EXPLANATORY MEMORANDUM TO

THE PATERNITY AND ADOPTION LEAVE (AMENDMENT) REGULATIONS 2014

2014 No. [XXXX]

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 instrument

2.1 The Paternity and Adoption Leave (Amendment) Regulations 2014 ("the PALA Regulations") amend the Paternity and Adoption Leave Regulations 2002 ("the 2002 Regulations"). The amendments:

- ensure that a parent is not entitled to take paternity leave in relation to a child once he or she has taken any shared parental leave for the same child;
- ensure that if an employee has exercised the right to paid time off to attend an adoption appointment they cannot then elect to take paternity leave rather than adoption leave;
- remove the 26 week qualifying period for adoption leave;
- provide protection for employees who suffer detriment or dismissal in relation to time off for antenatal or adoption appointments;
- amend the right to return following paternity or adoption leave to take account of the forthcoming shared parental leave regulations.

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

3.1 None.

4. Legislative context

4.1 The 2002 Regulations make provision for two weeks paternity leave following birth or adoption and for 52 weeks adoption leave for employees with 26 weeks qualifying service at the point they are notified of having been matched with a child for adoption.

4.2 The Children and Families Act 2014 ("the 2014 Act") gives effect to the Government's reform of family related leave. Part 7 of the 2014 Act creates the powers to provide for a new statutory entitlement to shared parental leave and statutory shared parental pay, in the year following the birth or adoption of a child, if both parents individually meet the qualifying requirements.

4.3 Part 8 of the 2014 Act covers time off work in relation to antenatal care. Section 127 of the 2014 Act amended the Employment Rights Act 1996 to provide an entitlement

to up to two half days of unpaid time off to attend an antenatal appointment for fathers/mother's partner/intended parents in surrogacy arrangements.

4.4 Section 128 provides an entitlement to time off to to attend adoption appointments before the child with whom they have been matched comes to live with an adopter.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

In my view the provisions of the Paternity and Adoption Leave (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Unlike maternity leave, which is a day one right, there is currently a requirement for 26 weeks' continuous service with the same employer in order for an employee to entitled to adoption leave. The Government decided that there should be parity between birth parents and adoptive parents in this respect. The PALA Regulations, therefore, remove the 26 week qualification period for entitlement to adoption leave, making it a day one right for all employees.

7.2 By providing a right to take time off (paid or unpaid) to attend adoption appointments and to unpaid leave to attend antenatal appointments, and protecting individuals from detriment or dismissal for exercising their rights, the Government is encouraging the early bonding between prospective parents and their children .

7.3 We are also requiring that the person who exercises the right to take paid time off to attend adoption appointments must be the same person who takes adoption leave. The effect of this is that in the case of a couple adopting, they are required to consider ahead of attending any adoption appointment which will elect to take adoption leave and which will take paternity leave and the person who opts to take the paid time off for adoption appointments may not then choose to take paternity leave.

7.4 The amendments ensure that a parent cannot take paternity leave cannot in relation to a child for whom s/he has already taken shared parental leave.

7.5 The PALA Regulations also make the necessary amendments to reflect that the right to return following a period of paternity or adoption leave may be affected if a parent has taken shared parental leave.

8. Consultation outcome

8.1 The Modern Workplaces Consultation was published on the 16 May 2011 and ran for 12 weeks. The Government response was published in November 2012 and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82793/12-1269-modern-workplaces-response-flexible-working.pdf.

8.2 The consultation asked whether fathers should be allowed time off to attend antenatal appointments. 88% of respondents were in favour of giving fathers time off to attend antenatal appointments.

8.3 We did not consult on: removing the 26 week qualification period for adoption leave; prohibiting taking paternity leave in relation to a child once SPL has been taken in relation to that child; or preventing an employee who has taken paid time off to attend an adoption appointment from taking paternity instead of adoption leave.

8.4 The right to return following a period of shared parental leave was considered as part of the *Modern Workplaces: administration of shared parental leave and pay* consultation. In light of feedback and further consideration of the issue the Government decided that the right to return to the same job should be maintained for employees returning from any period of statutory family leave that includes maternity, paternity, adoption and/or shared parental leave that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks. The full Government response can be accessed at: https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay

9. Guidance

9.1 The changes brought about by the PALA Regulations will be publicised widely so that all who may be affected may be made aware of their effects. The Department will use appropriate communication channels and press avenues to publicise the changes.

10. Impact

10.1 The PALA Regulations are part of a package of legislative measures required to implement the Government's policy on shared parental leave and pay, and other changes to statutory family leave and pay. A single Impact Assessment was prepared for these as a whole and is attached to this memorandum. It is also available online at http://www.parliament.uk/documents/impact-assessments/IA12-030.pdf.

10.2 The impact on employers of this package of measures includes annual average administration and absence costs of £24.9m, of which the impact on business, charities and voluntary bodies is 70%. Transition costs in the first year (associated with employers familiarising themselves with the legislation and making changes to HR and payroll

systems, and Exchequer set-up costs) total £55.8m, of which the impact on business, charities and voluntary bodies is 61%. Annual average exchequer costs of the measures (including statutory payments and ongoing administration) are £9.6m.

10.3 The introduction of this package of measures is expected to have significant non-economic benefits in relation to child welfare, parental choice and flexibility. There will also be benefits to business through increased staff retention and greater flexibility in discussing how and when family related leave is taken. The financial benefits of these measures take the form of an increase in the amount of paid leave taken by parents (an annual average value of £8.4m).

11. Regulating small business

11.1 The legislation applies to small business.

11.2 No special measures in relation to the PALA Regulations apply to small businesses, however, it is worth noting that in relation to statutory payments arising from maternity leave, paternity leave and adoption leave, small employers (those whose national insurance contributions amount to less than £45,000 per annum) are entitled to reclaim 103% of the costs of the statutory payment.

12. Monitoring & review

12.1 The Government has committed to a full review of the changes brought about by the 2014 Act and the wider family-related leave landscape. This review will take place after 2018 to allow time for the new provisions to bed down.

13. Contact

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