Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Shared Parental Pay (General) Regulations 2014

Made - - - -	***
Coming into force - -	*1st December 2014*

A draft of these Regulations was laid before Parliament in accordance with section 176(1) of the Social Security Contributions and Benefits Act 1992(**1**) and approved by resolution of each House of Parliament.

This instrument contains only regulations made by virtue of, or consequential upon, section 119 of the Children and Families Act 2014(**2**) and is made before the end of the period of 6 months beginning with the coming into force of that enactment(**3**).

The Secretary of State, in exercise of the powers conferred by sections 171ZU(1), (2), (3), (4), (5), (12), (13), (14) and (15), 171ZV(1), (2), (3), (4), (5), (12), (13), (14), (15) and (17), 171ZW(1)(a) to (f), 171ZX(2) and (3), 171ZY(1), (3), (4) and (5), 171ZZ1(3), 171ZZ4(3), (4), (7) and (8) and 175(3) of the Social Security Contributions and Benefits Act 1992(**4**) and by section 5(1)(g), (i), (l) and (p) of the Social Security Administration Act 1992(**5**) and with the concurrence of the Commissioners for Her Majesty's Revenue and Customs in so far as such concurrence is required, makes the following Regulations:

(**1**) 1992 c.4; see section 171ZZ4(1) for the definition of "prescribed"; under section 175(1) regulations are made by the Secretary of State.
(**2**) 2014 c.6.
(**3**) See section 173(5) of the Social Security Administration Act 1992 (c.5). Pursuant to section 172 of that Act, where the Secretary of State proposes to make regulations under the Social Security Contributions and Benefits Act 1992, the Secretary of State is required to refer such proposals, normally in the form of draft regulations, to the Social Security Advisory Committee. This requirement does not apply where the regulations are contained in a statutory instrument made before the end of a period of six months beginning with the coming into force of the enactments by virtue or as a consequence of which the regulations are being made.
(**4**) Section 171ZU to section 171ZZ5 were inserted by the Children and Families Act 2014.
(**5**) 1992 c.5; section 5(5) was amended by the Children and Families Act 2014, Schedule 7, paragraph 24.

PART 1

GENERAL

Citation and commencement

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

Definitions

2.—(1) In these Regulations—

"1992 Act" means the Social Security Contributions and Benefits Act 1992;

"A" means a person with whom C is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;

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

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

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

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

"actual week of birth", in relation to a child, means the week beginning with midnight between Saturday and Sunday, in which the child was born;

"adoption agency" has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002(**6**) and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007(**7**);

"child", in relation to A, means a person who is, or when placed with A for adoption was, under the age of 18;

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

"expected week of birth", in relation to a child, means the week, beginning with midnight between Saturday and Sunday, in which, as appropriate, it is expected that the child will be born, or was expected that the child would be born;

"partner", in relation to M or A, means a person (whether of a different sex or the same sex) who lives with, as the case may be, M or A as well as C in an enduring family relationship but is not a relative of M or A of a kind specified in paragraph (2);

"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(**8**) 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(**9**);

(**6**) 2002 c.38.
(**7**) 2007 asp 4.
(**8**) 1989 c.41; section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c.23).
(**9**) 1998 c.29.

"shared parental leave" means leave under section 75E or 75G of the Employment Rights Act 1996(**10**);

"statutory shared parental pay" means statutory shared parental pay payable in accordance with Part 12ZC of the 1992 Act(**11**);

"statutory shared parental pay (adoption)" means statutory shared parental pay payable where entitlement to that pay arises under regulation 17 or 18;

"statutory shared parental pay (birth)" means statutory shared parental pay payable where entitlement to that pay arises under regulation 4 or 5;

"week" in Parts 2, 3 and 5 means a period of seven days.

(2) The relatives of M or A referred to in the definition of "partner" in paragraph (1) are M's, or, A's parent, grandparent, sister, brother, aunt, uncle, child, grandchild, niece or nephew.

(3) References to relationships in paragraph (2)—

(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 his adoptive, or former adoptive parents, but do not include any other adoptive relationship.

(4) For the purpose of these Regulations—

(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;

(b) in a case where paragraph (a) applies, a person is notified as having been matched with a child on the date that person receives notification of the agency's decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005(**12**), regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(**13**) or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(**14**);

(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(**15**) 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(**16**);

(d) in a case where paragraph (c) applies, a person is notified as 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.

(5) 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(**17**).

(6) 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(**18**).

(**10**) 1996 c.18; section 75E and 75G were inserted by the Children and Families Act 2014, section 117(1).
(**11**) Part 12ZC was inserted by section 119 of the Children and Families Act 2014.
(**12**) S.I. 2005/389.
(**13**) S.I. 2005/1313.
(**14**) S.S.I. 2009/154.
(**15**) S.I. 2010/959; amended by S.I. 2014/1556; there is another amending instrument but it is not relevant.
(**16**) S. I. 2005/389; amended by S.I. 2014/1556; there are other amending instruments but none is relevant.
(**17**) 1989 c.41; paragraph 12F was inserted by the Children and Young Persons Act 2008, Schedule 1, paragraph 4.
(**18**) S.I. 2005/389: amended by S.I. 2014/1556; there are other amending instruments but none is relevant.

Application

3. These Regulations apply in relation to—

(a) statutory shared parental pay (birth) in respect of children whose expected week of birth begins on or after 5th April 2015;

(b) statutory shared parental pay (adoption) in respect of children placed for adoption on or after 5th April 2015.

PART 2

ENTITLEMENT TO STATUTORY SHARED PARENTAL PAY (BIRTH)

Entitlement of mother to statutory shared parental pay (birth)

4.—(1) M is entitled to statutory shared parental pay (birth) if M satisfies the conditions specified in paragraph (2) and if P satisfies the conditions specified in paragraphs (3).

(2) The conditions referred to in paragraph (1) are that—

(a) M satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 30;

(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 has complied with the requirements specified in regulation 6 (notification and evidential requirements of M)**;**

(d) M became entitled by reference to the birth or expected birth of C to statutory maternity pay in respect of C;

(e) the maternity pay period that applies as a result of M's entitlement to statutory maternity pay is, and continues to be, reduced under section 165(3A) of the 1992 Act(**19**);

(f) it is M's intention to care for C during each week in respect of which statutory shared parental pay (birth) is paid to her;

(g) M is absent from work during each week in respect of which statutory shared parental pay (birth) is paid to her (except in the cases referred to in regulation 15 (entitlement to shared parental pay: absence from work)); and

(h) where M is an employee (within the meaning of the Employment Rights Act 1996) M's absence from work as an employee during each week that statutory shared parental pay (birth) is paid to her is absence on shared parental leave in respect of C;

(3) The conditions referred to in paragraph (1) are that—

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

(b) P satisfies the conditions relating to employment and earnings in regulation 29 (conditions as to employment and earnings of claimant's partner).

Entitlement of father or partner to statutory shared parental pay (birth)

5.—(1) P is entitled to statutory shared parental pay (birth) if P satisfies the conditions specified in paragraph (2) and M satisfies the conditions specified in paragraph (3).

(2) The conditions specified in paragraph (1) are that—

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

(a) P satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 30;

(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 the requirements specified in regulation 7 (notification and evidential requirements of P);

(d) it is P's intention to care for C during each week in respect of which statutory shared parental pay (birth) is paid to P;

(e) P is absent from work during each week in respect of which statutory shared parental pay (birth) is paid to P (except in the cases referred to in regulation 15 (entitlement to statutory shared parental pay: absence from work)); and

(f) where P is an employee (within the meaning of the Employment Rights Act 1996(**20**) P's absence from work as an employee during each week that statutory shared parental pay (birth) is paid to P is absence on shared parental leave in respect of C.

(3) The conditions specified in paragraph (1) are—

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

(b) M meets the conditions as to employment and earnings in regulation 29 (conditions as to employment and earnings of claimant's partner);

(c) M became entitled by reference to the birth, or expected birth, of C to statutory maternity pay or maternity allowance; and

(d) the maternity pay period or the maternity allowance period which applies to M as a result of her entitlement to statutory maternity pay or maternity allowance is, and continues to be, reduced under sections 35(3A) or 165(3A) of the 1992 Act(**21**).

Notification and evidential requirements relating to the mother

6.—(1) The notice and evidential requirements referred to in regulation 4(2)(c) are that M gives the employer(**22**) who will be liable to pay statutory shared parental pay (birth) to M the notice and information specified in—

(a) paragraphs (2) and (3)(a), (b), (d) and (e) at least 8 weeks before the beginning of the first period specified by M pursuant to paragraph (2)(d);

(b) paragraph (3)(c) at least 8 weeks before the beginning of the first period specified by M pursuant to paragraph (2)(d) or, where C is not born by that time, as soon as reasonably practicable after the birth of C but in any event before the beginning of that first period; and

(c) paragraph (4) within 14 days of that employer requesting that information where the employer requests it within 14 days of receiving the notice and information specified in paragraph (2) and (3)(a),(b),(d) and (e).

(2) The notice specified in this paragraph is notice of—

(a) the number of weeks in respect of which M would be entitled to claim statutory shared parental pay (birth) in respect of C if entitlement were fully exercised disregarding any intention of P to claim statutory shared parental pay in respect of C;

(b) the number of weeks out of those specified under sub-paragraph (a) in respect of which M intends to claim statutory shared parental pay (birth) in respect of C;

(**20**) 1996 c.18.
(**21**) Section 35(3A) was inserted by section 120(2) of the Children and Families Act 2014.
(**22**) 'employer' is construed in accordance with section 171ZZ4(1) of the Social Security Contributions and Benefits Act 1992.