EXPLANATORY MEMORANDUM TO

The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Normal Weekly Earnings etc.) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020

S.R. 2020 No. 70

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 167ZJ(8), 167ZS(8), 167ZZ7(8) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002 ("the 2002 Regulations") and the Statutory Shared Parental Pay (General) Regulations (Northern Ireland) 2015 "the 2015 Regulations".

2.2. The purpose of the Regulations is to prevent an employee from experiencing disadvantage in relation to certain family-related statutory payments (specifically Statutory Paternity Pay (SPP), Statutory Adoption Pay (SAP) and Statutory Shared Parental Pay (SShPP)) as a result of their being placed on temporary leave under the Coronavirus Job Retention Scheme ("the CJRS").

2.3. The effect of the amendments is to ensure that an employee's eligibility for SPP, SAP (including the earnings-related rate of SAP) and SShPP is the same as it would have been had they not been furloughed.

3. Background

3.1. As part of its response to the coronavirus crisis, the UK Government implemented the CJRS. This is a temporary scheme designed to support employers whose operations have been severely affected by the coronavirus crisis to retain their employees. The scheme started on 1 March 2020 and is expected to run to the end of June 2020, although may be extended if necessary. Under the CJRS, an employee can be placed on temporary leave ("furloughed") and their employer can apply for a Government grant that covers 80% of their wages, up to a maximum of £2500 a month. Whilst some employers will continue to pay furloughed employees their normal wages in full ('100%'), many employers will pay employees at a reduced rate (matching the 80% figure that they can claim back through the CJRS).

3.2. Provisions within family-related pay legislation depend upon the calculation of a person's Normal Weekly Earnings (NWE) during a relevant, eight-week "assessment period". If an employee is furloughed during the "assessment

period" applicable to the particular statutory payment (and therefore potentially only being paid 80% of their usual earnings for that period), this might accordingly reduce the calculation of their NWE. This could lead to disadvantage for employees seeking to take family-related pay in two ways:

- The employee's NWE for the assessment period could fall below the Lower Earnings Limit (£120 per week for 2020/21), meaning that they may become ineligible for the family-related statutory payment altogether; or
- The employee's NWE for the assessment period may be lower than it would have been had the employee never been furloughed, which will accordingly reduce the earnings-related rate for the first six weeks of SAP.

3.3. The aim of these Regulations is to help prevent these disadvantages to ensure that an employee receives what they would have received had they not been furloughed. The calculation of Normal Weekly Earnings (NWE) should therefore take into account what the employee would have earned had they not been on furlough, rather than the 80% figure that they may be receiving whilst on furlough.

3.4. The Regulations achieve this aim by modifying how NWE are calculated for an employee who has been furloughed under the CJRS for any part of the assessment period so that their earnings in that part of the assessment period are taken to be the higher of:

- what they would actually receive from their employer; or
- what they would have received from their employer had they not been furloughed.

3.5. Using legislation is the only way to guarantee that the desired policy effect is realised. If the amendments in these Regulations were not made, the 2002 Regulations and 2015 Regulations, as they currently stand, would force an employer to calculate an employee's NWE based on what they actually earned during the assessment period, which could be as low as 80% of usual earnings for an employee who had been furloughed during any part of the assessment period.

4. Consultation

4.1. Due to the need for the Department to respond rapidly to the coronavirus crisis, no consultation has been undertaken.

5. Equality Impact

5.1. The purpose of the Regulations is to prevent adverse impact on employees' entitlements to family-related statutory payments arising as a consequence of being furloughed. The change to the calculation of Normal Weekly Earnings will apply to all claimants and will therefore not distinguish by section 75 category and will not adversely affect anyone on that basis.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has not been published for this instrument because it is an emergency measure in response to the coronavirus outbreak, and applies in circumstances which are directly related to the pandemic.

6.2. However, the impact on business, charities or the voluntary sector is considered to be negligible. We expect there to be a negligible impact on employers as a result of the variation in how Normal Weekly Earnings (NWE) should be calculated for an employee who has been furloughed during the assessment period. Currently, employers are able to recover 92% of the cost of family-related statutory pay (103% if they are a small employer). This is unchanged by these Regulations, meaning that employers will continue to be able to recover costs in the usual way. There will be no additional costs to employers as the amendments do not change what employers would have paid to employees and subsequently recovered had the CJRS not been implemented. Instead, these Regulations will cause employers to lose a saving that they would otherwise have made had the amendments not been made to protect employees' eligibility and entitlement.

7. Financial Implications

7.1. Due to the need for the Department to respond rapidly to the coronavirus crisis there has been no opportunity to conduct analysis, however no significant additional impact on the Executive budget is foreseen.

8. Section 24 of the Northern Ireland Act 1998

8.1. This Statutory Rule complies with the provisions of Section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Statutory Rule applies only to Northern Ireland.

10.2. The effect of the Regulations will, in concert with similar legislation made by the Department for Communities in respect of Statutory Maternity Pay and Maternity Allowance, maintain parity of arrangements with Great Britain.

11. Non-compliance with 21 Day Rule

11.1. The Department regrets these Regulations are made and laid in breach of the 21 day rule. The regulations were prepared, as an emergency measure, as soon as it became clear that they were necessary to ensure that the maximum number of people are brought within the scope of these provisions, therefore minimising disadvantage as a result of their being furloughed.

12. Additional Information

12.1. Not applicable.