EXPLANATORY MEMORANDUM TO

THE BEREAVED PARTNER'S PATERNITY LEAVE REGULATIONS 2026

2026 No. [XXXX]

AND

THE EMPLOYMENT RIGHTS ACT 1996 (APPLICATION OF SECTION 80B TO PARENTAL ORDER CASES) (AMENDMENT) REGULATIONS 2026

2026 No. [XXXX]

AND

THE EMPLOYMENT RIGHTS ACT 1996 (APPLICATION OF SECTION 80B TO ADOPTIONS FROM OVERSEAS) (AMENDMENT) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kate Dearden, Minister for Employment Rights and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Jayne McCann, Deputy Director for Participation, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Beth Pearce or Harriet Davidson at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the instrument: beth.pearce@businessandtrade.gov.uk and harriet.davidson@businessandtrade.gov.uk. Alternatively, the department can be contacted by telephone: +44 (0) 20 4551 0011

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Bereaved Partner's Paternity Leave Regulations 2026 ("the BPPL Regulations") make provision to implement a new statutory leave entitlement to be known as Bereaved Partner's Paternity Leave. This legislation is required by sections 80A and 80B of the Employment Rights Act 1996 ("the 1996 Act"), following amendments made by the Paternity Leave (Bereavement) Act 2024 ("the 2024 Act").

4.2 The Employment Rights Act 1996 (Application of Section 80B to Adoptions from Overseas) (Amendment) Regulations 2026 (made under section 80B(8) of the 1996

Act) and the Employment Rights Act 1996 (Application of Section 80B to Parental Order Cases) (Amendment) Regulations 2026 (made under section 80B(9) of the 1996 Act) (together, "the Modifying Regulations") amend the Principal Modifying Regulations referred to in subsection 6.1 to provide that the amendments to the 1996 Act made by the 2024 Act (which apply in relation to birth and adoption cases) have effect, with modifications, in relation to cases which involve, respectively, adoption from overseas ("overseas adoption cases") and parental orders under section 54 of the Human Fertilisation and Embryology Act 2008 ("parental order cases").

4.3 The BPPL Regulations apply in relation to birth cases, domestic adoption cases, overseas adoption cases and parental order cases.

4.4 Bereaved Partner's Paternity Leave is an extended form of unpaid Paternity Leave ("PL") of up to 52 weeks following a child's birth, placement for adoption (in domestic adoption cases), or entry into Great Britain (in overseas adoption cases). It is available to an employee who is the father of a child or the partner, including same-sex partner, of a child's mother or primary caregiver, where the child's mother or primary caregiver dies. An employee may exercise an entitlement to Bereaved Partner's Paternity Leave during the period beginning with the day after the child's birth, placement for adoption or entry into Great Britain and ending 52 weeks after that date. The only exception to this is, where the primary caregiver dies within the 13 days prior to a child's first birthday, an employee will be able to take BPPL up to 14 days after the bereavement date, even if this extends after a child's first birthday. This ensures all of those who are eligible are able to take at least two weeks of leave. The entitlement will apply in relation to a child whose mother/primary caregiver dies on or after 6 April 2026.

4.5 Bereaved Partner's Paternity Leave ensures that eligible employees, from the first day of their employment, have a statutory right to take leave to care for a child, in the event that the child's mother or primary caregiver dies.

Where does the legislation extend to, and apply?

4.6 The extent of these instruments (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

4.7 The territorial application of these instruments (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The objectives of Bereaved Partner's Paternity Leave are:

- To give employed, bereaved fathers/partners a statutory right to leave from day one of their employment to care for a child during the first year of the child's life or adoption, if the child's mother or primary caregiver dies.
- To provide an entitlement which mirrors the length of leave available to other primary caregivers through Maternity Leave and Adoption Leave. The BPPL Regulations entitle an employee – regardless of how long they have worked for their employer – to take up to 52 weeks off work during the 52-week period beginning with the day after the child's birth, placement for adoption or entry into Great Britain, in the event that the child's mother or primary caregiver dies.

5.2 There are around 180 maternal deaths within 12 months of childbirth each year. The Government estimates that half of those eligible will take up the entitlement each year

because of, for example, other forms of support being available from employers such as compassionate leave. This estimate only applies to cases of maternal death due to a lack of data on the death of primary caregivers who are not birth mothers.

What was the previous policy, how is this different?

5.3 There was previously no specific statutory entitlement to leave for bereaved partners/fathers who needed time off work to care for a child following the death of the child's primary caregiver.

5.4 Previously, in the event of maternal/primary caregiver death before the end of the first year of the child's birth or adoption, fathers or partners who were eligible would be able to access two weeks of PL for the purpose of caring for the child, but only if they had not already taken their entitlement to PL in relation to that child. Some fathers or partners may also have been able to access Shared Parental Leave ("SPL"), although the amount of SPL available at the point of death would depend on how much SPL (and preceding Maternity Leave or Adoption Leave) had already been taken.

5.5 Both PL and SPL currently have qualifying criteria including continuity of service requirements. As it stands, for a parent to take either entitlement, they must have worked for their employer for 26 continuous weeks up to any day in the "qualifying week" which is 15 weeks before the baby is due to be born. The Employment Rights Act removes this requirement, and once relevant provisions are in force, employees will be entitled to PL from their first day of employment, subject to providing the required notice.

5.6 However, even in cases where continuity of service requirements for PL were met, a bereaved father/partner only had access to a maximum of two weeks' leave. For SPL, a bereaved father/partner would have only been able to access this if the mother/primary caregiver had been entitled to Maternity Leave or Adoption Leave, and they would also still have to meet continuity of service requirements. Therefore, employees generally needed to rely on the compassion of their employer to provide them with adequate leave to act as the primary caregiver for a child in the first year after the child's birth or adoption.

5.7 As outlined at paragraphs 5.3-5.6, there are limitations attached to PL and SPL which the BPPL Regulations address. Specifically, BPPL ensures that bereaved partners/fathers have access to a significant amount of leave to care for a child, irrespective of their late partner's employment history, and with no attached continuity of service requirements.

6. Legislative and Legal Context

How has the law changed?

6.1 Sections 80A and 80B of the 1996 Act place a duty on the Secretary of State to make regulations entitling an employee who satisfies specified requirements as to duration of service and relationship with a child and the child's mother or primary caregiver to be absent from work on PL to care for a child or its mother/primary caregiver. Section 80A relates to birth cases and section 80B relates to domestic adoption cases. Section 80B(8) and (9) of the 1996 Act allows section 80B to be extended, with modifications, to overseas adoption cases and parental order cases respectively. Those powers were exercised to make the Employment Rights Act 1996 (Application of Section 80B to Adoptions from Overseas) Regulations 2003 and the Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases)

Regulations 2014 (together, "the Principal Modifying Regulations"), to extend section 80B of the 1996 Act to overseas adoption cases and parental order cases respectively.

Why was this approach taken to change the law?

6.2 The 2024 Act, which started as a Private Members' Bill and received cross-party support, received Royal Assent on 24 May 2024. The 2024 Act amended the PL provisions of the 1996 Act. Under new sections 80A(6A) (in relation to birth cases) and 80B(6C) (in relation to domestic adoption cases) of the 1996 Act, the Secretary of State must make regulations entitling an employee who satisfies specified requirements as to the relationship with a child and its deceased mother or primary caregiver, but not as to duration of service, to be absent from work on PL to care for that child.

6.3 The Modifying Regulations, exercising the powers conferred by section 80B(8) and 80B(9) of the 1996 Act, amend the Principal Modifying Regulations to provide that section 80B(6C) of the 1996 Act has effect, with modifications, in relation to overseas adoption cases and parental order cases.

6.4 The 1996 Act, as amended by the 2024 Act and extended by the amended Principal Modifying Regulations, contains a number of powers that allow the policy detail for Bereaved Partner's Paternity Leave to be delivered through regulations, which is a standard approach for family leave entitlements. The BPPL Regulations are the first use of these new regulation-making powers.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation has been carried out in regard to Bereaved Partner's Paternity Leave. Ensuring that the right powers were captured in the primary legislation relied on having key policy principles in place. The short timeframe between the Department for Business and Trade under the previous Government deciding to support the Private Members' Bill and the parliamentary debates meant that a consultation period was not feasible.

7.2 The Government has engaged a number of key stakeholders on the high-level policy design for the entitlement, including business representative groups, parental rights groups, Other Government Departments and the Devolved Governments. The entitlement has been well received by those stakeholders.

8. Applicable Guidance

8.1 Guidance will be available on GOV.UK, ahead of the BPPL Regulations coming into force on 6 April 2026. This will comprise an employer guide and guidance for employees, in the same format as is provided for other similar rights.

8.2 The Advisory, Conciliation and Arbitration Service (ACAS) will publish guidance on this new entitlement for employers when the legislation is in force.

8.3 The Government will work with relevant stakeholders to ensure that any guidance is clear, and that eligible fathers/partners are made aware of Bereaved Partner's Paternity Leave and understand how to access it.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis Assessment for Bereaved Partner's Paternity Leave has been prepared for internal departmental use. This is the same assessment that was prepared for internal departmental use for the 2024 Act, and the policy set by these regulations has no impact on the costs identified in that assessment. A De Minimis Assessment was undertaken rather than a full Impact Assessment as the business impacts are expected to be less than £10m per year. The De Minimis Assessment is based on data capturing all mothers in the UK who die during pregnancy or up to one year after the end of pregnancy.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant, impact on business, charities or voluntary bodies because Bereaved Partner's Paternity Leave is an unpaid leave entitlement and only a small number of employees will be eligible. There may be a negligible cost to business associated with managing an employee's absence.

9.3 The legislation does not impact small or micro businesses for the reasons set out above, but it does apply to them.

9.4 There is no, or no significant, impact on the public sector because, as stated above, there is no statutory pay included in this entitlement. Therefore, there will be no statutory payment costs or costs to HMRC associated with making IT changes to payroll systems in order for businesses to reclaim pay.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is consistent with other, similar entitlements to family related leaves. Data and information will be monitored post-implementation using discussions with key stakeholders. We will conduct a non-statutory Post-Implementation Review after at least five years following introduction, once the new entitlement has been established sufficiently. This would likely be in 2031.

10.2 The BPPL Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kate Dearden MP has made the following statement: "Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that to make provision for a statutory review in this instrument would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate. The Department for Business and Trade will undertake a non-statutory review of the policy in 2031 using stakeholder feedback to assess the effectiveness of the legislation and guidance."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Kate Dearden MP, the Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection has made the following statement regarding Human Rights: "In my view the provisions of the Bereaved Partner's Paternity Leave Regulations 2026, The Employment Rights Act 1996 (Application of Section 80B to Parental Order Cases) (Amendment) Regulations 2026 and The Employment Rights Act 1996 (Application of Section 80B to Adoptions from Overseas) (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 These instruments are not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").