

*These notes refer to the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 (c.5) which received Royal Assent on 21 March 2022*

# Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1 Parental Bereavement Leave*

Section 1 of the Act amends Part 9 of the Employment Rights (Northern Ireland) Order 1996 by inserting a new Chapter 4, consisting of Articles 112EA to 112EF, which will result in the provision of entitlement to parental bereavement leave and miscarriage leave.

#### Article 112EA - Parental Bereavement Leave

Article 112EA requires the Department to make regulations to give an entitlement to employed parents to time off work following the death of a child. It provides for the conditions of entitlement to be defined in regulations by reference to the employee's relationship with the child who has died, including by reference to caring for the child prior to the child's death.

Regulations must set the duration of leave and when the leave can be taken. The leave entitlement must be a period of at least 2 weeks; and the regulations must establish a period within which the leave may be taken, which must extend to at least 56 days after the child's death. The regulations must also specify that, where more than one child dies, the employee is entitled to leave in respect of each child.

In addition, regulations can make provision for how the leave is to be taken.

A child is defined as being under the age of 18 years and a week is any 7 day period.

#### Article 112EB - Rights during and after Parental Bereavement Leave

Article 112EB requires the regulations made under Article 112EA to set out:

- the employee's rights in relation to retaining their existing terms and conditions of employment, whilst taking parental bereavement leave;
- the employee's obligations in relation to those terms and conditions;

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- the employee's right to return to work once their leave period has concluded and the nature of the job to which they are entitled to return, as well as the terms and conditions applicable on return, and matters such as seniority, pension and similar rights.

The reference to 'terms and conditions' in this context is not limited to contractual terms and conditions, but does not include remuneration. Regulations can specify what things should, or should not be, seen as 'remuneration' for this purpose.

#### Article 112EC - Special Cases

Article 112EC allows the regulations to make special provision for the redundancy and dismissal of employees during a period of parental bereavement leave, including whether an employer is required to offer alternative employment, and the consequences of failing to comply with the regulations.

#### Article 112ED - Chapter 4: Supplemental

Article 112ED allows the regulations made under Article 112EA to set out what notices and evidence must be given by an employee to their employer, and what procedures are to be followed, in order to take parental bereavement leave as well as any requirements for record keeping. They can also set out the consequences of not complying with any of these requirements or procedures.

The regulations can also make provision for situations where an employee also has a non-statutory right to take parental bereavement leave (for example, a right arising under their contract of employment).

Regulations can also modify the way in which a week's pay is calculated in Chapter 4 of Part 1 of the Employment Rights (Northern Ireland) Order 1996 to take account of periods of parental bereavement leave. The concept of 'a week's pay' is widely used in that Order, for example in Article 153 which sets out how the basic Industrial Tribunal award for unfair dismissal should be calculated.

#### Article 112EE - Power to extend Chapter to stillbirths

The entitlement to parental bereavement leave under Articles 112EA to 112ED will apply on the death of a child under 18. Article 112EE ensures that this entitlement will be extended to parents of children stillborn after 24 weeks of pregnancy.

#### Article 112EF – Application in relation to miscarriage

Article 112EF requires the Department, by regulations, to provide that regulations under Chapter 4 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 specified in regulations. The Department may also provide that regulations extend to a person who satisfies conditions as to their relationship with the person who has experienced a miscarriage. This enables the right to be extended to, for example, the father or the person's partner.