EXPLANATORY MEMORANDUM TO

THE STATUTORY PATERNITY PAY AND STATUTORY ADOPTION PAY (PARENTAL ORDERS AND PROSPECTIVE ADOPTERS) (AMENDMENT) REGULATIONS 2024

2024 No. 843

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade (DBT) and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Justin Madders, Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

2.2 Jayne McCann, Deputy Director for Individual Rights and Participation, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Erin Fair, telephone: 07917 176650 or email: erin.fair@businessandtrade.gov.uk or Rosemary Edmonds, telephone: 07843 825970 or email rosemary.edmonds@businessandtrade.gov.uk both at the Department for Business and Trade can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will amend the Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 to correct drafting errors within the legislation following changes that were made by the Statutory Paternity Pay (Amendment) Regulations 2024. The amendments will relate to "Parental Order Parents" (where a person and their partner are the intended parents in surrogacy arrangements under the Human Fertilisation and Embryology Act 2008).

4.2 The first amendment relates to notice periods for statutory paternity pay, to ensure there is a clear notice period for Parental Order Parents to give before taking or varying their periods of pay.

4.3 The second amendment will ensure that Parental Order Parents can choose to take their statutory paternity pay in two non-consecutive blocks.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Scotland and Wales.

5. Policy Context

What is being done and why?

5.1 The changes to Paternity Leave and Pay introduced in 2024 were designed to make paternity leave easier to take. This was done by:

- Allowing fathers and partners to take their entitlement in non-consecutive blocks.
- Shortening, in most cases, the notice period required for each period of leave and pay.
- Allowing fathers and partners to take their leave and pay at any point in the first year after the birth or adoption of their child.

5.2 This statutory instrument will correct drafting errors in the Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 to ensure that the set of regulatory changes made to Paternity Leave and Pay in 2024 operate as intended for Parental Order Parents.

5.3 In particular, the corrections are required to ensure the changes described in bullet points one and two of paragraph 5.1 are correctly reflected in the 2014 regulations so that they apply to Parental Order Parents.

5.4 The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 now provide that a person may choose to receive statutory paternity pay (adoption) in respect of a single period or two non-consecutive periods of a week each. This instrument will ensure that provision also applies to Parental Order Parents.

5.5 This instrument will also make modifications to ensure it is clear that the time periods for giving notice (and notice of variation) for Parental Order Parents is 28 days (or as soon as reasonably practicable).

5.6 This instrument will also replace a reference to "birth" in the 2014 regulations with "child's birth" for additional clarity.

What was the previous policy, how is this different?

5.7 The intent of the previous policy was to make Paternity Leave and Pay easier for fathers and partners to take by:

- Reducing notice for leave and pay dates.
- Enabling fathers and partners to take their leave and any point during the first year from birth or adoption.
- Enabling fathers and partners to take their leave in two non-consecutive weeks.

5.8 However, this policy intent was not delivered for fathers and partners who have had their children through surrogacy arrangements, due to an error. This correction SI seeks to deliver this policy intent for fathers and partners through surrogacy arrangements.

6. Legislative and Legal Context

How has the law changed?

6.1 Entitlements to Statutory Paternity Pay were introduced in 2003 by the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 ("the 2002 Regulations").

6.2 In 2014 the Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 ("the 2014 Regulations") made provision for an entitlement to statutory paternity pay (adoption) for "Parental Order Parents". These are where a person and their partner are the intended parents in surrogacy arrangements under the Human Fertilisation and Embryology Act 2008. Parental orders are court orders that transfer legal parenthood to the intended parent(s) from the surrogate after the birth of a child following a surrogacy arrangement.

6.3 The 2014 Regulations apply the 2002 Regulations to Parental Order Parents with modifications to ensure they operate effectively. For example, a recurring modification throughout replaces references to the child's placement for adoption with a reference to the child's birth.

6.4 The Statutory Paternity Pay (Amendment) Regulations 2024 ("2024 regulations") made changes to the 2002 and 2014 Regulations (amongst others), to implement changes to the way fathers and partners can take their Statutory Paternity Pay, including Parental Order Parents.

6.5 The 2024 Regulations came into force on 8 March 2024 and applied to parents of babies with an expected week of birth after 6 April 2024, or of children with an expected date of placement for adoption on or after 6 April 2024, or for those adopting from overseas, of children with an expected date of entry into Great Britain on or after 6 April 2024.

6.6 Drafting errors were made in the 2024 Regulations that affected the operation of the modifications made by the 2014 Regulations. These errors meant that a new paragraph (2) of regulation 12 of the 2002 Regulations (allowing Pay to be taken in two non-consecutive weeks) does not appear to apply to Parental Order Parents, and the modifications of new regulation 12B of the 2002 Regulation in relation to giving and varying notice incorrectly refer to wording that does not appear in that regulation. This instrument makes the necessary amendments to ensure the regulations operate for Parental Order Parents, as intended and as set out in the explanatory material accompanying the 2024 Regulations.

Why was this approach taken to change the law?

6.7 The approach to the changes made in the 2024 Regulations were decided by Ministers following a consultation on Parental Leave and Pay, to increase the flexibility in how fathers and partners can take their Paternity Leave and Pay.

7. Consultation

Summary of consultation outcome and methodology

7.1 In 2019, in response to significant stakeholder interest in reforming parental leave and pay, the Conservative Manifesto committed to "look at ways to make it easier for fathers to take Paternity Leave".

7.2 Following the manifesto, the then Government launched the 2019 consultation "Good Work Plan: Proposals to support families". Government consulted on high-level options for reforming parental leave and pay, which included questions on Paternity Leave and Pay. In their responses 58% of stakeholders (i.e., including businesses, charities and academic institutions but excluding individual respondents) said they were in favour of Government promoting flexibility around how Paternity Leave should be taken (respondents provided open answers to the question).

7.3 The reforms to Statutory Paternity Leave and Pay made earlier this year reflected the responses to the consultation. This SI will make the necessary corrections to ensure those reforms operate as intended for Parental Order Parents.

8. Applicable Guidance

8.1 Guidance on Statutory Paternity Leave and Pay can be found at https://www.gov.uk/paternity-pay-leave.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because this instrument is only being made to make corrections following the changes made by the Statutory Paternity Pay (Amendment) Regulations 2024. A de minimis impact assessment has been published on legislation.gov.uk alongside those regulations.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because the instrument only makes corrections to ensure the changes to statutory paternity pay made by the Statutory Paternity Pay (Amendment) Regulations 2024 apply to Parental Order Parents as intended.

9.3 The legislation does not impact small or micro businesses for the reasons set out above but it does apply to them.

9.4 There is no, or no significant, impact on the public sector because, as stated above, this instrument only makes the necessary corrections to ensure the recent changes to statutory paternity pay apply to Parental Order Parents as intended.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that Government will continue to monitor uptake of Statutory Paternity Leave and Pay following the changes made on 8 March 2024, including rates of uptake by Parental Order Parents.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Justin Madders, Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets at the Department has made the following statement:

"I have decided that to make provision for a statutory review in this instrument would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument has been made in consequence of defects in SI 2024/121 and is being issued free of charge to all known recipients of the instrument.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").