EXPLANATORY MEMORANDUM TO

THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT) (NORTHERN IRELAND) REGULATIONS 20222

2022 No. 385

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This statutory instrument makes a consequential amendment to the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) ('the CIS Regulations 2005') following the introduction of Statutory Parental Bereavement Pay (SPBP) in Northern Ireland (NI). The changes in this instrument will come into force on 6 April 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The laying of this instrument breaches the 21-day rule. The primary legislation extending Statutory Parental Bereavement (Leave and Pay) to Northern Ireland, did not receive Royal Assent until 21 March 2022 and consequently, HMRC were unable to lay consequential amendments to the CIS Regulations 2005 until after that date. The impact of delaying these Regulations to satisfy the 21-day rule is that this would result in a period during which the Statutory Parental Bereavement Pay would be available in Northern Ireland but there would be no legislation in place for recovery of these payments should a reason to recover arise.

3.2 HMRC has breached the 21-day rule to the minimum extent possible in light of when Royal Assent for the primary legislation was received.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 2 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 ("the 2022 Act") inserted a new Part 12ZD into the Social Security Contributions and Benefits (Northern Ireland) Act 1992. This makes provision for a new entitlement to Statutory Parental Bereavement Pay in Northern Ireland.

6.2 This instrument makes a consequential amendment to regulation 56 (7) (d) of the CIS Regulations 2005 by adding corresponding Northern Ireland legislation to the provisions for recovering Statutory Parental Bereavement Pay.

7. Policy background

What is being done and why?

7.1 The Parental Bereavement Leave and Pay Act 2018 came into force on 6 April 2020 and created a statutory requirement for all employers to grant a minimum of 2 weeks of parental bereavement leave to employees who have lost a child under the age of 18 or experienced a stillbirth from 24 weeks' pregnancy. The 2018 Act also created a new statutory payment called Statutory Parental Bereavement Pay, which eligible employees are entitled to claim in respect of the 2 weeks' leave.

7.2 In April 2020 consequential amendments were made to HMRC legislation to reflect these new rights. As a result, S.I. 2020 No. 240 was laid to ensure that PAYE, CIS, and Statutory Payment Schemes (Electronic Communications) regulations reflected the introduction of Statutory Parental Bereavement Allowance (SPBA).

7.3 With effect from 6 April 2022, the Northern Ireland Assembly are introducing Statutory Parental Bereavement Pay in Northern Ireland. This will bring entitlement to SPBP in Northern Ireland in line with Great Britain. As a consequence, this regulatory change is being made to ensure that corresponding Northern Ireland legislation falls within the meaning of 'relevant recovery provisions' in respect of Statutory Parental Bereavement Pay in Northern Ireland.

7.4 This instrument makes a consequential amendment to the CIS Regulations 2005 by adding corresponding Northern Ireland legislation to the provisions for recovering Statutory Parental Bereavement Pay.

7.5 This instrument is also related to The Social Security Contributions (Amendment Of Extent) Regulations 2022 (S.I. 2022/384) which extends the coverage of the amendments made in The Social Security Contributions (Decisions and Appeals) Regulations 2020 (S.I. 2020/238) and The Social Security (Contributions) (Amendment) Regulations 2020 (S.I. 2020/239) to Northern Ireland.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 As this instrument does not change the substance of the regulations concerned, there are no plans for consolidation.

10. Consultation outcome

10.1 As the consequential change introduced by this instrument results from the introduction of Statutory Paternal Bereavement Pay in Northern Ireland no consultation has taken place specifically in relation to this instrument.

10.2 In June 2020, however, the Department for the Economy (DfE) in Northern Ireland did issue a consultation document, "Parental Bereavement Leave and Pay–Public Consultation". The document sought to inform the public about the government's intention to introduce Parental Bereavement Leave and Pay entitlements into NI

Employment Law akin to the entitlements that came into force in GB on 6 April 2020. It focused on the definition of a bereaved parent, how and when to take leave, and the notice and evidence requirements. It also sought views as to how best the GB legislation could be mirrored, while being cognisant of any specific needs in NI.

10.3 Following closure of the consultation in August 2020, DfE issued its formal response. It outlined that the government would proceed with legislation to give effect to the decisions taken as a result of the consultation. The consultation document and government response is available to view at: https://www.economy-ni.gov.uk/consultations/parental-bereavement-leave-and-pay

11. Guidance

11.1 The relevant guidance will be updated to reflect the changes to legislation made by this instrument. It will be available to view on GOV.UK NIDIRECT.GOV.UK by 6 April 2022.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it makes changes as a consequence of legislation to introduce Parental Bereavement Leave and Pay in NI, which was introduced by DfE. An impact assessment was published by DfE in April 2020 in respect of these changes. This can be viewed here: https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/initial-regulatory-impact-assessment-parental-bereavement-leave-and-pay.pdf.

13. Regulating small business

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

13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that as is the case for all statutory payments. Small businesses (defined for these purposes as those who pay less than £45,000 in Class 1 National Insurance Contributions) will be able to claim back 103% of the payment made to the employee by reducing their National Insurance bill accordingly.

14. Monitoring & review

14.1 The government keeps all areas of the tax and benefit system under review, and that includes this instrument.

14.2 The instrument does not include a statutory review clause because it has been laid as a consequence of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022.

15. Contact

15.1 Christiana Daly at HMRC Telephone: 03000 594708 or email: Christiana.daly@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Helen Page, Deputy Director for Tax Administration Policy and Strategy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.