

**EXPLANATORY MEMORANDUM TO**  
**THE STATUTORY SHARED PARENTAL PAY (PERSONS ABROAD AND**  
**MARINERS) REGULATIONS 2014**

**2014 No. 3134**

**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 Statutory Shared Parental Pay (Mariners and Persons Abroad) Regulations 2014 (“the ShPP Mariners Regulations”) modify the Statutory Shared Parental Pay (General) Regulations 2014 (“General Regulations”) to give certain persons abroad, those who work as mariners and those who work on the continental shelf an entitlement to statutory shared parental pay.

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

3.1 The ShPP Mariners Regulations will enter into force less than 21 days after the date on which they are laid and so do not observe the ‘21 day rule’; the Department considers that this is appropriate in the circumstances.

3.2 The ShPP Mariners Regulations extend the scope of the General Regulations and the Statutory Shared Parental Pay (Adoption from Overseas) Regulations 2014 (“Adoption from Overseas Regulations”), which were both made under the draft affirmative procedure. It was therefore necessary to wait until the parliamentary scrutiny of the General Regulations and the Adoption from Overseas Regulations had taken place and those Regulations had been made before making the ShPP Mariners Regulations. (On this issue, the Department had regard to the JCSI’s 22<sup>nd</sup> Report of 2010-2012, in particular paragraph 3.7 (<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtstatin/150/150.pdf>)). The General Regulations were made on 18 November 2014 and the Adoption from Overseas Regulations were made on 25 November. The Department considers it is important for the ShPP Mariners Regulations to come into force on 1 December 2014 at the same time as other Regulations on statutory shared parental pay, so that all of the interrelated rights to this new pay regime commence at once and in order to facilitate public awareness and understanding of the full package of Regulations on statutory shared parental pay. The Department has also had regard to the fact that the ShPP Mariners Regulations only apply to babies due, or adopted, on or after 5 April 2015, and so the Regulations will only have limited application before that date in relation to babies born early.

3.3 To mitigate the effect of the breach of the 21 day rule, the ShPP Mariners Regulations were made publicly available in draft by being published online on 28

October 2014 (<https://www.gov.uk/government/publications/shared-parental-leave-and-pay-draft-legislation>).

#### **4. Legislative context**

4.1 The General Regulations provide an entitlement to shared parental pay for qualifying parents and adopters.

4.5 The ShPP Mariners Regulations modify the General Regulations to allow certain persons abroad, those who work as mariners and those who work on the continental shelf to be qualifying employees, thus enabling access shared parental pay.

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

5.1 This instrument applies to Great Britain.

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

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

7.1 In November 2012, the Government announced in the Government Response to the flexible parental leave part of the Modern Workplaces consultation in 2011 its intention to introduce a system of shared parental leave and pay for qualifying parents. 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. It is also designed to encourage shared parenting as evidence has shown that where fathers are involved in parenting at any early stage they are more likely to stay involved with their children in later years, leading to a basket of positive outcomes for children.

7.2 On 21 July 2014, the Government laid before Parliament in draft the three sets of regulations which will, subject to parliamentary process, create the framework for shared parental leave and pay for eligible birth parents and adoptive parents who are matched with a child for adoption. The ShPP Mariners Regulations extend rights to statutory shared parental pay to mariners and persons abroad if they meet the eligibility requirements.

#### **8. Consultation outcome**

8.1 The Modern Workplaces Consultation was published on the 16 May 2011 and ran for 12 weeks. It sought views on a radical new system whereby maternity leave would be reduced to 18 weeks and then 34 weeks of leave and 21 weeks of statutory pay to be available for the parents to share on a flexible basis allowing the parents to be absent from

work at the same time, with some leave being reserved for the exclusive use of each parent on a “use it or lose it”, non-transferable basis. The consultation document can be found at: <https://www.gov.uk/government/consultations/consultation-on-modern-workplaces>.

8.2 In light of consultation responses, the Government announced a revised proposal for shared parental leave and pay in November 2012. The Government response 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). It sets out the proposal for new statutory rights to shared parental leave and pay for employees with a partner who is working, or has recently been working (whether employed or self-employed). The new system would allow a woman to curtail her maternity leave period or reduce her maternity pay/maternity allowance period to create an entitlement to shared parental leave and/or pay that could be shared with her partner. Adopters would curtail their adoption leave/adoption pay period to create shared parental leave and /or pay. Eligible employees would be able to share up to 50 weeks of shared parental leave and up to 37 weeks of statutory shared parental pay.

8.3 A further consultation on the administrative elements of the system was launched on in February 2013 and the Government response was published in November 2013. The consultation document and full Government response can be accessed at: <https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay>.

8.4 The consultations did not ask specific questions about whether the rights should be extended to mariners and persons abroad, but in keeping with other aspects of employment law, the Government has decided to extend the rights to qualifying mariners and persons abroad.

## **9. Guidance**

9.1 The changes brought about by these Regulations and the other elements of the package 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 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)

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 No special measures apply to small businesses.

## **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.

## **13. Contact**

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