

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7 - Statutory Rights to Leave and Pay**

##### **Statutory shared parental pay**

##### *Section 119: Statutory shared parental pay*

530. This section inserts a new Part 12ZC into the Social Security Contributions and Benefits Act 1992 (SSCBA), enabling regulations to be made to create new entitlements to shared parental pay for qualifying birth parents, adopters and intended parents in surrogacy arrangements.

##### **Section 171ZU: Entitlement: birth**

531. This section deals with entitlement to statutory shared parental pay in relation to birth.
532. Subsection (1) confers power on the Secretary of State to make regulations to provide that where the conditions in subsection (2) are satisfied, the mother of a child (the “claimant mother”) is entitled to payments to be known as “statutory shared parental pay”.
533. The condition in subsection (2)(a) is that the claimant mother and another person (“P”) satisfy certain prescribed conditions as to caring or intending to care for the child.
534. The condition in subsection (2)(b) is that P must meet certain prescribed conditions as to employment or self-employment, earnings and relationship with the claimant mother or child. The conditions in subsection (2)(c), (d) and (e) require the claimant mother to have met prescribed conditions regarding a continuous length of employment, earnings and entitlement to be in employment. The condition in subsection (2)(f) is that, if regulations so provide, the claimant mother continues in employed earner’s employment until such a time as specified.
535. The condition in subsection (2)(g) is that the claimant mother became entitled to receive statutory maternity pay in respect of the child. The condition in subsection (2)(h) relates to the reduction of the maternity pay period applying to the claimant mother.
536. The condition in subsection (2)(i) and (j) is that the claimant mother has given notice of the total number of weeks which she would be entitled to claim statutory shared parental pay, the number of weeks she intends to claim the pay and the number of weeks P intends to claim the pay and the periods during which the claimant mother intends to claim the pay.
537. The condition in subsection (2)(k) is that the notices under subsection (2)(i) and (j) are given by such a time as may be prescribed and satisfy certain prescribed conditions as to form and content

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538. The condition in subsection (2)(l) is that P consents to the amount of statutory shared parental pay the claimant mother intends to claim.
539. The condition in subsection (2)(m) is that it must be the claimant mother's intention to care for the child during each week in which statutory shared parental pay is paid to her.
540. The conditions in subsection (2)(n) and (o) state the claimant mother must be absent from work for each week that statutory shared parental pay is paid to her. Where she is an employee, she must be absent from work on shared parental leave.
541. Subsection (3) confers power on the Secretary of State to make regulations to provide that where the conditions in subsection (4) are satisfied, a person ("the claimant") is entitled to payments to be known as "statutory shared parental pay".
542. The condition in subsection (4)(a) is that the claimant and another person who is the mother of a child satisfy certain prescribed conditions as to caring or intending to care for the child. The condition in subsection (4)(b) is that the claimant must satisfy certain prescribed conditions as to the relationship with the child or the child's mother.
543. The condition in subsection (4)(c) is that the child's mother meets prescribed conditions as to employment or self-employment and earnings. The conditions in subsection (4) (d), (e) and (f) are that the claimant has met prescribed conditions relating to a continuous length of employment, earnings and entitlement to be in that employment. The condition in subsection (4)(g) is that the claimant, if so prescribed, must continue in employed earner's employment until such a time as specified in regulations.
544. The condition in subsection (4)(h) is that the mother of the child must have been entitled as a result of the birth of the child to receive either maternity allowance or statutory maternity pay. The condition in subsection (4)(i) relates to the reduction of the maternity pay period or the maternity allowance period applying to the mother.
545. The condition in subsection (4)(j) and (k) is that the claimant has given notice of the total number of weeks which the claimant would be entitled to claim statutory shared parental pay, the number of weeks the claimant intends to claim the pay and the number of weeks the child's mother intends to claim the pay and the periods during which the claimant intends to claim the pay.
546. The condition in subsection (4)(l) is that the notices are submitted by such a time as may be prescribed and satisfy prescribed conditions as to form and content. The condition in subsection (4)(m) is that the mother of the child must consent to the amount of statutory shared parental pay that the claimant intends to claim.
547. The condition in subsection (4)(n) is that it is the claimant's intention to care for the child during each week in which statutory shared parental pay is paid to the claimant.
548. The condition in subsection (4)(o) and (p) is that the claimant must be absent from work for each week that statutory shared parental pay is paid to the claimant. If the claimant is an employee, the claimant must be absent from work on shared parental leave.
549. Subsection (5) provides for the Secretary of State to make regulations to determine the extent of a person's entitlement to statutory shared parental pay in respect of a child, and the times at which this is to be paid.
550. Subsections (6) and (7) provide the extent of a person's entitlement to statutory shared parental pay cannot exceed the length of the maternity pay period (currently 39 weeks) less the number of weeks that maternity allowance or maternity pay is payable to the mother up to her return to work or the number of weeks by which the maternity pay period or maternity allowance period has been reduced (where the mother reduces these periods before returning to work). Subsection (7) defines the meaning of "relevant week".

551. Subsection (8) specifies that for the purposes of the calculation under subsection (6)(b), part of a week is to be treated as a full week.
552. Subsection (9) specifies that provision under subsection (5)(a) is to ensure that where two people are both entitled to statutory shared parental pay in respect of the same child, the total number of weeks taken by both does not exceed the number of weeks as specified in the calculation described under subsection (6). Subsection (10) specifies that provision under subsection (5)(b) as to when statutory shared parental pay is payable is to ensure that payments of statutory shared parental pay cannot be made to a person after such period as may be prescribed. Subsection (11) further specifies that the provision as to when statutory shared parental pay is payable is to ensure that no payment of statutory shared parental pay may be made to the mother of the child before the end of the mother's maternity pay period.
553. Subsection (12) provides for regulations to enable a person who is entitled to statutory shared parental pay to vary the period or periods during which the person intends to claim such pay without varying the overall amount of statutory shared parental pay the person intends to take, provided certain conditions are satisfied. These conditions are specified in subsection (13). They require the person who intends to claim statutory shared parental pay to give notice of their intention to vary the period or periods during which they intend to claim the pay to the person who will be liable to pay it. This notice must be given by such time and satisfying certain conditions as to form and content as may be prescribed.
554. Subsection (14) provides for regulations to enable a person who is entitled to statutory shared parental pay to vary the number of weeks that the person intends to claim, providing certain conditions are satisfied. These conditions are specified in subsection (15). They require that the person must give notice of certain specified information to the person who will be liable to pay the statutory shared parental pay. The consent of the other person eligible for statutory shared parental pay in respect of the same child must also be obtained. This notice must be given by such time as may be prescribed and satisfying certain conditions as to form and content.
555. Subsection (16) specifies that a person's entitlement to statutory shared parental pay under this section is not affected by the birth of more than one child as a result of the same pregnancy.

### **Section 171ZV: Entitlement: adoption**

556. This section deals with entitlement to statutory shared parental pay in relation to adoption.
557. Subsections (1) and (3) confer power to make regulations to provide that where the respective conditions in subsections (2) and (4) are satisfied, a person with whom a child is, or is expected to be, placed for adoption ("claimant A") and another person ("claimant B") are to be entitled to payments to be known as "statutory shared parental pay".
558. Subsection (2) of the new section states the conditions claimant A must meet in order to be entitled to statutory shared parental pay. In some cases, the conditions provide for further matters to be dealt with in regulations.
559. The condition in subsection (2)(a) is that claimant A and another person ("X") must satisfy certain prescribed conditions as to caring or intending to care for the child.
560. The condition in subsection (2)(b) specifies that the other person must have met certain prescribed conditions as to employment status, earnings and relationship with claimant A or the child. In practice, X may also be the person who is claimant B for the purposes of subsection (3).

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561. The conditions in subsection (2)(c), (d) and (e) require claimant A to have met certain prescribed conditions regarding length of service, earnings and entitlement to be in employment. The condition in subsection (2)(f) is that, if regulations so provide, claimant A must continue in employed earner's employment until such a time as specified in regulations.
562. The condition in subsection (2)(g) is that claimant A became entitled to receive statutory adoption pay in respect of the child. The condition in subsection (2)(h) relates to the reduction of the adoption pay period.
563. The condition in subsection (2)(i) and (j) is that claimant A has given notice of the total number of weeks claimant A would be entitled to claim statutory shared parental pay, the number of weeks claimant A intends to claim the pay, the number of weeks X intends to claim the pay and the periods during which claimant A intends to claim the pay.
564. The condition in subsection (2)(k) is that the notices under subsection (2)(i) or (j) are given by such a time as may be prescribed and satisfy certain prescribed conditions as to form and content.
565. The condition in subsection (2)(l) is that X must consent to the amount of statutory shared parental pay claimant A intends to claim.
566. The condition in subsection (2)(m) specifies that it must be claimant A's intention to care for the child during each week in which statutory shared parental pay is paid to claimant A.
567. The conditions in subsection (2)(n) and (o) are that claimant A must be absent from work for each week that statutory shared parental pay is paid to claimant A. Where claimant A is an employee, that person must be absent from work on shared parental leave.
568. Subsection (4) deals with the conditions that claimant B must meet in order to be entitled to statutory shared parental pay. As with the entitlement criteria for claimant A, in some cases the conditions provide for further matters to be dealt with in regulations.
569. The condition in subsection (4)(a) is that claimant B and another person ("Y") who is a person with whom a child is, or is expecting to be, placed for adoption satisfy certain prescribed conditions as to caring or intending to care for the child. Subsection (4)(b) requires that claimant B satisfy certain conditions as regards relationship with the child or Y. In practice, Y may also be the same person who is claimant A for the purposes of subsection (1).
570. The condition in subsection (4)(c) is that Y must meet certain employment status and earnings criteria, the details of which will be prescribed in regulations. The conditions in subsection (4)(d), (e) and (f) require that claimant B has met certain prescribed conditions relating to a continuous length of employment, earnings and entitlement to be in that employment. The condition in subsection (4)(g) is that claimant B, if so prescribed, must continue in employed earner's employment until such a time as specified in regulations.
571. The condition in subsection (4)(h) is that Y became entitled to receive statutory adoption pay by reference to the child. The condition in subsection (4)(i) relates to the reduction of the adoption pay period applying to Y.
572. The condition in subsection (4)(j) and (k) is that claimant B has given notice of the total number of weeks which claimant B would be entitled to claim statutory shared parental pay, the number of weeks claimant B intends to claim pay and the number of weeks Y intends to claim the pay and the periods during which claimant B intends to claim the pay. The condition in subsection (4)(l) is that these notices be submitted by such a time as may be prescribed and satisfy prescribed conditions as to form and content.

The condition in subsection (4)(m) is that Y consent to the amount of statutory shared parental pay that claimant B intends to claim.

573. The condition in subsection (4)(n) is that it must be claimant B's intention to care for the child during each week in which statutory shared parental pay is paid to the claimant.
574. The condition in subsection (4)(o) and (p) is that claimant B must be absent from work for each week that statutory shared parental pay is paid to the claimant. If claimant B is an employee, the claimant must be absent from work on shared parental leave.
575. Subsection (5) provides for the Secretary of State to make regulations to determine the extent of a person's entitlement to statutory shared parental pay in respect of a child, and the times at which this may be paid.
576. Subsections (6) and (7) provide the extent of a person's entitlement to statutory shared parental pay cannot exceed the length of the adoption pay period (currently 39 weeks) less the number of weeks that adoption pay is payable to the claimant's return to work or the number of weeks by which the adoption pay period has been reduced (where the claimant reduces this period before returning to work). Subsection (7) defines the meaning of "relevant week".
577. Subsection (8) further specifies that for the purposes of calculations under subsection (6)(b), part of a week is to be treated as a full week.
578. Subsection (9) specifies that provision under subsection (5)(a) is to ensure that when two people are entitled to statutory shared parental pay in respect of the same child, the total number of weeks taken cannot exceed the number of weeks calculated under subsection (6).
579. Subsection (10) specifies that provision under subsection (5)(b) as to when statutory shared parental pay is payable is to secure that payments of statutory shared parental pay cannot be made to a person after a prescribed period. Subsection (11) further specifies that the provision as to when statutory shared parental pay is payable is to secure that where a person is entitled to receive statutory adoption pay, no payment of statutory shared parental pay may be made to them before the end of their adoption pay period.
580. Subsection (12) provides for regulations to enable a person who is entitled to statutory shared parental pay to vary the period(s) during which the person intends to claim such pay without varying the overall amount of statutory shared parental pay the person intends to take, provided certain conditions are satisfied. These conditions are specified in subsection (13). They require the person who intends to claim statutory shared parental pay to give notice of their intention to vary the period(s) during which they intend to claim the pay to the person who will be liable to pay it. This notice must satisfy certain prescribed conditions as to time, form and content.
581. Subsection (14) provides power to make regulations to enable a person who is entitled to statutory shared parental pay to vary the number of weeks of shared parental pay that he or she intends to claim, providing certain conditions in subsection (15) are satisfied. They require that the person must give notice in prescribed form and by a prescribed time, containing specified information to the person who will be liable to pay the statutory shared parental pay. The consent of the other person eligible for statutory shared parental pay in respect of the same child must also be obtained.
582. Subsection (16) has the effect that if a person adopts more than one child as part of the same arrangement, he or she will not be entitled to take any more shared parental pay than that to which he or she would have been entitled if only one child was adopted.

### **Section 171ZW: Entitlement: general**

583. This section makes further provision about a person's entitlement to statutory shared parental pay (whether in relation to birth or adoption).

584. Subsection (1)(a) provides power for the Secretary of State to provide that the entitlement conditions for statutory shared parental pay do not have effect, or have effect subject to prescribed modifications in such cases as may be prescribed.
585. Subsection (1)(b) provides power for the Secretary of State to impose requirements about evidence of entitlement by way of regulations.
586. Subsection (1)(c) to (f) provides power for the Secretary of State to make provision relating to continuous employment and the calculation of earnings.
587. Subsection (2) defines the person or persons on whom requirements may be imposed by virtue of subsection (1)(b).

**Section 171ZX: Liability to make payments**

588. This section makes provision about liability to pay statutory shared parental pay (whether in relation to birth or adoption).
589. Subsection (1) of the inserted section provides for employers to be liable for the payment of statutory shared parental pay. (Although under section 7 of the Employment Act 2002, as amended by Schedule 7, provision is made for the funding of employers' liabilities to pay statutory shared parental pay.)
590. Subsection (2) requires the Secretary of State to make regulations about the liability of a former employer to pay statutory shared parental pay where the employee has been dismissed by the employer to avoid liability to pay statutory shared parental pay.
591. Subsection (3) of the inserted section provides power for the Secretary of State, with the concurrence of the Commissioners for HMRC, to specify in regulations circumstances in which liability for paying statutory shared parental pay is to fall on the Commissioners.

**Section 171ZY: Rate and period of pay**

592. This section deals with the rate at which statutory shared parental pay is payable and the period for which it is payable (whether in relation to birth or adoption).

**Section 171ZZ: Restrictions on contracting out**

593. This section deals with restrictions on contracting out.
594. Subsection (1) provides that an agreement is void to the extent that it purports to exclude, limit or otherwise modify any provision of the new Part 12ZC of the SSCBA, or to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person's employer or former employer under that Part.
595. Subsection (2) contains a provision which ensures that certain agreements with an employee authorising deductions from shared parental pay are not void.

**Section 171ZZ1: Relationship with contractual remuneration**

596. This section deals with the way in which statutory shared parental pay interacts with contractual remuneration.
597. Subsection (1) provides that, subject to subsections (2) and (3), any entitlement to statutory shared parental pay is not to affect any right of any person in relation to contractual remuneration. Subsection (2) specifies that payment of contractual remuneration can be counted as discharging a liability of the employer to pay statutory shared parental pay. Also payment of statutory shared parental pay can be counted as discharging an obligation of the employer to pay contractual remuneration.

598. Subsection (3) makes provision for regulations to provide which payments are to be treated as contractual remuneration for the purposes of subsections (1) and (2).

### **Section 171ZZ2: Crown employment**

599. This section provides that the provisions of the new Part 12ZC of the SSCBA apply in relation to persons employed by or under the Crown in the same way as persons otherwise employed.

### **Section 171ZZ3: Special classes of person**

600. This section gives power to the Secretary of State to make regulations modifying any provision of the Part of the Act dealing with statutory shared parental pay in application to special classes of person. The special classes are those employed on board any ship, vessel, hovercraft or aircraft; outside Great Britain at a prescribed time or in prescribed circumstances; and in prescribed employment in connection with continental shelf operations.

### **Section 171ZZ4: Part 12ZC: supplementary**

601. Subsections (1), (2) and (5) define the meaning of “employer”, “modifications”, “prescribed”, “employee” and “week” in the Part of the Act dealing with statutory shared parental pay.
602. Subsection (3) provides that persons who do not meet the definition of “employee” as stated in subsection (2) may be treated as such for the purposes of the Part of the Act dealing with statutory shared parental pay, and that some who do meet the definition may be treated as if they do not.
603. Subsection (4) provides that two or more employers and that two or more contracts of service in respect of the same employee may be treated as one for the purposes of this Part by way of regulations.
604. Subsection (6) sets out how to calculate a person’s normal weekly earnings for the purposes of this new Part 12ZC of the SSCBA. Subsection (7) provides for the meaning of “earnings” and “relevant period” as mentioned in subsection (6) to be defined in regulations. Subsection (8) provides that a person’s normal weekly earnings will be calculated in accordance with regulations in such cases as may be prescribed.
605. Subsections (9) to (11) make special provision as to the treatment of contracts of employment within the NHS.

### **Section 171ZZ5: Power to apply Part 12ZC**

606. Subsection (1) enables provision to be made so that the shared parental pay regulations made under the new Part 12ZC of the SSCBA may have effect in relation to cases involving the adoption of a child from outside the jurisdiction of the United Kingdom.
607. Subsection (2) enables provision to be made so that the shared parental pay regulations made under the new Part 12ZC of the SSCBA may have effect in relation to intended parents in surrogacy arrangements who meet certain conditions.
608. Subsection (3) enables regulations made under section 171ZW(1)(b) (about evidence of entitlement and procedures to be followed) to require that intended parents in surrogacy arrangements who wish to take shared parental pay must make statutory declarations as to their eligibility and intention to apply for a parental order.

### ***Section 120: Curtailment of statutory pay periods and exclusion of statutory pay***

609. This section amends the SSCBA. It inserts provisions into sections 35, 165 171ZE and 171ZN that allow regulations to be made that will enable the duration of the maternity

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allowance period, the maternity pay period or the adoption pay period as it applies to a person to be reduced subject to prescribed conditions and restrictions. This will allow access to the new system of shared parental leave and pay. The section also allows regulations to be made that will enable a reduction in maternity allowance, maternity pay or adoption pay periods to be revoked or to be treated as revoked subject to prescribed conditions and restrictions (for example, the regulation making power might be used in some circumstances where a woman's partner has died).

610. *Subsection (3)* inserts a provision into section 35 to ensure that a woman is not entitled to maternity allowance for any week that she would have been entitled to statutory maternity pay, had she not reduced the duration of the statutory maternity pay period.
611. *Subsection (5)* inserts provisions into section 171ZE to specify that statutory paternity pay will not be payable in respect of a child for a week where the person has already been paid statutory shared parental pay, or taken shared parental leave, in respect of the child or is due to be paid statutory shared parental pay, or take shared parental leave, in respect of the child for any part of that week.