
STATUTORY RULES OF NORTHERN IRELAND

2022 No. 238

**The Statutory Parental Bereavement Pay (General)
(No. 2) Regulations (Northern Ireland) 2022**

PART 3

**CONDITIONS OF ENTITLEMENT RELATING
TO EMPLOYMENT AND EARNINGS**

Treatment of persons as employees

11.—(1) A person is treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though not falling within the definition of ‘employee’ in section 167ZZ17(2) of that Act) where, and in so far as, that person is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978(1) (but see paragraph (3)).

(2) A person shall not be treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though falling within the definition of ‘employee’ in section 167ZZ17(2) of that Act) where, and in so far as, that person is not treated as an employed earner by the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (but see paragraph (3)).

(3) Paragraphs (1) and (2) shall have effect in relation to a person who—

- (a) is under the age of 16; and
- (b) would, or as the case may be, would not have been treated as an employed earner by virtue of those Regulations had they been over that age;

as they have effect in relation to a person who is, or as the case may be, is not treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978.

(4) A person is treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though not falling within the definition of ‘employee’ in section 167ZZ17(2) of that Act) where that person is in employed earner’s employment under a contract of apprenticeship.

(5) A person is not to be treated as an employee for the purposes of Part 12ZD of the 1992 Act (even though falling within the definition of ‘employee’ in section 167ZZ17(2) of that Act) where that person is in employed earner’s employment but that person’s employer—

- (a) does not fulfil the conditions prescribed in regulation 145(1) (conditions as to residence or presence) of the Social Security (Contributions) Regulations 2001(2) in so far as that provision relates to residence or presence in Northern Ireland; or
- (b) is a person who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—

(1) S.R. 1978 No. 401, amended for relevant purposes by S.R. 1980 No. 405, S.R. 1990 No. 339, S.R. 1994 No. 92, S.R. 1998 No. 250, S.I. 2003/733, S.I. 2003/2421, 2004/770, S.I. 2005/3134, S.I. 2006/1531 and S.I. 2014/635.

(2) S.I. 2001/1004; regulation 145 was amended by S.I. 2012/817.

- (i) is exempt from the provisions of the 1992 Act; or
- (ii) is a person against whom the provisions of the 1992 Act are not enforceable.

Continuous employment

12.—(1) A week is to be treated for the purposes of section 167ZZ9 of the 1992 Act as part of a period of continuous employment with the employer even though no contract of service exists with that employer in respect of that week in the circumstances mentioned in paragraph (2) and subject to paragraphs (3) and (4).

(2) The circumstances mentioned in paragraph (1) are that in any week the person is, for the whole or part of the week—

- (a) incapable of work in consequence of sickness or injury;
- (b) absent from work on account of a temporary cessation of work; or
- (c) absent from work in circumstances such that, by arrangement or custom, that person is regarded as continuing in the employment of their employer for all or any purposes;

and returns to work for their employer after the incapacity for or absence from work.

(3) Incapacity for work which lasts for more than 26 consecutive weeks shall not count for the purposes of paragraph (2)(a).

(4) Where a person—

- (a) is an employee in employed earner's employment in which the custom is for the employer—
 - (i) to offer work for a fixed period of not more than 26 consecutive weeks;
 - (ii) to offer work for such period on two or more occasions in a year for periods which do not overlap; and
 - (iii) to offer the work available to those persons who had worked for the employer during the last or a recent such period; but
- (b) is absent from work because of incapacity arising from some specific disease or bodily or mental disablement;

then in that case paragraph (2) shall apply as if the words “and returns to work for their employer after the incapacity for or absence from work” were omitted.

Continuous employment and unfair dismissal

13.—(1) Where in consequence of specified action in relation to a person's dismissal, the person is reinstated or re-engaged by their employer or by a successor or associated employer of that employer then—

- (a) the continuity of their employment shall be preserved for the purposes of section 167ZZ9 of the 1992 Act for the period beginning with the effective date of termination and ending with the date of reinstatement or re-engagement; and
- (b) any week which falls within the interval beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, as the case may be, shall count in the computation of their period of continuous employment.

(2) In this regulation—

- (a) “associated employer” shall be construed in accordance with Article 4 of the Employment Rights (Northern Ireland) Order 1996(3);

- (b) “dismissal procedures agreement” and “successor” have the same meanings as in Article 2 of the Employment Rights (Northern Ireland) Order 1996;
- (c) “specified action in relation to a person’s dismissal” means action which consists of—
 - (i) the presentation by that person of a complaint under Article 145(1) (complaints to industrial tribunal) of the Employment Rights (Northern Ireland) Order 1996;
 - (ii) that person making a claim in accordance with a dismissal procedure agreement designated by an order under Article 142 of that Order⁽⁴⁾; or
 - (iii) any action taken by a conciliation officer under Article 20 (conciliation) of the Industrial Tribunals (Northern Ireland) Order 1996⁽⁵⁾.

Continuous employment and stoppages of work

14.—(1) Where a person does not work for any week or part of a week because there is a stoppage of work at that person’s place of employment due to a trade dispute within the meaning of Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995⁽⁶⁾ then—

- (a) that person’s continuity of employment shall be treated as continuing throughout the stoppage (but see paragraph (2)) for the purposes of section 167ZZ9 of the 1992 Act; and
- (b) no such week shall count in the computation of their period of continuous employment (but see paragraph (3)).

(2) Where during the stoppage of work a person is dismissed from their employment, that person’s continuity of employment shall not be treated under paragraph (1) as continuing beyond the commencement of the day that person stopped work (but see paragraph (3)).

(3) Paragraph (1)(b) and paragraph (2) do not apply to a person who proves that at no time did they have a direct interest in the trade dispute in question.

Modification for periods of employment between 25 and 26 weeks

15.—(1) This regulation applies where a person has been in employed earner’s employment with the same employer in each of 26 consecutive weeks (but no more than 26 weeks), ending with the week immediately preceding the week of C’s death.

(2) For the purpose of determining whether that person’s employment amounts to a continuous period of at least 26 weeks (see section 167ZZ9 of the 1992 Act), the first of those 26 weeks is a period commencing on the first day of the person’s employment with the employer (“the start date”) and ending at midnight on—

- (a) the first Saturday after the start date; or
- (b) where the start date is a Saturday, that day.

Change of employer

16.—(1) Where a person’s employer changes, a person’s employment is to be treated for the purposes of section 167ZZ9 of the 1992 Act as continuous employment with the second employer in the following circumstances—

- (a) the employer’s trade or business or an undertaking (whether or not it is an undertaking established by or under Northern Ireland legislation or an Act of Parliament) is transferred from one person to another;

(4) Article 142 was amended by the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998 (S.I. 1998/1265 (N.I. 8)), Article 13(1) to (3) and (5).

(5) S.I. 1996/1921 (N.I. 18).

(6) S.I. 1995/2705 (N.I. 15).

- (b) a contract of employment between any body corporate and the person is modified by or under Northern Ireland legislation or an Act of Parliament, whether public or local and whenever passed and some other body corporate is substituted as that person's employer;
- (c) on the death of the employer, the person is taken into the employment of the personal representatives or trustees of the deceased;
- (d) the person is employed by partners, personal representatives or trustees and there is a change in the partners, or as the case may be, personal representatives or trustees;
- (e) the person is taken into the employment of an employer who is, at the time the person entered into the employer's employment, an associated employer of the person's previous employer; or
- (f) on the termination of the person's employment with an employer that person is taken into the employment of another employer and those employers are governors of a school maintained by a local education authority.

(2) In paragraph (1)(e) "associated employer" must be construed in accordance with Article 4 of the Employment Rights (Northern Ireland) Order 1996.

Reinstatement after service with the armed forces

17. Where a person—

- (a) is entitled to apply to their employer under the Reserve Forces (Safeguard of Employment) Act 1985(7); and
- (b) enters the employment of that employer within the six month period mentioned in section 1(4)(b) (obligation to reinstate) of that Act;

that person's previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in that six month period shall be treated as continuous for the purposes of section 167ZZ9 of the 1992 Act.

Treatment of two or more employers or two or more contracts of service as one

18.—(1) In a case where the earnings paid to a person in respect of two or more employments are aggregated and treated as a single payment of earnings under regulation 15(1) (aggregation of earnings paid in respect of different employed earner's employments by different persons) of the Social Security (Contributions) Regulations 2001, the employers of that person in respect of those employments shall be treated as one for the purposes of Part 12ZD of the 1992 Act (and these Regulations).

(2) Where two or more employers are treated as one under the provisions of paragraph (1), liability for statutory parental bereavement pay shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the person's normal weekly earnings from each employment bear to the amount of the aggregated normal weekly earnings over the relevant period as defined in regulation 19(4).

(3) Where two or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part 12ZD of the 1992 Act (and these Regulations) except where, by virtue of regulation 14 (aggregation of earnings paid in respect of separate employed earner's employments under the same employer) of the Social Security (Contributions) Regulations 2001, the earnings from those contracts of service are not aggregated for the purpose of earnings-related contributions.

Normal weekly earnings

19.—(1) For the purposes of section 167ZZ17(6) (which defines normal weekly earnings for the purposes of Part 12ZD of the 1992 Act) “earnings” and “relevant period” have the meanings given in this regulation.

(2) The expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a person’s employment except any amount which is—

- (a) excluded from the computation of a person’s earnings under regulation 25 (payments to be disregarded) of, and Schedule 3 to, the Social Security (Contributions) Regulations 2001 or regulation 27 (payments to directors to be disregarded)(**8**) of those Regulations (or would have been so excluded had they not been made under the age of 16); or
- (b) a chargeable emolument under section 10A (class 1B contributions) of the 1992 Act(**9**) except where, in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory parental bereavement pay (or where such a payment or amount would have been so excluded and in consequence the person would not have been entitled to statutory parental bereavement pay had they not been aged under the age of 16).

(3) The expression “earnings” includes—

- (a) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the 1992 Act(**10**);
- (b) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the Employment Rights (Northern Ireland) Order 1996;
- (c) any sum payable by way of pay in pursuance of an order made under the Employment Rights (Northern Ireland) Order 1996 for the continuation of a contract of employment;
- (d) any sum payable by way of remuneration in pursuance of a protective award under Article 217 of the Employment Rights (Northern Ireland) Order 1996(**11**);
- (e) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 147(6) of the 1992 Act(**12**);
- (f) any sum payable by way of statutory maternity pay;
- (g) any sum payable by way of statutory paternity pay;
- (h) any sum payable by way of statutory shared parental pay;
- (i) any sum payable by way of statutory adoption pay;
- (j) any sum payable by way of statutory parental bereavement pay.

(4) The relevant period is the period—

- (a) ending on the last normal pay day to fall before the appropriate date; and
- (b) beginning with the day following the last normal pay day to fall at least eight weeks earlier than the normal pay day mentioned in sub-paragraph (a).

(**8**) Schedule 3 was amended by S.I. 2001/2412, 2001/3629, 2002/307, 2002/2924, 2003/1059, 2003/2085, 2003/2340, 2003/2985, 2004/173, 2004/770, 2004/2096, 2005/728, 2005/778, 2005/2422, 2005/3130, 2006/576, 2006/883, 2006/2003, 2006/2829, 2007/2091, 2007/2401, 2007/2905, 2008/607, 2008/1431, 2008/2624, 2009/600, 2010/188, 2011/225, 2011/797, 2011/1000, 2011/2700, 2012/817, 2013/622, 2013/1142, 2013/1907, 2014/608, 2014/3159, 2014/3228, 2015/478, 2015/543, 2016/352, 2016/647, 2016/1067, 2017/307, 2017/373, 2018/120; regulation 27 was amended by S.I. 2004/770, 2005/3130.

(**9**) Section 10A was inserted by the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), Article 50.

(**10**) Section 4B was inserted by the National Insurance Contributions Act 2006 (c. 10), section 2(1).

(**11**) S.I. 1996/1919 (N.I. 16); Article 217(1) was substituted by, Article 217(1A) and (1B) was inserted by and paragraph (4) was amended by S.R. 1999 No. 432, and further amended by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), Sch. 2 para. 39.

(**12**) Section 147(6) was amended by paragraph 10 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I.1999/671).

(5) In a case where a person has no identifiable normal pay day, paragraph (4) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.

(6) In a case where a person has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) that person’s normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(7) In a case to which paragraph (6) does not apply and the relevant period is not an exact number of weeks, the person’s normal weekly earnings shall be calculated by dividing their earnings in the relevant period by the number of days in the relevant period and multiplying the result by seven.

(8) In any case where a person receives a back-dated pay increase which includes a sum in respect of a relevant period, normal weekly earnings shall be calculated as if such a sum was paid in that relevant period even though received after that period.

(9) In paragraphs (4) to (6)—

- (a) “the appropriate date” means the first day of the week in which C dies;
- (b) “day of payment” means a day on which a person is paid;
- (c) “normal pay day” means a day on which the terms of a person’s contract of service require the person to be paid, or the practice in that person’s employment is for that person to be paid if any payment is due to them.