

EXPLANATORY MEMORANDUM TO

The Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2015

S.R. 2015 No. 87

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)(aa) and (ab), 107A(1), (1A) and (3)(c), 107D(2), 112A(4A), 112B(1), (4A) and (5)(aa) and (ba), 112BA(1), 112C(1)(c), 112D(1) and 131(1), (2) and (3)(aa) and (ab) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. The purpose of these Regulations is to amend the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (“the 2002 Regulations”) to take account of the policy changes being brought forward in association with the Work and Families Act (Northern Ireland) 2015 (“the 2015 Act”).
- 2.2. The Regulations remove the requirement that employees must be employed continuously by their employer for 26 weeks or more before being able to access the right to statutory adoption leave. This makes statutory adoption leave a 'day one' employment right.
- 2.3. They adjust the right to return to work following paternity or adoption leave to ensure that account is taken of situations where employees have accessed the new right to shared parental leave.
- 2.4. The Regulations further make adoption leave available to foster parents who are prospective adopters if they have been notified that a child is to be placed with them as part of a ‘fostering for adoption’ arrangement. They also confer the right to paternity leave on the spouses, civil partners and partners of prospective adopters in this situation.
- 2.5. The Regulations prevent paternity leave from being taken in respect of an adoption placement if such leave has already been taken at an earlier stage as part of a fostering for adoption process for the same child. They achieve the same end in relation to adoption leave, so that it too may not be taken on two occasions in respect of the same child. They also prevent paternity leave from being taken if a person has already taken paid time off to attend an adoption appointment in respect of the child (and is thus the adopter) or has already taken shared parental leave.
- 2.6. Finally, the Regulations protect employees who suffer a detriment or who are dismissed in relation to time off work for ante-natal or adoption appointments. The right to take time off for these appointments was introduced by the 2015 Act, which amended the Employment Rights (Northern Ireland) Order 1996 to make relevant provision.

3. Background

- 3.1. 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.

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 substantiv 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 working fathers in their family life and provide parents with additional choice and flexibility in balancing their responsibilities at work and in the home. The conversion of statutory adoption leave to a 'day one'

employment right, the provision of adoption leave in respect of fostering for adoption situations and measures around time off for adoption appointments will be of particular benefit to adoptive parents and adopted children.

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. This single set of Regulations corresponds to two separate sets of Regulations with application in Great Britain, namely the Paternity and Adoption Leave (Amendment) Regulations 2014 (S.I. 2014/2112) and the Paternity and Adoption Leave (Amendment) (No. 2) Regulations 2014 (S.I. 2014/3206). They contribute to the continuation and enhancement of a UK wide system of rights for working parents, reflecting the wishes of contributors to successive public consultations in this area of law.

11. Additional Information

- 11.1. Not applicable.