
STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

[^{F1}PART IX

F1 1999 NI 9

CHAPTER I

MATERNITY LEAVE

Ordinary maternity leave

103.—(1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

(2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Department.

[^{F2}(3) Regulations under paragraph (2)—

(a) shall secure that, where an employee has a right to leave under this Article, she is entitled to an ordinary maternity leave period of at least 26 weeks;

(b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;

[^{F3}(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;]

(c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.]

[
^{F4}(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.]

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

(a) is entitled[^{F5}, for such purposes and to such extent as may be prescribed,] to the benefit of the terms and conditions of employment which would have applied if she had not been absent,

(b) is bound[^{F5}, for such purposes and to such extent as may be prescribed] by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and

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[is entitled to return from leave to a job of a prescribed kind.]
F5(c)

(5) In paragraph (4)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

[
F5(7) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.]

F2	Art. 103(3) substituted (1.9.2006) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) , arts. 1(3), 13(1), Sch. 1 para. 30 ; S.R. 2006/344, art. 2(b)(c)
F3	Art. 103(3)(ba)(bb) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , ss. 3(2)(a), 23(1) ; S.R. 2015/86, art. 3(1)(c)
F4	Art. 103(3A) inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1) , ss. 3(2)(b), 23(1) ; S.R. 2015/86, art. 3(1)(c)
F5	2002 NI 2

Compulsory maternity leave

104.—(1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) shall secure—

- (a) that no compulsory leave period is less than two weeks, and
- (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

(4) Subject to paragraph (5), any provision of or made under the Health and Safety at Work (Northern Ireland) Order 1978 shall apply in relation to the prohibition under paragraph (1) as if it were imposed by regulations under Article 17 of that Order.

(5) Article 31(1)(c) of the 1978 Order shall not apply in relation to the prohibition under paragraph (1); and an employer who contravenes that paragraph shall be—

- (a) guilty of an offence, and
- (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Additional maternity leave

105.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional maternity leave period.

(2) An additional maternity leave period is a period calculated in accordance with regulations made by the Department.

[^{F6}(3) Regulations under paragraph (2)—

(a) may allow an employee [^{F7}to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and also to satisfying prescribed conditions,]

[^{F8}(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,]

(b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.]

[
^{F9}(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) Subject to Article 106, an employee who exercises her right under paragraph (1)—

(a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if she had not been absent,

(b) is bound, for such purposes and to such extent as may be prescribed, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and

(c) is entitled to return from leave to a job of a prescribed kind.

(5) In paragraph (4)(a) “terms and conditions of employment”

(a) includes matters connected with an employee's employment whether or not they arise under her contract of employment, but

(b) does not include terms and conditions about remuneration.

[
^{F10}(5A) In paragraph (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.]

(6) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(7) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

F6 Art. 105(3) substituted (1.9.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 31**; S.R. 2006/344, **art. 2(b)(c)**

F7 Words in art. 105(3)(a) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(3)(a)**, 23(1); S.R. 2015/86, art. 3(1)(c)

F8 Art. 105(3)(aa) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(3)(b)**, 23(1); S.R. 2015/86, art. 3(1)(c)

F9 Art. 105(3A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(3)(c)**, 23(1); S.R. 2015/86, art. 3(1)(c)

F10 2002 NI 2

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Redundancy and dismissal

106.—(1) Regulations under Article 103 or 105 may make provision about redundancy during an ordinary or additional maternity leave period.

(2) Regulations under Article 103 or 105 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.

(3) Regulations made by virtue of paragraph (1) or (2) 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 XI).

(4) Regulations under Article^[F11] 103 or] 105 may make provision—

- (a) for Article^[F11] 103(4)(c) or] 105(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an^[F11] ordinary or] additional maternity leave period.

F11 2002 NI 2

Articles 103 to 105: supplemental

107.—(1) Regulations under Article 103, 104 or 105 may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
 - (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
 - (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
 - (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
 - (e) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional maternity leave;
 - (f) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary, compulsory or additional maternity leave.
- (2) In Articles 103 to 105 “prescribed” means prescribed by regulations made by the Department.

[^{F12}CHAPTER IA

ADOPTION LEAVE

F12 2002 NI 2

Ordinary adoption leave

107A.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.

[

^{F13}(1A) The conditions that may be prescribed under paragraph (1) include the condition mentioned in Article 107AB.]

(2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Department.

[
^{F14}(2A) Regulations under paragraph (2)]^{F15}—

- (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,]

[may specify circumstances in which an employee may work for his employer during an
^{F16}(c)] ordinary adoption leave period without bringing the period to an end.]

[
^{F17}(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.]

(3) Subject to Article 107C, an employee who exercises his right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
- (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
- (c) is entitled to return from leave to a job of a prescribed kind.

(4) In paragraph (3)(a) “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
- (b) does not include terms and conditions about remuneration.

(5) In paragraph (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.

(6) The Department may make regulations specifying matters which are, or, are not, to be treated as remuneration for the purposes of this Article.

(7) The Department may make regulations making provision, in relation to the right to return under paragraph (3)(c), about—

- (a) seniority, pension rights and similar rights, and
- (b) terms and conditions of employment on return.

F13 Art. 107A(1A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 8(2)**, 23(1); S.R. 2015/86, art. 3(1)(f)

F14 Art. 107A(2A) inserted (1.9.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 32**; S.R. 2006/344, **art. 2(b)(c)**

F15 Art. 107A(2A)(a)(b) and preceding punctuation mark inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(4)(a)**, 23(1); S.R. 2015/86, art. 3(1)(c)

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- F16** Words in art. 107A(2A) renumbered as art. 107A(2A)(c) (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(4\)\(b\)](#), 23(1); S.R. 2015/86, art. 3(1)(c)
- F17** Art. 107A(2B) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(4\)\(c\)](#), 23(1); S.R. 2015/86, art. 3(1)(c)

Modifications etc. (not altering text)

- C1** Art. 107A applied (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\)](#), regs. 1(1), 2

[^{F18}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—
- being an approved foster parent,
 - being an approved prospective adopter,
 - 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
 - satisfying such further conditions as may be prescribed.

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

- is considering adoption for the child, or
- 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.]

- F18** Art. 107AB inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 8\(3\)](#), 23(1); S.R. 2015/86, art. 3(1)(f)

[^{F19}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]

F19 Art. 107AC inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 10(2), 23(1)**; S.R. 2015/86, art. 3(1)(h)

Additional adoption leave

107B.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.

(2) An additional adoption leave period is a period calculated in accordance with regulations made by the Department.

[^{F20}(3) Regulations under paragraph (2)—

(a) may allow an employee [^{F21}to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions,]

[^{F22}(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,]

(b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.]

[
^{F23}(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.]

(4) Subject to Article 107C, an employee who exercises his right under paragraph (1)—

(a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,

(b) is bound, for such purposes and to such extent as may be prescribed by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and

(c) is entitled to return from leave to a job of a prescribed kind.

(5) In paragraph (4)(a) “terms and conditions of employment”

(a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but

(b) does not include terms and conditions about remuneration.

(6) In paragraph (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—

(a) maternity leave, or

(b) ordinary adoption leave,

or to both.

(7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(8) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

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- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

- F20** Art. 107B(3) substituted (1.9.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 33**; S.R. 2006/344, **art. 2(b)(c)**
- F21** Words in art. 107B(3)(a) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(a)**, 23(1); S.R. 2015/86, art. 3(1)(c)
- F22** Art. 107B(3)(aa) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(b)**, 23(1); S.R. 2015/86, art. 3(1)(c)
- F23** Art. 107B(3A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(c)**, 23(1); S.R. 2015/86, art. 3(1)(c)

Modifications etc. (not altering text)

- C2** Art. 107B applied (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\)](#), regs. 1(1), 2

[^{F24}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]

- F24** Art. 107BA inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 10(3)**, 23(1); S.R. 2015/86, art. 3(1)(h)

Redundancy and dismissal

107C.—(1) Regulations under Article 107A or 107B may make provision about—

- (a) redundancy, or
- (b) dismissal (other than by reason of redundancy),

during an ordinary or additional adoption leave period.

(2) Regulations 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 XI).

(3) Regulations under Article 107A or 107B may make provision—

- (a) for Article 107A(3)(c) or 107B(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

Chapter IA: supplemental

107D.—(1) Regulations under Article 107A or 107B may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees 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 this Chapter and which arises under his contract of employment or otherwise;
- (f) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on ordinary or additional adoption leave;
- (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave.

[^{F25}(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.]

(2) In Articles 107A [^{F26}, 107AB, 107BA, 107AC] and 107B “prescribed” means prescribed by regulations made by the Department.]

F25 Art. 107D(1A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 10(4)**, 23(1); S.R. 2015/86, art. 3(1)(h)

F26 Words in art. 107D(2) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(6)**; S.R. 2015/86, art. 3(2)(d)

[^{F27}CHAPTER 1B

SHARED PARENTAL LEAVE

F27 Pt. 9 Ch. 1B inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 2(2)**, 23(1); S.R. 2015/86, art. 3(1)(b)

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,

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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 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—
- (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,

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- (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,
- (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,

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- (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.

Modifications etc. (not altering text)

- C3** Art. 107G applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107G and 107I to Adoptions from Overseas\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/97\), reg. 1, Sch.](#)
- C4** Art. 107G applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\), reg. 1\(1\), Sch. 1](#)

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,

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- (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,
 - (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).

Modifications etc. (not altering text)

- C5** Art. 107I applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107G and 107I to Adoptions from Overseas\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/97\)](#), reg. 1, **Sch.**
- C6** Art. 107I applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\)](#), reg. 1(1), **Sch. 1**

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

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(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]

CHAPTER II

PARENTAL LEAVE

Entitlement to parental leave

108.—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment, and
- (b) as to having, or expecting to have, responsibility for a child,

to be absent from work on parental leave for the purpose of caring for a child.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to parental leave in respect of a child;
- (b) when parental leave may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this paragraph is without prejudice to any provision which may be made by regulations for cases in which—

- (a) a person ceases to satisfy conditions under paragraph (1);
- (b) an entitlement to parental leave is transferred.

(4) Provision under paragraph (2)(b) may, in particular, refer to—

- (a) a child's age, or
- (b) a specified period of time starting from a specified event.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;

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- (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
- (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
- (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
- (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
- (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;
- (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

[
^{F28}(6) In this Article and Article 110(4) and (5), “specified” means specified for the time being in regulations made under this Article.]

F28 Art. 108(6) added (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(7\)](#); S.R. 2015/86, art. 3(2)(d)

Rights during and after parental leave

109.—(1) Regulations under Article 108 shall provide—

- (a) that an employee who is absent on parental leave is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
- (b) that an employee who is absent on parental leave is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with Article 108(1)), and
- (c) that an employee who is absent on parental leave is entitled, subject to Article 110(1), to return from leave to a job of such kind as the regulations may specify.

(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 a contract of employment, but
- (b) does not include terms and conditions about remuneration.

(3) Regulations under Article 108 may specify matters which are, or are not, to be treated as remuneration for the purposes of paragraph (2)(b).

(4) The regulations 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.

[
^{F29}(5) In this Article, “prescribed” means prescribed by the regulations made under Article 108.]

F29 Art. 109(5) added (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(8\)](#); S.R. 2015/86, art. 3(2)(d)

Special cases

- 110.**—(1) Regulations under Article 108 may make provision—
- (a) about redundancy during a period of parental leave;
 - (b) about dismissal (other than by reason of redundancy) during a period of parental leave.
- (2) Provision 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 XI).
- (3) Regulations under Article 108 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—
- (a) by varying the terms of his contract of employment as to hours of work, or
 - (b) by varying his normal working practice as to hours of work,
- in a way specified in or permitted by the regulations for a period specified in the regulations.
- (4) Provision by virtue of paragraph (3)—
- (a) may restrict an entitlement to specified circumstances;
 - (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
 - (c) may include consequential provision.
- (5) Regulations under Article 108 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.
- (6) The reference in Article 109(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly^{F30} to parental leave and partly to—
- (a) maternity leave, or
 - (b) adoption leave,
- or to both.]
- (7) Regulations under Article 108 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—
- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
 - (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

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Supplemental

- 111.**—(1) Regulations under Article 108 may, in particular—
- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
 - (b) make provision requiring employers or employees to keep records;
 - (c) make provision about other procedures to be followed by employees and employers;

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- (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
 - (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
 - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
 - (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to parental leave.
- (2) The regulations may make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on parental leave.
- (3) Without prejudice to the generality of Article 108, the regulations may make any provision which appears to the Department to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [96/34/EC](#) on the framework agreement on parental leave, or
 - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.

Complaint to industrial tribunal

- 112.**—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably postponed a period of parental leave requested by the employee, or
 - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, 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 this Article well-founded it—
- (a) shall make a declaration to that effect, and
 - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's behaviour, and
 - (b) any loss sustained by the employee which is attributable to the matters complained of.

[^{F31}CHAPTER III PATERNITY LEAVE

F31 2002 NI 2

Entitlement to [^{F32}paternity leave] : birth

112A.—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a newborn, or expected, child, and
- (c) as to relationship with the child's mother,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the mother.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's birth.

[^{F33}(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.]

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child's mother;
- (b) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) make provision about how leave under this Article may be taken.

(6) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (4) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(7) In this Article—

- “newborn child” includes a child stillborn after twenty-four weeks of pregnancy;
- “week” means any period of seven days.

[^{F34}(8) In this Article and Articles 112B, 112BA, 112BAA, 112C and 112E, “specified” means specified for the time being in regulations made under the Article concerned.]

F32 Words in art. 112A title substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(9\)\(a\)](#); S.R. 2015/86, art. 4(2)(c) (with art. 7(2))

F33 Art. 112A(4A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(6\), 23\(1\)](#); S.R. 2015/86, art. 3(1)(c)

F34 Art. 112A(8) added (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), s. 23\(1\), Sch. 1 para. 4\(9\)\(b\)](#); S.R. 2015/86, art. 3(2)(d)

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Modifications etc. (not altering text)

C7 Art. 112A applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\)](#), reg. 1(1), **Sch. 2**

Entitlement to additional paternity leave: birth

^{F35}**112AA.**

F35 Art. 112AA repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), ss. 4, 23(1), **Sch. 2**; [S.R. 2015/86](#), art. 4(1)(a)(3) (with art. 7(2))

Entitlement to [^{F36}paternity leave] : adoption

^{F37}**112B** .—(1) The Department shall 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, and
- (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under sub-paragraph (c).

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.

[^{F38}(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.]

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;

[^{F39}(aa) 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;]

- (b) make provision excluding the right to be absent on leave under this Article in the case of an employee who exercises a right to be absent from work on adoption leave;

[^{F40}(ba) an employee who has exercised a right to take time off under Article 85ZJ;]

(c) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is placed for adoption as part of the same arrangement;

(d) make provision about how leave under this Article may be taken.

(6) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

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

(8) The Department may by regulations provide for this Article 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.

- F36** Words in [art. 112B](#) title substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015](#) (c. 1), s. 23(1), [Sch. 1 para. 4\(10\)](#); S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F37** mod. by SR 2003/220
- F38** Art. 112B(4A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015](#) (c. 1), [ss. 3\(7\)](#), 23(1); S.R. 2015/86, art. 3(1)(c)
- F39** Art. 112B(5)(aa) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015](#) (c. 1), [ss. 8\(4\)](#), 23(1); S.R. 2015/86, art. 3(1)(f)
- F40** Art. 112B(5)(ba) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015](#) (c. 1), [ss. 17\(5\)](#), 23(1); S.R. 2015/86, art. 3(1)(n)

Modifications etc. (not altering text)

- C8** Art. 112B applied (with modifications) (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015](#) (S.R. 2015/100), reg. 1(1), [Sch. 2](#)

[^{F41}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—

(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.]

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F41 Art. 112BA inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 8(5), 23(1); S.R. 2015/86, art. 3(1)(f)

[F42] 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]

F42 Art. 112BAA inserted (15.3.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 10(5), 23(1); S.R. 2015/86, art. 3(1)(h)

Entitlement to additional paternity leave: adoption

F35 112BB.

F35 Art. 112AA repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), ss. 4, 23(1), Sch. 2; S.R. 2015/86, art. 4(1)(a)(3) (with art. 7(2))

Rights during and after paternity leave

112C.—(1) Regulations under Article 112A F43 ... shall provide—

- (a) that an employee who is absent on leave under that Article is entitled, for such purposes and to such extent as [F44 may be specified] , to the benefit of the terms and conditions of employment which would have applied if he 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 [F45 may be specified] , by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1) of that Article), 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 [F46 that may be specified] , subject to Article 112D(1).

(2) The reference in paragraph (1)(c) to absence on leave under Article 112A F47 ... includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that Article and partly to any one or more of the following—

F48 (za)

- (a) maternity leave,
(b) adoption leave, F49 ...
[shared parental leave, and]

F50 (ba)

- (c) parental leave.

(3) Paragraph (1) shall apply to regulations under Article 112B [F51[F52 or 112BAA as it applies to regulations under Article 112A] .]

(4) In the application of paragraph (1)(c) to regulations under Article 112B [F53 or [F54 112BAA]] , the reference to absence on leave under that Article includes, where appropriate, a reference to a

continuous period of absence attributable partly to leave under that Article and partly to anyone or more of the following—

- ^{F55}(za)
- (a) maternity leave,
- (b) adoption leave,
- [shared parental leave,]
- ^{F56}(ba)
- (c) parental leave, and
- (d) leave under Article 112A ^{F57}... .
- (5) In paragraph (1)(a), “terms and conditions of employment”
- (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
- (b) does not include terms and conditions about remuneration.
- (6) Regulations under [^{F58}Article 112A or 112B] may specify matters which are, or are not, to be treated as remuneration for the purposes of this Article.
- (7) Regulations under [^{F59}Article 112A or 112B] 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.

- F43** Words in art. 112C(1) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(a\)](#), [Sch. 2](#); S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))
- F44** Words in art. 112C(1)(a) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(b\)](#); S.R. 2015/86, art. 3(2)(d)
- F45** Words in art. 112C(1)(b) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(b\)](#); S.R. 2015/86, art. 3(2)(d)
- F46** Words in art. 112C(1)(c) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(c\)](#); S.R. 2015/86, art. 3(2)(d)
- F47** Words in art. 112C(2) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(d\)\(i\)](#), [Sch. 2](#); S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))
- F48** Art. 112C(2)(za) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(d\)\(ii\)](#), [Sch. 2](#); S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))
- F49** Word in art. 112C(2) repealed (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(d\)\(iii\)](#), [Sch. 2](#); S.R. 2015/86, art. 3(2)(d)(3)
- F50** Art. 112C(2)(ba) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(d\)\(iv\)](#); S.R. 2015/86, art. 3(2)(d)
- F51** Words in art. 112C(3) substituted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), [7\(4\)](#); S.R. 2010/295, [art. 2\(a\)](#)
- F52** Words in art. 112C(3) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(e\)](#); S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F53** Words in art. 112C(4) inserted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), [7\(5\)\(a\)](#); S.R. 2010/295, [art. 2\(a\)](#)
- F54** Word in art. 112C(4) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(f\)\(i\)](#); S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F55** Art. 112C(4)(za) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(f\)\(ii\)](#), [Sch. 2](#); S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))
- F56** Art. 112C(4)(ba) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), [Sch. 1 para. 4\(11\)\(f\)\(iii\)](#); S.R. 2015/86, art. 3(2)(d)

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- F57** Words in art. 112C(4)(d) repealed (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), Sch. 1 para. 4(11)(f)(iv), **Sch. 2**; S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))
- F58** Words in art. 112C(6) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(11)(g)**; S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F59** Words in art. 112C(7) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(11)(h)**; S.R. 2015/86, art. 4(2)(c) (with art. 7(2))

Special cases

- 112D.**—(1) Regulations under Article [^{F60}112A or 112B] 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 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 XI).

- F60** Words in art. 112D(1) substituted (5.4.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(12)**; S.R. 2015/86, art. 4(2)(c) (with art. 7(2))

Chapter III: supplemental

112E

- [
^{F61}(1)] Regulations under [^{F62}Article 112A or 112B] may—
- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
 - (b) make provision requiring employers or employees 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 [^{F62}Article 112A or 112B] and which arises under his contract of employment or otherwise;
 - (f) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under [^{F62}Article 112A or 112B] ;
 - (g) make provision applying, modifying or excluding a 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 [^{F62}Article 112A or 112B] .
- ^{F63}(2)]]

- F61** Art. 112E renumbered (9.9.2010) as art. 112E(1) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 37(3)**; S.R. 2010/295, **art. 2(b)(c)**

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- F62** Words in art. 112E(1) substituted (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), **Sch. 1 para. 4(13)(a)**; S.R. 2015/86, art. 4(2)(c) (with art. 7(2))
- F63** Art. 112E(2) repealed (5.4.2015) by Work and Families Act (Northern Ireland) 2015 (c. 1), s. 23(1), Sch. 1 para. 4(13)(b), **Sch. 2**; S.R. 2015/86, art. 4(2)(c)(3) (with art. 7(2))

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