



2015 CHAPTER 1

PART 3

TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS

Time off work to accompany to ante-natal appointments

- 15.—(1) The Employment Rights Order is amended as follows.
(2) After Article 85ZD insert—

“Accompanying to ante-natal appointments

Right to time off to accompany to ante-natal appointments

85ZE.—(1) An employee who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(4) An employee is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in paragraph (1) unless the employee gives that declaration (which may be given in electronic form).

(6) The employee must state in the declaration—

- (a) that the employee has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the employee's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person ("A") is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) A intends to apply, jointly with another person ("B"), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,

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- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

Complaint to industrial tribunal

85ZF.—(1) An employee may present a complaint to an industrial tribunal that his or her employer has unreasonably refused to let him or her take time off as required by Article 85ZE.

(2) An industrial tribunal may not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the employer to pay to the employee an amount determined in accordance with paragraph (4).

(4) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the employee, and
- (b) B is the number of working hours for which the employee would have been entitled under Article 85ZE to be absent if the time off had not been refused.

(5) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week

for that employee when employed under the contract of employment in force on the day when the time off would have been taken.

(6) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

(a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (7) as are appropriate in the circumstances.

(7) The considerations referred to in paragraph (6)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

Accompanying to ante-natal appointments: agency workers

Right to time off to accompany to ante-natal appointments: agency workers

85ZG.—(1) An agency worker who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care. when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(4) An agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the temporary work agency or the hirer requests the agency worker to give that person a declaration signed by the agency worker, the agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the agency worker gives that declaration (which may be given in electronic form).

(6) The agency worker must state in the declaration—

- (a) that the agency worker has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the agency worker's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person (“A”) is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

Complaint to industrial tribunal: agency workers

85ZH.—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by Article 85ZG.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZG.

(3) An industrial tribunal may not consider a complaint under paragraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, 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.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the payment to the agency worker of an amount determined in accordance with paragraph (6).

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(5) Where the tribunal orders that payment under paragraph (4) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(6) The amount payable to the agency worker is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the agency worker, and
- (b) B is the number of working hours for which the agency worker would have been entitled under Article 85ZG to be absent if the time off had not been refused.

(7) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off would have been taken.

(8) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken.

Agency workers: supplementary

85ZI.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZG and 85ZH do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZG and 85ZH imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZG and 85ZH do not apply where Articles 85ZE and 85ZF apply.

(4) In this Article and Articles 85ZG and 85ZH the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

(3) In Article 21 (the calculation date in finding a week’s pay), after paragraph (3) insert—

“(3A) Where the calculation is for the purposes of Article 85ZF, the calculation date is the day of the appointment.”.

(4) In Article 70C (right not to be subject to detriment: leave for family and domestic reasons), in paragraph (2) (prescribed reasons), after sub-paragraph (a) insert—

“(aa) time off under Article 85ZE,”.

(5) In Article 131 (being regarded as unfairly dismissed: leave for family reasons), in paragraph (3) (prescribed kinds of reasons or prescribed circumstances), after paragraph (a) insert—

“(aa) time off under Article 85ZE,”.

Time off work for ante-natal care: increased amount of award

16.—(1) The Employment Rights Order is amended as follows.

(2) In Article 85 (complaints to industrial tribunals where time off work for ante-natal care refused to employee), in paragraph (4) (amount of award for unreasonable refusal), for “an amount equal to” substitute “an amount that is twice the amount of”.

(3) In Article 85ZC (complaints to industrial tribunals where time off work for ante-natal care refused to agency worker), in paragraph (5) (amount of award for unreasonable refusal), for “an amount equal to” substitute “an amount that is twice the amount of”.

Time off work to attend adoption appointments

17.—(1) The Employment Rights Order is amended as follows.

(2) After Article 85ZI (as inserted by section 15(2)) insert—

“Adoption appointments

Right to paid time off to attend adoption appointments

85ZJ.—(1) An employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee alone is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee who—

(a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and

(b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An employee may not make an election for the purposes of paragraph (2) (b) if—

(a) the employee has made an election for the purposes of Article 85ZL(1)(b) in connection with the adoption, or

(b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZN(2)(b) in connection with the adoption.

(4) An employee is not entitled to take time off under this Article on or after the date of the child’s placement for adoption with the employee.

(5) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(7) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

(8) An employee is not entitled to take time off under paragraph (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An employee is not entitled to take time off under paragraph (2) unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(13) In this Article, an "adoption agency" means an adoption agency for the purposes of the Adoption (Northern Ireland) Order 1987 (see Articles 2(2) and 3(3) of the Order).

Right to remuneration for time off under Article 85ZJ

85ZK.—(1) An employee who is permitted to take time off under Article 85ZJ is entitled to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent, at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week

for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by—

- (a) the average number of normal working hours, calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under the employee's contract of employment ("contractual remuneration").

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period.

(7) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZJ goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Right to unpaid time off to attend adoption appointments

85ZL.—(1) An employee who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment

at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee may not make an election for the purposes of paragraph (1)(b) if—

- (a) the employee has made an election for the purposes of Article 85ZJ(2)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZP(1)(b) in connection with the adoption.

(3) An employee is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the employee.

(4) In relation to any particular adoption, an employee is not entitled to take time off under this Article on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(6) An employee is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).

(7) An employee is not entitled to take time off under this Article unless, if the employer requests it, the employee gives the employer—

- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).

(8) A declaration or document requested under paragraph (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,

(d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,

(e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this Article, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

(11) In this Article, "adoption agency" has the same meaning as in Article 85ZJ.

Complaint to industrial tribunal

85ZM.—(1) An employee may present a complaint to an industrial tribunal that his or her employer—

(a) has unreasonably refused to let him or her take time off as required by Article 85ZJ or 85ZL, or

(b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 85ZK.

(2) An industrial tribunal may not consider a complaint under this Article unless it is presented—

(a) before the end of the period of three months beginning with the day of the appointment in question, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it must make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZJ, the tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under Article 85ZK if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under Article 85ZK, the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.

(6) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by Article 85ZL, the tribunal must

also order the employer to pay to the employee an amount determined in accordance with paragraph (7).

(7) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the employee determined in accordance with Article 85ZK(2) to (4), and
- (b) B is the number of working hours for which the employee would have been entitled under Article 85ZL to be absent if the time off had not been refused.

Adoption appointments: agency workers

Right to paid time off to attend adoption appointments: agency workers

85ZN.—(1) An agency worker who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker alone is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and
- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(3) An agency worker may not make an election for the purposes of paragraph (2)(b) if—

- (a) the agency worker has made an election for the purposes of Article 85ZP(1)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (2)(b) or Article 85ZJ(2)(b) in connection with the adoption.

Status: This is the original version (as it was originally enacted).

(4) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.

(5) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than five occasions.

(6) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(7) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1) or (2)(a).

(8) An agency worker is not entitled to take time off under paragraph (1) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(9) An agency worker is not entitled to take time off under paragraph (2) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

- (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (2)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (7).

(10) A document or declaration requested under paragraph (8) or (9) may be given in electronic form.

(11) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraphs (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,
- (b) the references in paragraphs (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (3) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(13) In this Article “adoption agency” has the same meaning as in Article 85ZJ.

Right to remuneration for time off under Article 85ZN

85ZO.—(1) An agency worker who is permitted to take time off under Article 85ZN is entitled to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an agency worker, is the amount of one week’s pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off is taken.

(3) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week’s pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker’s normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken.

(4) A right to any amount under paragraph (1) does not affect any right of an agency worker in relation to remuneration under the agency worker’s contract with the temporary work agency (“contractual remuneration”).

(5) Any contractual remuneration paid to an agency worker in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay remuneration under paragraph (1) in respect of that period.

(6) Any payment of remuneration under paragraph (1) in respect of a period of time off under Article 85ZN goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

Right to unpaid time off to attend adoption appointments: agency workers

85ZP.—(1) An agency worker who—

- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker and another person jointly, and

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- (b) has elected to exercise the right to take time off under this Article in connection with the adoption,

is entitled to be permitted by the temporary work agency and the hirer to take time off during the agency worker's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An agency worker may not make an election for the purposes of paragraph (1)(b) if—

- (a) the agency worker has made an election for the purposes of Article 85ZN(2)(b) in connection with the adoption, or
- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of paragraph (1)(b) or Article 85ZL(1)(b) in connection with the adoption.

(3) An agency worker is not entitled to take time off under this Article on or after the date of the child's placement for adoption with the agency worker.

(4) In relation to any particular adoption, an agency worker is not entitled to take time off under this Article on more than two occasions.

(5) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(6) An agency worker is not entitled to take time off under this Article unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in paragraph (1)(a).

(7) An agency worker is not entitled to take time off under this Article unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—

- (a) a declaration signed by the agency worker stating that the agency worker has made an election for the purposes of paragraph (1)(b) in connection with the adoption, and
- (b) a document showing the date and time of the appointment in question and that it has been arranged as described in paragraph (6).

(8) A declaration or document requested under paragraph (7) may be given in electronic form.

(9) In cases where more than one child is to be, or is expected to be, placed for adoption with an agency worker and another person jointly as part of the same arrangement, this Article has effect as if—

- (a) the purposes specified in paragraph (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement,

- (b) the references in paragraphs (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement,
- (c) the references in paragraph (2) to the adoption were references to any of the adoptions that are part of the arrangement,
- (d) the reference in paragraph (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement,
- (e) the reference in paragraph (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(10) For the purposes of this Article the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

(11) In this Article, "adoption agency" has the same meaning as in Article 85ZJ.

Complaint to industrial tribunal: agency workers

85ZQ.—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency—

- (a) has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP, or
- (b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under Article 85ZO.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZN or 85ZP.

(3) An industrial tribunal may not consider a complaint under subparagraph (1) or (2) unless it is presented—

- (a) before the end of the period of three months beginning with the day of the appointment in question, 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.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it must make a declaration to that effect.

(5) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZN, the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency

worker would have been entitled under Article 85ZO if the agency worker had not been refused the time off.

(6) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under Article 85ZO, the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.

(7) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by Article 85ZP, the tribunal must also order payment to the agency worker of an amount determined in accordance with sub-paragraph (8).

(8) The amount payable to the agency worker under paragraph (7) is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the agency worker determined in accordance with Article 85ZO(2) and (3), and
- (b) B is the number of working hours for which the agency worker would have been entitled under Article 85ZP to be absent if the time off had not been refused.

(9) Where the tribunal orders that payment under paragraph (5) or (7) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

Agency workers: supplementary

85ZR.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZN to 85ZQ do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZN to 85ZQ imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZN to 85ZQ do not apply where Articles 85ZJ to 85ZM apply.

(4) In this Article and Articles 85ZN to 85ZQ the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

Entitlement: prospective adopters with whom looked after children are placed

85ZS.—(1) Paragraph (3) applies where an authority notifies a person who is an approved foster parent and an approved prospective adopter that a child who is looked after by it is to be, or is expected to be, placed with the person by the authority, in the circumstances mentioned in paragraph (2), under Article 27(2)(a) of the Children (Northern Ireland) Order 1995.

(2) The circumstances are that—

(a) the authority—

(i) is considering adoption for the child, or

(ii) has decided by virtue of regulation 11 of the Adoption Agencies Regulations (Northern Ireland) 1989 that it is satisfied that adoption is in the best interests of the child, and

(b) such conditions as may be specified in regulations made by the Department are satisfied.

(3) Where this paragraph applies, Articles 85ZJ, 85ZL, 85ZN and 85ZP have effect as if references to adoption, an adoption agency, placement for adoption or placing for adoption were such references as may be specified in regulations made by the Department.

(4) Where a child is placed by an authority as referred to in paragraphs (1) and (2), notification of the person by an adoption agency during the placement that the child is to be, or is expected to be, placed with the person for adoption is not to give rise to a right to time off under Article 85ZJ, 85ZL, 85ZN or 85ZP for the person or another person.

(5) In this Article—

“adoption agency” has the same meaning as in Article 85ZJ,

“approved foster parent” means a person approved as a foster parent by the authority under regulation 3 of the Foster Placement (Children) Regulations (Northern Ireland) 1996,

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“approved prospective adopter” means a person considered by the authority by virtue of the Adoption Agencies Regulations (Northern Ireland) 1989 to be a person suitable to adopt a child,

“authority” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 2(2) and (3) of the Order),

“child who is looked after by an authority” has the same meaning as in that Order (see Articles 2(7)(b) and 25 of the Order).

(6) The Department may by order amend the definition of, or substitute another definition for the definition of, “approved foster parent” or “approved prospective adopter” for the time being contained in paragraph (5), in consequence of any modification or replacement of the regulations referred to in the definition.”.

(3) In Article 21 (the calculation date in finding a week’s pay), after paragraph (3A) (as inserted by section 15(3)) insert—

“(3B) Where the calculation is for the purposes of Article 85ZK or 85ZM, the calculation date is the day of the appointment.”.

(4) In Article 70C (right not to be subject to detriment: leave for family and domestic reasons), in paragraph (2) (prescribed reasons), after sub-paragraph (aa) (as inserted by section 15(4)) insert—

“(ab) time off under Article 85ZJ or 85ZL,”.

(5) In Article 112B (entitlement to ordinary paternity leave: adoption), in paragraph (5) (provision that may be made in regulations under paragraph (1)), after sub-paragraph (b) insert—

“(ba) make provision excluding the right to be absent on leave under this Article in the case of an employee who has exercised a right to take time off under Article 85ZJ;”.

(6) In Article 131 (being regarded as unfairly dismissed: leave for family reasons), in paragraph (3) (prescribed reasons), after sub-paragraph (aa) (as inserted by section 15(5)) insert—

“(ab) time off under Article 85ZJ or 85ZL,”.

Right not to be subjected to detriment: agency workers

18.—(1) The Employment Rights Order is amended as follows.

(2) In Article 70C (right not to be subjected to detriment for taking leave for family and domestic reasons), after paragraph (3) add—

“(4) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the temporary work agency or the hirer done on the ground that—

- (a) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—
 - (i) time off under Article 85ZA, and
 - (ii) remuneration under Article 85ZB in respect of that time off,
- (b) being a person entitled to time off under Article 85ZG, the agency worker exercised (or proposed to exercise) that right,
- (c) being a person entitled to the following time off or remuneration, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration—
 - (i) time off under Article 85ZN, and
 - (ii) remuneration under Article 85ZO in respect of that time off,
 or
- (d) being a person entitled to time off under Article 85ZP, the agency worker exercised (or proposed to exercise) that right.
- (5) Paragraph (4) does not apply where the agency worker is an employee.
- (6) In this Article, the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3 and 4 of the regulations)—
 - “agency worker”,
 - “hirer”,
 - “temporary work agency””””
- (3) In Article 71 (complaints to industrial tribunals)—
 - (a) in paragraph (1) for “70C” substitute “70C(1)”,
 - (b) after paragraph (1A) insert—
 - “(1AA) An agency worker may present a complaint to an industrial tribunal that the agency worker has been subjected to a detriment in contravention of Article 70C(4) by the temporary work agency or the hirer.”,
 - (c) in paragraph (2) for “this Article” substitute “paragraph (1), (1ZA), (1A) or (1B)”,
 - (d) after that paragraph insert—
 - “(2A) On a complaint under paragraph (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.”,
 - (e) in paragraph (4) after “an employer” insert “, a temporary work agency or a hirer”,

(f) after paragraph (5) add—

“(6) In—

(a) this Article, “agency worker”, and

(b) this Article and Article 72, “hirer” and “temporary work agency”,

have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011.”.

(4) In Article 72 (remedies in the case of complaints to an industrial tribunal)

—
(a) in paragraph (1) for “Article 71” substitute “Article 71(1), (1ZA), (1A) or (1B)”,

(b) after that paragraph insert—

“(1A) Where an industrial tribunal finds a complaint under Article 71(1AA) well-founded, the tribunal—

(a) shall make a declaration to that effect, and

(b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.”.