

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

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

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

### PARENTAL 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**

#### 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.

[<sup>F2</sup>(6) In this Article and Article 110(4) and (5), “specified” means specified for the time being in regulations made under this Article.]

**F2** 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.

[<sup>F3</sup>(5) In this Article, “prescribed” means prescribed by the regulations made under Article 108.]

**F3** 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<sup>F4</sup> 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.

**F4** 2002 NI 2

## 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.]

**Changes to legislation:**

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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\(7\)](#)