EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY CONTRIBUTIONS (STATUTORY PARENTAL BEREAVEMENT PAY) (AMENDMENT OF EXTENT) (NORTHERN IRELAND) REGULATIONS 2022

2022 No. 384

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.

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

2. Purpose of the instrument

2.1 This statutory instrument extends the amendments made to the Social Security Contributions (Decisions and Appeals) Regulations 1999 by the Social Security Contributions (Decisions and Appeals) Regulations 2020 (S.I. 2020/238) and the amendments made to the Social Security (Contributions) (Amendment) Regulations 2001 by the Social Security (Contributions) (Amendment) Regulations 2020 (S.I. 2020/239) to 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 On 7 February 2022, the NI Assembly passed the Parental Bereavement (Leave and Pay) Bill. This Bill provides for a new statutory entitlement to Parental Bereavement Leave and Pay in NI. This entitlement will come into force on 6 April 2022. Breach of the 21-day rule could not be avoided because Royal Assent for the primary legislation was received on 21 March 2022 and the commencement order was made on 22 March 2022.

3.2 Consequential amendments to secondary legislation were required in 2020 to bring the entitlement to Statutory Parental Bereavement Pay (SPBP) into effect in Great Britain (GB). However, the consequential amendments made in 2020 only apply to GB. These urgent Regulations are being laid to extend the coverage of the consequential amendments to NI to ensure the required legislation is in place to bring SPBP in NI into effect from 6 April 2022.

3.3 The impact of delaying these Regulations to satisfy the 21-day rule is that it would delay these Regulations past 6 April 2022. The consequence of not having this legislation in place on 6 April is that without it there would be no legal basis on which employers could deduct National Insurance contributions (NICs) on the payments made for SPBP in NI. If employers were to deduct NICs on these payments without the Regulations being in place, it would leave employers and HMRC open to the risk of a legal challenge.

3.4 HMRC has breached the 21-day rule to the minimum extent that has been 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 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 made provision for a new entitlement to SPBP in Great Britain (GB). As a result, it was necessary to make consequential amendments to secondary legislation to bring the entitlement to SPBP into effect.

6.2 S.I. 2020/238 inserted references to SPBP into the Social Security Contributions (Decisions and Appeals) Regulations 1999 (S.I. 1999/1027) ("the 1999 Regulations"). 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.

6.3 S.I. 2020/239 inserted references to SPBP into the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the 2001 Regulations"). This meant that SPBP will be treated like other statutory payments as part of the assessment of earnings-related contributions.

6.4 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 introduced the right to SPBP in NI.

6.5 This statutory instrument extends the coverage of the consequential amendments made in 2020 to the Social Security Contributions (Decisions and Appeals) Regulations 1999 and Social Security (Contributions) Regulations 2001 to Northern Ireland.

7. Policy background

What is being done and why?

7.1 Before 6 April 2020, there was no specific statutory entitlement in the United Kingdom for parents to take time off work (paid or otherwise) following the death of their child. Some employers allowed parents to take compassionate leave. This was at the discretion of the employer and there was no minimum standard across the board.

7.2 The 2018 Act created a statutory requirement within GB 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 created a new statutory payment called SPBP, which eligible employees are entitled to claim in respect of the 2 weeks' leave. SPBP is 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 set a minimum standard for employees and employers so that all parents are entitled to take time away from work in the event that they lose a child or baby. The 2018 Act provided 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 SPBP is a type of Statutory Payment (SP), alongside Maternity, Paternity, Adoption and Shared Parental Pay. Eligible employees can claim SPs from their employer. If the employee qualifies, their employer must pay the SP through their payroll. An employer can usually reclaim 92% of SPs made to employees via their payroll submission to HMRC. Additionally, employers can refuse to pay the employee if they don't think they qualify. If an employee is unhappy with the decision, they can contact HMRC to adjudicate

7.5 Consequential amendments to secondary legislation were required in 2020 to bring the entitlement to SPBP into effect. S.I. 2020/238 inserted references to SPBP into the 1999 Regulations for the purpose of decisions taken by HMRC about the statutory payments and subsequent appeals. S.I. 2020/239 also inserted references to SPBP into the 2001 Regulations so that SPBP will be treated like other statutory payments as part of the assessment of earnings-related contributions. The 2020 Regulations also relate to the Statutory Parental Bereavement Pay (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/240), which made similar amendments to introduce references to SPBP 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 NI. In June 2020, the Department for the Economy (DfE) in NI issued a consultation document to inform the public about the government's intention to introduce this entitlement into NI, akin to the entitlements that came into force in GB. Following closure of the consultation in August 2020, DfE outlined that the government will proceed with legislation to give effect to the entitlement. The 2022 Act will come into force on 6 April 2022 to introduce the statutory entitlement to Parental Bereavement Leave and Pay to NI. As stated during consultation, the initial offering of the statutory entitlement in NI will mirror the current arrangements within GB. Consequential amendments of HMRC regulations are required to give SPBP in NI effect and enable HMRC to administer the reimbursement of bereavement pay through income tax (PAYE and CIS). This will bring entitlement to SPBP in NI in line with GB.

7.7 This instrument makes the changes set out at 2.1, which are required as a consequence of legislation referred to at 6.4. This instrument is related to the Income Tax (Construction Industry Scheme) (Amendment) (Northern Ireland) Regulations 2022 (S.I. 2022/385), which makes consequential amendments to S.I. 2005/2045 by extending the meaning of "the relevant recovery provision" in respect of SPBP to include corresponding NI legislation.

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 1999 Regulations, the 2001 Regulations or the 2020 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 SPBP in NI, no consultation has taken place specifically in relation to this instrument.

10.2 In June 2020, DfE issued 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 in October 2020. It outlined that the government will 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 NIDIRECT.GOV.UK and 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, businesses that qualify for 'Small Employers' Relief' can reclaim 103% of SPBP payments made to employees, rather than the standard 92%. A business can qualify for this relief if they paid £45,000 or less in Class 1 NICs in the last complete tax year.

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 Richard Greaves at HMRC Telephone: 03000 590820 or email: richard.greaves2@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance 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.