



2015 CHAPTER 1

PART 1

DEFINED EXPRESSIONS IN THIS ACT

**Defined expressions in this Act**

1. In this Act—

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996,

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

PART 2

SHARED RIGHTS TO LEAVE AND PAY

*Shared parental leave*

**Shared parental leave**

2.—(1) The Employment Rights Order is amended as follows.

(2) In Part 9, after Article 107D insert—

“CHAPTER 1B  
SHARED PARENTAL LEAVE

**Entitlement to shared parental leave: birth**

**107E.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to being, or expecting to be, the mother of a child,
- (c) as to caring or intending to care, with another person (“P”), for the child,
- (d) as to entitlement to maternity leave,
- (e) as to the exercise of that entitlement and the extent of any such exercise,
- (f) as to giving notice of an intention to exercise an entitlement to leave under this paragraph, and
- (g) as to the consent of P to the amount of leave under this paragraph that the employee intends to take,

to be absent from work on leave under this paragraph for the purpose of caring for the child.

(2) Regulations under paragraph (1) may provide that the employee’s entitlement is subject to the satisfaction by P of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child, and
- (d) as to relationship with the child or the employee.

(3) Provision under paragraph (1)(f) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under paragraph (4) or to statutory shared parental pay),
- (b) how much of the entitlement to leave the employee intends to exercise,
- (c) the extent to which P intends to exercise an entitlement to leave under paragraph (4) or to statutory shared parental pay.

(4) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,

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- (b) as to relationship with a child or expected child or with the child's mother,
- (c) as to caring or intending to care, with the child's mother, for the child,
- (d) as to giving notice of an intention to exercise an entitlement to leave under this paragraph, and
- (e) as to the consent of the child's mother to the amount of leave under this paragraph that the employee intends to take,

to be absent from work on leave under this paragraph for the purpose of caring for the child.

(5) Regulations under paragraph (4) may provide that the employee's entitlement is subject to the satisfaction by the child's mother of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child,
- (d) as to entitlement (or lack of entitlement) to maternity leave, statutory maternity pay or maternity allowance, and
- (e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under paragraph (4)(d) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of the child's mother to exercise an entitlement to leave under paragraph (1) or to statutory shared parental pay),
- (b) how much of the entitlement to leave the employee intends to exercise,
- (c) the extent to which the child's mother intends to exercise an entitlement to leave under paragraph (1) or to statutory shared parental pay.

(7) In this Article and Articles 107F to 107K and 107M, "specified" means specified for the time being in regulations made under the Article concerned.

#### **Entitlement to leave under Article 107E: further provision**

**107F.**—(1) Regulations under Article 107E are to include provision for determining—

- (a) the amount of leave under Article 107E(1) or (4) to which an employee is entitled in respect of a child,

- (b) when leave under Article 107E(1) or (4) may be taken.
- (2) Provision under paragraph (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—
  - (a) in a case where the child’s mother became entitled to maternity leave, the relevant amount of time reduced by—
    - (i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of Article 103(3)(ba) or 105(3)(a), the amount of maternity leave taken by the child’s mother, or
    - (ii) except where sub-paragraph (a)(i) applies, the amount of time between the beginning of her maternity leave and the time when her ordinary or additional maternity leave period, as curtailed by virtue of Article 103(3)(ba) or 105(3)(a), comes to an end,
  - (b) in a case where the child’s mother became entitled to statutory maternity pay or maternity allowance but not maternity leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 167ZV(2) of the Contributions and Benefits Act 1992.
- (3) In paragraph (2) “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under Article 107E.
- (4) Provision under paragraph (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—
  - (a) in a case where another person is entitled to leave under Article 107E in respect of the child, the amount of such leave taken by the other person,
  - (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under Article 107E, the number of weeks in respect of which such pay is payable to the other person.
- (5) In reckoning for the purposes of paragraph (2) the amount of maternity leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of paragraph (4) the amount of leave under Article 107E taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under paragraph (1)(b) is to secure that leave under Article 107E must be taken before the end of such period as may be specified.
- (8) Regulations under Article 107E are to provide for the taking of leave under that Article in a single period or in non-consecutive periods.
- (9) Regulations under that Article may—

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- (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under that Article to take that amount of leave as a single period of leave,
  - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under Article 107E may provide for the variation, subject to such restrictions as may be specified, of—
- (a) the period or periods during which an amount of leave under Article 107E may be taken,
  - (b) the amount of leave under Article 107E that the employee previously specified in accordance with provision by virtue of—
    - (i) Article 107E(3)(b) or (6)(b), or
    - (ii) paragraph (13)(b).
- (11) Provision under paragraph (10)(a) may provide for variation to be subject to the consent of an employer in specified circumstances.
- (12) Provision under paragraph (10)(b) may require an employee to satisfy specified conditions—
- (a) as to giving notice of an intention to vary the amount of leave under Article 107E to be taken by the employee,
  - (b) if the employee proposes to vary the amount of leave under Article 107E(1) to be taken by the employee, as to the consent of P to that variation,
  - (c) if the employee proposes to vary the amount of leave under Article 107E(4) to be taken by the employee, as to the consent of the child's mother to that variation.
- (13) Provision under paragraph (12)(a) may require an employee to give notice to the employer about—
- (a) the extent to which the employee has exercised an entitlement to leave under Article 107E(1) or (4) in respect of the child,
  - (b) how much of the entitlement to leave the employee intends to exercise,
  - (c) the extent to which a person other than the employee has exercised an entitlement to leave under Article 107E or to statutory shared parental pay in respect of the child,
  - (d) the extent to which a person other than the employee intends to exercise such an entitlement.

- (14) Regulations under Article 107E may—
- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child,
  - (b) make provision excluding the right to be absent on leave under Article 107E in respect of a child where more than one child is born as a result of the same pregnancy,
  - (c) specify a minimum amount of leave under Article 107E which may be taken,
  - (d) make provision about how leave under Article 107E may be taken,
  - (e) specify circumstances in which an employee may work for the employer during a period of leave under Article 107E without bringing the particular period of leave, or the employee's entitlement to leave under Article 107E, to an end,
  - (f) specify circumstances in which an employee may be absent on leave under Article 107E otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under Article 107E to an end.
- (15) In this Article, “week” means any period of seven days.
- (16) The Department may by regulations provide that the following do not have effect, or have effect with specified modifications, in a case where the mother of a child dies before another person has become entitled to leave under Article 107E in respect of the child—
- (a) Article 107E(4)(b), (c) and (e),
  - (b) Article 107E(5),
  - (c) Article 107E(6)(c),
  - (d) paragraph (12)(c),
  - (e) paragraph (13)(c) and (d).

### **Entitlement to shared parental leave: adoption**

**107G.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom,
- (c) as to caring or intending to care, with another person (“P”), for the child,
- (d) as to entitlement to adoption leave,

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- (e) as to the exercise of that entitlement and the extent of any such exercise,
- (f) as to giving notice of an intention to exercise an entitlement to leave under this paragraph, and
- (g) as to the consent of P to the amount of leave under this paragraph that the employee intends to take,

to be absent from work on leave under this paragraph for the purpose of caring for the child.

(2) Regulations under paragraph (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child, and
- (d) as to relationship with the child or the employee.

(3) Provision under paragraph (1)(f) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under paragraph (4) or to statutory shared parental pay),
- (b) how much of the entitlement to leave the employee intends to exercise,
- (c) the extent to which P intends to exercise an entitlement to leave under paragraph (4) or to statutory shared parental pay.

(4) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom or with a person ("A") with whom the child is, or is expected to be, so placed,
- (c) as to caring or intending to care, with A, for the child,
- (d) as to giving notice of an intention to exercise an entitlement to leave under this paragraph, and
- (e) as to the consent of A to the amount of leave under this paragraph that the employee intends to take,

to be absent from work on leave under this paragraph for the purpose of caring for the child.

(5) Regulations under paragraph (4) may provide that the employee's entitlement is subject to the satisfaction by A of specified conditions—

- (a) as to employment or self-employment,
- (b) as to having earnings of a specified amount for a specified period,
- (c) as to caring or intending to care, with the employee, for the child,
- (d) as to entitlement (or lack of entitlement) to adoption leave or statutory adoption pay, and
- (e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under paragraph (4)(d) may require the employee to give notice to the employer about—

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of A to exercise an entitlement to leave under paragraph (1) or to statutory shared parental pay),
- (b) how much of the entitlement to leave the employee intends to exercise,
- (c) the extent to which A intends to exercise an entitlement to leave under paragraph (1) or to statutory shared parental pay.

**Entitlement to shared parental leave: prospective adopters with whom looked after children are placed**

**107H.**—(1) Regulations made under Article 107G(1) and (4) are to include provision for leave in respect of a child who is looked after by an authority and who is to be, or is expected to be, placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.

(2) The circumstances are that—

- (a) the authority—
  - (i) is considering adoption for the child, or
  - (ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and
- (b) such conditions as may be specified are satisfied.

(3) Regulations made under Article 107G(1) and (4) are to provide for Articles 107G and 107I to have effect, in relation to provision made by virtue of paragraph (1), as if references to a child being placed for adoption under



the law of any part of the United Kingdom were such references as may be specified.

(4) In this Article, “approved foster parent”, “approved prospective adopter”, “authority” and “child who is looked after by an authority” have the same meaning as in Article 107AB.

### **Regulations under Article 107G: further provision**

**107I.**—(1) Regulations under Article 107G are to include provision for determining—

- (a) the amount of leave under Article 107G(1) or (4) to which an employee is entitled in respect of a child,
- (b) when leave under Article 107G(1) or (4) may be taken.

(2) Provision under paragraph (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed—

- (a) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to adoption leave, the relevant amount of time reduced by—
  - (i) where the person’s adoption leave ends without the person’s ordinary or additional adoption leave period having been curtailed by virtue of Article 107A(2A)(a) or 107B(3)(a), the amount of adoption leave taken by that person, or
  - (ii) except where sub-paragraph (a)(i) applies, the amount of time between the beginning of the person’s adoption leave and the time when the person’s ordinary or additional adoption leave period, as curtailed by virtue of Article 107A(2A)(a) or 107(3)(a), comes to an end,

- (b) in a case where a person with whom the child is, or is expected to be, placed for adoption became entitled to statutory adoption pay but not adoption leave, the relevant amount of time reduced by an amount determined in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 167ZX(2) of the Contributions and Benefits Act 1992.

(3) In paragraph (2) “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under Article 107G.

(4) Provision under paragraph (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account—

- (a) in a case where another person is entitled to leave under Article 107G in respect of the child, the amount of such leave taken by the other person,

- (b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under Article 107G, the number of weeks in respect of which such pay is payable to the other person.
- (5) In reckoning for the purposes of paragraph (2) the amount of adoption leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of paragraph (4) the amount of leave under Article 107G taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under paragraph (1)(b) is to secure that leave under Article 107G must be taken before the end of such period as may be specified.
- (8) Regulations under Article 107G are to provide for the taking of leave under that Article in a single period or in non-consecutive periods.
- (9) Regulations under Article 107G may—
  - (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under Article 107G to take that amount of leave as a single period of leave, and
  - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under Article 107G may provide for the variation, subject to such restrictions as may be specified, of—
  - (a) the period or periods during which an amount of leave under Article 107G is to be taken,
  - (b) the amount of leave under Article 107G that the employee previously specified in accordance with provision by virtue of—
    - (i) Article 107G(3)(b) or (6)(b), or
    - (ii) paragraph (13)(b).
- (11) Provision under paragraph (10)(a) may provide for variation to be subject to the consent of an employer in specified circumstances.
- (12) Provision under paragraph (10)(b) may require an employee to satisfy specified conditions—
  - (a) as to giving notice of an intention to vary the amount of leave under Article 107G to be taken by the employee,
  - (b) if the employee proposes to vary the amount of leave under Article 107G(1) to be taken by the employee, as to the consent of P to that variation,

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- (c) if the employee proposes to vary the amount of leave under Article 107G(4) to be taken by the employee, as to the consent of A to that variation.

(13) Provision under paragraph (12)(a) may require an employee to give notice to the employer about—

- (a) the extent to which the employee has exercised an entitlement to leave under Article 107G(1) or (4) in respect of the child,
- (b) how much of the entitlement to leave the employee intends to exercise,
- (c) the extent to which a person other than the employee has exercised an entitlement to leave under Article 107G or to statutory shared parental pay in respect of the child,
- (d) the extent to which a person other than the employee intends to exercise such an entitlement.

(14) Regulations under Article 107G may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child,
- (b) make provision excluding the right to be absent on leave under Article 107G in respect of a child where more than one child is placed for adoption as part of the same arrangement,
- (c) specify a minimum amount of leave under Article 107G which may be taken,
- (d) make provision about how leave under Article 107G may be taken,
- (e) specify circumstances in which an employee may work for the employer during a period of leave under Article 107G without bringing the particular period of leave, or the employee's entitlement to leave under that Article, to an end,
- (f) specify circumstances in which an employee may be absent on leave under Article 107G otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under that Article to an end.

(15) In this Article, “week” means any period of seven days.

(16) The Department may by regulations provide that the following do not have effect, or have effect with specified modifications, in a case where a person who is taking adoption leave or is entitled to be paid statutory adoption pay in respect of a child dies before another person has become entitled to leave under Article 107G in respect of the child—

- (a) Article 107G(4)(b), (c) and (e),
- (b) Article 107G(5),

- (c) Article 107G(6)(c),
- (d) paragraph (12)(c),
- (e) paragraph (13)(c) and (d).

### **Power to apply Articles 107G and 107I to other cases**

**107J.**—(1) The Department may by regulations provide for Articles 107G and 107I to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as may be specified.

(2) The Department may by regulations provide for Articles 107G and 107I to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as may be specified.

(3) Where Articles 107G and 107I have effect in relation to such cases as are described in paragraph (2), regulations under Article 107G about evidence to be produced may require statutory declarations as to—

- (a) eligibility to apply for a parental order,
- (b) intention to apply for such an order.

### **Rights during and after shared parental leave**

**107K.**—(1) Regulations under Article 107E or 107G are to 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 if the employee had not been absent,
  - (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 Article 107E(1) or (4) or 107G(1) or (4), as the case may be, and
  - (c) that an employee who is absent on leave under that Article is entitled to return from leave to a job of a kind that may be specified, subject to Article 107L(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 employee’s 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 107E or 107G includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under one of those Articles and partly to any one or more of the following—

- (a) leave under the other of those Articles,
- (b) maternity leave,
- (c) paternity leave,
- (d) adoption leave, and
- (e) parental leave.

(4) Regulations under Article 107E or 107G may specify matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(5) Regulations under Article 107E or 107G 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.

### **Redundancy and dismissal**

**107L.**—(1) Regulations under Article 107E or 107G 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 made 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).

### **Chapter 1B: supplemental**

**107M.**—(1) Regulations under Article 107E or 107G may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by—
  - (i) employees,
  - (ii) employers, and
  - (iii) relevant persons,
- (b) make provision requiring such persons 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 sub-paragraph (a),
  - (e) make special provision for cases where an employee has a right which corresponds to a right under Article 107E or 107G and which arises under the employee'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 107E or 107G,
  - (g) make provision applying, modifying or excluding any 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 107E or 107G.
- (2) For the purposes of paragraph (1), "relevant person" means—
- (a) a person who, in connection with an employee's claim to be entitled to leave under Article 107E or 107G, is required to satisfy conditions specified in provision under Article 107E(2) or (5) or 107G(2) or (5), or
  - (b) a person who is an employer or former employer of such a person.
- (3) In paragraph (2)(b) "employer", in relation to a person falling within paragraph (2)(a) who is an employed earner, includes a person who is a secondary contributor as regards that employed earner.
- (4) The conditions as to employment or self-employment that may be specified in provision under Article 107E(2) or (5) or 107G(2) or (5) include conditions as to being in employed or self-employed earner's employment.
- (5) In paragraphs (3) and (4)—
- "employed earner" and "self-employed earner" have the meaning given by section 2 of the Contributions and Benefits Act 1992, subject for these purposes to the effect of regulations made under section 2(2)(b) of that Act (persons who are to be treated as employed or self-employed earners),
- "employment", in the case of employment as an employed or self-employed earner, has the meaning given by section 121 of that Act,
- "secondary contributor", as regards an employed earner, means a person who—
- (a) is indicated by section 7(1) of that Act, as that subsection has effect subject to section 7(2) of that Act, as being a secondary contributor as regards the earner, or

(b) is indicated by regulations under section 7(2) of that Act as being a person to be treated as a secondary contributor as regards the earner”

(3) In Article 251 (orders and regulations), in paragraph (1A) (regulations to which confirmatory procedure applies), after “107B,” insert “107E, 107F(16), 107G, 107I(16), 107J(1) or (2),”.

### **Exclusion or curtailment of other statutory rights to leave**

3.—(1) The Employment Rights Order is amended as follows.

(2) In Article 103 (ordinary maternity leave)—

(a) in paragraph (3), after sub-paragraph (b) insert—

“(ba) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;

(bb) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”

(b) after that paragraph insert—

“(3A) Provision under paragraph (3)(ba) is to secure that an employee may bring forward the date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107E or statutory shared parental pay in respect of the child.”.

(3) In Article 105 (additional maternity leave)—

(a) in paragraph (3), in sub-paragraph (a), for the words from “to choose” to the end substitute “to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and also to satisfying prescribed conditions,”

(b) in paragraph (3), after that sub-paragraph insert—

“(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;”

(c) after that paragraph insert—

“(3A) Provision under paragraph (3)(a) is to secure that an employee may bring forward the date on which an additional maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107E or statutory shared parental pay in respect of the child.”.

(4) In Article 107A (ordinary adoption leave)—

(a) in paragraph (2A), after “paragraph (2)” insert “—

- (a) may allow an employee to bring forward the date on which an ordinary adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions,
  - (b) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,”
- (b) in that paragraph, the words from “may specify circumstances” to the end become sub-paragraph (c),
- (c) after that paragraph insert—
  - “(2B) Provision under paragraph (2A)(a) is to secure that an employee may bring forward the date on which an ordinary adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107G or statutory shared parental pay in respect of the child.”.
- (5) In Article 107B (additional adoption leave)—
  - (a) in paragraph (3), in sub-paragraph (a), for the words from “to choose” to the end substitute “to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions,”,
  - (b) in paragraph (3), after that sub-paragraph insert—
    - “(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,”,
  - (c) after that paragraph insert—
    - “(3A) Provision under paragraph (3)(a) is to secure that an employee may bring forward the date on which an additional adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107G or statutory shared parental pay in respect of the child.”.
- (6) In Article 112A (entitlement to ordinary paternity leave: birth), after paragraph (4) insert—
  - “(4A) Provision under paragraph (2)(b) must secure that, once an employee takes shared parental leave under Article 107E in respect of a child, the employee may not take leave under this Article in respect of the child.”.
- (7) In Article 112B (entitlement to ordinary paternity leave: adoption), after paragraph (4) insert—
  - “(4A) Provision under paragraph (2)(b) must secure that, once an employee takes shared parental leave under Article 107G in respect of a child, the employee may not take leave under this Article in respect of the child.”.



**Abolition of additional paternity leave**

4. In Part 9 of the Employment Rights Order, omit Articles 112AA and 112BB (entitlement to additional paternity leave: birth and adoption).

*Statutory shared parental pay***Statutory shared parental pay**

5.—(1) The Contributions and Benefits Act is amended as follows.

(2) After section 167ZT insert—

**“PART 12ZC****STATUTORY SHARED PARENTAL PAY****167ZU Entitlement: birth**

(1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person who is the mother of a child (“the claimant mother”), the claimant mother is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.

(2) The conditions are—

- (a) that the claimant mother and another person (“P”) satisfy prescribed conditions as to caring or intending to care for the child,
- (b) that P satisfies prescribed conditions—
  - (i) as to employment or self-employment,
  - (ii) as to having earnings of a prescribed amount for a prescribed period, and
  - (iii) as to relationship either with the child or with the claimant mother,
- (c) that the claimant mother has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (d) that the claimant mother’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (e) if regulations so provide, that the claimant mother continues in employed earner’s employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time,

- (f) that the claimant mother became entitled to statutory maternity pay by reference to the birth of the child,
  - (g) that the claimant mother satisfies prescribed conditions as to the reduction of the duration of the maternity pay period,
  - (h) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of—
    - (i) the number of weeks in respect of which she would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of P to claim statutory shared parental pay in respect of the child),
    - (ii) the number of weeks in respect of which she intends to claim statutory shared parental pay, and
    - (iii) the number of weeks in respect of which P intends to claim statutory shared parental pay,
  - (i) that the claimant mother has given the person who will be liable to pay statutory shared parental pay to her notice of the period or periods during which she intends to claim statutory shared parental pay in respect of the child,
  - (j) that a notice under paragraph (h) or (i)—
    - (i) is given by such time as may be prescribed, and
    - (ii) satisfies prescribed conditions as to form and content,
  - (k) that P consents to the extent of the claimant mother’s intended claim for statutory shared parental pay,
  - (l) that it is the claimant mother’s intention to care for the child during each week in respect of which statutory shared parental pay is paid to her,
  - (m) that the claimant mother is absent from work during each week in respect of which statutory shared parental pay is paid to her,
  - (n) that, where she is an employee within the meaning of the Employment Rights Order, the claimant mother’s absence from work during each such week is absence on shared parental leave.
- (3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person (“the claimant”), the claimant is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.
- (4) The conditions are—

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

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- (a) that the claimant and another person (“M”) who is the mother of a child satisfy prescribed conditions as to caring or intending to care for the child,
- (b) that the claimant satisfies—
  - (i) prescribed conditions as to relationship with the child, or
  - (ii) prescribed conditions as to relationship with M,
- (c) that M satisfies prescribed conditions—
  - (i) as to employment or self-employment, and
  - (ii) as to having earnings of a prescribed amount for a prescribed period,
- (d) that the claimant has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (e) that the claimant’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (f) if regulations so provide, that the claimant continues in employed earner’s employment (whether or not with the employer by reference to whom the condition in paragraph (d) is satisfied) until a prescribed time,
- (g) that M became entitled, by reference to the birth of the child, to—
  - (i) a maternity allowance, or
  - (ii) statutory maternity pay,
- (h) that M satisfies prescribed conditions as to—
  - (i) the reduction of the duration of the maternity allowance period, or
  - (ii) the reduction of the duration of the maternity pay period, as the case may be,
- (i) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of—
  - (i) the number of weeks in respect of which the claimant would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of M to claim statutory shared parental pay in respect of the child),
  - (ii) the number of weeks in respect of which the claimant intends to claim statutory shared parental pay, and

- (iii) the number of weeks in respect of which M intends to claim statutory shared parental pay,
- (j) that the claimant has given the person who will be liable to pay statutory shared parental pay to the claimant notice of the period or periods during which the claimant intends to claim statutory shared parental pay in respect of the child,
- (k) that a notice under paragraph (i) or (j)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content,
- (l) that M consents to the extent of the claimant's intended claim for statutory shared parental pay,
- (m) that it is the claimant's intention to care for the child during each week in respect of which statutory shared parental pay is paid to the claimant,
- (n) that the claimant is absent from work during each week in respect of which statutory shared parental pay is paid to the claimant,
- (o) that, where the claimant is an employee within the meaning of the Employment Rights Order, the claimant's absence from work during each such week is absence on shared parental leave.

**167ZV Extent of entitlement and when payable: birth**

- (1) Regulations may provide for—
  - (a) the determination of the extent of a person's entitlement, by virtue of section 167ZU, to statutory shared parental pay in respect of a child,
  - (b) when statutory shared parental pay by virtue of that section is to be payable.
- (2) Provision under subsection (1)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental pay in respect of a child does not exceed the number of weeks of the maternity pay period reduced by—
  - (a) where the mother of the child takes action that is treated by regulations as constituting for the purposes of section 167ZU and this section her return to work without satisfying conditions prescribed under subsection (2)(h) or, as the case may be, (4)(i) of section 167ZU—
    - (i) the number of relevant weeks in respect of which maternity allowance or statutory maternity pay is payable to the mother, or
    - (ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or

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

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- (b) except where paragraph (a) applies, the number of weeks to which the maternity allowance period is reduced by virtue of section 35(3A) or, as the case may be, the maternity pay period is reduced by virtue of section 161(3A).
- (3) For the purposes of subsection (2)(a), a relevant week is—
  - (a) where maternity allowance is payable to a mother, a week or part of a week falling before the time at which the mother takes action that is treated by regulations as constituting for the purposes of this section her return to work,
  - (b) where statutory maternity pay is payable to a mother, a week falling before the week in which the mother takes action that is so treated.
- (4) For the purposes of subsections (2)(a) and (3), “week” has—
  - (a) the same meaning as in section 121(1), in relation to maternity allowance, or
  - (b) the same meaning as in section 161(8), in relation to statutory maternity pay.
- (5) In determining the number of weeks for the purposes of subsection (2)(b)—
  - (a) “week” has the same meaning as in subsection (4), and
  - (b) a part of a week is to be treated as a week.
- (6) Provision under subsection (1)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one’s entitlement and the extent of the other’s entitlement do not, taken together, exceed what would be available to one person (see subsection (2)).
- (7) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.
- (8) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who is the mother of the child before the end of the mother’s maternity pay period.
- (9) Regulations may provide that, where the conditions in subsection (10) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZU(1) or (3) (“V”), V may vary the period or periods during which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (11) where that is relevant.
- (10) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay,
- (b) that a notice under paragraph (a)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content.

(11) Regulations may provide that, where the conditions in subsection (12) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZU(1) or (3) (“V”), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.

(12) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
  - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
  - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
  - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
  - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child,
- (b) that a notice under paragraph (a)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content,
- (c) that the person who is P or, as the case may be, M in relation to V consents to that variation.

(13) A person’s entitlement to statutory shared parental pay under section 167ZU and this section is not affected by the birth of more than one child as a result of the same pregnancy.

### **167ZW Entitlement: adoption**

(1) Regulations may provide that, where all the conditions in subsection (2) are satisfied in relation to a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom (“claimant A”), claimant A is to be entitled in accordance with the following provisions of this Part to payments to be known as “statutory shared parental pay”.

(2) The conditions are—

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

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- (a) that claimant A and another person (“X”) satisfy prescribed conditions as to caring or intending to care for the child,
- (b) that X satisfies prescribed conditions—
  - (i) as to employment or self-employment,
  - (ii) as to having earnings of a prescribed amount for a prescribed period, and
  - (iii) as to relationship either with the child or with claimant A,
- (c) that claimant A has been in employed earner’s employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
- (d) that claimant A’s normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
- (e) if regulations so provide, that claimant A continues in employed earner’s employment (whether or not with the employer by reference to whom the condition in paragraph (c) is satisfied) until a prescribed time,
- (f) that claimant A became entitled to statutory adoption pay by reference to the placement for adoption of the child,
- (g) that claimant A satisfies prescribed conditions as to the reduction of the duration of the adoption pay period,
- (h) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of—
  - (i) the number of weeks in respect of which claimant A would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of X to claim statutory shared parental pay in respect of the child),
  - (ii) the number of weeks in respect of which claimant A intends to claim statutory shared parental pay, and
  - (iii) the number of weeks in respect of which X intends to claim statutory shared parental pay,
- (i) that claimant A has given the person who will be liable to pay statutory shared parental pay to claimant A notice of the period or periods during which claimant A intends to claim statutory shared parental pay in respect of the child,
- (j) that a notice under paragraph (h) or (i)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content,

- (k) that X consents to the extent of claimant A's intended claim for statutory shared parental pay,
- (l) that it is claimant A's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant A,
- (m) that claimant A is absent from work during each week in respect of which statutory shared parental pay is paid to claimant A,
- (n) that, where claimant A is an employee within the meaning of the Employment Rights Order, claimant A's absence from work during each such week is absence on shared parental leave.

(3) Regulations may provide that, where all the conditions in subsection (4) are satisfied in relation to a person ("claimant B"), claimant B is to be entitled in accordance with the following provisions of this Part to payments to be known as "statutory shared parental pay".

- (4) The conditions are—
- (a) that claimant B and another person ("Y") who is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom satisfy prescribed conditions as to caring or intending to care for the child,
  - (b) that claimant B satisfies—
    - (i) prescribed conditions as to relationship with the child, or
    - (ii) prescribed conditions as to relationship with Y,
  - (c) that Y satisfies prescribed conditions—
    - (i) as to employment or self-employment, and
    - (ii) as to having earnings of a prescribed amount for a prescribed period,
  - (d) that claimant B has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week,
  - (e) that claimant B's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week,
  - (f) if regulations so provide, that claimant B continues in employed earner's employment (whether or not with the employer by reference to whom the condition in paragraph (d) is satisfied) until a prescribed time,
  - (g) that Y became entitled to statutory adoption pay by reference to the placement for adoption of the child,



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- (h) that Y satisfies prescribed conditions as to the reduction of the duration of the adoption pay period,
- (i) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of—
  - (i) the number of weeks in respect of which claimant B would be entitled to claim statutory shared parental pay in respect of the child if the entitlement were fully exercised (disregarding for these purposes any intention of Y to claim statutory shared parental pay in respect of the child),
  - (ii) the number of weeks in respect of which claimant B intends to claim statutory shared parental pay, and
  - (iii) the number of weeks in respect of which Y intends to claim statutory shared parental pay,
- (j) that claimant B has given the person who will be liable to pay statutory shared parental pay to claimant B notice of the period or periods during which claimant B intends to claim statutory shared parental pay in respect of the child,
- (k) that a notice under paragraph (i) or (j)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content,
- (l) that Y consents to the extent of claimant B's intended claim for statutory shared parental pay,
- (m) that it is claimant B's intention to care for the child during each week in respect of which statutory shared parental pay is paid to claimant B,
- (n) that claimant B is absent from work during each week in respect of which statutory shared parental pay is paid to claimant B,
- (o) that, where claimant B is an employee within the meaning of the Employment Rights Order, claimant B's absence from work during each such week is absence on shared parental leave.

**167ZX Extent of entitlement and when payable: adoption**

- (1) Regulations may provide for—
  - (a) the determination of the extent of a person's entitlement, by virtue of section 167ZW, to statutory shared parental pay in respect of a child,
  - (b) when statutory shared parental pay by virtue of that section is to be payable.
- (2) Provision under subsection (1)(a) is to secure that the number of weeks in respect of which a person is entitled to payments of statutory shared parental

pay in respect of a child does not exceed the number of weeks of the adoption pay period reduced by—

(a) where the person who became entitled to receive statutory adoption pay takes action that is treated by regulations as constituting for the purposes of section 167ZW and this section the person's return to work without satisfying conditions prescribed under subsection (2) (h) or, as the case may be, (4)(i) of section 167ZW—

(i) the number of relevant weeks in respect of which statutory adoption pay is payable to the person, or

(ii) if that number of relevant weeks is less than a number prescribed by regulations, that prescribed number of weeks, or

(b) except where paragraph (a) applies, the number of weeks to which the adoption pay period has been reduced by virtue of section 167ZN(2A).

(3) In subsection (2)(a) "relevant week" means a week falling before the week in which a person takes action that is treated by regulations as constituting for the purposes of this section the person's return to work, and for these purposes "week" has the meaning as in section 167ZN(8).

(4) In determining the number of weeks for the purposes of subsection (2) (b)—

(a) "week" has the same meaning as in subsection (3), and

(b) a part of a week is to be treated as a week.

(5) Provision under subsection (1)(a) is to secure that, where two persons are entitled to payments of statutory shared parental pay in respect of a child, the extent of one's entitlement and the extent of the other's entitlement do not, taken together, exceed what would be available to one person (see subsection (2)).

(6) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay may be made to a person in respect of a child after the end of such period as may be prescribed.

(7) Provision under subsection (1)(b) is to secure that no payment of statutory shared parental pay in respect of a child may be made to a person who became entitled to receive statutory adoption pay in respect of the child before the end of the person's adoption pay period.

(8) Regulations may provide that, where the conditions in subsection (9) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZW(1) or (3) ("V"), V may vary the period or periods during which V intends to claim statutory shared parental pay in respect of the child in question, subject to complying with provision under subsection (10) where that is relevant.

(9) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of an intention to vary the period or periods during which V intends to claim statutory shared parental pay,
- (b) that a notice under paragraph (a)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content.

(10) Regulations may provide that, where the conditions in subsection (11) are satisfied in relation to a person who is entitled to statutory shared parental pay under section 167ZW(1) or (3) (“V”), V may vary the number of weeks in respect of which V intends to claim statutory shared parental pay.

(11) The conditions are—

- (a) that V has given the person who will be liable to pay statutory shared parental pay to V notice of—
  - (i) the extent to which V has exercised an entitlement to statutory shared parental pay in respect of the child,
  - (ii) the extent to which V intends to claim statutory shared parental pay in respect of the child,
  - (iii) the extent to which another person has exercised an entitlement to statutory shared parental pay in respect of the child, and
  - (iv) the extent to which another person intends to claim statutory shared parental pay in respect of the child,
- (b) that a notice under paragraph (a)—
  - (i) is given by such time as may be prescribed, and
  - (ii) satisfies prescribed conditions as to form and content,
- (c) that the person who is X or, as the case may be, Y in relation to V consents to that variation.

(12) A person’s entitlement to statutory shared parental pay under this section is not affected by the placement for adoption of more than one child as part of the same arrangement.

**167ZY Entitlement etc.: prospective adopters with whom looked after children are placed**

(1) Regulations are to provide for statutory shared parental pay in respect of a child who is looked after by an authority and who is, or is expected to be, placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.

- (2) The circumstances are that—
- (a) the authority—
    - (i) is considering adoption for the child, or
    - (ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and
  - (b) such conditions as may be prescribed are satisfied.
- (3) Sections 167ZW and 167ZX have effect, in relation to provision made by virtue of subsection (1) as if references to a child being placed for adoption under the law of any part of the United Kingdom and to placement for adoption were such references as may be prescribed.
- (4) In this section, “approved foster parent”, “approved prospective adopter”, “authority” and “child who is looked after by an authority” have the same meaning as in section 167ZBA.”.

#### **167ZZ Entitlement: general**

- (1) Regulations may—
- (a) provide that the following do not have effect, or have effect subject to prescribed modifications, in such cases as may be prescribed—
    - (i) section 167ZU(2)(a) to (o),
    - (ii) section 167ZU(4)(a) to (p),
    - (iii) section 167ZV(10)(a) and (b),
    - (iv) section 167ZV(12)(a) to (c),
    - (v) section 167ZW(2)(a) to (o),
    - (vi) section 167ZW(4)(a) to (p),
    - (vii) section 167ZX(9)(a) and (b), and
    - (viii) section 167ZX(11)(a) to (c),
  - (b) impose requirements about evidence of entitlement and procedures to be followed,
  - (c) specify in what circumstances employment is to be treated as continuous for the purposes of section 167ZU or 167ZW,
  - (d) provide that a person is to be treated for the purposes of those sections as being employed for a continuous period of at least the prescribed period where—
    - (i) the person has been employed by the same employer for at least the prescribed period under two or more separate contracts of service, and
    - (ii) those contracts were not continuous,

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- (e) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 167ZU or 167ZW,
  - (f) 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,are to be calculated or estimated for the purposes of section 167ZU or 167ZW 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 are, to such extent as may be prescribed, to be disregarded or, as the case may be, to be deducted from the amount of the person’s earnings.
- (2) The persons upon whom requirements may be imposed by virtue of subsection (1)(b) include—
- (a) a person who, in connection with another person’s claim to be paid statutory shared parental pay, is required to satisfy conditions prescribed under section 167ZU(2)(b) or (4)(c) or 167ZW(2)(b) or (4)(c),
  - (b) an employer or former employer of such a person.
- (3) In subsection (1)(d) “the prescribed period” means the period of the length prescribed by regulations under section 167ZU(2)(c) or (4)(d) or 167ZW(2)(c) or (4)(d), as the case may be.

### **167ZZ1 Liability to make payments**

- (1) The liability to make payments of statutory shared parental pay by virtue of sections 167ZU and 167ZV or, as the case may be, 167ZW and 167ZX is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 167ZU(2)(c) or (4)(d) or, as the case may be, 167ZW(2)(c) or (4)(d).
- (2) Regulations must make provision as to a former employer’s liability to pay statutory shared parental pay to a person in any case where the former employee’s contract of service with the person has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory shared parental pay.
- (3) The Department may, with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory shared parental pay is to be a liability of the Commissioners.

**167ZZ2 Rate and period of pay**

(1) Statutory shared parental 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) Subject to the following provisions of this section, statutory shared parental pay is payable to a person in respect of each week falling within a relevant period, up to the number of weeks determined in the case of that person in accordance with regulations under section 167ZV(1) or 167ZX(1).

(3) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period if it is not the person's intention at the beginning of the week to care for the child by reference to whom the person satisfies—

- (a) the condition in section 167ZU(2)(a) or (4)(a), or
- (b) the condition in section 167ZW(2)(a) or (4)(a).

(4) Except in such cases as may be prescribed, statutory shared parental pay is not payable to a person in respect of a week falling within a relevant period during any part of which week the person works for any employer.

(5) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory shared parental pay in respect of a week falling within a relevant period.

(6) Where for any purpose of this Part or of regulations it is necessary to calculate the daily rate of statutory shared parental pay, the amount payable by way of statutory shared parental pay for any day shall be taken as one seventh of the weekly rate.

(7) For the purposes of this section a week falls within a relevant period if it falls within a period specified in a notice under—

- (a) section 167ZU(2)(j) or (4)(k) or 167ZV(10)(a), or
- (b) section 167ZW(2)(j) or (4)(k) or 167ZX(9)(a),

and is not afterwards excluded from such a period by a variation of the period or periods during which the person in question intends to claim statutory shared parental pay.

(8) In this section “week”, in relation to a relevant period, means a period of seven days beginning with the day of the week on which the relevant period starts.

**167ZZ3 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) For the avoidance of doubt, an agreement between an employer and an employee, authorising deductions from statutory shared parental 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.

#### **167ZZ4 Relationship with contractual remuneration**

(1) Subject to subsections (2) and (3), any entitlement to statutory shared parental pay is not to affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).

(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 shared parental pay to that person in respect of that period, and
- (b) any statutory shared parental 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).

#### **167ZZ5 Crown employment: Part 12ZC**

**167ZZ5.** 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.

#### **167ZZ6 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, notwithstanding that it would not otherwise apply,
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply,
  - (c) for excepting any such person from the application of any such provision where the person neither is domiciled nor has a place of residence in any part of 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).

### **167ZZ7 Part 12ZC: supplementary**

- (1) In this Part—
- “adoption pay period” has the same meaning as in section 167ZN(2),
- “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,
- “maternity allowance period” has the meaning given in section 35(2),
- “maternity pay period” has the meaning given in section 161(1),
- “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly,
- “prescribed” means prescribed by regulations.
- (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 general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003).

(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) Without prejudice to any other power to make regulations under this Part, 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.

(5) In this Part, except where otherwise provided, “week” means a period of seven 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.

(7) For the purposes of subsection (6) “earnings” and “relevant period” have the meanings 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) 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.

(10) Regulations under subsection (9) 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 shared parental pay as the person's employer under the contract.

(11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part.

(12) In this Part, "regulations" means regulations made by the Department for Employment and Learning, and in relation to any such regulations sections 171 and 172 have effect as if references there to "the Department" were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) must be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs.

#### **167ZZ8 Power to apply Part 12ZC to other cases**

(1) The Department may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

(2) The Department may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as the regulations may prescribe.

(3) Where section 167ZZ(1)(b) has effect in relation to such cases as are described in subsection (2), regulations under section 167ZZ(1)(b) may impose requirements to make statutory declarations as to—

- (a) eligibility to apply for a parental order,
- (b) intention to apply for such an order."

(3) In section 172 (Assembly etc. control of regulations and orders), in subsection (2) (regulations and orders to which confirmatory procedure applies), in paragraph (a), after "167ZN(1)" insert "or any of sections 167ZU to 167ZZ2".

#### **Exclusion or curtailment of other statutory rights to pay**

6.—(1) The Contributions and Benefits Act is amended as follows.

(2) In section 35 (entitlement to maternity allowance), after subsection (3) insert—

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

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“(3A) Regulations may provide for the duration of the maternity allowance period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

- (a) after a prescribed period beginning with the day on which the woman is confined; and
- (b) when at least a prescribed part of the maternity allowance period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of the woman’s entitlement to maternity leave;
- (b) the doing of work by the woman;
- (c) the taking of prescribed steps by the woman or another person as regards leave under Article 107E of the Employment Rights Order in respect of the child;
- (d) the taking of prescribed steps by a person other than the woman as regards statutory shared parental pay in respect of the child.

(3D) Regulations may provide for a reduction in the duration of the maternity allowance period as it applies to a woman to be revoked, subject to prescribed restrictions and conditions.”.

(3) In section 35, after subsection (3D) (as inserted by subsection (2)) insert—

“(3E) A woman who would, but for the reduction in duration of a maternity pay period by virtue of section 161(3A), be entitled to statutory maternity pay for a week is not entitled to a maternity allowance for that week.”.

(4) In section 161 (the maternity pay period), after subsection (3) insert—

“(3A) Regulations may provide for the duration of the maternity pay period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

- (a) after a prescribed period beginning with the day on which the woman is confined; and
- (b) when at least a prescribed part of the maternity pay period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

- (a) the end of the woman’s entitlement to maternity leave;

- (b) the doing of work by the woman;
  - (c) the taking of prescribed steps by the woman or another person as regards leave under Article 107E of the Employment Rights Order in respect of the child;
  - (d) the taking of prescribed steps by the woman or another person as regards statutory shared parental pay in respect of the child.
- (3D) Regulations may provide for a reduction in the duration of the maternity pay period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”.
- (5) In section 167ZE (rate and period of statutory paternity pay), after subsection (3) insert—
- “(3A) Statutory paternity pay is not payable to a person in respect of a statutory pay week if—
- (a) statutory shared parental pay is payable to that person in respect of any part of that week or that person takes shared parental leave in any part of that week; or
  - (b) statutory shared parental pay was payable to that person or that person has taken shared parental leave in respect of the child before that week.”.
- (6) In section 167ZN (rate and period of statutory adoption pay), after subsection (2) insert—
- “(2A) Regulations may provide for the duration of the adoption pay period as it applies to a person (“A”) to be reduced, subject to prescribed restrictions and conditions.
- (2B) Regulations under subsection (2A) are to secure that the reduced period ends at a time—
- (a) after a prescribed part of the adoption pay period has expired; and
  - (b) when at least a prescribed part of the adoption pay period remains unexpired.
- (2C) Regulations under subsection (2A) may, in particular, prescribe restrictions and conditions relating to—
- (a) the end of A’s entitlement to adoption leave;
  - (b) the doing of work by A;
  - (c) the taking of prescribed steps by A or another person as regards leave under Article 107G of the Employment Rights Order in respect of the child;
  - (d) the taking of prescribed steps by A or another person as regards statutory shared parental pay in respect of the child.

(2D) Regulations may provide for a reduction in the duration of the adoption pay period as it applies to a person to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.”.

### **Abolition of additional paternity pay**

7. In Part 12ZA of the Contributions and Benefits Act, omit sections 167ZEA to 167ZEE (additional statutory paternity pay: birth and adoption).

### *Other statutory rights*

### **Other statutory rights to leave of prospective adopters with whom looked after children are placed**

- 8.—(1) The Employment Rights Order is amended as follows.
- (2) In Article 107A (ordinary adoption leave), after paragraph (1) insert—
- “(1A) The conditions that may be prescribed under paragraph (1) include the condition mentioned in Article 107AB.”.
- (3) After that Article, insert—

#### **“Ordinary adoption leave: prospective adopters with whom looked after children are placed**

**107AB.**—(1) The condition referred to in Article 107A(1A) is a condition as to the employee—

- (a) being an approved foster parent,
- (b) being an approved prospective adopter,
- (c) being notified by an authority that a child who is looked after by it is to be, or is expected to be, placed with the employee by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), and
- (d) satisfying such further conditions as may be prescribed.

(2) The circumstances referred to in paragraph (1)(c) are that the authority—

- (a) is considering adoption for the child, or
- (b) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child.

(3) In this Article—

“approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996,

“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989 to be a person suitable to adopt a child,

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 2(2) and (3) of the Order),

“child who is looked after by an authority” has the same meaning as in that Order (see Articles 2(7)(b) and 25 of the Order).

(4) The Department may by order amend the definition of, or substitute another definition for the definition of, “approved foster parent” or “approved prospective adopter” for the time being contained in paragraph (3), in consequence of any modification or replacement of the regulations referred to in the definition.”.

(4) In Article 112B (entitlement to ordinary paternity leave: adoption), in paragraph (5), after sub-paragraph (a) insert—

“(aa) make provision excluding the right to be absent on leave under this Article in the case of an employee who, by virtue of provision under Article 112BA(1), has already exercised a right to be absent on leave under this Article in connection with the same child;”.

(5) After that Article, insert—

**“Entitlement to paternity leave: prospective adopters with whom looked after children are placed**

**112BA.**—(1) Regulations made under Article 112B(1) are to include provision for leave in respect of a child who is looked after by an authority and who is to be, or is expected to be, placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.

(2) The circumstances are that—

(a) the authority—

(i) is considering adoption for the child, or

(ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and

(b) such conditions as may be specified are satisfied.

(3) Regulations made under Article 112B(1) are to provide for Article 112B to have effect, in relation to provision made by virtue of paragraph (1), as if—

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

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- (a) references to a child being placed for adoption or placement for adoption were such references as may be specified,
- (b) in paragraph (5), sub-paragraph (aa) were omitted.
- (4) In this Article, “approved foster parent”, “approved prospective adopter”, “authority” and “child who is looked after by an authority” have the same meaning as in Article 107AB.”

**Other statutory rights to pay of prospective adopters with whom looked after children are placed**

- 9.—(1) The Contributions and Benefits Act is amended as follows.
- (2) After section 167ZB (entitlement to ordinary statutory paternity pay: adoption), insert—

**“167ZBA Entitlement: prospective adopters with whom looked after children are placed**

- (1) Subsection (3) applies in a case involving a child who is looked after by an authority and who is placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.
- (2) The circumstances are that—
- (a) the authority—
    - (i) is considering adoption for the child, or
    - (ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and
  - (b) such conditions as may be prescribed are satisfied.
- (3) Section 167ZB has effect as if the following references or definitions were such references or definitions as may be prescribed—
- (a) the references in subsection (2) to a child being placed for adoption under the law of any part of the United Kingdom,
  - (b) the reference in subsection (3) to the week in which the adopter is notified of being matched with the child for the purposes of adoption,
  - (c) the reference in subsection (6) to placement for adoption,
  - (d) the definition of “adopter” in subsection (7).
- (4) Where, by virtue of subsections (1) to (3), a person becomes entitled to statutory paternity pay in connection with the placement of a child as mentioned in those subsections, the person may not become entitled to

payments of statutory paternity pay in connection with the placement of the child for adoption.

(5) In this section—

“approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996,

“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989 to be a person suitable to adopt a child,

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 2(2) and (3) of the Order),

“child who is looked after by an authority” has the same meaning as in that Order (see Articles 2(7)(b) and 25 of the Order).

(6) The Department may by order amend the definition of, or substitute another definition for the definition of, “approved foster parent” or “approved prospective adopter” for the time being contained in subsection (5), in consequence of any modification or replacement of the regulations referred to in the definition.”.

(3) In section 167ZE (rate and period of statutory paternity pay), after subsection (11) add—

“(12) Where statutory paternity pay is payable to a person by virtue of section 167ZBA(1) to (3), this section has effect as if the following references were such references as may be prescribed—

(a) the references in subsections (3)(b) and (10) to placement for adoption,

(b) the references in subsection (10) to being placed for adoption.”.

(4) After section 167ZL (entitlement to statutory adoption pay), insert—

**“167ZLA Entitlement: prospective adopters with whom looked after children are placed**

(1) Subsection (3) applies in a case involving a child who is looked after by an authority and who is, or is expected to be, placed by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), with an approved foster parent who is also an approved prospective adopter.

(2) The circumstances are that—

(a) the authority—

(i) is considering adoption for the child, or



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

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(ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and

(b) such conditions as may be prescribed are satisfied.

(3) Section 167ZL has effect as if the following references or definitions were such references or definitions as may be prescribed—

(a) the reference in subsection (2)(a) to a child being placed for adoption under the law of any part of the United Kingdom,

(b) the reference in subsection (3) to the week in which the person is notified that he has been matched with the child for the purposes of adoption,

(c) the reference in subsection (5) to placement, or expected placement, for adoption.

(4) Where, by virtue of subsections (1) to (3), a person becomes entitled to statutory adoption pay in respect of a child who is, or is expected to be placed as mentioned in subsection (1), the person may not become entitled to payments of statutory adoption pay as a result of the child being, or being expected to be, placed for adoption.

(5) In this section, “approved foster parent”, “approved prospective adopter”, “authority” and “child who is looked after by an authority” have the same meaning as in section 167ZBA.”.

(5) In section 167ZN (rate and period of statutory adoption pay), after subsection (8) add—

“(9) Where statutory adoption pay is payable to a person by virtue of section 167ZLA(1) to (3), this section has effect as if the reference in subsection (2F) to the week in which the person is notified that he has been matched with a child for the purposes of adoption were such reference as may be prescribed.”.

### **Other statutory rights to leave of applicants for parental orders**

**10.—**(1) The Employment Rights Order is amended as follows.

(2) After Article 107AB (ordinary adoption leave: prospective adopters with whom looked after children are placed) (inserted by section 8(3)), insert—

#### **“Power to apply Article 107A to other cases**

**107AC.** The Department may by regulations provide for Article 107A to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as may be prescribed”.

(3) After Article 107B (additional adoption leave), insert—

**“Power to apply Article 107B to other cases**

**107BA.** The Department may by regulations provide for Article 107B to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as may be prescribed”.

(4) In Article 107D (supplemental provision about adoption leave), after paragraph (1) insert—

“(1A) Where Article 107A or 107B has effect in relation to such cases as are described in Article 107AC or 107BA, regulations under Article 107A or 107B about evidence to be produced may require statutory declarations as to—

- (a) eligibility to apply for a parental order,
- (b) intention to apply for such an order.”.

(5) After Article 112BA (entitlement to paternity leave: prospective adopters with whom looked after children placed) (inserted by section 8(5)), insert—

**“Power to apply Article 112B to other cases**

**112BAA.** The Department may by regulations provide for Article 112B to have effect in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as may be specified”.

**Other statutory rights to pay of applicants for parental orders**

**11.—(1)** The Contributions and Benefits Act is amended as follows.

(2) In section 167ZK (power to apply Part 12ZA, statutory paternity pay, to adoption cases not involving placement)—

- (a) in the title, for “adoption cases not involving placement”, substitute “other cases”,
- (b) the existing text becomes subsection (1),
- (c) after that subsection add—

“(2) The Department may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is,

or will be, the subject of the order, with such modifications as may be prescribed.”.

(3) In section 167ZT (power to apply Part 12ZB, statutory adoption pay, to adoption cases not involving placement)—

- (a) in the title, for “adoption cases not involving placement”, substitute “other cases”,
- (b) the existing text becomes subsection (1),
- (c) after that subsection add—

“(2) The Department may by regulations provide for this Part to have effect in relation to cases which involve a person who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order, with such modifications as may be prescribed.

(3) Regulations under subsection (2) may modify section 167ZL(8)(c) so as to enable regulations made by virtue of section 167ZL(8) to impose requirements to make statutory declarations as to—

- (a) eligibility to apply for a parental order,
- (b) intention to apply for such an order.”.

### **Statutory paternity pay: notice requirement and period of payment**

**12.—**(1) The Contributions and Benefits Act is amended as follows.

(2) In section 167ZC (further provision as to entitlement to statutory paternity pay)—

- (a) in subsection (1) (requirement to give notice), for the words from “only if” to the end substitute “only if he gives the person who will be liable to pay it notice of the week or weeks in respect of which he expects there to be liability to pay him statutory paternity pay.”,
- (b) after that subsection insert—

“(1A) Regulations may provide for the time by which notice under subsection (1) is to be given.”.

(3) In section 167ZE (rate and period of statutory paternity pay)—

- (a) in subsection (2) (period of pay), for the words from “be payable” to the end substitute “be 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 he may choose in accordance with regulations.”,

(b) after subsection (2) insert—

“(2A) Provision under subsection (2)(b) is to secure that the prescribed number of weeks is not less than two.”,

(c) after subsection (2A) (as inserted by paragraph (b)) insert—

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

(4) In section 172 (Assembly control of regulations and orders), in subsection (2) (regulations to which confirmatory procedure applies), in paragraph (a), after “section 167ZE(1)” insert “or (2)(b)”.

### **Rate of statutory adoption pay**

**13.—**(1) The Contributions and Benefits Act is amended as follows.

(2) In section 167ZN (rate and period of statutory adoption pay)—

(a) omit subsection (1) (rate of pay),

(b) after subsection (2D) (as inserted by section 6(6)) insert—

“(2E) Statutory adoption pay shall be payable to a person—

(a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and

(b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the adoption pay period.

(2F) The earnings-related rate is a weekly rate equivalent to 90 per cent of a person’s normal weekly earnings for the period of 8 weeks ending with the week in which the person is notified that the person has been matched with a child for the purposes of adoption.

(2G) The weekly rate prescribed under subsection (2E)(b) shall not be less than the weekly rate of statutory sick pay for the time being specified in section 153(1) or, if two or more such rates are for the time being so specified, the higher or highest of those rates.”,

(c) in subsection (7), for “subsection (2)” substitute “subsections (2) and (2E)”.

(3) In section 172 (Assembly control of regulations and orders), in subsection (2) (regulations to which confirmatory procedure applies), in paragraph (a), omit the words “or section 167ZN(1)”.

### **Further amendments**

**14.—**(1) Schedule 1 (which contains further amendments relating to statutory rights to leave and pay) has effect.

(2) A reference to ordinary statutory paternity pay in an instrument or document made before the coming into operation of sub-paragraphs (8) and (9) of paragraph 2 of Schedule 1 is to be read, in relation to any time after the coming into operation of those paragraphs, as a reference to statutory paternity pay.

(3) A reference to statutory paternity pay in a statutory provision (including a statutory provision amended by this Act) or in an instrument or document is to be read, in relation to any time that falls—

- (a) after the coming into operation of paragraphs 11 and 12 of Schedule 1 to the Work and Families (Northern Ireland) Order 2006, but
- (b) before the coming into operation of sub-paragraphs (8) and (9) of paragraph 2 of Schedule 1,

as a reference to ordinary statutory paternity pay.

(4) Subsection (3) does not apply to the extent that a reference to statutory paternity pay is a reference to additional statutory paternity pay.

(5) In this section, “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

## PART 3

### TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS

#### **Time off work to accompany to ante-natal appointments**

**15.—**(1) The Employment Rights Order is amended as follows.

(2) After Article 85ZD insert—

#### *“Accompanying to ante-natal appointments*

#### **Right to time off to accompany to ante-natal appointments**

**85ZE.—**(1) An employee who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(4) An employee is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in paragraph (1) unless the employee gives that declaration (which may be given in electronic form).

(6) The employee must state in the declaration—

- (a) that the employee has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the employee's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person ("A") is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

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- (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee’s contract of employment, the employee is required to be at work.

### **Complaint to industrial tribunal**

**85ZF.**—(1) An employee may present a complaint to an industrial tribunal that his or her employer has unreasonably refused to let him or her take time off as required by Article 85ZE.

(2) An industrial tribunal may not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the employer to pay to the employee an amount determined in accordance with paragraph (4).

(4) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the employee, and

(b) B is the number of working hours for which the employee would have been entitled under Article 85ZE to be absent if the time off had not been refused.

(5) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off would have been taken.

(6) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

- (a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (7) as are appropriate in the circumstances.

(7) The considerations referred to in paragraph (6)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

*Accompanying to ante-natal appointments: agency workers*

**Right to time off to accompany to ante-natal appointments: agency workers**

**85ZG.**—(1) An agency worker who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care. when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.



(3) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(4) An agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the temporary work agency or the hirer requests the agency worker to give that person a declaration signed by the agency worker, the agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the agency worker gives that declaration (which may be given in electronic form).

(6) The agency worker must state in the declaration—

- (a) that the agency worker has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the agency worker's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person (“A”) is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

### **Complaint to industrial tribunal: agency workers**

**85ZH.**—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by Article 85ZG.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZG.

(3) An industrial tribunal may not consider a complaint under paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the payment to the agency worker of an amount determined in accordance with paragraph (6).

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

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(5) Where the tribunal orders that payment under paragraph (4) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(6) The amount payable to the agency worker is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the agency worker, and
- (b) B is the number of working hours for which the agency worker would have been entitled under Article 85ZG to be absent if the time off had not been refused.

(7) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off would have been taken.

(8) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken.

#### **Agency workers: supplementary**

**85ZI.**—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZG and 85ZH do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZG and 85ZH imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZG and 85ZH do not apply where Articles 85ZE and 85ZF apply.

(4) In this Article and Articles 85ZG and 85ZH the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

(3) In Article 21 (the calculation date in finding a week’s pay), after paragraph (3) insert—

“(3A) Where the calculation is for the purposes of Article 85ZF, the calculation date is the day of the appointment.”.

(4) In Article 70C (right not to be subject to detriment: leave for family and domestic reasons), in paragraph (2) (prescribed reasons), after sub-paragraph (a) insert—

“(aa) time off under Article 85ZE,”.

(5) In Article 131 (being regarded as unfairly dismissed: leave for family reasons), in paragraph (3) (prescribed kinds of reasons or prescribed circumstances), after paragraph (a) insert—

“(aa) time off under Article 85ZE,”.

#### **Time off work for ante-natal care: increased amount of award**

16.—(1) The Employment Rights Order is amended as follows.

(2) In Article 85 (complaints to industrial tribunals where time off work for ante-natal care refused to employee), in paragraph (4) (amount of award for unreasonable refusal), for “an amount equal to” substitute “an amount that is twice the amount of”.

(3) In Article 85ZC (complaints to industrial tribunals where time off work for ante-natal care refused to agency worker), in paragraph (5) (amount of award for unreasonable refusal), for “an amount equal to” substitute “an amount that is twice the amount of”.

#### **Time off work to attend adoption appointments**

17.—(1) The Employment Rights Order is amended as follows.

(2) After Article 85ZI (as inserted by section 15(2)) insert—

*“Adoption appointments*

**Right to paid time off to attend adoption appointments**

**85ZJ.**—(1) 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 alone is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee who—

(a) 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 jointly, and

(b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An employee may not make an election for the purposes of paragraph (2) (b) if—

(a) the employee has made an election for the purposes of Article 85ZL(1)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZN(2)(b) in connection with the adoption.

(4) An employee is not entitled to take time off under this Article on or after the date of the child’s placement for adoption with the employee.

(5) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(7) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

(8) An employee is not entitled to take time off under paragraph (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An employee is not entitled to take time off under paragraph (2) unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(13) In this Article, an "adoption agency" means an adoption agency for the purposes of the Adoption (Northern Ireland) Order 1987 (see Articles 2(2) and 3(3) of the Order).

#### **Right to remuneration for time off under Article 85ZJ**

**85ZK.**—(1) An employee who is permitted to take time off under Article 85ZJ is entitled to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent, at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week

for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

- (a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period.

(7) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Right to unpaid time off to attend adoption appointments**

**85ZL.**—(1) An employee who—

- (a) 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 jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment

at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee may not make an election for the purposes of paragraph (1)(b) if—

- (a) the employee has made an election for the purposes of Article 85ZJ(2)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZP(1)(b) in connection with the adoption.

(3) An employee is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the employee.

(4) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(6) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).

(7) An employee is not entitled to take time off under this Article unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).

(8) A declaration or document requested under paragraph (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,



(d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,

(e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(11) In this Article, "adoption agency" has the same meaning as in Article 85ZJ.

### **Complaint to industrial tribunal**

**85ZM.**—(1) An employee may present a complaint to an industrial tribunal that his or her employer—

(a) has unreasonably refused to let him or her take time off as required by Article 85ZJ or 85ZL, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 85ZK.

(2) An industrial tribunal may not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the day of the appointment in question, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it must make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZJ, the tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under Article 85ZK if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under Article 85ZK, the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.

(6) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZL, the tribunal must

also order the employer to pay to the employee an amount determined in accordance with paragraph (7).

(7) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the employee determined in accordance with Article 85ZK(2) to (4), and
- (b) B is the number of working hours for which the employee would have been entitled under Article 85ZL to be absent if the time off had not been refused.

*Adoption appointments: agency workers*

**Right to paid time off to attend adoption appointments: agency workers**

**85ZN.**—(1) 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 alone is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker who—

- (a) 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 jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An agency worker may not make an election for the purposes of paragraph (2)(b) if—

- (a) the agency worker has made an election for the purposes of Article 85ZP(1)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZJ(2)(b) in connection with the adoption.

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(4) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.

(5) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(7) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

(8) An agency worker is not entitled to take time off under paragraph (1) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An agency worker is not entitled to take time off under paragraph (2) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

- (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(13) In this Article “adoption agency” has the same meaning as in Article 85ZJ.

### **Right to remuneration for time off under Article 85ZN**

**85ZO.**—(1) An agency worker who is permitted to take time off under Article 85ZN is entitled 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.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week’s pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week’s pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker’s normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under paragraph (1) does not affect any right of an agency worker in relation to remuneration under the agency worker’s contract with the temporary work agency (“contractual remuneration”).

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay remuneration under paragraph (1) in respect of that period.

(6) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

### **Right to unpaid time off to attend adoption appointments: agency workers**

**85ZP.**—(1) An agency worker who—

- (a) 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 jointly, and

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- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker may not make an election for the purposes of paragraph (1)(b) if—

- (a) the agency worker has made an election for the purposes of Article 85ZN(2)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZL(1)(b) in connection with the adoption.

(3) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.

(4) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(6) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).

(7) An agency worker is not entitled to take time off under this Article unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

- (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).

(8) A declaration or document requested under paragraph (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker and another person jointly as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,

- (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(11) In this Article, "adoption agency" has the same meaning as in Article 85ZJ.

#### **Complaint to industrial tribunal: agency workers**

**85ZQ.**—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency—

- (a) has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP, or
- (b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under Article 85ZO.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP.

(3) An industrial tribunal may not consider a complaint under subparagraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it must make a declaration to that effect.

(5) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZN, the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency

worker would have been entitled under Article 85ZO if the agency worker had not been refused the time off.

(6) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under Article 85ZO, the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.

(7) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZP, the tribunal must also order payment to the agency worker of an amount determined in accordance with sub-paragraph (8).

(8) The amount payable to the agency worker under paragraph (7) is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the agency worker determined in accordance with Article 85ZO(2) and (3), and
- (b) B is the number of working hours for which the agency worker would have been entitled under Article 85ZP to be absent if the time off had not been refused.

(9) Where the tribunal orders that payment under paragraph (5) or (7) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

#### **Agency workers: supplementary**

**85ZR.**—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZN to 85ZQ do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZN to 85ZQ imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZN to 85ZQ do not apply where Articles 85ZJ to 85ZM apply.

(4) In this Article and Articles 85ZN to 85ZQ the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

**Entitlement: prospective adopters with whom looked after children are placed**

**85ZS.**—(1) Paragraph (3) applies where an authority notifies a person who is an approved foster parent and an approved prospective adopter that a child who is looked after by it is to be, or is expected to be, placed with the person by the authority, in the circumstances mentioned in paragraph (2), under Article 27(2)(a) of the Children (Northern Ireland) Order 1995.

(2) The circumstances are that—

(a) the authority—

(i) is considering adoption for the child, or

(ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and

(b) such conditions as may be specified in regulations made by the Department are satisfied.

(3) Where this paragraph applies, Articles 85ZJ, 85ZL, 85ZN and 85ZP have effect as if references to adoption, an adoption agency, placement for adoption or placing for adoption were such references as may be specified in regulations made by the Department.

(4) Where a child is placed by an authority as referred to in paragraphs (1) and (2), notification of the person by an adoption agency during the placement that the child is to be, or is expected to be, placed with the person for adoption is not to give rise to a right to time off under Article 85ZJ, 85ZL, 85ZN or 85ZP for the person or another person.

(5) In this Article—

“adoption agency” has the same meaning as in Article 85ZJ,

“approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996,



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

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“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989 to be a person suitable to adopt a child,

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 2(2) and (3) of the Order),

“child who is looked after by an authority” has the same meaning as in that Order (see Articles 2(7)(b) and 25 of the Order).

(6) The Department may by order amend the definition of, or substitute another definition for the definition of, “approved foster parent” or “approved prospective adopter” for the time being contained in paragraph (5), in consequence of any modification or replacement of the regulations referred to in the definition.”.

(3) In Article 21 (the calculation date in finding a week’s pay), after paragraph (3A) (as inserted by section 15(3)) insert—

“(3B) Where the calculation is for the purposes of Article 85ZK or 85ZM, the calculation date is the day of the appointment.”.

(4) In Article 70C (right not to be subject to detriment: leave for family and domestic reasons), in paragraph (2) (prescribed reasons), after sub-paragraph (aa) (as inserted by section 15(4)) insert—

“(ab) time off under Article 85ZJ or 85ZL,”.

(5) In Article 112B (entitlement to ordinary paternity leave: adoption), in paragraph (5) (provision that may be made in regulations under paragraph (1)), after sub-paragraph (b) insert—

“(ba) make provision excluding the right to be absent on leave under this Article in the case of an employee who has exercised a right to take time off under Article 85ZJ;”.

(6) In Article 131 (being regarded as unfairly dismissed: leave for family reasons), in paragraph (3) (prescribed reasons), after sub-paragraph (aa) (as inserted by section 15(5)) insert—

“(ab) time off under Article 85ZJ or 85ZL,”.

### **Right not to be subjected to detriment: agency workers**

**18.—**(1) The Employment Rights Order is amended as follows.

(2) In Article 70C (right not to be subjected to detriment for taking leave for family and domestic reasons), after paragraph (3) add—

“(4) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the temporary work agency or the hirer done on the ground that—

- (a) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—
  - (i) time off under Article 85ZA, and
  - (ii) remuneration under Article 85ZB in respect of that time off,
- (b) being a person entitled to time off under Article 85ZG, the agency worker exercised (or proposed to exercise) that right,
- (c) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—
  - (i) time off under Article 85ZN, and
  - (ii) remuneration under Article 85ZO in respect of that time off,
 or
- (d) being a person entitled to time off under Article 85ZP, the agency worker exercised (or proposed to exercise) that right.

(5) Paragraph (4) does not apply where the agency worker is an employee.

(6) In this Article, the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3 and 4 of the regulations)—

- “agency worker”,
- “hirer”,
- “temporary work agency””””

(3) In Article 71 (complaints to industrial tribunals)—

- (a) in paragraph (1) for “70C” substitute “70C(1)”,
- (b) after paragraph (1A) insert—
  - “(1AA) An agency worker may present a complaint to an industrial tribunal that the agency worker has been subjected to a detriment in contravention of Article 70C(4) by the temporary work agency or the hirer.”,
- (c) in paragraph (2) for “this Article” substitute “paragraph (1), (1ZA), (1A) or (1B)”,
- (d) after that paragraph insert—
  - “(2A) On a complaint under paragraph (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.”,
- (e) in paragraph (4) after “an employer” insert “, a temporary work agency or a hirer”,

(f) after paragraph (5) add—

“(6) In—

(a) this Article, “agency worker”, and

(b) this Article and Article 72, “hirer” and “temporary work agency”, have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011.”.

(4) In Article 72 (remedies in the case of complaints to an industrial tribunal)

(a) in paragraph (1) for “Article 71” substitute “Article 71(1), (1ZA), (1A) or (1B)”,

(b) after that paragraph insert—

“(1A) Where an industrial tribunal finds a complaint under Article 71(1AA) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.”.

## PART 4

### OTHER EMPLOYMENT RIGHTS: MISCELLANEOUS

#### **Flexible working: removal of requirement to be a carer**

**19.**—(1) Article 112F of the Employment Rights Order is amended as follows.

(2) In paragraph (1) (conditions for exercising right to request flexible working)—

(a) omit the word “and” following sub-paragraph (a),

(b) omit sub-paragraph (b) (condition that employee’s purpose be to enable caring for a child or adult).

(3) In paragraph (2)—

(a) after sub-paragraph (b) insert “and”,

(b) omit the word “and” following sub-paragraph (c),

(c) omit sub-paragraph (d) (application to explain how employee meets conditions as to relationship mentioned in paragraph (1)(b)).

(4) Omit paragraph (9) (definitions for paragraphs (1)(b) and (2)(d)).

### **Procedure for regulations as to prescribed amount of annual leave**

**20.** In Article 15 of the Work and Families (Northern Ireland) Order 2006, (power by regulations to make provision conferring right, except in prescribed cases, to prescribed amount of annual leave in each leave year), in paragraph (6), for the words from “shall—” to the end substitute “shall not be made unless a draft has been laid before, and approved by a resolution of, the Assembly”.

## **PART 5**

### **GENERAL PROVISIONS**

#### **Supplementary, incidental and consequential etc. provision**

**21.—**(1) The Department may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as it considers appropriate—

(a) for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision of it,

(b) in connection with the coming into operation of any provision of this Act.

(2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(3) In subsection (2), “modify” includes the making of additions, omissions and exceptions.

(4) Except as mentioned in subsection (5), an order made under this section is subject to negative resolution.

(5) An order under subsection (1) containing provision which adds to, replaces or omits any part of the text of Northern Ireland legislation or an Act of Parliament is not to be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(6) In this section—

(a) “the Department” means the Department for Employment and Learning,

(b) “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

#### **Repeals**

**22.** The provisions set out in the first column of Schedule 2 are repealed to the extent specified in the second column of the Schedule.

### **Commencement**

**23.—**(1) This Act, except this section and sections 21 and 24, comes into operation on such day or days as the Department may by order appoint.

(2) Without prejudice to section 21(1), an order under subsection (1) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with any provision brought into operation by the order.

(3) In this section, “the Department” has the same meaning as in section 21.

### **Short title**

**24.** This Act may be cited as the Work and Families Act (Northern Ireland) 2015.