EXPLANATORY MEMORANDUM TO

THE PATERNITY AND ADOPTION LEAVE (AMENDMENT) (No.2) REGULATIONS 2014

2014 No. 3206

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.

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

2. Purpose of the instrument

2.1 The Paternity and Adoption Leave (Amendment) (No.2) Regulations 2014 extend adoption leave and paternity leave to qualifying prospective adopters who are also foster carers who have a child placed with them under section 22C of the Children Act 1989 following consideration in accordance with section 22C(9B)(c) of that Act (see para 4.2).

2.2 The regulations also prevent a person who has exercised their right to adoption leave or paternity leave in relation to a placement on this basis from a second entitlement to adoption leave or paternity leave in respect of the same child if the placement becomes a placement for adoption under the Adoption and Children Act 2002.

2.3 The regulations also provide that, in the circumstances of a disrupted placement, the employee's adoption leave ends 8 weeks after the child is returned to the adoption agency following termination of the placement, if the adoption leave does not end before that date.

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

3.1 None.

4. Legislative context

4.1 Section 121 of the Children and Families Act 2014 amends sections 75A and 80B of the Employment Rights Act 1996 to provide powers to make regulations which set out the conditions for an employee who is a local authority foster parent and an approved prospective adopter with whom a looked after child is placed to be entitled to adoption leave, and their partner to have entitlement to paternity leave.

4.2 The Paternity and Adoption Leave (Amendment) (No.2) Regulations 2014 amend the Paternity and Adoption Leave Regulations 2002 (S.I. 2002/2788) to give an

entitlement to adoption leave to qualifying employees who are approved local authority foster parents who have also been approved as suitable to adopt a child and been notified of the decision ("LAFP prospective adopters"). These LAFP prospective adopters are eligible for adoption leave if they have been notified under regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 (S.I. 2005/389) that a child is to be placed with them under section 22C of the Children Act 1989 and they meet the eligibility criteria in the Paternity and Adoption Leave Regulations 2002. Notification under regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 takes place following consideration of that placement in accordance with section 22C(9B)(c) of the Children Act 1989. The Regulations also provide new rights to paternity leave to the spouses, civil partners and partners of these LAFP prospective adopters, if they meet the eligibility criteria in the Paternity and Adoption Leave Regulations 2002.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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) (No. 2) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 Adoption leave or paternity leave is available to qualifying employees who are matched with a child for adoption. Prospective adopters who are also approved as local authority foster parents with whom a child is placed under a fostering placement are not currently entitled to adoption leave nor their partners to paternity leave.

7.2 In November 2012, the Government announced its intention to extend adoption leave and pay to this group of prospective adopters if they met the qualifying requirements. This forms part of the Government's commitment to creating a legislative framework of family-related leave which reflects the nature and needs of modern families. This package of measures includes the extension of the right to request flexible working to all employees which was introduced in June 2014; the introduction of shared parental leave and pay; adoption leave becoming a 'day 1 right' for qualifying adopters, LAFP prospective adopters and parents who have obtained or expect to obtain a parental order for a child born through surrogacy (parental order parents); and the extension of the period in which unpaid parental leave can be taken.

7.3 Section 2 of the Children and Families Act 2014 amended section 22C of the Children Act 1989 to place a duty on local authorities in England, when considering adoption for a looked after child, to consider placing the child with local authority foster

parents who are also approved prospective adopters. This also supports efforts to increase the numbers of looked after children who find a permanent home. This provision was included in the Children and Families Act 2014 and scrutinised as part of the passage of this Act through Parliament.

7.4 The modifications made through the Paternity and Adoption Leave (Amendment) (No.2) Regulations 2014 extend adoption leave and paternity leave to qualifying LAFP prospective adopters and their partners.

8. Consultation outcome

8.1 The Government carried out the Modern Workplaces Consultation in 2011. It sought views on a range of issues relating to family-related leave in the workplace. The consultation document can be found at: https://www.gov.uk/government/consultations/consultation-on-modern-workplaces.

8.2 The Government published its response 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. It sets out a number of changes to family related leave and pay, including the introduction of a system of shared parental leave and pay, the extension of adoption leave and pay to new groups (LAFP prospective adopters and the parental order parents in surrogacy arrangements), and the enhancement of adoption pay for the first 6 weeks in line with statutory maternity pay.

8.3 The proposals were taken forward in the Children and Families Act 2014 and are in the process of being implemented through secondary legislation.

9. Guidance

9.1 The changes brought about by these Regulations and the other elements of the package 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 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 changes as a whole and is attached to this memorandum. It is also 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

10.3 For the purposes of the impact assessment, the total number of adoptions per year was estimated at 4000. This includes placements of children with a foster carer who is also approved as an adopter following consideration in accordance with section 22C(9B)(c) of the Children Act 1989 . Given the small numbers involved a separate impact assessment was not produced.

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 Government will consider the impact of this legislative change as part of its ongoing monitoring of family-related leave.

13. Contact

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