EXPLANATORY MEMORANDUM TO

THE STATUTORY PARENTAL BEREAVEMENT PAY (EMPLOYMENT AND EARNINGS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2026

2026 No. 74

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule and is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under powers conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 and the Social Security Administration (Northern Ireland) Act 1992. The rule is subject to the confirmatory resolution procedure.

2. Purpose

2.1 The purpose of the Statutory Parental Bereavement Pay (Employment and Earnings) (Amendment) Regulations (Northern Ireland) 2026 is to remove service-based earnings and the reliance on actual earnings for entitlement, ensure that statutory parental bereavement pay (SPBP) operates as a genuine day-one right, and provide clarity for employees with atypical or incomplete earnings histories. The Regulations also make technical amendments to ensure that employees working in the EEA but treated as employed in Northern Ireland for social security purposes are fully covered, including where entitlement is based on expected earnings. Taken together, these amendments modernise the statutory scheme, ensure that the recent extension of the right to include miscarriage operates coherently, and support fair and consistent access to SPBP during an acutely distressing period.

2.2 The Regulations remove service-based barriers to entitlement by repealing the requirement for 26 weeks' continuous employment. This ensures that employees are not denied access to statutory parental bereavement pay simply because they have recently started a job or have changed employer. Bereavement is inherently unforeseeable and can occur at any point in the employment relationship, and the removal of the service condition ensures that entitlement operates as a genuine day-one right. This approach gives effect to the statutory requirement in section 3 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 to ensure that continuous service is not a barrier to statutory parental bereavement pay.

2.3 The Regulations update the earnings-based rules to ensure that entitlement is available to employees with limited or irregular earnings histories. The introduction of an 8-week earnings-based test, together with provision to determine entitlement using expected normal weekly earnings, ensures that employees are not excluded where they lack a full earnings record or where recent earnings do not reflect their usual pay. This is particularly relevant for employees who have recently started work, returned from absence, or work irregular or variable patterns. Allowing entitlement to be determined using reasonable assumptions about expected earnings ensures that assessments more accurately reflect the employee's likely earnings and support a fair determination of both entitlement and the rate of payment.

2.4 The Regulations also make a number of associated amendments to ensure that the new approach to entitlement operates consistently across the statutory scheme. These changes include clarifications to the calculation of earnings, the weekly rate of payment, and the avoidance-of-liability provisions. Collectively, these amendments provide greater certainty for employees and employers, support consistent decision-making, and ensure that the recent extension of entitlement to include miscarriage is fully and coherently reflected. They help ensure that entitlement is assessed fairly, transparently, and in line with the overall policy intent.

2.5 The Regulations make technical amendments in relation to employees who have worked, or were expected to work, in an EEA state during the earnings assessment period. The amendments align the statutory parental bereavement pay scheme with the established UK-wide approach, ensuring that employees are not disadvantaged where EEA-based employment is treated as employment in Northern Ireland for social security purposes. Bespoke provisions are also made to ensure that expected-earnings assessments can take account of circumstances in which an employee would reasonably have been expected to work and earn in an EEA state. These changes support legal clarity, promote consistency across the statutory scheme, and ensure that the recent extension of entitlement to include miscarriage is fully and coherently reflected.

3. Background

3.1 Section 3 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 sets the latest permissible date on which the Department for the Economy may continue to rely on the temporary modifications to Part 12ZD of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 when making Regulations. These modifications were intended to operate only for a limited period and provided the legal basis for maintaining the scheme in its modified form during that time.

3.2 The interim modifications ensured that the Northern Ireland scheme could operate on the same basis as the equivalent scheme in Great Britain while the policy development and drafting of the required enhancements progressed. Those enhancements—such as the inclusion of miscarriage and the creation of a day-one right—were themselves statutory obligations under the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 and were required to be fully implemented no later than 6 April 2026. The modified scheme was therefore always intended as a temporary arrangement pending delivery of those statutory enhancements.

3.3 These Regulations bring the interim modifications to an end and give effect to the provisions required under the unmodified Part 12ZD. This ensures the continued operation of Statutory Parental Bereavement Pay in Northern Ireland, including the introduction of the miscarriage criterion and the associated enhancements to the right.

4. Consultation

4.1 A full public consultation was carried out to inform and determine the necessary modifications required to extend eligibility for Parental Bereavement Leave and Pay to the circumstances of miscarriage, as well as seeking views on the Department's intention to amend the principal legislation to make Statutory Parental Bereavement Pay, a day one right.

4.2 The requirements to provide the right to Statutory Parental Bereavement Pay on a day one basis are determined by Part 12ZD of the Social Security Contributions and

Benefits (Northern Ireland) Act 1992, as amended by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022.

5. Equality Impact

5.1 The Department is required under section 75 of the Northern Ireland Act 1998 to screen the proposed changes to ascertain if an Equality Impact Assessment is required. The screening exercise was carried out, and no equality issues were identified.

6. Regulatory Impact

6.1 A full Regulatory Impact Assessment was undertaken to determine the impact on business; this impact assessment also demonstrates the costs to the Department for the introduction of the enhancements to Parental Bereavement Leave and Pay as well as the Department's financial liabilities.

6.2 As per the impact assessment prior to the enhancement to include a miscarriage criterion as a ground of entitlement within Parental Bereavement Leave and Pay, it continues to be the case there is no impact on charities or voluntary bodies. The Statutory Rule imposes no new obligations on them, except in their capacity as employers. The impact on the public sector is limited to the extent to which they may need to administer this entitlement to an employee.

6.3 The Regulatory Impact Assessment can be found on the Department for the Economy website:

https://www.economy-ni.gov.uk/publications/regulatory-impact-assessment-enhancements-parental-bereavement-leave-and-pay-include-miscarriage-criterion-and-introduce-day-one

7. Financial Implications

7.1 The extension of Parental Bereavement Leave and Pay to encompass cases of miscarriage, as set out in the Regulations, will result in financial implications for the Department.

7.2 The Department will be responsible for the associated costs of all payments which relate to Statutory Parental Bereavement Pay on the grounds of miscarriage as well as any cases of entitlement which are based upon expected earnings. The final costs will depend upon the level of payment uptake and will be influenced by the relevant employer's eligibility for small employers' relief per claim.

7.3 In order to implement the required modifications to the Statutory Parental Bereavement Pay scheme in accordance with the Pay Regulations, the Department incurred charges for the system changes and process adjustments within the UK wide HMRC statutory payment framework.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 This Statutory Rule amends an existing statutory rule in Northern Ireland: the Statutory Parental Bereavement Pay (General) (No. 2) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 155).

10.2 The corresponding Statutory Rule to S.R. 2023 No. 155 in Great Britain (GB) is the Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233), which were made on 9 March 2020 and continue to operate on an unchanged basis.

10.3 The GB Regulations retain a requirement for 26 weeks' continuous employment and base earnings calculations on determinations relating to pay periods before the week of the bereavement. In contrast, the removal of the 26-week continuous employment requirement and the revised earnings provisions—which may rely on expected earnings from the date of the bereavement—apply only to employees in Northern Ireland. These enhancements reflect changes introduced under the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 and are not mirrored in the GB scheme.

11. Additional Information

11.1 Not applicable.

12. Contact

12.1 Joseph Ward at the Department for the Economy Telephone: 02890416728 or email: joseph.ward@economy-ni.gov.uk can be contacted with any queries regarding the instrument.

12.2 Colin Jack, Director of Business and Employment Regulation at the Department for the Economy, can confirm that this Explanatory Memorandum meets the required standard.