

SCHEDULE

Section 4.

Further amendments to do with parental bereavement leave and pay

PART 1

Principal Amendments

Social Security (Northern Ireland) Order 1989

1. In Schedule 5 to the Social Security (Northern Ireland) Order 1989 (employment-related schemes for pensions or other benefits to comply with the principle of equal treatment), after paragraph 5C insert—

“Unfair parental bereavement leave provisions

(1) Where an employment-related benefit scheme includes any unfair parental bereavement leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

- (a) the scheme is to be regarded to that extent as not complying with the principle of equal treatment; and
- (b) subject to sub-paragraph (3), this Schedule is to apply accordingly.

(2) In this paragraph “unfair parental bereavement leave provisions”, in relation to an employment-related benefit scheme, means any provision—

- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid parental bereavement leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
- (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid parental bereavement leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair parental bereavement leave provision—

- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
- (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid parental bereavement leave, a member is only required to pay contributions on the amount of contractual remuneration or statutory parental bereavement pay actually paid to or for the member in respect of that period.

(4) In this paragraph—

“the normal employment requirement” is the requirement that any period of paid parental bereavement leave is to be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;

“period of paid parental bereavement leave”, in the case of a member, means any period—

(a) throughout which a member who is a bereaved parent (within the meaning given by section 167ZZ9(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992) is absent from work due to the death of a child, otherwise than by virtue of a period of leave mentioned in sub-paragraph (5); and

(b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory parental bereavement pay.

(5) The periods of leave referred to in paragraph (a) of the definition of “period of paid parental bereavement leave” are—

(a) a period of paid paternity leave (within the meaning of paragraph 5A),

(b) a period of maternity leave (within the meaning given in sub-paragraph (6)),

(c) a period of paid adoption leave (within the meaning of paragraph 5B), or

(d) a period of shared parental leave (within the meaning of paragraph 5C).

(6) A period of maternity leave is a period throughout which the member is absent—

(a) in consequence of the prohibition in Article 104(1) of the Employment Rights (Northern Ireland) Order 1996 (compulsory maternity leave), or

(b) because the member is exercising the right conferred by Article 103(1) or 105(1) of that Order (ordinary maternity leave or additional maternity leave).”.

Social Security Contributions and Benefits (Northern Ireland) Act 1992

2. The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended as follows.

- 3.** In section 1(5) (outline of contributory system: certain statutory payments), for “and statutory shared parental pay” substitute “, statutory shared parental pay and statutory parental bereavement pay”.
- 4.** In section 4(1)(a) (payments treated as remuneration and earnings)—
- (a) at the end of sub-paragraph (v), omit “and”;
 - (b) after that sub-paragraph insert “or
 - (vi) statutory parental bereavement pay; and”.
- 5.** In section 4AA(2) (limited liability partnerships: power to modify definitions of “employee” and “employer”), for “or 167ZS” substitute “, 167ZS or 167ZZ17”.
- 6.** In section 4C(11) (power to make provision in consequence of provision made by virtue of section 4B(2) etc: definitions), in paragraph (a) of the definition of “statutory payment”, for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.
- 7.** In section 170 (interpretation), in the definition of “the Department”, for the words “and 12ZC” (which were inserted by paragraph 2(18)(a) of Schedule 1 to the Work and Families Act (Northern Ireland) 2015) substitute “, 12ZC and 12ZD”.
- 8.—(1)** Section 172 (Assembly, etc. control of regulations and orders) is amended as follows.
- (2) In subsection (2)(a), after “sections 167ZU to 167ZZ2” insert “or sections 167ZZ9 to 167ZZ12”.
 - (3) In subsection (4), for “and (7A)” substitute “, (7A) and (7B)”.
 - (4) After subsection (7A) insert—
 - “(7B) The first regulations under section 167ZZ19 must not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

Social Security Administration (Northern Ireland) Act 1992

- 9.** The Social Security Administration (Northern Ireland) Act 1992 is amended as follows.
- 10.** In section 5 (regulations about claims for and payments of benefits), in subsection (4A), for “and statutory shared parental pay” substitute “, statutory shared parental pay and statutory parental bereavement pay”.
- 11.** In section 116AA (disclosure of contributions information etc by HMRC), in subsection (1), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

12. In section 143 (general financial arrangements), in subsection (1)(d), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

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

(2) In subsection (1)(b)—

(a) at the end of sub-paragraph (iv), omit “and”;

(b) after sub-paragraph (v) insert “; and

(vi) statutory parental bereavement pay.”

(3) In subsection (5B)(a), for “or statutory adoption pay” substitute “, statutory adoption pay or statutory parental bereavement pay”.

Pensions (Northern Ireland) Order 1995

14. In Article 63(3) of the Pensions (Northern Ireland) Order 1995, after “5” insert “, 5D”.

Employment Rights (Northern Ireland) Order 1996

15. The Employment Rights (Northern Ireland) Order 1996 is amended as follows.

16. In Article 2(3) (interpretation)—

(a) at the appropriate place insert—

““parental bereavement leave” means leave under Article 112EA,”;

(b) in the definition of “week”, in paragraph (b), after “112B” insert “, 112EA”.

17. In Article 59(1) (sums included within the meaning of “wages”), after sub-paragraph (cc) insert—

“(cd) statutory parental bereavement pay under Part 12ZD of that Act.”.

18. In Article 70C(2) (right not to be subjected to detriment for prescribed reasons), after sub-paragraph (ca) insert—

“(cb) parental bereavement leave, or”.

19. In Article 107K(3) (rights during and after period of absence on shared parental leave and other kinds of leave)—

(a) at the end of sub-paragraph (d), omit “and”;

(b) after sub-paragraph (e) insert “, and

(f) parental bereavement leave.”.

20.—(1) Article 112C (rights during and after paternity leave) is amended as follows.

(2) In paragraph (2), after sub-paragraph (ba) (but before the “and”) insert—

“(bb) parental bereavement leave.”

(3) In paragraph (4), after sub-paragraph (ba) insert—

“(bb) parental bereavement leave.”

21.—(1) Article 120 (liability of employer to pay employee during period of notice: employments with normal working hours) is amended as follows.

(2) In paragraph (1)(c), after “shared parental leave,” insert “parental bereavement leave.”

(3) In paragraph (2), after “statutory shared parental pay,” insert “parental bereavement pay, statutory parental bereavement pay.”

22.—(1) Article 121 (effect of notice of termination: employments without normal working hours) is amended as follows.

(2) In paragraph (3)(b), after “shared parental leave,” insert “parental bereavement leave.”

(3) In paragraph (4), after “statutory shared parental pay,” insert “parental bereavement pay, statutory parental bereavement pay.”

23. In Article 131(3) (dismissal is unfair if it is because of leave for family reasons), after sub-paragraph (ca) insert—

“(cb) parental bereavement leave, or”.

24.—(1) Article 251 (orders and regulations) is amended as follows.

(2) In paragraph (1A), after “112BAA,” insert “112EA.”

(3) In paragraph (1B), after “or 67FA” insert “, and the first regulations under Article 112EF.”

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

25. The Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 is amended as follows.

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

(2) In paragraph (1)—

(a) in sub-paragraph (fa), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”;

- (b) in sub-paragraph (g), for “12ZC” substitute “12ZD”;
- (c) in sub-paragraph (g), for “and statutory shared parental pay” substitute “, statutory shared parental pay and statutory parental bereavement pay”;
- (d) in sub-paragraph (ga), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

(3) In paragraph (3)(b), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

27. In Article 10 (appeals against decisions of officers of Revenue and Customs), in paragraph (2)(a), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

28. In Article 13 (matters arising as respects decisions), in paragraphs (1)(a)(i) and (4), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

Employment (Northern Ireland) Order 2002

29. The Employment (Northern Ireland) Order 2002 is amended as follows.

30.—(1) Article 8 (funding of employers’ liabilities as regards certain statutory pay) is amended as follows.

(2) In paragraph (1), for “and statutory shared parental pay” substitute “, statutory shared parental pay and statutory parental bereavement pay”.

(3) In paragraph (2)(a) and (b), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

(4) In paragraph (3)—

- (a) for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”;
- (b) at the end of sub-paragraph (ii), omit “or”;
- (c) after sub-paragraph (iii) insert “or
(iv) the period for which the payment of statutory parental bereavement pay is made,”.

31. In Article 9 (regulations about payment), in paragraphs (1) and (2)(a), (b) and (d), for “and statutory shared parental pay” substitute “, statutory shared parental pay and statutory parental bereavement pay”.

32. In Article 11 (power to require information), in paragraphs (1) and (2)(a), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

33. In Article 12 (penalties for failure to comply), in paragraph (6), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory parental bereavement pay”.

34. In Article 13 (penalties for fraud etc), paragraphs (1)(a) and (b), (3) and (5), after “statutory paternity pay” insert “or statutory parental bereavement pay”.

Pensions (No.2) Act (Northern Ireland) 2008

35. In section 13 of the Pensions (No.2) Act (Northern Ireland) 2008 (qualifying earnings), in subsection (3), after paragraph (ea) insert—

“(eb) statutory parental bereavement pay under Part 12ZD of that Act;”.

PART 2

Further Amendments: entitlement to work provisions

36. Part 12ZD of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, inserted by section 2 of this Act, is amended as follows.

37. In section 167ZZ9 (entitlement to statutory parental bereavement pay), after subsection (2)(b) insert—

“(ba) that at the end of the relevant week the person was entitled to be in that employment;”.

38. In section 167ZZ10 (entitlement: supplementary), after subsection (4) insert—

“(5) The Department may by regulations provide for circumstances in which section 167ZZ9(2)(ba) does not have effect.”.