EXPLANATORY MEMORANDUM TO

THE PATERNITY LEAVE (AMENDMENT) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (DBT) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument is part of a package of legislative changes to statutory rights to Paternity Leave and Pay. This affirmative instrument deals with Paternity Leave. It is accompanied by another negative instrument which deals with Statutory Paternity Pay and amends the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002. Because these instruments work as a package, several of the following sections explain the combined impact of these instruments.

2.2 This instrument amends the Paternity and Adoption Leave Regulations 2002, the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003, and the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014.

2.3 The relevant powers which apply are set out in sections 80A (1), (2), (3), (4) and (5), 80B(1), (2), (3), (4), (5), (6A) and (6B), 80E(1) and 236(5) of the Employment Rights Act 1996.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

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

5. European Convention on Human Rights

5.1 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Paternity Leave (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 Entitlements to Paternity Leave and Statutory Paternity Pay were introduced in 2003 and allow eligible employed fathers and partners to take up either one or two

consecutive weeks of paid leave within the first eight weeks following the birth of their child or adoption placement.

6.2 As with other family-related leave entitlements, such as Shared Parental Leave, in order to be eligible for leave, the father/partner must have been continuously employed by their employer for at least 26 weeks at the end of the 'qualifying week', which is the 15th week before the week in which the baby is due. In cases of adoption, the person claiming Paternity Leave must have been continuously employed for at least 26 weeks by the week in which notification is received of being matched with a child for adoption.

6.3 Under the current system, fathers and partners are entitled to two weeks Paternity Leave and Pay, which are paid at the Statutory Paternity Pay rate (£172.48 2023-24) or 90% of their average weekly earnings (whichever is lower). Leave can only be taken in one block of one or two weeks and must be taken within eight weeks from the birth or placement of their child.

6.4 These amendments will apply to babies born after 6 April 2024 or placed for adoption on or after 6 April 2024.

7. Policy background

What is being done and why?

7.1 In 2019 the Conservative Manifesto committed to "look at ways to make it easier for fathers to take Paternity Leave".

7.2 Following the manifesto, the Government launched the 2019 consultation "Good Work Plan: Proposals to support families" which included high-level options for reforming parental leave and pay. In their responses 58% of stakeholders (i.e., including businesses, charities and academic institutions but excluding individual respondents) said they were in favour of Government promoting flexibility around how Paternity Leave should be taken.

7.3 The proposed reforms to Paternity Leave and Pay will increase the flexibility of the current system.

Context and Effects

7.4 Paternity Leave can currently only be taken in one block which means that, while a father or partner is entitled to up to two weeks of leave, if they take one week, they cannot take the other week on a separate occasion.

7.5 To achieve the policy intent of making Paternity Leave easier to take, these Regulations will do the following:

- **Allow fathers and partners to take their leave and pay in non-consecutive blocks**. Currently, only one block of leave can be taken which can be either one or two weeks. Our changes will remove this barrier by enabling fathers to take two non-consecutive weeks of leave.
- **Allow fathers and partners to take their leave and pay at any point in the first year after the birth or adoption of their child** (rather than only within the first eight weeks after birth or adoption). This gives fathers and partners more flexibility to take their Paternity Leave at a time that works for their family.

- **Shorten, in most cases, the notice period required for each period of leave and pay** (for example from 14 weeks before the expected week of birth, to four weeks (28 days) before each week of leave). The new measure will require an employee to give only four weeks' notice prior to each period of leave. This means that they can decide when to take their leave at shorter notice to accommodate the changing needs of their families.

7.6 For domestic adoption cases, the notice period for leave will remain within seven days of the adopter having received notice of having been matched with a child. The domestic adoption process is inherently less predictable than birth and children may be placed at short notice following being matched with their adoptive parents. Therefore, setting the initial notice period for leave at 28 days prior to the start of leave does not make sense in these circumstances. A father or partner who has given their initial notice may vary any dates given, if they give 28 days' notice of their variation, enabling them to change planned dates at a later stage to best suit the needs of their families.

Evidence

7.7 The 2019 Parental Rights Survey found that 59% of fathers and partners took Paternity Leave after the birth of their child and 21% took some other sort of time off. Of those taking Paternity Leave, 24% did not take their full entitlement mainly because they could not afford to. Beyond financial reasons, responses to a 2019 consultation on high level options for reforming parental leave and pay also suggested there is a need for more flexibility around when Paternity Leave can be taken. The 2019 Conservative Manifesto commits to making it easier for dads to take Paternity Leave, and these reforms respond to that commitment.

7.8 By extending the window to take Paternity Leave to 52 weeks we are enabling fathers and partners to take leave at any point during the first year of the child's life, and potentially after the mother, or the parent who is taking adoption leave, has returned to work if they take less than 52 weeks of maternity leave.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 There is no plan to consolidate the legislation amended by these Regulations.

10. Consultation outcome

10.1 On 19 July 2019 the Government launched the Good Work Plan: Proposals to support families, which sought views on parental leave and pay, neonatal leave and pay, transparency of flexible working and family related leave and pay policies. It was open for 19 weeks and closed on 29 November 2019.

10.2 This consultation included a chapter with questions for consultation on parental leave and pay. The aim was to explore the objectives of parental leave and pay; how government policy supports parents and employers; the factors which enable parents to combine work and childcare and the impact of these factors; and to look at high level options for reforming parental leave and pay.

10.3 There were 185 responses to this chapter of the consultation, of which 123 responded through the online form and 62 sent in responses by email. Most of the online responses were from individuals, while business representatives, trade unions and lobby groups were more likely to send in their responses separately.

10.4 64% of respondents to the 2019 consultation suggested Government should promote flexibility, and allowing fathers and partners to take leave in blocks at any time in the first year was the most commonly suggested measure by respondents.

10.5 The Government Response, containing a summary of responses, was published on 26 June 2023 and can be found here: https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families.

11. Guidance

11.1 Information and guidance about statutory Paternity Leave and Pay for employees can be found at the following link: https://www.gov.uk/paternity-pay-leave. Guidance for employers can be found at this link: https://www.gov.uk/employers-paternity-pay-leave/eligibility. Guidance for employers and employees will be updated to reflect the changes before 8 March 2024 when the instrument comes into force.

11.2 The ACAS guidance will also be updated in line with the changes being made to the Gov.UK guidance pages on Paternity Leave and Pay.

12. Impact

12.1 There is very limited impact on business, charities or voluntary bodies.

12.2 There is very limited impact on the public sector.

12.3 A combined de minimis impact assessment has been completed for changes to Paternity Leave and Paternity Pay. The following information on the impact relates to changes both to leave and to pay. No formal regulatory impact assessment is required for this regulation change as the impacts on private businesses are expected to be small (below £5m per annum).

12.4 The costs to businesses are driven by the reorganisation costs of absent employees, administrative costs of processing leave and pay requests and costs of familiarising with the legislation. Making Paternity Leave and Pay more flexible will also create wage-like costs for some businesses due to the fact that some employers can only reclaim 92% of Statutory Paternity Pay from Government, unless they qualify for Small Employers' Relief (if they pay £45,000 or less in Class 1 National Insurance contributions) in which case they can reclaim 103% of statutory costs.

12.5 There would be additional costs to the Exchequer in the form of a one-off admin cost, that would be incurred to make changes to the existing IT systems, such as amendments to allow employers to process two blocks of pay over the year, and resource costs to process the policy reforms. Changes are required to ensure that the system continues to process payments. The system is currently set-up for one block of pay so the fact that pay can now be claimed in two separate blocks will mean the system needs updating. HMRC has estimated these changes to around £0.5 million.

12.6 A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be to continue to engage with relevant stakeholders to monitor the impact of the policy.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Erin Fair, telephone: 07917 176650 or email: erin.fair@businessandtrade.gov.uk or Rosemary Edmonds, telephone 07843 825970 or email rosemary.edmonds@businessandtrade.gov.uk both at the Department for Business and Trade can be contacted with any queries regarding the instrument.

15.2 Jayne McCann, Deputy Director for Individual Rights and Participation, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake, Minister for Small Business, Consumers and Labour Markets at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.