

EXPLANATORY MEMORANDUM TO

The Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations (Northern Ireland) 2010

2010 No. 299

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (Amendment) Regulations (Northern Ireland) 2010

2010 No. 305

The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (Amendment) Regulations (Northern Ireland) 2010

2010 No. 306

The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations (Northern Ireland) 2010

2010 No. 304

The Additional Statutory Paternity Pay (Health and Social Care Employees) Regulations (Northern Ireland) 2010

2010 No. 301

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rules (details above) which are laid before the Northern Ireland Assembly.
- 1.2. These Statutory Rules are made under the following powers:
 - 1.2.1. **the Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations (Northern Ireland) 2010** – Articles 8, 9, 11 and 16(1) of the Employment (Northern Ireland) Order 2002 and Articles 7(1)(fa) and (ga) and 23 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs;
 - 1.2.2. **the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (Amendment) Regulations (Northern Ireland) 2010** – section 167ZK of the Social Security

Contributions and Benefits (Northern Ireland) Act 1992 (“the Contributions and Benefits Act”);

- 1.2.3. **the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (Amendment) Regulations (Northern Ireland) 2010** – sections 167ZI, 167ZJ(1), 167ZR and 167ZS(1) of the Contributions and Benefits Act, with the concurrence of the Treasury;
 - 1.2.4. **the Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations (Northern Ireland) 2010** – sections 167ZI, 167ZJ(1), 167ZR and 167ZS(1) of the Contributions and Benefits Act 1992, with the concurrence of the Treasury.
 - 1.2.5. **the Additional Statutory Paternity Pay (Health And Social Care Employees) Regulations (Northern Ireland) 2010** – section 167ZJ(9) and (10) of the Contributions and Benefits Act 1992, with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs.
- 1.3. All of the above Statutory Rules are subject to the negative resolution procedure.

2. Purpose

- 2.1. These Statutory Rules govern the administration of Additional Statutory Paternity Pay (ASPP) for employers and Her Majesty’s Revenue and Customs. ASPP is payable to eligible fathers and adopters taking leave to care for their new child and whose partners were eligible for maternity or adoption pay and have returned to work. These regulations also provide for ASPP to be paid where eligible earners are working abroad, are mariners or are employed by more than one Health and Social Care body.
- 2.2. The Additional Statutory Paternity Pay (Birth, Adoption and Adoption from Overseas) (Administration) Regulations (Northern Ireland) 2010 provide for the funding of employers’ liabilities to make payments of ASPP; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners of Her Majesty’s Revenue and Customs.
- 2.3. The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations (Northern Ireland) 2003 (Amendment) Regulations (Northern Ireland) 2010 provide for the application of those provisions of Part 12ZA of the Contributions and Benefits Act concerning Additional Statutory Paternity Pay as regards children adopted from overseas.
- 2.4. The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (Amendment) Regulations (Northern Ireland) 2010 amend the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 2002 (“the 2002 Regulations”), which provide Ordinary Statutory Paternity Pay and statutory adoption pay for persons abroad and mariners. Amendment is

necessary in order to introduce ASPP for persons abroad and mariners, and also to make a minor correction to the 2002 Regulations.

- 2.5. The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations (Northern Ireland) 2010 modify the 2002 Regulations to provide Ordinary Statutory Paternity Pay, Additional Statutory Paternity Pay and Statutory Adoption Pay for mariners and persons abroad who adopt from overseas (i.e. who adopt a child under the law of another country). This legislation repeals the previous regulations on this subject, and replaces them with one substantive change, namely that the regulations now additionally take account of ASPP.
- 2.6. The Additional Statutory Paternity Pay (Health and Social Care Employees) Regulations (Northern Ireland) 2010 allow (in certain cases) a Health and Social Care employee with two or more contracts of employment to elect, for the purposes of entitlement to ASPP, to treat those contracts as one contract.

3. Background

- 3.1. Additional Paternity Leave and Pay is a package intended to provide greater choice for parents in how they divide childcare responsibilities between them. It will enable certain employees (usually fathers) to have a greater involvement in raising their child in the first year of the child's life.
- 3.2. The Work and Families (Northern Ireland) Order 2006 was introduced to make provision for statutory rights to leave and pay in connection with the birth or adoption of children. This included the introduction of a new scheme to provide certain employees (generally fathers) with a new entitlement to take leave to care for a child and a new entitlement to receive pay while they are on leave, if certain conditions are met.
- 3.3. The introduction of Additional Paternity Leave and Pay is aimed at giving families more choice about their caring arrangements during the first year of life, thereby increasing fairness. The package is a response to evidence that a growing number of fathers want greater opportunities to care for their child.

4. Consultation

- 4.1. Since 2005 the Department has consulted extensively, by way of four separate public consultations, on Northern Ireland aspects of the proposed introduction of a new UK-wide right to Additional Paternity Leave and Pay. The most recent of these consultations, dealing with detailed aspects of the administration of the right, closed in January 2010.
- 4.2. Responses to the latest consultation, like those to the previous public consultations, have indicated general agreement with the proposed introduction of Additional Paternity Leave and Pay on a parity basis, although some concerns have been expressed about the potential impact on business, particularly small firms. Administration of the scheme is designed to be as 'light touch' as possible, and the Department intends to provide comprehensive guidance and explore

means of providing greater support to small businesses in understanding and properly discharging their employment rights responsibilities. The Department believes that the Additional Paternity Leave and Pay scheme achieves the right balance between meeting business' concerns and providing parents with increased choice in how their children are looked after.

- 4.3. All consultation material, including that relating to previous consultations, is available to view or download from the Department's website at www.delni.gov.uk/index/consultation-zone.

5. Equality Impact

- 5.1. Equality impact assessments have been carried out on a number of occasions as the package of Additional Paternity Leave and Pay measures has been developed. It is likely that the package will have a positive impact from an equality perspective in that it will support working fathers in their family life and provide both parents with additional choice and flexibility in balancing their responsibilities at work and in the home.
- 5.2. Impact assessments relating to the introduction of Additional Paternity Leave and Pay are available to view or download, alongside associated consultation material, from the Department's website at www.delni.gov.uk/consultation-zone.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment, carried out on the basis of the corresponding exercise in Great Britain, has identified only modest costs. Costs across all employers in Northern Ireland are estimated at a maximum of £125,000 in the first year and up to £270,000 per annum from then on.

7. Financial Implications

- 7.1. Exchequer costs, which relate to administration of the scheme by HM Revenue and Customs, are estimated at £35,000 in the first year and a maximum of £80,000 per annum thereafter.

8. Section 24 of the Northern Ireland Act 1998

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

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The previous UK Government set in place regulations which will introduce Additional Paternity Leave and Pay, making the right exercisable by fathers of children born or placed for adoption from April 2011. The present UK Government has decided to retain these regulations in statute.

10.2. There has been a long-established policy of parity between Northern Ireland and Great Britain in respect of statutory rights for working parents that are administered on a UK-wide basis by HM Revenue and Customs such as Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay. Additional Statutory Paternity Pay, together with the associated leave, is a comparable ‘family-friendly’ package, with the pay elements to be administered in the same way. In line with established practice, and in response to the views expressed by a majority of contributors to successive public consultations, it is considered appropriate to replicate this legislation in Northern Ireland.

11. Additional Information

11.1. Not applicable.