EXPLANATORY MEMORANDUM TO

THE ADDITIONAL STATUTORY PATERNITY PAY (GENERAL) (AMENDMENT) REGULATIONS 2011

2011 No. 678

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument corrects a drafting error in the Additional Statutory Paternity Pay (General) Regulations 2010 (SI 2010/1056) ("the original regulations"). It will clarify the earliest start point for Additional Statutory Paternity Pay when a child is placed for adoption.

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

3.1 None

4. Legislative Context

4.1 Part 3 of the original regulations concern additional statutory paternity pay payable in connection with adoption. It provides for the conditions which must be fulfilled for entitlement to arise to this form of additional statutory paternity pay. It also sets out the period during which additional statutory paternity pay is payable. The provisions in Part 3 correspond to those in Part 2 which relates to additional statutory paternity pay in connection with the birth of a child.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Explanatory Memorandum for the original regulations is attached as Annex A. It sets out the policy background for the introduction of Additional Statutory Paternity Pay (ASPP). The regulations correct a drafting error in the original regulations restoring the intention of those provisions.

7.2 The drafting error in regulation 14 of the original regulations would appear to allow ASPP (adoption) to begin 20 weeks *before* a child is placed for adoption (although other eligibility conditions would prevent this). The intention was that ASPP (adoption) should not begin earlier than 20 weeks *after* the child's placement for adoption. This reflects the birth provisions that ASPP (birth) cannot begin earlier than 20 weeks after the child is born. The intended position is reflected in the Explanatory Note to the original regulations which state that the provisions on ASPP (adoption) correspond to the provisions on ASPP (birth). The intended position is also reflected in guidance issued after the original regulations were made. This amendment will ensure the intended position is achieved

- Consolidation

7.3 This instrument does not consolidate any other instruments.

8. Consultation outcome

8.1 No consultation has been carried out on this instrument since its impact is only to correct a drafting error. The Explanatory Memorandum for the original regulations sets out the consultations which took place on the policy.

9. Guidance

9.1 Guidance on Additional Statutory Paternity Pay is available from www.direct.gov.uk , www.businesslink.gov.uk , www.hmrc.gov.uk .

10. Impact

10.1 The impact on business, public sector, charities or voluntary bodies for the policy is set out in the Impact Assessment which accompanied the original regulations.

10.2 The Impact Assessment provided for the original regulations is available from www.legislation.gov.uk . No assessment has been carried out for this instrument since it only corrects a drafting error.

11. Regulating small business

11.1 The legislation applies to small business. The Explanatory Memorandum for the original regulations sets out the steps taken to minimise the impact on small business.

12. Monitoring & review

12.1 The Explanatory Memorandum for the original regulations sets out how Additional Statutory Paternity Pay will be monitored.

13. Contact

13.1 Nicola Dissem at the Department for Business, Innovation and Skills Tel: 020 7215 0389 or email: nicola.dissem@bis.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

EXPLANATORY MEMORANDUM TO

The Additional Paternity Leave Regulations 2010

2010 No. 1055

The Additional Statutory Paternity Pay (General) Regulations 2010

2010 No. 1056

The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations

2010 No. 1057

The Employment Rights Act 1996 (Application of Section 80BB to Adoptions from Overseas) Regulations 2010

2010 No. 1058

The Additional Paternity Leave (Adoptions from Overseas) Regulations 2010

2010 No. 1059

And

The Additional Statutory Paternity Pay (Weekly Rates) Regulations 2010

2010 No. 1060

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

2. Purpose of the instruments

2.1 These instruments introduce Additional Paternity Leave and Pay. This gives eligible employees (usually fathers) a right to up to six months' leave to care for a child, if the child's mother or (in the case of adoptions) the primary adopter returns to work without exercising their full entitlement to maternity leave. Some of the leave may be paid if it is taken during the mother's maternity pay period or, for adopted children, during the primary adopter's adoption pay period. The entitlement to Additional Paternity Leave and Pay will apply to parents of children due on or after 3 April 2011, or to adoptive parents notified of having been matched on or after that date.

2.2 The Additional Paternity Leave Regulations 2010 allow eligible employees (usually fathers) up to 26 weeks additional paternity leave, for the purpose of caring for a child under the age of one, or (for an adopted child) in

the first year after being placed for adoption. Leave can only be taken once the mother has returned to work and the child is over 20 weeks old, or the child has been with its adoptive parents for 20 weeks. The Regulations set out the eligibility criteria including notice periods and information to be declared. These Regulations also provide for a longer period of leave where the child's mother or primary adopter has died during the year after the child's birth or placement for adoption.

2.3 The Additional Statutory Paternity Pay (General) Regulations 2010 allow employed earners to be paid Additional Statutory Paternity Pay if they are not working during their partner's maternity or adoption pay period. To be eligible the mother must have been entitled to maternity allowance, statutory maternity pay or statutory adoption pay and have returned to work. The Regulations set out the eligibility criteria including notice periods and length of service requirements. These Regulations also provide for cases where the mother or primary adopter dies during the year after the child's birth or placement for adoption.

2.4 The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010, the Employment Rights Act 1996 (Application of Section 80BB to Adoptions from Overseas) Regulations 2010 and The Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 apply the entitlement to Additional Paternity Leave and Pay (with necessary modifications) to eligible parents who are adopting a child from overseas.

2.5 The Additional Statutory Paternity Pay (Weekly Rates) Regulations 2010 set the standard weekly rate for Additional Statutory Paternity Pay.

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

3.1 None.

4. Legislative Context

4.1 These instruments introduce the right to Additional Paternity Leave and Pay, provision for which was made by the Work and Families Act 2006, which amends the Employment Rights Act 1996 and Social Security (Contributions and Benefits) Act 1992. As so amended, the 1996 Act governs the entitlement to Additional Paternity Leave and the 1992 Act governs the entitlement to Additional Statutory Paternity Pay.

4.2 The instruments are part of a suite of regulations that enable Additional Paternity Leave and Pay, with a further six negative instruments completing the package.

4.3 This fulfils an undertaking made by the Government to introduce Additional Paternity Leave and Pay. On the 20 June 2007, Jim Fitzpatrick made an announcement in the House of Commons stating that the Government

had made a commitment to introduce additional paternity leave and additional statutory paternity pay before the end of this Parliament, although a date of introduction was still to be decided.

5. Territorial Extent and Application

5.1 These instruments apply to Great Britain. Separate regulations are to be made in Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State for Employment Relations and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the named Statutory Instruments are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Government believes Additional Paternity Leave and Pay will 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.

7.2 In its 2005 Manifesto, the Government stated its intention to give fathers more opportunities to spend time with their children.

7.3 The Work and Families Act 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.

7.4 Introducing Additional Paternity Leave and Pay aims to give families more choice about their caring arrangements during the first year of life and so increase fairness. This will respond to the growing number of fathers who want greater opportunities to care for their child.

- Consolidation

7.4 These Orders do not consolidate any other Instruments.

8. Consultation outcome

8.1 Consultations took place in March 2006 on the detail of the Additional Paternity Leave and Pay scheme and in May 2007 on the administration of Additional Paternity Leave and Pay. Both consultations were for 12 weeks.

8.2 A further consultation on the draft regulations closed on 20 November 2009. This consultation lasted eight weeks. A shorter consultation period was required in order to meet the challenging parliamentary timetable. As this was the third consultation, it gave interested parties ample opportunity to respond. A number of meetings with key stakeholders took place during the consultation period.

8.3 One hundred and ten written responses were received to the 2009 consultation. Half were from business or business representatives, 8% each from employee representatives and local government, and 11% each from charities or social enterprises and individuals. A further 5% each came from legal representatives and individuals.

8.4 Responses to the 2009 consultation were generally positive, with almost two thirds saying that the proposed administration strikes the right balance between the need to keep administration simple and need for certainty of entitlement.

9. Guidance

9.1 Guidance will be available for employees via www.direct.gov.uk and for employers via www.businesslink.gov.uk and www.hmrc.gov.uk; as well as HMRC Employer's CDRom; Employer Help books and the HMRC employer helpline. This guidance will be in place before the 3 April 2011 to ensure that employers and employees are aware of the changes and have the required level of information available.

10. Impact

10.1 The impact on business, public sector, charities or voluntary bodies can be more readily ascertained from the accompanying Impact Assessment.

10.2 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Maternity, Paternity and Adoption leave are entitlements that should be available to employees based on eligibility criteria that are applied consistently, regardless of the size of their employer. We do not want to exclude parents who work in small firms from benefiting.

11.3 To minimise the impact of the requirements on firms employing up to 20 people, we have designed the administration of the scheme to be as 'light-touch' as possible to minimise the burden placed upon businesses. Small businesses (defined as paying £45,000 or less in National Insurance contributions) can claim back 104.5% of Additional Statutory Paternity payments made.

11.4 All affected businesses will be impacted by the absence of a member of staff, and small businesses may experience a disproportionate impact when an individual takes leave, compared to larger businesses. However, it is estimated that less than 1% of small businesses will be affected each year.

11.5 We have consulted with small business representatives as part of the consultation process.

12. Monitoring & review

12.1 The Department for Business, Innovation and Skills (BIS) regularly undertakes evaluations of maternity and paternity rights in conjunction with the Department for Work and Pensions (DWP). A survey of fathers will be undertaken once Additional Paternity Leave and Pay has been implemented in April 2011. Further surveys will be carried out on a regular basis.

13. Contact

13.1 Karen Haseldine at the Department of Business, Innovation and Skills Tel: 020 7215 5531 or email: karen.haseldine@bis.gsi.gov.uk can answer any queries regarding the instrument.