EXPLANATORY MEMORANDUM TO

THE MATERNITY ALLOWANCE (CURTAILMENT) REGULATIONS 2014

2014 No. 3053

and

THE STATUTORY MATERNITY PAY AND STATUTORY ADOPTION PAY (CURTAILMENT) REGULATIONS 2014

2014 No. 3054

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions ('DWP') 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 instruments

2.1 The Maternity Allowance (Curtailment) Regulations 2014 enable a woman to end her Maternity Allowance early so that an eligible person (a spouse, civil partner, partner or the child's father) can take the remaining number of untaken weeks of Maternity Allowance as shared parental pay and/or shared parental leave.

2.2 The Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014 enable a woman or a primary adopter to end their Statutory Maternity Pay or Statutory Adoption Pay early so that an eligible person can take or share the remaining number of untaken weeks of Statutory Maternity Pay or Statutory Adoption Pay as shared parental pay and/or shared parental leave.

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

3.1 The Maternity Allowance (Curtailment) Regulations 2014 and the Statutory Maternity Pay and Statutory Adoption Pay (Curtailment) Regulations 2014 ('the DWP Regulations') refer to and operate alongside two sets of regulations introduced by the Department for Business, Innovation and Skills ('the BIS Regulations'). The BIS Regulations are the Shared Parental Pay (General) Regulations 2014 (2014/3051) and the Shared Parental Leave Regulations 2014 (2014/3050)**,** which were subject to the affirmative resolution procedure an can be found at http://www.legislation.gov.uk. For this new system of shared parental leave and pay to be effective, it is necessary for both the DWP Regulations and the BIS Regulations to come into force together. They will

come into force on 1 December 2014. The DWP Regulations cannot be viewed in isolation, as together with the BIS Regulations they set out a new system of shared parental leave and pay.

3.2 The DWP Regulations could not be made until the BIS Regulations had been made, because the effect of this would have been for the DWP Regulations to refer to legislation which did not exist. The Department for Work and Pensions ('DWP') has had regard to the Joint Committee on Statutory Instruments' advice in its Twenty-second Report of Session 2010-12[1].
http://www.publications.parliament.uk/pa/jt201012/jtselect/jtstatin/150/150.pdf

3.3 The BIS Regulations were made on 18 November 2014. As a consequence, the DWP Regulations will breach the 21 day rule in order to take effect on 1 December 2014.

3.4 DWP considered delaying the coming into force date of the DWP Regulations in order to avoid breaching the 21 day rule. However, as the BIS Regulations cannot operate until the DWP Regulations have come into force, this would have meant that the entire shared parental leave and pay system could not operate. The BIS Regulations expressly refer to a woman or adopter curtailing their Maternity Allowance, Statutory Maternity Pay, or Statutory Adoption Pay so as to allow an eligible partner to take shared parental pay and/or shared parental leave.

3.5 DWP also considered it to be conceptually incomplete for the BIS Regulations to be made while referring to DWP Regulations which did not exist, and after taking into account the advice given by the Joint Committee on Statutory Instruments in the Report referred to above, will breach the 21 day rule. In doing this however, DWP have made the draft DWP Regulations available online on GOV.UK and have also made copies of the draft DWP Regulations available for illustrative purposes to the Vote Office for MPs and the Printed Paper Office for Peers, prior to their debates on the BIS Regulations.

4. Legislative context

4.1 The DWP Regulations are made under powers set out in Part 7 of the Children and Families Act 2014 http://www.legislation.gov.uk/ukpga/2014/6/part/7
These powers are being used for the first time to create a new entitlement to shared parental leave and pay for eligible persons (as described in paragraph 2.1 above) and operate alongside two other sets of affirmative regulations by the Department for Business Innovation and Skills (the BIS Regulations), as described in paragraph 3.1 above.
Together these Regulations set out a new system of shared parental leave and pay.

5. Territorial extent and application

[1] At paragraph 3.7

5.1 These Regulations apply to Great Britain. Similar provision will be introduced in Northern Ireland in due course.

6. European Convention on Human Rights

6.1 As the Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Children and Families Act 2014 gives effect to the Coalition Government's commitment to encourage shared parenting and sets out the framework for shared parental leave and shared parental pay. The scheme applies to working parents.

7.2 The policy enables a woman who has given birth to reduce her Statutory Maternity Pay period or Maternity Allowance period or an adopter to reduce their Statutory Adoption Pay period, so that the remainder can be used by the woman or adopter and an eligible person (see paragraph 2.1 above) as shared parental pay and/or shared parental leave. Where a woman or adopter is not eligible for Statutory Maternity Leave or Statutory Adoption Leave, they may still transfer the balance of their Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay to an eligible person who is entitled to take shared parental pay and/or shared parental leave.

7.3 The woman or adopter will need to give notice to their employer, or the Department for Work and Pensions in the case of Maternity Allowance, of the intention to curtail their Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay period on a specific date. The notice may be revoked in certain limited circumstances, such as when the eligible person dies.

7.4 The untaken balance of the 39 weeks of Maternity Allowance, Statutory Maternity Pay or Statutory Adoption Pay will be available for an eligible person to take as shared parental pay and/or shared parental leave.

7.5 Women or primary adopters not wishing to utilise the shared parental leave and pay system will not be affected and will be able to continue to receive Maternity Allowance, Statutory Maternity Pay or Statutory Adoption Pay as usual.

7.6 This change will affect women who are due to give birth on or after 5 April 2015 or those parents who will have a child placed with them for adoption on or after 5 April 2015.

7.7 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website at http://www.legislation.gov.uk . An explanation as to which instruments are maintained on each site is available at http://lawvolumes.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 The Department for Business Innovation and Skills ('BIS') published the *Modern Workplaces* consultation document on 16 May 2011 to seek views on a radical new system whereby maternity leave would be reduced to 18 weeks and then the remaining 34 weeks of leave and 21 weeks of pay to be available for the parents to share on a flexible basis. Thus allowing the parents to be absent from work at the same time, with some leave being reserved for the exclusive use of each parent on a "use it or lose it", non-transferable basis. This ran for 12 weeks until 11 August 2011. BIS received 273 responses from a broad spectrum of interested parties. The Government response was published in November 2012 and the proposed system was built upon the proposals in the consultation and took into account the responses received. The response announced that there would be no reduction in the amount of maternity leave and the default position was that all employed women would remain entitled, on the same basis, to 52 weeks of Statutory Maternity Leave and 39 weeks of Statutory Maternity Pay or Maternity Allowance.

8.2 A new entitlement to shared parental leave and shared parental pay would arise for eligible working couples or parents, once the mother had decided to curtail her Statutory Maternity Leave period or reduce her Statutory Maternity Pay or Maternity Allowance period.

8.3 Full analysis of the responses can be found in the Government response, available at: https://www.gov.uk/government/consultations/consultation-on-modern-workplaces

8.4 On 25 February 2013, the same day that the Children and Families Bill was introduced in the House of Commons, BIS launched a consultation on the administration arrangements for the new system of shared parental leave and pay, which ended on 17 May 2013. This can be found at: https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay

8.5 The consultation asked questions about the period in which it should be possible to take shared parental leave, the notification arrangements and how the right to return to the same job should apply when shared parental leave could be taken discontinuously. 87 responses were received from a broad spectrum of interested stakeholders.

8.6 The Government response on the administration of the scheme was published on 29 November 2013. This announced that:

- shared parental leave and pay could be taken in the 52 weeks following the birth;
- there would be a cap of 3 notices to take a period of shared parental leave, thus limiting the number of discontinuous periods of leave that an employee could take;
- the right to return to the same job would apply to an employee taking any combination of maternity, paternity, adoption and shared parental leave up to a total of 26 weeks in aggregate and that thereafter there would be a right to return from such leave to the same job or, if that was not reasonably practicable, to a similar job.

8.7 Full analysis of the responses can be found in the Government response available at: https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay

8.8 A summary of the outcome of the consultations can be found in the Explanatory Memorandum produced by the Department for Business Innovation and Skills ('BIS') for the Shared Parental Pay (General) Regulations 2014 (2014/3051) and the Shared Parental Leave Regulations 2014 (2014/3050) available at: http://www.legislation.gov.uk/ukdsi/2014/9780111118832/memorandum/contents

8.9 These Regulations are being made following the above consultations.

9. Guidance

9.1 The changes brought about by these Regulations will be publicised widely so that all who may be affected are made aware of their effects. Both BIS and the Department for Work and Pensions ('DWP') will work together to use appropriate communication channels and press avenues to publicise the changes. In addition, BIS and DWP will be providing links from the Maternity Allowance, Statutory Maternity Pay and Statutory Adoption Pay online guidance on Gov.UK to guidance on shared parental leave and shared parental pay for employers and employees. This will include guidance on how it arises; the eligibility criteria; how statutory payments are administered and reimbursed to employers; and the notice and evidential requirements to opt into the shared parental leave and pay scheme.

10. Impact

10.1 The impact on business and civil society organisations is set out in the Explanatory Memorandum produced for the BIS Regulations available at: http://www.legislation.gov.uk/ukdsi/2014/9780111118832/memorandum/contents

10.2 The impact on the public sector is estimated at £1.3m based on the highest level of take up predicted for the shared parental leave and pay scheme and not based solely on

these Regulations. These costs can be viewed in the Impact Assessment (paragraph 116) via the link in paragraph 10.3 below. DWP will incur delivery costs estimated between £75k and £100K which will be met by the Department for Business Innovation and Skills (BIS).

10.3 An Impact Assessment was prepared for the Children and Families Act 2014. The full Impact Assessment is 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

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 DWP intends to monitor and review the changes to Maternity Allowance and BIS will conduct an internal review of the implementation and take up of shared parental leave and shared parental pay no earlier than 2018.

13. Contact

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Debra Macleod at the Department for Business, Innovation and Skills Tel: 020 7215 0973 or email debra.macleod@bis.gsi.gov.uk for queries on Statutory Adoption Pay.