EXPLANATORY MEMORANDUM TO

The Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations (Northern Ireland) 2015

S.R. 2015 No. 95

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 103(2), (3)(ba) and (bb) and (3A), 105(2), (3)(a) and (aa) and (3A), 107(1)(a) and (2), 107A(1A), (2), (2A) and (2B), 107B(2), (3)(a) and (aa) and (3A) and 107D(1)(a) and (2) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the confirmatory resolution procedure.

2. Purpose

2.1. The right to shared parental leave and statutory shared parental pay are new statutory rights for employees with a partner who is working, or has recently been working (whether employed or self-employed). 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.

2.2. These Regulations enable an expectant mother or a mother on maternity leave, or an adopter or a prospective adopter to give notice to end her/his relevant entitlement on a specific future date. Where such entitlements have been curtailed , the balance of the untaken period of leave may be taken as shared parental leave if the parents satisfy entitlement and notification criteria.

2.3. The benefit of curtailing leave, rather than the mother or adopter simply returning to work, is that it enables the number of weeks of maternity or adoption leave that will be untaken at that date to be known in advance and allows the child's father or the mother's or adopter's partner to start taking shared parental leave whilst the mother or adopter remains on maternity or adoption leave. This enables both parents to be at home together with the child from the earliest stages following birth or placement for adoption.

2.4. Separate regulations establish entitlement to curtail statutory maternity pay, maternity allowance or statutory adoption pay in order to allow statutory shared parental pay to arise.

3. Background

3.1. The Work and Families Act (Northern Ireland) 2015 provides a legislative framework for the making of regulations that allow for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child, and for conferring other rights relating to the first year after birth, or placement, of the child. The Act further facilitates extension to the right to request flexible working for all qualifying employees.

3.2. These Regulations are part of a group of Statutory Rules which, taken collectively, have the purpose of enabling eligible working parents to share leave and pay entitlement in respect of children due to be born, or placed for adoption, on or after 5th April 2015.

4. Consultation

4.1. Public consultation explaining Great Britain proposals and asking whether it would be appropriate to take forward comparable measures in Northern Ireland took place between 6th June and 23rd August 2013.

4.2. The consultation asked for views on the merits of the Great Britain programme; the extent (if any) to which it should be implemented in Northern Ireland; and whether alternative options would be appropriate.

4.3. There were 28 substantive responses to the consultation, demonstrating substantial support for the introduction of rights to leave and pay for Northern Ireland's working parents corresponding to the entitlements being brought forward in Great Britain.

4.4. The Department considered a number of policy options. The first was to retain unchanged the present leave, pay and/or flexible working arrangements, making such minor legislative amendments as necessary to support that objective. This received no substantive support.

4.5. The second option was to develop pay, leave and/or flexible working arrangements bespoke to Northern Ireland. Although the consultation did not make any specific alternative proposals concerning leave and pay, it did ask for stakeholder input on available options. None were identified

4.6. The third option available to the Department was to provide leave, pay and/or flexible working entitlements corresponding to those envisaged in Great Britain. As this option received substantial support, the Department proceeded on this basis.

5. Equality Impact

5.1. An assessment of the equality impact of the complete package of proposals concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, the primary beneficiaries of the proposals are anticipated to be older workers, male and female employees, dependants and persons with disabilities.

5.2. These Regulations, constituting part of that package, will contribute to a positive impact from an equality perspective in that they will support working fathers in their family life and provide parents with additional choice and flexibility in balancing their responsibilities at work and in the home.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment, carried out on the basis of the corresponding exercise in Great Britain, has identified only modest costs in respect of the package of new rights for working parents.

6.2. The assessment anticipates one-off transitional costs across all employers totalling £1,467,000, relating to the cost of management time in changes to payroll/HR systems in implementing the new rights.

6.3. Annually recurring costs of £747,000 are expected to be associated with parents exercising the new rights in respect of adoption leave and pay, antenatal appointments, unpaid parental leave and shared parental leave and pay.

7. Financial Implications

7.1. Estimated additional costs to the Exchequer in respect of introducing the new rights to Northern Ireland are: one-off transitional costs of £207,000 associated with preparing for the implementation of the new rights; and annually recurring costs totalling £288,000 comprised of administrative costs and costs associated with parents exercising the new rights in respect of adoption leave and pay and shared parental leave and pay.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that the Regulations are compliant with section 24 of the Northern Ireland Act 1998.

8.2. The package of which the Regulations are part impacts on family life to the extent that it increases choice and flexibility, improving options with regard to childcare. Negative impacts on the right to family life are not considered to arise.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Regulations correspond to the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 in Great Britain (S.I. 2014/3052), and contribute to the continuation and enhancement of a UK wide system of rights for working parents. This reflects the wishes of contributors to successive public consultations in this area of law.

11. Additional Information

11.1. Not applicable.