

2015 No. 87

EMPLOYMENT

WORK AND FAMILIES

**The Paternity and Adoption Leave (Amendment) Regulations
(Northern Ireland) 2015**

Made - - - - 2nd March 2015

Coming into operation

*for the purpose of regulations 1, 2,
3(a)(i) and (ii) (partially), 4, 5(a),
5(b) (partially), 6, 9, 10, 12, and
14(1), (2), (4) and (6)*

15th March 2015

for all other purposes

5th April 2015

Approved by resolution of the Assembly on 12th May 2015

The Department for Employment and Learning makes the following Regulations in exercise of the powers conferred by Articles 70C(2)(aa) and (ab)(a), 107A(1), (1A) and (3)(c), 107D(2)(b), 112A(4A), 112B(1), (4A) and (5)(aa) and (ba), 112BA(1), 112C(1)(c), 112D(1)(c) and 131(1), (2) and (3)(aa) and (ab)(d) of the Employment Rights (Northern Ireland) Order 1996(e).

Citation and commencement

1.—(1) These Regulations may be cited as the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2015.

(2) This regulation and regulations 2, 3(a)(i) and (ii) (except for the definitions of “placed for adoption” and “prospective adopter”), 4, 5(a) and (b) (so far as it relates to new sub-paragraph (a) of new paragraph (1A)), 6, 9, 10, 12 and 14(1), (2), (4) and (6) come into operation on 15th March 2015.

(3) Regulations 3(a)(ii) (in so far as it is not already in operation) and (b), 5(b) (so far as it relates to sub-paragraphs (b) and (c) of new paragraph (1A)), 7, 8, 11, 13 and 14(3) and (5) come into operation on 5th April 2015.

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- (a) Article 70C was inserted by the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), Schedule 4, Part 3, paragraph 3. Paragraphs (aa) and (ab) were inserted into Article 70C(2) by the Work and Families Act (Northern Ireland) 2015 (c. 1 (N.I.)), sections 15(4) and 17(4).
- (b) Articles 107A and 107D were inserted by the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), Article 3. Article 107A(1A) was inserted by 2015 c. 1 (N.I.), section 8(2).
- (c) Articles 112A to 112D were inserted by S.I. 2002/2836 (N.I. 2), Article 4. Article 112A(4A) was inserted by 2015 c. 1 (N.I.), section 3(6). Article 112B(4A) was inserted by 2015 c. 1 (N.I.), section 3(7). Article 112B(5)(aa) was inserted by 2015 c. 1 (N.I.), section 8(4). Article 112B(5)(ba) was inserted by 2015 c. 1 (N.I.), section 17(5). Article 112BA(1) was inserted by 2015 c.1 (N.I.), section 8(5).
- (d) Article 131 was substituted by S.I. 1999/2790 (N.I. 9), Schedule 4, Part 3, paragraph 8. Paragraph (3)(aa) was inserted by 2015 c. 1 (N.I.), section 15(5) and paragraph (3)(ab) was inserted by 2015 c. 1 (N.I.), section 17(6).
- (e) S.I. 1996/1919 (N.I. 16).

Amendments to the Paternity and Adoption Leave Regulations (Northern Ireland) 2002

2. The Paternity and Adoption Leave Regulations (Northern Ireland) 2002(a) are amended as follows.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “adoption agency”, for “section 1(4) of the Adoption Act 1976(b)” substitute “section 2(1) of the Adoption and Children Act 2002(c)”;

(ii) after the definition of “paternity leave” insert—

““placed for adoption” means—

(a) placed for adoption by virtue of regulation 12 of the Adoption Agencies Regulations (Northern Ireland) 1989(d);

(b) placed by an authority with a person who is an approved foster parent who is also an approved prospective adopter(e) where the authority—

(i) is considering adoption for the child, or

(ii) is satisfied that adoption is in the best interests of the child,

and is considering whether that person would be a suitable adoptive parent for that child;

(c) placed for adoption under the Adoption and Children Act 2002(f) or the Adoption and Children (Scotland) Act 2007(g);

(d) placed in accordance with section 22C of the Children Act 1989(h) with a local authority foster parent who is also a prospective adopter;

“prospective adopter” means a person who has been notified of being an approved prospective adopter or 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(i);

“shared parental leave” means leave under Article 107E or 107G of the 1996 Order(j);”
;

(b) for paragraph (4) substitute—

“(4) For the purposes of these Regulations—

(a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child either individually or jointly with another person;

(b) in a case where sub-paragraph (a) applies, a person is notified of having been matched with a child on the date that person receives notification of the agency’s decision, under regulation 11(2)(d) of the Adoption Agencies Regulations (Northern Ireland) 1989, regulation 33(3)(a) of the Adoption Agencies Regulations

(a) S.R. 2002 No. 377.

(b) 1976 c. 36. The Adoption Act 1976 was repealed by the Adoption and Children Act 2002 (c. 38), section 139(3), Schedule 5, paragraph 1.

(c) 2002 c. 38.

(d) S.R. 1989 No. 253.

(e) “Approved foster parent”, “approved prospective adopter” and “authority” are defined in Articles 107AB(3) and 112BA(4) of S.I. 1996/1919 (N.I. 16), as inserted by 2015 c. 1 (N.I.), section 8(3).

(f) 2002 c. 38.

(g) 2007 asp 4.

(h) 1989 c. 41; section 22C was inserted by the Children and Young Persons Act 2008 (c. 23), section 8(1), and subsections (9A) to (9C) were inserted by the Children and Families Act 2014 (c. 6), section 2.

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

(j) Articles 107E and 107G were inserted by 2015 c. 1 (N.I.), section 2.

2005, regulation 28(3) of the Adoption Agencies (Wales) Regulations 2005(a), or regulation 8(5) of the Adoption Agencies (Scotland) Regulations 2009(b);

- (c) a person is also matched with a child where each of the following conditions is met—
- (i) that person is an approved foster parent and an approved prospective adopter, and the child is, or is expected to be, placed by the authority with that person under Article 27(2)(a) of the Children (Northern Ireland) Order 1995(c);
 - (ii) the authority—
 - (aa) is considering adoption for the child, or
 - (bb) is satisfied that adoption is in the best interests of the child;
 - (iii) the authority is considering whether that person would be a suitable adoptive parent for that child;
- (d) in a case where sub-paragraph (c) applies, a person is notified as having been matched with a child on the date which that person receives notification from the authority that the conditions in that sub-paragraph have been met;
- (e) a person is also matched with a child for adoption when a decision has been made in accordance with regulation 22A of the Care Planning, Placement and Case Review (England) Regulations 2010(d) and an adoption agency has identified that person with whom the child is to be placed in accordance with regulation 12B of the Adoption Agencies Regulations 2005(e);
- (f) in a case where sub-paragraph (e) applies, a person is notified of having been matched with a child on the date on which that person receives notification in accordance with regulation 12B(2)(a) of the Adoption Agencies Regulations 2005 of the decision to place for adoption the child with that person.

(4A) For the purposes of these Regulations, a person elects to be a child’s adopter, in a case where the child is matched with him and another person jointly, if he and that person agree, at the time at which they are matched, that he and not the other person will be the adopter.”.

4. In regulation 4 (entitlement to paternity leave: birth)—

- (a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;
- (b) after paragraph (1) insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee has taken any shared parental leave in respect of the child.”.

5. In regulation 8 (entitlement to paternity leave: adoption)—

- (a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;
- (b) after paragraph (1) insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) if the employee—

 - (a) has taken any shared parental leave in respect of the child;
 - (b) has exercised a right to take time off under Article 85ZJ of the 1996 Order in respect of the child; or
 - (c) has already taken paternity leave in relation to the child as a result of the child being placed with a prospective adopter who is at the time of the placement the employee’s spouse, civil partner or partner.”.

(a) S.I. 2005/1313.

(b) S.S.I. 2009/154.

(c) S.I. 1995/755 (N.I. 2), as amended by S.I. 2003/431 (N.I. 9).

(d) S.I. 2010/959, as amended by S.I. 2014/1556. There is another amending instrument but it is not relevant.

(e) Regulation 12B was inserted by S.I. 2014/1556.

6. In paragraph (1) of regulation 13 (right to return after paternity leave), for sub-paragraph (b) substitute—

“(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 means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks.”.

7. In regulation 15 (entitlement to ordinary adoption leave)—

(a) in paragraph (1), for “An” substitute “Subject to paragraph (1A), an”;

(b) after paragraph (1) insert—

“(1A) An employee is not entitled to be absent from work under paragraph (1) in relation to a child if the employee has already taken ordinary adoption leave as a result of that child being placed, or expected to be placed, with the employee in the circumstances described in paragraph (b) or (d) of the definition of “placed for adoption” in regulation 2(1).”;

(c) at the end of paragraph (2)(a) insert “and”;

(d) omit paragraph (2)(b);

(e) omit paragraph (3).

8. Regulation 22 (disrupted placement in the course of adoption leave) is amended as follows—

(a) for paragraph (1)(b)(ii) substitute—

“(ii) the child is returned after being placed for adoption.”;

(b) after paragraph (3) insert—

“(3A) In paragraph (1) “returned after being placed for adoption” means—

- (a) returned to the authority under Article 31(3) of the Adoption (Northern Ireland) Order 1987(a);
- (b) where the child is placed for adoption in the circumstances described in paragraph (b) of the definition of “placed for adoption” in regulation 2(1), returned to the authority following termination of the placement;
- (c) returned under sections 31 to 35 of the Adoption and Children Act 2002;
- (d) in Scotland, 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
- (e) where the child is placed in accordance with section 22C of the Children Act 1989, returned to the adoption agency following a termination of the placement.”.

9. In paragraph (1) of regulation 26 (right to return after adoption leave), for sub-paragraph (b) substitute—

“(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 means that the total amount of statutory leave taken in relation to that child totals more than 26 weeks.”.

(a) S.I. 1987/2203; Article 31(3) was amended by the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), Schedule 9, paragraph 154(2).

10. In paragraph (1) of regulation 28 (protection from detriment), before sub-paragraph (a) insert—

“(za) the employee took or sought to take time off under Article 85ZE of the 1996 Order(a);

(zb) the employer believed that the employee was likely to take time off under Article 85ZE of the 1996 Order;”.

11. In paragraph (1) of regulation 28 (protection from detriment), after sub-paragraph (zb)(b) insert—

“(zc) the employee took or sought to take time off under Article 85ZJ or 85ZL of the 1996 Order(c);

(zd) the employer believed that the employee was likely to take time off under Article 85ZJ or 85ZL of the 1996 Order;”.

12. In paragraph (3) of regulation 29 (unfair dismissal), before sub-paragraph (a) insert—

“(za) the employee took or sought to take time off under Article 85ZE of the 1996 Order;

(zb) the employer believed that the employee was likely to take time off under Article 85ZE of the 1996 Order;”.

13. In paragraph (3) of regulation 29 (unfair dismissal), after sub-paragraph (zb)(d) insert—

“(zc) the employee took or sought to take time off under Article 85ZJ or 85ZL of the 1996 Order;

(zd) the employer believed that the employee was likely to take time off under Article 85ZJ or 85ZL of the 1996 Order;”.

Transitional provision

14.—(1) The amendments made by the following regulations have effect only in relation to children matched with a person who is notified of having been matched on or after 5th April 2015—

(a) regulation 3(a)(ii) (except for the definition of “shared parental leave”) and (b);

(b) regulation 5(b) (so far as it relates to sub-paragraph (c) of new paragraph (1A));

(c) regulation 7(a) and (b); and

(d) regulation 8.

(2) Regulation 10 has effect only in relation to an act or failure to act which takes place on or after 15th March 2015.

(3) Regulation 11 has effect only in relation to an act or failure to act which takes place on or after 5th April 2015.

(4) Regulation 12 has effect only in relation to dismissals where the effective date of termination (within the meaning of Article 129 of the Employment Rights (Northern Ireland) Order 1996(e)) falls on or after 15th March 2015.

(5) Regulation 13 has effect only in relation to dismissals where the effective date of termination (within the meaning of Article 129 of the Employment Rights (Northern Ireland) Order 1996) falls on or after 5th April 2015.

(a) Article 85ZE was inserted by 2015 c. 1 (N.I.), section 15(2).

(b) Sub-paragraph (zb) is inserted by regulation 10 of these Regulations.

(c) Articles 85ZJ and 85ZL were inserted by 2015 c. 1 (N.I.), section 17(2).

(d) Sub-paragraph (zb) is inserted by regulation 12 of these Regulations.

(e) Article 129 was amended by the Employment Relations (Northern Ireland) Order 1999, Article 40, Schedule 9, paragraph 2, and S.R. 2002 No. 298.

(6) For the purposes of paragraph (1), “matched” has the meaning given in regulation 2 of the Paternity and Adoption Leave Regulations (Northern Ireland) 2002^(a) (as amended by regulation 3(b)).

Sealed with the Official Seal of the Department for Employment and Learning on 2nd March 2015.



Dr Stephen Farry
Minister for Employment and Learning

^(a) S.R. 2002 No. 377.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (“the 2002 Regulations”).

The amendments:

- remove the requirement for a qualifying period of service of 26 weeks before an employee is entitled to adoption leave, making statutory adoption leave a ‘day one’ right (regulation 7(c) to (e));
- adjust the right to return after paternity or adoption leave to take account of shared parental leave (regulation 6);
- extend to foster parents who are prospective adopters new rights to adoption leave if they have been notified that a child is to be placed with them (‘fostering for adoption’ arrangements) (much of regulation 3 is relevant);
- provide new rights to paternity leave to the spouses, civil partners and partners of these prospective adopters (again, much of regulation 3 is relevant);
- provide for an employee’s adoption leave to terminate early if the child’s placement as part of a fostering for adoption arrangement is terminated and the child is returned to the adoption agency (regulation 8);
- prevent an employee from taking paternity leave if the employee—
 - has already taken shared parental leave (regulations 4 and 5);
 - has already exercised a right to take paid time off to attend an adoption appointment in respect of the same child (regulation 5);
 - has already taken paternity leave as part of a fostering for adoption arrangement for the same child (regulation 5);
- prevent an employee from taking adoption leave, if the employee has already done so as part of a fostering for adoption arrangement for the same child (regulation 7(a) and (b)); and
- protect employees who suffer a detriment or who are dismissed in relation to time off work for ante-natal or adoption appointments (regulations 10 to 13).

An impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impacts were assessed within the document ‘Sharing parental rights, extending flexibility at work – public consultation’, published in May 2013 (www.delni.gov.uk/index/consultation-zone/archived-consultations/archived-consultations-2013/working-parents-rights.htm), and supplemented by a further publication in April 2014 (www.delni.gov.uk/index/publications/equality-good-relations/shared-parental-leave-and-pay.htm).

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