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STATUTORY INSTRUMENTS

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**2002 No. 2836**

**The Employment (Northern Ireland) Order 2002**

*Adoption leave and paternity leave*

**Adoption leave**

3. In Part IX of the Employment Rights (Northern Ireland) Order 1996 (N.I. 16), after Chapter I there shall be inserted—

*“CHAPTER IA*

*ADOPTION LEAVE*

**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.

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

(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.

### **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.

(3) Regulations under paragraph (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends.

(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—

(a) seniority, pension rights and similar rights;

(b) terms and conditions of employment on return.

### **Redundancy and dismissal**

**107C.**—(1) Regulations under Article 107 A 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 ‘die regulations, (which may include provision for a dismissal to be treated as unfair for ‘die 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.

(2) In Articles 107A and 107B “prescribed” means prescribed by regulations made by the Department.”.

#### **Paternity leave**

4. In Part IX of the Employment Rights (Northern Ireland) Order 1996 (N.I. 16) (maternity and parental leave) after Chapter there shall be inserted—

#### *“CHAPTER III*

#### *PATERNITY LEAVE*

#### **Entitlement to 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.

(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.

### **Entitlement to paternity leave: adoption**

**112.**—(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 subparagraph (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.

(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;
- (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;

- (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.

### **Rights during and after paternity leave**

- 112C.**—(1) Regulations under Article 112A shall provide—
- (a) that an employee who is absent on leave under that Article is entitled, for such purposes and to such extent as the regulations may prescribe, 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 the regulations may prescribe, 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 prescribed by regulations, subject to Article 112D(1).
- (2) The reference in paragraph (1)(c) to absence on leave under Article 112A 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—
- (a) maternity leave,
  - (b) adoption leave, and
  - (c) parental leave.
- (3) Paragraph (1) shall apply to regulations under Article 112B as it applies to regulations under Article 112A.
- (4) In the application of paragraph (1)(c) to regulations under Article 112B, 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—
- (a) maternity leave,
  - (b) adoption leave,
  - (c) parental leave, and
  - (d) leave under Article 112A.
- (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 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 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.

### **Special cases**

**112D.**—(1) Regulations under Article 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).

### **Chapter III: supplemental**

**112E.** Regulations under 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 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 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 Article 112A or 112B.”.