

**EXPLANATORY MEMORANDUM TO**  
**THE MATERNITY AND PARENTAL LEAVE ETC. (AMENDMENT) REGULATIONS**  
**2014**

**2014 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 Maternity and Parental Leave etc. (Amendment) Regulations 2014 (“the MPLA Regulations”) amend the Maternity and Parental Leave etc. Regulations 1999 (“the 1999 regulations”). The MPLA Regulations remove the limitation on parental leave so that it may be taken at any time before a child’s eighteenth birthday. The MPLA 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 2014.

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

3.1 None.

**4. Legislative context**

4.1 Part 3 of the 1999 Regulations implement 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 eighteenth birthday if the child is disabled).

4.2 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.

4.3 The changes made by the MPLA Regulations are being made following the Modern Workplaces consultation, which was published in 2011.

## **5. Territorial extent and application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

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

In my view the provisions of the Maternity and Parental Leave etc. (Amendment) Regulations 2014 are compatible with the Convention rights.

## **7. Policy background**

7.1 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 the period up to which an employee may take unpaid parental leave up to the child's eighteenth birthday reflects the fact that caring responsibilities do not end when the child reaches five, or starts school.

7.2 Part 7 of the Children and Families Act 2014 amends the Employment Rights Act 1996 to provide regulation-making powers to introduce a new system of shared parental leave and pay for employed parents with a working partner. Regulations to implement shared parental leave and pay were laid in draft before Parliament on 21 July 2014 and are subject to the affirmative resolution process. The draft Shared Parental Leave Regulations can be found at:  
<http://www.legislation.gov.uk/ukdsi/2014/978011118856/contents>.

7.3 This is a new type of statutory leave with specific provisions for returning to work after a period of shared parental leave. The provision on the right to return to work after a period of ordinary maternity leave or parental leave needs to reflect this new type of statutory leave as ordinary maternity leave or parental leave could be taken immediately following, preceding or in the middle of other types of leave including shared parental leave. 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. Key features of shared parental leave are that it is shared between the parents, can be taken in discontinuous blocks (with the employee returning to work between periods of leave) and both parents may be absent from work at the same time.

7.4 When shared parental leave is introduced in 1 December 2014 for babies due on or after 5 April 2015, the provisions on the right to return following ordinary maternity leave and parental leave need to reflect the fact that shared parental leave can be taken discontinuously. The Government has taken an approach which balances protection for employees with need for clarity and certainty for employers.

## **8. Consultation outcome**

8.1 The Modern Workplaces Consultation was published on the 16 May 2011. The Government response was published in November 2012 and is available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82969/12-1267-modern-workplaces-response-flexible-parental-leave.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82969/12-1267-modern-workplaces-response-flexible-parental-leave.pdf).

8.2 The consultation asked whether the cut off age before which parental leave must be taken should remain the same or increase. There was a total of 228 responses, 30% of which were in favour of the age remaining at five years, and 32% of which were in favour of extending the period up to the child's eighteenth birthday, with little support for ages in between. Of those who explained their answers, those in favour of raising the age limit to 18 acknowledged that parents remain responsible for their children until that age and that parenting responsibilities do not diminish over time. The Government decided to extend the age limit for these reasons, and also to harmonise the unpaid leave system so that it is the same for the parents of all children (currently only parents of disabled children may take unpaid parental leave until the child's 18<sup>th</sup> birthday).

8.3 The right to return following a period of shared parental leave was considered as part of the 2013 Modern Workplaces: administration of shared parental leave and pay consultation. In light of feedback and further consideration of the issue the Government decided that the right to return to the same job should be maintained for employees returning from any period of statutory family leave that includes maternity, paternity, adoption and/or shared parental leave that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks. The full Government response can be accessed at: <https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay>

## **9. Guidance**

9.1 The changes brought about by the MPLA Regulations 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.

## **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 changes 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](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](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 The impact on employers of this package of measures includes annual average administration and absence costs of £24.9m, of which the impact on business, charities and voluntary bodies is 70%. Transition costs in the first year (associated with employers familiarising themselves with the legislation and making changes to HR and payroll systems, and Exchequer set-up costs) total £55.8m, of which the impact on business, charities and voluntary bodies is 61%. Annual average Exchequer costs of these measures (including statutory payments and ongoing administration) are £9.6m.

10.4 The introduction of this package of measures is expected to have significant non-economic benefits in relation to child welfare, parental choice and flexibility. There will also be benefits to business through increased staff retention and greater flexibility in discussing how and when parental leave is taken. The financial benefits of these measures take the form of an increase in the amount of paid leave taken by parents (an annual average value of £8.4m).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No special measures apply to small businesses.

11.3 If small and micro-businesses were exempted from complying with these regulations, it would be likely to distort the demographic profile of staff choosing to work for them, which would have a negative impact on the business itself as it would not be seen as an employer of choice and would not be recruiting from the widest possible pool of talent.

## **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.

12.2 We have committed to reviewing The Parental Leave (EU Directive) Regulations 2013 in 2018. That review will consider whether the Government's approach to parental leave supports and is consistent with shared parental leave, and will therefore, need to examine the operation of these regulations.

### **13. Contact**

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