

2002 No. 2836 (N.I. 2)

NORTHERN IRELAND

The Employment (Northern Ireland) Order 2002

Made - - - - - 20th November 2002

*Coming into operation on days to be appointed
under Article 1(2)*

ARRANGEMENT OF ORDER

Introductory

1. Title and commencement
2. Interpretation

Adoption leave and paternity leave

3. Adoption leave
4. Paternity leave

Statutory paternity pay and statutory adoption pay

5. Statutory paternity pay
6. Statutory adoption pay
7. Financial arrangements
8. Funding of employers' liabilities
9. Regulations about payment
10. Decisions and appeals
11. Power to require information
12. Penalties: failures to comply
13. Penalties: fraud, etc.

Maternity leave

14. Rights during and after maternity leave
15. Flexible working

Supplementary

16. Regulations

17. Amendments and revocations

SCHEDULES

Schedule 1	Penalties: procedure and appeals
Schedule 2	Amendments

At the Court at Buckingham Palace, the 20th day of November 2002

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Employment (Northern Ireland) Order 2002.

(2) This Order shall come into operation on such day or days as the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions and savings as the Department considers necessary or expedient in connection with the coming into operation of any of the provisions of this Order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Board” means the Commissioners of Inland Revenue;

“the Department” means the Department for Employment and Learning;

“employer” and “employee” have the same meanings as in Parts XIIZA and XIIZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

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 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.
- (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.”.

Statutory paternity pay and statutory adoption pay

Statutory paternity pay

5. In the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) after Part XII (statutory maternity pay) there shall be inserted—

“PART XIIZA

STATUTORY PATERNITY PAY

Entitlement: birth

167ZA.—(1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as “statutory paternity pay”.

- (2) The conditions are—
 - (a) that he satisfies prescribed conditions—
 - (i) as to relationship with a newborn child, and
 - (ii) as to relationship with the child's mother;
 - (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
 - (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in

force under section 5(1)(a) above at the end of the relevant week;
and

(d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is born.

(3) The references in subsection (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child's birth.

(4) A person's entitlement to statutory paternity pay under this section shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

(5) In this section, "newborn child" includes a child stillborn after twenty-four weeks of pregnancy.

Entitlement: adoption

167ZB.—(1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as "statutory paternity pay".

(2) The conditions are—

(a) that he satisfies prescribed conditions—

(i) as to relationship with a child who is placed for adoption, under the law of any part of the United Kingdom, and

(ii) as to relationship with a person with whom the child is so placed for adoption;

(b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;

(c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week;

(d) that he has been in employed earner's employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is placed for adoption; and

(e) where he is a person with whom the child is placed for adoption, that he has elected to receive statutory paternity pay.

(3) The references in subsection (2) above to the relevant week are to the week in which the adopter is notified of being matched with the child for the purposes of adoption.

(4) A person may not elect to receive statutory paternity pay if he has elected in accordance with section 167ZL below to receive statutory adoption pay.

(5) Regulations may make provision about elections for the purposes of subsection (2)(e) above.

(6) A person's entitlement to statutory paternity pay under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

(7) In this section, "adopter", in relation to a person who satisfies the condition under subsection (2)(a)(ii) above, means the person by reference to whom he satisfies that condition.

Entitlement: general

167ZC.—(1) A person shall be entitled to payments of statutory paternity pay in respect of any period only if—

- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory paternity pay to begin; and
- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.

(2) The notice shall be in writing if the person who is liable to pay the statutory paternity pay so requests.

(3) The Department may by regulations—

- (a) provide that subsection (2)(b), (c) or (d) of section 167ZA or 167ZB above shall have effect subject to prescribed modifications in such cases as may be prescribed;
- (b) provide that subsection (1) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 167ZA or 167ZB above;
- (e) provide that a person is to be treated for the purposes of section 167ZA or 167ZB above as being employed for a continuous period of at least 26 weeks where—
 - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 167ZA or 167ZB above;
- (g) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,

shall be calculated or estimated for the purposes of section 167ZA or 167ZB above in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description

made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

Liability to make payments

167ZD.—(1) The liability to make payments of statutory paternity pay, under section 167ZA or 167ZB above is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (d) of that section.

(2) Regulations shall make provision as to a former employer's liability to pay statutory paternity pay to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory paternity pay.

(3) The Department may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory paternity pay is to be a liability of the Board.

Rate and period of pay

167ZE.—(1) Statutory paternity pay shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.

(2) Statutory paternity pay shall be payable in respect of—

(a) a period of two consecutive weeks within the qualifying period beginning on such date within that period as the person entitled may choose in accordance with regulations, or

(b) if regulations permit the person entitled to choose to receive statutory paternity pay in respect of—

(i) a period of a week, or

(ii) two non-consecutive periods of a week,

such week or weeks within die qualifying period as he may choose in accordance with regulations.

(3) For the purposes of subsection (2) above, the qualifying period shall be determined in accordance with regulations, which shall secure that it is a period of at least 56 days beginning—

(a) in the case of a person to whom the conditions in section 167ZA(2) above apply, with the date of the child's birth, and

(b) in the case of a person to whom the conditions in section 167ZB(2) above apply, with the date of the child's placement for adoption.

(4) Statutory paternity pay shall not be payable to a person in respect of a statutory pay week if it is not his purpose at the beginning of the week—

(a) to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 167ZA(2)(a) or 167ZB(2)(a) above; or

(b) to support the person by reference to whom he satisfies the condition in sub-paragraph (ii) of that provision.

(5) A person shall not be liable to pay statutory paternity pay to another in respect of a statutory pay week during any part of which the other works under a contract of service with him.

(6) It is immaterial for the purposes of subsection (5) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.

(7) Except in such cases as may be prescribed, statutory paternity pay shall not be payable to a person in respect of a statutory pay week during any part of which he works for any employer who is not liable to pay him statutory paternity pay.

(8) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory paternity pay in respect of a statutory pay week.

(9) Where more than one child is born as a result of the same pregnancy, the reference in subsection (3)(a) above 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.

(10) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (3)(b) above 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.

(11) In this section—

“statutory pay week”, in relation to a person entitled to statutory paternity pay, means a week chosen by him as a week in respect of which statutory paternity pay shall be payable;

“week” means any period of seven days.

Restrictions on contracting out

167ZF.—(1) Any agreement shall be void to the extent that it purports—

(a) to exclude, limit or otherwise modify any provision of this Part of this Act, or

(b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.

(2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory paternity pay which the employer is liable to pay to the employee in respect of any

period shall not be void by virtue of subsection (1)(a) above if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

Relationship with contractual remuneration

167ZG.—(1) Subject to subsections (2) and (3) below, any entitlement to statutory paternity pay shall not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).

(2) Subject to subsection (3) below—

- (a) any contractual remuneration paid to a person by an employer of his in respect of any period shall go towards discharging any liability of that employer to pay statutory paternity pay to him in respect of that period; and
- (b) any statutory paternity pay paid by an employer to a person who is an employee of his in respect of any period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that period.

(3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2) above.

Crown employment—Part XIIZA

167ZH. The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Special classes of person

167ZI.—(1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as the Department thinks proper in its application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations.

(2) Regulations under subsection (1) above may, in particular, provide—

- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;

- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

(3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (8) of section 11 of the Petroleum Act 1998 (application of civil law to certain offshore activities) were omitted would nevertheless fall within subsection (2) of that section.

Part XIZA: supplementary

167ZJ.—(1) In this Part of this Act—

“the Board” means the Commissioners of Inland Revenue;

“the Department” means the Department for Employment and Learning;

“employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;

“prescribed” means prescribed by regulations.

(2) In this Part of this Act, “employee” means a person who is—

(a) gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) over the age of 16.

(3) Regulations may provide—

(a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act; and

(b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.

(4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

(a) two or more employers are to be treated as one;

(b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(5) In this Part of this Act, except section 67ZE, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part of this Act, a person’s normal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.

(7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.

(8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.

(9) Where in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.

(10) Regulations under subsection (9) above may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person’s employers under two or more contracts is to be regarded for the purposes of statutory paternity pay as his employer under the contract.

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

(12) In this Part of this Act “regulations” means regulations made by the Department and in relation to any such regulations sections 171 and 172 below have effect as if references to the Department were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

Power to apply Part XIIZA to adoption cases not involving placement

167ZK. The Department may by regulations provide for this Part of this Act 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.”.

Statutory adoption pay

6. In the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) after Part XIIZA (inserted by Article 5) there shall be inserted—

“PART XIIZB

STATUTORY ADOPTION PAY

Entitlement

167ZL.—(1) Where a person who is, or has been, an employee satisfies the conditions in subsection (2), he shall be entitled in accordance with the following provisions of this Part of this Act to payments to be known as “statutory adoption pay”.

(2) The conditions are—

- (a) that he is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;
- (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that he has ceased to work for the employer;
- (d) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and
- (e) that he has elected to receive statutory adoption pay.

(3) The references in subsection (2)(b) and (d) above to the relevant week are to the week in which the person is notified that he has been matched with the child for the purposes of adoption.

(4) A person may not elect to receive statutory adoption pay if—

- (a) he has elected in accordance with section 167ZB above to receive statutory paternity pay; or
- (b) where the child is, or is expected to be, placed for adoption with him as a member of a married couple and his spouse is a person to whom the conditions in subsection (2) above apply, his spouse has elected to receive statutory adoption pay.

(5) A person’s entitlement to statutory adoption pay shall not be affected by the placement, or expected placement, for adoption of more than one child as part of the same arrangement.

(6) A person shall be entitled to payments of statutory adoption pay only if—

- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him statutory adoption pay to begin; and
- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.

(7) The notice shall be in writing if the person who is liable to pay the statutory adoption pay so requests.

(8) The Department may by regulations—

- (a) provide that subsection (2)(b), (c) or (d) above shall have effect subject to prescribed modifications in such cases as may be prescribed;
- (b) provide that subsection (6) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of this section;
- (e) provide that a person is to be treated for the purposes of this section as being employed for a continuous period of at least 26 weeks where—
 - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of this section;
- (g) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,shall be calculated or estimated for the purposes of this section in, such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings;
- (h) make provision about elections for statutory adoption pay.

Liability to make payments

167ZM.—(1) The liability to make payments of statutory adoption pay is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in section 167ZL(2)(b) above.

(2) Regulations shall make provision as to a former employer's liability to pay statutory adoption pay to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory adoption pay.

(3) The Department may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory adoption pay is to be a liability of the Board.

Rate and period of pay

167ZN.—(1) Statutory adoption pay shall be payable at such fixed or earnings-related weekly rate as the Department may prescribe by regulations, which may prescribe different kinds of rate for different cases.

(2) Statutory adoption pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period ("the adoption pay period") of a duration not exceeding 26 weeks.

(3) A person shall not be liable to pay statutory adoption pay to another in respect of any week during any part of which the other works under a contract of service with him.

(4) It is immaterial for the purposes of subsection (3) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the adoption pay period or a contract of service which did not so exist.

(5) Except in such cases as may be prescribed statutory adoption pay shall not be payable to a person in respect of any week during any part of which he works for any employer who is not liable to pay him statutory adoption pay.

(6) The Department may by regulations specify circumstances in which there is to be no liability to pay statutory adoption pay in respect of a week.

(7) In subsection (2) above, "week" means any period of seven days.

(8) In subsections (3), (5) and (6) above, "week" means a period of seven days beginning with the day of the week on which the adoption pay period begins.

Restrictions on contracting out

167ZO.—(1) Any agreement shall be void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.

(2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory adoption pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period; or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

Relationship with benefits and other payments, etc.

167ZP.—(1) Except as may be prescribed, a day which falls within the adoption pay period shall not be treated as a day of incapacity for work for the purposes of determining, for this Act, whether it forms part of a period of incapacity for work for the purposes of incapacity benefit.

(2) Regulations may provide that in prescribed circumstances a day which falls within the adoption pay period shall be treated as a day of incapacity for work for the purposes of determining entitlement to the higher rate of short-term incapacity benefit or to long-term incapacity benefit.

(3) Regulations may provide that an amount equal to a person's statutory adoption pay for a period shall be deducted from any such benefit in respect of the same period and a person shall be entitled to such benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(4) Subject to subsections (5) and (6) below, any entitlement to statutory adoption pay shall not affect any right of a person in relation to remuneration under any contract of service ("contractual remuneration").

(5) Subject to subsection (6) below—

- (a) any contractual remuneration paid to a person by an employer of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay statutory adoption pay to him in respect of that week; and
- (b) any statutory adoption pay paid by an employer to a person who is an employee of his in respect of a week in the adoption pay period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that week.

(6) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (4) and (5) above.

(7) In subsection (5) above, "week" means a period of seven days beginning with the day of the week on which the adoption pay period begins.

Crown employment—Part XIIIB

167ZQ. The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Special classes of person

167ZR.—(1) The Department may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as the Department thinks proper in its application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations.

(2) Regulations under subsection (1) above may, in particular, provide—

- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

(3) In this section “continental shelf operations” means any activities which, if paragraphs (a) and (d) of subsection (8) of section 11 of the Petroleum Act 1998 (application of civil law to certain offshore activities) were omitted would nevertheless fall within subsection (2) of that section.

Part XIIIB: supplementary

167ZS.—(1) In this part of this Act—

- “adoption pay period” has the meaning given by section 167ZN(2) above;
- “the Board” means the Commissioners of Inland Revenue
- “the Department” means the Department for Employment and Learning;
- “employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary

Class 1 contributions in relation to any of the earnings of the person who is an employee;

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;

“prescribed” means prescribed by regulations.

(2) In this Part of this Act, “employee” means a person who is—

(a) gainfully employed in Northern Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) over the age of 16.

(3) Regulations may provide—

(a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act; and

(b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.

(4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

(a) two or more employers are to be treated as one;

(b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(5) In this Part of this Act, except sections 167ZN and 167ZP, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part of this Act, a person’s nominal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.

(7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.

(8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.

(9) Where in consequence of the establishment of one or more Health and Social Services trusts under the Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.

- (10) Regulations under subsection (9) above may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
 - (b) the manner in which, and the time within which, such an election is to be made;
 - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
 - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
 - (e) the time for which such an election is to have effect;
 - (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory adoption pay as his employer under the contract.

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

(12) In this Part of this Act, except section 167ZP(1) to (3), "regulations" means regulations made by the Department; and in relation to any such regulations sections 171 and 172 below have effect as if references to the Department were references to the Department for Employment and Learning.

(13) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

Power to apply Part XIIIB to adoption cases not involving placement

167ZT. The Department may by regulations provide for this Part of this Act 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."

Financial arrangements

7.—(1) In section 143(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (sums payable out of National Insurance Fund), for paragraph (d) there shall be substituted—

“(d) any sum which under regulations relating to statutory sick pay, statutory maternity pay, statutory adoption pay or statutory paternity pay, falls to be paid by or on behalf of the Inland Revenue or to be set off against sums payable to the Inland Revenue otherwise than on account of contributions;”.

(2) In section 145 of that Act (adjustments between National Insurance Fund and Consolidated Fund)—

- (a) in subsection (1)(b) (adjustments in respect of the operation of legislation relating to statutory sick pay and maternity pay)—
 - (i) the word “and” at the end of sub-paragraph (i) shall be omitted, and

(ii) after sub-paragraph (ii) there shall be inserted—

“(iii) statutory paternity pay; and

(iv) statutory adoption pay.”; and

(b) in subsection (5)(a) (adjustments in respect of certain administrative expenses of the Inland Revenue), after “above” there shall be inserted “, or in carrying into effect any other legislation relating to statutory paternity pay or statutory adoption pay”.

(3) In section 1(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (which provides for payment by way of additional contributions out of money appropriated for that purpose of an annual amount equal to statutory sick pay and maternity pay recovered by employers and others), for “and statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay and statutory adoption pay”.

Funding of employers’ liabilities

8.—(1) The Department shall by regulations make provision for the payment by employers of statutory paternity pay and statutory adoption pay to be funded by the Board to such extent as the regulations may specify.

(2) Regulations under paragraph (1) shall—

(a) make provision for a person who has made a payment of statutory paternity pay or statutory adoption pay to be entitled, except in such circumstances as the regulations may provide, to recover an amount equal to the sum of—

(i) the aggregate of such of those payments as qualify for small employers’ relief; and

(ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and

(b) include provision for a person who has made a payment of statutory paternity pay or statutory adoption pay qualifying for small employers’ relief to be entitled, except in such circumstances as the regulations may provide, to recover an additional amount equal to the amount to which the person would have been entitled under section 163(2)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (corresponding provision for statutory maternity pay) had the payment been a payment of statutory maternity pay.

(3) For the purposes of paragraph (2), a payment of statutory paternity pay or statutory adoption pay qualifies for small employers’ relief if it would have so qualified were it a payment of statutory maternity pay, treating the period for which the payment is made, in the case of statutory paternity pay, or the payee’s adoption pay period, in the case of statutory adoption pay, as the maternity pay period.

(4) Regulations under paragraph (1) may, in particular—

(a) make provision for funding in advance as well as in arrear;

(b) make provision for funding, or the recovery of amounts due under provision made by virtue of paragraph (2)(b), by means of deductions from

such amounts for which employers are accountable to the Board as the regulations may provide, or otherwise;

(c) make provision for the recovery by the Board of any sums overpaid to employers under the regulations.

(5) Where in accordance with any provision of regulations under paragraph (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as the Department may by regulations provide) be treated for the purposes of any provision made by or under any statutory provision in relation to primary or secondary Class 1 contributions—

(a) as having been paid (on such date as may be determined in accordance with the regulations), and

(b) as having been received by the Board,

towards discharging the employer's liability in respect of such contributions.

(6) Regulations under this Article must be made with the concurrence of the Board.

(7) In this Article "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any statutory provision, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.

Regulations about payment

9.—(1) The Department may make regulations with respect to the payment by employers of statutory paternity pay and statutory adoption pay.

(2) Regulations under paragraph (1) may, in particular, include provision—

(a) about the records to be kept by employers in relation to payments of statutory paternity pay and statutory adoption pay, including the length of time for which they are to be retained;

(b) for the production of wages sheets and other documents and records to officers of the Board for the purpose of enabling them to satisfy themselves that statutory paternity pay and statutory adoption pay have been paid and are being paid, in accordance with the regulations, to employees who are entitled to them;

(c) for requiring employers to provide information to employees (in their itemised pay statements or otherwise);

(d) for requiring employers to make returns to the Board containing such particulars with respect to payments of statutory paternity pay and statutory adoption pay as the regulations may provide.

(3) Regulations under paragraph (1) must be made with the concurrence of the Board.

Decisions and appeals

10.—(1) Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (decisions and appeals) shall be amended as follows.

(2) In Article 7(1) (which lists social security matters in relation to which decisions shall be for an officer of the Board)—

(a) after sub-paragraph (f) (issues relating to entitlement to statutory sick pay or statutory maternity pay) there shall be inserted—

“(fa) subject to and in accordance with regulations made for the purposes of this paragraph by the Department for Employment and Learning with the concurrence of the Board, to decide any issue arising as to, or in connection with, entitlement to statutory paternity pay or statutory adoption pay;”;

(b) in sub-paragraph (g) (other issues relating to those matters) for the words from “under Part” to the end there shall be substituted “under Parts XI to XIIIZB of the Contributions and Benefits Act (statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay)”, and

(c) after that sub-paragraph there shall be inserted—

“(ga) to make any decision that falls to be made under regulations under Article 8 of the Employment (Northern Ireland) Order 2002 (funding of employers’ liabilities to make payments of statutory paternity or adoption pay),”.

(3) In Article 7(3)(b) (which excludes certain decisions from Article 7(1)(g)) for “or statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

(4) In Article 10 (appeals against decisions of the Board), in paragraph (2)(a) (right of employer and employee in the case of statutory sick pay and statutory maternity pay to appeal to tax appeal Commissioners), for “or statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

(5) In Article 13 (matters arising as respects decisions) –

(a) in paragraph (1)(a)(i) (power to make regulations as respects such matters relating to statutory sick pay or statutory maternity pay), for “or statutory maternity pay” there shall be substituted “, statutory maternity pay, statutory paternity pay or statutory adoption pay”, and

(b) after paragraph (3) there shall be inserted—

“(4) Regulations under this Article must be made with the concurrence of the Department for Employment and Learning in so far as they relate to statutory paternity pay or statutory adoption pay”.

Power to require information

11.—(1) The Department may by regulations make provision enabling an officer of the Board authorised by the Board for the purposes of this Article to require persons of a description specified in the regulations to provide, or produce for inspection, within such period as the regulations may require, such information or documents as the officer may reasonably require for the purpose of ascertaining whether statutory paternity pay or statutory adoption pay is or was payable to or in respect of any person.

(2) The descriptions of person which may be specified by regulations under paragraph (1) include, in particular—

- (a) any person claiming to be entitled to statutory paternity pay or statutory adoption pay,
- (b) any person who is, or has been, the spouse or partner of such a person as is mentioned in sub-paragraph (a),
- (c) any person who is, or has been, an employer of such a person as is mentioned in sub-paragraph (a),
- (d) any person carrying on an agency or other business for the introduction or supply to persons requiring them of persons available to do work or to perform services, and
- (e) any person who is a servant or agent of any such person as is specified in sub-paragraphs (a) to (d).

(3) Regulations under paragraph (1) must be made with the concurrence of the Board.

Penalties: failures to comply

12.—(1) Where a person—

- (a) fails to produce any document or record, provide any information or make any return, in accordance with regulations under Article 9, or
- (b) fails to provide any information or document in accordance with regulations under Article 11,

he shall be liable to the penalties mentioned in paragraph (2) (subject to paragraph (4)).

(2) The penalties are—

- (a) a penalty not exceeding £300, and
- (b) if the failure continues after a penalty is imposed under sub-paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that sub-paragraph was imposed (but excluding any day for which a penalty under this sub-paragraph has already been imposed).

(3) Where a person fails to keep records in accordance with regulations under Article 9, he shall be liable to a penalty not exceeding £3,000.

(4) Subject to paragraph (5), no penalty shall be imposed under paragraph (2) or (3) at any time after the failure concerned has been remedied.

(5) Paragraph (4) does not apply to the imposition of a penalty under paragraph (2)(a) in respect of a failure within paragraph (1)(a).

(6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of statutory paternity pay or statutory adoption pay in accordance with any regulations under Article 9, the employer shall be liable to a penalty not exceeding £3,000.

(7) Section 118(2) of the Taxes Management Act 1970 (c. 9) (extra time for compliance, etc.) shall apply for the purposes of paragraphs (1), (3) and (6) as it applies for the purposes of that Act.

(8) Schedule 1 (penalties: procedure and appeals) has effect in relation to penalties under this Article.

Penalties: fraud, etc.

13.—(1) Where a person fraudulently or negligently—

- (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory paternity pay, or
- (b) provides any incorrect information or document of a kind mentioned in regulations under Article 11(1) so far as relating to statutory paternity pay,

he shall be liable to a penalty not exceeding £300.

(2) Where a person fraudulently or negligently—

- (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory adoption pay, or
- (b) provides any incorrect information or document of a kind mentioned in regulations under Article 11(1) so far as relating to statutory adoption pay,

he shall be liable to a penalty not exceeding £3,000.

(3) Where an employer fraudulently or negligently makes incorrect payments of statutory paternity pay, he shall be liable to a penalty not exceeding £300.

(4) Where an employer fraudulently or negligently makes incorrect payments of statutory adoption pay, he shall be liable to a penalty not exceeding £3,000.

(5) Where an employer fraudulently or negligently—

- (a) produces any incorrect document or record, provides any incorrect information or makes any incorrect return, of a kind mentioned in regulations under Article 9, or
- (b) receives incorrect payments in pursuance of regulations under Article 8,

he shall be liable to a penalty not exceeding £3,000 or, if the offence relates only to statutory paternity pay, £300.

(6) Schedule 1 (penalties: procedure and appeals) has effect in relation to penalties under this Article.

Maternity leave

Rights during and after maternity leave

14.—(1) Chapter I of Part IX of the Employment Rights (Northern Ireland) Order 1996 (N.I. 16) (maternity leave) shall be amended as follows.

(2) In Article 103 (ordinary maternity leave), in paragraph (4) (rights during and after leave)—

- (a) in sub-paragraph (a), after “entitled” there shall be inserted “, for such purposes and to such extent as may be prescribed,”,
- (b) in sub-paragraph (b), after “bound” there shall be inserted “, for such purposes and to such extent as may be prescribed”, and
- (c) for sub-paragraph (c) there shall be substituted—
“(c) is entitled to return from leave to a job of a prescribed kind.”.

(3) In that Article, for paragraph (7) there shall be substituted—

“(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.”.

(4) In Article 105 (additional maternity leave), after paragraph (5) there shall be inserted—

“(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.”.

(5) In Article 106 (redundancy and dismissal), in paragraph (4) (power to make provision about the right to return from, and for dismissal at the end of, an additional maternity leave period)—

- (a) after “Article” (where it first appears) there shall be inserted “103 or”,
- (b) in sub-paragraph (a), after “Article” there shall be inserted “103(4)(c) or”, and
- (c) in sub-paragraph (b), after “an” there shall be inserted “ordinary or”.

Flexible working

Flexible working

15.—(1) The Employment Rights (Northern Ireland) Order 1996 (N.I. 16) shall be amended as follows.

(2) After Part IX there shall be inserted—

“PART IXA

FLEXIBLE WORKING

Statutory right to request contract variation

112F.—(1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if—

- (a) the change relates to—
 - (i) the hours he is required to work,
 - (ii) the times when he is required to work,
 - (iii) where, as between his home and a place of business of his employer, he is required to work, or
 - (iv) such other aspect of his terms and conditions of employment as the Department may specify by regulations, and
- (b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is a child in respect of whom he satisfies such conditions as to relationship as the Department may specify by regulations.

(2) An application under this Article must—

- (a) state that it is such an application,

- (b) specify the change applied for and the date on which it is proposed the change should become effective;
- (c) explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in his opinion, any such effect might be dealt with, and
- (d) explain how the employee meets, in respect of the child concerned, the conditions as to relationship mentioned in paragraph (1)(b).

(3) An application under this Article must be made before the fourteenth day before the day on which the child concerned reaches the age of six or, if disabled, eighteen.

(4) If an employee has made an application under this Article, he may not make a further application under this Article to the same employer before the end of the period of twelve months beginning with the date on which the previous application was made.

(5) The Department may by regulations make provision about—

- (a) the form of applications under this Article, and
- (b) when such an application is to be taken as made.

(6) The Department may by order substitute a different age for the first of the ages specified in paragraph (3).

(7) In paragraph (3), the reference to a disabled child is to a child who is entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

(8) For the purposes of this Article, an employee is—

- (a) a qualifying employee if he—
 - (i) satisfies such conditions as to duration of employment as the Department may specify by regulations, and
 - (ii) is not an agency worker;
- (b) an agency worker if he is supplied by a person (“the agent”) to do work for another (“the principal”) under a contract or other arrangement made between the agent and the principal.

Employer’s duties in relation to application under Article 112F

112G.—(1) An employer to whom an application under Article 112F is made—

- (a) shall deal with the application in accordance with regulations made by the Department, and
- (b) shall only refuse the application because he considers that one or more of the following grounds applies—
 - (i) the burden of additional costs,
 - (ii) detrimental effect on ability to meet customer demand,
 - (iii) inability to re-organise work among existing staff,
 - (iv) inability to recruit additional staff,

- (v) detrimental impact on quality,
 - (vi) detrimental impact on performance,
 - (vii) insufficiency of work during the periods the employee proposes to work,
 - (viii) planned structural changes, and
 - (ix) such other grounds as the Department may specify by regulations.
- (2) Regulations under paragraph (1)(a) shall include—
- (a) provision for the holding of a meeting between the employer and the employee to discuss an application under Article 112F within twenty-eight days after the date the application is made;
 - (b) provision for the giving by the employer to the employee of notice of his decision on the application within fourteen days after the date of the meeting under sub-paragraph (a);
 - (c) provision for notice under sub-paragraph (b) of a decision to refuse the application to state the grounds for the decision;
 - (d) provision for the employee to have a right, if he is dissatisfied with the employer's decision, to appeal against it within fourteen days after the date on which notice under sub-paragraph (b) is given;
 - (e) provision about the procedure for exercising the right of appeal under sub-paragraph (d), including provision requiring the employee to set out the grounds of appeal;
 - (f) provision for notice under sub-paragraph (b) to include such information as the regulations may specify relating to the right of appeal under sub-paragraph (d);
 - (g) provision for the holding, within fourteen days after the date on which notice of appeal is given by the employee, of a meeting between the employer and the employee to discuss the appeal;
 - (h) provision for the employer to give the employee notice of his decision on any appeal within fourteen days after the date of the meeting under sub-paragraph (g);
 - (i) provision for notice under sub-paragraph (h) of a decision to dismiss an appeal to state the grounds for the decision;
 - (j) provision for a statement under sub-paragraph (c) or (i) to contain a sufficient explanation of the grounds for the decision;
 - (k) provision for the employee to have a right to be accompanied at meetings under sub-paragraph (a) or (g) by a person of such description as the regulations may specify;
 - (l) provision for postponement in relation to any meeting under sub-paragraph (a) or (g) which a companion under sub-paragraph (k) is not available to attend;
 - (m) provision in relation to companions under sub-paragraph (k) corresponding to Article 12(6) and (7) of the Employment

Relations (Northern Ireland) Order 1999 (N.I. 9) (right to paid time off to act as companion, etc.);

- (n) provision, in relation to the rights under sub-paragraphs (k) and (l), for the application (with or without modification) of Articles 13 to 15 of the Employment Relations (Northern Ireland) Order 1999 (provisions ancillary to right to be accompanied under Article 12 of that Order).
- (3) Regulations under paragraph (1)(a) may include—
 - (a) provision for any requirement of the regulations not to apply where an application is disposed of by agreement or withdrawn;
 - (b) provision for extension of a time limit where the employer and employee agree, or in such other circumstances as the regulations may specify;
 - (c) provision for applications to be treated as withdrawn in specified circumstances.
- (4) The Department may by order amend paragraph (2).

Complaints to industrial tribunals

112H.—(1) An employee who makes an application under Article 112F may present a complaint to an industrial tribunal—

- (a) that his employer has failed in relation to the application to comply with Article 112G(1), or
- (b) that a decision by his employer to reject the application was based on incorrect facts.

(2) No complaint under this Article may be made in respect of an application which has been disposed of by agreement or withdrawn.

(3) In the case of an application which has not been disposed of by agreement or withdrawn, no complaint under this Article may be made until the employer—

- (a) notifies the employee of a decision to reject the application on appeal, or
- (b) commits a breach of regulations under Article 112G(1)(a) of such description as the Department may specify by regulations.

(4) No complaint under this Article may be made in respect of failure to comply with provision included in regulations under paragraph (1)(a) of Article 112G because of paragraph (2)(k), (l) or (m) of that Article.

(5) 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 relevant date, 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.

- (6) In paragraph (5)(a), the reference to the relevant date is—
- (a) in the case of a complaint permitted by paragraph (3)(a), the date on which the employee is notified of the decision on the appeal, and
 - (b) in the case of a complaint permitted by paragraph (3)(b), the date on which the breach concerned was committed.

Remedies

112I.—(1) Where an industrial tribunal finds a complaint under Article 112H well-founded it shall make a declaration to that effect and may—

- (a) make an order for reconsideration of the application, and
- (b) make an award of compensation to be paid by the employer to the employee.

(2) The amount of compensation shall be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances.

(3) For the purposes of paragraph (2), the permitted maximum is such number of weeks' pay as the Department may specify by regulations.

(4) Where an industrial tribunal makes an order under paragraph (I)(a), Article 112G, and the regulations under that Article, shall apply as if the application had been made on the date of the order.”.

- (3) After Article 70C there shall be inserted—

“Flexible working

70D.—(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee—

- (a) made (or proposed to make) an application under Article 112F,
- (b) exercised (or proposed to exercise) a right conferred on him under Article 112G,
- (c) brought proceedings against the employer under Article 112H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

(2) This Article does not apply where the detriment in question amounts to dismissal within the meaning of Part XI.”.

- (4) After Article 135B there shall be inserted—

“Flexible working

135C. An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee—

- (a) made (or proposed to make) an application under Article 112F,
- (b) exercised (or proposed to exercise) a right conferred on him under Article 112G,

- (c) brought proceedings against the employer under Article 112H, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”.

Supplementary

Regulations

16.—(1) Regulations under this Order may contain such incidental, supplementary, consequential or transitional provisions as the Department considers necessary or expedient.

(2) Regulations under this Order shall be subject to negative resolution.

Amendments and revocations

17.—(1) Schedule 2 (which makes consequential amendments) shall have effect.

(2) In the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), in Schedule 1, paragraph 32 is revoked.

A. K. Galloway
Clerk of the Privy Council

SCHEDULES

SCHEDULE I

PENALTIES: PROCEDURE AND APPEALS

Determination of penalties by officer of Board

1.—(1) Subject to sub-paragraph (2) and except where proceedings have been instituted under paragraph 5, an officer of the Board authorised by the Board for the purposes of this paragraph may make a determination—

- (a) imposing a penalty under Article 12 or 13, and
- (b) setting it at such amount as, in his opinion, is correct or appropriate.

(2) Articles 12 and 13 does not apply to the imposition of such a penalty as is an Article 12(2)(a).

(3) Notice of a determination of a penalty under this paragraph shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.

(4) After the notice of a determination under this paragraph has been served the determination shall not be altered except in accordance with this paragraph or on appeal.

(5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this paragraph that the amount of a penalty determined under this paragraph is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.

Provisions supplementary to paragraph 1

2.—(1) A penalty determined under paragraph 1 shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.

(2) Part VI of the Taxes Management Act 1970 (c. 9) shall apply in relation to a penalty determined under paragraph 1 as if it were tax charged in an assessment and due and payable.

Appeals against penalty determinations

3.—(1) An appeal may be brought against the determination of a penalty under paragraph 1.

(2) The provisions of the Taxes Management Act 1970 relating to appeals, except section 50(6) to (8), shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.

(3) On an appeal by virtue of sub-paragraph (2) against the determination of a penalty under paragraph 1, the General or Special Commissioners may—

- (a) if it appears to them that no penalty has been incurred, set the determination aside;
- (b) if the amount determined appears to them to be appropriate, confirm the determination;
- (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate;
- (d) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.

(4) An appeal from a decision of the Commissioners against the amount of a penalty which has been determined under paragraph 1 or this paragraph shall lie, at the instance of the person liable to the penalty to the High Court, and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this paragraph.

Penalty proceedings before Commissioners

4.—(1) An officer of the Board authorised by the Board for the purposes of this paragraph may commence proceedings for any penalty to which sub-paragraph (1) of paragraph 1 does not apply by virtue of sub-paragraph (2) of that paragraph.

(2) Proceedings under this paragraph shall be by way of information in writing, made to the General or Special Commissioners, and upon summons issued by them to the defendant to appear before them at a time and place stated in the summons and they shall hear and decide each case in a summary way.

(3) Part VI of the Taxes Management Act 1970 (c. 9) shall apply in relation to a penalty determined in proceedings under this paragraph as if it were tax charged in an assessment and due and payable.

(4) An appeal against the determination of a penalty in proceedings under this paragraph shall lie to the High Court—

- (a) by any party on a question of law, and
- (b) by the defendant against the amount of the penalty.

(5) On any such appeal the court may—

- (a) if it appears that no penalty has been incurred, set the determination aside;
- (b) if the amount determined appears to be appropriate, confirm the determination;
- (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate;
- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

Penalty proceedings before court

5.—(1) Where in the opinion of the Board the liability of any person for a penalty under Article 12 or 13 arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court.

SCH. 1 (2) Subject to sub-paragraph (3), proceedings under this paragraph shall be instituted in the name of the Attorney General for Northern Ireland.

(3) Sub-paragraph (2) shall not prevent proceedings under this paragraph being instituted under the Crown Proceedings Act 1947 (c. 44) by and in the name of the Board as an authorised department for the purposes of that Act.

(4) Any proceedings under this paragraph shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 (c. 44).

(5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.

Mitigation of penalties

6. The Board may in their discretion mitigate any penalty under Article 12 or 13, or stay or compound any proceedings for a penalty, and may also, after judgment, further mitigate or entirely remit the penalty.

Time limits for penalties

7. A penalty under Article 12 or 13 may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or the court, at any time within six years after the date on which the penalty was incurred or began to be incurred.

Interest on penalties

8.—(1) After paragraph (q) of section 178(2) of the Finance Act 1989 (c. 26) (setting rates of interest) there shall be inserted—

“(r)paragraph 8 of Schedule I to the Employment (Northern Ireland) Order 2002.”

(2) A penalty under Article 12 or 13 shall carry interest at the rate applicable under section 178 of the Finance Act 1989 (c. 26) from the date on which it becomes due and payable until payment.

Interpretation

9. In this Schedule “General Commissioners” and “Special Commissioners” have the same meanings as in the Taxes Management Act 1970 (c. 9).

SCHEDULE 2

AMENDMENTS

The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)

1.—(1) In section 4 (payments treated as remuneration and earnings), in subsection (1)(a) (payments in satisfaction of entitlement to statutory sick pay or maternity pay), after “maternity pay;” insert “or

(iii) statutory paternity pay, or

(iv) statutory adoption pay”.

(2) In section 170 in the definition of “the Department” after “means” insert “(except in Parts XIIZA and XIIZB above)”.

(3) In section 172(2)(a) (Assembly control) at the end insert “or section 167ZE(1) or section 167ZN (1) above”.

The Social Security Administration (Northern Ireland) Act 1992 (c. 8)

2.—(1) In section 5 after subsection (4) insert—

“(4A) Subsection (1)(g), (j), (m), (q) and (r) above shall have effect as if—

(a) statutory paternity pay and statutory adoption pay were benefits to which this section applies; and

(b) for the words “Regulations may” at the beginning of subsection (1) there were substituted the words “The Department for Employment and Learning may by regulations subject to negative resolution (within the meaning of section 166(12))”.

(2) In section 116AA (disclosure of information by the Inland Revenue), in subsection (1) (which permits the disclosure of information relating to statutory sick pay and maternity pay by the Board to certain authorities, or in connection with certain agreements with countries outside the United Kingdom), for “or statutory maternity pay” substitute “, statutory maternity pay, statutory paternity pay or statutory adoption pay”.

The Industrial Relations (Northern Ireland) Order 1992 (N.I. 5)

3. In Article 84A(1) (claims and proceedings to which Agency arbitration scheme applies)—

(a) after “tribunal” insert “under, or”;

(b) after “contravention of” insert—

“(za) Article 112G(1) or 112H(1)(b) of the Employment Rights (Northern Ireland) Order 1996 (flexible working);” and

(c) in sub-paragraph (a) for “the Employment Rights (Northern Ireland) Order 1996” substitute “that Order”.

The Employment Rights (Northern Ireland) Order 1996 (N.I. 16)

4.—(1) In Article 2(3) (definitions) insert at the appropriate place—

““paternity leave” means leave under Article 112A or 112B.”.

(2) In Article 2(3) in the definition of “week” for “Article 118” substitute “Articles 112A, 112B and 118”.

(3) In Article 21 (definition of calculation date for the purposes of the calculation of a week’s pay in relation to cases connected with rights during employment), at the end insert—

“(6) Where the calculation is for the purposes of Article 112I, the calculation date is the day on which the application under Article 112F was made.”.

- SCH. 2 (4) In Article 23(1) (maximum amount of week's pay) before sub-paragraph (a) insert—
- “(za) an award of compensation under Article 112I(1)(b),”.
- (5) In Article 59(1) (meaning of “wages”), after sub-paragraph (c) insert—
- “(ca) statutory paternity pay under Part XIIZA of that Act,
(cb) statutory adoption pay under Part XIIZB of that Act,”.
- (6) In Article 70C (leave for family and domestic reasons) after sub-paragraph (b) of paragraph (2) insert—
- “(ba) ordinary or additional adoption leave,”.
- (7) In Article 70C for “or” at the end of sub-paragraph (c) of paragraph (2) substitute—
- “(ca) paternity leave, or”.
- (8) In Article 71(1) (right to present complaint of detriment to industrial tribunal), for “or 70C” substitute “, 70C or 70D”.
- (9) In Article 110 (parental leave: special cases), in paragraph (6), for the words from “to maternity” to the end substitute—
- “to parental leave and partly to—
(a) maternity leave, or
(b) adoption leave,
or to both.”
- (10) In Article 120 (pay during notice period: employments with normal working hours) in paragraph (I)(c), for “parental leave” substitute “adoption leave, - parental leave or paternity leave” and in paragraph (2), after “statutory maternity pay,” insert “paternity pay, statutory paternity pay, adoption pay, statutory adoption pay,”.
- (11) In Article 121 (pay during notice period: employments without normal working hours) in paragraph (3)(b), for “parental leave” substitute “adoption leave, parental leave or paternity leave” and in paragraph (4), after “statutory maternity pay,” insert “paternity pay, statutory paternity pay, adoption pay, statutory adoption pay,”.
- (12) In Article 124 (right to written statement of reasons for dismissal), in paragraphs (2) and (3) for “paragraph (4)” substitute “paragraphs (4) and (4A)”, and after paragraph (4) insert—
- “(4A) An employee who is dismissed while absent from work during an ordinary or additional adoption leave period is entitled to a written statement under this Article without having to request it and irrespective of whether he has been continuously employed for any period if he is dismissed in circumstances in which that period ends by reason of the dismissal.”
- (13) In Article 131 (unfair dismissal: leave for family reasons) after sub-paragraph (b) of paragraph (3) insert—
- “(ba) ordinary or additional adoption leave,”.

(14) In Article 131 for “or” .at the end of sub-paragraph (c) of paragraph (3) substitute— SCH. 1

“(ca) paternity leave, or”.

(15) In Article 138 (dismissal of replacement employees), in paragraph (2)(a), after “childbirth,” insert “or on adoption leave”.

(16) In Article 236(2) (provisions of the Order which have effect in relation to Crown employment), in sub-paragraph (a) for “IX” substitute “IXA,”.

(17) In Article 237(2) (provisions of the Order which have effect in relation to service as a member of the armed forces) in sub-paragraph (e) after “134” insert “, 135C”.

(18) In Article 242 (application of the Order to mariners) in paragraphs (2) and (8)(d) for “and IX” substitute “, IX and IXA”

(19) In Article 251(1A) (procedure for making regulations) after “105,” insert “107A, 107B,” and after “108,” insert “112A, 112B, 112G,”.

The Industrial Tribunals (Northern Ireland) Order 1996 (N.I. 18)

5. In Article 20(1) (claims and proceedings to which provisions as to conciliation apply)—

(a) in sub-paragraph (c)—

(i) at the beginning insert “under, or”;

(ii) after head (vii) insert—

“(viii) Article 112G(1) or 112H(I)(b) (flexible working);” and

(b) in sub-paragraph (e) at the beginning insert “under, or”

The Employment Relations (Northern Ireland) Order 1999 (N.I. 9)

6. In Article 24(1) (power to confer rights on individuals) at the end add—

”(g) the Employment (Northern Ireland) Order 2002.”.

The Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

7. In Article 23(1) and (2) after “the Department” insert “or the Department for Employment and Learning”.

EXPLANATORY NOTE

(This note is not part of the Orders.)

This Order makes provision for statutory rights to paternity and adoption leave and pay, amends the law relating to statutory maternity leave and makes provision about flexible working.

© Crown Copyright 2002

Printed and published in the U.K. by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
N776 12/2002

£6.00

ISBN 0-110-44280-6



9 780110 442808