EXPLANATORY MEMORANDUM TO

THE PARENTAL BEREAVEMENT LEAVE REGULATIONS (NORTHERN IRELAND) 2023

2023 No. 55

AND

THE STATUTORY PARENTAL BEREAVEMENT PAY (GENERAL) REGULATIONS (NORTHERN IRELAND) 2023

2023 No. 57

1. Introduction

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

1.2 The Statutory Rules are made under powers inserted into the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Employment Rights (Northern Ireland) Order 1996 by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 and the Social Security Administration (Northern Ireland) Act 1992. The Regulations also contain transitional provisions made under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and Employment Rights (Northern Ireland) Order 1996. The Regulations are subject to the confirmatory resolution procedure.

2. Purpose

2.1 These Regulations revoke and re-enact the provisions of the Parental Bereavement Leave Regulations (No. 2) (Northern Ireland) 2022 and the Statutory Parental Bereavement Pay (General) (No. 2) Regulations (Northern Ireland) 2022.

2.2 These two sets of Regulations contain only provisions in consequence of the Parental Bereavement Leave Regulations (Northern Ireland) 2023 and the Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2023 and are two of a series of statutory rules relating to Parental Bereavement Leave and Pay.

2.3 These Statutory Rules make provision to implement and maintain a statutory entitlement to Parental Bereavement Leave and Pay for employed parents who have lost a child on or after 6th April 2022. The Statutory Rules ensure that bereaved parents who are employees will have at least a right to time off work to grieve. This will also establish and maintain a statutory baseline for employers when managing parental bereavement in the workplace.

2.4 Specifically:

- The Parental Bereavement Leave Regulations (Northern Ireland) 2023 implement an entitlement for bereaved parents who are employees to two weeks' leave from their job, and

- The Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2023 implement an entitlement for bereaved parents who meet certain eligibility criteria to receive a statutory payment (paid at either the statutory flat rate of £172.48 per week for 2023/24, or 90% of average earnings calculated over a set reference period, whichever is the lower) whilst absent from work.

3. Background

3.1 The objectives of the Parental Bereavement Leave and Pay policy are to:

- give bereaved employees a statutory right to paid leave to provide space for them to grieve following the death of a child, and
- to send a signal to employees and employers about the importance and value of recognising bereavement and providing adequate support for parents in such circumstances.

3.2 The Parental Bereavement Leave Regulations (Northern Ireland) 2023 and the Statutory Parental Bereavement Pay (General) (Regulations (Northern Ireland) 2023 set a statutory minimum provision which all bereaved parents who are employees can rely on and, in doing so, will establish a clear baseline of support for employers to adhere to when managing bereavement in the workplace.

3.3 The Parental Bereavement Leave Regulations (Northern Ireland) 2023 do this by giving all employees a statutory right to 2 weeks off work in the event of their child's death or stillbirth, regardless of how long they have worked for their employer. Consistent with other rights to family related leave, the employee will not be able to take leave without giving notice to their employer. Given the circumstances, however, notice need not be in writing, but can be given orally, and there is no requirement to provide evidence of entitlement. The regulations give employees protection from detriment whilst on leave or afterwards such that an employer cannot treat them less favourably as a consequence of their decision to take this leave.

3.4 The Statutory Parental Bereavement Pay (General) Regulations (Northern Ireland) 2023 implements a statutory payment for parents taking time away from work following a child bereavement (subject to eligibility criteria, as for all other statutory family leave payments). The payment will provide a measure of earnings replacement which will support parents to be absent from work to grieve. Notice must be given in writing to the employer in order to claim this payment.

3.5 Entitlements to both leave and pay must be exercised within a window of 56 weeks from the death of the child, and bereaved parents can elect to take either a single week, or 2 weeks, which may be taken in blocks of one week at a time.

3.6 The revocation and re-enactment of provisions by these Regulations does not affect the continuity of the law. The transitional provisions provide a continuity of entitlement, obligation, process and responsibility between the respective revoked and re-enacted provisions.

4. Consultation

4.1 Public consultation has not been carried out in relation to these Statutory Rules. Prior to the passage of the Parental Bereavement (Leave and Pay) Bill through the Northern

Ireland Assembly, a full public consultation, exploring the introduction of Parental Bereavement Leave and Pay was completed.

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. Prior to the passage of the Parental Bereavement (Leave and Pay) Bill through the Northern Ireland Assembly a screening exercise was, therefore, carried out. No equality issues were identified.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment has not been carried out in relation to these Statutory Rules as the impact on business is small. There is no impact on charities or voluntary bodies and the Statutory Rules impose 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. Prior to the recent passage of the Parental Bereavement (Leave and Pay) Bill through the Northern Ireland Assembly, a regulatory impact assessment was completed.

7. Financial Implications

7.1 None for the Department.

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 The Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233) and the Parental Bereavement Leave Regulations 2020 (SI 2020/249), applicable in GB, were made on 9 March 2020. The provisions in the GB Regulations are broadly similar to the provisions contained within these Statutory Rules.

11. Additional Information

11.1 Not applicable.

12. Contact

12.1 Gareth Dillon at the Department for the Economy Telephone: 02890416728 or email: Gareth.dillon@economy-ni.gov.uk can be contacted with any queries regarding the Statutory Rules.

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.