STATUTORY INSTRUMENTS

2014 No. 2929

TERMS AND CONDITIONS OF EMPLOYMENT

SOCIAL SECURITY

The Statutory Shared Parental Pay (Administration) Regulations 2014

Made - - - -	*5th November 2014*
Laid before Parliament	*7th November 2014*
Coming into force - -	*1st December 2014*

The Secretary of State makes these Regulations in exercise of powers conferred by sections 7, 8, 10 and 51(1) of the Employment Act 2002(**a**) and sections 8(1)(f) and (ga) and 25(3) and (6) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(**b**) with the concurrence of the Commissioners for Her Majesty's Revenue and Customs(**c**).

Citation and commencement

1. These Regulations may be cited as the Statutory Shared Parental Pay (Administration) Regulations 2014 and come into force on 1st December 2014.

Interpretation

2.—(1) In these Regulations—

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

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

"contributions payments" has the same meaning as in section 7 of the Employment Act 2002;

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001(**e**);

"income tax month" means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

(**a**) 2002 c.22. Sections 7, 8 and 10 were amended by the Children and Families Act 2014 (c. 6), Schedule 7, paragraphs 51 to 53.

(**b**) 1999 c.2. Section 8(1)(f) was amended by, and section 8(1)(ga) was inserted by, section 9(1) and (2) of the Employment Act 2002 and these provisions were further amended by the Children and Families Act 2014, Schedule 7 paragraph 45.

(**c**) Regulations made by the Secretary of State pursuant to sections 7, 8 and 10 of the Employment Act 2002 and to section 8(1)(f) of the Social Security Contributions (Transfer of Functions etc.) Act 1999 must, by virtue of those sections, be made with the concurrence of the Commissioners of Inland Revenue. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11) references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

(**d**) 1992 c.4.

(**e**) S.I. 2001/1004, to which there are amendments not relevant to these Regulations.

"income tax quarter" means the period beginning on—

(a) the 6th day of April and ending on the 5th day of July;

(b) the 6th day of July and ending on the 5th day of October;

(c) the 6th day of October and ending on the 5th day of January;

(d) the 6th day of January and ending on the 5th day of April;

"period of payment of statutory shared parental pay" means each week during which statutory shared parental pay is payable to a person under section 171ZY(2) of the 1992 Act(**a**);

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

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

"writing" includes writing delivered by means of electronic communications to the extent that the electronic communications are approved by directions issued by the Commissioners pursuant to regulations under section 132 of the Finance Act 1999(**c**).

(2) Any reference in these Regulations to the employees of an employer includes the employer's former employees(**d**).

Funding of employers' liabilities to make payments of statutory shared parental pay

3.—(1) An employer who has made any payment of statutory shared parental pay shall be entitled—

(a) to an amount equal to 92% of such payment; or

(b) if the payment qualifies for small employer's relief by virtue of section 7(3) of the Employment Act 2002—

(i) to an amount equal to such payment; and

(ii) to an additional payment equal to the amount to which the employer would have been entitled under section 167(2)(b) of the 1992 Act had the payment been a payment of statutory maternity pay.

(2) The employer shall be entitled in either case (a) or case (b) to apply for advance funding in respect of such payment in accordance with regulation 4, or to deduct it in accordance with regulation 5 from amounts otherwise payable by the employer.

Applications for funding from the Commissioners

4.—(1) An employer may apply to the Commissioners for funds to pay the statutory shared parental pay (or so much of it as remains outstanding) to the employee or employees in a form approved for that purpose by the Commissioners where—

(a) the conditions in paragraph (2) are satisfied; or

(b) the condition in paragraph (2)(a) is satisfied and the employer considers that the condition in paragraph (2)(b) will be satisfied on the date of any subsequent payment of emoluments to one or more employees who are entitled to payment of statutory shared parental pay.

(2) The conditions in this paragraph are—

(a) the employer is entitled to a payment determined in accordance with regulation 3 in respect of statutory shared parental pay which the employer is required to pay to an employee or employees for an income tax month or income tax quarter; and

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(**a**) Section 171ZY was inserted by section 119 of the Children and Families Act 2014.
(**b**) Part 12ZC was inserted by section 119 of the Children and Families Act 2014 and is applied by S.I. 2003/499 and S.I. 2014/2866.
(**c**) 1999 c.16; section 132 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 156.
(**d**) "employee" and "employer" are defined in section 16 of the Employment Act 2002.

(b) the payment exceeds the aggregate of—

(i) the total amount of tax which the employer is required to pay to the collector of taxes in respect of the deduction from the emoluments of employees in accordance with the Income Tax (Pay as You Earn) Regulations 2003(**a**) for the same income tax month or income tax quarter;

(ii) the total amount of the deductions made by the employer from the emoluments of employees for the same income tax month or income tax quarter in accordance with regulations under section 22(5) of the Teaching and Higher Education Act 1998(**b**) or under section 73B of the Education (Scotland) Act 1980(**c**) or in accordance with article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998(**d**);

(iii) the total amount of contributions payments which the employer is required to pay to the collector of taxes in respect of the emoluments of employees (whether by means of deduction or otherwise) in accordance with the Contributions Regulations for the same income tax month or income tax quarter; and

(iv) the total amount of payments which the employer is required to pay to the collector of taxes in respect of the deductions made on account of tax from payments to sub-contractors in accordance with section 61 of the Finance Act 2004(**e**) for the same income tax month or income quarter.

(3) An application by an employer under paragraph (1) shall be for an amount up to, but not exceeding, the amount of the payment to which the employer is entitled in accordance with regulation 3 in respect of statutory shared parental pay which the employer is required to pay to an employee or employees for the income tax month or income tax quarter to which the payment of emoluments relates.

Deductions from payments to the Commissioners

5. An employer who is entitled to a payment determined in accordance with regulation 3 may recover such payment by making one or more deductions from the aggregate of the amounts specified in sub-paragraphs (i) to (iv) of regulation 4(2)(b) except where and in so far as—

(a) those amounts relate to earnings paid before the beginning of the income tax month or income tax quarter in which the payment of statutory shared parental pay was made;

(b) those amounts are paid by the employer later than six years after the end of the tax year in which the payment of statutory shared parental pay was made;

(c) the employer has received payment from the Commissioners under regulation 4; or

(d) the employer has made a request in writing under regulation 4 that the payment to which the employer is entitled in accordance with regulation 3 be paid and the employer has not received notification by the Commissioners that the request is refused.

Payments to employers by the Commissioners

6. The Commissioners shall pay the employer such amount as the employer was unable to deduct where—

(a) the Commissioners are satisfied that the total amount which the employer is or would otherwise be entitled to deduct under regulation 5 is less than the payment to which the employer is entitled in accordance with regulation 3 in an income tax month or income tax quarter; and

(b) the employer has in writing requested the Commissioners to do so.

(**a**) S.I. 2003/2682.
(**b**) 1998 c.30; section 22(5) was amended by the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 236(a).
(**c**) 1980 c.44; section 73B was inserted by section 29 of the Teaching and Higher Education Act 1998.
(**d**) S.I. 1998/1760 (N.I. 14).
(**e**) 2004 c.12.

Date when certain contributions are to be treated as paid

7. Where an employee has made a deduction from a contributions payment under regulation 5, the date on which it is to be treated as having been paid for the purposes of subsection (5) of section 7 (funding of employers' liabilities) of the Employment 2002 is—

(a) in a case where the deduction did not extinguish the contributions payment, the date on which the remainder of the contributions payment or, as the case may be, the first date on which any part of the remainder of the contributions payment was paid; and

(b) in a case where deduction extinguished the contributions payment, the 14th day after the end of the income tax month or income tax quarter during which there were paid the earnings in respect of which the contributions payment was payable.

Overpayments

8.—(1) This regulation applies where funds have been provided to the employer pursuant to regulation 4 in respect of one or more employees and it appears to an officer of Revenue and Customs that the employer has not used the whole or part of those funds to pay statutory shared parental pay.

(2) An officer of Revenue and Customs shall decide to the best of the officer's judgement the amount of funds provided pursuant to regulation 4 and not used to pay statutory shared parental pay and shall serve notice in writing of this decision on the employer.

(3) A decision under this regulation may cover funds provided pursuant to regulation 4—

(a) for any one income tax month or income tax quarter, or more than one income tax month or income tax quarter, in a tax year; and

(b) in respect of a class or classes of employees specified in the decision notice (without naming the individual employees), or in respect of one or more employees named in the decision notice.

(4) Subject to the following provisions of this regulation, Part 6 of the Taxes Management Act 1970(**a**) (collection and recovery) shall apply with any necessary modifications to a decision under this regulation as if it were an assessment and as if the amount of funds determined were income tax charged on the employer.

(5) Where an amount of funds determined under this regulation relates to more than one employee, proceedings may be brought for the recovery of that amount without distinguishing the amounts making up that sum which the employer is liable to repay in respect of each employee and without specifying the employee in question, and the amount determined under this regulation shall be one cause of action or one matter of complaint for the purposes of proceedings under section 65, 66 or 67 of the Taxes Management Act 1970(**b**).

(6) Nothing in paragraph (5) prevents the bringing of separate proceedings for the recovery of any amount which the employer is liable to repay in respect of each employee.

Records to be maintained by employers

9. Every employer shall maintain for three years after the end of a tax year in which the employer made payments of statutory shared parental pay to any employee a record of—

(a) if the employee's period of payment of statutory shared parental pay began in that year—

(i) the date of which that period began; and

(**a**) 1970 c.9.

(**b**) Section 65 was amended by section 57(1) of the Finance Act 1984 (c.43) and paragraph 30 of Schedule 19 to the Finance Act 1998.; section 66 was amended by section 57(2) of the Finance Act 1984, section 137(2) of the Finance Act 2008 (c.9), Schedule 9 to the Crime and Courts Act 2013 (c.22) and the Schedule to S.I. 1991/724, and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001 (c.9.); section 67 was amended by section 58 of the Finance Act 1976 (c.14) and partly repealed by Schedule 15 to that Act, further amended by section 156 of the Finance Act 1995 (c.4) and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001.

(ii) the evidence of entitlement to statutory shared parental pay provided by the employee pursuant to regulations made under section 171ZW(1)(b) of the 1992 Act(**a**);

(b) the weeks in that tax year in which statutory shared parental pay was paid to the employee and the amount paid in each week;

(c) any week in that tax year which was within the employee's period of payment of statutory shared parental pay but for which no payment of statutory shared parental pay was made to the employee and the reason no payment was made.

Inspection of employers' records

10.—(1) Every employer, whenever called upon to do so by any authorised officer of Revenue and Customs, shall produce the documents and records specified in paragraph (2) to that officer for inspection, at such time as that officer may reasonably require, at the prescribed place.

(2) The documents and records specified in this paragraph are—

(a) all wage sheets, deductions working sheets, records kept in accordance with regulation 9 and other documents relating to the calculation or payment of statutory shared parental pay to employees in respect of the years specified by such officer; or

(b) such of those wages sheets, deductions working sheets, or other documents and records as may be specified by the authorised officer.

(3) The "prescribed place" mentioned in paragraph (1) means—

(a) such place in Great Britain as the employer and the authorised officer may agree upon; or

(b) in default of such agreement, the place in Great Britain at which the documents and records referred to in paragraph (2)(a) are normally kept; or

(c) in default of such agreement and if there is no such place as it referred to in sub-paragraph (b), the employer's principal place of business in Great Britain.

(4) The authorised officer may—

(a) take copies of, or make extracts from, any document or record produced to the authorised officer for inspection in accordance with paragraph (1); and

(b) remove any document or record so produced if it appears to the authorised officer to be necessary to do so, at a reasonable time and for a reasonable period.

(5) Where any document or record is removed in accordance with paragraph (4)(b), the authorised officer shall provide—

(a) a receipt for the document or record so removed; and

(b) a copy of the document or record, free of charge, within seven days, to the person by whom it was produced or caused to be produced where the document or record is reasonably required for the proper conduct of business.

(6) Where a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) shall not be regarded as breaking the lien.

(7) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.

Provision of information relating to entitlement to statutory shared parental pay

11.—(1) An employer shall furnish the employee with details of a decision that the employer has no liability to make payments of statutory shared parental pay to the employee and the reason for it where the employer—

(**a**) Section 171ZW was inserted by section 119 of the Children and Families Act 2014.

(a) has been given evidence of entitlement to statutory shared parental pay pursuant to regulations made under section 171ZW(1)(b) of the 1992 Act; and

(b) decides that they have no liability to make payments of statutory shared parental pay to the employee.

(2) An employer who has been given such evidence of entitlement to statutory shared parental pay shall furnish the employee with the information specified in paragraph (3) where the employer—

(a) has made one or more payments of statutory shared parental pay to the employee but,

(b) decides, before the end of the period of payment of statutory shared parental pay, that they have no liability to make further payments to the employee because the employee has been detained in legal custody or sentenced to a term of imprisonment which was not suspended.

(3) The information specified in this paragraph is—

(a) details of the employer's decision and the reasons for it; and

(b) details of the last week in respect of which a liability to pay statutory shared parental pay arose and the total number of weeks within the period of payment of statutory shared parental pay in which such liability arose.

(4) The employer shall—

(a) return to the employee any evidence provided by the employee as referred to in paragraph (1) or (2);

(b) comply with the requirements imposed by paragraph (1) within 28 days of the day the employee gave evidence of entitlement to statutory shared parental pay pursuant to regulations made under section 171ZW(1)(b) of the 1992 Act; and

(c) comply with the requirements imposed by paragraph (2) within seven days of being notified of the employee's detention or sentence.

Application for the determination of any issue arising as to, or in connection with, entitlement to statutory shared parental pay

12.—(1) An application for the determination of any issue arising as to, or in connection with, entitlement to statutory shared parental pay may be submitted to an officer of Revenue and Customs by the employee concerned.

(2) Such an issue shall be decided by an officer of Revenue and Customs only on the basis of such an application or on their own initiative.

Applications in connection with statutory shared parental pay

13.—(1) An application for the determination of any issue referred to in regulation 12 shall be made in a form approved for the purpose by the Commissioners.

(2) Where such an application is made by an employee, it shall—

(a) be made to an officer of Revenue and Customs within six months of the earliest day in respect of which entitlement to statutory shared parental pay is an issue;

(b) state the period in respect of which entitlement to statutory shared parental pay is in issue; and

(c) state the grounds (if any) on which the applicant's employer had denied liability for statutory shared parental pay in respect of the period specified in the application.

Provision of information

14.—(1) Where an officer of Revenue and Customs—

(a) reasonably requires information or documents from a person specified in paragraph (2) to ascertain whether statutory shared parental pay is or was payable, and

(b) gives notification to that person requesting such information or documents,

that person shall furnish that information within 30 days of receiving the notification.

(2) The requirement to provide such information or documents applies to—

(a) any person claiming to be entitled to statutory shared parental pay;

(b) any person who is, or has been, the spouse, civil partner or partner of such a person as is specified in sub-paragraph (a);

(c) any person who is, or has been, an employer of such a person as is specified in sub-paragraph (a);

(d) any person carrying on an agency or other business for the introduction or supply of persons available to do work or to perform services to persons requiring them; and

(e) any person who is a servant or agent of any such person as is specified in sub-paragraphs (a) to (d).

The Commissioners for Her Majesty's Revenue and Customs hereby concur

Jim Harra
Ruth Owen
4th November 2014 Two Commissioners for Her Majesty's Revenue and Customs

Jo Swinson
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
5th November 2014 Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the funding of employers' liabilities to make payments of statutory shared parental pay; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners").

Under regulation 3, an employer is entitled to an amount equal to 92 per cent. of payments made by the employer of statutory shared parental pay, or the whole of such payments if the employer is a small employer. Regulations 4 to 7 provide for employers to be reimbursed through deductions from income tax, national insurance and other payments that they would otherwise make to the Commissioners, and for the Commissioners to fund payments to the extent that employers cannot be fully reimbursed in this way. Regulation 8 enables the Commissioners to recover overpayments to employers.

Regulation 9 requires employers to maintain records relevant to the payment of statutory shared parental pay to employees or former employees, and regulation 10 empowers officers of Revenue and Customs to inspect, copy or remove employers' payment records.

Regulation 11 requires an employer who decides not to make any, or any further, payments of statutory shared parental pay to an employee or a former employee to give that person the details of the decision and the reasons for it. Regulations 12 and 13 provide for officers of Revenue and Customs to determine issues relating to a person's entitlement to statutory shared parental pay. Regulation 14 provides for employers, employment agencies, persons claiming statutory shared parental pay and others to furnish information or documents to an officer of Revenue and Customs on request.

A separate impact assessment has not been prepared for these Regulations. The Regulations are part of a package of legislative measures and 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 Markets Directorate, 1 Victoria Street, London SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.

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