Regulations made by the Department for the Economy and laid before the Assembly under section 172(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2022 No. 167

EMPLOYMENT

PARENTAL BEREAVEMENT

The Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2022

Made - - - -	*30th March 2022*
Coming into operation -	*6th April 2022*

CONTENTS

PART 1
GENERAL

1.	Citation and Commencement	3
2.	Application	3
3.	Interpretation	3

PART 2
ENTITLEMENT

4.	Conditions of entitlement to statutory parental bereavement pay	5
5.	Number of weeks of pay	7
6.	Options in respect of payment of statutory parental bereavement pay	7
7.	Qualifying period	7
8.	Notice and evidence requirements for statutory parental bereavement pay	7
9.	Cases where there is no liability to pay statutory parental bereavement pay	8
10.	Work during period of payment of statutory parental bereavement pay	8

PART 3
CONDITIONS OF ENTITLEMENT RELATING TO EMPLOYMENT AND EARNINGS

11.	Treatment of persons as employees	8
12.	Continuous employment	9
13.	Continuous employment and unfair dismissal	10
14.	Continuous employment and stoppages of work	10

15. Modification for periods of employment between 25 and 26 weeks 11
16. Change of employer 11
17. Reinstatement after service with the armed forces 11
18. Treatment of two or more employers or two or more contracts of service as one 12
19. Normal weekly earnings 12

PART 4

PAYMENT OF STATUTORY PARENTAL BEREAVEMENT PAY

20. Weekly rate of payment 13
21. Statutory parental bereavement pay and contractual remuneration 14
22. Avoidance of liability for statutory parental bereavement pay 14
23. Payment of statutory parental bereavement pay 14
24. Time when statutory parental bereavement pay is to be paid 14
25. Liability of the Commissioners to pay statutory parental bereavement pay 15
26. Liability of the Commissioners to pay statutory parental bereavement pay in cases of legal custody or imprisonment 16
27. Payments by the Commissioners 16
28. Persons unable to act 16
29. Service of notices 17
30. Expiry 17

The Department for the Economy makes the following Regulations in exercise of the powers conferred by sections 167ZZ9(3) and (4), 167ZZ10(2) and (4)(a) to (g), 167ZZ11(2) and (3), 167ZZ12(1) to (5), (8) and (9), 167ZZ14(3), 167ZZ17(3) to (5), (7) and (8), and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and section 5(1)(g), (j), (m) and (q) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and now vested in it(**c**), and section 3(1) and (2) of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022(**d**) and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs in so far as such concurrence is required(**e**).

PART 1

GENERAL

Citation and Commencement

1. These Regulations may be cited as the Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2022 and shall come into operation on 6th April 2022.

Application

2. These Regulations apply in respect of children who die on or after 6th April 2022.

Interpretation

3.—(1) In these Regulations—

"the 1992 Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"adopter" means a person who intends to adopt C and to whom the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 apply;

"approved foster parent" means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996(**f**);

"approved prospective adopter" means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989(**g**) to be a person suitable to adopt a child;

"authority" has the same meaning as in the Children (Northern Ireland) Order 1995(**h**);

"C" means the child in relation to whom an entitlement to statutory parental bereavement pay arises;

(**a**) 1992 c. 7; section 167ZZ9 to section 167ZZ17 were inserted by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5 (N.I.)), Section 2. Sections 167ZZ9 to 167ZZ11 and 167ZZ17 are temporarily modified by section 3 of that Act.

(**b**) 1992 c.8; section 5(4A)(a) was amended by 2022 c. 5 (N.I.), Schedule 1, paragraph 10.

(**c**) The Department for Employment and Learning was dissolved by section 1(10) of the Departments Act (Northern Ireland) 2016 c. 5 (N.I.). Its functions under the Social Security Administration (Northern Ireland) Act 1992, were transferred to the Department for the Economy by the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76), Article 6(1)(c).

(**d**) 2022 c. 5 (N.I.).

(**e**) Regulations made by the Department for the Economy pursuant to 2022 c. 5 (N.I.), sections 167ZZ11(3) and 167ZZ17(5), (7) and (8), must, by virtue of those sections, be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs. By virtue of the Commissioners for Revenue and Customs Act 2005 (c. 11), section 50(1), references to the Commissioners of Inland Revenue in statutory provisions are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

(**f**) S.R. 1996 No.467.

(**g**) S.R. 1989 No. 253.

(**h**) S.I. 1995/755 (N.I. 2).

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"intended parent" means a person who—

(a) has applied, or intended to apply during the period of 6 months beginning with the day of C's birth—

(i) with another person for an order under section 54 (parental orders: two applicants) of the Human Fertilisation and Embryology Act 2008(**a**) in respect of C; or

(ii) as the sole applicant for an order under section 54A (parental orders: one applicant) of that Act(**b**) in respect of C; and

(b) expected the court to make such an order on that application in respect of C;

"official notification" means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of C, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

"placed for adoption" means—

(a) placed for adoption by virtue of regulation 12 of the Adoption Agencies Regulations (Northern Ireland) 1989(**c**);

(b) placed by an authority with a person who is an approved foster parent who is also an approved prospective adopter where the authority—

(i) is considering adoption for C, or

(ii) is satisfied that adoption is in the best interests of C,

and is considering whether that person would be a suitable adoptive parent for C;

(c) placed for adoption under the Adoption and Children Act 2002(**d**) or the Adoption and Children (Scotland) Act 2007(**e**);

(d) placed in accordance with section 22C of the Children Act 1989(**f**) (ways in which looked after children are to be accommodated and maintained) with a local authority foster parent who is also a prospective adopter, following consideration in accordance with subsection (9B)(c) of that section(**g**); or

(e) placed in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014(**h**) with a prospective adopter, following consideration in accordance with subsection (10) of that section;

"prospective adopter" 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(**i**) or regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**j**);

"relevant domestic authority" means—

(a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003(**k**) apply, the Department of Health(**l**); and

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(**a**) 2008 c. 22; section 54 was amended by the Crime and Courts Act 2013 (c. 22), Schedule 11, Part 1, paragraph 206 and by S.I. 2018/1413.
(**b**) Section 54A was inserted by S.I. 2018/1413.
(**c**) S.R. 1989 No. 253.
(**d**) 2002 c. 38.
(**e**) 2007 asp 4.
(**f**) 1989 c. 41.
(**g**) Section 22C was inserted by the Children and Young Persons Act 2009 (c. 23), section 8 and amended by the Children and Families Act 2014 (c. 6), section 2 and Schedule 2, part 1, paragraph 29. S.I. 2016/413 and S.I.2018/195.
(**h**) 2014 anaw.4/dccc.
(**i**) S.I. 2005/389; regulation 30B was substituted by S.I. 2013/985.
(**j**) S.I. 2005/1313.
(**k**) S.R. 2003 No. 16.
(**l**) The Department of Health, Social Services and Public Safety was renamed the Department of Health under section 1 of the Departments Act (Northern Ireland) 2016 (c. 5).

(b) in any other case, the Central Authority designated in accordance with Article 6 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

"statutory parental bereavement pay" means statutory parental bereavement pay payable in accordance with Part 12ZD of the 1992 Act;

"week", except in Part 3, means a period of seven days(**a**);

"week of C's death" means the week, beginning with a Sunday, in which C dies.

(2) In these Regulations—

(a) references to a child include a child stillborn after twenty-four weeks of pregnancy; and

(b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.

(3) The Interpretation Act (Northern Ireland) 1954(**b**) shall apply to these Regulations as it applies to an Act of the Assembly.

PART 2

ENTITLEMENT

Conditions of entitlement to statutory parental bereavement pay

4.—(1) The conditions prescribed under section 167ZZ9(3) of the 1992 Act (conditions as to relationship with a child who has died) are that, at the date of C's death, the person is—

(a) C's parent;

(b) C's natural parent and named in an order made pursuant to section 51A(2)(a) of the Adoption and Children Act 2002(**c**) or section 11(3)(aa) of the Children (Scotland) Act 1995(**d**), provided that such an order has not subsequently been revoked or discharged;

(c) a person with whom C has been placed for adoption, for so long as that placement has not been disrupted as mentioned in paragraph (2);

(d) an adopter—

(i) with whom C was living; and

(ii) who has received official notification in respect of C;

(e) an intended parent of C;

(f) C's parent in fact; or

(g) the partner of P.

(2) For the purposes of paragraph (1)(c), a placement has been disrupted—

(a) when C has been returned to the authority under Article 31(3) of the Adoption (Northern Ireland) Order 1987(**e**);

(b) when C has been returned under sections 31 to 35 of the Adoption and Children Act 2002(**f**);

(**a**) For the meaning of 'week' in Part 3, see section 167ZZ17(5) of the 1992 Act.
(**b**) 1954 c. 33 (N.I.).
(**c**) Section 51A was inserted by the Children and Families Act 2014, section 9.
(**d**) Section 11(3)(aa) was inserted by the Adoption and Children (Scotland) Act 2007, section 107.
(**e**) Article 31(3) was amended by Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), Schedule 9, paragraph 154(2).
(**f**) Sections 32, 34 and 35 were amended by the Children and Families Act 2014, Schedule 2, Part 2, paragraphs 63 and 64 and by S.I. 2016/413.

(c) in Scotland, when C has been 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

(d) when C's placement—

(i) with a local authority foster parent who is also a prospective adopter in accordance with section 22C of the Children Act 1989 following consideration in accordance with subsection (9B)(c) of that section; or

(ii) with a prospective adopter in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014;

has been terminated.

(3) Subject to paragraph (5), a person is C's parent in fact if that person, for a continuous period of at least four weeks ending with the day on which C dies—

(a) lived with C in the person's own home; and

(b) had day to day responsibility for C's care.

(4) For the purposes of the continuous period mentioned in paragraph (3), no account is to be taken of any absences of a temporary or intermittent nature.

(5) A person is not to be regarded as C's parent in fact if—

(a) C is in the care of that person in premises in which any parent of C's, or any person who is not a parent of C's but who has responsibility for C, is living; or

(b) that person was or is entitled to receive remuneration, whether by way of wages or otherwise, in respect of the care of C.

(6) A person has responsibility for C, for the purposes of paragraph (5)(a), if the person has parental responsibility, within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(**a**)

(7) For the purposes of paragraph (5)(b), the following payments are not to be regarded as remuneration—

(a) any fee or allowance paid by a local authority to a foster parent;

(b) payments wholly or mainly intended to reimburse the person for expenses which arise from, or are expected to arise from, the person's care of C;

(c) amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of C's care.

(8) In this regulation—

(a) "P" means any person who satisfies one of the conditions in paragraphs (1)(a) to (f);

(b) "partner" means a person (whether of a different sex or the same sex) who lives with C and P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (c);

(c) the relatives of P referred to in sub-paragraph (b) are P's parent, grandparent, sister, brother, aunt or uncle;

(d) references to relationships in sub-paragraph (c)—

(i) 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

(ii) include the relationship of a child with his adoptive, or former adoptive, parents;

but do not include any other adoptive relationships.

(**a**) S.I. 1995/755 (N.I. 2).

Number of weeks of pay

5. The number of weeks in respect of which a person is entitled to payments of statutory parental bereavement pay is two weeks.

Options in respect of payment of statutory parental bereavement pay

6. A person may choose for statutory parental bereavement pay to be paid in respect of—

(a) a single period of either one week or two weeks; or

(b) discontinuous periods of a week each.

Qualifying period

7. The qualifying period for the purposes of section 167ZZ12(5) of the 1992 Act (period within which statutory parental bereavement pay is payable) is a period of 56 weeks beginning with the date of C's death.

Notice and evidence requirements for statutory parental bereavement pay

8.—(1) The notice provided for in section 167ZZ10(1) of the 1992 Act (notice to be given stating the week or weeks in respect of which payments are to be made) must be given to whoever will be liable to pay statutory parental bereavement pay—

(a) before the end of the period of 28 days beginning with the first day of the period in respect of which payment of statutory parental bereavement pay is to be made; or

(b) in a case where it is not reasonably practicable for the person to give the notice in accordance with sub-paragraph (a), as soon as reasonably practicable.

(2) A person must provide evidence of entitlement to statutory parental bereavement pay by providing in writing to whoever will be liable to pay statutory parental bereavement pay—

(a) the information specified in paragraph (3); and

(b) a declaration that the person meets one of the conditions prescribed in regulation 4(1).

(3) The information referred to in paragraph (2)(a) is as follows—

(a) the name of the person claiming the statutory parental bereavement pay; and

(b) the date of C's death.

(4) The information referred to in paragraph (3) must be provided at the same time as a notice is given under paragraph (1).

(5) The declaration referred to in paragraph (2)(b) must be provided at the same time as a notice is first given under paragraph (1) in respect of C's death.

(6) Where notice under paragraph (1) is given prior to the start of the week or weeks specified in that notice, the person may withdraw that notice by giving notice of withdrawal in writing to the person who will be liable to pay statutory parental bereavement pay in the manner specified in paragraphs (7) and (8).

(7) Where the notice under paragraph (1) states two weeks in respect of which statutory parental bereavement pay is to be paid, notice of withdrawal may be given in relation to either one or both of those weeks, regardless of whether those weeks are consecutive or non-consecutive.

(8) Where the notice of withdrawal relates to a week which begins—

(a) in Period A, it must be given no later than on the first day of that week; and

(b) in Period B, it must be given no later than one week before the start of that week.

(9) In this regulation—

"Period A" means the period of 56 days beginning with the date of C's death;

"Period B" means the period beginning the day after the end of Period A and ending with the end of the period specified in regulation 7.

Cases where there is no liability to pay statutory parental bereavement pay

9.—(1) There is no liability to pay statutory parental bereavement pay to a person in respect of any week—

(a) during any part of which the person who is entitled to that pay is entitled to statutory sick pay under Part 11 of the 1992 Act;

(b) following that in which the person entitled to it has died; or

(c) during any part of which the person who is entitled to that pay is detained in legal custody (unless one of the circumstances in paragraph (2) applies) or sentenced to a term of imprisonment (except where the sentence is suspended).

(2) There is liability to pay statutory parental bereavement pay in respect of any week during any part of which the person who is entitled to that pay is detained in legal custody where that person—

(a) is released subsequently without charge;

(b) is subsequently found not guilty of any offence and is released; or

(c) is convicted of an offence but does not receive a custodial sentence.

Work during period of payment of statutory parental bereavement pay

10.—(1) Despite section 167ZZ12(8) of the 1992 Act (statutory parental bereavement pay not payable to a person in respect of a week during any part of which the person works for any employer who is not liable to pay the person statutory parental bereavement pay), statutory parental bereavement pay is payable to a person in respect of a statutory pay week(**a**) during any part of which the person works only for an employer—

(a) who is not liable to pay the person statutory parental bereavement pay; and

(b) for whom the person has worked in the week immediately preceding the week of C's death.

(2) Where a person works for an employer falling within paragraph (1)(a) but not paragraph (1)(b) for any part of a period which is specified by that person in a notice under regulation 8(1), the person must notify the employer liable to pay statutory parental bereavement pay of the fact of that work within seven days of the first day during which the person does such work.

(3) The notification mentioned in paragraph (2) must be in writing, if the employer who has been liable to pay statutory parental bereavement pay so requests.

PART 3

CONDITIONS OF ENTITLEMENT RELATING TO EMPLOYMENT AND EARNINGS

Treatment of persons as employees

11.—(1) A person is treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though not falling within the definition of 'employee' in section 167ZZ17(2) of that Act) where, and in so far as, that person is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978(**b**) (but see paragraph (3)).

(2) A person shall not be treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though falling within the definition of 'employee' in section 167ZZ17(2) of that Act) where,

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(**a**) For the definition of "statutory pay week", see section 167ZZ12 of the 1992 Act.

(**b**) S.R. 1978 No. 401, amended for relevant purposes by S.R. 1980 No. 405, S.R. 1990 No. 339, S.R. 1994 No. 92, S.R. 1998 No. 250, S.I. 2003/733, S.I 2003/2421, 2004/770, S.I. 2005/3134, S.I. 2006/1531 and S.I. 2014/635.

and in so far as, that person is not treated as an employed earner by the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (but see paragraph (3)).

(3) Paragraphs (1) and (2) shall have effect in relation to a person who—

(a) is under the age of 16; and

(b) would, or as the case may be, would not have been treated as an employed earner by virtue of those Regulations had they been over that age;

as they have effect in relation to a person who is, or as the case may be, is not treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978.

(4) A person is treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though not falling within the definition of 'employee' in section 167ZZ17(2) of that Act) where that person is in employed earner's employment under a contract of apprenticeship.

(5) A person is not to be treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though falling within the definition of 'employee' in section 167ZZ17(2) of that Act) where that person is in employed earner's employment but that person's employer—

(a) does not fulfil the conditions prescribed in regulation 145(1) (conditions as to residence or presence) of the Social Security (Contributions) Regulations 2001(**a**) in so far as that provision relates to residence or presence in Northern Ireland; or

(b) is a person who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—

(i) is exempt from the provisions of the 1992 Act; or

(ii) is a person against whom the provisions of the 1992 Act are not enforceable.

Continuous employment

12.—(1) A week is to be treated for the purposes of section 167ZZ9 of the 1992 Act as part of a period of continuous employment with the employer even though no contract of service exists with that employer in respect of that week in the circumstances mentioned in paragraph (2) and subject to paragraphs (3) and (4).

(2) The circumstances mentioned in paragraph (1) are that in any week the person is, for the whole or part of the week—

(a) incapable of work in consequence of sickness or injury;

(b) absent from work on account of a temporary cessation of work; or

(c) absent from work in circumstances such that, by arrangement or custom, that person is regarded as continuing in the employment of their employer for all or any purposes;

and returns to work for their employer after the incapacity for or absence from work.

(3) Incapacity for work which lasts for more than 26 consecutive weeks shall not count for the purposes of paragraph (2)(a).

(4) Where a person—

(a) is an employee in employed earner's employment in which the custom is for the employer—

(i) to offer work for a fixed period of not more than 26 consecutive weeks;

(ii) to offer work for such period on two or more occasions in a year for periods which do not overlap; and

(iii) to offer the work available to those persons who had worked for the employer during the last or a recent such period; but

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(**a**) S.I. 2001/1004; regulation 145 was amended by S.I. 2012/817.

(b) is absent from work because of incapacity arising from some specific disease or bodily or mental disablement;

then in that case paragraph (2) shall apply as if the words "and returns to work for their employer after the incapacity for or absence from work" were omitted.

Continuous employment and unfair dismissal

13.—(1) Where in consequence of specified action in relation to a person's dismissal, the person is reinstated or re-engaged by their employer or by a successor or associated employer of that employer then—

(a) the continuity of their employment shall be preserved for the purposes of section 167ZZ9 of the 1992 Act for the period beginning with the effective date of termination and ending with the date of reinstatement or re-engagement; and

(b) any week which falls within the interval beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, as the case may be, shall count in the computation of their period of continuous employment.

(2) In this regulation—

(a) "associated employer" shall be construed in accordance with Article 4 of the Employment Rights (Northern Ireland) Order 1996(**a**);

(b) "dismissal procedures agreement" and "successor" have the same meanings as in Article 2 of the Employment Rights (Northern Ireland) Order 1996;

(c) "specified action in relation to a person's dismissal" means action which consists of—

(i) the presentation by that person of a complaint under Article 145(1) (complaints to industrial tribunal) of the Employment Rights (Northern Ireland) Order 1996;

(ii) that person making a claim in accordance with a dismissal procedure agreement designated by an order under Article 142 of that Order(**b**); or

(iii) any action taken by a conciliation officer under Article 20 (conciliation) of the Industrial Tribunals (Northern Ireland) Order 1996(**c**).

Continuous employment and stoppages of work

14.—(1) Where a person does not work for any week or part of a week because there is a stoppage of work at that person's place of employment due to a trade dispute within the meaning of Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995(**d**) then—

(a) that person's continuity of employment shall be treated as continuing throughout the stoppage (but see paragraph (2)) for the purposes of section 167ZZ9 of the 1992 Act; and

(b) no such week shall count in the computation of their period of continuous employment (but see paragraph (3)).

(2) Where during the stoppage of work a person is dismissed from their employment, that person's continuity of employment shall not be treated under paragraph (1) as continuing beyond the commencement of the day that person stopped work (but see paragraph (3)).

(3) Paragraph (1)(b) and paragraph (2) do not apply to a person who proves that at no time did they have a direct interest in the trade dispute in question.

(**a**) S.I. 1996/1919 (N.I. 16).
(**b**) Article 142 was amended by the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)), Article 13(1) to (3) and (5).
(**c**) S.I. 1996/1921 (N.I. 18).
(**d**) S.I. 1995/2705 (N.I. 15).

Modification for periods of employment between 25 and 26 weeks

15.—(1) This regulation applies where a person has been in employed earner's employment with the same employer in each of 26 consecutive weeks (but no more than 26 weeks), ending with the week immediately preceding the week of C's death.

(2) For the purpose of determining whether that person's employment amounts to a continuous period of at least 26 weeks (see section 167ZZ9 of the 1992 Act), the first of those 26 weeks is a period commencing on the first day of the person's employment with the employer ("the start date") and ending at midnight on—

(a) the first Saturday after the start date; or

(b) where the start date is a Saturday, that day.

Change of employer

16.—(1) Where a person's employer changes, a person's employment is to be treated for the purposes of section 167ZZ9 of the 1992 Act as continuous employment with the second employer in the following circumstances—

(a) the employer's trade or business or an undertaking (whether or not it is an undertaking established by or under Northern Ireland legislation or an Act of Parliament) is transferred from one person to another;

(b) a contract of employment between any body corporate and the person is modified by or under Northern Ireland legislation or an Act of Parliament, whether public or local and whenever passed and some other body corporate is substituted as that person's employer;

(c) on the death of the employer, the person is taken into the employment of the personal representatives or trustees of the deceased;

(d) the person is employed by partners, personal representatives or trustees and there is a change in the partners, or as the case may be, personal representatives or trustees;

(e) the person is taken into the employment of an employer who is, at the time the person entered into the employer's employment, an associated employer of the person's previous employer; or

(f) on the termination of the person's employment with an employer that person is taken into the employment of another employer and those employers are governors of a school maintained by a local education authority.

(2) In paragraph (1)(e) "associated employer" must be construed in accordance with Article 4 of the Employment Rights (Northern Ireland) Order 1996.

Reinstatement after service with the armed forces

17. Where a person—

(a) is entitled to apply to their employer under the Reserve Forces (Safeguard of Employment) Act 1985(**a**); and

(b) enters the employment of that employer within the six month period mentioned in section 1(4)(b) (obligation to reinstate) of that Act;

that person's previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in that six month period shall be treated as continuous for the purposes of section 167ZZ9 of the 1992 Act.

(**a**) 1985 c. 17.

Treatment of two or more employers or two or more contracts of service as one

18.—(1) In a case where the earnings paid to a person in respect of two or more employments are aggregated and treated as a single payment of earnings under regulation 15(1) (aggregation of earnings paid in respect of different employed earner's employments by different persons) of the Social Security (Contributions) Regulations 2001, the employers of that person in respect of those employments shall be treated as one for the purposes of Part 12ZD of the 1992 Act (and these Regulations).

(2) Where two or more employers are treated as one under the provisions of paragraph (1), liability for statutory parental bereavement pay shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the person's normal weekly earnings from each employment bear to the amount of the aggregated normal weekly earnings over the relevant period as defined in regulation 19(4).

(3) Where two or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part 12ZD of the 1992 Act (and these Regulations) except where, by virtue of regulation 14 (aggregation of earnings paid in respect of separate employed earner's employments under the same employer) of the Social Security (Contributions) Regulations 2001, the earnings from those contracts of service are not aggregated for the purpose of earnings-related contributions.

Normal weekly earnings

19.—(1) For the purposes of section 167ZZ17(6) (which defines normal weekly earnings for the purposes of Part 12ZD of the 1992 Act) "earnings" and "relevant period" have the meanings given in this regulation.

(2) The expression "earnings" refers to gross earnings and includes any remuneration or profit derived from a person's employment except any amount which is—

(a) excluded from the computation of a person's earnings under regulation 25 (payments to be disregarded) of, and Schedule 3 to, the Social Security (Contributions) Regulations 2001 or regulation 27 (payments to directors to be disregarded)(**a**) of those Regulations (or would have been so excluded had they not been made under the age of 16); or

(b) a chargeable emolument under section 10A (class 1B contributions) of the 1992 Act(**b**) except where, in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory parental bereavement pay (or where such a payment or amount would have been so excluded and in consequence the person would not have been entitled to statutory parental bereavement pay had they not been aged under the age of 16).

(3) The expression "earnings" includes—

(a) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the 1992 Act(**c**);

(b) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the Employment Rights (Northern Ireland) Order 1996;

(c) any sum payable by way of pay in pursuance of an order made under the Employment Rights (Northern Ireland) Order 1996 for the continuation of a contract of employment;

(d) any sum payable by way of remuneration in pursuance of a protective award under Article 217 of the Employment Rights (Northern Ireland) Order 1996(**a**);

(**a**) Schedule 3 was amended by S.I. 2001/2412, 2001/3629, 2002/307, 2002/2924, 2003/1059, 2003/2085, 2003/2340, 2003/2985, 2004/173, 2004/770, 2004/2096, 2005/728, 2005/778, 2005/2422, 2005/3130, 2006/576, 2006/883, 2006/2003, 2006/2829, 2007/2091, 2007/2401, 2007/2905, 2008/607, 2008/1431, 2008/2624, 2009/600, 2010/188, 2011/225, 2011/797, 2011/1000, 2011/2700, 2012/817, 2013/622, 2013/1142, 2013/1907, 2014/608, 2014/3159, 2014/3228, 2015/478, 2015/543, 2016/352, 2016/647, 2016/1067, 2017/307, 2017/373, 2018/120; regulation 27 was amended by S.I. 2004/770, 2005/3130.

(**b**) Section 10A was inserted by the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), Article 50.

(**c**) Section 4B was inserted by the National Insurance Contributions Act 2006 (c. 10), section 2(1).

(e) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 147(6) of the 1992 Act(**b**);

(f) any sum payable by way of statutory maternity pay;

(g) any sum payable by way of statutory paternity pay;

(h) any sum payable by way of statutory shared parental pay;

(i) any sum payable by way of statutory adoption pay;

(j) any sum payable by way of statutory parental bereavement pay.

(4) The relevant period is the period—

(a) ending on the last normal pay day to fall before the appropriate date; and

(b) beginning with the day following the last normal pay day to fall at least eight weeks earlier than the normal pay day mentioned in sub-paragraph (a).

(5) In a case where a person has no identifiable normal pay day, paragraph (4) shall have effect as if the words "day of payment" were substituted for the words "normal pay day" in each place where they occur.

(6) In a case where a person has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) that person's normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(7) In a case to which paragraph (6) does not apply and the relevant period is not an exact number of weeks, the person's normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of days in the relevant period and multiplying the result by seven.

(8) In any case where a person receives a back-dated pay increase which includes a sum in respect of a relevant period, normal weekly earnings shall be calculated as if such a sum was paid in that relevant period even though received after that period.

(9) In paragraphs (4) to (6)—

(a) "the appropriate date" means the first day of the week in which C dies;

(b) "day of payment" means a day on which a person is paid;

(c) "normal pay day" means a day on which the terms of a person's contract of service require the person to be paid, or the practice in that person's employment is for that person to be paid if any payment is due to them.

PART 4

PAYMENT OF STATUTORY PARENTAL BEREAVEMENT PAY

Weekly rate of payment

20.—(1) The weekly rate of payment of statutory parental bereavement pay is the smaller of the following two amounts—

(a) £156.66;

(**a**) S.I. 1996/1919 (N.I. 16); Article 217(1) was substituted by, Article 217(1A) and (1B) was inserted by and paragraph (4) was amended by S.R. 1999 No. 432, and further amended by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), Sch. 2 para. 39.

(**b**) Section 147(6) was amended by paragraph 10 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I.1999/671).

(b) 90% of the normal weekly earnings of the person claiming statutory parental bereavement pay determined in accordance with section 167ZZ17(6) of the 1992 Act and regulation 19.

(2) Where the amount of any payment of statutory parental bereavement pay is calculated by reference to—

(a) the weekly rate specified in paragraph (1)(b); or

(b) the daily rate of one-seventh of the weekly rate specified in paragraph (1)(a) or (b),

and that amount includes a fraction of a penny, the payment shall be rounded up to the nearest whole number of pence.

Statutory parental bereavement pay and contractual remuneration

21. For the purposes of section 167ZZ14(1) and (2) of the 1992 Act (payment of contractual remuneration to go towards discharging liability to pay statutory parental bereavement pay and payment of statutory parental bereavement pay to go towards discharging liability to pay contractual remuneration), the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

(a) by way of remuneration;

(b) for incapacity for work due to sickness or injury; or

(c) by reason of the birth, adoption, care or death of a child.

Avoidance of liability for statutory parental bereavement pay

22.—(1) A former employer shall be liable to make payments of statutory parental bereavement pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and the employee's contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory parental bereavement pay.

(2) In a case falling within paragraph (1)—

(a) the employee shall be treated as if the employee had been employed for a continuous period ending with C's death; and

(b) regulation 19(4) (relevant period for the purpose of the calculation of normal weekly earnings) shall apply as if it read—

"(4) The relevant period is the period—

(a) ending on the last day of payment under the former contract of employment; and

(b) beginning with the day following the day of payment under that contract to fall at least 8 weeks earlier than the day of payment mentioned in sub-paragraph (a).".

Payment of statutory parental bereavement pay

23. Payments of statutory parental bereavement pay may be made in like manner to payments of remuneration but shall not include payment in kind or by way of the provision of board and lodgings.

Time when statutory parental bereavement pay is to be paid

24.—(1) In any case where—

(a) any decision has been made by an officer of Revenue and Customs under Article 7(1) (decisions by officers) of the Social Security Contributions (Transfer of Functions, etc.)

(Northern Ireland) Order 1999(**a**) as a result of which a person is entitled to an amount of statutory parental bereavement pay; and

(b) the time for bringing an appeal against the decision has expired and either—

(i) no such appeal has been brought;

(ii) leave to appeal against the decision is required and has been refused; or

(iii) such appeal has been brought and has been finally disposed of;

that amount statutory parental bereavement pay shall be paid within the time specified in paragraph (2).

(2) The employer or former employer shall pay the amount not later than the first pay day after the following days (but see paragraphs (3) and (4))—

(a) where an appeal has been brought, the day on which the employer or former employer receives notification that it has been finally disposed of;

(b) where leave to appeal has been refused, and there remains no further opportunity to apply for leave, the day on which the employer or former employer receives notification of the refusal; and

(c) in any other case, the day on which the time for bringing an appeal expires.

(3) Where it is impracticable, in view of the employer's or former employer's methods of accounting for and paying remuneration, for the requirement of payment referred to in paragraph (2) to be met by the pay day referred to in that paragraph, it shall be met not later than the next following pay day (but see paragraph (4)).

(4) Where the employer or former employer would not have remunerated the employee for their work in the week in respect of which statutory parental bereavement pay is payable as early as the pay day specified in paragraph (2) or (if it applies) paragraph (3), the requirement of payment shall be met on the first day on which the employee would have been remunerated for work in that week.

(5) In this regulation "pay day" means a day on which it has been agreed, or it is the normal practice between an employer or former employer and a person who is or was an employee of theirs, that payments by way of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a calendar month.

Liability of the Commissioners to pay statutory parental bereavement pay

25.—(1) Despite section 167ZZ11(1) of the 1992 Act (liability to make payments of statutory parental bereavement pay is liability of the employer), where the conditions in regulation 24(1)(a) and (b) are satisfied, liability to make payments of statutory parental bereavement pay to a person is to be the liability of the Commissioners and not the employer for—

(a) any week in respect of which the employer was liable to pay statutory parental bereavement pay to that person but did not do so; and

(b) for any subsequent week that person is entitled to payments of statutory parental bereavement pay.

(2) Despite section 167ZZ11(1) of the 1992 Act, liability to make payments of statutory parental bereavement pay to a person is to be a liability of the Commissioners and not the employer as from the week in which the employer first becomes insolvent (see paragraphs (3) and (4)) until the last week that person is entitled to payment of statutory parental bereavement pay.

(3) For the purposes of paragraph (2) an employer shall be taken to be insolvent if, and only if—

(a) the employer has been adjudged bankrupt or has made a composition or arrangement with its creditors;

(**a**) S.I. 1999/671; Article 7(1) was amended by 2006 (S.I. 2006/1947 (N.I. 16)), Schedule 1, paragraph 43(1) and (2) and by 2015 c. 1 (N.I.), Schedule 1, paragraph 5(1) and (2).

(b) the employer has died and the employer's estate falls to be administered in accordance with an order made under Article 365 of the Insolvency (Northern Ireland) Order 1989(**a**); or

(c) where an employer is a company or a limited liability partnership—

(i) a winding-up order is made or a resolution for a voluntary winding-up is passed (or, in the case of a limited liability partnership, a determination for voluntary winding-up has been made) with respect to it;

(ii) it enters administration;

(iii) a receiver or manager of its undertaking is duly appointed;

(iv) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company or limited liability partnership comprised in or subject to the charge; or

(v) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency (Northern Ireland) Order 1989 is approved under that Part.

Liability of the Commissioners to pay statutory parental bereavement pay in cases of legal custody or imprisonment

26. Where there is liability to pay statutory parental bereavement pay—

(a) in respect of a period which is subsequent to the period mentioned in paragraph (1)(c) of regulation 9 (cases where there is no liability to pay statutory parental bereavement pay); or

(b) during a period of detention in legal custody by virtue of paragraph (2) of that regulation;

that liability, despite section 167ZZ11(1) of the 1992 Act, shall be that of the Commissioners and not the employer.

Payments by the Commissioners

27. Where the Commissioners become liable in accordance with regulation 25 (liability of the Commissioners to pay statutory parental bereavement pay) or regulation 26 (liability of the Commissioners to pay statutory parental bereavement pay in case of legal custody or imprisonment) then payment is to be made as soon as reasonably practicable after they become so liable, by means of an instrument of payment or by such other means as appear to the Commissioners to be appropriate in the circumstances of any particular case.

Persons unable to act

28.—(1) This regulation applies where—

(a) statutory parental bereavement pay is payable to a person or it is alleged that statutory parental bereavement pay is payable to a person;

(b) that person is unable for the time being to act;

(c) no controller ad interim has been appointed by the Court with power to receive statutory parental bereavement pay on his behalf; and

(d) a written application has been made to the Commissioners by a person, who, if a natural person, is over the age of 18, to exercise any right, or deal with any sums payable, under Part 12ZD of the 1992 Act on behalf of the person unable to act.

(2) Where this regulation applies the Commissioners may appoint the person referred to in paragraph (1)(d)—

(**a**) S.I. 1989/2405 (N.I. 19).

(a) to exercise, on behalf of the person unable to act, any right to which the person unable to act may be entitled under Part 12ZD of the 1992 Act; and

(b) to deal, on behalf of the person unable to act, with any sums payable to the person unable to act under Part 12ZD of the 1992 Act.

(3) Where the Commissioners have made an appointment under paragraph (2)—

(a) they may at any time revoke it;

(b) the person appointed may resign their office after having given one month's notice in writing to the Commissioners of that person's intention to do so; and

(c) the appointment shall end when the Commissioners are notified that a deputy or other person to whom paragraph (1)(c) refers has been appointed.

(4) Anything required by Part 12ZD of the 1992 Act to be done by or to the person who is unable to act may be done by or to the person appointed under this regulation to act on behalf of the person unable to act, and the receipt of the person so appointed shall be a good discharge to the employer or former employer of the person unable to act for any sum paid.

Service of notices

29.—(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 that 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.

Expiry

30.—(1) These Regulations expire on 5th April 2026.

(2) This regulation does not affect the validity of anything done pursuant to these Regulations before they expire.

Sealed with the Official Seal of the Department for the Economy on 30th March 2022.

(L.S.)

Colin Jack
A senior officer of the
Department for the Economy

The Commissioners for Her Majesty's Revenue and Customs concur

29th March 2022

Penny Ciniewicz
Joanna Rowland
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations exercise powers inserted into the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (the "1992 Act") by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5), which provided for a new entitlement for bereaved parents who are employed earners to receive a statutory payment from their employers called statutory parental bereavement pay.

Part 1 is introductory and, in particular, defines certain terms and specifies when the new entitlement arises.

Part 2 (regulations 4 to 10) relates to the conditions for entitlement to statutory parental bereavement pay. Regulation 4 sets out the types of relationships with a child which qualify someone for entitlement when the child dies. This includes a child's legal parents (whether they are natural or adoptive parents) and natural parents who have lost their legal status as parents following an adoption or parental order, but in favour of whom a contact order has been made after the adoption. The entitlement also extends to adoptive and surrogate parents before a formal adoption or parental order is made, once the child is born (in the case of surrogacy) or (in the case of adoption) has been placed with them for adoption, or has entered Northern Ireland from abroad to live with them, prior to being adopted. In addition, individuals will be entitled if the child has been living with them, and they have had day to day responsibility for the child, for at least four weeks. The Regulations also confer entitlement on the partners of any of these parents.

Regulation 5 sets out how many weeks of statutory parental bereavement pay are available to a bereaved parent and Regulation 6 allows pay to be claimed for a single consecutive period, or for two non-consecutive blocks of a week each. Regulation 7 sets the qualifying period, within which statutory parental bereavement pay is payable, as a period of 56 weeks after the child's death.

Regulation 8 details what notices and information the bereaved parent must provide. Notice of the week or weeks in respect of which payments must be made must be given within 28 days of the start of that week (or those weeks), along with the parent's name and the date of the child's death. In addition, parents must provide a written declaration, on the first occasion that they give notice, that they meet one of the relevant conditions as to relationship with the child who has died. If notice has been given before the start of the statutory pay week, there is provision for parents to withdraw that notice. Regulation 9 sets out circumstances where there is no liability to make payments (including for example when the parent is entitled to statutory sick pay, or has died). Regulation 10 deals with further circumstances relating to such matters as work or absence from work which mean that pay may, or may not be, payable.

Part 3 (regulations 11 to 19) contains provisions with further detail on the conditions relating to employment and earnings that a bereaved parent must satisfy in order to be entitled to statutory parental bereavement pay. Regulation 11 provides that certain people are, or are not, to be regarded as 'employees' for the purposes of the 1992 Act regardless of whether or not they would otherwise meet the relevant definition of an employee in that Act. Regulations 12 to 14 make specific provision to ensure that certain weeks in which an employee is absent from work, without a contract of service which continues during that absence, nevertheless count towards the requirement of 26 weeks' continuous employment. Regulation 15 makes special provision for periods of employment which are between 25 and 26 weeks' long. Regulations 16 and 17 make provision for continuity of employment when the identity of an employer changes, or the person is reinstated following service with the armed forces. Regulation 18 sets out when two or more employers should be treated as a single employer for the purposes of the 1992 Act, and how liability for statutory pay is to be apportioned between them. It also provides for two or more contracts of service with a single employer to be treated as a single contract of service. Regulation 19 sets out details of what the terms 'earnings' and 'relevant period' (used in the 1992 Act) are to mean.

Part 4 (regulations 20 to 29) contains provisions as to the payment of statutory parental bereavement pay. Regulation 20 sets the weekly rate of payment. Regulation 21 sets out when contractual and statutory rights to parental bereavement pay can be set off against each other. Regulation 22 provides that an employer who deliberately dismisses a parent in order to avoid liability for pay remains liable for payments. Regulation 23 allows payments to be made in the same way as remuneration, but excludes the possibility of payments in kind or the provision of board and lodging as a form of payment. Regulation 24 sets out when payment must be made after a determination has been issued by an officer of Revenue and Customs. Regulations 25 and 26 set out the circumstances in which liability to make payments shifts to the Commissioners for Revenue and Customs. Regulation 27 makes provision for when those payments are to be made. Regulation 28 allows the Commissioners to appoint someone else to act on behalf of the parent who is entitled to receive pay, in certain circumstances when the parent is incapacitated. Regulation 29 provides details of when notices are to be regarded as given.

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment is the Parental Bereavement (Leave and Pay) Bill impact assessment which was published in April 2020. (Https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/equality-impact-assessment-parental-bereavement-leave-and-pay.pdf).

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