

Regulations made by the Department for the Economy and laid before the Assembly under Article 251(1A) of the Employment Rights (Northern Ireland) Order 1996 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2022 No. 237

EMPLOYMENT

PARENTAL BEREAVEMENT

**The Parental Bereavement Leave (No. 2)
Regulations (Northern Ireland) 2022**

Made - - - - 30th September 2022

Coming into operation 3rd October 2022

The Department for the Economy makes the following Regulations in exercise of the powers conferred by Articles 70C(1) and (2)(1), 112EA(1) to (8), 112EB(1), (4) and (5), 112EC, 112ED(2), 131(3) and 251(6) of the Employment Rights (Northern Ireland) Order 1996(4).

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Parental Bereavement Leave (No. 2) Regulations (Northern Ireland) 2022 and shall come into operation on 3rd October 2022.

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- (1) Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9), Article 11 and Schedule 4, Part 3, paragraph 3; relevant amendments were made by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I.2), Article 17(1) and Schedule 2, paragraph (4)(6), the Work and Families Act (Northern Ireland) 2015 (c. 1), section 15(4) and Schedule 1, paragraph 4(1) and (5) and The Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5), section 4 and Schedule, Part 1, paragraph 19.
- (2) Articles 112EA, 112EB, 112EC and 112ED were inserted by section 1 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 c. 5.
- (3) Article 131 was substituted by S.I. 1999/2790 (N.I. 9), Article 11 and Schedule 4, Part 3, paragraph 8 and amended for relevant purposes by 2022 c. 5 (N.I.) section 4 and Schedule 1, paragraph 24.
- (4) S.I. 1996/1919 (N.I. 16).

Application

2. These Regulations apply in respect of children who die on or after 6th April 2022.

Interpretation

- 3.—(1) In these Regulations—

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996;

“adopter” means a person who intends to adopt C and to whom the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003⁽⁵⁾ apply;

“approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996⁽⁶⁾;

“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989⁽⁷⁾ to be a person suitable to adopt a child;

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995⁽⁸⁾;

“C” means the child in relation to whom an entitlement to parental bereavement leave arises;

“intended parent” means a person who—

- (a) has applied, or intended to apply during the period of 6 months beginning with the day of C’s birth—
- (i) with another person for an order under section 54 (parental orders: two applicants) of the Human Fertilisation and Embryology Act 2008⁽⁹⁾ in respect of C; or
 - (ii) as the sole applicant for an order under section 54A (parental orders: one applicant) of that Act⁽¹⁰⁾ in respect of C; and

- (b) expected the court to make such an order on that application in respect of C;

“official notification” means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of C, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

“parental bereavement leave” means leave under regulation 4;

“placed for adoption” means—

- (a) placed for adoption by virtue of regulation 12 of the Adoption Agencies Regulations (Northern Ireland) 1989⁽¹¹⁾;
- (b) placed by an authority with a person who is an approved foster parent who is also an approved prospective adopter where the authority—
- (i) is considering adoption for C, or
 - (ii) is satisfied that adoption is in the best interests of C,
- and is considering whether that person would be a suitable adoptive parent for C;

⁽⁵⁾ S.R. 2003 No. 16.

⁽⁶⁾ S.R. 1996/467.

⁽⁷⁾ S.R. 1989/253.

⁽⁸⁾ S.I. 1995/755 (N.I. 2).

⁽⁹⁾ 2008 c. 22; section 54 was amended by the Crime and Courts Act 2013 (c. 22), section 31A and Schedule 11, Part 1, paragraph 206 and by S.I. 2018/1413.

⁽¹⁰⁾ Section 54A was inserted by S.I. 2018/1413.

⁽¹¹⁾ S.R. 1989 No. 253.

- (c) placed for adoption under the Adoption and Children Act 2002⁽¹²⁾ or the Adoption and Children (Scotland) Act 2007⁽¹³⁾;
- (d) placed in accordance with section 22C of the Children Act 1989⁽¹⁴⁾ (ways in which looked after children are to be accommodated and maintained) with a local authority foster parent who is also a prospective adopter, following consideration in accordance with subsection (9B)(c) of that section⁽¹⁵⁾; or
- (e) placed in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014⁽¹⁶⁾ with a prospective adopter, following consideration in accordance with subsection (10) of that section;

“prospective adopter” means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005⁽¹⁷⁾ or regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005⁽¹⁸⁾;

“relevant domestic authority” means—

- (a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003 apply, the Department of Health⁽¹⁹⁾; and
- (b) in any other case, the Central Authority designated in accordance with Article 6 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“statutory leave” means leave provided for in Part 9 of the 1996 Order.

(2) The Interpretation Act (Northern Ireland) 1954⁽²⁰⁾ applies to these Regulations as it applies to an Act of the Assembly (but see regulations 16 to 21); and the Interpretation Act 1978⁽²¹⁾ shall not apply.

PART 2

ENTITLEMENT TO PARENTAL BEREAVEMENT LEAVE

Entitlement to parental bereavement leave

4.—(1) An employee is entitled to be absent from work to take parental bereavement leave if he or she—

- (a) satisfies one of the conditions specified in paragraph (2); and
- (b) complies with the notice requirements in regulation 6.

(2) The conditions referred to in paragraph (1) are that, at the date of C’s death, the employee is—

- (a) C’s parent;

(12) 2002 c. 38.

(13) 2007 asp 4.

(14) 1989 c. 41.

(15) Section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), section 8 and amended by the Children and Families Act 2014 (c. 6), section 2 and Schedule 2, part 1, paragraph 29. S.I. 2016/413 and S.I. 2018/195.

(16) 2014 anaw/dccc 4.

(17) S.I. 2005/389; regulation 30B was substituted by S.I. 2013/985.

(18) S.I. 2005 No. 1313(W.95).

(19) The Department of Health, Social Services and Public Safety was renamed the Department of Health under section 1 of the Departments Act (Northern Ireland) 2016 (c 5).

(20) 1954 c. 33 (N.I.).

(21) 1978 c. 30.

- (b) C's natural parent and named in an order made pursuant to section 51A(2)(a) of the Adoption and Children Act 2002 or section 11(3)(aa) of the Children (Scotland) Act 1995⁽²²⁾, provided that such an order has not subsequently been revoked or discharged;
 - (c) a person with whom C has been placed for adoption, for so long as that placement has not been disrupted, as mentioned in paragraph (3);
 - (d) an adopter—
 - (i) with whom C was living; and
 - (ii) who has received official notification in respect of C;
 - (e) an intended parent of C;
 - (f) C's parent in fact; or
 - (g) the partner of P.
- (3) For the purposes of paragraph (2)(c), a placement has been disrupted—
- (a) when C has been returned to the agency under Article 31(3) of the Adoption (Northern Ireland) Order 1987⁽²³⁾;
 - (b) when C has been returned under sections 31 to 35 of the Adoption and Children Act 2002⁽²⁴⁾;
 - (c) in Scotland, when C has been returned to the adoption agency, adoption society or nominated person in accordance with section 25(6) of the Adoption and Children (Scotland) Act 2007; or
 - (d) when C's placement—
 - (i) with a local authority foster parent who is also a prospective adopter in accordance with section 22C of the Children Act 1989⁽²⁵⁾ following consideration in accordance with subsection (9B)(c) of that section; or
 - (ii) with a prospective adopter in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014;
 has been terminated.
- (4) Subject to paragraph (6), a person is C's parent in fact if that person, for a continuous period of at least four weeks ending with the day on which C dies—
- (a) lived with C in the person's own home; and
 - (b) had day to day responsibility for C's care.
- (5) For the purposes of the continuous period mentioned in paragraph (4), no account is to be taken of any absences of a temporary or intermittent nature.
- (6) A person is not to be regarded as C's parent in fact if—
- (a) C is in the care of that person in premises in which any parent of C's, or any person who is not a parent of C's but who has responsibility for C, is living; or
 - (b) that person was or is entitled to receive remuneration, whether by way of wages or otherwise, in respect of the care of C.

⁽²²⁾ Section 11(3)(aa) was inserted by the Adoption and Children (Scotland) Act 2007, section 107.

⁽²³⁾ Article 31(3) was amended by the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), Article 185(1) Schedule 9, paragraph 154(2).

⁽²⁴⁾ Sections 32, 34 and 35 were amended by the Children and Families Act 2014, section 12 and Schedule 2, Part 2, paragraphs 63 and 64 and by S.I. 2016/43.

⁽²⁵⁾ 1989 c. 41; section 22C(9B) was inserted by the Children and Families Act 2014, section 2(3).

(7) A person has responsibility for C, for the purposes of paragraph (6)(a), if the person has parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(26).

(8) For the purposes of paragraph (6)(b), the following payments are not to be regarded as remuneration—

- (a) any fostering fee or allowance paid to an approved foster parent;
- (b) payments wholly or mainly intended to reimburse the person for expenses which arise from, or are expected to arise from, the person's care of C;
- (c) amounts received pursuant to the terms of a will, trust or similar instrument which makes provision in respect of C's care.

(9) In this regulation—

- (a) "P" means any person who satisfies one of the conditions in paragraph (2)(a) to (f);
- (b) "partner" means a person (whether of a different sex or the same sex) who lives with C and P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (c);
- (c) the relatives of P referred to in sub-paragraph (b) are P's parent, grandparent, sister, brother, aunt or uncle;
- (d) references to relationships in sub-paragraph (c)—
 - (i) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption; and
 - (ii) include the relationship of a child with his or her adoptive, or former adoptive, parents;

but do not include any other adoptive relationships.

(10) Where an employee is eligible to take parental bereavement leave under this regulation as a result of the death of more than one child, the employee is entitled to parental bereavement leave in respect of each child.

Options in respect of parental bereavement leave

5.—(1) The minimum period of parental bereavement leave which may be taken by an employee is one week.

(2) An employee may choose to take either one or two weeks' parental bereavement leave.

(3) Where an employee chooses to take two weeks' parental bereavement leave, the weeks need not be consecutive.

(4) Parental bereavement leave may be taken at any time within the period of 56 weeks beginning with the date of C's death.

(5) Paragraphs (1), (2) and (3) of this regulation are subject to regulation 8.

Notice requirements for parental bereavement leave

6.—(1) An employee must give his or her employer notice of his or her intention to take any absence from work as parental bereavement leave specifying—

- (a) the date of C's death;
- (b) the date on which the employee chooses any period of absence to begin; and

- (c) whether the employee intends that period of absence to be a period of one or two weeks' parental bereavement leave.
- (2) Where any week which an employee intends to be treated as parental bereavement leave begins within Period A, notice provided for in paragraph (1) must be given to the employer—
 - (a) before the employee is due to start work on the employee's first day of absence from work in that week; or
 - (b) in a case where it is not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as is reasonably practicable.
- (3) Where any week which an employee intends to be treated as parental bereavement leave begins within Period B, notice provided for in paragraph (1) must be given to the employer at least one week before the start of that week.
- (4) Where an employee gives notice in accordance with paragraph (2) or (3) to take a period of parental bereavement leave which includes a week which begins—
 - (a) in Period A, the employee may cancel that week's parental bereavement leave by giving notice to the employer no later than the time on the first day of that week at which the employee would have been due to start work if the employee was not taking parental bereavement leave;
 - (b) in Period B, the employee may cancel that week's parental bereavement leave by giving notice to the employer at least one week before the start of that week.
- (5) An employee may not cancel any week of parental bereavement leave which has already commenced.
- (6) In this regulation—
 - “Period A” means the period of 56 days beginning with the date of C's death;
 - “Period B” means the period beginning the day after the end of Period A and ending with the end of the period specified in regulation 5(4).

Commencement of parental bereavement leave

- 7.—(1) An employee's period of parental bereavement leave begins on the date specified in his or her notice under regulation 6(1) except where—
- (a) he or she has cancelled the week or weeks of parental bereavement leave specified in that notice in accordance with regulation 6(4); or
 - (b) paragraph (2) applies.
- (2) In a case where—
- (a) the employee notifies his or her employer of the employee's intention to begin his or her parental bereavement leave on the same day as notice is given to his or her employer in accordance with regulation 6(2); and
 - (b) he or she is already at work on that day;
- the employee's period of parental bereavement leave begins on the day after that day.

Commencement of other statutory leave

- 8.—(1) This regulation applies where an employee's period of parental bereavement leave has commenced in accordance with regulation 7 and, before that period is due to end, the employee begins another period of statutory leave.

(2) Where paragraph (1) applies, the period of parental bereavement leave ends immediately before the start of the other period of statutory leave and any remaining entitlement to parental bereavement leave—

- (a) may be taken after the end of the other period of statutory leave (but within the period specified in regulation 5(4)); and
- (b) must be taken in a single consecutive period.

(3) Where paragraph (1) applies, and the employee chooses, in accordance with paragraph (2)(a), to take his or her remaining entitlement to parental bereavement leave after the end of the other period of statutory leave, he or she must give a separate notice in respect of that remaining entitlement, in accordance with regulation 6 (other than the requirement under regulation 6(1)(c)).

(4) Where any remaining entitlement to parental bereavement leave includes part of a week as a result of paragraph (2), the portion of the remaining entitlement comprising part of a week will be deemed to be a week for the purposes of the requirements set out in regulation 6(1) to (5).

PART 3

TAKING PARENTAL BEREAVEMENT LEAVE

Application of terms and conditions during parental bereavement leave

9.—(1) An employee who takes parental bereavement leave, is, during any period of leave—

- (a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent; and
- (b) bound by any obligations arising under those terms and conditions, subject only to the exception in Article 112EB(1)(b) of the 1996 Order⁽²⁷⁾.

(2) In paragraph (1)(a), “terms and conditions of employment” has the meaning given by Article 112EB(2) of the 1996 Order, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of Article 112EB of the 1996 Order, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security (Northern Ireland) Order 1989⁽²⁸⁾, nothing in paragraph (1)(a) imposes a requirement which exceeds the requirements of paragraph 5D⁽²⁹⁾ of that Schedule.

Right to return after parental bereavement leave

10.—(1) An employee who returns to work after a period of parental bereavement leave which was—

- (a) an isolated period of parental bereavement leave; or
- (b) the last of two or more consecutive periods of statutory leave which did not include any—
 - (i) period of parental leave of more than four weeks; or
 - (ii) period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child as the period of parental

⁽²⁷⁾ Article 112EB was inserted by section 1 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5).

⁽²⁸⁾ S.I. 1989 No. 1342 (N.I. 13).

⁽²⁹⁾ Paragraph 5D was inserted by section 4 and Schedule 1, paragraph 1 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5).

bereavement leave the employee is returning from means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks; is entitled to return from leave to the job in which the employee was employed before the absence.

(2) An employee who returns to work after a period of parental bereavement leave not falling within the description within paragraph (1)(a) or (b) is entitled to return from leave to the job in which he or she was employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable and appropriate for the employee to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which the employee was employed before the absence are references to the job in which the employee was employed—

- (a) if the return is from an isolated period of parental bereavement leave, immediately before that period;
- (b) if the return is from consecutive periods of statutory leave, immediately before the first such period.

(4) In this regulation, “parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999⁽³⁰⁾.

Right to return after parental bereavement leave: supplementary

11.—(1) The right to return under regulation 10 is a right to return—

- (a) with the employee’s seniority, pension and similar rights as they would have been if the employee had not been absent; and
- (b) on terms and conditions not less favourable than those which would have applied if the employee had not been absent.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security (Northern Ireland) Order 1989⁽³¹⁾, nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule⁽³²⁾.

Protection from detriment

12.—(1) An employee is entitled under Article 70C⁽³³⁾ of the 1996 Order not to be subjected to any detriment by any act, or any deliberate failure to act, by an employer because—

- (a) the employee took, sought to take, or made use of the benefits of, parental bereavement leave; or
- (b) the employer believed that the employee was likely to take parental bereavement leave.

(2) For the purposes of paragraph (1)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to a dismissal within the meaning of Part 11 of the 1996 Order.

⁽³⁰⁾ S.R. 1999 No. 471; regulation 13 was amended by S.R. 2002 No. 135.

⁽³¹⁾ S.R. 1989 No. 1342 (N.I. 13).

⁽³²⁾ Paragraph 5A was inserted by the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1), Article 242(1), and amended by S.I.2006/1947 (N.I. 16).

⁽³³⁾ Article 70C was inserted by S.I. 1999/2790 (N.I. 9), Article 11 and Schedule 4, Part 3, paragraph 3, and amended for relevant purposes by 2015 c. 1 (N.I.), section 14(1) and Schedule 1, paragraph 4(5).

Unfair Dismissal

13.—(1) An employee who is dismissed is entitled under Article 131 of the 1996 Order⁽³⁴⁾ to be regarded for the purposes of Part 11 of that Order as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

(2) An employee who is dismissed is also to be regarded for the purposes of Part 11 of the 1996 Order as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer; and
- (c) it is shown that the reason or principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

- (a) that the employee took, sought to take, or made use of the benefits of parental bereavement leave;
- (b) that the employer believed that the employee was likely to take parental bereavement leave.

(4) For the purposes of paragraph (3)(a), an employee makes use of the benefits of parental bereavement leave if, during a period of parental bereavement leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 9 during that period.

Calculation of a week's pay for the purposes of Chapter 4 of Part 1 of the 1996 Order

14. Where—

- (a) under Chapter 4 of Part 1 of the 1996 Order, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date");
- (b) during a week in that period, the employee was absent from work on parental bereavement leave; and
- (c) remuneration is payable to the employee in respect of that week under their contract of employment, but the amount payable is less than the amount that would be payable if he or she were working;

that week must be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

⁽³⁴⁾ Article 131 was substituted by S.I. 1999/2790 (N.I. 9), Article 11 and Schedule 4, Part 3, paragraph 8, and amended for relevant purposes by 2015 c. 1 (N.I.), section 14(1) and Schedule 1, paragraph 4(16).

PART 4

CONTRACTUAL RIGHTS

Contractual rights to parental bereavement leave

15. Where an employee is entitled to parental bereavement leave (referred to in this regulation as “the statutory right”) and also to a right which corresponds to that right and which arises under the employee’s contract of employment or otherwise—

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable; and
- (b) the provisions of the 1996 Order and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

PART 5

TRANSITIONAL AND REVOCATION PROVISIONS

Transitional provisions

16. The revocation and re-enactment of provisions by these Regulations does not affect the continuity of the law.

17.—(1) This regulation applies to a reference (expressed or implied) in these Regulations, any statutory provision, or any other instrument or document, to a provision of these Regulations.

(2) The reference is, subject to its context, to be read as being or including a reference to the corresponding provision revoked by these Regulations, in relation to times, circumstances or purposes in relation to which that provision had effect.

18.—(1) This regulation applies to a reference (expressed or implied) in any statutory provision, or any other instrument or document to a provision revoked by these Regulations.

(2) The reference is, subject to its context, to be read as being or including a reference to the corresponding provision of these Regulations, in relation to times, circumstances or purposes in relation to which that provision has effect.

19. The revocation of any provision by these Regulations does not affect the previous operation of that provision, except as provided by regulation 20.

20.—(1) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision revoked by these Regulations and in operation or effective immediately before the time these Regulations come into operation, has effect after that time as if done under (or for the purposes of or in reliance on) the corresponding provision of these Regulations.

(2) Any right, privilege, obligation or liability acquired, accrued or incurred under a provision revoked by these Regulations is to be treated as having acquired, accrued or incurred instead under the corresponding provision of these Regulations.

(3) The revocation of any provision by these Regulations does not affect-

(a) any offence committed against that provision, or any penalty or punishment incurred in respect thereof, or

(b) any investigation or legal proceeding in respect of any such penalty or punishment;

and any investigation or legal proceeding in respect of any such penalty or punishment may be instituted, continued or enforced, and any such penalty or punishment may be imposed, as if the provision had not been revoked.

21.—(1) Regulations 16 to 20 have effect in place of sections 28(2) and 29 of the Interpretation Act (Northern Ireland) 1954⁽³⁵⁾ (“1954 Act”)

(2) Nothing in this Part affects any other provision of the 1954 Act.

(3) In this Part, “instrument” and “statutory provision” have the meaning given to them by section 1(c) and (f) of the 1954 Act.

Revocation

22. The Parental Bereavement Leave Regulations (Northern Ireland) 2022⁽³⁶⁾ are revoked.

Sealed with the Official Seal of the Department for the Economy on 30th September 2022.

(L.S.)

Colin Jack
A senior officer of the
Department for the Economy

⁽³⁵⁾ 1954 c. 33 (N.I.).

⁽³⁶⁾ S.R. 2022 No. 166.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers inserted into the Employment Rights (Northern Ireland) Order 1996 (N.I. 16) (the “1996 Order”) by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c. 5).

The Regulations revoke and re-enact the provisions of the Parental Bereavement Leave Regulations (Northern Ireland) 2022 which would otherwise cease to have effect by virtue of Article 251(1A) of the Employment Rights (Northern Ireland) Order 1996.

These Regulations provide for a statutory entitlement for bereaved parents who are employees to take up to two weeks’ leave from their job called parental bereavement leave in the 56 weeks following the death of a child.

Part 2 relates to entitlement to parental bereavement leave. The right to take parental bereavement leave is conferred by regulation 4 which sets out the conditions for entitlement which must be satisfied by the employee in order to take parental bereavement leave. These include substantive requirements, such as the employee falling within the definition of a bereaved parent (in particular, specifying the types of parental relationships in respect of which the new entitlement arises), as well as procedural requirements, such as the employee giving appropriate notices to their employer. Where an employee is entitled to parental bereavement leave under regulation 4 as the result of the death of more than one child, the employee is entitled to parental bereavement leave in respect of each child.

Regulation 5 sets out the number of weeks of parental bereavement leave that are available to a bereaved parent and gives an employee the option of taking either one or two weeks’ parental bereavement leave. The weeks taken as parental bereavement leave do not need to be taken consecutively. It also provides that parental bereavement leave may only be taken within the period of 56 weeks beginning with the date of the child’s death.

Regulation 6 details the notice requirements and other information the bereaved parent must provide to their employer before taking parental bereavement leave. An employee does not need to provide notice in writing to his or her employer, but the length of notice required to book and cancel parental bereavement leave will vary depending on whether the period the employee intends to take as parental bereavement leave falls within 56 days of the child’s death or later. Regulations 7 and 8 respectively set out when an employee’s period of bereavement leave may start and what happens when a period of parental bereavement leave is interrupted by another type of statutory leave under Part 9 of the 1996 Order.

Part 3 contains provisions applicable in relation to the taking of parental bereavement leave. Regulation 9 elaborates on the new Article 112EB of the 1996 Order, by providing that an employee is entitled during his or her absence on leave to the benefit of all of his or her terms and conditions of employment apart from the right to remuneration (excluded by Article 112EB(2)(b)); also that the employee is subject to all of the obligations under those terms and conditions except in so far as they are inconsistent with the right to take parental bereavement leave (the exception appears in Article 112EB(1)(b)). Regulations 10 and 11 provide for an employee’s right to return to work after taking a period of parental bereavement leave, distinguishing the case where the leave was an isolated period of absence from the case where it followed another period of statutory leave. Regulations 12 and 13 provide that an employee entitled to parental bereavement leave is protected from detriment and dismissal attributable to the fact that they took or sought to take parental bereavement leave.

Part 4 contains provisions applicable where an employee has a contractual right to parental bereavement leave, in addition to the statutory right contained within these Regulations.

Part 5 (regulations 16 to 22) contains provisions in respect of the Transitional arrangements that will ensure a continuity of entitlement between the revoked Regulations and current Regulations, and the revocation of the Parental Bereavement Leave Regulations (Northern Ireland) 2022.

A separate impact assessment has not been prepared for these Regulations. The Regulations are part of a package of legislative measures and the relevant impact assessment is the Parental Bereavement (Leave and Pay) Bill impact assessment which was published in April 2020. (<https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/equality-impact-assessment-parental-bereavement-leave-and-pay.pdf>).