

*These notes refer to the Work and Families Act (Northern Ireland)
2015 (c.1) which received Royal Assent on 8th January 2015*

Work and Families Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Time Off Work: Ante-Natal Care, Adoption Appointments

Section 15: Time off work to accompany to ante-natal appointments

Section 15 amends the ERO to make provision to allow employees to take time off work to attend ante-natal appointments.

Subsection (2) inserts new *Articles 85ZE to 85ZI* in the ERO.

Subsection (3) amends Article 21 of the ERO to provide that the calculation date to be used for determining a week's pay for an employee is the date of the appointment in question.

Subsection (4) amends Article 70C of the ERO to give an employee a right not to be subjected to a detriment as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment. (A similar right for an agency worker not to be subjected to a detriment is created in *section 18*.)

Subsection (5) amends Article 131 of the ERO to give an employee a right not to be unfairly dismissed, as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment.

Article 85ZE: Right to time off to accompany to ante-natal appointment

Article 85ZE(1) creates a right for an employee who has a qualifying relationship with a pregnant woman or her expected child to take time off during working hours to accompany her to an ante-natal appointment which, in accordance with *paragraph (4)*, must be made on the advice of a designated healthcare professional. *Paragraphs (7) to (10)* define a qualifying relationship so that the right is available to the woman's husband, civil partner or partner; the father or parent of the pregnant woman's expected child; and an intended parent in a surrogacy situation who meets specified conditions.

In accordance with *paragraphs (2) and (3)*, the right to take time off can be exercised on up to two occasions for a maximum of six and a half hours on

each occasion. *Paragraph (5)* provides that an employee is not entitled to take time off unless he or she gives the employer (upon request) a declaration in the form specified in *paragraph (6)*. *Paragraph (6)* provides that the declaration must set out the employee's relationship to the woman and expected child, the purpose in taking time off, the fact that the appointment is made on the advice of a designated healthcare professional, and the date and time of the appointment.

Article 85ZF: Complaint to industrial tribunal

Article 85ZF(1) provides that an employee who is unreasonably refused time off by an employer may present a complaint to an industrial tribunal. The complaint must be made within the designated time limit in *paragraph (2)* (usually three months). If the complaint is substantiated the tribunal, per *paragraph (3)*, must make an order to this effect and must award compensation calculated in accordance with *paragraphs (4) to (7)* of twice the hourly pay of the employee for the period of absence.

Article 85ZG: Right to time off to accompany to ante-natal appointments: agency workers

Article 85ZG(1) creates a right for an agency worker who has a qualifying relationship with a pregnant woman or her expected child to take time off during working hours to accompany her to an ante-natal appointment which, in accordance with *paragraph (4)*, must be made on the advice of a designated healthcare professional. *Paragraphs (7) to (10)* define a qualifying relationship so that the right is available to the woman's husband, civil partner or partner; the father or parent of the pregnant woman's expected child; and an intended parent in a surrogacy situation who meets specified conditions.

In accordance with *paragraphs (2) and (3)*, the right to take time off can be exercised on up to two occasions for a maximum of six and a half hours on each occasion. *Paragraph (5)* provides that an agency worker is not entitled to take time off unless he or she gives the temporary work agency or the hirer (upon request) a declaration in the form specified in *paragraph (6)*. *Paragraph (6)* provides that the declaration must set out the agency worker's relationship to the woman and expected child, the purpose in taking time off, the fact that the appointment is made on the advice of a designated healthcare professional, and the date and time of the appointment.

Article 85ZH: Complaint to industrial tribunal: agency workers

Article 85ZH(1) provides that an agency worker who is unreasonably refused time off by a temporary work agency may present a complaint to an industrial tribunal; *paragraph (2)* provides the same right where the unreasonable refusal is by the hirer. The complaint must be made within the designated time limit in *paragraph (3)* (usually three months). If the complaint is substantiated the tribunal, per *paragraph (4)*, must make an order to this effect and must award compensation calculated in accordance with *paragraphs (6) to (9)* of twice the hourly pay of the agency worker for the period of absence. In ordering such a

payment, the tribunal under *paragraph (5)* will determine the proportion to be paid, respectively, by the temporary work agency and the hirer in accordance with its assessment of the culpability of each for the infringement.

Article 85ZI: Agency workers: supplementary

Article 85ZI sets out which agency workers have the right to time off under *Article 85ZG*.

Section 16: Time off work for ante-natal care: increased amount of award

Section 16 increases the amount of compensation that an industrial tribunal will order where it finds that a pregnant employee or agency worker has unreasonably been refused time off work to attend an ante-natal appointment. The amount is increased from the hourly pay of the employee or agency worker to twice that amount.

Subsection (2) amends Article 85 of the ERO to this effect in respect of employees and *subsection (3)* amends Article 85ZC in respect of agency workers.

Section 17: Time off work to attend adoption appointments

Section 17 amends the ERO, making provision for employed single adopters, or employed adoptive couples, to take time off to attend appointments relating to the placement of a child for adoption (including FFA arrangements). The purpose of the appointments is to enable the adopter(s) to bond with the child and to meet with professionals involved in the care of the child, thus increasing the chances of the adoption being successful.

Subsection (2) inserts new *Articles 85ZJ to 85ZS* into the ERO.

Subsection (3) amends Article 21 of the ERO to provide that the calculation date to be used for determining a week's pay for an employee is the date of the appointment in question.

Subsection (4) amends Article 70C of the ERO to give an employee a right not to be subjected to a detriment as a result of exercising or proposing to exercise a right to time off work to attend adoption appointments. (A similar right for an agency worker not to be subjected to a detriment is created in *section 18*.)

Subsection (5) amends Article 112B of the ERO so that provision may be made that will exclude a person who has exercised the right to paid time off to attend adoption appointments from simultaneously availing of the right to paternity leave.

Subsection (6) amends Article 131 of the ERO to give an employee a right not to be unfairly dismissed, as a result of exercising or proposing to exercise a right to time off to attend adoption appointments.

Article 85ZJ: Right to paid time off to attend adoption appointments

Article 85ZJ creates a new right for employees to take paid time off work to attend adoption appointments.

Paragraph (1) creates a right for an employed single adopter who has been notified by an adoption agency that a child is, or is expected to be, placed for adoption with him or her, to take time off to attend an appointment for the purpose of having contact with the child or for any other purpose connected with the adoption (an “adoption appointment”).

Paragraph (2) creates a right for an employee who has been notified by an adoption agency that a child is to be or is expected to be placed for adoption with the employee and another person to take time off to attend an adoption appointment provided he or she has elected to exercise the right to take time off under this paragraph.

Paragraph (3) provides that the employee cannot elect to take time off under *paragraph (2)* if he or she has already elected to take time off under *Article 85ZL(1)(b)* (unpaid time off), or if the other adopter, being an employee or an agency worker, has already elected to take time off under *paragraph (2)(b)* or *Article 85ZN(2)(b)*.

Paragraph (4) provides that an employee is not entitled to take time off to attend adoption appointments on or after the date of the child’s placement for adoption with the employee.

Paragraph (5) limits the number of adoption appointments that may be taken to no more than five for any particular adoption. *Paragraph (6)* limits the maximum amount of time off for each adoption appointment to six and a half hours.

Paragraph (7) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.

Paragraph (8) provides that a single adopter is not entitled to take time off under *paragraph (1)* unless he or she provides to his or her employer (upon request) a document showing the date and time of the adoption appointment in question and that it has been arranged by an adoption agency.

Paragraph (9) similarly provides that an employee adopting with another person is not entitled to take time off under *paragraph (2)* unless he or she provides to his or her employer (upon request) a document that shows the date and time of the adoption appointment and a signed declaration indicating the election to take time off under *paragraph (2)(b)*.

Paragraph (10) provides that the document that shows the date and time of the appointment or the declaration relating to the election under *paragraph (8)* or *(9)* can be in electronic form.

Paragraph (11) makes provision to modify the operation of *Article 85ZJ* where more than one child is, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter). Where the adoption appointments relate to the adoption of more than one child, the effect is that the election under *paragraph (2)(b)* relates to all the children; the maximum number of adoption appointments remains five in total; and the date after which no adoption appointments can be taken is the placement date of the first child.

Article 85ZK: Right to remuneration for time off under Article 85ZJ

Paragraph (1) makes provision for an employee entitled to attend adoption appointments under *Article 85ZJ* to be paid remuneration by his or her employer for the number of working hours for which he or she is entitled to be absent at the appropriate hourly rate, calculated in accordance with *paragraphs (2) to (4)*.

Paragraph (5) provides that any amount of remuneration for time off under *paragraph (1)* does not affect any right to contractual remuneration. However, *paragraphs (6) and (7)* provide that any contractual remuneration will contribute towards discharging any liability of that employer to pay remuneration under *paragraph (1)*, and vice versa.

Article 85ZL: Right to unpaid time off to attend adoption appointments

Paragraph (1) creates a right for an employed adopter who has been notified by an adoption agency that a child is, or is expected to be, placed for adoption with him or her and another person, to take time off to attend an adoption appointment, provided he or she has elected to take time off under *paragraph (1)(b)*.

Paragraph (2) provides that an employee may not elect to take time off under *paragraph (1)* if he or she has already elected to take paid time off under *Article 85ZJ*, or if the other adopter has already elected to take unpaid time off under *paragraph (1)(b)* or under *Article 85ZP(1)(b)*.

Paragraph (3) provides that an employee is not entitled to take time off to attend adoption appointments on or after the date of the child's placement for adoption with the employee.

Paragraphs (4) and (5) limit the number of adoption appointments that may be taken to two appointments and specify that the maximum time off during working hours for these appointments is six and a half hours per appointment.

Paragraph (6) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.

Paragraph (7) provides that an employee is not entitled to take time off under unless he or she provides to the employer (upon request) a document showing the date and time of the adoption appointment in question and that it has been

arranged by an adoption agency, and a signed declaration that he or she has made an election for the purposes of *paragraph (1)(b)*. Per *paragraph (8)*, the declaration or document may be in electronic form.

Paragraph (9) makes provision to modify the operation of *Article 85ZL* where more than one child is, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter). Where the adoption appointments relate to the adoption of more than one child, the effect is that the election under *paragraph (1)(b)* relates to all the children; the maximum number of adoption appointments remains two in total; and the date after which no adoption appointments can be taken is the placement date of the first child.

Article 85ZM: Complaint to industrial tribunal

Paragraph (1) provides that an employee may complain to an industrial tribunal if the employer has unreasonably refused time off under *Article 85ZJ or 85ZL* to attend an adoption appointment or has failed to pay amounts due under *Article 85ZK*. The complaint must be made within the time limit designated in *paragraph (2)*, normally three months.

If the complaint is substantiated the tribunal, per *paragraph (3)*, must make a declaration accordingly. If time off has been refused, it must also order the employer to pay the employee twice the amount to which he or she would have been entitled, per *paragraphs (4), (6) and (7)*. If there has been a failure on the part of the employer to pay all or part of the amount due in respect of time off, the tribunal under *paragraph (5)* must order the employer to pay the due amount to the employee.

Article 85ZN: Right to paid time off to attend adoption appointments: agency workers

Article 85ZN creates a new right for agency workers to take paid time off work to attend adoption appointments.

Paragraph (1) creates a right for an employed single adopter who has been notified by an adoption agency that a child is, or is expected to be, placed for adoption with him or her, to take time off to attend an adoption appointment.

Paragraph (2) creates a right for an agency worker who has been notified by an adoption agency that a child is to be or is expected to be placed for adoption with the agency worker and another person, to take time off to attend an adoption appointment, provided he or she has elected to exercise the right to take time off under this paragraph.

Paragraph (3) provides that the agency worker cannot elect to take time off under *paragraph (2)* if he or she has already elected to take time off under *Article 85ZP(1)(b)* (unpaid time off), or if the other adopter, being an agency worker or an employee, has already elected to take time off under *paragraph (2)(b)* or *Article 85ZJ(2)(b)*.

Paragraph (4) provides that an agency worker is not entitled to take time off to attend adoption appointments on or after the date of the child's placement for adoption with the agency worker.

Paragraph (5) limits the number of adoption appointments that may be taken to no more than five for any particular adoption. *Paragraph (6)* limits the maximum amount of time off during working hours for each adoption appointment to six and a half hours.

Paragraph (7) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.

Paragraph (8) provides that a single adopter is not entitled to take time off under *paragraph (1)* unless he or she provides to the temporary work agency or the hirer (upon request) a document showing the date and time of the adoption appointment in question and that it has been arranged by an adoption agency.

Paragraph (9) similarly provides that an agency worker adopting with another person is not entitled to take time off under *paragraph (2)* unless he or she provides to the temporary work agency or hirer (upon request) a document that shows the date and time of the adoption appointment and a signed declaration stating the election to take time off under *paragraph (2)(b)*.

Paragraph (10) provides that the document that shows the date and time of the appointment or the declaration relating to the election under *paragraphs (8)* or *(9)* can be given in electronic form.

Paragraph (11) makes provision to modify the operation of *Article 85ZN* where more than one child is, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter). Where the adoption appointments relate to the adoption of more than one child, the effect is that the election under *paragraph (2)(b)* relates to all the children; the maximum number of adoption appointments remains five in total; and the date after which no adoption appointments can be taken is the placement date of the first child.

Article 85ZO: Right to remuneration for time off under Article 85ZN

Paragraph (1) makes provision for an agency worker entitled to attend adoption appointments under *Article 85ZN* to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate, calculated in accordance with *paragraphs (2)* and *(3)*.

Paragraph (4) provides that any amount of remuneration for time off under *paragraph (1)* does not affect any right to contractual remuneration. However, *paragraphs (5)* and *(6)* provide that any contractual remuneration will contribute towards discharging any liability of the temporary work agency to pay remuneration under *paragraph (1)*, and vice versa.

Article 85ZP: Right to unpaid time off to attend adoption appointments: agency workers

Paragraph (1) creates a right for an employed adopter who has been notified by an adoption agency that a child is, or is expected to be, placed for adoption with him or her and another person, to take time off to attend an adoption appointment, provided he or she has elected to take time off under *paragraph (1)(b)*.

Paragraph (2) provides that an employee may not elect to take time off under *paragraph (1)* if he or she has already elected to take paid time off under *Article 85ZN*, or if the other adopter has already elected to take unpaid time off under *paragraph (1)(b)* or under *Article 85ZL(1)(b)*.

Paragraph (3) provides that an agency worker is not entitled to take time off to attend adoption appointments on or after the date of the child's placement for adoption with the employee.

Paragraphs (4) and (5) limit the number of adoption appointments that may be taken to two and specify that the maximum time off during working hours for these appointments is six and a half hours per appointment.

Paragraph (6) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.

Paragraph (7) provides that an employee is not entitled to take time off unless he or she provides to the temporary work agency or hirer (upon request) a document showing the date and time of the adoption appointment in question and that it has been arranged by an adoption agency, and a signed declaration that he or she has made an election for the purposes of *paragraph (1)(b)*. Per *paragraph (8)*, the declaration or document may be in electronic form.

Paragraph (9) makes provision to modify the operation of *Article 85ZP* where more than one child is, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter). Where the adoption appointments relate to the adoption of more than one child, the effect is that the election under *paragraph (1)(b)* relates to all the children; the maximum number of adoption appointments remains two in total; and the date after which no adoption appointments can be taken is the placement date of the first child.

Article 85ZQ: Complaint to industrial tribunal: agency workers

Paragraph (1) provides that an agency worker may complain to an industrial tribunal if the temporary work agency has unreasonably refused time off under *Article 85ZN* or *85ZP* to attend an adoption appointment or has failed to pay amounts due under *Article 85ZO*. *Paragraph (2)* provides that an agency worker may also make a complaint that the hirer has unreasonably refused to let him or

her take time off. The complaint must be made within the time limit designated in *paragraph (3)*, normally three months.

If the complaint is substantiated the tribunal, per *paragraph (4)*, must make a declaration accordingly. If time off has been refused, the tribunal must also order the temporary work agency or the hirer to pay the agency worker twice the amount to which he or she would have been entitled, per *paragraphs (5), (7) and (8)*. If there has been a failure on the part of the temporary work agency to pay all or part of the amount due in respect of time off, the tribunal under *paragraph (5)* must order the temporary work agency to pay the due amount to the agency worker. In ordering a payment under *paragraph (5) or (7)*, the tribunal under *paragraph (9)* will determine the proportion to be paid, respectively, by the temporary work agency and the hirer in accordance with its assessment of the culpability of each for the infringement.

Article 85ZR: Agency workers: supplementary

Paragraph (1) provides that the rights to paid and unpaid time off, and the right to present a complaint to a tribunal, do not apply if the agency worker has not completed the qualifying period or if there is a break between assignments. *Paragraph (2)* makes clear that the rights to paid and unpaid time off do not impose any duty on the hirer or temporary work agency which extends beyond the original intended duration of the assignment. *Paragraph (3)* makes clear that if a person is entitled to take paid or unpaid time off as an employee, then they are excluded from taking paid time or unpaid time off as an agency worker.

Article 85ZS: Entitlement: prospective adopters with whom looked after children are placed

Article 85ZS, at *paragraph (4)*, provides for *Articles 85ZJ, 85ZL, 85ZN and 85ZP* to apply to employees and agency workers who are expecting to have a child placed with them under a FFA arrangement.

In accordance with *paragraphs (1) to (3)*, such an arrangement is one where a child is placed by a competent authority (a Health and Social Care Trust) with an approved foster parent who is also an approved prospective adopter, where a decision is pending or has already been taken that adoption is in the child's best interests. In accordance with *paragraph (3)(b)*, regulations may specify that certain conditions must also be satisfied, thereby allowing the regulations to set a specific point at which entitlement will be triggered.

Paragraph (5) provides that where entitlement has been exercised under this Article, then entitlement cannot subsequently be exercised under *Articles 85ZJ, 85ZL, 85ZN or 85ZP*.

Paragraph (6) enables the Department, by order subject to the draft affirmative resolution Assembly procedure, to amend certain definitions deriving from other legislation if changes are made to the definitions in that legislation.

Section 18: Right not to be subjected to detriment: agency workers

Section 18 amends the ERO to provide that agency workers may not be subjected to detriment as a result of exercising the right to take time off work for ante-natal appointments or adoption appointments.

Subsection (2) amends Article 70C of the ERO to give agency workers a right not to be subjected to a detriment by the *temporary* work agency or hirer on certain grounds. The grounds are that the agency worker took or sought to take time off for an ante-natal appointment; as a pregnant woman, received or sought to receive remuneration in respect of such time off; took or sought to take time off for an adoption appointment; or, as a primary adopter, received or sought to receive remuneration in respect of such time off.

Subsection (3) amends Article 71 of the ERO to allow an agency worker who has been subjected to such a detriment to present a complaint to an industrial tribunal. It is for the temporary work agency or the hirer to show the ground on which any act or deliberate failure to act was done.

Subsection (4) amends Article 72 of the ERO to provide that if such a complaint is well-founded, the tribunal will make a declaration to that effect and may award compensation to be paid to the agency worker by the temporary work agency, the hirer, or both.