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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### [<sup>F1</sup>PART IX

F1 1999 NI 9

#### CHAPTER I

#### MATERNITY LEAVE

##### Ordinary maternity leave

**103.**—(1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

(2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2)—

- (a) shall secure that no ordinary maternity leave period is less than 18 weeks;
- (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

- (a) is entitled[<sup>F2</sup>, for such purposes and to such extent as may be prescribed,] to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
- (b) is bound[<sup>F2</sup>, for such purposes and to such extent as may be prescribed] by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and

[<sup>F2</sup>(c) is entitled to return from leave to a job of a prescribed kind.]

(5) In paragraph (4)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

[<sup>F2</sup>(7) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.]

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**F2** 2002 NI 2

### **Compulsory maternity leave**

**104.**—(1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) shall secure—

- (a) that no compulsory leave period is less than two weeks, and
- (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

(4) Subject to paragraph (5), any provision of or made under the Health and Safety at Work (Northern Ireland) Order 1978 shall apply in relation to the prohibition under paragraph (1) as if it were imposed by regulations under Article 17 of that Order.

(5) Article 31(1)(c) of the 1978 Order shall not apply in relation to the prohibition under paragraph (1); and an employer who contravenes that paragraph shall be—

- (a) guilty of an offence, and
- (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Additional maternity leave**

**105.**—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.

(2) An additional maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
- (b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.

(5) In paragraph (4)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but
- (b) does not include terms and conditions about remuneration.

[<sup>F3</sup>(5A) In paragraph (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.]

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(7) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

**F3** 2002 NI 2

### **Redundancy and dismissal**

**106.**—(1) Regulations under Article 103 or 105 may make provision about redundancy during an ordinary or additional maternity leave period.

(2) Regulations under Article 103 or 105 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.

(3) Regulations made by virtue of paragraph (1) or (2) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

(4) Regulations under Article<sup>F4</sup> 103 or] 105 may make provision—

- (a) for Article<sup>F4</sup> 103(4)(c) or] 105(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an<sup>F4</sup> ordinary or] additional maternity leave period.

**F4** 2002 NI 2

### **Articles 103 to 105: supplemental**

**107.**—(1) Regulations under Article 103, 104 or 105 may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
  - (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
  - (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
  - (e) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
  - (f) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave.
- (2) In Articles 103 to 105 “prescribed” means prescribed by regulations made by the Department.

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## [<sup>F5</sup>CHAPTER IA ADOPTION LEAVE

F5 2002 NI 2

### Ordinary adoption leave

[<sup>F5</sup>107A.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.

(2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Department.

(3) Subject to Article 107C, an employee who exercises his right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
- (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.

(4) In paragraph (3)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
- (b) does not include terms and conditions about remuneration.

(5) In paragraph (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.

(6) The Department may make regulations specifying matters which are, or, are not, to be treated as remuneration for the purposes of this Article.

(7) The Department may make regulations making provision, in relation to the right to return under paragraph (3)(c), about—

- (a) seniority, pension rights and similar rights, and
- (b) terms and conditions of employment on return.]

### Additional adoption leave

[<sup>F5</sup>107B.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.

(2) An additional adoption leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends.

(4) Subject to Article 107C, an employee who exercises his right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

- (b) is bound, for such purposes and to such extent as may be prescribed by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
  - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In paragraph (4)(a) “terms and conditions of employment”
- (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) In paragraph (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—
- (a) maternity leave, or
  - (b) ordinary adoption leave,
- or to both.
- (7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.
- (8) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—
- (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.]

### **Redundancy and dismissal**

- 107C.**—(1) Regulations under Article 107A or 107B may make provision about—
- (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
- during an ordinary or additional adoption leave period.
- (2) Regulations made by virtue of paragraph (1) may include—
- (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations, (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).
- (3) Regulations under Article 107A or 107B may make provision—
- (a) for Article 107A(3)(c) or 107B(4)(c) not to apply in specified cases, and
  - (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

### **Chapter IA: supplemental**

- 107D.**—(1) Regulations under Article 107A or 107B may—
- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision requiring employers or employees to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);

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- (e) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under his contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;
  - (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave.
- (2) In Articles 107A and 107B “prescribed” means prescribed by regulations made by the Department.]

## CHAPTER II

### PARENTAL LEAVE

#### Entitlement to parental leave

**108.**—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment, and
- (b) as to having, or expecting to have, responsibility for a child,

to be absent from work on parental leave for the purpose of caring for a child.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to parental leave in respect of a child;
- (b) when parental leave may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this paragraph is without prejudice to any provision which may be made by regulations for cases in which—

- (a) a person ceases to satisfy conditions under paragraph (1);
- (b) an entitlement to parental leave is transferred.

(4) Provision under paragraph (2)(b) may, in particular, refer to—

- (a) a child's age, or
- (b) a specified period of time starting from a specified event.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
- (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
- (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
- (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
- (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;

- (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

### **Rights during and after parental leave**

**109.**—(1) Regulations under Article 108 shall provide—

- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
- (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with Article 108(1)), and
- (c) that an employee who is absent on parental leave is entitled, subject to Article 110(1), to return from leave to a job of such kind as the regulations may specify.

(2) In paragraph (1)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under a contract of employment, but
- (b) does not include terms and conditions about remuneration.

(3) Regulations under Article 108 may specify matters which are, or are not, to be treated as remuneration for the purposes of paragraph (2)(b).

(4) The regulations may make provision, in relation to the right to return mentioned in paragraph (1)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

### **Special cases**

**110.**—(1) Regulations under Article 108 may make provision—

- (a) about redundancy during a period of parental leave;
- (b) about dismissal (other than by reason of redundancy) during a period of parental leave.

(2) Provision by virtue of paragraph (1) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

(3) Regulations under Article 108 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—

- (a) by varying the terms of his contract of employment as to hours of work, or
- (b) by varying his normal working practice as to hours of work,

in a way specified in or permitted by the regulations for a period specified in the regulations.

(4) Provision by virtue of paragraph (3)—

- (a) may restrict an entitlement to specified circumstances;
- (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
- (c) may include consequential provision.

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(5) Regulations under Article 108 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.

(6) The reference in Article 109(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly]<sup>F6</sup> to parental leave and partly to—

- (a) maternity leave, or
- (b) adoption leave,

or to both.]

(7) Regulations under Article 108 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—

- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
- (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

**F6** 2002 NI 2

## Supplemental

**111.**—(1) Regulations under Article 108 may, in particular—

- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision about other procedures to be followed by employees and employers;
- (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
- (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
- (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave.

(2) The regulations may make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.

(3) Without prejudice to the generality of Article 108, the regulations may make any provision which appears to the Department to be necessary or expedient—

- (a) for the purpose of implementing Council Directive 96/34/EC on the framework agreement on parental leave, or
- (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.

## Complaint to industrial tribunal

**112.**—(1) An employee may present a complaint to an industrial tribunal that his employer—

- (a) has unreasonably postponed a period of parental leave requested by the employee, or
  - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an industrial tribunal finds a complaint under this Article well-founded it—
- (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's behaviour, and
  - (b) any loss sustained by the employee which is attributable to the matters complained of.

[<sup>F7</sup>CHAPTER III  
PATERNITY LEAVE]

F7 2002 NI 2

**Entitlement to paternity leave: birth**

**112A.**—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a newborn, or expected, child, and
- (c) as to relationship with the child's mother,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the mother.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's birth.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child's mother;
- (b) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) make provision about how leave under this Article may be taken.

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(6) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (4) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(7) In this Article—

“newborn child” includes a child stillborn after twenty-four weeks of pregnancy;

“week” means any period of seven days.

VALID FROM 09/09/2010

<sup>[F8]</sup><sup>[F9]</sup> **Entitlement to additional paternity leave: birth**

**112AA.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child, and
- (c) as to relationship with the child's mother,

to be absent from work on leave under this Article for the purpose of caring for the child, at a time when the child's mother satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the child's mother;
- (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance;
- (c) whether, and to what extent, she is exercising or has exercised any such entitlement.

(3) Any regulations under this Article shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.

(5) Provision under paragraph (3)(b) shall secure that leave under this Article—

- (a) may not be taken before the end of a specified period beginning with the date of the child's birth, but
- (b) must be taken before the end of the period of twelve months beginning with that date.

(6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the child's mother has died before the end of the period mentioned in paragraph (5)(b).

(7) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) specify a minimum period which may be taken as leave under this Article;
- (d) make provision about how leave under this Article may be taken;

(e) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.

(8) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (5) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(9) In this Article “week” means any period of seven days.]

**F8** 2002 NI 2

**F9** Art. 112AA inserted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 5; S.R. 2010/295, art. 2(a)

### **Entitlement to paternity leave: adoption**

**112B** <sup>F10</sup>.—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and
- (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under sub-paragraph (c).

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;
- (b) make provision excluding the right to be absent on leave under this Article in the case of an employee who exercises a right to be absent from work on adoption leave;
- (c) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is placed for adoption as part of the same arrangement;
- (d) make provision about how leave under this Article may be taken.

(6) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

(7) In this Article, “week” means any period of seven days.

(8) The Department may by regulations provide for this Article to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

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**F10** mod. by SR 2003/220

VALID FROM 09/09/2010

**[<sup>F11</sup>Entitlement to additional paternity leave: adoption**

**112BB.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed for adoption under the law of any part of the United Kingdom, and
- (c) as to relationship with a person with whom the child is so placed for adoption (“the adopter”),

to be absent from work on leave under this Article for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the adopter;
- (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;
- (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement.

(3) Any regulations under this Article shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.

(5) Provision under paragraph (3)(b) shall secure that leave under this Article—

- (a) may not be taken before the end of a specified period beginning with the date of the child's placement for adoption, but
- (b) must be taken before the end of the period of twelve months beginning with that date.

(6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the adopter has died before the end of the period mentioned in paragraph (5)(b).

(7) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) make provision excluding the right to be absent on leave under this Article in the case of an employee who exercises a right to be absent from work on adoption leave;
- (c) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is placed for adoption as part of the same arrangement;
- (d) specify a minimum period which may be taken as leave under this Article;

(e) make provision about how leave under this Article may be taken;

(f) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.

(8) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (5) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

(9) In this Article “week” means any period of seven days.

(10) The Department may by regulations provide for this Article to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.]]]

**F8** 2002 NI 2

**F11** Art. 112BB inserted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 6; S.R. 2010/295, [art. 2\(a\)](#)

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**Modifications etc. (not altering text)**

**C1** Art. 112BB applied (with modifications) (3.10.2010) by [Employment Rights \(Northern Ireland\) Order 1996 \(Application of Article 112BB to Adoptions from Overseas\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/303\)](#), [reg. 2](#), Sch.

## Rights during and after paternity leave

- 112C.**—(1) Regulations under Article 112A shall provide—
- (a) that an employee who is absent on leave under that Article is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if he had not been absent;
  - (b) that an employee who is absent on leave under that Article is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1) of that Article), and
  - (c) that an employee who is absent, on leave under that Article is entitled to return from leave to a job of a kind prescribed by regulations, subject to Article 112D(1).
- (2) The reference in paragraph (1)(c) to absence on leave under Article 112A includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that Article and partly to any one or more of the following—
- (a) maternity leave,
  - (b) adoption leave, and
  - (c) parental leave.
- (3) Paragraph (1) shall apply to regulations under Article 112B as it applies to regulations under Article 112A.
- (4) In the application of paragraph (1)(c) to regulations under Article 112B, the reference to absence on leave under that Article includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that Article and partly to any one or more of the following—
- (a) maternity leave,
  - (b) adoption leave,
  - (c) parental leave, and

*Status: Point in time view as at 15/01/2006. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: The Employment Rights (Northern Ireland) Order 1996, PART IX is up to date with all changes known to be in force on or before 14 June 2024. There are changes that may be brought into force at a future date.*

*Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) leave under Article 112A.
- (5) In paragraph (1)(a), “terms and conditions of employment”
  - (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (6) Regulations under Article 112A or 112B may specify matters which are, or are not, to be treated as remuneration for the purposes of this Article.
- (7) Regulations under Article 112A or 112B may make provision, in relation to the right to return mentioned in paragraph (1)(c), about—
  - (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

### **Special cases**

- 112D.**—(1) Regulations under Article 112A or 112B may make provision about—
- (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),
- during a period of leave under that Article.
- (2) Provision by virtue of paragraph (1) may include—
- (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

### **Chapter III: supplemental**

- 112E.** Regulations under Article 112A or 112B may—
- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision requiring employers or employees to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
  - (e) make special provision for cases where an employee has a right which corresponds to a right under Article 112A or 112B and which arises under his contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under Article 112A or 112B;
  - (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under Article 112A or 112B.

**Status:**

Point in time view as at 15/01/2006. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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