

*Status: Point in time view as at 15/03/2015. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Work and Families Act (Northern Ireland) 2015, Section 17. (See end of Document for details)*



## 2015 CHAPTER 1

### PART 3

#### TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS

##### **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

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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,

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- (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—

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- (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.

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(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—

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- (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.

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### *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.

(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).

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(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



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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
- (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

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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.

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(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 subparagraph (8).

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

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$$A \times B \times 2$$

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”.

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### **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,

“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

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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,”.

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**Commencement Information**

**II** S. 17(4)-(6) in operation at 15.3.2015 by S.R. 2015/86, art. 3(1)(n)

**Status:**

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