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STATUTORY INSTRUMENTS

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**1996 No. 1919**

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

**PART IX**

**MATERNITY RIGHTS**

*General right to maternity leave*

**General right to maternity leave**

**103.**—(1) An employee who is absent from work at any time during her maternity leave period is (subject to Articles 106 and 107) entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

(2) Paragraph (1) does not confer any entitlement to remuneration.

**Commencement of maternity leave period**

**104.**—(1) Subject to paragraph (2), an employee's maternity leave period commences with the earlier of—

- (a) the date which, in accordance with Article 106(1) to (3), she notifies to her employer as the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, and
- (b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee's maternity leave period has not commenced by virtue of paragraph (1) when childbirth occurs, her maternity leave period commences with the day on which childbirth occurs.

(3) The Department may by order vary paragraphs (1) and (2).

**Duration of maternity leave period**

**105.**—(1) Subject to paragraphs (2) and (3), an employee's maternity leave period continues for the period of fourteen weeks from its commencement or until the birth of the child, if later.

(2) Subject to paragraph (3), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period mentioned in paragraph (1) by reason of her having recently given birth, her maternity leave period continues until the end of that later period.

(3) Where the employee is dismissed after the commencement of her maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(4) In paragraph (2) “relevant statutory provision” means a statutory provision other than a provision for the time being specified in an order made under Article 98(2).

(5) The Department may by order vary paragraphs (1) to (4).

**Requirement to notify commencement of leave**

**106.**—(1) Subject to paragraphs (4) and (5), an employee does not have the right conferred by Article 103 unless she notifies her employer of the date on which she intends her period of absence from work in exercise of the right to commence.

(2) No date occurring before the beginning of the eleventh week before the expected week of childbirth may be notified under paragraph (1).

(3) Notification under paragraph (1) shall be given by an employee—

- (a) not less than twenty-one days before the date on which she intends her period of absence from work in exercise of the right conferred by Article 103 to commence, or
- (b) if that is not reasonably practicable, as soon as is reasonably practicable.

(4) Where an employee’s maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(5) Where an employee’s maternity leave period commences with the day on which childbirth occurs—

- (a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but
- (b) (whether or not she has notified him of that date) she does not have the right conferred by Article 103 unless she notifies him as soon as is reasonably practicable after the birth that she has given birth.

(6) Any notification required by this Article shall, if the employer so requests, be given in writing.

**Requirement to notify pregnancy etc.**

**107.**—(1) An employee does not have the right conferred by Article 103 unless at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable, she informs her employer in writing of—

- (a) her pregnancy, and
- (b) the expected week of childbirth,

or, if childbirth has occurred, of the date on which it occurred.

(2) An employee does not have the right conferred by Article 103 unless, if requested to do so by her employer, she produces for his inspection a certificate from—

- (a) a registered medical practitioner, or
- (b) a registered midwife,

stating the expected week of childbirth.

### **Requirement to notify return during maternity leave period**

**108.**—(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of her maternity leave period without complying with paragraph (1), her employer shall be entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has seven days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of her maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

### **Redundancy during maternity leave period**

**109.**—(1) This Article applies where during an employee's maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment.

(2) If there is a suitable available vacancy, the employee is entitled to be offered (before the ending of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
- (b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

### **Contractual rights to maternity leave**

**110.**—(1) An employee who has both the right to maternity leave under Article 103 and another right to maternity leave (under a contract of employment or otherwise) may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of Articles 104 to 109 apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right under Article 103.