STATUTORY RULES OF NORTHERN IRELAND

# 2015 No. 93

# EMPLOYMENT

## WORK AND FAMILIES

# The Shared Parental Leave Regulations (Northern Ireland) 2015

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| *Made - - - -* | *2nd March 2015* |
| *Coming into operation* | *15th March 2015* |

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by Articles 70C(2), 107E, 107F(1), (4), (7) to (14), and (16), 107G(1) to (6), 107H(1) and (3), 107(I)(1), (4), (7) to (14), and (16), 107K(1), (4), and (5), 107L, 107M(1) and 131 of the Employment Rights (Northern Ireland) Order 1996 [F1].

**F1** S.I. 1996/1919 (N.I. 16). Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), **Schedule 4**, Part 3, paragraph 3 and amended for relevant purposes by 2015 c. 1 (N.I.), **Schedule 1**, paragraph 4(5). Articles 107E to 107M were inserted by 2015 c. 1 (N.I.), **section 2**. Article 131 was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), **Schedule 4**, Part 3, paragraph 8, and amended for relevant purposes by the Work and Families Act (Northern Ireland) 2015 (c. 1), **Schedule 1**, paragraph 16.

**Modifications etc. (not altering text)**

**C1** Regulations applied in part (with modifications) (15.3.2015) by The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015 (S.R. 2015/101), **regs. 5**, 20-33 (as amended (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 13**)

**C2** Regulations applied in part (with modifications) (5.4.2015) by The Shared Parental Leave and Paternity and Adoption Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2015 (S.R. 2015/98), **regs. 7-21**

**C3** Regulations: amendment to earlier affecting provision S.I. 2014/3095, **reg. 2** (3.1.2019) by The Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018/1413), art. 1(1), **Sch. 2 para. 13**

# PART 1

## GENERAL

### Citation and commencement

**1.** These Regulations may be cited as the Shared Parental Leave Regulations (Northern Ireland) 2015 and come into operation on 15th March 2015.

### Application

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

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

(3) Regulation 42 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 15th March 2015.

(4) Regulation 43 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of Article 129 of the 1996 Order [F2]) falls on or after 15th March 2015.

**F2** Article 129 was amended by S.I. 1999/2790 (N.I. 9), **Schedule 9**, paragraph 2, and S.R. 2002 No. 298.

### Interpretation

**3.**—(1) In these Regulations—

"1992 Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 [F3];

"1996 Order" means the Employment Rights (Northern Ireland) Order 1996;

"A", in relation to C, means the person with whom C is, or is expected to be, placed for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 [F4];

"adoption agency" has the meaning given—

(a) in relation to Northern Ireland, by Article 3(3) of the Adoption (Northern Ireland) Order 1987 [F5];

(b) in relation to England and Wales, by section 2(1) of the Adoption and Children Act 2002 [F6]; and

(c) in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007 [F7];

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

"allowance curtailment date" means the last day of M's maternity allowance period where that period has been reduced under section 35(3A) of the 1992 Act [F8];

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

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

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

"leave curtailment date" means—

(a) in Part 2, the last day of M's statutory maternity leave period where that period has been curtailed under Article 103(3)(ba) or 105(3)(a) of the 1996 Order [F9];

(b) in Part 3, the last day of A's statutory adoption leave period where that period has been curtailed under Article 107A(2A)(a) or 107B(3)(aa) of the 1996 Order [F10];

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

"maternity allowance" means a maternity allowance under section 35(1) of the 1992 Act [F11];

"maternity allowance period" means the period referred to in section 35(2) of the 1992 Act [F12];

"maternity pay period" has the meaning given by regulation 2 of the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987 [F13];

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

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

"pay curtailment date" means—

(a) in Part 2, the last day of M's maternity pay period where that period has been reduced under section 161(3A) of the 1992 Act [F14];

(b) in Part 3, the last day of A's adoption pay period where that period has been reduced under section 167ZN(2A) [F15];

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

"placed for adoption" means—

(a) placed for adoption by virtue of regulation 12 of the Adoption Agencies Regulations (Northern Ireland) 1989 [F16];

(b) placed by an authority with a person who is an approved foster parent who is also an approved prospective adopter [F17] where the authority—

(i) is considering adoption for the child; or

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

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

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

(d) placed in accordance with section 22C of the Children Act 1989 [F18] 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 [F19];

"returned after being placed for adoption" means—

(a) returned to the authority under Article 31(3) of the Adoption (Northern Ireland) Order 1987 [F20];

(b) where the child is placed for adoption in the circumstances described in paragraph (b) of the definition of "placed for adoption", returned to the authority following termination of the placement;

(c) returned under sections 31 to 35 of the Adoption and Children Act 2002;

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

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

"revocation notice" means a notice given under Article 103(3)(bb), 105(3)(aa), 107A(2A)(b), or 107B(3)(aa) of the 1996 Order [F21] or section 35(3D), 161(3D), or 167ZN(2D) of the 1992 Act [F22], as the case may be, which revokes a notice previously given under that section;

"shared parental leave" means leave under section 107E or 107G of the 1996 Order;

"statutory adoption leave" means ordinary adoption leave under Article 107A of the 1996 Order or additional adoption leave under Article 107B of that Order;

"statutory adoption pay" has the meaning given in section 167ZL of the 1992 Act [F23];

"statutory maternity leave" means ordinary maternity leave under Article 103 of the 1996 Order or additional maternity leave under Article 105 of that Order [F24];

"statutory maternity pay" has the meaning given in section 160(1) of the 1992 Act; and

"statutory shared parental pay" means any pay payable in accordance with the provisions of Part 12ZC of the 1992 Act [F25].

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

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

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

(3) For the purposes of these Regulations—

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

(b) in a case where sub-paragraph (a) applies, a person is notified of having been matched with a child on the date on which that person receives notification of the agency's decision, under regulation 11(2)(d) of the Adoption Agencies Regulations (Northern Ireland) 1989 [F26], regulation 33(3)(a) of the Adoption Agencies Regulations 2005 [F27], regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005 [F28], or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009 [F29];

(c) a person is also matched with a child where each of the following conditions is met—

(i) that person is an approved foster parent and an approved prospective adopter, and the child is, or is expected to be, placed by the authority with that person under Article 27(2)(a) of the Children (Northern Ireland) Order 1995 [F30];

(ii) the authority—

(aa) is considering adoption for the child; or

(bb) is satisfied that adoption is in the best interests of the child;

(iii) the authority is considering whether that person would be a suitable adoptive parent for that child;

(d) in a case where sub-paragraph (c) applies, a person is notified as having been matched with a child on the date on which that person receives notification from the authority that the conditions in that sub-paragraph have been met;

(e) 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 [F31] 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 [F32];

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

(4) In paragraph (d) of the definition of "placed for adoption" in paragraph (1)—

"local authority foster parent" 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 [F33];

"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 [F34].

**F3** 1992 c. 7.
**F4** S.R. 2002 No. 377; election is dealt with in regulation 2(4)(c) of those Regulations.
**F5** S.I. 1987/2203 (N.I. 22).
**F6** 2002 c. 38.
**F7** 2007 asp 4.
**F8** Section 35(3A) was inserted 2015 c. 1 (N.I.), **section 6(2)**.
**F9** Article 103(3)(ba) was inserted, and Article 105(3)(a) amended, by 2015 c. 1 (N.I.), **section 3(2)** and (3) respectively.
**F10** Articles 107A and 107B were inserted by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), **Article 3**. Article 107A(2A) was inserted by the Work and Families (Northern Ireland) Order 2006 (S.I 2006/1947 (N.I. 16)), Schedule 1, paragraph 32. Article 107A(2A)(a) and Article 107B(3)(aa) were inserted by 2015 c. 1 (N.I.), **section 3(4)** and (5) (respectively).
**F11** Section 35(1) was substituted by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), **Article 50(1)**, and amended by the Social Security Act (Northern Ireland) 2002 (c. 10), **Schedule 1**, paragraph 2(a), and S.R. 2014 No. 102.
**F12** Section 35(2) was amended by S.R. 2014 No. 102.
**F13** S.R. 1987 No. 30; regulation 2 was substituted by S.R. 2006 No. 361.
**F14** Section 161(3A) was inserted by 2015 c. 1 (N.I.), **section 6(4)**.
**F15** Section 167ZN was inserted by S.I. 2002/2836 (N.I. 2), **Article 6**. Section 167ZN(2A) was inserted by 2015 c. 1 (N.I.), **section 6(6)**.
**F16** S.R. 1989 No. 253.
**F17** "Approved foster parent", "approved prospective adopter" and "authority" are defined in Article 107H(4) of S.I. 1996/1919 (N.I. 16), as inserted by 2015 c. 1 (N.I.), **section 2(2)**.
**F18** 1989 c. 41; section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), **section 8(1)**, and subsection (9B)(c) was inserted by the Children and Families Act 2014 (c. 6), **section 118**.
**F19** 1998 c. 29; section 1 was amended by the Freedom of Information Act 2000 (c. 36), **section 68(2)(a)**, and Schedule 8, paragraph 1.
**F20** Article 31(3) was amended by the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), **Schedule 9**, paragraph 154(2).
**F21** Articles 103(3)(bb), 105(3)(aa), 107A(2A)(b) and 107B(3)(aa) were inserted by 2015 c. 1 (N.I.), **section 3**.
**F22** Sections 35(3D), 161(3D) and 167ZN(2D) were inserted by 2015 c. 1 (N.I.), **section 6**.
**F23** Section 1671ZL was inserted by S.I. 2002/2836 (N.I. 2), **Article 6**.