EXPLANATORY MEMORANDUM TO

THE ADDITIONAL STATUTORY PATERNITY PAY (BIRTH, ADOPTION AND ADOPTIONS FROM OVERSEAS) (ADMINISTRATION) REGULATIONS 2010 (SI 2010 No.154)

THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (APPLICATION OF PARTS 12ZA AND 12ZB TO ADOPTIONS FROM OVERSEAS) REGULATIONS 2003 (AMENDMENT) REGULATIONS 2010 (SI 2010 No.153)

THE STATUTORY PATERNITY PAY AND STATUTORY ADOPTION PAY (PERSONS ABROAD AND MARINERS) REGULATIONS 2002 (AMENDMENT) REGULATIONS 2010 (SI 2010 No.151)

THE ORDINARY STATUTORY PATERNITY PAY (ADOPTION), ADDITIONAL STATUTORY PATERNITY PAY (ADOPTION) AND STATUTORY ADOPTION PAY (ADOPTIONS FROM OVERSEAS) (PERSONS ABROAD AND MARINERS) REGULATIONS 2010 (SI 2010 No.150)

and

THE ADDITIONAL STATUTORY PATERNITY PAY (NATIONAL HEALTH SERVICE EMPLOYEES) REGULATIONS 2010 (SI 2010 No.152)

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 instruments

2.1 These instruments govern the administration of Additional Statutory Paternity Pay (ASPP) for employers and Her Majesty's Revenue and Customs. Additional Statutory Paternity Pay is payable to eligible fathers and adopters taking leave to care for their new child and whose partners were eligible for maternity or adoption pay and have returned to work. These regulations also provide for ASPP to be paid where eligible earners are working abroad, are mariners or are employed by more than one NHS body.

2.2 The Additional Statutory Paternity Pay (Birth, Adoption and Adoption from Overseas) (Administration) Regulations 2010 provide for the funding of employers' liabilities to make payments of additional statutory paternity pay; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners of Her Majesty's Revenue and Customs.

2.3 The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010 provide for the application of those sections of Part 12ZA of the Social Security Contributions and Benefits Act 1992 (c. 4) concerning additional statutory paternity pay as regards children adopted from overseas.

2.4 The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (Amendment) Regulations 2010 amend the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (***the 2002 Regulations***), which provide ordinary statutory paternity pay and statutory adoption pay for persons abroad and mariners. Amendment is necessary in order to introduce additional paternity pay for persons abroad and mariners, and also to make a minor correction to the 2002 Regulations.

2.5 The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations 2010 modify the 2002 Regulations to provide Ordinary Statutory Paternity Pay, Additional Statutory Adoption Pay and Statutory Adoption Pay for mariners and persons abroad who adopt from overseas (i.e. who adopt a child under the law of another country). The instrument repeals the previous regulations on this subject, and replaces them with one substantive change, namely that the regulations now additionally take account of additional paternity pay.

2.6 The Additional Statutory Paternity Pay (National Health Service Employees) Regulations 2010 allow (in certain cases) an NHS employee with two or more contracts of employment to elect, for the purposes of entitlement to Additional Statutory Paternity Pay to treat those contracts as one contract.

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

3.1 The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (Amendment) Regulations 2010 address issues raised by the JCSI in its 6th Report of the Parliamentary Session for 2002-03.

4. Legislative Context

4.1 These instruments are part of a package of instruments that 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 affirmative instruments, laid on 19 January, 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 Additional Statutory Paternity Pay (Birth, Adoption and Adoption from Overseas) (Administration) Regulations 2010; The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010; The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (Amendment) Regulations 2010; The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations 2010 and The Additional Statutory Paternity Pay (National Health Service Employees) Regulations 2010 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***

7.5 The Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 (Amendment) Regulations 2010 amend the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002. This is the first time the latter Regulations have been amended. Should there be further amendments in the future, we will consider consolidating the Regulations.

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 ensure that the Government could bring these Regulations into force by 6th April 2010 (whilst allowing sufficient time for the Affirmative Regulations to be debated in Parliament. 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 can be found at
http://www.bis.gov.uk/files/file54236.pdf

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.