

EXPLANATORY MEMORANDUM TO
THE PARENTAL LEAVE (EU DIRECTIVE) REGULATIONS 2013

2013 No. [XXXX]

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 purpose of the instrument is to make amendments to existing primary and secondary legislation in order to implement Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (“the Parental Leave Directive”).

2.2 The regulations make two amendments. Firstly, to increase the amount of [unpaid] parental leave available to parents under the Maternity and Parental Leave Regulations 1999 (as amended) from 13 weeks to 18 weeks. Secondly, to extend the right to request flexible working to employed agency workers who are returning from parental leave.

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

3.1 None.

4. Legislative Context

4.1 This instrument is being made to implement the Parental Leave Directive.

The Maternity and Parental Leave Regulations 1999 (as amended) implement the previous Parental Leave Directive (Council Directive 94/36/EC). That Directive has now been replaced by Directive 2010/18/EU. In order to meet its obligations under EU law, the UK (including Gibraltar) is required to transpose Directive 2010/18/EU into domestic legislation. This instrument does that for Great Britain.

Gibraltar and Northern Ireland will make their own legal instruments to ensure they comply with the Directive.

4.2 BIS submitted an EM on Council Doc No. 12761/09 on 10th September 2009 July 2003 relating to a “Draft Council Directive implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive

96/34/EC". The Commons European Scrutiny Committee considered the EM and assessed the proposal as legally and politically important. Following further requests for information the Commons Committee cleared it on the understanding that the Government put the Committee's concerns to the Commission's Legal Service and ask it both to explain and to justify its view of how Article 155(2) TFEU should be interpreted. This was done and the proposal adopted in council. (Report 19 chapter 4, 2009). The Lords Select Committee on the EU cleared it (Progress of Scrutiny, 19 November 2009).

4.6 A transposition note on the implementation of the provisions of the Directive has been prepared and is annexed to this memorandum.

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, Consumer and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the Parental Leave (EU Directive) Regulations 2013 are compatible with the Convention rights

7. Policy background

7.1 The Parental Leave Directive repeals an earlier Framework Agreement on Parental Leave (96/34/EC) and implements a cross-sectoral agreement between EU social partners (representing both employers and employees).

7.2. The Directive sets out minimum requirements for parental leave to support the reconciliation of parental and professional responsibilities for working parents. It differs from the previous Directive in two respects. Firstly, it extends the minimum period of parental leave from 3 to 4 months of leave per child. This means it is necessary to amend the Maternity and Parental Leave Regulations 1999 in order to increase the minimum period of parental leave from 13 to 18 weeks. Secondly, it provides that the rights in the Directive apply to all employees regardless of their type of contract. This meant that a change to the Employment Rights Act 1996 is necessary in order to extend the right to request flexible working to employed agency workers who are returning from parental leave.

8. Consultation outcome

8.1. The Commission carried out a two-stage consultation with the social partners on measures to support the reconciliation of work and family life. In

the first stage consultation, those social partners who responded acknowledged the importance of reconciliation, the majority of organisations considered that further action was needed but views differed on what should be done and at what level. In the second stage consultation the Commission sought the social partners' views on a number of legislative and non-legislative options, including changes to parental leave and maternity protections as well as new provisions relating to family leave, adoption leave and paternity leave. The response of the social partners to the second stage consultation on the wider agenda is set out in Annex II to the Commission's Impact Assessment which accompanied the Pregnant Workers Directive proposal. Broadly, employer's organisations were against further regulation while trade unions would welcome the introduction of new types of leave.

8.2. On 11 September 2008, the social partners informed the Commission that they would open formal negotiations with a view to revising Directive 96/34/EC. Negotiations were concluded on 18 June 2009 when a revised Framework Agreement on parental leave was signed by the Secretaries-General of Business Europe, UEAPME, CEEP and ETUC. This was adopted by the Council on 8th March 2010.

8.3. In reaching the revised agreement on parental leave the TUC, the CBI and CEEP UK undertook the role of the UK representatives in the European Social Partner negotiations.

8.4 Implementation of the Parental Leave Directive was considered as part of the Modern Workplaces Consultation on proposals to introduce a new system of shared parental leave.

8.5. The consultation signalled the Government's intention to implement the Directive and sought views as to whether alongside these changes the age limit of the child should be raised. To be entitled to unpaid parental leave under the current system, an employee must be responsible for a child aged 5 or under, or 18 or under if the child is disabled. During the consultation a range of age limits were proposed— 5, 8, 12, 16 and 18. Around 30% of respondents called for there to be no change, whereas around 31% called for the age limit to be increased to 18. There was not much support for the 8, 12, or 16 options.

8.6. The Government has decided to raise the age limit to 18 as part its commitment to encouraging shared parenting. In order to minimise the costs to business this change will only be introduced alongside the other changes to the system of maternity, paternity and parental leave. So the change will not be made through these Regulations.

8.7 5. The initial deadline for Member States to transpose the Directive was March 2012. However, the UK formally notified the Commission that it would exercise the right to take the additional year to implement provided for under Article 3(2) of the Directive, thereby extending the implementation deadline until March of 2013. This was to take account of particular difficulties arising from the fact that a wider revision of parental leave and

flexible working in Great Britain is in progress. The Government consulted publicly on this revision during 2011.

9. Guidance

9.1 Guidance on the Principle Regulations is available at http://www.acas.org.uk/media/pdf/f/n/Parents_at_workRW04.pdf in respect of parental leave rights and <http://www.acas.org.uk/CHttpHandler.ashx?id=661&p=0> in respect of flexible working provisions

10. Impact

10.1 A full regulatory Impact Assessment of the effect that this instrument will have on the costs of business, charities, voluntary bodies and the public sector is available at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/p/12-1285-parental-leave-regulations-2013-impact> and is annexed to this Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business. It would not be appropriate for employees of small businesses to have different access to unpaid parental leave than employees of businesses with more than 20 employees

12. Monitoring & review

12.1 These regulations include a Ministerial duty to review by 8th of March 2018.

13. Contact

13.1 Kim Wager at the Department for Business, Innovation and Skills. Tel: 0207 215 6661 or email: kim.wager@bis.gsi.gov.uk who can answer any queries regarding the instrument.