EXPLANATORY MEMORANDUM TO

THE STATUTORY SHARED PARENTAL PAY (ADMINISTRATION) REGULATIONS 2014

2014 No. 2929

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 Shared Parental Pay (Administration) Regulations 2014 ("the Administration Regulations") provide for the funding of employers' liabilities to make payments of statutory shared parental pay; they also impose obligations on employers in connection with such payments and confer powers on the Commissioners of Her Majesty's Revenue and Customs.

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

3.1 None.

4. Legislative context

4.1 Part 7 of the Children and Families Act 2014 ("the 2014 Act") inserts a new Part 12ZC into the Social Security Contributions and Benefits Act 1992 giving the Secretary of State the power to make regulations to create an entitlement to statutory shared parental pay. Part 7 also contains provisions relating to shared parental leave.

4.2 The draft Statutory Shared Parental Pay (General) Regulations 2014s were laid in draft before Parliament on 21 July 2014 pursuant to these powers. They are the main regulations which underpin the introduction of statutory shared parental pay.

4.3 The Administration regulations are part of the broader legislative framework required to ensure the effective implementation of the new system

5. Territorial extent and application

5.1 These instruments extend 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 The provisions of the 2014 Act relating to statutory shared parental pay (as well as shared parental leave) and the Regulations made using powers in those provisions, including the Administration Regulations, give effect to the Coalition Government's commitment to "encourage shared parenting from the earliest stages of pregnancy – including the promotion of a system of flexible parental leave". The policy objective is to create choice for families in how they look after their children, and to create more equity in the workplace and reduce the gender penalty resulting from women taking long periods of time out of the workplace on maternity leave. This legislation is also designed to encourage shared parenting as evidence has shown that where fathers are involved in parenting at any early stage they are more likely to stay involved with their children in later years, leading to a range of positive outcomes for children.

8. Consultation outcome

8.1 The Government's Modern Workplaces Consultation was published on the 16 May 2011 and ran for 12 weeks. It sought views on a radical new system whereby maternity leave would be reduced to 18 weeks and then 34 weeks of leave and 21 weeks of statutory pay to be available for the parents to share on a flexible basis allowing the parents to be absent from work at the same time, with some leave being reserved for the exclusive use of each parent on a "use it or lose it", non-transferable basis. The consultation document can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31549/11-699-consultation-modern-workplaces.pdf.

8.2 61% of respondents disagreed with our proposal to reserve 18 weeks of maternity leave exclusively for mothers. In light of this, the Government announced a revised proposal for shared parental leave and pay in November 2012. The Government response 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 set out the proposal for new statutory rights to shared parental leave and pay for employees with a partner who is working, or has recently been working (whether employed or self-employed) which the Government is taking forward. The new system will allow a woman to curtail her maternity leave period or reduce her maternity pay/maternity allowance period to create an entitlement to shared parental leave and/or pay that can be shared with her partner. Similarly, adopters will be able to curtail their adoption leave/adoption pay period to create shared parental leave and /or pay. Eligible employees will be able to share up to 50 weeks of shared parental leave and up to 37 weeks of statutory shared parental pay.

8.4 A further consultation on the administrative elements of the system was launched on in February 2013 and the Government response was published in November 2013. The consultation document and full Government response can be accessed at:

https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay.

9. Guidance

9.1 The changes brought about by the package of Regulations relating to shared parental leave and pay, of which the Administration Regulations form part, 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. In addition, the Department will be using existing means to communicate with employers through HMRC bulletins and business representative groups to make employers aware of the new statutory entitlement.

9.2 There is online guidance on GOV.UK for employers and employees on shared parental leave and statutory shared parental pay; how it arises; the eligibility criteria; how it is administered and statutory payments reclaimed; notice and evidence requirements for an employee to take shared parental leave and statutory shared parental pay. In addition, Acas has provided guidance to employers and employees on operating the shared parental leave and pay system in the workplace.

10. Impact

10.1 The Administration 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.

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

10.3 The take-up assumptions for shared parental leave and pay are based on 782,000 births a year, with 285,000 couples (or sets of parents) eligible to take shared parental leave and statutory shared parental pay. Cost assumptions were based on a low take-up of 2% of eligible parents to 8% of eligible parents and the annual recurring costs on employers (including employer costs for absence, employer contribution to statutory shared parental pay, employer personnel time) is estimated to be between £0.1million and £4.8 million. The one-off costs to employers are estimated at £7.6 million - £7.9 million.

10.4 The impact on the public sector is an estimated £1.3m for the highest level of take up predicted. These costs represent exchequer costs for statutory payments (netting off the savings from statutory maternity pay and maternity allowance). The one-off

exchequer set up costs is £6.9 million.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Small employers (those whose national insurance contributions amount to less than £45,000 per annum) are entitled to reclaim 103% of the costs of the statutory payment rather than the 92% that larger employers (with NI contributions of over £45,000) can reclaim.

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

Debra MacLeod, Department for Business, Innovation and Skills
Tel: 020 7215 0973 or email: debra.macleod@bis.gsi.gov.uk.