

EXPLANATORY MEMORANDUM TO

The Employment Rights (Northern Ireland) Order 1996 (Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases) Regulations (Northern Ireland) 2015

S.R. 2015 No.100

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 107AC, 107BA, 107J(2), 112BAA and 251(6) of the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order") and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These Regulations apply and modify existing powers in the 1996 Order to allow the making of regulations to give an employee who meets the eligibility criteria entitlement to statutory adoption leave, paternity leave and shared parental leave if that employee has a child born with the help of a surrogate and the employee is a parental order parent.
- 2.2. A parental order parent is someone who on the day of the child's birth intends to apply for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 with another person in respect of the child and they expect the court to make such an order; or someone who obtains such an order.

3. Background

- 3.1. The Work and Families Act (Northern Ireland) 2015 ("the 2015 Act") provides a legislative framework for the making of regulations that allow for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child, and for conferring other rights relating to the first year after birth, or placement, of the child. The Act further facilitates extension to the right to request flexible working for all qualifying employees.
- 3.2. These Regulations are part of a group of Statutory Rules which, taken collectively, have the purpose of enabling eligible working parents to share leave and pay entitlement in respect of children due to be born, or placed for adoption, on or after 5th April 2015.
- 3.3. Articles 107A and 107B of the 1996 Order give employees who satisfy prescribed conditions the right to take ordinary adoption leave and additional adoption leave. They also allow an employee who is entitled to ordinary or additional adoption leave to curtail that leave to access shared parental leave. These Regulations provide that those Articles have effect in relation to parental order parents.

- 3.4. Articles 107G and 107I of the 1996 Order (inserted by the 2015 Act) contain powers to make regulations entitling an employee who is adopting a child under the law of any part of the United Kingdom, or has a specified relationship with such an adopter, to take shared parental leave. These Regulations make the necessary modifications to those Articles to provide for them to have effect in relation to parental order parents.
- 3.5. Article 112B of the 1996 Order confers power to make regulations entitling an employee who satisfies specified conditions to avail of paternity leave in respect of an adoption. These Regulations make the necessary modifications to Article 112B to provide for it to have effect in relation to parental order parents. In addition, these Regulations modify Article 112A of the 1996 Order to allow the making of regulations which provide that an employee does not have an entitlement to paternity leave in respect of a birth under that Article where the employee has the right to paternity leave under Article 112B or to adoption leave under Article 107A.
- 3.6. Regulations making use of these modified powers are made separately.

4. Consultation

- 4.1. Public consultation explaining Great Britain proposals and asking whether it would be appropriate to take forward comparable measures in Northern Ireland took place between 6th June and 23rd August 2013.
- 4.2. The consultation asked for views on the merits of the Great Britain programme; the extent (if any) to which it should be implemented in Northern Ireland; and whether alternative options would be appropriate.
- 4.3. There were 28 substantive responses to the consultation, demonstrating substantial support for the introduction of rights to leave and pay for Northern Ireland's working parents corresponding to the entitlements being brought forward in Great Britain.
- 4.4. The Department considered a number of policy options. The first was to retain unchanged the present leave, pay and/or flexible working arrangements, making such minor legislative amendments as necessary to support that objective. This received no substantive support.
- 4.5. The second option was to develop pay, leave and/or flexible working arrangements bespoke to Northern Ireland. Although the consultation did not make any specific alternative proposals concerning leave and pay, it did ask for stakeholder input on available options. None were identified.
- 4.6. The third option available to the Department was to provide leave, pay and/or flexible working entitlements corresponding to those envisaged in Great Britain. As this option received substantial support, the Department proceeded on this basis.

5. Equality Impact

- 5.1. An assessment of the equality impact of the complete package of proposals concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, the primary beneficiaries of the proposals

are anticipated to be older workers, male and female employees, dependants and persons with disabilities.

- 5.2. These Regulations, constituting part of that package, will contribute to a positive impact from an equality perspective in that they will support those making use of surrogacy arrangements, providing them with additional choice and flexibility in balancing their responsibilities at work and in the home.

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 in respect of the package of new rights for working parents.
- 6.2. The assessment anticipates one-off transitional costs across all employers totalling £1,467,000, relating to the cost of management time in changes to payroll/HR systems in implementing the new rights.
- 6.3. Annually recurring costs of £747,000 are expected to be associated with parents exercising the new rights in respect of adoption leave and pay, antenatal appointments, unpaid parental leave and shared parental leave and pay.

7. Financial Implications

- 7.1. Estimated additional costs to the Exchequer in respect of introducing the new rights to Northern Ireland are: one-off transitional costs of £207,000 associated with preparing for the implementation of the new rights; and annually recurring costs totalling £288,000 comprised of administrative costs and costs associated with parents exercising the new rights in respect of adoption leave and pay and shared parental leave and pay.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that the Regulations are compliant with section 24 of the Northern Ireland Act 1998.
- 8.2. The package of which the Regulations are part impacts on family life to the extent that it increases choice and flexibility, improving options with regard to childcare. Negative impacts on the right to family life are not considered to arise.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Regulations correspond to the Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 in Great Britain (S.I. 2014/3095), and contribute to the continuation and enhancement of a UK wide system of rights for working parents. This reflects the wishes of contributors to successive public consultations in this area of law.

11. Additional Information

- 11.1. Not applicable.