EXPLANATORY MEMORANDUM TO

The Time Off to Attend Adoption Appointments (Prospective Adopters) Regulations (Northern Ireland) 2015

S.R. 2015 No. 213

1. Introduction

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

1.2. The Statutory Rule is made under Article 85ZS(2)(b) and (3) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the negative resolution procedure.

2. Purpose

2.1. Article 85ZS of the Employment Rights (Northern Ireland) Order 1996 (the "1996 Order"), inserted by section 17 of the Work and Families Act (Northern Ireland) 2015 (the "2015 Act"), empowers the Department for Employment and Learning to make regulations specifying the circumstances in which approved foster parents who are also approved prospective adopters can access rights under Article 85ZJ, 85ZL, 85ZN and 8ZZP of the 1996 Order.

2.2. Those Articles confer on qualifying employees and agency workers who are adopting a child rights to paid and unpaid time off work to meet with a child and relevant professionals in advance of the child's placement in order to help make that placement a success.

2.3. These Regulations establish conditions under which approved foster parents who are approved prospective adopters can access these rights, and provide that Articles 85ZJ, 85ZL, 85ZN and 85ZP are to be read as referring to 'fostering for adoption' arrangements.

3. Background

3.1. The 2015 Act provides a legislative framework for the making of regulations that allow for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child, and for conferring other rights relating to the first year after birth, or placement, of the child. The Act further facilitates extension to the right to request flexible working for all qualifying employees.

3.2. These Regulations are part of a group of Statutory Rules which, taken collectively, have the purpose of enabling eligible working parents to share leave and pay entitlement in respect of children due to be born, or placed for adoption, on or after 5th April 2015.

3.3. Articles 85ZJ and 85ZN make provision for employees and agency workers respectively to take leave of up to six and a half hours on 5 occasions or less in advance of placement of a child. Such leave would be

paid at an hourly rate calculated in accordance with Articles 85ZK and 85ZO respectively.

3.4. Articles 85ZL and 85ZP make provision for employees or agency workers respectively, who are to adopt a child along with a person availing of leave under Article 85ZJ or 85ZN, to take unpaid leave of up to six and a half hours on up to two occasions prior to placement.

3.5. The purpose of leave under these Articles is to facilitate meetings with the child and relevant professionals so as to help ensure the placement goes smoothly and allow the child to bond with the adopters.

4. Consultation

4.1. Public consultation explaining Great Britain proposals and asking whether it would be appropriate to take forward comparable measures in Northern Ireland took place between 6th June and 23rd August 2013.

4.2. The consultation asked for views on the merits of the Great Britain programme; the extent (if any) to which it should be implemented in Northern Ireland; and whether alternative options would be appropriate.

4.3. There were 28 substantive responses to the consultation, demonstrating substantial support for the introduction of rights to leave and pay for Northern Ireland's working parents corresponding to the entitlements being brought forward in Great Britain.

4.4. The Department considered a number of policy options. The first was to retain unchanged the present leave, pay and/or flexible working arrangements, making such minor legislative amendments as necessary to support that objective. This received no substantive support.

4.5. The second option was to develop pay, leave and/or flexible working arrangements bespoke to Northern Ireland. Although the consultation did not make any specific alternative proposals concerning leave and pay, it did ask for stakeholder input on available options. None were identified

4.6. The third option available to the Department was to provide leave, pay and/or flexible working entitlements corresponding to those envisaged in Great Britain. As this option received substantial support, the Department proceeded on this basis.

5. Equality Impact

5.1. An assessment of the equality impact of the complete package of proposals concluded that, of the nine equality categories set out under section 75 of the Northern Ireland Act 1998, the primary beneficiaries of the proposals are anticipated to be older workers, male and female employees, dependants and persons with disabilities.

5.2. These Regulations, constituting part of that package, will contribute to a positive impact from an equality perspective in that they will support parents and children in fostering for adoption situations by improving communication around the initial placement of the child.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment, carried out on the basis of the corresponding exercise in Great Britain, has identified only modest costs in respect of the package of new rights for working parents.

6.2. The assessment anticipates one-off transitional costs across all employers totalling £1,467,000, relating to the cost of management time in changes to payroll/HR systems in implementing the new rights.

6.3. Annually recurring costs of £747,000 are expected to be associated with parents exercising the new rights in respect of adoption leave and pay, antenatal appointments, unpaid parental leave and shared parental leave and pay.

6.4. Costs arising from this particular set of regulations are envisaged as being negligible given the small number of cases and the limitations on the time off (paid and otherwise) that is available.

7. Financial Implications

7.1. Estimated additional costs to the Exchequer in respect of introducing the new rights to Northern Ireland are: one-off transitional costs of £207,000 associated with preparing for the implementation of the new rights; and annually recurring costs totalling £288,000 comprised of administrative costs and costs associated with parents exercising the new rights in respect of adoption leave and pay and shared parental leave and pay.

7.2. There are no costs to government arising from these Regulations, except where government employees avail of the right conferred by them. Where such rights are exercised, costs are deemed negligible, as for employers generally.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that the Regulations are compliant with section 24 of the Northern Ireland Act 1998.

8.2. The package of which the Regulations are part impacts on family life to the extent that it increases choice and flexibility, improving options with regard to childcare. Negative impacts on the right to family life are not considered to arise.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Regulations, in association with Article 85ZS of the 1996 Order, correspond to the effect of provisions contained in section 57ZS of the Employment Rights Act 1996 (inserted by section 128 of the Children and Families Act 2014).

11. Additional Information

11.1. Not applicable.

12. 21-Day Rule

12.1. These Regulations form part of a very substantial series of Statutory Rules intended to extend new rights to parents of children expecting a child to be born or placed for adoption from 5th April 2015. In respect of these Regulations specifically, there is a need to cater (insofar as is possible) for adoption appointments occurring on or after 5th April, as the Department considers that it is in the interests of both children and prospective adopters to bring these Regulations into operation at the earliest possible date. Doing so promotes consistency, enabling approved foster parents who are also approved prospective adopters, in specified circumstances, to avail of time off to attend appointments in advance of placement of a child from the same date as that on which the facility becomes available to prospective adopters pursuing conventional adoption arrangements. The Department is conscious that this decision occasions a breach of the 21-day rule but, on balance, considers this action merited for the reasons given.