EXPLANATORY MEMORANDUM TO

THE BLOOD TESTS (EVIDENCE OF PATERNITY) (AMENDMENT) (REVIEW) REGULATIONS 2015

2015 No. 2048

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Blood Tests (Evidence of Paternity) (Amendment) Regulations 2015 (SI 2015/1834) ("the 2015 Regulations") were laid on 30 October and came into force on 23 November. Having considered further the new regulatory framework required under section 28 to 32 of the Small business, Enterprise and Employment Act 2015, it has been concluded it would be appropriate to amend the 2015 Regulations to include a statutory review clause. This instrument makes that amendment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument will be free of charge to anyone who has purchased the 2015 Regulations.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2015 Regulations amend the Blood Tests (Evidence of Paternity) Regulations 1971 ("the 1971 Regulations") to make new provision about who may be a "sampler" and what they must do. The key change is that specifically trained but non-medically qualified people can take mouth swab samples, or supervise the giving of such samples. Modern-day DNA testing methods are non-invasive and so no longer require the involvement of medically qualified people.

4.2 This instrument amends the 2015 Regulations to insert a review clause, further to the requirements of sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As this 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 amendment to the 2015 Regulations made by this instrument is being made in light of the Small Business, Enterprise and Employment Act 2015 requirement for a review clause to be inserted where a new provision in an Act or Statutory Instrument which regulates business. The 1971 Regulations regulate business to the extent that they put obligations on "testers" (as defined in those Regulations) to take certain steps when dealing with DNA tests which have resulted from a court direction. The 2015 Regulations amend the 1971 Regulations to (amongst other things) allow for testers to appoint samplers (being people who take DNA samples for testing in court directed cases). Any such "samplers" appointed by testers must be trained by a tester and may only take samples by way of mouth swabs, or supervise the giving of mouth swab samples. To that extent, the 2015 Regulations impose a regulatory burden on business, and for this reason it has been concluded that it is appropriate to include a review provision in the 2015 Regulations.

7.2 The amendment made by this instrument to the 2015 Regulations imposes on the Secretary of State for Justice a requirement to review the effect of the amendments made by the 2015 Regulations to the 1971 Regulations within one year of the 2015 regulations coming into force and within every five years after that and publish a report on the matter.

7.3 The amendments made to the 1971 Regulations by the 2015 Regulations support a new scheme whereby the Children and Family Court Advisory and Support Service (Cafcass) will fund the cost of DNA tests in certain cases, with officers of Cafcass or, in Wales, CAFCASS Cymru, being able to be "samplers" in those cases. Cafcass will be carrying out their own review after nine months of the 2015 Regulations coming into force of how their new scheme has worked with recommendations for the way forward. The MoJ first review will build on their findings.

Consolidation

7.4 This instrument makes only one short amendment to the 2015 Regulations. That being the case, it is not considered desirable to consolidate the 2015 Regulations at this stage.

8. Consultation outcome

8.1 The Explanatory Memorandum for the 2015 Regulations set out the details of the consultation with Ministry of Justice accredited DNA testing laboratories. This resulted in the substantive changes made to the 1971 Regulations by the 2015 Regulations.

8.2 There has been no consultation on this instrument as it only inserts into the 2015 Regulations a review clause which impacts on the Ministry of Justice.

9. Guidance

9.1 No guidance is required for this instrument until such time as the Ministry of Justice embarks on the required review.

10. Impact

10.1 The impact of the amendments made by the 2015 Regulations to the 1971 Regulations on business, charities or voluntary bodies and the public sector is anticipated to be below £1m per annum and is anticipated to result in net benefits for business. The final figure will be subject to validation by the Regulatory Policy Committee.

10.2 This instrument inserting the review clause does not require an Impact Assessment as it will only impact on the MoJ who will carry out and publish the review

11. Regulating small business

11.1 This instrument (which inserts the review clause into the 2015 Regulations) will impact on MoJ and not on small businesses.

12. Monitoring & review

12.1 The purpose of this instrument is to insert a review clause into the 2015 Regulations. The benefits of this review process, and the nature of that process, will be reviewed at the point in time when the review is undertaken.

13. Contact

13.1 Francis Cairns at the Ministry of Justice Telephone: 020 3334 3141or email: francis.cairns@justice.gsi.gov.uk can answer any queries regarding the instrument.