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STATUTORY INSTRUMENTS

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**2006 No. 1947 (N.I. 16)**

**NORTHERN IRELAND**

**The Work and Families (Northern Ireland) Order 2006**

*Made* - - - - 19th July 2006  
*Laid* - - - - 26th July 2006  
*Coming into operation in accordance with Article 1(2)  
and (3)*

Whereas this Order in Council is made only for purposes corresponding to the purposes of the Work and Families Act 2006 (c. 18):

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) (as modified by section 17 of the said Act of 2006) 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:—

*Introduction*

**Title and commencement**

1.—(1) This Order may be cited as the Work and Families (Northern Ireland) Order 2006.

(2) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

(4) An order under paragraph (3) may include supplementary, incidental, saving or transitional provisions.

**Annotations:**

**Subordinate Legislation Made**

P1 [Art. 1\(3\)](#) power partly exercised: different dates appointed for specified provisions by [{S.R. 2006/344}](#), arts. 2-4

**Interpretation**

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

*Status: This version of this Order contains provisions that are prospective.*

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(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992 (c. 8);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

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

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996 (NI 16);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

### *Extension of maternity pay period and adoption pay period*

#### **Maternity pay period**

3. In section 161(1) of the Contributions and Benefits Act (which specifies the maximum period that may be prescribed as the period for which statutory maternity pay and, by virtue of section 35(2) of that Act, maternity allowance, are payable), for “26 weeks” substitute “ 52 weeks ”.

#### **Adoption pay period**

4. In section 167ZN(2) of the Contributions and Benefits Act (which specifies the maximum period that may be prescribed as the period for which statutory adoption pay is payable), for “26 weeks” substitute “ 52 weeks ”.

PROSPECTIVE

### *Additional paternity leave and pay*

#### **Additional paternity leave: birth**

5. In Part IX of the Employment Rights Order (which makes provision for leave for family reasons), after Article 112A insert—

##### **“Entitlement to additional paternity leave: birth**

**112AA.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child, 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, at a time when the child's mother satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the child's mother;
- (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance;

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- (c) whether, and to what extent, she is exercising or has exercised any such entitlement.
- (3) Any regulations under this Article 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.
- (4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.
- (5) Provision under paragraph (3)(b) shall secure that leave under this Article—
  - (a) may not be taken before the end of a specified period beginning with the date of the child's birth, but
  - (b) must be taken before the end of the period of twelve months beginning with that date.
- (6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the child's mother has died before the end of the period mentioned in paragraph (5)(b).
- (7) 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;
  - (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) specify a minimum period which may be taken as leave under this Article;
  - (d) make provision about how leave under this Article may be taken;
  - (e) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.
- (8) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (5) 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.
- (9) In this Article “week” means any period of seven days.”.

#### **Additional paternity leave: adoption**

6. After Article 112B of the Employment Rights Order insert—

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

**112BB.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed 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 so placed for adoption (“the adopter”),

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to be absent from work on leave under this Article for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the adopter;
- (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;
- (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement.

(3) Any regulations under this Article 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.

(4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.

(5) Provision under paragraph (3)(b) shall secure that leave under this Article—

- (a) may not be taken before the end of a specified period beginning with the date of the child's placement for adoption, but
- (b) must be taken before the end of the period of twelve months beginning with that date.

(6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the adopter has died before the end of the period mentioned in paragraph (5)(b).

(7) 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;
- (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) specify a minimum period which may be taken as leave under this Article;
- (e) make provision about how leave under this Article may be taken;
- (f) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.

(8) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (5) 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.

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

(10) 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 additional paternity leave**

7.—(1) Article 112C of the Employment Rights Order (rights during and after paternity leave) is amended as follows.

(2) In paragraph (1) after “112A” insert “ or 112AA ”.

(3) In paragraph (2)—

(a) after “112A” insert “ or 112AA ”, and

(b) before sub-paragraph (a) insert—

“(za) leave under the other Article,”.

(4) In paragraph (3), for the words from “as it applies” to the end substitute “ or 112BB as it applies to regulations under Article 112A or 112AA. ”.

(5) In paragraph (4)—

(a) after “112B” insert “ or 112BB ”,

(b) before sub-paragraph (a) insert—

“(za) leave under the other Article,”, and

(c) in sub-paragraph (d), after “112A” insert “ or 112AA ”.

(6) In paragraphs (6) and (7), for “Article 112A or 112B” substitute “ any of Articles 112A to 112BB ”.

### **Entitlement to additional statutory paternity pay: birth**

8. After section 167ZE of the Contributions and Benefits Act insert—

*“Additional statutory paternity pay*

#### **Entitlement to additional statutory paternity pay: birth**

**167ZEA.**—(1) The Department may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”.

(2) Those conditions are—

(a) that the claimant satisfies prescribed conditions—

(i) as to relationship with a child, and

(ii) as to relationship with the child's mother;

(b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;

(c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;

(d) if regulations so provide, that the claimant continues in employed earner's employment (whether or not with that employer) until a prescribed time;

(e) that the mother of the child by reference to whom the condition in paragraph (a) is satisfied became entitled, by reference to the birth of the child—

(i) to a maternity allowance, or

(ii) to statutory maternity pay;

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- (f) that the mother has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section her return to work;
  - (g) that the day on which the mother is treated as returning to work falls—
    - (i) after the end of a prescribed period beginning with the birth of the child, but
    - (ii) at a time when at least a prescribed part of her maternity allowance period or maternity pay period remains unexpired;
  - (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.
- (3) The regulations may—
- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the child's mother has died, and
  - (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.
- (4) A person's entitlement to additional statutory paternity pay under this section shall not be affected by the birth of more than one child as a result of the same pregnancy.”

#### **Entitlement to additional statutory paternity pay: adoption**

9. After section 167ZEA of the Contributions and Benefits Act insert—

#### **“Entitlement to additional statutory paternity pay: adoption**

**167ZEB.**—(1) The Department may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”.

- (2) Those conditions are—
- (a) that the claimant satisfies prescribed conditions—
    - (i) as to relationship with a child who has been 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 (“the adopter”);
  - (b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
  - (c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
  - (d) if regulations so provide, that the claimant continues to work in employed earner's employment (whether or not with that employer) until a prescribed time;
  - (e) that the adopter became entitled to statutory adoption pay by reference to the placement of the child for adoption;
  - (f) that the adopter has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section the adopter's return to work;

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- (g) that the day on which the adopter is treated as returning to work falls—
  - (i) after the end of a prescribed period beginning with the placement of the child for adoption, but
  - (ii) at a time when at least a prescribed part of the adopter's adoption pay period remains unexpired;
- (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.
- (3) The regulations may—
  - (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the adopter has died, and
  - (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.
- (4) A person may not elect to receive additional statutory paternity pay if he has elected in accordance with section 167ZL to receive statutory adoption pay.
- (5) A person's entitlement to additional 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.”.

#### **Entitlement to additional statutory paternity pay: general**

10. After section 167ZEB of the Contributions and Benefits Act insert—

#### **“Entitlement to additional statutory paternity pay: general**

- 167ZEC.**—(1) A person shall not be entitled to payments of additional statutory paternity pay in respect of any period unless—
- (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 additional statutory paternity pay to begin and the date on which he expects that liability to end; and
  - (b) the notice is given by such time as may be prescribed.
- (2) The notice shall be in writing if the person who is liable to pay the additional statutory paternity pay so requests.
- (3) The Department may by regulations—
- (a) provide that the conditions mentioned in subsection (2)(b) or (c) of section 167ZEA or 167ZEB shall have effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide that subsection (1) of this section 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 167ZEA or 167ZEB;
  - (e) provide that a person is to be treated for the purposes of section 167ZEA or 167ZEB as being employed for a continuous period of the length prescribed under that section where—
    - (i) he has been employed by the same employer for a period of at least that length under two or more contracts of service, and
    - (ii) those contracts were not continuous;

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- (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 167ZEA or 167ZEB;
- (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 167ZEA or 167ZEB 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 of additional statutory paternity pay**

11. After section 167ZEC of the Contributions and Benefits Act insert—

##### **“Liability to make payments of additional statutory paternity pay**

**167ZED.**—(1) The liability to make payments of additional statutory paternity pay under section 167ZEA or 167ZEB is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) of that section.

(2) Regulations shall make provision as to a former employer's liability to pay additional 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 solely, or mainly, for the purpose of avoiding liability for additional statutory paternity pay or ordinary statutory paternity pay, or both.

(3) The Department may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of additional statutory paternity pay is to be a liability of the Commissioners.”.

#### **Additional statutory paternity pay: rate and period of pay**

12. After section 167ZED of the Contributions and Benefits Act insert—

##### **“Rate and period of pay: additional statutory paternity pay**

**167ZEE.**—(1) Additional 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) Subject to the following provisions of this section, additional statutory paternity pay shall be payable in respect of a period (“the additional paternity pay period”)—

- (a) beginning with such day as may (subject to subsection (3)) be determined in accordance with regulations, and
- (b) ending with—
  - (i) the day on which the additional statutory pay period is ended by virtue of subsection (4) or (8), or
  - (ii) such earlier day as the employee may choose in accordance with regulations.

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(3) The first day of the additional paternity pay period must not be earlier than the day on which the child's mother or the person with whom the child is placed for adoption ("the mother or adopter") is treated for the purpose of section 167ZEA or 167ZEB as returning to work; but this subsection does not apply in a case where the mother or adopter has died.

(4) The additional paternity pay period—

- (a) shall not last longer than any prescribed number of weeks,
- (b) shall not continue after the end of the period of 12 months beginning with the relevant date, and
- (c) shall not continue after the end—
  - (i) in a case falling within section 167ZEA, of the mother's maternity allowance period or maternity pay period, or
  - (ii) in a case falling within section 167ZEB, of the adoption pay period of the person with whom the child is placed for adoption.

(5) In subsection (4)(b), "the relevant date" means—

- (a) in the case of a person to whom the conditions in section 167ZEA(2) apply, the date of the child's birth (or, where more than one child is born as a result of the same pregnancy, the date of birth of the first child born as a result of the pregnancy), and
- (b) in the case of a person to whom the conditions in section 167ZEB(2) apply, the date of the child's placement for adoption (or, where more than one child is placed for adoption as part of the same arrangement, the date of placement of the first child to be placed as part of the arrangement).

(6) Additional statutory paternity pay shall not be payable to a person in respect of a week if it is not his purpose at the beginning of the week to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 167ZEA(2) (a) or 167ZEB(2)(a).

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

(8) Where subsection (6) or (7) prevents additional statutory paternity pay being payable to a person in respect of any week, the person's additional paternity pay period shall be taken to have ended at the end of the previous week.

(9) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of additional statutory paternity pay, the amount payable by way of additional statutory paternity pay for that day shall be taken to be one seventh of the weekly rate.

(10) In this section "week" means a period of seven days beginning with the day of the week on which the additional paternity pay period began."

### *Leave and pay related to birth or adoption: further amendments*

#### **Leave and pay related to birth or adoption: further amendments**

**13.—**(1) Schedule 1 (which contains further amendments relating to statutory leave and pay) has effect.

(2) Any reference to statutory paternity pay in any statutory provision or document made before the commencement of paragraphs 11 and 12 of Schedule 1 is to be read, in relation to any time after that commencement, as a reference to ordinary statutory paternity pay.

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(3) Any reference to ordinary statutory paternity pay in any statutory provision (including this Order and any statutory provision amended by this Order) or document is to be read, in relation to any time before the commencement of paragraphs 11 and 12 of Schedule 1, as a reference to statutory paternity pay.

#### Annotations:

#### Commencement Information

- II** Art. 13 partly in operation; art. 13 not in operation at date of making see art. 1(3); art. 13 in operation for certain purposes at 1.9.2006 and 1.10.2006 by S.R. 2006/344, arts. 2(b), 3(a)

### *Miscellaneous provisions about employment rights*

#### Flexible working

**14.—**(1) Article 112F of the Employment Rights Order (statutory right to request contract variation) is amended as follows.

(2) In paragraph (1), for sub-paragraph (b) substitute—

“(b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is—

- (i) a child who has not reached the prescribed age or falls within a prescribed description and in respect of whom (in either case) the employee satisfies prescribed conditions as to relationship, or
- (ii) a person aged 18 or over who falls within a prescribed description and in respect of whom the employee satisfies prescribed conditions as to relationship.”

(3) In paragraph (2)(d), for the words from “child” to the end substitute “child or other person to be cared for, the conditions as to relationship mentioned in paragraph (1)(b)(i) or (ii).”.

(4) Omit paragraphs (3), (6) and (7).

(5) After paragraph (8) add—

“(9) In this Article—

“child” means a person aged under 18;

“prescribed” means prescribed by regulations made by the Department.”.

#### Annual leave

**15.—**(1) The Department may by regulations make provision conferring on workers the right, except in prescribed cases, to a prescribed amount of annual leave in each leave year, as defined for the purposes of the regulations.

(2) The regulations may in particular—

- (a) make provision for determining the amount of annual leave to which workers are to be entitled;
- (b) make provision for determining the amount of pay in respect of any period of leave which is required by the regulations to be paid leave;
- (c) make provision enabling a worker to elect when to take leave to which he is entitled by virtue of the regulations, subject to any provision of the regulations enabling his employer to require him to take, or not to take, that leave at a particular time;
- (d) make provision for the payment of compensation in prescribed cases to a worker who has not taken leave to which he is entitled;

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- (e) make provision as to the relationship between the rights conferred by the regulations and a worker's rights to leave, pay or compensation under any contract or under any statutory provision;
  - (f) enable a worker to present a complaint to an industrial tribunal that his employer has refused to permit him to exercise any right he has under the regulations, or has failed to pay him any amount due to him under the regulations;
  - (g) make, in connection with any right conferred by the regulations (including any right to payment), any other provision which is the same as or similar to any provision made, in connection with any right relating to annual leave conferred in pursuance of any Community obligation, by any regulations under section 2(2) of the European Communities Act 1972 (c. 68) made at any time before the day on which the first regulations under this Article are made.
- (3) Regulations under this Article may make provision as to—
- (a) who is to be treated as a worker for the purposes of the regulations, and
  - (b) who is to be treated as the worker's employer.
- (4) Regulations under this Article may in particular—
- (a) make provision applying to—
    - (i) Crown employment and persons in Crown employment;
    - (ii) service as a member of the armed forces;
  - (b) make provision conferring rights to and in connection with annual leave on persons falling within any other categories of persons on whom any Community obligation of the United Kingdom requires a right to annual leave to be conferred.
- (5) Regulations under this Article may contain incidental, supplemental, consequential, transitional or saving provision, including provision amending any statutory provision.
- (6) Regulations under this Article shall—
- (a) be laid before the Assembly after being made; and
  - (b) come into operation on such date as may be specified in the regulations, but (without prejudice to the validity of anything done thereunder or to the making of new regulations) shall cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations are approved by a resolution of the Assembly.
- (7) In this Article—
- “the armed forces” means any of the naval, military or air forces of the Crown;
  - “Crown employment” has the meaning given by Article 236(3) of the Employment Rights Order.

### **Increase of maximum amount of a week's pay for certain purposes**

- 16.—**(1) This Article applies to the sums specified in the following provisions—
- (a) Article 23(1) of the Employment Rights Order (maximum amount of a week's pay for the purposes of certain provisions of the Order relating to awards of compensation and redundancy payments);
  - (b) Article 231(1)(a) and (b) of the Employment Rights Order (employee's rights on insolvency of employer: maximum amount payable).
- (2) The Department may, on one occasion only, by order substitute for each of the sums mentioned in paragraph (1) such higher sum as may be specified in the order.

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- (3) An order under this Article—
- (a) may include transitional provision;
  - (b) may exclude, on a single occasion specified in the order under this Article, any duty to make an order under Article 33 of the 1999 Order (indexation of amounts, etc.), so far as relating to the sums mentioned in paragraph (1).
- (4) Subject to any provision made under paragraph (3)(b), this Article does not affect the operation of Article 33 of the 1999 Order in relation to the sums substituted by the order under this Article in the provisions mentioned in paragraph (1).
- (5) An order under this Article shall—
- (a) be laid before the Assembly after being made; and
  - (b) take effect on such date as may be specified in the order but (without prejudice to the validity of anything done thereunder or to the making of a new order) shall cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the order is approved by a resolution of the Assembly.
- (6) In this Article “the 1999 Order” means the Employment Relations (Northern Ireland) Order 1999 (NI 9).

### *Supplementary*

#### **Repeals**

17. The statutory provisions specified in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

#### **Annotations:**

#### **Commencement Information**

**I2** [Art. 17](#) partly in operation; [art. 17](#) not in operation at date of making see [art. 1\(3\)](#); [art. 17](#) in operation for certain purposes at 1.10.2006 by [S.R. 2006/344](#), [art. 3\(e\)](#)

*A.K. Galloway*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 13.

#### LEAVE AND PAY RELATED TO BIRTH OR ADOPTION: FURTHER AMENDMENTS

PROSPECTIVE

##### *The Social Security (Northern Ireland) Order 1989 (NI 13)*

1.—(1) In Schedule 5 (employment-related schemes for pensions or other benefits: equal treatment for men and women), paragraph 5A (unfair paternity leave provisions) is amended as follows.

(2) In sub-paragraph (3), for “or statutory paternity pay” substitute “, ordinary statutory paternity pay or additional statutory paternity pay”.

(3) In sub-paragraph (4), in the definition of “period of paid paternity leave”—

(a) in paragraph (a), for “or (7)” substitute “, (7) or (8)”, and

(b) in paragraph (b), for “or statutory paternity pay” substitute “, ordinary statutory paternity pay or additional statutory paternity pay”.

(4) After sub-paragraph (7) add—

“(8) This sub-paragraph applies if—

(a) the member's absence from work is due to the fact that he is caring for a child, and

(b) in relation to that child, the member satisfies the conditions prescribed—

(i) under section 167ZEA(2)(a)(i) and (ii) of that Act,

(ii) under section 167ZEB(2)(a)(i) and (ii) of that Act, or

(iii) under section 167ZEB(2)(a)(i) and (ii) of that Act as applied by virtue of section 167ZK of that Act (adoption cases not involving placement under the law of the United Kingdom).”.

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

PROSPECTIVE

2. In section 1(5) (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, statutory maternity pay, statutory paternity pay and statutory adoption pay recovered by employers and others), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

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## PROSPECTIVE

**3.** In section 4(1) (payments treated as remuneration and earnings), in paragraph (a), for subparagraphs (iii) and (iv) substitute—

- “(iii) ordinary statutory paternity pay; or  
(iv) additional statutory paternity pay; or  
(v) statutory adoption pay; and”.

## PROSPECTIVE

**4.** In section 4C (power to make provision in consequence of provision made by or by virtue of section 4B(2)), in subsection (11), in the definition of “statutory payment”, for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

**5.** In section 35 (state maternity allowance), in subsection (3)(a) (power by regulations to prescribe cases in which a woman is disqualified from receiving a maternity allowance), for subparagraph (i) substitute—

- “(i) during the maternity allowance period, except in prescribed cases, she does any work in employment as an employed or self-employed earner;  
(ia) during the maternity allowance period she fails without good cause to observe any prescribed rules of behaviour; or”.

**6.—(1)** Section 161 (the maternity pay period) is amended as follows.

(2) For subsections (2) and (3) substitute—

“(2) Subject to subsections (3) and (7), the maternity pay period shall begin with the 11th week before the expected week of confinement.

(3) Cases may be prescribed in which the first day of the period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined.”.

(3) In subsection (4), at the beginning insert “Except in such cases as may be prescribed, ”.

(4) After subsection (7) add—

“(8) In subsections (1), (4) and (6) “week” means a period of 7 days beginning with the day of the week on which the maternity pay period begins.”.

**Annotations:****Commencement Information**

**I3** Sch. 1 para. 6 wholly in operation at 1.10.2006; Sch. 1 para. 6 not in operation at date of making see art. 1(3); Sch. 1 para. 6 in operation for certain purposes at 1.9.2006 and wholly in operation at 1.10.2006 by S.R. 2006/344, arts. 2(d), 3(b)

**7.—(1)** Section 162 (rate of statutory maternity pay) is amended as follows.

(2) After subsection (1) insert—

“(1A) In subsection (1) “week” means any period of 7 days.”.

(3) After subsection (3) add—

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“(4) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory maternity pay, the amount payable by way of statutory maternity pay for any day shall be taken as one seventh of the weekly rate.”.

8.—(1) Section 167 (interpretation of Part XII) is amended as follows.

(2) In subsection (1), omit the definition of “week”.

(3) After that subsection insert—

“(1A) In this Part, except section 161(1), (4) and (6), section 162(1) and paragraph 3(2) of Schedule 13, “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 case.”.

**Annotations:**

**Commencement Information**

**I4** Sch. 1 para. 8 wholly in operation at 1.10.2006; Sch. 1 para. 8 not in operation at date of making see art. 1(3); Sch. 1 para. 8 in operation for certain purposes at 1.9.2006 and wholly in operation at 1.10.2006 by S.R. 2006/344, arts. 2(d), 3(b)

PROSPECTIVE

9. For the heading to Part XIIZA (statutory paternity pay), substitute “ ORDINARY AND ADDITIONAL STATUTORY PATERNITY PAY ”.

PROSPECTIVE

10. In Part XIIZA, immediately before section 167ZA insert the heading “ Ordinary statutory paternity pay ”.

PROSPECTIVE

11. In section 167ZA (entitlement: birth), in subsections (1) and (4), for “statutory paternity pay” substitute “ ordinary statutory paternity pay ”.

PROSPECTIVE

12. In section 167ZB (entitlement: adoption), in subsections (1), (4) and (6), for “statutory paternity pay” substitute “ ordinary statutory paternity pay ”.

PROSPECTIVE

13. In section 167ZC (entitlement: general), for “statutory paternity pay” (wherever occurring) substitute “ ordinary statutory paternity pay ”.

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## PROSPECTIVE

- 14.**—(1) Section 167ZD (liability to make payments) is amended as follows.
- (2) In subsection (1), after “payments of” insert “ ordinary ”.
- (3) In subsection (2)—
- (a) for “statutory paternity pay” (where first occurring) substitute “ ordinary statutory paternity pay ”, and
- (b) for “liability for statutory paternity pay” substitute “ liability for ordinary statutory paternity pay or additional statutory paternity pay (or both) ”.

- 15.**—(1) Section 167ZE (rate and period of statutory paternity pay) is amended as follows.
- (2) For “statutory paternity pay” (wherever occurring) substitute “ ordinary statutory paternity pay ”.
- (3) After subsection (10) insert—
- “(10A) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of ordinary statutory paternity pay, the amount payable by way of ordinary statutory paternity pay for any day shall be taken as one seventh of the weekly rate.”.

**Annotations:****Commencement Information**

- 15** [Sch. 1 para. 15](#) partly in operation; [Sch. 1 para. 15](#) not in operation at date of making see [art. 1\(3\)](#); [Sch. 1 para. 15\(1\)\(3\)](#) in operation at 1.10.2006 by [S.R. 2006/344](#), [art. 3\(c\)](#)

## PROSPECTIVE

- 16.** Immediately before section 167ZF insert the heading “ *Ordinary and additional statutory paternity pay: supplementary provisions* ”.

## PROSPECTIVE

- 17.** In section 167ZF (restrictions on contracting out), in subsection (2), for “statutory paternity pay” substitute “ ordinary statutory paternity pay or additional statutory paternity pay ”.

## PROSPECTIVE

- 18.** In section 167ZG (relationship with contractual remuneration), at the end add—
- “(4) In this section “statutory paternity pay” means ordinary statutory paternity pay or additional statutory paternity pay.”.

## PROSPECTIVE

- 19.**—(1) Section 167ZJ (Part XIIZA: supplementary) is amended as follows.

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(2) In subsection (5), for “section 167ZE” substitute “ sections 167ZE and 167ZEE ”.

(3) In subsection (10)(f), for “statutory paternity pay” substitute “ ordinary statutory paternity pay or additional statutory paternity pay ”.

**20.**—(1) Section 167ZN (rate and period of statutory adoption pay) is amended as follows.

(2) At the beginning of subsection (3) insert “ Except in such cases as may be prescribed, ”.

(3) After subsection (6) insert—

“(6A) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory adoption pay, the amount payable by way of statutory adoption pay for any day shall be taken as one seventh of the weekly rate.”.

**Annotations:**

**Commencement Information**

**I6** Sch. 1 para. 20 wholly in operation at 1.10.2006; Sch. 1 para. 20 not in operation at date of making see art. 1(3); Sch. 1 para. 20 in operation for certain purposes at 1.9.2006 and wholly in operation at 1.10.2006 by S.R. 2006/344, arts. 2(d), 3(b)

PROSPECTIVE

**21.** In section 172 (Assembly control), in subsection (2)(a) (regulations subject to confirmatory procedure), after “section 167ZE(1)” insert “ , sections 167ZEA to 167ZEE ”.

**22.** In Schedule 13 (relationship of statutory maternity pay with benefits and other payments etc.), in paragraph 3 (contractual remuneration), after sub-paragraph (2) insert—

“(2A) In sub-paragraph (2) “week” means a period of 7 days beginning with the day of the week on which the maternity pay period begins.”.

PROSPECTIVE

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

**23.** In section 5 (regulations about claims for and payments of benefit) in subsection (4A) for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

**24.** In section 116AA(1) (disclosure of contributions information by Her Majesty's Revenue and Customs), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

**25.** In section 143(1) (sums payable out of National Insurance Fund), in paragraph (d) for “or statutory paternity pay” substitute “ , ordinary statutory paternity pay or additional statutory paternity pay ”.

**26.**—(1) Section 145 (adjustments between National Insurance Fund and Consolidated Fund) is amended as follows.

(2) In subsection (1)(b) (adjustments in respect of the operation of legislation relating to statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay), for sub-paragraphs (iii) and (iv) substitute—

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- “(iii) ordinary statutory paternity pay;
- (iv) additional statutory paternity pay; and
- (v) statutory adoption pay.”.

(3) In subsection (5)(a) (adjustments in respect of certain administrative expenses of the Board), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

*The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

PROSPECTIVE

- 27.** In Article 2(3) (other definitions), for the definition of “paternity leave” substitute—  
 ““ordinary or additional paternity leave” means leave under any of Articles 112A to 112BB;”.

PROSPECTIVE

- 28.** In Article 59(1) (meaning of “wages” etc.), in sub-paragraph (ca), for “statutory paternity pay” substitute “ ordinary statutory paternity pay or additional statutory paternity pay ”.

PROSPECTIVE

- 29.** In Article 70C (leave for family and domestic reasons), in paragraph (2), for sub-paragraph (ca) substitute—  
 “(ca) ordinary or additional paternity leave, or”.

- 30.** In Article 103 (ordinary maternity leave), for paragraph (3) substitute—  
 “(3) Regulations under paragraph (2)—  
 (a) shall secure that, where an employee has a right to leave under this Article, she is entitled to an ordinary maternity leave period of at least 26 weeks;  
 (b) may allow an employee to choose, subject to prescribed restrictions, the date on which an ordinary maternity leave period starts;  
 (c) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.”.

- 31.** In Article 105 (additional maternity leave), for paragraph (3) substitute—  
 “(3) Regulations under paragraph (2)—  
 (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends;  
 (b) may specify circumstances in which an employee may work for her employer during an additional maternity leave period without bringing the period to an end.”.

- 32.** In Article 107A (ordinary adoption leave), after paragraph (2) insert—  
 “(2A) Regulations under paragraph (2) may specify circumstances in which an employee may work for his employer during an ordinary adoption leave period without bringing the period to an end.”.

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**33.** In Article 107B (additional adoption leave), for paragraph (3) substitute—

“(3) Regulations under paragraph (2)—

- (a) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional adoption leave period ends;
- (b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.”.

PROSPECTIVE

**34.** In the heading to Article 112A (entitlement to paternity leave: birth), after “to” insert “ordinary”.

PROSPECTIVE

**35.** In the heading to Article 112B (entitlement to paternity leave: adoption), after “to” insert “ordinary”.

PROSPECTIVE

**36.** In Article 112D (special cases), in paragraph (1) for “112A or 112B” substitute “ 112A, 112AA, 112B or 112BB ”.

PROSPECTIVE

**37.—**(1) Article 112E (Chapter III: supplemental) is amended as follows.

(2) For “Article 112A or 112B” (wherever occurring) substitute “ any of Articles 112A to 112BB ”.

(3) Renumber the provision as so amended to become paragraph (1) of the Article and at the end add—

“(2) The persons on whom duties may be imposed by regulations under Article 112AA or 112BB include not only employees exercising rights by virtue of that Article and their employers but also—

- (a) in the case of Article 112AA, the mother of the child in question and any employer or former employer of hers, and
- (b) in the case of Article 112BB, the person by reference to whom the condition in paragraph (1)(c) of that Article is satisfied and any employer or former employer of that person.”.

PROSPECTIVE

**38.—**(1) Article 120 (employments with normal working hours) is amended as follows.

(2) In paragraph (1)(c), for “paternity leave” substitute “ ordinary or additional paternity leave ”.

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(3) In paragraph (2), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

PROSPECTIVE

**39.**—(1) Article 121 (employments without normal working hours) is amended as follows.

(2) In paragraph (3)(b), for “paternity leave” substitute “ ordinary or additional paternity leave ”.

(3) In paragraph (4), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

PROSPECTIVE

**40.** In Article 131 (leave for family reasons), in paragraph (3), for paragraph (ca) substitute—  
“(ca) ordinary or additional paternity leave, or”.

PROSPECTIVE

**41.** In Article 138 (replacements), in paragraph (2)(a) after “adoption leave” insert “ or leave under Article 112AA or 112BB (additional paternity leave), ”.

PROSPECTIVE

**42.** In Article 251(1A) (orders and regulations – confirmatory procedure) for “112A, 112B, 112G” substitute “ , 112A, 112AA, 112B, 112BB, 112G ”.

PROSPECTIVE

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

**43.**—(1) Article 7 (decisions by officers of Revenue and Customs) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraphs (fa) and (g), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”, and

(b) in sub-paragraph (ga), for “statutory paternity or adoption pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay or statutory adoption pay ”.

(3) In paragraph (3)(b), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

**44.** In Article 10(2)(a) (appeals against decisions of Her Majesty's Revenue and Customs), for “statutory paternity pay” substitute “ ordinary statutory paternity pay, additional statutory paternity pay ”.

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**45.** In Article 13 (matters arising as respects decisions), in paragraphs (1)(a)(i) and (4), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

PROSPECTIVE

*The Employment (Northern Ireland) Order 2002 (NI 2)*

**46.—**(1) Article 8 (funding of employers' liabilities) is amended as follows.

(2) In paragraph (1), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

(3) In paragraph (2), for “statutory paternity pay” (in both places) substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

(4) In paragraph (3)—

(a) for “a payment of statutory paternity pay” substitute “a payment of ordinary statutory paternity pay, additional statutory paternity pay”, and

(b) for “in the case of statutory paternity pay” substitute “in the case of ordinary statutory paternity pay or additional statutory paternity pay”.

**47.** In Article 9 (regulations about payment), for “statutory paternity pay” (wherever occurring) substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

**48.** In Article 11 (power to require information), for “statutory paternity pay” (in both places) substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

**49.** In Article 12 (penalties: failure to comply), in paragraph (6), for “statutory paternity pay” substitute “ordinary statutory paternity pay, additional statutory paternity pay”.

**50.—**(1) Article 13 (penalties: fraud, etc.) is amended as follows.

(2) In paragraphs (1) and (3), for “statutory paternity pay” substitute “ordinary statutory paternity pay”.

(3) In paragraphs (2) and (4), after “statutory adoption pay” insert “or additional statutory paternity pay”.

(4) In paragraph (5), for “statutory paternity pay” substitute “ordinary statutory paternity pay”.

SCHEDULE 2

Article 17.

REPEALS

**Annotations:**

**Commencement Information**

**I7** [Sch. 2](#) partly in operation; [Sch. 2](#) not in operation at date of making see [art. 1\(3\)](#); [Sch. 2](#) in operation for certain purposes at 1.10.2006 and 6.4.2007 by [S.R. 2006/344](#), [arts. 3\(f\), 4\(b\)](#)

**Short Title**

**Extent of repeal**

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The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)	In section 167(1), the definition of “week”.
The Employment Rights (Northern Ireland) Order 1996 (NI 16).	Article 112F(3), (6) and (7).
The Social Security Act (Northern Ireland) 2002 (c. 10).	Section 1.
The Employment (Northern Ireland) Order 2002 (NI 2).	Article 7(2)(a). In Schedule 2, paragraphs 1 and 4(1), (7), (14) and (19).

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which is made only for purposes corresponding to the Work and Families Act 2006, makes provision about statutory rights to leave and pay in connection with the birth or adoption of children, amends Article 112F of the Employment Rights (Northern Ireland) Order 1996, makes provision about workers' entitlement to annual leave, provides for the increase in the sums specified in Articles 23(1) and 231(1) of that Order, and makes provision for connected purposes.

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**Commencement Orders yet to be applied to the The Work and Families (Northern Ireland) Order 2006:**

Commencement Orders bringing provisions within this Order into force:

- [S.R. 2010/295 arts. 2 3](#) commences ([S.I. 2006/1947 \(N.I.\)](#))