

EXPLANATORY MEMORANDUM TO

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2008

2008 No. 374

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 70C(2), 105(4), (6) and (7), 107B(4), (7) and (8) and 131(1) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the confirmatory resolution procedure.
- 1.3. The rule is due to come into operation on 1st October 2008.

2. Purpose

- 2.1. The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2008("the 2008 Amending Regulations") amend the provisions of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 and the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 respectively. They will apply to the parents of children expected to be born or placed for adoption on or after 5 October 2008. The amendments remove distinctions between the rights to non-pay benefits of employees on ordinary maternity leave and those on additional maternity leave. Similar distinctions between the rights of employees on ordinary adoption leave and additional adoption leave are also removed.

3. Background

- 3.1. As a result of the High Court order in *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] EWHC 483 (Admin), in which the Court ruled that the Employment Equality (Sex Discrimination) Regulations 2005, did not comply with the requirements of European law, the Sex Discrimination Act 1975 has been amended by the Sex Discrimination Act 1975 (Amendment) Regulations 2008. In order to maintain parity with Great Britain, the Sex Discrimination (Northern Ireland) Order 1976 ("the 1976 Order") has been similarly amended by the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008. This legislative change was taken forward by the Office of the First Minister and deputy First Minister, which has responsibility for sex discrimination legislation.
- 3.2. As a result of the change, the 1976 Order allows employees on additional maternity leave to bring claims for discrimination in relation to any of the terms and conditions of her employment except those relating to pay. This means a woman whose expected week of childbirth falls on or after 5 October 2008 may have a claim if she is not afforded the same benefits of

the terms and conditions of employment, except those relating to pay, during additional maternity leave as she is during ordinary maternity leave.

- 3.3. The 2008 Amending Regulations are being made by the Department for Employment and Learning to clarify the law with regard to terms and conditions of employment which must continue during additional maternity leave, and to ensure that the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 are consistent with the amended 1976 Order. The Department is also making corresponding changes in relation to additional adoption leave so that the adoption leave regime is consistent with the maternity leave regime.
- 3.4. Regulations 4 – 7 of the 2008 Amending Regulations modify the Maternity and Parental Leave etc Regulations (Northern Ireland) 1999 to extend the non-pay terms and conditions to which a woman is entitled during ordinary maternity leave so that they cover the period of additional maternity leave.
- 3.5. Regulations 8 – 10 of the 2008 Amending Regulations modify the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 to extend the non-pay terms and conditions to which a woman is entitled during ordinary adoption leave so that they cover the period of additional adoption leave
- 3.6. As was the case with the 1976 Order before it was amended, the amended 1976 Order has no impact on entitlement to terms and conditions relating to pay, as defined by European community law. Employers are therefore not obliged to go beyond the obligations of the Social Security (Northern Ireland) Order 1989 which provides that pension contributions must continue during periods of paid family leave. The 2008 Amending Regulations do not change this provision or extend pension rights during unpaid additional maternity or adoption leave.

4. Matters of Special Interest to the Employment and Learning Committee

- 4.1. None.

5. Consultation

- 5.1. No consultation took place as the amendments to maternity leave legislation were an obligatory requirement resulting from changes to existing sex discrimination legislation. With regard to the changes to adoption leave legislation, the Department has a policy of, where possible, affording the same rights to adoptive parents as those applicable to natural parents, and this could be provided for in this instance at a small potential additional cost to employers.

6. Position in Great Britain

- 6.1. The legislation in Northern Ireland has been amended in order to maintain parity with Great Britain and, contextual differences aside, is identical. The reasons behind the changes to the legislation in Great Britain are explained in Section 3.

7. Equality Impact

- 7.1. The Department is of the view that there is no negative equality impact, and a slight positive impact on both women of childbearing age and individuals adopting dependant children. There is no impact on other equality categories.

8. Regulatory Impact

- 8.1. The overall cost of the combined maternity and adoption leave package to business is approximately £4.83 million per annum. This total includes the regulatory impact of the measures introduced by the Office of the First Minister and deputy First Minister in relation to maternity leave. Initial familiarisation costs for business are expected to be in the region of £0.26 million. Regulatory impact assessments in respect of the maternity and adoption measures are available, respectively, from OFMdfM and the Department for Employment and Learning.

9. Financial Implications

- 9.1. No additional Exchequer expenditure is anticipated. The cost to business is described above.

10. Section 24 of the Northern Ireland Act 1998

- 10.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

11. EU Implications

- 11.1. This amending legislation was the result of a High Court ruling that the existing legislation did not comply with the requirements of European law. There are no further EU implications.

12. Additional Information

- 12.1. Not applicable.