

**EXPLANATORY MEMORANDUM TO**  
**THE MATERNITY ALLOWANCE (CURTAILMENT) REGULATIONS**  
**(NORTHERN IRELAND) 2015**  
**S.R. 2015 No. 149**  
**AND**  
**THE STATUTORY MATERNITY PAY (CURTAILMENT) REGULATIONS**  
**(NORTHERN IRELAND) 2015**  
**S.R. 2015 No. 150**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rules (details above) which are laid before the Northern Ireland Assembly.
- 1.2. These Statutory Rules are made under sections 35(3A), (3B), (3C) and (3D), 161(3A), (3B), (3C) and (3D) and 171(1), (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and now vested in it, and are subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The Maternity Allowance (Curtailment) Regulations (Northern Ireland) 2015 enable a woman to end her Maternity Allowance early so that an eligible person (a spouse, civil partner, partner or the child's father) can take the remaining number of untaken weeks of Maternity Allowance as shared parental pay and/or shared parental leave.
- 2.2. The Statutory Maternity Pay (Curtailment) Regulations (Northern Ireland) 2015 enable a woman to end their Statutory Maternity Pay early so that an eligible person can take or share the remaining number of untaken weeks of Statutory Maternity Pay as shared parental pay and/or shared parental leave.

### **3. 21 day Rule**

- 3.1. The Maternity Allowance (Curtailment) Regulations (Northern Ireland) 2015 and the Statutory Maternity Pay (Curtailment) Regulations (Northern Ireland) 2015 (“the DSD Regulations”) refer to and operate alongside two sets of regulations introduced by the Department for Employment and Learning (‘the DEL Regulations’). The DEL Regulations are the Statutory Shared Parental Pay (General) Regulations (Northern Ireland) 2015 (SR 2015 No. 94) and the Shared Parental Leave Regulations (Northern Ireland) 2015 (SR 2015 No. 93). For this new system of shared parental leave and pay to be effective, it is necessary for both the DSD Regulations and the DEL Regulations to come into operation together. They will come into operation on 15 March 2015. The DSD Regulations cannot be viewed in isolation, as together with the DEL Regulations they set out a new system of shared parental leave and pay.
- 3.2. The DSD Regulations could not be made until the DEL Regulations had been made, because the effect of this would have been for the DSD Regulations to refer to legislation which did not exist. Consequently it has not been possible to meet the 21 day Rule in respect of these Regulations.
- 3.3. DSD considered delaying the coming into operation date of the DSD Regulations in order to avoid breaching the 21 day rule. However, as the DEL Regulations cannot operate until the DSD Regulations have come into operation, this would have meant that the entire shared parental leave and pay system could not operate. The DEL Regulations expressly refer to a woman or adopter curtailing their Maternity Allowance and Statutory Maternity Pay, so as to allow an eligible partner to take shared parental pay and/or shared parental leave.

### **4. Background**

- 4.1. The DSD Regulations are made under powers set out in DELs Work and Families Act (Northern Ireland) 2015 (c.1). These powers are being used for the first time to create a new entitlement to shared parental leave and pay for eligible persons (as described in paragraph 2.1 above) and operate alongside two other sets of regulations made by DEL), as described in

paragraph 3.1 above. Together these Regulations set out a new system of shared parental leave and pay.

- 4.2. The Work and Families Act (Northern Ireland) 2015 gives effect to the Coalition Government's commitment to encourage shared parenting and sets out the framework for shared parental leave and shared parental pay. The scheme applies to working parents.
- 4.3. The policy enables a woman who has given birth to reduce her Statutory Maternity Pay period or Maternity Allowance period, so that the remainder can be used by the woman and an eligible person (see paragraph 2.1 above) –as shared parental pay and/or shared parental leave. Where a woman is not eligible for Statutory Maternity Leave or Statutory Adoption Leave, they may still transfer the balance of their Statutory Maternity Pay or Maternity Allowance to an eligible person who is entitled to take shared parental pay and/or shared parental leave.
- 4.4. The woman will need to give notice to their employer, or the Department for Social Development in the case of Maternity Allowance, of the intention to curtail their Statutory Maternity Pay or Maternity Allowance period on a specific date. The notice may be revoked in certain limited circumstances, such as when the eligible person dies.
- 4.5. The untaken balance of the 39 weeks of Maternity Allowance or Statutory Maternity Pay will be available for an eligible person to take as shared parental pay and/or shared parental leave.
- 4.6. Women not wishing to utilise the shared parental leave and pay system will not be affected and will be able to continue to receive Maternity Allowance or Statutory Maternity Pay as usual.
- 4.7. This change will affect women who are due to give birth on or after 5 April 2015.

## **5. Consultation**

- 5.1. The Department for Employment and Learning consulted on the overall proposals on 14 April 2014 (<http://www.delni.gov.uk/index/consultation->

[zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm](http://zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm)).

## **6. Equality Impact**

- 6.1. The Department has pre-screened both Rules and does not expect there to be any adverse equality implications. A full screening exercise will be published on the Department's website in due course.

## **7. Regulatory Impact**

- 7.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

## **8. Financial Implications**

- 8.1. A breach of parity in this matter may incur financial costs, both in the loss of benefit savings and in administration costs, which would have to be met by the Northern Ireland Executive from the Northern Ireland block grant.

## **9. Section 24 of the Northern Ireland Act 1998**

- 9.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –
- (a) is not incompatible with any of the Convention rights;
  - (b) is not incompatible with Community law;
  - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and
  - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **10. EU Implications**

- 10.1. Not applicable.

## **11. Parity or Replicatory Measure**

- 11.1. The Rules mirror the provisions contained in The Maternity Allowance (Curtailed) Regulations 2014 (S.I. 2014/3053), and The Statutory

Maternity Pay and Statutory Adoption Pay (Curtilment) Regulations 2014 (S.I. 2014/3054) in relation to maternity only, and are in keeping with the principal of parity between Northern Ireland and Great Britain in social security matters.

## **12. Additional Information**

12.1. Not applicable.