

EXPLANATORY MEMORANDUM TO
The Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2015

S.R. 2015 No.104

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 Articles 103(4)(c), 108(1) and (2), and 109(1)(c) of the Employment Rights (Northern Ireland) Order 1996 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These Regulations amend the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 ("the 1999 Regulations"). The purpose of doing so is to remove the limitation on parental leave so that it may be taken at any time before a child's eighteenth birthday.
- 2.2. The Regulations also amend the right to return after maternity and parental leave to reflect the introduction of shared parental leave by the Shared Parental Leave Regulations (Northern Ireland) 2015.
- 2.3. The effect will be that unpaid parental leave will be able to be taken at any point up a child's 18th birthday, including immediately before, after or in between periods of other family-related leave. Extending to the child's eighteenth birthday the time until which an employee may exercise entitlement to take unpaid parental leave reflects the fact that caring responsibilities do not end when the child reaches five, or starts school.

3. Background

- 3.1. Part 3 of the 1999 Regulations implements the Parental Leave Directive (Council Directive 2010/18/EU) and provides that employees with one year's service are entitled to up to 18 weeks' unpaid parental leave to be taken before the fifth birthday of their child (or the eighteenth birthday if the child is disabled).
- 3.2. The 1999 Regulations also set out that an individual returning from ordinary maternity leave or parental leave of less than four weeks, either as an isolated period or the last of two or more consecutive periods of statutory leave (excluding additional maternity leave or additional adoption leave), is entitled to return to the same job they were employed in before their absence. If they are returning from an isolated period of unpaid parental leave of four or more weeks, or from two or more consecutive periods of statutory leave which included additional maternity leave or additional adoption leave, the individual has the right to return to the same job or, if that is not reasonably practicable, a job which is both suitable and appropriate in the circumstances. It has been necessary to

update these provisions to take account of the introduction of shared parental leave.

4. Consultation

- 4.1. The possible extension of the age limit for children in respect of whom parental leave is available was initially explored as part of the Department's public consultation between 8th October and 21st December 2012 on the requirement to implement EU Directive 2010/18/EU. The Directive stipulated that all Member States of the European Union were required to provide parental leave for a period of at least four months. It also set general guidelines concerning age, but contained no specific requirements additional to those with which Northern Ireland legislation already conformed.
- 4.2. Responses to that consultation indicated a level of stakeholder agreement that it would be appropriate to increase the age limit, but the Department concluded that there was insufficient consensus as to the selection of a particular age.
- 4.3. It was therefore determined that the Department should explore the matter further as part of wider public consultation, between 6th June and 23rd August 2013. That broader consultation explained the comprehensive range of Great Britain proposals relating to working parents' rights and asked whether it would be appropriate to take forward comparable measures in Northern Ireland.
- 4.4. 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.
- 4.5. 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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. The agreed framework includes the extension of the age limit for unpaid parental leave to eighteen years.

5. Equality Impact

- 5.1. These Regulations, constituting part of the wider package of rights under the Work and Families Act (Northern Ireland) 2015, will contribute to a

positive impact from an equality perspective in that they will extend to working parents additional choice and flexibility in balancing their responsibilities at work and in the home.

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. The impact of the change to unpaid parental leave is anticipated to be negligible as the amount of time off that can be taken is not being increased.

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. As already noted, the impact of the change to unpaid parental leave is anticipated to be negligible.

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 correspond to the Maternity and Parental Leave etc. (Amendment) Regulations 2014 in Great Britain (S.I. 2014/3221), and contribute to the continuation and enhancement of a UK wide system of rights for working parents. This reflects the wishes of contributors to successive public consultations in this area of law.

11. Additional Information

- 11.1. Not applicable.