

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### [<sup>F1</sup>PART IX

### [<sup>F1</sup>CHAPTER I

### MATERNITY LEAVE

**F1** 1999 NI 9

**F1** functions transferred SR 1999/481

**Non-textual amendments applied to the whole Legislation can be found in the Introduction**

#### 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.

[<sup>F2</sup>(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;

[<sup>F3</sup>(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.]

[  
<sup>F4</sup>(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)—

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- (a) is entitled<sup>F5</sup>, 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<sup>F5</sup>, 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
- [ is entitled to return from leave to a job of a prescribed kind.]
- <sup>F5</sup>(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.
- [
- <sup>F5</sup>(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.]

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

[<sup>F6</sup>(3) Regulations under paragraph (2)—

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

[<sup>F8</sup>(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.]

[  
<sup>F9</sup>(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.

[  
<sup>F10</sup>(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)

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- 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](#)

### 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<sup>F11</sup> 103 or] 105 may make provision—

- (a) for Article<sup>F11</sup> 103(4)(c) or] 105(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an<sup>F11</sup> 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.]

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 4A inserted by [2016 c. 15 \(N.I.\) s. 18](#)
- Pt. 7A inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- art. 21(4B) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- art. 23(1)(zza) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- art. 28(5) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 12](#)
- art. 43(5) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 13](#)
- art. 55(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 14](#)
- art. 66(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 15](#)
- art. 70F inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- art. 71(3A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 16](#)
- art. 74(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 17](#)
- art. 77C(1) art. 77 renumbered as art. 77C(1) by [2016 c. 15 \(N.I.\) Sch. 2 para. 18\(2\)](#)
- art. 77C(2) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 18\(3\)](#)
- art. 79(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 19](#)
- art. 82(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 20](#)
- art. 85(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 21](#)
- art. 85B(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 27](#)
- art. 85ZC(3A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 22](#)
- art. 85ZF(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 23](#)
- art. 85ZH(3A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 24](#)
- art. 85ZM(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 25](#)
- art. 85ZQ(3A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 26](#)
- art. 88(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 28](#)
- art. 91(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 29](#)
- art. 91C(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 30](#)
- art. 95(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 31](#)
- art. 95F(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- art. 102(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 33](#)
- art. 102A(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 34](#)
- art. 112(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 35](#)
- art. 112H(7) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 36](#)
- art. 135E inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- art. 137(6D) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- art. 140(3)(fj) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- art. 143(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- art. 144(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)
- art. 145(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 37](#)
- art. 199(4) added by [2016 c. 15 \(N.I.\) Sch. 2 para. 38](#)
- art. 201(8ZA) inserted by [S.I. 2019/146 Sch. para. 257\(2\)\(b\)](#)
- art. 217(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 39](#)
- art. 220(2A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 40](#)
- art. 228(4ZA) inserted by [S.I. 2019/146 Sch. para. 257\(3\)\(b\)](#)
- art. 249B applied by [1995 c. 50, Sch. 3 para. 3\(1A\) \(as inserted\) by 2016 c. 15 \(N.I.\) Sch. 2 para. 11](#)
- art. 249B applied by [1998 c. 39, s. 11\(4B\) \(as inserted\) by 2016 c. 15 \(N.I.\) Sch. 2 para. 43](#)

- art. 249B applied by S.I. 1976/1042 (N.I.), art. 76(1A) (as inserted) by [2016 c. 15 \(N.I.\) Sch. 2 para. 3](#)
- art. 249B applied by S.I. 1997/869 (N.I.), art. 65(1A) (as inserted) by [2016 c. 15 \(N.I.\) Sch. 2 para. 42](#)
- art. 249B applied by S.I. 1999/2790 (N.I.), art. 13(2A) (as inserted) by [2016 c. 15 \(N.I.\) Sch. 2 para. 44](#)
- art. 249B and cross-heading inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 41](#)
- art. 251(1B)(1C) inserted by [2016 c. 15 \(N.I.\) s. 24\(3\)](#)
- art. 251(5B) inserted by [2016 c. 15 \(N.I.\) s. 24\(6\)](#)
- art. 251(7)-(9) added by [2016 c. 15 \(N.I.\) s. 24\(7\)](#)