EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT (APPLICATION OF SECTIONS 75G AND 75H TO ADOPTIONS FROM OVERSEAS) REGULATIONS 2014
No. 3091

THE SHARED PARENTAL LEAVE AND PATERNIY AND ADOPTION LEAVE (ADOPTION FROM OVERSEAS) REGULATIONS 2014
No. 3092

AND

THE STATUTORY SHARED PARENTAL PAY (ADOPTION FROM OVERSEAS) REGULATIONS 2014
No. 3093

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.

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

2. Purpose of the instrument

2.1 The Employment Rights Act (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014 ("the ERA AfO Regulations") modify existing powers to allow the Government to make regulations which will give entitlement to shared parental leave to employees who are adopting from overseas; the Shared Parental Leave and Paternity and Adoption Leave (Adoption from Overseas) Regulations 2014 ("the SPL AfO Regulations") are to be made using the modified powers. The SPL AfO Regulations and the Shared Parental Pay (Adoptions from Overseas) Regulations 2014 ("the ShPP AfO Regulations") make the necessary modifications to the Shared Parental Leave Regulations 2014 and Statutory Shared Parental Pay (General) Regulations 2014, respectively, to provide an entitlement to shared parental leave and pay for qualifying individuals adopting from overseas and reflect the different triggers and qualification points which exist in cases of adoption from overseas.

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

3.1 None.

4. Legislative context

4.1 Sections 117 - 120 of the Children and Families Act 2014 ("the CFA") provide powers to make secondary legislation to introduce a new system of shared parental leave and pay to qualifying working parents.

4.2 Sections 75G to 75K were inserted into the Employment Rights Act 1996 by section 117 of the CFA. They contain powers under which the Secretary of State may make regulations entitling an employee who is adopting a child under the law of any part of the United Kingdom, or the partner of such an adopter, to shared parental leave. The ERA AfO Regulations 2014 modify sections 75G and 75H to provide for those sections to have effect in relation to adoptions from overseas.

4.3 Part 12ZC was inserted into the Social Security Contributions and Benefits Act 1992 by section 119 of the CFA. Section 171ZV provides the power to make regulations which provide entitlement to an employee who is adopting a child under the law of any part of the United Kingdom, or the partner of such an adopter, to statutory shared parental pay. Section 171ZV is to be modified by the Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) (Amendment) Regulations 2014, which are to be made shortly, and the ShPP AfO Regs will be made using those modified powers.

4.4 The SPL AfO regulations and the ShPP AfO regulations provide the necessary modifications to extend entitlement to shared parental leave and statutory shared parental pay in relation to adoptions from overseas.

5. Territorial extent and application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Employment Rights Act (Application of Sections 75G and 75H to Adoptions from Overseas) Regulations 2014; the Shared Parental Leave (Adoption from overseas) Regulations 2014, and the Statutory Shared Parental Pay (Adoptions from Overseas) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Government declared its intention in November 2012 to introduce a system of shared parental leave and pay for qualifying parents. 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. It 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 basket of positive outcomes for children.

7.2 Shared parental leave and statutory shared parental pay can be taken by both parents at the same time, allowing the family to be at home together if they wish. In addition, the leave and pay can be taken discontinuously in blocks of one or more weeks, with the employee returning to work between periods of leave, thereby enabling parents to juggle work and home commitments in the first year.

7.3 On 21 July 2014, the Government laid before Parliament in draft the three sets of regulations which will, subject to the parliamentary process, create the framework for shared parental leave and pay for eligible birth parents and adoptive parents who have been matched with a child for adoption.

7.4 As is already the case with other family related leave and pay – including adoption leave and pay and paternity leave and pay – the Government intends to extend the rights available to eligible GB adopters to eligible adopters who are adopting a child from overseas.

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 In light of consultation responses, 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. Adopters would 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.

8.5 The consultations did not ask questions about how systems of flexible or shared parental leave and pay should work specifically in cases of adoption from overseas. However, the principles for the operation in adoptions more generally are to be translated to adoptions from overseas. This implements the Government's policy to reflect the rights which exist for domestic adoptions of looked after children in adoptions from overseas situations.

9. Guidance

9.1 The changes brought about by these 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. Guidance materials on shared parental leave and pay are available at: https://www.gov.uk/government/publications/shared-parental-leave-and-pay-employers-technical-guide. Other information, including materials aimed at specific target groups, will be published in advance of the regulations coming into effect.

10. Impact

10.1 These 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 as a whole and is attached to this memorandum. It is also 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 For the purposes of the impact assessment, the total number of adoptions per year was estimated at 4000. This includes overseas adoptions. Given the small numbers involved a separate impact assessment was not produced.

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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