EXPLANATORY MEMORANDUM TO

THE PARENTAL BEREAVEMENT LEAVE AND PAY (CONSEQUENTIAL AMENDMENTS TO SUBORDINATE LEGISLATION) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instruments

2.1 This instrument amends various pieces of secondary legislation (which make provision for certain benefits) to reflect the introduction of Parental Bereavement Leave and Pay, which is a new statutory entitlement for employed parents who lose a child on or after 6th April 2020. When calculating entitlements to certain other benefits or rights, leave from work and pay is often a relevant factor. This instrument makes provision to ensure that it is clear in those pieces of secondary legislation how parental bereavement leave and pay is to be treated in those calculations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Parental Bereavement (Leave) Regulations 2020 and the Statutory Parental Bereavement Pay (General) Regulations 2020 were the first use of the new regulation making powers on parental bereavement leave and pay set out in the 2018 Act. Those regulations implement the main provisions of the new entitlement to parental bereavement leave and pay. They were laid in Parliament on 23 January 2020.

3.2 As noted in the joint Explanatory Memorandum to those Regulations, the Government is mindful of considerations in relation to the 21 day rule. To note that it is intended that this instrument comes into force on the 6th April, and that in any event the amendments do not impose duties significantly more onerous than before.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 The territorial application of this instrument includes Scotland.

3.4 The instrument applies to England, Wales and Scotland. It does not apply in Northern Ireland as employment matters are devolved to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether parental bereavement leave and pay and related consequential provisions should apply in Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

"In my view the provisions of the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The powers being exercised in this instrument were given to the Government in a Private Member's Bill, which was supported by the Government. This Private Member's Bill received Royal Assent in 2018 to become the Parental Bereavement (Leave and Pay) Act 2018 (the "2018 Act").

6.2 This instrument makes amendments to secondary legislation arising from the Parental Bereavement (Leave and Pay) Act 2018, which made provision for a new entitlement to parental bereavement leave and statutory parental bereavement pay.

6.3 Specifically, this instrument amends existing secondary legislation to insert references to "parental bereavement leave" and "statutory parental bereavement pay".

6.4 The Government will make further regulations to provide for the administration of statutory parental bereavement pay and the entitlement of certain persons abroad and mariners to this payment. These forthcoming regulations will be laid before both Houses under the negative resolution procedure.

7. Policy background

What is being done and why?

7.1 The objectives of the parental bereavement leave and pay policy are to:

- give bereaved employees a statutory right to paid leave to provide space for them to grieve following the death of a child, and
- to send a signal to employees and employers about the importance and value of recognising bereavement and providing adequate support for parents in such circumstances.

7.2 This instrument supports these objectives by ensuring that it is clear how parental bereavement leave and pay should be treated when calculating entitlement to other benefits where leave and pay is relevant . It does this by inserting references to "parental bereavement leave" and "statutory parental bereavement pay" into other secondary legislation to ensure that these entitlements are treated in the same way as other family-related leave and pay entitlements (for example shared parental leave and pay) for the purposes of calculating entitlement to other statutory 'benefits' or schemes.

7.3 This also ensures that parental bereavement leave and statutory parental bereavement pay are afforded the same status and importance in the eyes of an employer when compared to other family-related leave and pay entitlements, which are usually associated with the birth or adoption of a child.

7.4 Using legislation to do this is the only way to guarantee that the desired policy effect is realised. If the amendments contained in this instrument were not made, there would be doubt cast over the consistency of this entitlement with other family-related

leave and pay entitlements when calculating entitlement to other statutory 'benefits' or schemes, which could lead to a perverse and unfair outcome for bereaved parents who make use of parental bereavement leave and pay.

7.5 We estimate that 10,200 parents per year will be eligible for parental bereavement leave, whilst 9,300 of these will also be eligible for statutory parental bereavement pay. Available data suggests that only around two thirds of businesses provide bereavement leave already.[1]

7.6 The previous Government committed to introduce a new entitlement to parental bereavement leave in the Conservative Party 2017 Manifesto. The powers to implement this new entitlement were given to the Government by the Parental Bereavement (Leave and Pay) Act 2018, which was legislated on by Parliament via a Private Member's Bill. There has been strong public and media interest in the policy.

7.7 The Welsh and Scottish Governments have been consulted on the policy.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The Department for Business, Energy and Industrial Strategy has no current plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 Prior to the introduction of the Private Members Bill in July 2017, which went on to become the 2018 Act, Government consulted key stakeholder groups including bereavement specialist groups, employers and parents in order to understand the impact that the new statutory entitlement to parental bereavement leave and pay would have on them. These groups expressed the view that, as far as possible, the new entitlement should maintain consistency with existing entitlements to family-related leave and pay. This would ensure the fair treatment of bereaved parents when compared with other parents in receipt of other entitlements, which are usually associated with the birth or adoption of a child.

10.2 In March 2018, during the 2018 Act's passage through Parliament, Government undertook a 12-week public consultation seeking views on how the powers contained in the Act should be exercised in relation to the definition of a 'bereaved parent', how and when the leave and pay can be taken, and the notice and evidence requirements for leave and pay. In total, the public consultation received 1448 responses – 95% of which were from individuals. In addition, a series of round-table sessions were held with stakeholder groups representing the interests of businesses and bereaved parents. The consultation exercise also took account of views expressed in both Houses of Parliament on the 2018 Act during its passage.

10.3 Similarly, this consultation received representations from stakeholders representing parents and employers expressing the view that the new entitlement to parental bereavement leave and pay should maintain consistency with the existing regime.

[1] CIPD survey which attracted 679 responses from the organisation's membership of over 145,000 HR and L&D professionals.

10.4 The full response to the 2018 consultation can be found on GOV.UK. A copy can be obtained from the Department for Business, Energy and Industrial Strategy, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET.

10.5 This SI makes certain amendments to legislation which deals with housing benefits (to ensure that it is clear how the taking of parental bereavement leave or receipt of statutory bereavement pay is treated when calculating entitlement to those benefits, and is treated consistently with other family-related leave and pay. Therefore, the Department for Business, Energy and Industrial Strategy has consulted Local Authority Associations on these amendments, as required by section 176 of the Social Security Administration Act 1992. Consultees were content with the policy aim behind the changes.

11. Guidance

11.1 Guidance on the Parental Bereavement Leave and Pay policy will be available on GOV.UK once the legislation is in place, ahead of the instruments coming into force on 6th April 2020. This will comprise of an employer guide and guidance for employees, in the same format as is provided for other similar rights.

11.2 The Advisory, Conciliation and Arbitration Service will publish guidance on this new entitlement for employers once the legislation is in place.

11.3 We will work with bereavement charities to ensure that their guidance reflects the new entitlement, so that bereaved parents are made aware of it and understand how to access it.

12. Impact

12.1 The impact of the Parental Bereavement Leave and Pay policy on business is small (approximately £1.2m net per year). There is no quantifiable impact on charities or voluntary bodies and the instrument imposes no new obligations on them, except in their capacity as employers.

12.2 The impact on the public sector is limited to the extent to which they may need to administer this entitlement to an employee – and these impacts are proportionate to organisations in the private sector.

12.3 A full Impact Assessment for Parental Bereavement Leave and Pay is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. This is the same Impact Assessment that accompanied the 2018 Act[2], and the policy set by these regulations has no impact on the costs identified in that Impact Assessment.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No special measures apply to small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is consistent with other, similar entitlements to family-related leave and pay. Data and information will be monitored

[2] A copy of that impact assessment can be obtained from the Department for Business, Energy and Industrial Strategy, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET

post-implementation using administrative data from HM Revenue and Customs and discussions with key stakeholders. We will conduct a non-statutory Post-Implementation Review (PIR) in 2025, once the new entitlement has been established sufficiently.

14.2 In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Paul Scully. 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, Energy and Industrial Strategy will undertake a non-statutory review of the policy in 2025 using data from HM Revenue and Customs to monitor take-up, as well as qualitative interviews to assess the effectiveness of the legislation and guidance."

15. Contact

15.1 Lucy Birt at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 3070 or email: Lucy.Birt@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Helen Martin and Joanna Warner, Deputy Directors for Individual Rights & Migration, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Paul Scully MP, Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.