EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY CONTRIBUTIONS (DECISION AND APPEALS) (AMENDMENT) REGULATIONS 2020

2020 No. 238

1. Introduction

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

2. Purpose of the instrument

2.1 This statutory instrument makes changes to the Social Security Contributions (Decisions and Appeals) Regulations 1999 (S.I. 1999/1027) ("the 1999 Regulations") as a direct consequence of the introduction of Statutory Parental Bereavement Pay, by inserting references to the new statutory payment. It will enable HMRC to make decisions about entitlement to Statutory Parental Bereavement Pay and allow employees and employers appeal against such decisions. The changes in this instrument will come into force on 6 April 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

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 Part 2, paragraphs 4 and 5 of the Schedule to the Parental Bereavement (Leave and Pay) Act 2018 ("the 2018 Act") inserted a new Part 12ZD into the Social Security Contributions and Benefits Act 1992. This makes provision for a new entitlement to Statutory Parental Bereavement Pay. As a result it is necessary to make consequential amendments to secondary legislation to bring the entitlement to Statutory Parental Bereavement Pay into effect.

6.2 This instrument inserts references to Statutory Parental Bereavement Pay into the 1999 Regulations.

6.3 The 1999 Regulations relate to decisions made by an officer of HMRC in respect of statutory payments and rights of appeal in relation to entitlement to statutory payments.

7. Policy background

What is being done and why?

7.1 There is currently no specific statutory entitlement for parents to take time off work (paid or otherwise) following the death of their child. Some employers allow parents to take compassionate leave. This is at the discretion of the employer and there is no minimum standard across the board.

7.2 The 2018 Act creates a statutory requirement for all employers to grant a minimum of 2 weeks 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 creates a new statutory payment called Statutory Parental Bereavement Pay, which eligible employees will be entitled to claim in respect of the 2 weeks' leave. Statutory Parental Bereavement Pay will be paid at the statutory flat rate of pay, or 90% of their average weekly earnings (whichever is lower), in respect of the 2 weeks leave. Eligibility for the payment is subject to a requirement that the employee has worked for their employer continuously for at least 26 weeks and has sufficient average weekly earnings (this mirrors the eligibility criteria for other similar statutory payments).

7.3 The introduction of a specific, statutory entitlement to parental bereavement pay will set a minimum standard for employees and employers so that all parents will be entitled to take time away from work in the event that they lose a child or baby. The policy intention is to provide certainty for employed parents and employers in relation to a bereaved parents' right to time off from work following the death of their child.

7.4 The government has reviewed the opportunities that employers give and, in order to ensure fairness for affected parents, has brought in legislation to give the right to bereavement leave.

7.5 This instrument makes the changes set out at 2.1 to the 1999 Regulations, which are required as a consequence of legislation referred to at 6.1. It is also related to the Social Security (Contributions) (Amendment) Regulations 2020 (S.I. 2020/239) and the Statutory Parental Bereavement Pay (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/240). S.I. 2020/239 makes amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) to introduce references to Statutory Parental Bereavement Pay. S.I. 2020/240 makes similar amendments to introduce references to Statutory Parental Bereavement Pay into the Statutory Payment Schemes (Electronic Communications) Regulations 2002 (S.I. 2002/3047), the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045).

7.6 Employment matters are devolved in Northern Ireland. It will be for the Northern Ireland Assembly to decide if similar provisions should apply in due course to Northern Ireland.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 1999 Regulations, there is no plan for consolidation.

10. Consultation outcome

10.1 As the consequential changes introduced by this instrument result from the introduction of Statutory Parental Bereavement Pay no consultation has taken place specifically in relation to this instrument.

10.2 In March 2018 the Department for Business, Energy and Industrial Strategy (BEIS) issued a consultation document "Consultation on Parental Bereavement and Pay". The document sought views on how to shape policy on Parental Bereavement Leave and Pay it focused on the definition of a bereaved parent, how and when to take leave, and the notice and evidence requirements.

10.3 In November 2018 BEIS issued its formal response to the consultation. It outlined that the government will bring forward Regulations 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.gov.uk/government/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 by 6 April 2020.

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 An 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, which was introduced by BEIS. An impact assessment was published by BEIS on 14th May 2018 in respect of these changes. This can be viewed here https://publications.parliament.uk/pa/bills/lbill/2017-2019/0105/18105-impact-assessment.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 regulatory burdens 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 in the case for all statutory payments small business (defined for these purposes as those who pay less than £45,000 in 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 approach to monitoring of this legislation is that BEIS has already committed to a non-statutory post-implementation review in 2025. Further details of the review's basis, objective, approach and rationale can be found on page 28 of the Impact Assessment referred to at 12.3.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt Hon Jesse Norman MP Financial Secretary to the Treasury has made the following statement:

"BEIS will undertake a non-statutory review of the policy in 2025 using data from HM Revenue and Customs to monitor take-up, as well as qualitative interviews to assess the effectiveness of the legislation and guidance".

15. Contact

15.1 Ativie Edebiri at HMRC Telephone: 03000 584748 or email: ativie.edebiri@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Nixon, Deputy Director for National Insurance Contributions Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.