



## 2022 CHAPTER 5

### **Parental bereavement leave**

1. After Article 112E of the Employment Rights (Northern Ireland) Order 1996 insert—

#### “CHAPTER 4

#### PARENTAL BEREAVEMENT LEAVE

##### **112EA Parental bereavement leave**

(1) The Department must make regulations entitling an employee who is a bereaved parent to be absent from work on leave under this Article.

(2) For the purposes of paragraph (1) an employee is a “bereaved parent” if the employee satisfies specified conditions as to relationship with a child who has died.

(3) The conditions specified under paragraph (2) may be framed, in whole or in part, by reference to the employee’s care of the child before the child’s death.

(4) The regulations must 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.

(5) Provision under paragraph (4)(a) must secure that where an employee is entitled to leave under this Article in respect of a child, the employee is entitled to at least two weeks’ leave.

(6) Provision under paragraph (4)(b) must 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 death.

(7) The regulations must secure that where an employee is eligible under paragraph (1) as the result of the death of more than one child, the employee is entitled to leave in respect of each child.

(8) The regulations may make provision about how leave under this Article is to be taken.

(9) In this Article—

“child” means a person under the age of 18 (see also Article 112EE for the application of this Chapter in relation to stillbirths);

“week” means any period of seven days.

(10) In this Article and Articles 112EB and 112ED, “specified” means specified for the time being in regulations made under this Article.

### **112EB Rights during and after bereavement leave**

(1) Regulations under Article 112EA must provide—

(a) that an employee who is absent on leave under that Article is entitled, for such purposes and to such extent as may be specified, to the benefit of the terms and conditions of employment which would have applied but for the absence;

(b) that an employee who is absent on leave under that Article is bound, for such purposes and to such extent as may be specified, 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 specified kind (but this is subject to Article 112EC(1)).

(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 the contract of employment, but

(b) does not include terms and conditions about remuneration.

(3) The reference in paragraph (1)(c) to absence on leave under Article 112EA 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) paternity leave;

(c) adoption leave;

(d) shared parental leave;

(e) parental leave.

(4) Regulations under Article 112EA may specify matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(5) Regulations under Article 112EA 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.

### **112EC Special cases**

(1) Regulations under Article 112EA 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 11).

### **112ED Chapter 4: supplemental**

**112ED.** Regulations under Article 112EA 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 paragraph (a);
- (e) make special provision for cases where an employee has a right that corresponds to a right under Article 112EA and that arises under the person's contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter 4 of Part 1 (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under Article 112EA;
- (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 112EA;

(h) make consequential provision.

#### **112EE Application in relation to stillbirths**

**112EE.** In this Chapter—

- (a) references to a child include a child stillborn after twenty-four weeks of pregnancy, and
- (b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.

#### **112EF Application in relation to miscarriage**

(1) The Department must by regulations provide that regulations under this Chapter apply in relation to a person who has experienced a miscarriage as they apply in relation to a bereaved parent, with such modifications, if any, as are specified in regulations.

(2) Regulations under this Article may—

- (a) specify conditions to be satisfied for the purpose of determining whether a person has experienced a miscarriage for the purposes of the regulations;
- (b) provide that regulations under this Chapter also apply in relation to a person who satisfies specified conditions as to relationship with the person who experienced the miscarriage.”.

#### **Parental bereavement pay**

**2.** After section 167ZZ8 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 insert—

### **“PART 12ZD**

#### **STATUTORY PARENTAL BEREAVEMENT PAY**

##### **167ZZ9 Entitlement**

(1) A person who satisfies the conditions in subsection (2) is entitled in accordance with the following provisions of this Part to payments to be known as “statutory parental bereavement pay”.

(2) The conditions are—

- (a) that the person is a bereaved parent,

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*Status: This is the original version (as it was originally enacted).*

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(b) that the person is in employed earner's employment with an employer on the day on which the child dies, and

(c) that the weekly earnings threshold is met (see subsection (5)).

(3) For the purposes of subsection (2) an employee is a "bereaved parent" if the employee satisfies prescribed conditions as to relationship with a child who has died.

(4) The conditions prescribed under subsection (3) may be framed, in whole or in part, by reference to the employee's care of the child before the child's death.

(5) The weekly earnings threshold is met if the person's normal weekly earnings for any continuous period of 8 weeks falling within the relevant window is not less than the lower earnings limit in force under section 5(1) (a) at the end of the relevant week.

(6) In subsection (5), the "relevant window" is the period consisting of—

(a) the 8 weeks ending with the relevant week, and

(b) the 8 weeks immediately following that week.

(7) The reference in subsection (5) to a person's normal weekly earnings is, in relation to any period after the date on which the child dies, a reference to the person's expected normal weekly earnings for that period.

(8) Section 167ZZ17(9) provides for the calculation of a person's expected normal weekly earnings.

(9) In this section "relevant week" means the week immediately before the one in which the child dies.

(10) Where a person satisfies the conditions in subsection (2) as a result of the death of more than one child, the person is entitled to statutory parental bereavement pay in respect of each child.

### **167ZZ10 Entitlement: supplementary**

(1) A person is entitled to payments of statutory parental bereavement pay in respect of any period only if the person gives notice to whoever is liable to make the payments stating the week or weeks in respect of which they are to be paid.

(2) Regulations may provide for the time by which notice under subsection (1) must be given.

(3) The notice must be in writing if the person who is liable to pay the statutory parental bereavement pay so requests.

(4) The Department may by regulations—

- (a) provide that section 167ZZ9(2)(b) or (c) or (5) to (7) have effect subject to prescribed modifications in such cases as may be prescribed;
- (b) provide that subsection (1) of this section does not have effect, or has effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 167ZZ9;
- (e) provide that a person is to be treated for the purposes of section 167ZZ9 as being employed for a continuous period of at least 8 weeks where—
  - (i) the person has been employed by the same employer for at least 8 weeks under two or more separate contracts of service, and
  - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 167ZZ9;
- (g) provide that—
  - (i) the amount of a person's earnings for any period, or
  - (ii) the amount of the person's earnings to be treated as comprised in any payment made to the person or for the person's benefit, is to be calculated or estimated for the purposes of section 167ZZ9 in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of the person's earnings.

### **167ZZ11 Liability to make payments**

(1) The liability to make payments of statutory parental bereavement pay under section 167ZZ9 is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) of that section.

(2) The Department must by regulations make provision as to a former employer's liability to pay statutory parental bereavement pay to a former employee in any case where the employee's contract of service with the employer has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory parental bereavement pay.

(3) The Department may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, despite this section, liability to make payments of statutory parental bereavement pay is to be a liability of the Commissioners.

### **167ZZ12 Rate and period of pay**

(1) Statutory parental bereavement pay is payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.

(2) Statutory parental bereavement pay is payable in respect of—

(a) such week within the qualifying period, or

(b) such number of weeks, not exceeding the prescribed number of weeks, within the qualifying period,

as the person entitled may choose in accordance with regulations.

(3) Provision under subsection (2)(b) must secure that the prescribed number of weeks is not less than two.

(4) Regulations under subsection (2)(b) may permit a person entitled to receive statutory parental bereavement pay to choose to receive such pay in respect of non-consecutive periods each of which is a week or a number of weeks.

(5) For the purposes of subsection (2), the qualifying period is to be determined in accordance with regulations, which must secure that it is a period of at least 56 days beginning with the date of the child's death.

(6) A person is not liable to pay statutory parental bereavement pay to another in respect of any statutory pay week during any part of which the other works under a contract of service with the person.

(7) It is immaterial for the purposes of subsection (6) whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.

(8) Except in such cases as may be prescribed, statutory parental bereavement pay is not payable to a person in respect of a statutory pay week during any part of which the person works for any employer who is not liable to pay the person statutory parental bereavement pay.

(9) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory parental bereavement pay in respect of a statutory pay week.

(10) Where for the purposes of this Part or of regulations it is necessary to calculate the daily rate of statutory parental bereavement pay, the amount

payable by way of statutory parental bereavement pay for any date is to be taken as one seventh of the weekly rate.

(11) In this section—

“statutory pay week”, in relation to a person entitled to statutory parental bereavement pay, means a week chosen by the person as a week in respect of which statutory parental bereavement pay is to be payable;

“week” means any period of seven days.

### **167ZZ13 Restrictions on contracting out**

(1) An agreement is void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part, or
- (b) to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person’s employer or former employer under this Part.

(2) An agreement between an employer and an employee, authorising any deductions from statutory parental bereavement pay which the employer is liable to pay to the employee in respect of any period, is not void by virtue of subsection (1)(a) if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which the employer is liable to pay in respect of the same period, or
- (b) would be so authorised if the employer were liable to pay contractual remuneration in respect of that period.

### **167ZZ14 Relationship with contractual remuneration**

(1) Any entitlement to statutory parental bereavement pay does not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”); but this is subject to subsections (2) and (3).

(2) Subject to subsection (3)—

- (a) any contractual remuneration paid to a person by an employer of that person in respect of any period is to go towards discharging any liability of that employer to pay statutory parental bereavement pay to that person in respect of that period; and
- (b) any statutory parental bereavement pay paid by an employer to a person who is an employee of that employer in respect of any period is to go towards discharging any liability of that employer to pay contractual remuneration to that person in respect of that period.



(3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2).

### **167ZZ15 Crown employment**

**167ZZ15.** The provisions of this Part apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

### **167ZZ16 Special classes of person**

(1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part in such manner as the Department thinks proper in its application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations.

(2) Regulations under subsection (1) may, in particular, provide—

- (a) for any provision of this Part to apply to any such person, despite the fact that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, despite the fact that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where the person is neither domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

(3) In this section, “continental shelf operations” has the same meaning as in sections 166(3), 167ZI(3) and 167ZR(3).

### **167ZZ17 Supplementary**

(1) In this Part—

“child” means a person under the age of 18 (see also section 167ZZ18 for the application of this Part in relation to stillbirths);

“the Department” means the Department for the Economy in Northern Ireland;

“employer”, in relation to a person who is an employee, means a person who—

- (a) under section 6 is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, or
- (b) would be liable to pay such contributions but for—
  - (i) the condition in section 6(1)(b), or
  - (ii) the employee being under the age of 16;

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department.

(2) In this Part, “employee” means a person who is gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with earnings (within the meaning of Parts 1 to 5).

(3) Regulations may provide—

- (a) for cases where a person who falls within the definition in subsection (2) is not to be treated as an employee for the purposes of this Part, and
- (b) for cases where a person who would not otherwise be an employee for the purposes of this Part is to be treated as an employee for those purposes.

(4) Regulations may specify cases in which, for the purposes of this Part or of such provisions of this Part as may be prescribed—

- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one;

and this power is without prejudice to any other power to make regulations under this Part.

(5) In this Part, except in section 167ZZ12, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part, a person’s normal weekly earnings are, subject to subsection (8), to be taken to be the average weekly earnings which in the relevant period have been paid to the person or paid for the person’s benefit under the contract of service with the employer in question;

but this does not apply to a person's expected normal weekly earnings (as to which, see subsection (9)).

(7) For the purposes of subsection (6), "earnings" and "relevant period" have the meaning given to them by regulations.

(8) In such cases as may be prescribed, a person's normal weekly earnings are to be calculated in accordance with regulations.

(9) For the purposes of section 167ZZ9, a person's expected normal weekly earnings are to be calculated in accordance with regulations; and such regulations may provide for assumptions to be made about the continuation of the person's employment and the person's earnings from that employment.

(10) Where in consequence of the establishment of one or more Health and Social Care trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person's contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part or such provisions of this Part as may be prescribed.

(11) Regulations under subsection (10) may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, the person is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory parental bereavement pay as the person's employer under the contract.

(12) The powers under subsections (10) and (11) are without prejudice to any other power to make regulations under this Part.

(13) In relation to regulations made by the Department under this Part, sections 171 and 172 have effect as if references there to "the Department" were references to the Department for the Economy.

(14) Regulations under any of subsections (4) to (11) must be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs.

**167ZZ18 Application in relation to stillbirths**

**167ZZ18.** In this Part—

- (a) references to a child include a child stillborn after twenty-four weeks of pregnancy, and
- (b) references to the death of a child are to be read, in relation to a stillborn child, as references to the birth of the child.

**167ZZ19 Application in relation to miscarriage**

(1) The Department must by regulations provide that this Part and regulations under it apply in relation to a person who has experienced a miscarriage as they apply in relation to a bereaved parent as set out in section 167ZZ9 (entitlement) with such modifications, if any, as are specified in regulations.

(2) Regulations under this section may—

- (a) specify conditions to be satisfied for the purpose of determining whether a person has experienced a miscarriage for the purposes of the regulations;
- (b) provide that this Part and regulations under it also apply in relation to a person who satisfies specified conditions as to relationship with the person who experienced the miscarriage.”.

**Temporary provision: qualifying employment period for parental pay**

**3.—**(1) This section applies in relation to a person’s entitlement to payments of statutory parental bereavement pay in respect of a child who dies before 6 April in the year that is specified under subsection (2).

(2) The Department for the Economy must by regulations specify a year for the purposes of subsection (1); and the year so specified must be—

- (a) no later than 2026, and
- (b) the same as the year specified in accordance with section 5(3) (application of miscarriage regulations).

(3) The provisions inserted by section 2 have effect with the modifications set out in subsections (4) to (8).

(4) In section 167ZZ9, for subsection (2) substitute—

“(2) The conditions are—

- (a) that the person is a bereaved parent,
- (b) that the person has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week,

- (c) that the person’s normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week, and
  - (d) that the person has been in employed earner’s employment with the employer by reference to whom the condition in paragraph (b) is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child dies.”.
- (5) In section 167ZZ9, omit subsections (5) to (8).
- (6) In section 167ZZ10(4)—
- (a) in paragraph (a), for “section 167ZZ9(2)(b) or (c) or (5) to (7) have” substitute “section 167ZZ9(2)(b), (c) or (d) has”;
  - (b) in paragraph (e), for “8 weeks” (in both places) substitute “26 weeks”.
- (7) In section 167ZZ11(1), after “subsection (2)(b)” insert “and (d)”.
- (8) In section 167ZZ17, omit—
- (a) the reference in subsection (6) to a person’s expected normal weekly earnings, and
  - (b) subsection (9).
- (9) Regulations under subsection (2) may make such transitory or transitional provision, or savings, as the Department considers necessary or expedient.
- (10) Regulations under subsection (2) are subject to negative resolution.

#### **Further amendments to do with parental bereavement leave and pay**

4. The Schedule contains amendments that are related to the statutory entitlements created by sections 1 and 2.

#### **Commencement**

5.—(1) Sections 1 to 3 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The first regulations under—

- (a) Article 112EA of the Employment Rights (Northern Ireland) Order 1996, and
- (b) Part 12ZD of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, except section 167ZZ19 (application to miscarriage),

must provide that they are to apply in respect of children who die on or after 6 April 2022 or such later date, not being later than 6 April 2023, as may be specified in the regulations.

(3) The first regulations under Article 112EF of the Employment Rights (Northern Ireland) Order 1996 and section 167ZZ19 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (miscarriage) must provide that they are to apply in respect of miscarriages that occur on or after 6 April in such year as is specified in the regulations.

(4) The year specified in accordance with subsection (3) must be no later than 2026.

(5) Part 1 of the Schedule (and section 4 so far as it relates to that Part) come into operation on such day or days as the Department for the Economy may by order appoint.

(6) Part 2 of the Schedule (and section 4 so far as it relates to that Part) come into operation on such day or days as the Department for Communities may by order appoint.

(7) An order under subsection (5) or (6) may make such transitory or transitional provision, or savings, as the Department making it considers necessary or expedient.

#### **Short title**

6. This Act may be cited as the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022.