

EXPLANATORY MEMORANDUM TO
THE STATUTORY PATERNITY PAY AND STATUTORY ADOPTION PAY
(GENERAL) (AMENDMENT) REGULATIONS 2014

2014 No. 2862

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Statutory Paternity Pay and Statutory Adoption Pay (General) (Amendment) Regulations 2014 (“the 2014 Regulations”) amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (“the 2002 Regulations”). The amendments align the notification period for statutory paternity pay with the notification period for statutory paternity leave. The 2014 Regulations also amend the provisions for subsequently varying the choice of when the pay period will begin so that they are aligned with those for statutory paternity leave.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) and the 2002 Regulations make provision for one or two weeks statutory paternity pay following birth or adoption where an employee is entitled and is absent from work. Currently, the 1992 Act requires an employee to give 28 days’ notice (or if that is not reasonably practicable as soon as is reasonably practicable) in order to be entitled to statutory paternity pay. The Children and Families Act 2014 amended section 171ZC of the 1992 Act by removing the reference to the 28 day period and introducing a power to set out the notice requirements for statutory paternity pay in regulations.

4.2 The Paternity and Adoption Leave Regulations 2002 set out the eligibility criteria and notification requirements for an employee to be entitled to statutory paternity leave in birth and adoption situations. To be entitled to paternity leave (birth), an employee must give notice of entitlement 15 weeks before the expected due date of the child (or if that is not reasonable, as soon as is reasonably practicable). In order to be entitled to paternity leave (adoption) an employee must give notice of entitlement no more than seven days after having been notified of being matched with a child for adoption (or if that is not reasonable, as soon as is reasonably practicable).

4.3 The 2014 Regulations remove this difference and align the notification requirements for statutory paternity pay (birth and adoption) with those for paternity leave (birth and adoption leave respectively) set out in the Paternity and Adoption Leave Regulations 2002. The changes are achieved by amending the 2002 Regulations, setting out the new provisions.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is implementing significant reforms to family-related leave.

7.2 The Government carried out a consultation on the proposal for a new statutory right to flexible parental leave in 2011. The consultation document can be found at: <https://www.gov.uk/government/consultations/consultation-on-modern-workplaces>.

7.3 In light of consultation responses, the Government announced a revised proposal for shared parental leave and pay and other changes to family related leave and pay in November 2012. The Government response is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82969/12-1267-modern-workplaces-response-flexible-parental-leave.pdf.

7.4 The Government launched a further consultation on the administrative elements of the shared parental leave system in February 2013 and the Government response was published in November 2013. The consultation document and full Government response can be accessed at: <https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay>.

7.5 The 2013 *Consultation on the administration of shared parental leave and pay* proposed that the notice requirement for statutory paternity pay be aligned to that of statutory paternity leave.

8. Consultation outcome

8.1 The 2013 consultation asked about administrative difficulties for employers of the existing different notice periods for paternity leave and statutory paternity pay. There were 64 responses to the question, equally split between employers and non-employers. 7% of respondents (33% employers, 67% non-employers) offered anecdotal feedback

relating to difficulties arising from the differences in notice periods between paternity leave and paternity pay.

8.2 A further question asked whether the government should align the notice period for paternity pay to that of leave. 76 responses were received to the question. 87% of respondents were in favour of the proposal as it would streamline the process for both parties. This was a fairly even split between employers and non-employers. Those who did not support the proposal were predominantly non-employers who called for the right to provide notice as soon as is reasonably practicable to be retained.

8.3 In response to the consultation, the Government confirmed that it would amend the notice period for statutory paternity pay, so that it was the same as for paternity leave.

9. Guidance

9.1 The changes brought about by these Regulations will be publicised widely so that all who may be affected may be made aware of their effects. The Department will use appropriate communication channels and press avenues to publicise the changes.

10. Impact

10.1 These Regulations are part of a package of legislative measures required to implement the Government's Modern Workplace agenda, including the introduction of shared parental leave and pay, and other changes to statutory family leave and pay. A single Impact Assessment was prepared for these as a whole during the passage through Parliament of the Children and Families Act 2014 and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/110692/13-651-modern-workplaces-shared-parental-leave-and-pay-impact-assessment2.pdf.

10.2 The equivalent annual net cost to business was revised in March 2014 to reflect the Better Regulation Executive's updated inflation assumptions and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf

11. Regulating small business

11.1 The legislation applies to small business.

11.2 No special measures apply to small businesses.

12. Monitoring & review

12.1 The Government will monitor the impact of these Regulations as part of its ongoing monitoring of the take up of statutory payments, including statutory paternity pay.

13. Contact

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