EXPLANATORY MEMORANDUM TO

THE STATUTORY PATERNITY PAY AND STATUTORY ADOPTION PAY (PARENTAL ORDERS AND PROSPECTIVE ADOPTERS) REGULATIONS 2014
2014 No. 2934

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 ("the Regulations") modify and amend the Statutory Paternity Pay and Statutory Adoption Pay Regulations (General) 2002 ("the Pay Regulations"). The Regulations to make provision for entitlement to adoption pay for qualifying:

- local authority foster parents who are prospective adopters if they have been notified that a child is to be placed with them under section 22C of the Children Act 1989.
- intended parents who are having a baby with the help of a surrogate (who intend to apply with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, and expect that order to be granted).

2.2 The Regulations also make provision for an entitlement to statutory paternity pay for qualifying spouses, civil partners and partners of these prospective adopters and intended parents.

2.3 The Regulations also amend and modify the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 ("the Administration Regulations") to cover these entitlements

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

3.1 None.

4. Legislative context

4.1 The Pay Regulations provide an entitlement to statutory paternity pay to qualifying fathers or mothers' partners (in birth scenarios) or the partner of an adopter (adoption situations). They also provide an entitlement to statutory adoption pay for qualifying adopters. The Pay Regulations set out the evidence requirements in order to be entitled to statutory adoption pay or statutory paternity pay.

4.2 The Regulations amend the Pay Regulations to cover local authority foster parents who are prospective adopters if they have been notified that a child is to be placed with them under section 22C of the Children Act 1989. They also modify the provisions

relating to statutory paternity pay in the case of adoption and statutory adoption pay so that they apply to intended parents who are having a baby with the help of a surrogate (who intend to apply with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008, and expect that order to be granted).

4.3 The Regulations make the necessary modifications to entitlement and evidence requirements to reflect the different processes involved.

4.4 The Administration Regulations provide for the funding of employers' liabilities to make payments of statutory paternity pay or statutory adoption pay and provide for record keeping and the inspection of employers' records. The Regulations amend and modify the Administration Regulations so they cover the situation of entitlement to statutory paternity pay or statutory adoption pay of intended parents or local authority foster parents

5. Territorial extent and application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 In November 2012, the Government announced in its response to the flexible parental leave part of the 2011 Modern Workplaces consultation, its intention to extend adoption leave and pay to qualifying intended parents who are having a child with the help of a surrogate, and to local authority foster parents who are also prospective adopters (i.e. they have been notified that a child is to be placed with them under section 22C of the Children Act 1989).

7.2 The decision to extend rights to intended parents is in response to representations to Government (including in relation to the Surrogate Parents (Leave, Pay and Allowance) Private Members Bill and the Adoption (Leave, Pay and Allowance Arrangements) Private Members Bill in 2012) that there should be provisions for leave and pay for parents whose children are born with the help of a surrogate which are equivalent to those of birth parents. Adoption leave and pay is the appropriate mechanism, rather than an extension to maternity rights as they are fundamentally different – maternity leave and pay are only available to eligible women who are pregnant or give birth and reflect the need to provide time to recover from childbirth. The modifications to the Pay Regulations made by the Regulations include qualification triggers and entitlement conditions that reflect timescales, events and documentation related to a birth rather than an adoption placement because this is more appropriate. The provision of rights to parental order parents does not impact on the rights of a qualifying surrogate mother to maternity leave and pay.

7.3 Extending adoption leave and pay to local authority foster parents who are prospective adopters if they have been notified that a child is to be placed with them under section 22C of the Children Act is aimed at supporting efforts to increase the numbers of looked after children who find a permanent home. This provision was included in the Children and Families Act 2014 and scrutinised as part of the passage of this Act through Parliament.

7.4 Partners of individuals who meet the criteria to receive adoption leave and pay, if they themselves meet the relevant qualifying criteria, are entitled to paternity leave. The Government has extended the right to paternity leave and pay to the partners of intended parents and prospective adopters who meet the qualifying requirements to receive adoption leave and pay.

8. Consultation outcome

8.1 The Government carried out the Modern Workplaces Consultation in 2011. It sought views on a range of issues relating to family-related leave in the workplace. The consultation document can be found at: https://www.gov.uk/government/consultations/consultation-on-modern-workplaces

8.2 The Government published its response in November 2012 which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82969/12-1267-modern-workplaces-response-flexible-parental-leave.pdf.

8.3 It sets out a number of changes to family related leave and pay, including the introduction of a system of shared parental leave and pay, the extension of adoption leave and pay to new groups (prospective adopters and the intended parents in surrogacy arrangements), and the enhancement of adoption pay for the first 6 weeks in line with statutory maternity pay.

9. Guidance

9.1 The changes brought about by the Regulations and the other elements of the package will be publicised widely so that all who may be affected may be made aware of their effects. The Department will use appropriate communication channels and press avenues to publicise the changes.

10. Impact

10.1 The Regulations are part of a package of legislative measures required to implement the Government's policy on shared parental leave and pay, and other changes to statutory family related leave and pay. A single Impact Assessment was prepared for these changes as a whole and 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. We estimate the numbers of employees to be affected by these regulations to be very small,

and they are included in the heading of adopters, rather than appearing in separate categories.

10.2 The equivalent annual net cost to business was revised in March 2014 to reflect the Better Regulation Executive's updated inflation assumptions and is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.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 The Government has committed to a review of shared parental leave and pay. This review will take place after 2018 to allow time for the policy to bed in and to collect data on the impact of these changes on employers and parents.

13. Contact

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