

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Shared parental leave**

##### *Section 117: Shared parental leave*

476. This section inserts a new Chapter 1B into Part 8 of the Employment Rights Act 1996 (ERA). This creates a new entitlement for employees to be absent from work on shared parental leave for the purposes of caring for a child.

##### **Section 75E: Entitlement to shared parental leave: birth**

477. Section 75E deals with entitlement to shared parental leave in relation to birth.
478. Subsections (1) and (4) confer powers on the Secretary of State to make regulations entitling employees to be absent from work for the purpose of caring for a child if they satisfy certain specified conditions.
479. Subsections (1) to (3) are about the conditions for eligibility of the mother of the child. The conditions that may be specified include conditions as to duration of employment, her relationship with the child and as to caring with another person (“P”) for the child. Subsection (1)(f) includes a condition relating to the giving of a notice of intention to take shared parental leave; and subsection (3) specifies what this notice may be about: it may be about the amount of leave available to the mother; the amount of leave the mother intends to take; and whether and to what extent P will take leave or statutory shared parental pay. Subsection (1)(g) specifies a condition relating to the consent of P to the amount of leave that the mother intends to take.
480. Subsection (2) provides that the conditions of entitlement of the mother can include P meeting conditions in respect of P’s employment or self-employment, P’s earnings, P’s relationship to the mother or the child and P’s intention to care, with the mother, for the child. The effect of this provision is that one of the conditions of entitlement to shared parental leave for the mother can relate to the mother’s sharing the care of the child with P and P satisfying conditions as to economic activity and relationship with the child or the mother.
481. Subsection (4) specifies conditions that may be included in regulations to give entitlement to shared parental leave for another employee (the father or the mother’s partner). These include certain conditions as to duration of employment, the employee’s relationship with the child or with the child’s mother and as to the employee caring, with the child’s mother, for the child. Subsection (4)(d) includes a condition relating to the giving of a notice of intention to take shared parental leave. Subsection (4)(e) specifies a condition relating to the child’s mother’s consent to the amount of shared parental leave the employee intends to take.

482. Subsection (5) provides that the conditions of entitlement for the employee can include the mother meeting conditions as to her employment or self-employment, her earnings, her caring with the employee for the child and her entitlement (or otherwise) to statutory maternity pay or maternity allowance and the exercise of these entitlements. The effect of this provision is that one of the conditions of entitlement to shared parental leave for an employee (the father or the mother's partner) can relate to the employee sharing care of the child with the mother and to the mother satisfying conditions as to economic activity.
483. Subsection (6) specifies what the notice the employee is required to give under subsection (4) is about. It may be about the amount of leave available to the employee, the amount of leave the employee intends to take, and whether and to what extent the mother will take leave or shared parental pay.

### **Section 75F: Entitlement to leave under section 75E: further provision**

484. Section 75F is about the making of regulations to calculate the amount of leave available to the employee, to limit the amount of shared parental leave, to limit when it may be taken, to require the leave to be taken as a single period and to provide for the varying of the amount of shared parental leave that an employee may take and the times at which an employee takes this leave.
485. This section provides that regulations under section 75E will include provisions for determining the amount of shared parental leave and when this leave may be taken. Subsection (7) specifies that provision under subsection (1)(b) is to secure that shared parental leave must be taken before the end of such a period as may be prescribed. Subsection (8) further specifies that provision under subsection (1)(b) is to provide for the taking of shared parental leave in a single period or in non-consecutive periods.
486. This section specifies the maximum amount of leave to which an employee is entitled. The maximum amount in the case of a mother who is entitled to maternity leave is an amount of time specified by regulations (expected to be the total length of maternity leave (52 weeks)) less the amount of maternity leave taken by the mother (where she returns to work without taking specified action to reduce her maternity leave period) or the amount by which the maternity leave period has been reduced. The maximum amount of time in the case of a mother who is entitled to statutory maternity pay or maternity allowance only is an amount of time specified by regulations (expected to be 52 weeks) less the number of weeks of statutory maternity pay or maternity allowance payable to the child's mother, or the number of weeks by which the maternity allowance period or maternity pay period has been reduced.
487. This section specifies that the amount of shared parental leave to which the employee is entitled in respect of a child takes into account the amount of such leave taken by another person in respect of that child or the number of weeks of statutory shared parental pay received by another person in respect of that child (in the case where the other person is entitled to statutory shared parental pay in respect of the child but not to shared parental leave).
488. This section specifies that for the purposes of calculation of the amount of shared parental leave under this section, part of a week is to be treated as a full week.
489. This section provides that the regulations under section 75E may enable an employer, in a case where an employee has proposed to take non-consecutive periods of shared parental leave, to require the employee to take that amount of leave as a single period of leave. This single period of leave may start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee. This provision is to provide a default position for when the shared parental leave can be taken if agreement cannot be reached between employer and employee.

490. This section provides that regulations made under section 75E may enable an employee, subject to prescribed restrictions, to vary the period or periods of shared parental leave to be taken without varying the amount of leave, and to vary the amount of leave which the employee has notified an intention to exercise. This section provides that variations to the period or periods during which the leave is taken may require this variation to be subject to obtaining the employer's consent in circumstances specified by regulations. This section specifies that in relation to variations to the amount of leave which the employee has notified an intention to exercise, the employee may be required to do this by notice and the consent of the child's mother or P may be required. This section specifies that notifications of variation of the amount of leave which an employee intends to exercise may be required to include notice about the amount of shared parental leave the employee has taken in respect of the child, how much leave the employee intends to take and the amount of shared parental leave or statutory shared parental pay that the other person who may be entitled to such leave or pay in respect of the child, has taken or intends to take.
491. This section provides that regulations made under section 75E may specify: the things which are and are not to be taken as done for the purpose of caring for the child; the minimum amount of shared parental leave that may be taken and provision about how this leave may be taken; the circumstances in which an employee may work for an employer during a period of shared parental leave without bringing the period of leave, or the employee's entitlement to it, to an end; and the circumstances in which the employee may be absent on shared parental leave otherwise than for the purpose of caring for a child without bringing their entitlement to an end. The latter provision might be relevant to situations where an employee has an entitlement to shared parental leave but whose child subsequently dies. They may also make provision to exclude the right to be absent on shared parental leave in respect of a child where more than one child is born as a result of the same pregnancy.
492. This section enables the Secretary of State to provide by regulations that certain subsections do not have effect, or have effect with prescribed modifications, in a case where the mother of a child dies before another person has become entitled to shared parental leave in respect of that child. This might be relevant to situations where a mother dies before entitlement to shared parental leave has arisen for herself or her partner.

### **Section 75G: Entitlement to shared parental leave: adoption**

493. Section 75G deals with entitlement to shared parental leave in relation to adoption.
494. Subsections (1) and (4) confer powers on the Secretary of State to make regulations entitling employees who are adopters or prospective adopters to be absent from work for the purpose of caring for a child if they satisfy certain conditions.
495. Subsections (1) to (3) are about the conditions of eligibility of the person with whom a child is to be, or is expected to be, placed for adoption (the "primary adopter"). These include certain conditions as to the primary adopter's duration of employment, relationship with the child and as to caring with another person ("P") for the child. Subsection (1)(g) specifies a condition relating to the consent of P to the amount of leave the primary adopter intends to take. Subsection (1)(f) includes a condition relating to the giving of a notice of intention to take shared parental leave under this subsection; and subsection (3) specifies what this notice may be about, such as the maximum amount of leave available to the primary adopter, the amount of leave the primary adopter intends to take and the extent to which P intends to exercise entitlement to the leave or to statutory shared parental pay.
496. Subsection (2) provides that the conditions of entitlement of the primary adopter can include P meeting certain conditions in respect of employment or self-employment, earnings, relationship to the primary adopter or the child and having caring responsibility for the child. The effect of this provision is that one of the conditions of

entitlement to shared parental leave for the primary adopter can relate to the primary adopter sharing the care of the child with P and P satisfying conditions as to economic activity and relation with the child or the primary adopter.

497. Subsections (4) to (6) specify conditions that may be included in regulations to give entitlement to shared parental leave to another employee (other than the primary adopter). These include certain conditions as to duration of employment, the employee's relationship with the child and with the primary adopter and as to the employee caring with the primary adopter for the child. Subsection (4)(d) includes a condition relating to giving notice of intention to take shared parental leave. Subsection (4)(e) specifies a condition relating to the consent of the primary adopter to the amount of leave that the other employee intends to take.
498. Subsection (5) provides that the conditions for entitlement for the employee can include the primary adopter meeting conditions as to employment or self-employment and earnings; the primary adopter caring with the employee for the child; the primary adopter's entitlement (or otherwise) to adoption leave or statutory adoption pay, and the extent of the primary adopter's exercise of such entitlement.
499. Subsection (6) specifies what the notice the employee is required to give under subsection (4) is about. It may be about the maximum possible extent of their entitlement to leave, the amount of leave the employee intends to take, and whether and to what extent the primary adopter will exercise an entitlement to shared parental leave or statutory shared parental pay.

#### **Section 75H: Entitlement to leave under section 75G: further provision**

500. Section 75H is about the making of regulations to calculate the amount of shared parental leave available to the employee, to limit the amount of shared parental leave, to limit when it may be taken, to require the leave to be taken as a single period and to provide for the varying of the amount of shared parental leave that an employee may take and the times at which an employee takes this leave.
501. This section provides that regulations under section 75G will include provisions for determining the amount of shared parental leave to which an employee is entitled in respect of a child, and when this leave may be taken. This section specifies that provision under subsection (1)(b) is to allow shared parental leave to be taken in non-consecutive periods. The effect of this is to allow the leave to be taken more flexibly than in a single consecutive block.
502. This section specifies the maximum amount of leave to which an employee is entitled. The maximum amount in the case of a primary adopter who is entitled to adoption leave is an amount of time specified in regulations (expected to be the total length of adoption leave (52 weeks)) less the amount of adoption leave taken by the primary adopter (where the primary adopter returns to work without taking specified action to reduce the adoption leave period) or the amount by which the adoption leave period has been reduced. The maximum amount of time in the case of a primary adopter who is entitled to statutory adoption pay only is an amount of time specified by regulations (expected to be 52 weeks) less the number of weeks of statutory adoption pay payable to the primary adopter, or the number of weeks by which the adoption pay period has been reduced. Subsection (3) specifies that the amount of shared parental leave to which the employee is entitled in respect of a child takes into account the amount of such leave taken by another person in respect of that child, or the number of weeks of statutory shared parental pay received by the other person in respect of the child (in a case where the other person is entitled to statutory shared parental pay in respect of the child but not shared parental leave.)
503. This section specifies that provision under subsection (1)(b) is to secure that shared parental leave must be taken before the end of a prescribed period.

*These notes refer to the Children and Families Act 2014  
(c.6) which received Royal Assent on 13 March 2014*

504. This section specifies that for the purposes of calculating the amount of adoption leave or shared parental leave taken, part of a week is to be treated as a full week.
505. This section provides that the regulations under section 75G may enable an employer, in a case where an employee has proposed to take non-consecutive periods of shared parental leave, to require the employee to take that amount of leave as a single period of leave. This single period of leave will start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee. The effect of this provision is to provide a default position for when shared parental leave can be taken if agreement cannot be reached between employer and employee.
506. This section provides that regulations made under section 75G may enable an employee, subject to prescribed restrictions, to vary the period(s) of shared parental leave to be taken without varying the amount of leave and to vary the amount of leave which the employee has notified an intention to exercise. This section provides that variations to the period or periods during which the leave is taken may require this variation to be subject to obtaining the employer's consent in circumstances specified by regulations. This section specifies that in relation to variations to the amount of leave which the employee has notified an intention to exercise, the employee may be required to include certain information in the notice to their employer and the consent of the primary adopter or P (as appropriate) may be required. This section specifies that notifications of variation of the amount of leave which an employee intends to exercise may be required to include notice about the amount of shared parental leave the employee has taken in respect of the child, how much leave the employee intends to take and the amount of shared parental leave or statutory shared parental pay that the other person who may be entitled to such leave or pay in respect of the child, has taken or intends to take.
507. This section provides that regulations made under section 75G may specify the things which are and are not to be taken as done for the purpose of caring for the child; the minimum amount of shared parental leave that may be taken and provision about how this leave may be taken; the circumstances in which an employee may work for an employer during a period of shared parental leave without bringing the period of leave, or the employee's entitlement to it, to an end and the circumstances in which the employee may be absent on shared parental leave otherwise than for the purpose of caring for a child without bringing their entitlement to an end. The latter may be relevant to situations where an employee has an entitlement to shared parental leave but whose child subsequently dies. They may also make provision to ensure that an employee cannot take more than one period of shared parental leave in circumstances where more than one child is placed for adoption as part of the same arrangement.
508. This section specifies that in this section "week" means any period of seven days.
509. This section enables regulations to stipulate that certain subsections do not have effect, or have effect with prescribed modifications, in a case where the person who is taking adoption leave or is entitled to be paid statutory adoption pay dies before another person has become entitled to shared parental leave in respect of the relevant child. This is to enable the other person to be able to become entitled to shared parental leave after the death of the primary adopter.
510. This section allows the Secretary of State to provide for sections 75G and 75H to have effect, with appropriate modifications, in relation to cases where a child has been adopted under the laws of a jurisdiction outside the United Kingdom.
511. This section enables the Secretary of State to provide by means of regulations for sections 75G and 75H to have effect (with modifications) in relation to cases involving an employee who has applied, or intends to apply, with another person, under section 54 of the Human Fertilisation and Embryology Act 2008 for a parental order in respect of a child ("intended parent"). This will allow some parents in surrogacy arrangements to be entitled to shared parental leave in the same way as certain adoptive parents.

### **Section 75I: Rights during and after shared parental leave**

512. Section 75I deals with the rights of employees during and after shared parental leave.
513. Subsection (1) provides for regulations under section 75E or 75G to specify the rights and responsibilities of employees whilst on, and after shared parental leave. Subsection (1)(a) states that employees who are absent on shared parental leave will be entitled as far as prescribed, to the benefit of the same terms and conditions of employment which would have applied if the employee had not been absent.
514. Subsection (1)(b) further stipulates that whilst on shared parental leave the employee will continue to be bound, as far as prescribed, by the obligations that would arise from those terms and conditions, to the extent they are compatible with the taking of shared parental leave.
515. Subsection (1)(c) provides for an employee who has been absent on shared parental leave to have the right to return to a kind of job as specified in regulations. Subsection (5) provides for regulations to make provision about seniority, pension and other similar rights, and terms and conditions of employment on return.
516. Subsection (3) stipulates that, where appropriate, the type of absence that gives rise to the right to return referenced in subsection (1)(c) may be a continuous period of absence attributable to a combination of shared parental leave, maternity leave, paternity leave, adoption leave and parental leave.
517. Subsection (2)(b) specifies that “terms and conditions of employment” as referenced in subsection (1)(a) does not include remuneration. Subsection (4) provides that regulations may specify matters which are or are not to be treated as remuneration for the purpose of entitlement to shared parental leave (for birth and adoption).

### **Section 75J: Redundancy and dismissal**

518. Section 75J provides that regulations under section 75E or 75G may make provisions about redundancy or dismissal during a period of shared parental leave.
519. Subsection (2) states that such provisions may include a requirement for an employer to offer alternative employment, and provision for the consequences of failure to comply with the regulations.

### **Section 75K: Chapter 1B: supplemental**

520. Section 75K allows regulations to be made about notices, evidence, procedures to be followed and other supplementary matters.
521. Subsection (1)(a) enables regulations to provide for notices to be given, evidence to be produced and other procedures to be followed by employers, employees and relevant persons. Subsection (2) defines “relevant person”. Subsection (1)(b) enables regulations to require such persons to keep records. Subsection (1)(c) enables regulations to provide for the consequences of failure to give notices, produce evidence, keep records or comply with other procedural requirements. Subsection (1)(d) enables regulations to make provision for the consequences of failure to act in accordance with such a notice. Subsection (1)(e) enables special provision for cases to be made where an employee has a right which corresponds to a right to shared parental leave and which arises under the employee’s contract of employment or otherwise. Subsection (1)(f) and (g) allows for regulations to make provision to modify provision in the ERA relating to the calculation of a week’s pay and to modify, apply or exclude enactments in relation to a person entitled to shared parental leave.
522. Subsections (3) to (5) ensure that the conditions of economic activity which may be specified under sections 75E(2) or (5) and 75G(2) or (5) in relation to the person with whom care of the child is shared can include conditions relating to that person being an

employed earner or a self-employed earner. They also ensure that the power to make provision about procedures to be followed by an employer of that other person under section 75K includes, as far as concerns an employed earner, the secondary contributor (in relation to secondary Class I National Insurance contributions).

- 523. Subsection (6) allows for regulations under any of sections 75E to 75H to make different provision for different cases or circumstances.
- 524. Subsection (7) provides that the Secretary of State can prescribe that eligible intended parents in surrogacy arrangements who wish to take shared parental leave must make a statutory declaration as to their eligibility and intention to apply for a parental order.

### ***Section 118: Exclusion or curtailment of other statutory rights to leave***

- 525. This section amends the ERA to allow regulations to be made which will enable a birth mother or primary adopter to bring their ordinary maternity or adoption leave to an end early. This will allow the person and/or their partner to access the new system of shared parental leave and pay.
- 526. This section allows regulations to be made which will set out the circumstances in which the birth mother or adoptive parent can change their mind about a decision to end their ordinary maternity or adoption leave early. It is intended that the birth mother will be able to revoke a decision made before the birth until a certain point (which will be set out in the regulations) after the birth.
- 527. This section provides that these regulations may only allow a birth mother or adoptive parent to bring their ordinary maternity or adoption leave to an end if they and the person with whom they share care of the child take certain steps in relation to the taking of shared parental leave or pay which will include giving notice to their employers where relevant.
- 528. This section also allows regulations to be made which will enable a birth mother or primary adopter to bring their additional maternity or adoption leave to an end early. It mirrors the provisions for ordinary maternity leave which are described above.
- 529. Finally, this section requires regulations to be made which will provide that the taking of shared parental leave prevents an employee from exercising the right to take any remaining paternity leave. This applies in both birth and adoption cases.

### **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

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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
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.



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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.

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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).
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).

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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 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.

### **Other statutory rights**

#### ***Section 121: Statutory rights to leave and pay of prospective adopters with whom looked after children are placed***

612. This section supports the changes being made by Part 1, which will provide swifter placement of looked after children in 'Fostering for Adoption' and 'concurrent planning' placements. It amends sections 75A and 80B of the ERA and sections 171ZB, 171ZE, 171ZJ 171ZL, 171ZN and 171ZS of the SSCBA, so that rights to adoption leave and pay and paternity leave and pay can apply to approved adopters who have looked after children placed with them as part of the 'Fostering for Adoption' or 'concurrent planning' processes under section 22C of the Children Act 1989.
613. *Subsection (1)* inserts a new provision into section 75A of the ERA which sets out conditions that may be prescribed for entitlement to ordinary adoption leave in cases relating to placement under section 22C of the Children Act 1989. These conditions are that the person must be a local authority foster parent, must be approved as a prospective adopter and must have been notified by a local authority in England that a child is to be, or is expected to be, placed with the employee under section 22C.
614. *Subsection (2)* inserts new provisions into section 80B of the ERA relating to entitlement to paternity leave. These new provisions enable regulations that are made under section 80(1) of the ERA to be revised so that paternity leave is available for the employed partners of adopters who have or expect to have a child placed with them

under section 22C of the Children Act 1989. They also enable those regulations to make provision ensuring that the employee has no entitlement to take a subsequent period of paternity leave in respect of a child if they have already exercised their right to take paternity leave.

615. *Subsection (3)* inserts new subsections (8) and (9) into section 171ZB of the SSCBA, relating to entitlement to statutory paternity pay. New subsection (8) provides that the reference in subsection (2) to a child being placed for adoption is to be treated, where relevant, as including placement under section 22C of the Children Act 1989. This allows regulations setting out conditions of entitlement to paternity pay to include cases where children are placed with prospective adopters under section 22C of the Children Act 1989. Subsection (3) also makes related necessary changes to other references in subsections (3), (6) and (7) of section 171ZE of the SSCBA. New subsection (9) has the effect that a person has no further entitlement to statutory paternity pay in respect of the placement of a child for adoption if he or she has already become entitled to statutory paternity pay in respect of that child in connection with the placement of the child under section 22C.
616. *Subsection (4)* inserts a new subsection (12) into section 171ZE of the SSCBA relating to the rate and period of statutory paternity pay, so that references in section 171(3) (b) and (10) to being placed for adoption should be read, in relevant cases, as being references to being placed under section 22C of the Children Act 1989.
617. *Subsection (5)* inserts new subsections (9) and (10) into section 171ZL of the SSCBA (entitlement to statutory adoption pay). These have the effect that various references to placement for adoption in section 171ZL shall be treated in relevant cases as referring to the placement of a child under section 22C of the Children Act 1989. They also have the effect that a person who has become entitled to statutory adoption pay in respect of a child who is (or is expected to be) placed under section 22C will not be entitled to a further period of statutory adoption pay if he or she is subsequently notified that child will (or is expected to) be placed with him or her for adoption.

### ***Section 122: Statutory rights to leave and pay of applicants for parental orders***

618. This section makes provision for intended parents in surrogacy arrangements, who are or will be entitled and intend to make an application for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, to be entitled to paternity leave and pay and to adoption leave and pay in respect of the child who is or will be the subject of the order.
619. *Subsection (1)* amends section 75A of the ERA to enable the Secretary of State by regulation to apply the provisions for ordinary adoption leave to cases involving an employee who has applied or intends to apply, with another person, for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child who is, or will be, the subject of the parental order.
620. *Subsection (2)* amends section 75B of the ERA to enable the Secretary of State by regulation to apply the provisions for additional adoption leave to the employee and child as described above for ordinary adoption leave.
621. *Subsection (3)* amends section 75D of the ERA to enable the Secretary of State, when making regulations concerning ordinary or additional adoption leave which concern cases involving an application for a parental order, to require the employee to make a statutory declaration as to his or her eligibility, with another person, to apply for a parental order and to state their intention to make such an application.
622. *Subsection (4)* amends section 80B of the ERA to enable the Secretary of State to make regulations to provide that ordinary paternity leave following birth may apply to intended parents in surrogacy cases where an employee, with another person, is eligible



and intends to apply for a parental order in respect of the child who is the subject of such an order.

623. *Subsection (5)* amends section 171ZK of the SSCBA concerning ordinary paternity pay so that regulations may apply ordinary paternity pay to qualifying intended parents in surrogacy arrangements.
624. *Subsection (6)* amends Part 12ZB of the SSCBA concerning statutory adoption pay by creating two new subsections. New subsection (2) enables regulations to be made to apply statutory adoption pay to qualifying intended parents in surrogacy arrangements. New subsection (3) enables the regulations in those cases to impose requirements on intended parents in surrogacy arrangements to provide statutory declarations as to their eligibility and intention to apply for a parental order.

### ***Section 123: Statutory paternity pay: notice requirement and period of payment***

625. This section amends the existing provisions in the SSCBA on statutory paternity pay.
626. *Subsection (2)* amends section 171ZC so that the requirement to give notice reflects the changes to the period of payment of statutory paternity pay made by *subsection (3)*. The amendments of section 171ZC also provide a power for the Secretary of State to set the amount of notice which the person must give. *Subsection (3)* amends section 171ZE to give the Secretary of State power to set the number of weeks of statutory paternity pay in regulations subject to a minimum of 2 weeks. It also allows regulations to be made to enable paternity pay to be taken in non-consecutive periods of not less than one week.
627. *Subsection (4)* requires that regulations which set the number of weeks of statutory paternity pay will be subject to the affirmative parliamentary procedure.

### ***Section 124: Rate of statutory adoption pay***

628. *Subsection (1)* repeals subsection (1) of section 171ZN of the SSCBA, and provides for the rate of statutory adoption pay to be paid at an earnings related rate for the first 6 weeks and the lower of an earnings related rate or a prescribed weekly rate, whichever is the lower, for the remaining weeks of statutory adoption pay.
629. It also sets the earnings related rate to be the equivalent of 90 per cent of a person's normal weekly earnings for the 8 weeks ending the week in which the person was notified of the adoption match. The prescribed weekly rate must not be lower than the highest weekly rate that has been set for statutory sick pay.
630. *Subsection (2)* repeals the entry in section 176(1)(a) of the SSCBA which relates to section 171ZN(1) of that Act (as section 171ZN(1) is repealed by *subsection (1)*).

### ***Section 125: Abolition of additional paternity leave and additional statutory paternity pay***

631. This section removes the statutory rights to additional paternity leave and additional statutory paternity pay.
632. *Subsection (1)* repeals the additional paternity leave provisions, for birth parents and adopters, from the ERA.
633. *Subsection (2)* repeals the additional statutory paternity pay provisions, for both birth parents and adopters, from Part 12ZA of the SSCBA.

### ***Section 126: Further amendments***

634. This section gives effect to Schedule 7. It also shows how references to "ordinary statutory paternity pay" and "statutory paternity pay" in instruments, documents and enactments are to be read once the Act renames "ordinary statutory paternity pay" as



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“statutory paternity pay” (which is the name this form of statutory pay had before it was changed by the Work and Families Act 2006).

***Schedule 7: Statutory rights to leave and pay: further amendments***

635. *Schedule 7* makes consequential amendments to a number of Acts in light of the introduction of shared parental leave and pay.
636. Many of the paragraphs make amendments to other legislation to re-name “ordinary statutory paternity pay” and “ordinary paternity leave” as “statutory paternity pay” and “paternity leave”. With the abolition of additional statutory paternity pay and leave there will only be one type of paternity leave and pay and the references to “ordinary” are no longer necessary.
637. Secondly, the amendments remove references to “additional paternity leave” and “additional paternity pay” where appropriate, in line with the abolition of additional statutory paternity pay and leave.
638. Thirdly, the amendments insert references to “statutory shared parental pay” and “shared parental leave” where appropriate.
639. *Paragraphs 1 to 4* amend Schedule 5 to the Social Security Act 1989. *Paragraphs 2 and 3* amend the existing paragraphs of Schedule 5 about employment-related schemes that contain unfair paternity leave provisions and unfair adoption leave provisions so that they also apply in cases relating to placement of a child under section 22C of the Children Act 1989 (Fostering for Adoption cases) and in cases involving surrogacy arrangements. *Paragraph 4* adds a new paragraph to Schedule 5 about employment-related schemes that contain unfair shared parental leave provisions.
640. *Paragraph 5* amends section 182 of the Finance Act 1989 (which concerns offences relating to the disclosure of information relating to social security functions). One of the ways in which it is amended is so that social security functions include functions relating to statutory shared parental pay.
641. *Paragraph 34(3) and (5)* amend powers in the ERA to allow the Secretary of State to set out in secondary legislation the nature of the right to return to work following a period of paternity leave which was combined with a period of shared parental leave.
642. *Paragraph 48* provides for provisions in the Finance Act 1999 about electronic communication to apply to additional statutory paternity pay.