

EXPLANATORY MEMORANDUM TO

THE STATUTORY PATERNITY PAY, STATUTORY ADOPTION PAY AND STATUTORY SHARED PARENTAL PAY (AMENDMENT) REGULATIONS 2015

2015 No. 2065

1. Introduction

- 1.1 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 These Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 and the Statutory Shared Parental Pay (General) Regulations 2014 to allow the ‘rounding up’ of the 1st week of the 26-week period that is used to determine if an employee qualifies for Statutory Shared Parental Pay, Statutory Paternity Pay and Statutory Adoption Pay (the ‘Continuity of Employment Test’). This is to ensure consistency with the ‘Continuity of Employment Test’ for Statutory Maternity Pay (which already allows for the ‘rounding up’ of the 1st week).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 and the Statutory Shared Parental Pay (General) Regulations 2014. Those regulations include provision as to when a person is entitled to Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales, and Scotland.
5.2 The instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 In order to qualify for certain types of family-related leave (Paternity Leave, Additional Paternity Leave and Shared Parental Leave) and all family related statutory pay (Statutory Maternity Pay, Statutory Paternity Pay, Additional Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay) an employee must meet a Continuity of Employment Test. That is, they must have worked for their employer for 26 weeks at the ‘qualifying week’. The ‘qualifying week’, for birth parents, is the end of the 15th week before the baby’s due date. In the case of adoptive parents, the ‘qualifying week’ is the week in which the employee is notified of a match with a child for adoption.
- 7.2 There is a discrepancy between, on the one hand, how the ‘Continuity of Employment Test’ is framed in the legislation for Statutory Paternity Pay, Additional Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (which does not allow the 1st week of the relevant 26 week period to be ‘rounded up’) and how the ‘Continuity of Employment Test’ is framed in the legislation which governs Statutory Maternity Pay (which does allow the ‘rounding up’ of the 1st week of the relevant 26 week period).
- 7.3 This means that a very small number of employees who change jobs in the 1st week of the relevant 26-week period are technically not currently entitled to Statutory Paternity Pay, Additional Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay even though they would have been entitled to Statutory Maternity Pay. There is no policy justification for this difference in treatments and the inconsistency was only drawn to our attention after the legislation that introduced Shared Parental Leave and Pay came into force.
- 7.4 This instrument addresses this anomaly by amending the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 and the Statutory Shared Parental Pay (General) Regulations 2014 to allow ‘rounding up’ of the 1st week of the relevant 26-week period for these types of family-related statutory payments. We have not made corresponding changes to the Additional Statutory Paternity Pay (General) Regulations 2010 as Additional Statutory Paternity Pay has been abolished (it has been replaced by Statutory Shared Parental Pay - which applies to the parents of children due or adopted from 5 April 2015).

8. Consultation outcome

- 8.1 The Social Security Advisory Committee has agreed in accordance with section 173(1)(b) of the Social Security Administration Act 1992 that a draft of this instrument need not be referred them under section 172(1) of that Act. BIS has not carried out a public consultation on this instrument as it makes only minor, technical changes.

9. Guidance

- 9.1 BIS will notify the HMRC’s Statutory Payments Advisory Group, employment law networks and other key stakeholders as to the changes being made by these Regulations.

10. Impact

- 10.1 The impact on business, charities and the voluntary sector is minor.
- 10.2 The impact on the public sector is minor.
- 10.3 An Impact Assessment has not been prepared for this instrument because it makes only minor, technical changes. To the extent that these Regulations relate to the introduction of Shared Parental Leave and Pay, the relevant impact assessment is the *Modern Workplaces: Shared Parental Leave and Pay Implementation Consultation* impact assessment which was published in February 2013 and reissued in March 2014 as Since the original publication of this assessment in February 2013, the Better Regulation Executive updated the inflation assumptions that are used to discount the costs and benefits of all policies. A copy of the 2014 impact assessment can be viewed at www.gov.uk

11. Regulating small business

- 11.1 The legislation applies to all employers and includes activities that are undertaken by small businesses.
- 11.2 This instrument has only a minor impact on small businesses.
- 11.3 An impact assessment has not been prepared for this instrument.

12. Monitoring & review

- 12.1 The Minister of State for Skills has made the following statement:
“A review provision is not appropriate for this instrument on the basis that it makes only minor, technical changes.”
- 12.2 The Department will monitor the reaction of persons affected by this instrument.

13. Contact

- 13.1 Bertha Eson-Benjamin at the Department for Business, Innovation and Skills (email: bertha.eson-benjamin@bis.gsi.gov.uk) can answer any queries regarding the instrument.