Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The Shared Parental Leave Regulations 2014

Made - - - - ***

Coming into force - - *1st December 2014*

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A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996(**a**) and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 47C(2), 75E, 75F(1), (4), (7) to (14), and (16), 75G(1) to (6), 75H(1), (4), (7) to (14), and (16), 75I(1), (4), and (5), 75J, 75K(1) and (6), and 99 of the Employment Rights Act 1996(**b**), makes the following Regulations.

PART 1
GENERAL

Citation and commencement

1. These Regulations may be cited as the Shared Parental Leave Regulations 2014 and come into force on 1st December 2014.

Application

2.—(1) The provisions relating to shared parental leave in Part 2 have effect only in relation to children whose expected week of birth begins on or after 5th April 2015.

(2) The provisions relating to shared parental leave in Part 3 have effect only in relation to children placed for adoption on or after 5th April 2015.

(3) Regulation 42 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 1st December 2014.

(4) Regulation 43 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the 1996 Act(**c**)) falls on or after 1st December 2014.

(**a**) 1996 c. 18. Section 236(3) was amended by the Children and Families Act 2014 (c. 6), section 117(2); there are other amending instruments but none is relevant.

(**b**) Section 47C was inserted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 3, paragraphs 5 and 8, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant. Sections 75E to 75K were inserted by the Children and Families Act 2014, section 117(1). Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 39; there are other amending instruments but none is relevant.

(**c**) Section 97 was amended by the Employment Relations Act 1999, Schedule 9, paragraph 2, and S.I. 2002/2034.

Interpretation

3.—(1) In these Regulations—

"1992 Act" means the Social Security Contributions and Benefits Act 1992(**a**);

"1996 Act" means the Employment Rights Act 1996;

"A", in relation to C, means the person with whom C is, or is expected to be, placed for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of the Paternity and Adoption Leave Regulations 2002(**b**);

"adoption agency" has the meaning given, in relation to England and Wales, by section 2(1) of the Adoption and Children Act 2002(**c**) and, in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007(**d**);

"adoption pay period" means the period in which statutory adoption pay may be payable in respect of C;

"allowance curtailment date" means the last day of M's maternity allowance period where that period has been reduced under section 35(3A) of the 1992 Act(**e**);

"AP" means the person who at the date that C is placed for adoption is married to, or the civil partner or the partner of, A;

"C" means the child in relation to whom an entitlement to shared parental leave arises;

"expected week of birth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that C will be born;

"leave curtailment date" means—

(a) in Part 2, the last day of M's statutory maternity leave period where that period has been curtailed under section 71(3)(ba) or 73(3)(a) of the 1996 Act(**f**);

(b) in Part 3, the last day of A's statutory adoption leave period where that period has been curtailed under section 75A(2A)(a) or 75B(3)(aa) of the 1996 Act(**g**);

"M" means the mother (or expectant mother) of C;

"maternity allowance" means a maternity allowance under section 35(1) of the 1992 Act(**h**);

"maternity allowance period" means the period referred to in section 35(2) of the 1992 Act(**i**);

"maternity pay period" has the meaning given by regulation 2 of the Statutory Maternity Pay (General) Regulations 1986(**j**);

"P" means the father of C, or the person who at the date of C's birth is married to, or the civil partner or the partner of, M;

"partner" in relation to M or A, means a person (whether of a different sex or the same sex) who lives with M or A and with C in an enduring family relationship but is not M's or A's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew;

"pay curtailment date" means—

(**a**) 1992 c. 4.
(**b**) S.I. 2002/2788; election is dealt with in regulation 2(4)(c) of those Regulations.
(**c**) 2002 c. 38.
(**d**) 2007 asp 4.
(**e**) Section 35(3A) was inserted by the Children and Families Act 2014, section 120(2).
(**f**) Section 71(3)(ba) and section 73(3)(a) were inserted by the Children and Families Act 2014, section 118(2) and (3) (respectively).
(**g**) Sections 75A and 75B were inserted by the Employment Act 2002 (c. 22), section 3. Section 75(2A) was inserted by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 22. Section 75A(2A)(a) and section 75B(3)(aa) were inserted by the Children and Families Act 2014, section 118(4) and (5) (respectively).
(**h**) Section 35(1) was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), section 53(1), and amended by the Employment Act 2002, Schedule 7, paragraph 4(2), and S.I. 2014/606.
(**i**) Section 35(2) was amended by S.I. 2014/606.
(**j**) S.I. 1986/1960; regulation 2 was substituted by S.I. 2006/2379.

(a) in Part 2, the last day of M's maternity pay period where that period has been reduced under section 165(3A) of the 1992 Act(**a**);

(b) in Part 3, the last day of A's adoption pay period where that period has been reduced under section 171ZN(2A)(**b**);

"period of leave notice" means a notice given in accordance with regulation 12 or 28;

"placed for adoption" means—

(a) placed for adoption under the Adoption and Children Act 2002 or the Adoption and Children (Scotland) Act 2007; or

(b) placed in accordance with section 22C of the Children Act 1989(**c**) with a local authority foster parent who is also a prospective adopter;

"processing", in relation to information, has the meaning given by section 1(1) of the Data Protection Act 1998(**d**);

"returned after being placed for adoption" means—

(a) returned under sections 31 to 35 of the Adoption and Children Act 2002,

(b) in Scotland, returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007, or

(c) where the child is placed in accordance with section 22C of the Children Act 1989, returned to the adoption agency following a termination of the placement;

"revocation notice" means a notice given under section 71(3)(bb), 73(3)(aa), 75A(2A)(b), or 75B(3)(aa) of the 1996 Act(**e**) or section 35(3D), 165(3D), or 171ZN(2D) of the 1992 Act(**f**), as the case may be, which revokes a notice previously given under that section;

"shared parental leave" means leave under section 75E or 75G of the 1996 Act;

"statutory adoption leave" means ordinary adoption leave under section 75A of the 1996 Act or additional adoption leave under section 75B of that Act;

"statutory adoption pay" has the meaning given in section 171ZL of the 1992 Act(**g**);

"statutory maternity leave" means ordinary maternity leave under section 71 of the 1996 Act or additional maternity leave under section 73 of that Act(**h**);

"statutory maternity pay" has the meaning given in section 164(1) of the 1992 Act; and

"statutory shared parental pay" means any pay payable in accordance with the provisions of Part 12ZC of the 1992 Act(**i**).

(2) References to relationships in the definition of "partner" in paragraph (1)—

(a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(b) include the relationship of a child with adoptive, or former adoptive, parents, but do not include other adoptive relationships.

(3) For the purposes of these Regulations—

(**a**) Section 165(3A) was inserted by the Children and Families Act 2014, section 120(4).

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

(**c**) 1989 c. 41. Section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), section 8(1), and subsection (9B)(c) was inserted by the Children and Families Act 2014, section 2.

(**d**) 1998 c. 29; section 1 was amended by the Freedom of Information Act 2000 (c. 36), section 68(2)(a), and Schedule 8, paragraph 1.

(**e**) Sections 71(3)(bb), 73(3)(aa), 75A(2A)(b) and 75B(3)(aa) were inserted by the Children and Families Act 2014, section 118.

(**f**) Sections 35(3D), 165(3D) and 171ZN(2D) were inserted by the Children and Families Act 2014, section 120.

(**g**) Section 171ZL was inserted by the Employment Act 2002, section 4, and amended by S.I. 2006/2012, 2011/1740.

(**h**) Sections 71 and 73 were substituted by the Employment Relations Act 1999, Schedule 4, Part 1, and amended by the Employment Act 2002, section 17, and by the Work and Families Act 2006, Schedule 1, paragraphs 31 and 32 (respectively).

(**i**) Part 12ZC was inserted by the Children and Families Act 2014, section 119.

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child either individually or jointly with another person;

(b) in a case where sub-paragraph (a) applies, a person is notified of having been matched with a child on the date on which the person receives notification of the agency's decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005(**a**), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**b**), or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(**c**);

(c) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(**d**) and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005(**e**);

(d) in a case where paragraph (c) applies, a person is notified of having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 of the decision to place for adoption the child with that person.

(4) The reference to "local authority foster parent" in the definition of "placed for adoption" in paragraph (1) means a person approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2 to the Children Act 1989(**f**).

(5) The reference to "prospective adopter" in the definition of "placed for adoption" in paragraph (1) means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(**g**).

PART 2

ENTITLEMENT TO SHARED PARENTAL LEAVE (BIRTH)

CHAPTER 1

Entitlement to leave – general

Mother's entitlement to shared parental leave

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

(2) The conditions are that—

(a) M satisfies the continuity of employment test (see regulation 35);

(b) M has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of P);

(c) M is entitled to statutory maternity leave in respect of C;

(d) M has ended any entitlement to statutory maternity leave by curtailing that leave under section 71(3)(ba) or 73(3)(a) of the 1996 Act (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave;

(**a**) S.I. 2005/389.
(**b**) S.I. 2005/1313.
(**c**) S.S.I. 2009/154.
(**d**) S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.
(**e**) Regulation 12B was inserted by S.I. 2014/1556.
(**f**) Paragraph 12F was inserted by the Children and Young Persons Act 2008, Schedule 1, paragraph 4.
(**g**) Regulation 30B was inserted by S.I. 2013/985.

(e) M has complied with regulation 8 (notice to employer of entitlement to shared parental leave);

(f) M has complied with regulation 10(3) to (5) (evidence for employer); and

(g) M has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that—

(a) P satisfies the employment and earnings test (see regulation 36); and

(b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M).

(4) Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.

Father's or partner's entitlement to shared parental leave

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

(2) The conditions are that—

(a) P satisfies the continuity of employment test (see regulation 35);

(b) P has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of M);

(c) P has complied with regulation 9 (notice to employer of entitlement to shared parental leave);

(d) P has complied with regulation 10(3) to (5) (evidence for employer); and

(e) P has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that—

(a) M satisfies the employment and earnings test (see regulation 36);

(b) M has, at the date of C's birth, the main responsibility for the care of C (apart from the responsibility of P);

(c) M is entitled to statutory maternity leave, statutory maternity pay, or maternity allowance in respect of C; and

(d) where—

(i) M is entitled to statutory maternity leave, she has ended any entitlement to statutory maternity leave by curtailing that leave under section 71(3)(ba) or section 73(3)(a) of the 1996 Act (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave,

(ii) M is not entitled to statutory maternity leave but is entitled to statutory maternity pay, she has curtailed the maternity pay period under section 165(3A) of the 1992 Act (and that period remains curtailed), or

(iii) M is not entitled to statutory maternity leave but is entitled to maternity allowance, she has curtailed the maternity allowance period under section 35(3A) of that Act (and that period remains curtailed).

(4) Entitlement under paragraph (1) is not affected by the number of children born or expected as a result of the same pregnancy.

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

6.—(1) Where M is entitled to statutory maternity leave, subject to paragraph (10), the total amount of shared parental leave available to M and P in relation to C is 52 weeks less—

(a) where there is a leave curtailment date, the number of weeks of statutory maternity leave beginning with the first day of statutory maternity leave taken by M and ending with the

leave curtailment date (irrespective of whether or not M returns to work before that date), or

(b) where M's statutory maternity leave ends without her curtailing that leave under section 71(3) or section 73(3) of the 1996 Act, the number of weeks of statutory maternity leave taken.

(2) Where M is not entitled to statutory maternity leave, but is entitled to statutory maternity pay, subject to paragraph (11), the total amount of shared parental leave available to P in relation to C is 52 weeks less—

(a) where M returns to work without reducing her statutory maternity pay period under section 165(3A) of the 1992 Act, the number of weeks of statutory maternity pay payable to M in respect of C before M returns to work, or

(b) in any other case, the number of weeks of statutory maternity pay payable to M in respect of C up to the pay curtailment date.

(3) Where M is not entitled to statutory maternity leave, but is entitled to maternity allowance, the total amount of shared parental leave available to P in relation to C is 52 weeks less—

(a) where M returns to work without reducing her maternity allowance period under section 35(3A) of the 1992 Act, the number of weeks of maternity allowance payable to M in respect of C before M returns to work, or

(b) in any other case, the number of weeks of maternity allowance payable to M in respect of C up to the allowance curtailment date.

(4) The total amount of shared parental leave which M is entitled to take in relation to C is the product of the calculation in paragraph (1) less—

(a) any shared parental leave which P has notified under regulation 12 (as varied by any notice under regulation 15),

(b) any period of leave which is required to be taken in accordance with paragraph (2) of regulation 18, and

(c) any weeks of statutory shared parental pay to which P is entitled and during which P is not absent on shared parental leave.

(5) The total amount of shared parental leave which P is entitled to take in relation to C is the product of the calculation in paragraph (1), (2) or (3), as the case may be, less—

(a) any shared parental leave which M has notified under regulation 12 (as varied by any notice under regulation 15),

(b) any period of leave which is required to be taken in accordance with paragraph (1) of regulation 18, and

(c) any weeks of statutory shared parental pay to which P is entitled and during which P is not absent on shared parental leave.

(6) For the purposes of paragraphs (4)(a) and (5)(a), any leave notified but, as a result of M giving a revocation notice, not taken must be disregarded.

(7) For the purposes of paragraph (1), a part of a week in which maternity leave is taken is to be treated as a whole week.

(8) For the purposes of paragraph (2) and (3)—

(a) a part of a week in respect of which statutory maternity pay or maternity allowance is payable is to be treated as a whole week, and

(b) "week" has the meaning given by section 165(8) of the 1992 Act(**a**), in relation to statutory maternity pay, and the meaning given by section 122(1) of that Act(**b**), in relation to maternity allowance.

(**a**) Section 165(8) was inserted by the Work and Families Act 2006, Schedule 1, paragraph 7(4).
(**b**) Section 122(1) was amended by the Tax Credits Act 2002 (c. 21), Schedule 6; there are other amending instruments but none is relevant.

(9) For the purposes of paragraphs (4) and (5), any week of leave or pay notified by M or P, as the case may be, to be taken concurrently from more than one employer is to be treated as one week.

(10) Where M is entitled to take statutory maternity leave from more than one employment, any calculation under paragraph (1) of the total amount of shared parental leave available must be calculated using—

(a) the first day of statutory maternity leave taken by M in relation to C from any employment; and

(b) the later of—

(i) the leave curtailment date, or

(ii) the last day of statutory maternity leave taken by M from any employment in relation to C where that leave ends without her curtailing it under section 71(3) or section 73(3) of the 1996 Act.

(11) Where M is not entitled to statutory maternity leave, but has more than one entitlement to statutory maternity pay—

(a) paragraph (2)(a) is to apply as though it read—

"(a) where M returns to work for all of her employers without reducing her statutory maternity pay periods under section 165(3A) of the 1992 Act, the number of weeks of statutory maternity pay payable to M in respect of C before the last date on which M returns to work, or", and

(b) paragraph (2)(b) is to apply as though it read—

"(b) in any other case, the number of weeks of statutory maternity pay payable to M in respect of C up to the latest pay curtailment date.".

Periods when shared parental leave may be taken

7.—(1) Shared parental leave may be taken at any time within the period which begins on the date C is born (or, where more than one child is born as the result of the same pregnancy, the date on which the first child is born) and ends the day before C's first birthday.

(2) Shared parental leave must be taken in complete weeks.

(3) Shared parental leave may be taken as one continuous period or in discontinuous periods.

(4) The minimum period of shared parental leave which may be taken is one week.

(5) An employee may be absent on shared parental leave in relation to C at the same time that another employee is—

(a) absent on leave provided for in Part 8 of the 1996 Act in relation to C;

(b) in receipt of pay under section 35 or Part 12, 12ZA, or 12ZC of the 1992 Act(**a**) in relation to C.

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

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

(2) The specified information is—

(a) M's name;

(b) P's name;

(c) the start and end dates of any period of statutory maternity leave taken or to be taken by M;

(**a**) Part 12ZA was inserted by the Employment Act 2002, section 2.

(d) the total amount of shared parental leave available (in accordance with regulation 6(1));

(e) C's expected week of birth and C's date of birth (except as provided for in paragraph (5));

(f) how much shared parental leave M and P each intend to take;

(g) an indication as to when M intends to take shared parental leave (including the start and end dates for each period of leave).

(3) The specified declarations are—

(a) a declaration signed by M that—

(i) M satisfies, or will satisfy, the conditions in regulation 4(2);

(ii) the information given by M in the notice is accurate;

(iii) M will immediately inform her employer if she ceases to care for C;

(b) a declaration signed by P—

(i) specifying P's name, address, and national insurance number (or a declaration that P does not have a national insurance number);

(ii) that P satisfies, or will satisfy, the conditions in regulation 4(3);

(iii) that P is the father of C, or the person who is married to, or the civil partner or the partner of, M;

(iv) that P consents to the amount of leave which M intends to take (as set out in the notice for the purposes of paragraph (2)(f));

(v) that P consents to M's employer processing the information in P's declaration.

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

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

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

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

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

(2) The specified information is—

(a) P's name;

(b) M's name;

(c) the start and end dates of any—

(i) period of statutory maternity leave taken or to be taken by M;

(ii) period in respect of which statutory maternity pay received or to be received by M (where statutory maternity leave was not taken or is not be taken in relation to that period) is payable; or

(iii) period in respect of which maternity allowance received or to be received by M (where statutory maternity leave was not taken or is not be taken in relation to that period) is payable;

(d) the total amount of shared parental leave available (in accordance with regulation 6(1), (2) or (3));

(e) C's expected week of birth and C's date of birth (except as provided for in paragraph (4));

(f) how much shared parental leave P and M each intend to take;

(g) an indication as to when P intends to take shared parental leave (including the start and end dates for each period of leave).

(3) The specified declarations are—

(a) a declaration signed by P that—

(i) P satisfies, or will satisfy, the conditions in regulation 5(2);

(ii) the information given by P in the notice is accurate;

(iii) that P is the father of C, or the person who is married to, or the civil partner or the partner of, M;

(iv) P will immediately inform P's employer if P ceases to care for C or if M informs P that she has ceased to satisfy the condition in regulation 5(3)(d);

(b) a declaration signed by M—

(i) specifying M's name, address, and national insurance number (or a declaration that M does not have a national insurance number);

(ii) that M satisfies, or will satisfy, the conditions in regulation 5(3);

(iii) that M consents to the amount of leave which P intends to take (as set out in the notice for the purposes of paragraph (2)(f));

(iv) that M will immediately inform P if she ceases to satisfy the conditions in regulation 5(3)(d);

(v) that M consents to P's employer processing the information in M's declaration.

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

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

Supplementary evidence requirements (birth)

10.—(1) Where M gives a notice under regulation 8 (excluding any notice given under regulation 8(5)), her employer may request within 14 days beginning with the date on which that notice was given—

(a) a copy of C's birth certificate;

(b) the name and address of P's employer.

(2) Where P gives a notice under regulation 9 (excluding any notice given under regulation 9(4)), P's employer may request within 14 days beginning with the date on which that notice was given—

(a) a copy of C's birth certificate;

(b) the name and address of M's employer.

(3) Where an employer makes a request under paragraph (1)(a) or (2)(a) after C's birth, M or P, as the case may be, must, within 14 days beginning with the date on which that request was made, send the employer—

(a) a copy of C's birth certificate, where one has been issued, or

(b) if the birth certificate has yet to be issued, a declaration signed by M or P, as the case may be, which states the date and location of C's birth and states that a birth certificate has not yet been issued.

(4) Where an employer makes a request under paragraph (1)(a) or (2)(a) before C's birth, M or P, as the case may be, must, within 14 days beginning on the date on which C is born, send the employer—

(a) a copy of C's birth certificate, where one has been issued, or

(b) if the birth certificate has yet to be issued, a declaration signed by M or P, as the case may be, which states the date and location of C's birth and states that a birth certificate has not yet been issued.

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

(a) the name and address requested, or

(b) a declaration that M or P, as the case may be, has no employer.

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

11.—(1) M may give M's employer a written notice to vary a notice given under regulation 8 to vary how much shared parental leave M and P each intend to take.

(2) P may give P's employer a written notice to vary a notice given under regulation 9 to vary how much shared parental leave M and P each intend to take.

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

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

(b) a description of the periods of shared parental leave that have been notified by M and P under regulation 12 or 15 in relation to C;

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

(d) a declaration signed by M and P that they agree the variation.

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

(5) For the purposes of any notices given by M, the reference to P in paragraph (3)(d) is a reference to the individual who satisfies paragraph (3) of regulation 4.

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

CHAPTER 2

Entitlement to particular periods of leave

Period of leave notice (birth)

12.—(1) M may only be absent from work to take a period of shared parental leave if she gives her employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(2) P may only be absent from work to take a period of shared parental leave if P gives P's employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(3) A notice given under paragraph (1) or (2) must be given not less than eight weeks before the start date of the first period of shared parental leave requested in the notice.

(4) A notice under this regulation may—

(a) be given at the same time as a notice under regulation 8, 9 or 11 is given to the employer;

(b) provide notice of more than one period of leave;

(c) if given before C is born—

(i) contain a start date for the leave which is the day on which C is born or which is expressed as a number of days following the date of C's birth;

(ii) contain an end date expressed as a number of days following the date of C's birth.

(5) A notice under this regulation may not—

(a) be given before a notice is given to the employer under regulation 8 or 9, as the case may be;

(b) request leave with a start or end date which is outside of the period in which shared parental leave may be taken (see regulation 7(1)).

Continuous period of shared parental leave (birth)

13. Where an employee gives a notice under regulation 12 which requests one continuous period of shared parental leave, the employee is entitled to take that period of leave.

Discontinuous periods of shared parental leave (birth)

14.—(1) This regulation applies where an employee gives a notice under regulation 12 which requests discontinuous periods of shared parental leave.

(2) In the two weeks beginning with the date the notice was given the employer who received the notice may—

(a) consent to the periods of leave requested;

(b) propose alternative dates for the periods of leave; or

(c) refuse the periods of leave requested without proposing alternative dates.

(3) Where in the two weeks beginning with the date the notice was given the employer—

(a) agrees to the periods of leave requested in that notice, or

(b) agrees with the employee alternative dates for the periods of leave,

the employee is entitled to take the leave on the dates agreed.

(4) Where in the two weeks beginning with the date the notice was given no agreement has been reached, the employee is entitled to take the total amount of leave requested in the notice as a continuous period of leave.

(5) Where the employee is entitled to take a continuous period of leave under paragraph (4)—

(a) the employee must choose a start date for that leave which is a date after the period of eight weeks beginning with the date on which the period of leave notice was given and must notify the employer of that date within 5 days of the end of the two week period referred to in paragraph (4); or

(b) if the employee does not choose a start date under sub-paragraph (a), that leave must start on the start date of the first period of leave requested in the period of leave notice.

(6) An employee may withdraw a notice which requests discontinuous periods of shared parental leave on or before the 15th day after the notice was given unless the employee and employer have agreed to periods of leave.

Variation of period of leave (birth)

15.—(1)Where an employee is entitled to a period of leave under regulation 13 or 14, the employee may give a written notice to request a variation of that period of leave.

(2) A notice under paragraph (1) may—

(a) vary the start date or the end date of any period of shared parental leave provided that the notice is given not less than eight weeks before both the date varied and the new date;

(b) request that a single period of leave become discontinuous periods of leave or vice versa;

(c) vary (including cancel) the amount of leave requested provided that the notice is given not less than eight weeks before any period of leave varied by the notice is due to commence.

(3) A notice under paragraph (1) must state what periods of shared parental leave the employee is entitled to under regulation 13 or 14.

(4) A notice under paragraph (1) may not request leave with a start or end date which is outside of the period in which shared parental leave may be taken (see regulation 7(1)).

(5) Regulations 13 and 14 apply to notices given under this regulation.

Limit on number of period of leave notices or variations (birth)

16.—(1) An employee may give a combined total of up to three notices under regulations 12 and 15.

(2) Any notice which is—

(a) withdrawn under regulation 14(6),

(b) given under regulation 15 as a result of C being born earlier or later than the expected week of birth, or

(c) given under regulation 15 in response to a request from the employer that the employee vary a period of leave,

is to be disregarded for the purposes of paragraph (1).

(3) Where an employee has more than one employer, the limit in paragraph (1) applies in respect of each employer.

(4) The limit in paragraph (1) may be waived by agreement between the employee and the employer.

Modification of eight week requirement for notices where child born early

17.—(1) This paragraph applies where—

(a) M or P, as the case may be, is entitled to take a period of shared parental leave with a start date in the eight weeks following the expected week of birth;

(b) C is born before the first day of the expected week of birth; and

(c) M or P, as the case may be, gives a notice under regulation 15 to vary the start date of the period of leave referred to in sub-paragraph (a) so that the period starts the same length of time following C's date of birth as the period would have started after the first day of the expected week of birth.

(2) Where paragraph (1) applies—

(a) the requirement in regulation 15(2)(a) to give not less than eight weeks' notice is satisfied if the notice is given as soon as reasonably practicable after C's date of birth; and

(b) M or P, as the case may be, is entitled to the period of leave requested in the notice referred to in paragraph (1)(c) above (provided that the notice did not also request a variation of the length of the period of leave).

(3) This paragraph applies where—

(a) M has given a notice under regulation 8, but not given a notice under regulation 12; and

(b) C is born eight or more weeks before the first day of the expected week of birth.

(4) Where paragraph (3) applies—

(a) in regulation 8(1) omit "not less than eight weeks";

(b) the requirement in regulation 12 for a notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice requests a period of leave with a start date in the eight weeks beginning with the date on which C is born and the notice is given as soon as reasonably practicable after C's date of birth; and

(c) where an employer—

(i) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or

(ii) has not made a request under regulation 10,

regulations 4(2)(f) and 10 do not apply to M.

(5) This paragraph applies where—

(a) M has not given a notice under regulation 8; and

(b) C is born eight or more weeks before the first day of the expected week of birth.

(6) Where paragraph (5) applies—

(a) the requirement in regulation 8 for the notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice is given as soon as reasonably practicable after C's date of birth;

(b) the requirement in regulation 12 for a notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice requests a period of leave with a start date in the eight weeks beginning with the date on which C is born and the notice is given as soon as reasonably practicable after C's date of birth; and

(c) regulations 4(2)(f) and 10 do not apply to M.

(7) This paragraph applies where—

(a) P has given a notice under regulation 9, but not given a notice under regulation 12; and

(b) C is born eight or more weeks before the first day of the expected week of birth.

(8) Where paragraph (7) applies—

(a) in regulation 9(1) omit "not less than eight weeks";

(b) the requirement in regulation 12 for a notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice requests a period of leave with a start date in the eight weeks beginning with the date on which C is born and the notice is given as soon as reasonably practicable after C's date of birth; and

(c) where an employer—

(i) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or

(ii) has not made a request under regulation 10,

regulations 5(2)(d) and 10 do not apply to P.

(9) This paragraph applies where—

(a) P has not given a notice under regulation 9; and

(b) C is born eight of more weeks before the first day of the expected week of birth.

(10) Where paragraph (9) applies—

(a) the requirement in regulation 9 for the notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice is given as soon as reasonably practicable after C's date of birth;

(b) the requirement in regulation 12 for a notice to be given not less than eight weeks before the start date of a period of leave is to be treated as satisfied if the notice requests a period of leave with a start date in the eight weeks beginning with the date on which C is born and the notice is given as soon as reasonably practicable after C's date of birth; and

(c) regulations 5(2)(d) and 10 do not apply to P.

Change of circumstances (birth)

18.—(1) Where less than 8 weeks before M is due to take a period of shared parental leave or during a period of such leave—

(a) M informs M's employer that M has ceased to care for C (and therefore M will not be absent from work on shared parental leave), and

(b) it is not reasonably practicable for M's employer to accommodate the change in circumstances by allowing M to work during the planned period of shared parental leave,

M's employer may require M to take a period of leave.

(2) Where less than 8 weeks before P is due to take a period of shared parental leave or during a period of such leave—

(a) P informs P's employer that P has ceased to care for C or that M has informed P that M has ceased to satisfy the condition in regulation 5(3)(d) (and therefore P will not be absent from work on shared parental leave), and

(b) it is not reasonably practicable for P's employer to accommodate the change in circumstances by allowing P to work during the planned period of shared parental leave,

P's employer may require P to take a period of leave.

(3) This regulation does not apply where regulation 19 applies.

(4) Leave that is required to be taken under paragraph (1) or (2) must be treated as shared parental leave for the purposes of these Regulations.

(5) Where M or P, as the case may be, is not on a period of shared parental leave at the time that the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

(a) start on the date on which the next period of shared parental leave was due to start; and

(b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing M or P, as the case may be, to work and, in any event, must end no later than—

(i) the date on which the next period of shared parental leave was due to end, or

(ii) eight weeks after the employer is informed of the change in circumstances,

whichever is the earlier.

(6) Where M or P, as the case may be, is on a period of shared parental leave at the time that the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

(a) start on the date that the employer was informed of the change of circumstances; and

(b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing M or P, as the case may be, to work and, in any event, must end no later than—

(i) the date on which that period of shared parental leave was due to end, or

(ii) eight weeks after the employer is informed of the change in circumstances,

whichever is the earlier.

Entitlement to shared parental leave in the event of the death of mother, father or partner, or child

19. Part 1 of the Schedule applies where M, P or C dies before the end of the period during which shared parental leave may be taken (see regulation 7(1)).

PART 3

ENTITLEMENT TO SHARED PARENTAL LEAVE (ADOPTION)

CHAPTER 1

Entitlement to leave – general

Adopter's entitlement to shared parental leave

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

(2) The conditions are that—

(a) A satisfies the continuity of employment test (see regulation 35);

(b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);

(c) A is entitled to statutory adoption leave in respect of C;

(d) A has ended any entitlement to statutory adoption leave by curtailing that leave under section 75A(2A) or 75B(3)(a) of the 1996 Act(**a**) (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave;

(e) A has complied with regulation 24 (notice to employer of entitlement to shared parental leave);

(f) A has complied with regulation 26(3) and (4) (evidence for employer); and

(g) A has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

(a) AP satisfies the employment and earnings test (see regulation 36); and

(b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A).

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

Adopter's partner's entitlement to shared parental leave

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

(2) The conditions are that—

(a) AP satisfies the continuity of employment test (see regulation 35);

(b) AP has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of A);

(c) AP has complied with regulation 25 (notice to employer of entitlement to shared parental leave);

(d) AP has complied with regulation 26(3) and (4) (evidence for employer); and

(e) AP has given a period of leave notice in accordance with regulation 28.

(3) The conditions are that—

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

(a) A satisfies the employment and earnings test (see regulation 36);

(b) A has, at the date of the placement for adoption of C, the main responsibility for the care of C (apart from the responsibility of AP);

(c) A is entitled to statutory adoption leave or statutory adoption pay in respect of C; and

(d) where—

(i) A is entitled to statutory adoption leave, A has ended any entitlement to statutory adoption leave by curtailing that leave under section 75A(2A) or 75B(3)(a) of the 1996 Act (and that leave remains curtailed) or, where A has not curtailed in that way, A has returned to work before the end of the statutory adoption leave, or

(ii) where A is not entitled to statutory adoption leave but is entitled to statutory adoption pay, A has curtailed the adoption pay period under section 171ZN(2A) of the 1992 Act(**a**) (and that period remains curtailed).

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

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

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

(a) where there is a leave curtailment date, the number of weeks of statutory adoption leave beginning with the first day of statutory adoption leave taken by A and ending with the leave curtailment date (irrespective of whether or not A returns to work before that date), or

(b) where A's statutory adoption leave ends without A curtailing that leave under section 75A(2A) or section 75B(3) of the 1996 Act, either—

(i) the number of weeks of statutory adoption leave taken; or

(ii) 2 weeks,

whichever is greater.

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

(a) where A returns to work without reducing A's statutory adoption pay period under section 171ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to A in respect of C before A returns to work, or

(b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the pay curtailment date.

(3) The total amount of shared parental leave which A is entitled to take is the product of the calculation in (1) less—

(a) any shared parental leave which AP has notified under regulation 28 (as varied by any notice under regulation 31),

(b) any period of leave which is required to be taken in accordance with paragraph (2) of regulation 33, and

(c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.

(4) The total amount of shared parental leave which AP is entitled to take is the product of the calculation in (1) or (2), as the case may be, less—

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

(a) any shared parental leave which A has notified under regulation 28 (as varied by any notice under regulation 31),

(b) any period of leave which is required to be taken in accordance with paragraph (1) of regulation 33, and

(c) any weeks of statutory shared parental pay to which AP is entitled and during which AP is not absent on shared parental leave.

(5) For the purposes of paragraphs (3)(a) and (4)(a), any leave notified but, as a result of A giving a revocation notice, not taken must be disregarded.

(6) For the purposes of paragraph (1), a part of a week in which statutory adoption leave is taken is to be treated as a whole week.

(7) For the purposes of paragraph (2)—

(a) a part of a week in respect of which statutory adoption pay is payable is to be treated as a whole week, and

(b) "week" has the meaning given by section 171ZN(8) of the 1992 Act.

(8) For the purposes of paragraphs (3) and (4), any week of leave or pay notified by A or AP, as the case may be, to be taken concurrently from more than one employer is to be treated as one week.

(9) Where A is entitled to take statutory adoption leave from more than one employment, any calculation under paragraph (1) of the total amount of shared parental leave available must be calculated using—

(a) the first day of statutory adoption leave taken by A in relation to C from any employment; and

(b) the later of—

(i) the leave curtailment date, or

(ii) the last day of statutory adoption leave taken by M from any employment in relation to C where that leave ends without A curtailing it under section 75A(2A) or section 75B(3) of the 1996 Act.

(10) Where A is not entitled to statutory adoption leave, but has more than one entitlement to statutory adoption pay—

(a) paragraph (2)(a) is to apply as though it read—

"(a) where A returns to work for all of A's employers without reducing the statutory adoption pay periods under section 171ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to M in respect of C before the last date on which A returns to work, or", and

(b) paragraph (2)(b) is to apply as though it read—

"(b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the latest pay curtailment date.".

Periods when shared parental leave may be taken (adoption)

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

(2) Shared parental leave must be taken in complete weeks.

(3) Shared parental leave may be taken as one continuous period or in discontinuous periods.

(4) The minimum period of shared parental leave which may be taken is one week.

(5) An employee may be absent on shared parental leave in relation to C at the same time that another employee is—

(a) absent on leave provided for in Part 8 of the 1996 Act in relation to C;

(b) in receipt of pay under section 35 or Part 12, 12ZA, 12ZB, or 12ZC of the 1992 Act(**a**) in relation to C.

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

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

(2) The specified information is—

(a) A's name;

(b) AP's name;

(c) the date that A was notified of having been matched for adoption with C;

(d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (5));

(e) the start and end dates of any period of statutory adoption leave taken or to be taken by A;

(f) the total amount of shared parental leave available (in accordance with the regulation 22(1));

(g) how much shared parental leave A and AP each intend to take;

(h) an indication as to when A intends to take shared parental leave (including the start and end dates for each period of leave).

(3) The specified declarations are—

(a) a declaration signed by A that—

(i) A satisfies, or will satisfy, the conditions in regulation 20(2);

(ii) the information given by A in the notice is accurate;

(iii) A will immediately inform A's employer if A ceases to care for C;

(b) a declaration signed by AP—

(i) specifying AP's name, address, and national insurance number (or a declaration that AP does not have a national insurance number);

(ii) that AP satisfies, or will satisfy the conditions in regulation 20(3);

(iii) that AP is married to, or the civil partner or partner of, A;

(iv) that AP consents to the amount of leave which A intends to take (as set out in the notice for the purposes of paragraph (2)(g));

(v) that AP consents to A's employer processing the information in AP's declaration.

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

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

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

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

25.—(1) AP must, not less than eight weeks before the start date of the first period of shared parental leave to be taken by AP, give AP's employer a written notice which contains the

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

information specified in paragraph (2) and is accompanied by the declarations specified in paragraph (3).

(2) The specified information is—

(a) AP's name;

(b) A's name;

(c) the date that A was notified of having been matched for adoption with C;

(d) the date that C is expected to be placed for adoption with A and the date of the placement (except as provided for in paragraph (4));

(e) the start and end dates of any—

(i) period of statutory adoption leave taken or to be taken by A; or

(ii) period in respect of which statutory adoption pay received or to be received by A (where statutory adoption leave was not taken or is not be taken in relation to that period) is payable;

(f) the total amount of shared parental leave available (in accordance with the regulation 22(1) or (2));

(g) how much shared parental leave AP and A each intend to take;

(h) an indication as to when AP intends to take shared parental leave (including the start and end dates for each period of leave).

(3) The specified declarations are—

(a) a declaration signed by AP that—

(i) AP satisfies, or will satisfy, the conditions in regulation 21(2);

(ii) the information given by AP in the notice is accurate;

(iii) that AP is married to, or the civil partner or partner of, A;

(iv) AP will immediately inform AP's employer if AP ceases to care for C or if A informs AP that A has ceased to satisfy the condition in regulation 21(3)(d);

(b) a declaration signed by A—

(i) specifying A's name, address, and national insurance number (or a declaration that A does not have a national insurance number);

(ii) that A satisfies, or will satisfy, the conditions in regulation 21(3);

(iii) that A consents to the amount of leave which AP intends to take (as set out in the notice for the purposes of paragraph (2)(g));

(iv) that A will immediately inform AP if A ceases to satisfy the conditions in regulation 21(3)(d);

(v) that A consents to AP's employer processing the information in A's declaration.

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

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

Supplementary evidence (adoption)

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

(a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—

(i) the name and address of the adoption agency;

(ii) the date that A was notified of having been matched for adoption with C;

(iii) the date on which the adoption agency expects to place C with A; and

(b) the name and address of AP's employer.

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

(a) evidence, in the form of one or more documents issued by the adoption agency that matched A with C, of—

(i) the name and address of the adoption agency;

(ii) the date that A was notified of having been matched for adoption with C;

(iii) the date on which the adoption agency expects to place C with A; and

(b) the name and address of A's employer.

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

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

(a) the name and address requested, or

(b) a declaration that A or AP, as the case may be, has no employer.

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2

Entitlement to particular periods of leave

Period of leave notice (adoption)

28.—(1) A may only be absent from work to take a period of shared parental leave if A gives A's employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(2) AP may only be absent from work to take a period of shared parental leave if AP gives AP's employer a written notice which sets out the start and end dates of each period of shared parental leave requested in that notice.

(3) A notice given under paragraph (1) or (2) must be given not less than eight weeks before the start date of the first period of shared parental leave requested in the notice.

(4) A notice under this regulation may—

(a) be given at the same time as a notice under regulation 24, 25 or 27 is given to the employer;

(b) provide notice of more than one period of leave;

(c) if given before C is placed for adoption —

(i) contain a start date for the leave which is the day on which C is placed for adoption or which is expressed as a number of days following the date of C's placement for adoption;

(ii) contain an end date expressed as a number of days following the date of C's placement for adoption.

(5) A notice under this regulation may not—

(a) be given before a notice is given to the employer under regulation 24 or 25, as the case may be;

(b) request leave with a start or end date which is outside of the period in which shared parental leave may be taken (see regulation 23(1)).

Continuous period of shared parental leave (adoption)

29. Where an employee gives a notice under regulation 28 which requests one continuous period of shared parental leave, the employee is entitled to take that period of leave.

Discontinuous periods of shared parental leave (adoption)

30.—(1) This regulation applies where an employee gives a notice under regulation 28 which requests discontinuous periods of shared parental leave.

(2) In the two weeks beginning with the date the notice was given the employer who received the notice may—

(a) consent to the periods of leave requested;

(b) propose alternative dates for the periods of leave; or

(c) refuse the periods of leave requested without proposing alternative dates.

(3) Where in the two weeks beginning with the date the notice was given the employer—

(a) agrees to the periods of leave requested in that notice, or

(b) agrees with the employee alternative dates for the periods of leave,

the employee is entitled to take the leave on the dates agreed.

(4) Where in the two weeks beginning with the date that notice was given no agreement has been reached, the employee is entitled to take the total amount of leave requested in the notice as a continuous period of leave.

(5) Where the employee is entitled to take a continuous period of leave under paragraph (4)—

(a) the employee must choose a start date for that leave which is a date after the period of eight weeks beginning with the date on which the period of leave notice was given and must notify the employer of that date within 5 days of the end of the two week period referred to in paragraph (4); or

(b) if the employee does not choose a start date under sub-paragraph (a), that leave must start on the start date of the first period of leave requested in the period of leave notice.

(6) An employee may withdraw a notice which requests discontinuous periods of shared parental leave on or before the 15th day after the notice was given unless the employee and employer have agreed to periods of leave.

Variation of period of leave (adoption)

31.—(1) Where an employee is entitled to a period of leave under regulation 29 or 30, the employee may give a written notice to request a variation of that period of leave.

(2) A notice under paragraph (1) may—

(a) vary the start date or end date of any period of shared parental leave provided that the notice is given not less than eight weeks before the date varied and the new date;

(b) request that a single period of leave become discontinuous periods of leave or vice versa;

(c) vary (including cancel) the amount of leave requested provided that the notice is given not less than eight weeks before any period of leave varied by the notice is due to commence.

(3) A notice under paragraph (1) must state what periods of shared parental leave the employee is entitled to under regulation 29 or 30.

(4) A notice under paragraph (1) may not request leave with a start or end date which is outside of the period in which shared parental leave may be taken (see regulation 23(1)).

(5) Regulations 29 and 30 apply to notices given under this regulation.

Limit on number of period of leave notices or variations (adoption)

32.—(1) An employee may give a combined total of up to three notices under regulations 28 and 31.

(2) Any notice which is—

(a) withdrawn under regulation 30(6),

(b) given under regulation 31 as a result of C being placed earlier or later than the date expected,

(c) given under regulation 31 in response to a request from the employer that the employee vary a period of leave,

is to be disregarded for the purposes of paragraph (1).

(3) Where an employee has more than one employer, the limit in paragraph (1) applies in respect of each employer.

(4) The limit in paragraph (1) may be waived by agreement between the employee and the employer.

Change of circumstances (adoption)

33.—(1) Where less than 8 weeks before A is due to take a period of shared parental leave or during a period of such leave—

(a) A informs A's employer that A has ceased to care for C (and therefore A will not be absent from work on shared parental leave); and

(b) it is not reasonably practicable for A's employer to accommodate the change in circumstances by allowing A to work during the planned period of shared parental leave,

A's employer may require A to take a period of leave.

(2) Where less than 8 weeks before AP is due to take a period of shared parental leave or during a period of such leave—

(a) AP informs AP's employer that AP has ceased to care for C or that A has informed AP that A has ceased to satisfy the condition in regulation 21(3)(d) (and therefore AP will not be absent from work on shared parental leave); and

(b) it is not reasonably practicable for AP's employer to accommodate the change in circumstances by allowing AP to work during the planned period of shared parental leave,

AP's employer may require AP to take a period of leave.

(3) This regulation does not apply where regulation 34 applies.

(4) Leave that is required to be taken under paragraph (1) or (2) must be treated as shared parental leave for the purposes of these Regulations.

(5) Where A or AP, as the case may be, is not on a period of shared parental leave at the time the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

(a) start on the date on which the next period of shared parental leave was due to start; and

(b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing A or AP, as the case may be, to work and, in any event, end no later than—

(i) the date on which the next period of shared parental leave was due to end, or

(ii) eight weeks after the employer is informed of the change in circumstances,

whichever is the earlier.

(6) Where A or AP, as the case may be, is on a period of shared parental leave at the time the employer is informed of the change of circumstances, any leave that is required to be taken under paragraph (1) or (2) must—

(a) start on the date that the employer is informed of the change of circumstances; and

(b) end as soon as it is reasonably practicable for the employer to accommodate the change in circumstances by allowing A or AP, as the case may be, to work and, in any event, end no later than—

(i) the date on which that period of shared parental leave was due to end, or

(ii) eight weeks after the employer is informed of the change in circumstances,

whichever is the earlier.

Entitlement to shared parental leave in the event of a disrupted placement or the death of adopter, adopter's partner or child

34. Part 2 of the Schedule applies where before the end of the period during which shared parental leave may be taken (see regulation 23(1))—

(a) A, AP or C dies, or

(b) C is returned after being placed for adoption.

PART 4

CONDITIONS OF ENTITLEMENT RELATING TO EMPLOYMENT AND EARNINGS

Continuity of employment test

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

(a) has been continuously employed with an employer for a period of not less than 26 weeks ending with the relevant week (see paragraph (3)); and

(b) remains in continuous employment with that employer until the week before any period of shared parental leave taken by the employee.

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

(3) In this regulation—

"relevant week" means—

(a) where Part 2 applies, the week immediately preceding the 14th week before the expected week of birth;

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

Employment and earnings test

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

(a) has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the calculation week; and

(b) has average weekly earnings (determined in accordance with paragraph (2)) of not less than the amount set out in section 35(6A) of the 1992 Act(**a**) in relation to the tax year preceding the tax year containing the calculation week.

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

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

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

(5) In this regulation—

"calculation week" means—

(a) where Part 2 applies, the expected week of birth;

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

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

"employed earner" has the meaning given by section 2 of the 1992 Act(**a**), subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act;

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

"specified payments"—

(a) in relation to a self-employed earner who satisfies the conditions in paragraph (6), are to be treated as made to the self-employed earner at an amount per week equal to the amount set out in section 35(6A) of the 1992 Act that is in force at the end of the week;

(b) in relation to an employed earner, are all payments made to the employed earner or for the employed earner's benefit as an employed earner specified in regulation 2 (specified payments for employed earners) of the Social Security (Maternity Allowance) (Earnings) Regulations 2000(**b**); and

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

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

(a) does not hold a certificate of exception issued pursuant to regulation 44(1) of the Social Security (Contributions) Regulations 2001(**c**) and has paid a Class 2 contribution (within the meaning of section 1 of the 1992 Act), or

(b) holds such a certificate of exception.

PART 5

TAKING SHARED PARENTAL LEAVE

Work during shared parental leave

37.—(1) An employee may carry out work for the employer during a period of shared parental leave without bringing the period of leave to an end.

(2) An employee may work no more than 20 days under paragraph (1) for each employer during the period in which shared parental leave may be taken (see regulations 7(1) and 23(1)).

(3) For the purposes of this regulation, any work carried out on any day constitutes a day's work.

(4) Subject to paragraph (5), for the purposes of this regulation, "work" means any work done under the contract of employment and includes training or any activity undertaken for the purposes of keeping in touch with the workplace.

(5) Contact to discuss an employee's return to work or any other reasonable contact from time to time between an employer and an employee does not constitute work for the purposes of this regulation.

(6) This regulation does not confer any right on an employer to require that any work be carried out during a period of shared parental leave, nor any right on an employee to work during a period of leave.

(7) Any day's work carried out under this regulation does not have the effect of extending the total duration of a period of shared parental leave.

Application of terms and conditions during shared parental leave

38.—(1) An employee who takes shared parental leave is, during any period of leave—

(**a**) Section 2 was amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6(2), paragraph 171.
(**b**) S.I. 2000/688, amended by S.I. 2007/1154.
(**c**) S.I. 2001/1004.

(a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent, and

(b) bound by any obligations arising under those terms and conditions, subject only to the exception in section 75I(1)(b)(**a**) of the 1996 Act.

(2) In paragraph (1), "terms and conditions of employment" has the meaning given by section 75I(2) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 75I of the 1996 Act, only sums payable to the employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989(**b**), nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraph 5C(**c**) of that Schedule.

Redundancy during shared parental leave

39.—(1) This regulation applies where, during a period in which an employee is taking shared parental leave, it is not practicable by reason of redundancy for an employer to continue to employ that employee under the existing contract of employment.

(2) Where there is a suitable alternative vacancy, the employee is entitled to be offered (before the end of the employee's employment under the contract of employment) alternative employment with the employer, the employer's successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of the employee's employment under the previous contract.

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for the employee to do in the circumstances, and

(b) its provisions as to the capacity and place in which the employee is to be employed, and as to the other terms and conditions of the employee's employment, are not substantially less favourable to the employee than if the employee had continued to be employed under the previous contract.

Right to return after shared parental leave

40.—(1) Where an employee returns to work after a period of shared parental leave which, when added to any other period of relevant statutory leave (see paragraph (3)) taken by the employee in relation to C, means that the total amount of relevant statutory leave taken by the employee in relation to C is 26 weeks or less, the employee is entitled to return from leave to the job in which the employee was employed before the absence, except where paragraph (2)(b) applies.

(2) Where an employee returns to work after a period of shared parental leave which—

(a) when added to any other period of relevant statutory leave taken by the employee in relation to C, means that the total amount of relevant statutory leave taken by the employee in relation to C is more than 26 weeks; or

(b) was the last of two or more consecutive periods of relevant statutory leave which included a period of parental leave of more than four weeks, a period of additional maternity leave, or a period of additional adoption leave,

the employee is entitled to return from leave to the job in which the employee was employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee

(**a**) Section 75I was inserted by the Children and Families Act 2014, section 117.
(**b**) 1989 c. 24.
(**c**) Paragraph 5C was inserted by the Children and Families Act 2014, Schedule 7, paragraphs 1 and 4.

to return to that job, to another job which is both suitable for the employee and appropriate for the employee to do in the circumstances.

(3) In this regulation—

"additional adoption leave" means leave under section 75B of the 1996 Act(**a**);

"additional maternity leave" means leave under section 73 of the 1996 Act(**b**);

"parental leave" means leave under section 76 of the 1996 Act(**c**);

"relevant statutory leave" means leave provided for in Part 8 of the 1996 Act(**d**) except any period of parental leave.

(4) This regulation does not apply where it is not practicable by reason of redundancy for the employer to continue to employ the employee under the existing contract of employment.

Right to return after shared parental leave: supplementary

41.—(1) For the purposes of regulation 40 a job is—

(a) the nature of the work which the employee is employed to do under the contract of employment; and

(b) the capacity and place the employee was employed in before the absence.

(2) References in regulation 40 to the job in which the employee was employed before the absence are references to the job in which the employee was employed—

(a) if the return is from an isolated period of shared parental leave, immediately before that period, or

(b) if the return is from consecutive periods of leave provided for in Part 8 of the 1996 Act, immediately before the first such period.

(3) The right to return under regulation 40 is a right to return—

(a) with the employee's seniority, pension rights and similar rights as they would have been if there had been no absence, and

(b) on terms and conditions not less favourable than those which would have applied if there had been no absence.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989, nothing in paragraph (3)(a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule(**e**).

Protection from detriment

42.—(1) An employee is entitled under section 47C(**f**) of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by an employer because—

(a) the employee took, sought to take, or made use of the benefits of, shared parental leave;

(b) the employer believed that the employee was likely to take shared parental leave; or

(c) the employee undertook, considered undertaking, or refused to undertake work in accordance with regulation 37.

(**a**) Section 75B was inserted by the Employment Act 2002, (c. 22), section 3.

(**b**) Section 73 was substituted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part 1, and amended by the Employment Act 2002, section 17, and by the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 32.

(**c**) Section 76 was substituted by the Employment Relations Act 1999, Schedule 4, Part 1.

(**d**) Part 8 was substituted by the Employment Relations Act 1999. Sections 75A to 75D were inserted by the Employment Act 2002, sections 1, and sections 80A to 80E were inserted by section 3 of that Act.

(**e**) Paragraph 5A was inserted by the Pensions Act 2004 (c. 35), section 265(1), and amended by the Work and Families Act 2006, Schedule 1, paragraph 1. Paragraph 5B was inserted by the Pensions Act 2004, section 265(1).

(**f**) Section 47C was inserted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 8, and amended by the Children and Families Act 2014 (c. 6), Schedule 7, paragraphs 29 and 31; there are other amending instruments but none is relevant.

(2) For the purposes of paragraph (1)(a), the employee makes use of the benefits of shared parental leave if, during a period of shared parental leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 38 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the 1996 Act.

Unfair dismissal

43.—(1) An employee who is dismissed is entitled under section 99(**a**) of the 1996 Act to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or

(b) the reason or principal reason for the dismissal is that the employee is redundant and regulation 39 has not been complied with.

(2) An employee who is dismissed is to be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the dismissed employee and who have not been dismissed by an employer, and

(c) it is shown that the reason or principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

(a) that the employee took, sought to take, or made use of the benefits of, shared parental leave;

(b) that the employer believed that the employee was likely to take shared parental leave; or

(c) that the employee undertook, considered undertaking, or refused to undertake work in accordance with regulation 37.

(4) For the purposes of paragraph (3)(a), the employee makes use of the benefits of shared parental leave if, during a period of shared parental leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 38 during that period.

Calculation of a week's pay for the purposes of Chapter 2 of Part 14 of the 1996 Act

44. Where—

(a) under Chapter 2 of Part 14 of the 1996 Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date"),

(b) during a week in that period, the employee was absent from work on shared parental leave, and

(c) remuneration is payable to the employee in respect of that week under the employee's contract of employment, but the amount payable is less than the amount that would be payable if the employee were working,

that week shall be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

(**a**) Section 99 was substituted by the Employment Relations Act 1999, Schedule 4, Part 3, paragraphs 5 and 16, and amended by the Children and Families Act 2014, Schedule 7, paragraphs 29 and 39; there are other amending instruments but none is relevant.

PART 6

Contractual rights and service of notices

Contractual rights to shared parental leave

45. Where an employee is entitled to shared parental leave (referred to in this regulation as "the statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise—

(a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and

(b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Service of notices

46.—(1) Where a notice is to be given under these Regulations, it may be given—

(a) where paragraph (2) applies, by electronic communication;

(b) by post; or

(c) by personal delivery.

(2) This paragraph applies where the person who is to receive the notice has agreed that the notice may be given to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(3) Where a notice is to be given under these Regulations it is to be taken to have been given—

(a) if sent by electronic communication, on the day of transmission;

(b) if sent by post in an envelope which is properly addressed and sent by prepaid post, on the day on which it is posted;

(c) if delivered personally, on the day of delivery.

Name
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
Date Department for Business, Innovation and Skills

SCHEDULE

Regulations 19 and 34

SHARED PARENTAL LEAVE IN SPECIAL CIRCUMSTANCES

PART 1

SHARED PARENTAL LEAVE (BIRTH)

Entitlement of father or partner to shared parental leave in the event of death of mother before curtailment

1.—(1) Where before P has given a notice under regulation 9 M dies—

(a) without curtailing her statutory maternity leave under section 71(3) or 73(3) of the 1996 Act;

(b) before the end of her maternity pay period and without curtailing that period under section 165(3A) of the 1992 Act; or

(c) before the end of her maternity allowance period and without curtailing that period under section 35(3A) of the 1992 Act,

sub-paragraph (2) applies in relation to the entitlement of P to shared parental leave.

(2) The provisions of the Regulations apply in respect of any period after M dies with the modifications specified in paragraphs (a) to (l)—

(a) a person is to be regarded as falling within the definition of "P" in regulation 3(1) if that person fell within that definition immediately before M died;

(b) regulation 5(2)(d) does not have effect;

(c) in regulation 5(3)(a) for "M satisfies" substitute "immediately before her death M satisfied";

(d) in regulation 5(3)(c) for "M is entitled" substitute "immediately before her death, M was entitled";

(e) regulation 5(3)(d) does not have effect;

(f) in regulation 6—

(i) for paragraph (1) substitute—

"(1) Where M was entitled to statutory maternity leave, subject to paragraph (10), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory maternity leave taken by M before M died.";

(ii) for paragraph (2) substitute—

"(2) Where M was not entitled to statutory maternity leave, but was entitled to statutory maternity pay, subject to paragraph (11), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory maternity pay payable to M in respect of C before M died.";

(iii) for paragraph (3) substitute—

"(3) Where M was not entitled to statutory maternity leave, but was entitled to maternity allowance, the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of maternity allowance payable to M in respect of C before M died.";

(g) in regulation 9(2)(f) for "and M each intend" substitute "intends";

(h) in regulation 9(2) after sub-paragraph (g) insert—

"(h) the date of M's death.";

(i) regulation 9(3)(b) is omitted;

(j) regulation 10 is omitted;

(k) regulation 11(3)(d) is omitted;

(l) where under regulation 9 or 12 a notice is required to be given not less than eight weeks before a start date and it is not reasonably practicable for P to satisfy that requirement, the notice may be given as soon as is reasonably practicable after the death of M and before the start date of the leave. The modification of regulation 12 applies only to the first notice given under regulation 12 following the death of M.

Entitlement of father or partner to shared parental leave in the event of death of mother after curtailment and before notice of entitlement given

2. Where M dies after curtailing her statutory maternity leave under section 71(3) or 73(3) of the 1996 Act or her statutory maternity pay period under section 165(3A) of the 1992 Act or her maternity allowance period under section 35(3A) of that Act, or after returning to work, as the case may be, and before P gives a notice under regulation 9, sub-paragraphs (2)(a) to (e) and (g) to (l) in paragraph 1 of this Schedule apply in relation to the entitlement of P to shared parental leave.

Entitlement of father or partner to shared parental leave in the event of death of mother after notice of entitlement given

3.—(1) Where M dies after P has given a notice under regulation 9, the provisions of the Regulations apply in respect of any period after M dies with the modifications in sub-paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) in relation to the entitlement of P to shared parental leave.

(2) Sub-paragraphs (2)(a) to (e) in paragraph 1 of this Schedule apply.

(3) Regulation 11(3)(d) does not have effect.

(4) Where by reason of M's death it is not reasonably practicable for P to satisfy a requirement under regulation 9, 12 or 15 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required P to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulations 12 and 15 applies only to the first notice given under either regulation 12 or 15 following the death M.

(5) The first notice given under either regulation 12 or 15 following the death of M must include the date of M's death.

(6) Where at the time of M's death P has given a combined total of three notices under regulations 12 and 15, in regulation 16(1) for "three" substitute "four".

(7) Where an employer—

(a) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or

(b) has not made a request under regulation 10,

before M dies, regulation 5(2)(d) does not have effect and regulation 10 is omitted.

Entitlement of mother to shared parental leave in the event of death of father or partner

4.—(1) Where P dies after M has given a notice under regulation 8, the provisions of the Regulations apply in respect of any period after P dies with the modifications in sub-paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) apply.

(2) The following modifications apply—

(a) a person is to be regarded as falling within the definition of "P" in regulation 3(1) if that person fell within that definition immediately before that person died;

(b) regulation 4(2)(f) does not have effect;

(c) in regulation 4(3)(a) for "P satisfies" substitute "immediately before P's death P satisfied".

(3) Regulation 11(3)(d) does not have effect.

(4) Where by reason of P's death it is not reasonably practicable for M to satisfy a requirement under regulation 8, 12 or 15 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required M to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulation 12 or 15 applies only to the first notice given under either regulation 12 or 15 following the death P.

(5) The first notice given under either regulation 12 or 15 following the death of P must include the date of P's death.

(6) Where at the time of P's death M has given a combined total of three notices under regulations 12 and 15, in regulation 16(1) for "three" substitute "four".

(7) Where an employer—

(a) has made a request under regulation 10 and the 14 day period in paragraph (3), (4) or (5) has not ended, or

(b) has not made a request under regulation 10,

before P dies, regulation 4(2)(f) does not have effect and regulation 10 is omitted.

Entitlement to shared parental leave in the event of death of child (birth)

5.—(1) Where after a notice of entitlement has been given under regulation 8 C dies following birth, the modifications set out in paragraphs (3), (5) and (6) below apply in relation to the entitlement of M to shared parental leave after C's death.

(2) Where after a notice of entitlement has been given under regulation 9 C dies following birth, the modifications set out in paragraphs (4) to (6) below apply in relation to the entitlement of P to shared parental leave after C's death.

(3) In regulation 4(1) omit "to care for C".

(4) In regulation 5(1) omit "to care for C".

(5) In regulation 15 for paragraph (2) substitute—

"(2) A notice under paragraph (1) may—

(a) vary the end date of any period of shared parental leave to reduce the period of leave to be taken provided that the notice is given at least eight weeks before the new end date;

(b) cancel a period or periods of leave."

(6) In regulation 16 for paragraph (1) substitute—

"(1) After C dies, no notice may be given under regulation 12 and only one notice may be given under regulation 15.".

(7) Where more than one child is born of the same pregnancy, a reference in this paragraph relating to the death of C must be construed as a reference to the last of those children to die.

PART 2

SHARED PARENTAL LEAVE (ADOPTION)

Entitlement of adopter's partner to shared parental leave in the event of death of adopter before curtailment

6.—(1) Where before AP has given a notice under regulation 25 A dies—

(a) without curtailing A's statutory adoption leave under section 75A(2A) or 75B(3) of the 1996 Act; or

(b) before the end of the adoption pay period and without curtailing that period under section 171ZN(2A) of the 1992 Act,

sub-paragraph (2) applies in relation to the entitlement of AP to shared parental leave.

(2) The provisions of the Regulations apply in respect of any period after A dies with the modifications specified in paragraphs (a) to (l)—

(a) a person is to be regarded as falling within the definition of P in regulation 3(1) if that person fell within that definition immediately before A died;

(b) regulation 21(2)(d) does not have effect;

(c) in regulation 21(3)(a) for "A satisfies" substitute "immediately before A's death A satisfied";

(d) in regulation 21(3)(c) for "A is entitled" substitute "immediately before A's death, A was entitled";

(e) regulation 21(3)(d) does not have effect.

(f) in regulation 22—

(i) for paragraph (1) substitute—

"(1) Where A was entitled to statutory adoption leave, subject to paragraph (9), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory adoption leave taken by A before A died.";

(ii) for paragraph (2) substitute—

"(2) Where A was not entitled to statutory adoption leave, but was entitled to statutory adoption pay, subject to paragraph (10), the total amount of shared parental leave available in relation to C is 52 weeks less the number of weeks of statutory adoption pay payable to A before A died.";

(g) in regulation 25(2)(g) for "and A each intend" substitute "intends";

(h) in regulation 25(2) after sub-paragraph (h) insert—

"(i) the date of A's death.";

(i) regulation 25(3)(b) is omitted;

(j) regulation 26 is omitted;

(k) regulation 27(3)(d) is omitted;

(l) where under regulation 25 or 28 a notice is required to be given not less than eight weeks before a start date and it is not reasonably practicable for P to satisfy that requirement, the notice may be given as soon as is reasonably practicable after the death of A and before the start date of the leave. The modification of regulation 28 applies only to the first notice given under regulation 28 following the death of A.

Entitlement of adopter's partner to shared parental leave in the event of death of adopter after curtailment and before notice of entitlement given

7. Where A dies after curtailing A's statutory adoption leave under section 75A(2A) or 75B(3) of the 1996 Act, or after curtailing the statutory adoption pay period under section 171ZN(2A) of the 1992 Act, or after returning to work, as the case may be, and before AP has given a notice under regulation 25, sub-paragraph (2)(a) to (e) and (g) to (l) in paragraph 6 of this Schedule apply in relation to the entitlement of AP to shared parental leave.

Entitlement of adopter's partner to shared parental leave in the event of death of adopter after notice of entitlement given

8.—(1) Where A dies after AP has given a notice of entitlement under regulation 25, the provisions of the Regulations apply in respect of any period after A dies with the modifications in

paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) in relation to the entitlement of AP to shared parental leave.

(2) Sub-paragraphs (2)(a) to (e) in paragraph 6 of this Schedule apply.

(3) Regulation 27(3)(d) does not have effect.

(4) Where by reason of A's death it is not reasonably practicable for AP to satisfy a requirement under regulation 25, 28 or 31 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required AP to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulations 28 and 31 applies only to the first notice given under either regulation 28 or 31 following the death A.

(5) The first notice given under either regulation 28 or 31 following the death of A must include the date of A's death.

(6) Where at the time of A's death AP has given a combined total of three notices under regulations 28 and 31, in regulation 32(1) for "three" substitute "four".

(7) Where an employer—

(a) has made a request under regulation 26 and the 14 day period in paragraph (3) or (4) has not ended, or

(b) has not made a request under regulation 26,

before A dies, regulation 21(2)(d) does not have effect and regulation 26 is omitted.

Entitlement of adopter to shared parental leave in the event of death of adopter's partner

9.—(1) Where AP dies after A has given a notice of entitlement under regulation 24, the provisions of the Regulations apply in respect of any period after AP dies with the modifications in sub-paragraphs (2) (on entitlement), (3) to (6) (on the provision of notices), and (7) (on evidence) apply.

(2) The following modifications apply—

(a) a person is to be regarded as falling within the definition of "AP" in regulation 3(1) if that person fell within that definition immediately before that person died;

(b) regulation 20(2)(f) does not have effect;

(c) in regulation 20(3)(a) for "AP satisfies" substitute "immediately before AP's death AP satisfied".

(3) Regulation 27(3)(d) does not have effect.

(4) Where by reason of AP's death it is not reasonably practicable for A to satisfy a requirement under regulation 24, 28 or 31 for a notice to be given not less than eight weeks before the date on which a period of shared parental leave begins, that regulation is to have effect as if it required A to give the notice as soon as reasonably practicable before the date on which the period of leave begins. The modification of regulations 28 and 31 applies only to the first notice given under either regulation 28 or 31 following the death AP.

(5) The first notice given under either regulation 28 or 31 following the death of AP must include the date of AP's death.

(6) Where at the time of AP's death A has given a combined total of three notices under regulations 28 and 31, in regulation 32(1) for "three" substitute "four".

(7) Where an employer—

(a) has made a request under regulation 26 and the 14 day period in paragraph (3) or (4) has not ended, or

(b) has not made a request under regulation 26,

before AP dies, regulation 20(2)(f) does not have effect and regulation 26 is omitted.

Entitlement to shared parental leave in the event of a disrupted placement or the death of child

10.—(1) Where after a notice of entitlement has been given under regulation 24 C dies or is returned after being placed for adoption, the modifications set out in paragraphs (3), (5) and (6) below apply in relation to the entitlement of A to shared parental leave after C's return or death.

(2) Where after a notice of entitlement has been given under regulation 25 C dies or is returned after being placed for adoption, the modifications set out in paragraphs (4) to (6) below apply in relation to the entitlement of AP to shared parental leave after C's return or death.

(3) In regulation 20(1) omit "to care for C".

(4) In regulation 21(1) omit "to care for C".

(5) In regulation 31 for paragraph (2) substitute—

"(2) A notice under paragraph (1) may—

(a) vary the end date of any period of shared parental leave to reduce the period of leave to be taken provided that the notice is given at least eight weeks before the new end date;

(b) cancel a period or periods of leave."

(6) In regulation 32 for paragraph (1) substitute—

"(1) After C dies or is returned after being placed for adoption, no notice may be given under regulation 28 and only one notice may be given under regulation 31.".

(7) Where more than one child is placed for adoption as a result of the same placement, a reference in this paragraph to the death of C or to the return of C after being placed for adoption must be construed as a reference to the last of those children to die or to the last of those children to be returned after being placed for adoption.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations introduce a new entitlement for employees who are mothers, fathers, adopters, or prospective adopters, or the partners of mothers or adopters, or prospective adopters, to take shared parental leave in the first year of their child's life or in the first year after the child's placement for adoption. The Regulations are made in exercise of powers inserted into the Employment Rights Act 1996 by the Children and Families Act 2014.

In Part 2, the Regulations confer the right to take shared parental leave (birth) where a mother who is entitled to statutory maternity leave, statutory maternity pay, or maternity allowance, curtails that leave, pay or allowance period; the balance of the leave, pay, or allowance period can be taken as shared parental leave if the other conditions for entitlement are satisfied.

For adoptions, Part 3 of the Regulations confers the right to take shared parental leave (adoption) where an adopter who is entitled to statutory adoption leave or statutory adoption pay curtails that leave or pay period; the balance of the leave or pay period can be taken as shared parental leave if the other conditions for entitlement are satisfied.

Regulation 4 sets out the conditions for entitlement for a mother and regulation 5 sets out the conditions for entitlement for a father or a spouse, civil partner, or partner of a mother. Regulations 20 and 21 set out the conditions for entitlement for an adopter and an adopter's partner, respectively.

Certain conditions apply to the person claiming the entitlement to shared parental leave and others apply to the person with whom the claimant will be caring for the child. The claimant must satisfy substantive requirements, such as continuous employment, as well as procedural requirements, such as giving appropriate notices to the claimant's employer. Regulations 8, 9 and 10 set out the notice and evidence requirements which need to be satisfied for shared parental leave (birth) and the equivalent provisions for shared parental leave (adoption) appear in regulations 24, 25 and 26.

Regulations 6 and 22 set out how many weeks of shared parental leave (birth) and shared parental leave (adoption), respectively, are available to a claimant or claimants.

The provisions on giving notices to request periods of leave, how those notices are to be treated, how they may be varied, and the limit on the number of notices are set out in regulations 12 to 16 for shared parental leave (birth) and in regulations 28 to 32 for shared parental leave (adoption).

Regulations 18 and 33 set out when an employer may require an employee to take a period of shared parental leave (birth) or shared parental leave (adoption), respectively, in the event of a change of circumstances.

Part 4 sets out the provisions on employment and earnings that must be satisfied by a claimant and the person with whom the claimant will be caring for the child.

Part 5 contains provisions applicable in relation to shared parental leave (birth and adoption). Those provisions include the ability to undertake work during a period of shared parental leave (regulation 37), additional redundancy protections (regulation 39), the right to return to work after a period of shared parental leave (regulation 40), and protections from detriment and dismissal attributable to the fact that a claimant took or sought to take shared parental leave (regulations 42 and 43).

The Schedule contains provisions modifying the regulations in various cases where a claimant, the person with whom the claimant was caring for the child, or the child, dies or an adoption placement is disrupted.

These Regulations are part of a package of legislative measures and the relevant impact assessment is the relevant impact assessment is the *Modern Workplaces: shared parental leave and pay administration consultation impact assessment* which was published in February 2013. A copy of that impact assessment can be obtained from the Department for Business, Innovation and Skills, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.

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