of Great Britain;
 - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

171ZZ4 Part 12ZC: supplementary

- (1) In this Part—
- “adoption pay period” has the meaning given in section 171ZN(2);
 - “employer”, in relation to a person who is an employee, means a person who—
 - (a) under section 6 is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, or
 - (b) would be liable to pay such contributions but for—
 - (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16;
 - “local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);
 - “local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);
 - “maternity allowance period” has the meaning given in section 35(2);
 - “maternity pay period” has the meaning given in section 165(1);
 - “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
 - “prescribed” means prescribed by regulations.

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- (2) In this Part “employee” means a person who is gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003).
- (3) Regulations may provide—
 - (a) for cases where a person who falls within the definition in subsection (2) is not to be treated as an employee for the purposes of this Part, and
 - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part, regulations may specify cases in which, for the purposes of this Part or of such provisions of this Part as may be prescribed—
 - (a) two or more employers are to be treated as one;
 - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part, except where otherwise provided, “week” means a period of seven days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part, a person’s normal weekly earnings are, subject to subsection (8), to be taken to be the average weekly earnings which in the relevant period have been paid to the person or paid for the person’s benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6) “earnings” and “relevant period” have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person’s normal weekly earnings are to be calculated in accordance with regulations.
- (9) Where—
 - (a) in consequence of the establishment of one or more National Health Service trusts under the National Health Service Act 2006, the National Health Service (Wales) Act 2006 or the National Health Service (Scotland) Act 1978, a person’s contract of employment is treated by a scheme under any of those Acts as divided so as to constitute two or more contracts, or
 - (b) an order under paragraph 26(1) of Schedule 3 to the National Health Service Act 2006 provides that a person’s contract of employment is so divided,regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part or such provisions of this Part as may be prescribed.
- (10) Regulations under subsection (9) may prescribe—
 - (a) the conditions that must be satisfied if a person is to be entitled to make such an election;

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- (b) the manner in which, and the time within which, such an election is to be made;
 - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
 - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, the person is to provide it;
 - (e) the time for which such an election is to have effect;
 - (f) which one of the person’s employers under two or more contracts is to be regarded for the purposes of statutory shared parental pay as the person’s employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part.
- (12) Regulations under any of subsections (4) to (10) must be made with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs.

171ZZ5 Power to apply Part 12ZC

- (1) The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.
 - (2) The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.
 - (3) Where section 171ZW(1)(b) has effect in relation to such cases as are described in subsection (2), regulations under section 171ZW(1)(b) may impose requirements to make statutory declarations as to—
 - (a) eligibility to apply for a parental order;
 - (b) intention to apply for such an order.”
- (2) In section 176 of the Social Security Contributions and Benefits Act 1992 (Parliamentary control of subordinate legislation), in subsection (1) (affirmative procedure), in paragraph (a), at the appropriate place there is inserted—
 “any of sections 171ZU to 171ZY;”.

120 Exclusion or curtailment of other statutory rights to pay

- (1) The Social Security Contributions and Benefits Act 1992 is amended as follows.
- (2) In section 35 (entitlement to maternity allowance), after subsection (3) there is inserted—
 “(3A) Regulations may provide for the duration of the maternity allowance period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

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- (3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—
- (a) after a prescribed period beginning with the day on which the woman is confined, and
 - (b) when at least a prescribed part of the maternity allowance period remains unexpired.
- (3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—
- (a) the end of the woman’s entitlement to maternity leave;
 - (b) the doing of work by the woman;
 - (c) the taking of prescribed steps by the woman or another person as regards leave under section 75E of the Employment Rights Act 1996 in respect of the child;
 - (d) the taking of prescribed steps by a person other than the woman as regards statutory shared parental pay in respect of the child.
- (3D) Regulations may provide for a reduction in the duration of the maternity allowance period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”
- (3) In section 35, after subsection (3D) (as inserted by subsection (2)) there is inserted—
- “(3E) A woman who would, but for the reduction in duration of a maternity pay period by virtue of section 165(3A), be entitled to statutory maternity pay for a week is not entitled to a maternity allowance for that week.”
- (4) In section 165 (the maternity pay period), after subsection (3) there is inserted—
- “(3A) Regulations may provide for the duration of the maternity pay period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.
- (3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—
- (a) after a prescribed period beginning with the day on which the woman is confined, and
 - (b) when at least a prescribed part of the maternity pay period remains unexpired.
- (3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—
- (a) the end of the woman’s entitlement to maternity leave;
 - (b) the doing of work by the woman;
 - (c) the taking of prescribed steps by the woman or another person as regards leave under section 75E of the Employment Rights Act 1996 in respect of the child;
 - (d) the taking of prescribed steps by the woman or another person as regards statutory shared parental pay in respect of the child.
- (3D) Regulations may provide for a reduction in the duration of the maternity pay period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”

Status: This is the original version (as it was originally enacted).

(5) In section 171ZE (rate and period of statutory paternity pay), after subsection (3) there is inserted—

“(3A) Statutory paternity pay is not payable to a person in respect of a statutory pay week if—

- (a) statutory shared parental pay is payable to that person in respect of any part of that week or that person takes shared parental leave in any part of that week, or
- (b) statutory shared parental pay was payable to that person or that person has taken shared parental leave in respect of the child before that week.”

(6) In section 171ZN (rate and period of statutory adoption pay), after subsection (2) there is inserted—

“(2A) Regulations may provide for the duration of the adoption pay period as it applies to a person (“A”) to be reduced, subject to prescribed restrictions and conditions.

(2B) Regulations under subsection (2A) are to secure that the reduced period ends at a time—

- (a) after a prescribed part of the adoption pay period has expired, and
- (b) when at least a prescribed part of the adoption pay period remains unexpired.

(2C) Regulations under subsection (2A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of A’s entitlement to adoption leave;
- (b) the doing of work by A;
- (c) the taking of prescribed steps by A or another person as regards leave under section 75G of the Employment Rights Act 1996 in respect of the child;
- (d) the taking of prescribed steps by A or another person as regards statutory shared parental pay in respect of the child.

(2D) Regulations may provide for a reduction in the duration of the adoption pay period as it applies to a person to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”

Other statutory rights

121 Statutory rights to leave and pay of prospective adopters with whom looked after children are placed

(1) In section 75A of the Employment Rights Act 1996 (ordinary adoption leave), after subsection (1) there is inserted—

“(1A) The conditions that may be prescribed under subsection (1) include conditions as to—

- (a) being a local authority foster parent;
- (b) being approved as a prospective adopter;

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- (c) being notified by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C of the Children Act 1989.”
- (2) In section 80B of the Employment Rights Act 1996 (entitlement to ordinary paternity leave: adoption)—
 - (a) in subsection (5), after paragraph (a) there is inserted—
 - “(aa) make provision excluding the right to be absent on leave under this section in the case of an employee who, by virtue of provision under subsection (6A), has already exercised a right to be absent on leave under this section in connection with the same child;”;
 - (b) after subsection (6) there is inserted—
 - “(6A) Regulations under subsection (1) shall include provision for leave in respect of a child placed, or expected to be placed, under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter.
 - (6B) This section has effect in relation to regulations made by virtue of subsection (6A) as if—
 - (a) references to being placed for adoption were references to being placed under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter;
 - (b) references to placement for adoption were references to placement under section 22C with such a person;
 - (c) paragraph (aa) of subsection (5) were omitted.”
- (3) In section 171ZB of the Social Security Contributions and Benefits Act 1992 (entitlement to ordinary statutory paternity pay: adoption), after subsection (7) there is inserted—
 - “(8) This section has effect in a case involving a child placed under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter with the following modifications—
 - (a) the references in subsection (2) to a child being placed for adoption under the law of any part of the United Kingdom are to be treated as references to a child being placed under section 22C in that manner;
 - (b) the reference in subsection (3) to the week in which the adopter is notified of being matched with the child for the purposes of adoption is to be treated as a reference to the week in which the prospective adopter is notified that the child is to be, or is expected to be, placed with the prospective adopter under section 22C;
 - (c) the reference in subsection (6) to placement for adoption is to be treated as a reference to placement under section 22C;
 - (d) the definition in subsection (7) is to be treated as if it were a definition of “prospective adopter”.
 - (9) Where, by virtue of subsection (8), a person becomes entitled to statutory paternity pay in connection with the placement of a child under section 22C

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of the Children Act 1989, the person may not become entitled to payments of statutory paternity pay in connection with the placement of the child for adoption.”

- (4) In section 171ZE of the Social Security Contributions and Benefits Act 1992 (rate and period of pay), after subsection (11) there is inserted—

“(12) Where statutory paternity pay is payable to a person by virtue of section 171ZB(8), this section has effect as if—

- (a) the references in subsections (3)(b) and (10) to placement for adoption were references to placement under section 22C of the Children Act 1989;
- (b) the references in subsection (10) to being placed for adoption were references to being placed under section 22C.”

- (5) In section 171ZL of the Social Security Contributions and Benefits Act 1992 (entitlement to statutory adoption pay), after subsection (8) there is inserted—

“(9) This section has effect in a case involving a child who is, or is expected to be, placed under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter with the following modifications—

- (a) the references in subsections (2)(a) and (4A)(a) to a child being placed for adoption under the law of any part of the United Kingdom are to be treated as references to a child being placed under section 22C in that manner;
- (b) the reference in subsection (3) to the week in which the person is notified that he has been matched with the child for the purposes of adoption is to be treated as a reference to the week in which the person is notified that the child is to be, or is expected to be, placed with him under section 22C;
- (c) the references in subsection (4B)(a) to adoption are to be treated as references to placement under section 22C;
- (d) the reference in subsection (5) to placement, or expected placement, for adoption is to be treated as a reference to placement, or expected placement, under section 22C.

- (10) Where, by virtue of subsection (9), a person becomes entitled to statutory adoption pay in respect of a child who is, or is expected to be, placed under section 22C of the Children Act 1989, the person may not become entitled to payments of statutory adoption pay as a result of the child being, or being expected to be, placed for adoption.”

- (6) In section 171ZN of the Social Security Contributions and Benefits Act 1992 (rate and period of pay), after subsection (8) there is inserted—

“(9) Where statutory adoption pay is payable to a person by virtue of section 171ZL(9), this section has effect as if the reference in subsection (2F) to the week in which the person is notified that he has been matched with a child for the purposes of adoption were a reference to the week in which the person is notified that a child is to be, or is expected to be, placed with him under section 22C of the Children Act 1989.”

- (7) In the Social Security Contributions and Benefits Act 1992—

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- (a) in section 171ZJ(1), at the appropriate place there is inserted—
 - ““local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);”;
 - ““local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);”;
- (b) in section 171ZS(1), at the appropriate place there is inserted—
 - ““local authority” has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);”;
 - ““local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);”.

122 Statutory rights to leave and pay of applicants for parental orders

- (1) In section 75A of the Employment Rights Act 1996 (ordinary adoption leave), after subsection (7) there is inserted—
 - “(8) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.”
- (2) In section 75B of the Employment Rights Act 1996 (additional adoption leave), after subsection (8) there is inserted—
 - “(9) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.”
- (3) In section 75D of the Employment Rights Act 1996 (supplemental provision about adoption leave), after subsection (1) there is inserted—
 - “(1A) Where section 75A or 75B has effect in relation to such cases as are described in section 75A(8) or 75B(9), regulations under section 75A or 75B about evidence to be produced may require statutory declarations as to—
 - (a) eligibility to apply for a parental order;
 - (b) intention to apply for such an order.”
- (4) In section 80B of the Employment Rights Act 1996 (entitlement to ordinary paternity leave: adoption), after subsection (8) there is inserted—
 - “(9) The Secretary of State may by regulations provide for this section to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.”
- (5) In section 171ZK of the Social Security Contributions and Benefits Act 1992 (power to apply Part 12ZA, statutory paternity pay, to adoption cases not involving placement)—

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- (a) in the title, the words “to adoption cases not involving placement” are repealed;
 - (b) the existing text becomes subsection (1);
 - (c) after that subsection there is inserted—
 - “(2) The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.”
- (6) In section 171ZT of the Social Security Contributions and Benefits Act 1992 (power to apply Part 12ZB, statutory adoption pay, to adoption cases not involving placement)—
- (a) in the title, the words “to adoption cases not involving placement” are repealed;
 - (b) the existing text becomes subsection (1);
 - (c) after that subsection there is inserted—
 - “(2) The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.
 - (3) Regulations under subsection (2) may modify section 171ZL(8)(c) so as to enable regulations to impose requirements to make statutory declarations as to—
 - (a) eligibility to apply for a parental order;
 - (b) intention to apply for such an order.”

123 Statutory paternity pay: notice requirement and period of payment

- (1) The Social Security Contributions and Benefits Act 1992 is amended as follows.
- (2) In section 171ZC (further provision as to entitlement to statutory paternity pay)—
 - (a) in subsection (1) (requirement to give notice), for the words from “only if” to the end there is substituted “only if he gives the person who will be liable to pay it notice of the week or weeks in respect of which he expects there to be liability to pay him statutory paternity pay.”;
 - (b) after subsection (1) there is inserted—
 - “(1A) Regulations may provide for the time by which notice under subsection (1) is to be given.”
- (3) In section 171ZE (rate and period of statutory paternity pay)—
 - (a) in subsection (2) (period of pay), for the words from “be payable” to the end there is substituted “be payable in respect of—
 - “(a) such week within the qualifying period, or
 - (b) such number of weeks, not exceeding the prescribed number of weeks, within the qualifying period,

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- as he may choose in accordance with regulations.”;
- (b) after subsection (2) there is inserted—
- “(2A) Provision under subsection (2)(b) is to secure that the prescribed number of weeks is not less than two.”;
- (c) after subsection (2A) (as inserted by paragraph (b)) there is inserted—
- “(2B) Regulations under subsection (2) may permit a person entitled to receive statutory paternity pay to choose to receive such pay in respect of non-consecutive periods each of which is a week or a number of weeks.”
- (4) In section 176 (Parliamentary control of subordinate legislation), in subsection (1) (affirmative procedure), in paragraph (a), after “section 171ZE(1)” there is inserted “or (2)(b)”.

124 Rate of statutory adoption pay

- (1) In section 171ZN of the Social Security Contributions and Benefits Act 1992 (rate and period of statutory adoption pay)—
- (a) subsection (1) is repealed;
- (b) after subsection (2D) (as inserted by section 120(6)) there is inserted—
- “(2E) Statutory adoption pay shall be payable to a person—
- (a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and
- (b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the adoption pay period.
- (2F) The earnings-related rate is a weekly rate equivalent to 90 per cent of a person’s normal weekly earnings for the period of 8 weeks ending with the week in which the person is notified that the person has been matched with a child for the purposes of adoption.
- (2G) The weekly rate prescribed under subsection (2E)(b) must not be less than the weekly rate of statutory sick pay for the time being specified in section 157(1) or, if two or more such rates are for the time being so specified, the higher or highest of those rates.”;
- (c) in subsection (7), for “subsection (2)” there is substituted “subsections (2) and (2E)”.
- (2) In section 176 of the Social Security Contributions and Benefits Act 1992 (Parliamentary control of subordinate legislation), in subsection (1) (affirmative procedure), in paragraph (a), the entry for section 171ZN(1) is repealed.

125 Abolition of additional paternity leave and additional statutory paternity pay

- (1) In Part 8 of the Employment Rights Act 1996, sections 80AA and 80BB (entitlement to additional paternity leave: birth and adoption) are repealed.

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- (2) In Part 12ZA of the Social Security Contributions and Benefits Act 1992, sections 171ZEA to 171ZEE (additional statutory paternity pay: birth and adoption) are repealed.

Further amendments

126 Further amendments

- (1) Schedule 7 (which contains further amendments relating to statutory rights to leave and pay) has effect.
- (2) A reference to ordinary statutory paternity pay in an instrument or document made before the commencement of paragraphs 12 and 13 of Schedule 7 is to be read, in relation to any time after that commencement, as a reference to statutory paternity pay.
- (3) A reference to statutory paternity pay in an enactment (including an enactment amended by this Act) or in an instrument or document is to be read, in relation to any time that falls—
- (a) after the commencement of paragraphs 12 and 13 of Schedule 1 to the Work and Families Act 2006, and
 - (b) before the commencement of paragraphs 12 and 13 of Schedule 7, as a reference to ordinary statutory paternity pay.
- (4) Subsection (3) does not apply to the extent that a reference to statutory paternity pay is a reference to additional statutory paternity pay.