

EXPLANATORY MEMORANDUM TO

The Additional Paternity Leave Regulations (Northern Ireland) 2010

2010 No. 297

The Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010

2010 No. 300

The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations (Northern Ireland) 2010

2010 No. 298

The Employment Rights (Northern Ireland) Order 1996 (Application of Article 112BB to Adoptions from Overseas) Regulations (Northern Ireland) 2010

2010 No. 303

The Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010

2010 No. 296

The Additional Statutory Paternity Pay (Weekly Rates) Regulations (Northern Ireland) 2010

2010 No. 302

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rules (details above) which are laid before the Northern Ireland Assembly.
- 1.2. These Statutory Rules are made under the following powers:
 - 1.2.1. **the Additional Paternity Leave Regulations (Northern Ireland) 2010** – Articles 70C(2), 112AA, 112BB, 112C, 112D, 112E and 131 of the Employment Rights (Northern Ireland) Order 1996 (“the Employment Rights Order”);
 - 1.2.2. **the Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010** – sections 167ZEA(1), (2), and (3), 167ZEB(1), (2) and (3), 167ZEC(1) and (3), 167ZED(2) and (3), 167ZEE(2), (4) and (7), 167ZG(3), 167ZJ(3), (4), (7) and (8) and 171(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the Contributions and Benefits Act”) and section 5(1)(g), (j) and (q) of the Social Security Administration (Northern Ireland) Act 1992, with the concurrence of the Commissioners for

Her Majesty's Revenue and Customs in so far as such concurrence is required;

- 1.2.3. **the Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations (Northern Ireland) 2010** – sections 167ZEB(1), (2) and (3), 167ZEC(1) and (3), 167ZED(2) and (3), 167ZEE(2), (4) and (7), 167ZG(3), 167ZJ(3), (4), (7) and (8) and 171(4) of the Contributions and Benefits Act, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs in so far as such concurrence is required;
 - 1.2.4. **the Employment Rights (Northern Ireland) Order 1996 (Application of Article 112BB to Adoptions from Overseas) Regulations (Northern Ireland) 2010** – Article 112BB(10) of the Employment Rights Order;
 - 1.2.5. **the Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010** – Articles 70C, 112BB, 112C, 112D, 112E and 131 of the Employment Rights Order;
 - 1.2.6. **the Additional Statutory Paternity Pay (Weekly Rates) Regulations (Northern Ireland) 2010** – section 167ZEE(1) of the Contributions and Benefits Act and section 5(1)(m) of the Social Security Administration (Northern Ireland) Act 1992.
- 1.3. All of the above Statutory Rules are subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These Statutory Rules introduce Additional Paternity Leave and Pay, giving eligible employees (usually fathers) a right to take up to six months' leave from their employment to care for a child, if the child's mother or (in the case of adoptions) the primary adopter returns to work without exercising their full entitlement to maternity leave. Some of the leave may be paid if it is taken during the mother's maternity pay period or, for adopted children, during the primary adopter's adoption pay period. The entitlement to Additional Paternity Leave and Pay will apply to parents of children due on or after 3 April 2011, or to adoptive parents notified of having been matched on or after that date.
- 2.2. The Additional Paternity Leave Regulations (Northern Ireland) 2010 allow eligible employees (usually fathers) up to 26 weeks' additional paternity leave for the purpose of caring for a child under the age of one or, for an adopted child, in the first year after being placed for adoption. Leave can only be taken once the mother has returned to work and the child is over 20 weeks old, or once the primary adopter has returned to work and more than 20 weeks have elapsed since the child's placement for adoption. The Regulations set out the eligibility criteria including notice periods and information to be declared. These Regulations also provide for a longer period of leave where the child's mother or the primary adopter has died during the year after the child's birth or placement for adoption.
- 2.3. The Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010 allow employed earners to be paid Additional Statutory Paternity Pay if

they are not working during their partner's maternity or adoption pay period. To be eligible the mother or primary adopter must have been entitled to Maternity Allowance, Statutory Maternity Pay or Statutory Adoption Pay and have returned to work. The Regulations set out the eligibility criteria including notice periods and length of service requirements. These Regulations also provide for cases where the mother or primary adopter dies during the year after the child's birth or placement for adoption.

- 2.4. The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations (Northern Ireland) 2010, the Employment Rights (Northern Ireland) Order 1996 (Application of Article 112BB to Adoptions from Overseas) Regulations (Northern Ireland) 2010 and the Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010 apply the entitlement to Additional Paternity Leave and Pay (with necessary modifications) to eligible parents who are adopting a child from overseas.
- 2.5. The Additional Statutory Paternity Pay (Weekly Rates) Regulations (Northern Ireland) 2010 set the standard weekly rate for Additional Statutory Paternity Pay.

3. Background

- 3.1. Additional Paternity Leave and Pay is a package intended to provide greater choice for parents in how they divide childcare responsibilities between them. It will enable certain employees (usually fathers) to have a greater involvement in raising their child in the first year of the child's life.
- 3.2. The Work and Families (Northern Ireland) Order 2006 was introduced to make provision for statutory rights to leave and pay in connection with the birth or adoption of children. This included the introduction of a new scheme to provide certain employees (generally fathers) with a new entitlement to take leave to care for a child and a new entitlement to receive pay while they are on leave, if certain conditions are met.
- 3.3. The introduction of Additional Paternity Leave and Pay is aimed at giving families more choice about their caring arrangements during the first year of life, thereby increasing fairness. The package is a response to evidence that a growing number of fathers want greater opportunities to care for their child.

4. Consultation

- 4.1. Since 2005 the Department has consulted extensively, by way of four separate public consultations, on Northern Ireland aspects of the proposed introduction of a new UK-wide right to Additional Paternity Leave and Pay. The most recent of these consultations, dealing with detailed aspects of the administration of the right, closed in January 2010.
- 4.2. Responses to the latest consultation, like those to the previous public consultations, have indicated general agreement with the proposed introduction of Additional Paternity Leave and Pay on a parity basis, although some concerns have been expressed about the potential impact on business, particularly small firms. Administration of the scheme is designed to be as 'light touch' as possible,

and the Department intends to provide comprehensive guidance and explore means of providing greater support to small businesses in understanding and properly discharging their employment rights responsibilities. The Department believes that the Additional Paternity Leave and Pay scheme achieves the right balance between meeting business' concerns and providing parents with increased choice in how their children are looked after.

- 4.3. All consultation material, including that relating to previous consultations, is available to view or download from the Department's website at www.delni.gov.uk/index/consultation-zone.

5. Equality Impact

- 5.1. Equality impact assessments have been carried out on a number of occasions as the package of Additional Paternity Leave and Pay measures has been developed. It is likely that the package will have a positive impact from an equality perspective in that it will support working fathers in their family life and provide both parents with additional choice and flexibility in balancing their responsibilities at work and in the home.
- 5.2. Impact assessments relating to the introduction of Additional Paternity Leave and Pay are available to view or download, alongside associated consultation material, from the Department's website at www.delni.gov.uk/consultation-zone.

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. Costs across all employers in Northern Ireland are estimated at a maximum of £125,000 in the first year and up to £270,000 per annum from then on.

7. Financial Implications

- 7.1. Exchequer costs, which relate to administration of the scheme by HM Revenue and Customs, are estimated at £35,000 in the first year and a maximum of £80,000 per annum thereafter.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The previous UK Government set in place regulations which will introduce Additional Paternity Leave and Pay, making the right exercisable by fathers of children born or placed for adoption from April 2011. The present UK Government has decided to retain these regulations in statute.

10.2. There has been a long-established policy of parity between Northern Ireland and Great Britain in respect of statutory rights for working parents that are administered on a UK-wide basis by HM Revenue and Customs such as Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay. Additional Statutory Paternity Pay, together with the associated leave, is a comparable ‘family-friendly’ package, with the pay elements to be administered in the same way. In line with established practice, and in response to the views expressed by a majority of contributors to successive public consultations, it is considered appropriate to replicate this legislation in Northern Ireland.

11. Additional Information

11.1. Not applicable.