EXPLANATORY MEMORANDUM TO

THE SHARED PARENTAL LEAVE AND LEAVE CURTAILMENT (AMENDMENT) REGULATIONS 2015

2015 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 Shared Parental Leave and Leave Curtailment (Amendment) Regulations 2015 ("the Amendment Regulations") correct drafting errors in the Shared Parental Leave Regulations 2014 ("the Leave Regulations") and the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 ("the Curtailment Regulations").

2.2 The Regulations also amend the provision on the variation of period of leave notices in the Leave Regulations to enable an employee who is on a period of shared parental leave to vary the end date of that leave by giving their employer at least 8 weeks' notice. This change corrects an error in the Leave Regulations and reflects Government policy on shared parental leave, balancing the need to give employees flexibility with the need for employers to have adequate notice of periods of leave.

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

3.1 None.

4. Legislative context

4.1 The Leave Regulations and the Curtailment Regulations were made under the new regulation making powers on shared parental leave and pay inserted into the Employment Rights Act 1996 by Part 7 of the Children and Families Act 2014.

4.2 The Leave Regulations and the Curtailment Regulations are part of a package of statutory instruments that give effect to the Government's Modern Workplaces agenda, creating a statutory right to shared parental leave and pay. The Regulations were laid in draft on 21 July 2014, were made on 18 November, and came into force on 1 December 2014.

5. Territorial extent and application

5.1 These instruments apply to Great Britain.

5.2 The Work and Families Act (Northern Ireland) 2015 has received Royal Assent and regulations providing for implementation of the new rights in Northern Ireland are being prepared so as to cater for parents expecting a child on or after 5th April 2015. The Department for Employment and Learning in Northern Ireland has published draft guidance for employers which is available at http://goo.gl/mIFj1B

6. European Convention on Human Rights

Jo Swinson, the Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Shared Parental Leave and Leave Curtailment (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 The Government declared its intention in November 2012 to introduce a system of shared parental leave and pay for qualifying parents. The policy objective is to create choice for families in how they look after their children, and to create more equity in the workplace and reduce the gender penalty resulting from women taking long periods of time out of the workplace on maternity leave. It is also designed to encourage shared parenting as evidence has shown that where fathers are involved in parenting at any early stage they are more likely to stay involved with their children in later years, leading to a basket of positive outcomes for children.

7.2 Shared parental leave and statutory shared parental pay can be taken by both parents at the same time, allowing the family to be at home together if they wish. In addition, the leave and pay can be taken discontinuously in blocks of one or more weeks, with the employee returning to work between periods of leave, thereby enabling parents to juggle work and home commitments in the first year.

7.3 Whilst the regulations are aimed at providing flexibility for working parents, they also provide protection for employers in the form of clear processes and notice periods before taking leave, or making changes to leave booked.

8. Consultation outcome

8.1 The Government's Modern Workplaces Consultation was published on the 16 May 2011 and ran for 12 weeks. It sought views on a radical new system whereby maternity leave would be reduced to 18 weeks and then 34 weeks of leave and 21 weeks of statutory pay to be available for the parents to share on a flexible basis allowing the parents to be absent from work at the same time, with some leave being reserved for the exclusive use of each parent on a "use it or lose it", non-transferable basis. The consultation document can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf.

8.2 In light of consultation responses, the Government announced a revised proposal for shared parental leave and pay in November 2012. The Government response is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82969/12-1267-modern-workplaces-response-flexible-parental-leave.pdf.

8.3 It set out the proposal for new statutory rights to shared parental leave and pay for employees with a partner who is working, or has recently been working (whether employed or self-employed) which the Government is taking forward. The new system will allow a woman to curtail her maternity leave period or reduce her maternity pay/maternity allowance period to create an entitlement to shared parental leave and/or pay that can be shared with her partner. Adopters would curtail their adoption leave/adoption pay period to create shared parental leave and /or pay. Eligible employees will be able to share up to 50 weeks of shared parental leave and up to 37 weeks of statutory shared parental pay.

8.4 A further consultation on the administrative elements of the system was launched in February 2013 and the Government response was published in November 2013. The consultation document and 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 Leave Regulations and the Curtailment to Leave Regulations have been widely publicised. Since the Amending Regulations only correct minor errors, it is not our intention to publicise them widely, but the changes will be drawn to the attention of interested parties.

10. Impact

10.1 These 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 related leave and pay. A single Impact Assessment was prepared for these as a whole and is available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/110692/13-651-modern-workplaces-shared-parental-leave-and-pay-impact-assessment2.pdf

10.2 The equivalent annual net cost to business was revised in March 2014 to reflect the Better Regulation Executive's updated inflation assumptions and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf

11. Regulating small business

11.1 The legislation applies to small business.

11.2 No special measures apply to small businesses.

12. Monitoring & review

12.1 The Department for Business, Innovation and Skills will conduct an internal review the implementation and take up of shared parental leave and statutory shared parental leave no earlier than 2018.

13. Contact

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