

EXPLANATORY MEMORANDUM TO
THE PARENTAL BEREAVEMENT PAY (ADMINISTRATION) REGULATIONS
2020

2020 No. 246

AND

THE STATUTORY PARENTAL BEREAVEMENT PAY (PERSONS ABROAD AND
MARINERS) REGULATIONS 2020

2020 No. 252

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee for Statutory Instruments.

2. Purpose of the instruments

- 2.1 These instruments are part of a package of regulations which together make provision to implement a new statutory entitlement to Parental Bereavement Leave and Pay for employed parents who lose a child under the age of 18, or suffer a stillbirth after 24 weeks' pregnancy, on or after 6th April 2020. Together, the package will ensure that bereaved parents who are employees will be supported to take time away from work to grieve. It will also establish a statutory baseline for employers when managing parental bereavement in the workplace.
- 2.2 Specifically:
 - The Statutory Parental Bereavement Pay (Administration) Regulations 2020 (the "Administration Regulations") make provision to allow employers to reclaim payments of statutory pay from Her Majesty's Revenue and Customs, including provisions allowing for Officers of Revenue and Customs to settle disputes;
 - The Statutory Parental Bereavement Pay (Persons Abroad and Mariners) Regulations 2020 (the "Persons Abroad and Mariners Regulations") deal with the entitlement to parental bereavement pay for employees who fall into particular categories of employment, for example: mariners, those employed in certain types of employment on the continental shelf, and those who have spent time working abroad, including in European Economic Area (EEA) states, who might otherwise not qualify for the entitlement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Parental Bereavement (Leave) Regulations 2020 and the Statutory Parental Bereavement Pay (General) Regulations 2020 were the first use of the new regulation making powers on parental bereavement leave and pay set out in the 2018 Act. Those regulations implement the main provisions of the new entitlement to parental bereavement leave and pay. They were approved by resolution of each House on 5th March 2020.
- 3.2 As noted in the joint Explanatory Memorandum to those Regulations, the Government is mindful of considerations in relation to the 21-day rule. To note that it is intended that these instruments come into force on the 6th April, and that in any event the Regulations do not impose significant new duties.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 The territorial application of the instruments includes Scotland.
- 3.4 All measures in these instruments apply to England, Wales and Scotland, as employment matters are not devolved in relation to Wales and Scotland. However, employment matters are devolved in Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of these instruments is England and Wales, and Scotland.
- 4.2 The territorial application of these instruments is Great Britain.

5. European Convention on Human Rights

- 5.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The powers being exercised here were given to the Government in a Private Member's Bill, which was supported by the Government. This Private Member's Bill received Royal Assent in 2018 to become the Parental Bereavement (Leave and Pay) Act 2018 (the "2018 Act").
- 6.2 The Schedule to the 2018 Act inserted Part 12ZD into the Social Security Contributions and Benefits Act 1992 and amended Part II of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and Part 1 of the Employment Act 2002. These amendments gave the Secretary of State powers to make regulations relating to the administration of statutory parental bereavement pay, and the application of this right to persons abroad and mariners.
- 6.3 The Administration Regulations and the Persons Abroad and Mariners Regulations are the first use of these new regulation making powers.

6.4 The instruments form part of a legislative package which provide for the new entitlement to Parental Bereavement Leave and Pay. The following instruments were laid before Parliament and approved by resolution of each House on 5th March 2020:

- The Parental Bereavement Leave Regulations 2020; and
- The Statutory Parental Bereavement Pay (General) Regulations 2020.

The draft Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 were laid before Parliament on 26th February 2020.

7. Policy background

What is being done and why?

7.1 The objectives of the Parental Bereavement Leave and Pay policy are to:

- give bereaved employees a statutory right to paid leave to provide space for them to grieve following the death of a child or stillbirth, and
- to send a signal to employees and employers about the importance and value of recognising bereavement and providing adequate support for parents in such circumstances.

7.2 The Parental Bereavement Leave Regulations 2020 set a statutory minimum entitlement for all employees - regardless of how long they have worked for their employer - to 2 weeks off work in the event of their child's death or stillbirth.

7.3 The Statutory Parental Bereavement Pay (General) Regulations 2020 implement a new statutory payment for parents taking time away from work following a child bereavement (paid subject to eligibility criteria, as for all other statutory payments). The payment will provide a measure of earnings replacement which will enable parents to take this time away from work to grieve. Whilst employers will administer the statutory payment on behalf of Government, they will be entitled to reclaim a proportion of the amount through setting payments off against deductions which they remit regularly to HMRC.

7.4 Employers are generally familiar with the framework and process for administering other forms of statutory pay, e.g. statutory maternity pay. The Statutory Parental Bereavement (Administration) Regulations 2020 make provision so that statutory parental bereavement pay is to be administered in exactly the same way as other family-related statutory payments. By making the payment straightforward to administer, it is more likely that employers will comply with their obligations and that employees will receive their entitlements.

7.5 The Statutory Parental Bereavement Pay (Persons Abroad and Mariners) Regulations 2020 ensure that individuals who may otherwise not fulfil the qualifying conditions for entitlement to statutory parental bereavement pay, because of the nature of their employment or the fact that they are outside the United Kingdom (for example mariners, continental shelf workers and workers who have spent time in other EEA states) have an entitlement to such pay. This instrument mirrors the approach taken to other similar statutory payments, so that individuals who would qualify for those other payments will also qualify for statutory parental bereavement pay.

7.6 Using legislation to do this is the only way to guarantee that the desired policy effect is realised. If the provisions made in these instruments were not made, statutory

parental bereavement pay would not be consistent with other family-related statutory payments with respect to the administration of the payment, and the entitlement of certain categories of workers to the payment.

- 7.7 We estimate that 10,200 parents would be eligible for parental bereavement leave per annum, whilst 9,300 of these will be eligible for statutory parental bereavement pay too. Available data suggests that only around two thirds of businesses provided bereavement leave already.¹
- 7.8 The previous Government committed to introduce a new entitlement to parental bereavement leave in the Conservative Party 2017 Manifesto. The powers to implement this new entitlement were given to the Government by the Parental Bereavement (Leave and Pay) Act 2018, which originated as a Private Member's Bill. There has been strong public and media interest in the policy.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 No consolidation is necessary, as this is the first exercise of the powers under the 2018 Act.

10. Consultation outcome

- 10.1 Prior to the introduction of the Private Members Bill in July 2017, which went on to become the 2018 Act, Government consulted key stakeholder groups including bereavement specialist groups, employers and parents in order to understand the impact that the new statutory entitlement to parental bereavement leave and pay would have on them. These groups expressed the view that, as far as possible, the new entitlement should maintain consistency with existing entitlements to family-related leave and pay. This would ensure the fair treatment of bereaved parents when compared with other parents in receipt of other entitlements, which are usually associated with the birth or adoption of a child. In addition, maintaining consistency would keep additional burdens on business to a minimum, as they are already familiar with the existing framework.
- 10.2 The powers being exercised in these instruments were given to the Government in a Private Member's Bill, which the Government supported, and which became the 2018 Act. In March 2018, during the Act's passage through Parliament, the Government undertook a 12-week public consultation between March and June 2018 seeking views on policy details to be set in the Regulations. In total, the public consultation received 1448 responses – 95% of which were from individuals. In addition, a series of round-table sessions were held with stakeholder groups representing the interests of businesses and bereaved parents. The consultation exercise also took account of the views expressed in both Houses of Parliament on the 2018 Act during its passage.
- 10.3 Similarly, this consultation received representations from stakeholders representing parents and employers expressing the view that the new entitlement to

¹ CIPD survey which attracted 679 responses from the organisation's membership of over 145,000 HR and L&D professionals.

parental bereavement leave and pay should maintain consistency with the existing framework of family-related leave and pay entitlements.

- 10.4 The full response to the 2018 consultation can be found on GOV.UK. A copy can be obtained from the Department for Business, Energy and Industrial Strategy, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET.

11. Guidance

- 11.1 Guidance will be available on GOV.UK once the legislation is in place, ahead of the instruments coming into force on 6th April 2020. This will comprise of an employer guide and guidance for employees, in the same format as is provided for other similar rights.
- 11.2 The Advisory, Conciliation and Arbitration Service will publish guidance on this new entitlement for employers once the legislation is in place.
- 11.3 We will work with bereavement charities to ensure that their guidance reflects the new entitlement, so that bereaved parents are made aware of it and understand how to access it.

12. Impact

- 12.1 The impact of the Parental Bereavement Leave and Pay policy on business is small (approximately £1.2m net per year). There is no quantifiable impact on charities or voluntary bodies and the instrument imposes no new obligations on them, except in their capacity as employers.
- 12.2 The Administration Regulations confer powers on the Commissioners for Her Majesty's Revenue and Customs, which creates a small additional administrative burden on them. Otherwise, the impact on the public sector is limited to the extent to which they may need to administer this entitlement to an employee – and these impacts are proportionate to organisations in the private sector.
- 12.3 A full Impact Assessment for Parental Bereavement Leave and Pay is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. This is the same Impact Assessment that accompanied the 2018 Act², and the policy set by these regulations has no impact on the costs identified in that Impact Assessment.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No special measures apply to small business. However, as is the case for all statutory payments, small businesses (defined as those who pay less than £45,000 in National Insurance Contributions) will be able to claim back 103% of the payment made to the employee by setting those amounts off against deductions which they remit regularly to HMRC.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is consistent with other, similar entitlements to family-related leave and pay. Data and information will be monitored

² A copy of that impact assessment can be obtained from the Department for Business, Energy and Industrial Strategy, Labour Market Directorate, 1 Victoria Street, London, SW1H 0ET

post-implementation using administrative data from HM Revenue and Customs and discussions with key stakeholders. We will conduct a non-statutory Post-Implementation Review (PIR) in 2025, once the new entitlement has been established sufficiently.

- 14.2 In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Paul Scully MP has made the following statement: “Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that to make provision for a statutory review in these instruments would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate. The Department for Business, Energy and Industrial Strategy will undertake a non-statutory review of the policy in 2025 using data from HM Revenue and Customs to monitor take-up, as well as qualitative interviews to assess the effectiveness of the legislation and guidance.”

15. Contact

- 15.1 Lucy Birt at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 3070 or email: Lucy.Birt@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Helen Martin and Joanna Warner, Deputy Directors for Individual Rights & Migration, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Paul Scully MP, Minister for Small Business, Consumers and Labour Markets at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.