

## SCHEDULES

### SCHEDULE 1

Article 3.

#### ARTICLES 14 TO 32 OF THE NO. 2 ORDER, AS SUBSTITUTED

##### **General right to maternity leave**

**14.—**(1) An employee who is absent from work at any time during her maternity leave period shall, subject to Articles 17 and 18, be entitled to the benefit of the terms and conditions of employment which would have been applicable to her if she had not been absent (and had not been pregnant or given birth to a child).

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

##### **Commencement of maternity leave period**

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

- (a) the date which, in accordance with Article 17, she notifies to her employer as the date on which she intends her period of absence from work in exercise of her right to maternity leave to commence; or
- (b) if earlier, the first day on which she is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the sixth week before the expected week of childbirth.

(2) Where childbirth occurs before the day with which the employee's maternity leave period would otherwise commence, her maternity leave period shall commence with the day on which childbirth occurs.

(3) The Department may by order vary either of the provisions of paragraphs (1) and (2).

##### **Duration of maternity leave period**

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

(2) Subject to paragraph (3), where any requirement imposed by or under any statutory provision, other than a provision for the time being specified in an order made under Article 26(3), prohibits her working for any period after the end of the period mentioned in paragraph (1) by reason of her having recently given birth, her maternity leave period shall continue until the expiry of that later period.

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

(4) The Department may by order vary any of the provisions of this Article.

##### **Notice of commencement of leave**

**17.—**(1) An employee shall not have the right conferred by Article 14 unless—

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- (a) she notifies her employer of the date (within the restriction imposed by paragraph (2)) (“the notified leave date”) on which she intends her period of absence from work in exercise of her right to maternity leave to commence—
  - (i) not less than twenty-one days before that date; or
  - (ii) if that is not reasonably practicable, as soon as is reasonably practicable;
- (b) where she is first absent from work wholly or partly because of pregnancy or childbirth before the notified leave date or before she has notified such a date and after the beginning of the sixth week before the expected week of childbirth, she notifies her employer as soon as is reasonably practicable that she is absent for that reason; or
- (c) where childbirth occurs before the notified leave date or before she has notified such a date, she notifies her employer that she has given birth as soon as is reasonably practicable after the birth,

and any notice she is required to give under sub-paragraphs (a) to (c) shall, if her employer so requests, be given in writing.

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

(3) Where, in the case of an employee, either sub-paragraph (b) or (c) of paragraph (1) has fallen to be satisfied, and has been so satisfied, nothing in sub-paragraph (a) of that paragraph shall impose any requirement on the employee.

#### **Requirement to inform employer of pregnancy etc.**

**18.**—(1) An employee shall not have the right conferred by Article 14 unless she informs her employer in writing at least twenty-one days before her maternity leave period commences or, if that is not reasonably practicable, as soon as is reasonably practicable—

- (a) that she is pregnant; and
- (b) of the expected week of childbirth or, if the childbirth has occurred, the date on which it occurred.

(2) An employee shall not have the right conferred by Article 14 unless, if requested to do so by her employer, she produces for his inspection a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth.

#### **Requirement to inform employer of return during maternity leave period**

**18A.**—(1) An employee who intends to return to work earlier than the end of her maternity leave period shall give to her employer not less than seven days notice of the date on which she intends to return.

(2) If an employee returns to work as mentioned in paragraph (1) without notifying her employer of her intention to do so or without giving him the notice required by that paragraph her employer shall be entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has seven days notice of her return.

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

(4) If an employee who has been notified under paragraph (2) that she is not to return to work before the date specified by her employer does return to work before that date the employer shall be under no contractual obligation to pay her remuneration until the date specified by him as the date on which she may return.

### **Special provision where redundancy during maternity leave period**

**19.**—(1) Where during an employee’s maternity leave period it is not practicable by reason of redundancy for the employer to continue to employ her under her existing contract of employment, she shall be entitled, where there is a suitable available vacancy, to be offered (before the ending of her employment under that contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (2) (and takes effect immediately on the ending of her employment under the previous contract).

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

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

### **Contractual right to maternity leave**

**19A.**—(1) An employee who has the right to maternity leave under Article 14 and a right to maternity leave under a contract of employment or otherwise may not exercise the two rights separately but may, in taking maternity leave, take advantage of whichever right is, in any particular respect, the more favourable.

(2) The provisions of Articles 15 to 19 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right under Article 14.

### **Right to return to work**

**20.**—(1) An employee who—

- (a) has the right conferred by Article 14; and
- (b) has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than two years,

shall also have the right to return to work at any time during the period beginning at the end of her maternity leave period and ending twenty-nine weeks after the beginning of the week in which childbirth occurs.

(2) An employee’s right to return to work under this Article is the right to return to work with the person who was her employer before the end of her maternity leave period, or (where appropriate) his successor, in the job in which she was then employed—

- (a) on terms and conditions as to remuneration not less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her maternity leave period;
- (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to the end of her maternity leave period were continuous with her employment following her return to work (but subject to the requirements of paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (credit for the period of absence in certain cases)); and
- (c) otherwise on terms and conditions no less favourable than those which would have been applicable to her had she not been absent from work after the end of her maternity leave period.

(3) The Department may by order vary the period of two years specified in paragraph (1) or that period as so varied.

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### **Requirement to give notice of return to employer**

**21.—**(1) An employee shall not have the right to return to work under Article 20 unless she includes with the information required by Article 18(1) the information that she intends to exercise the right.

(2) Where, not earlier than twenty-one days before the end of her maternity leave period, an employee is requested in accordance with paragraph (3) by her employer, or a successor of his, to give him written confirmation that she intends to exercise the right to return to work under Article 20, the employee shall not be entitled to that right unless she gives the requested confirmation within fourteen days of receiving the request or, if that is not reasonably practicable, as soon as is reasonably practicable.

(3) A request under paragraph (2) shall be—

- (a) made in writing; and
- (b) accompanied by a written statement of the effect of that paragraph.

### **Special provision where redundancies occur before return to work**

**22.—**(1) Where an employee has the right to return to work under Article 20, but it is not practicable by reason of redundancy for the employer to permit her to return in accordance with that right, she shall be entitled, where there is a suitable available vacancy, to be offered alternative employment with her employer (or his successor), or an associated employer, under a new contract of employment complying with paragraph (2).

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

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

### **Exercise of right to return to work**

**23.—**(1) An employee shall exercise the right to return to work under Article 20 by giving written notice to the employer (who may be her employer before the end of her maternity leave period or a successor of his) at least twenty-one days before the day on which she proposes to return of her proposal to return on that day (the “notified day of return”).

(2) An employer may postpone an employee’s return to work until a date not more than four weeks after the notified day of return if he notifies her before that day that for specified reasons he is postponing her return until that date, and accordingly she will be entitled to return to work with him on that date.

(3) Subject to paragraph (4), an employee may—

- (a) postpone her return to work until a date not exceeding four weeks from the notified day of return, notwithstanding that that date falls after the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred; and
- (b) where no day of return has been notified to the employer, extend the time during which she may exercise her right to return in accordance with paragraph (1), so that she returns to work not later than four weeks from the end of that period of twenty-nine weeks,

if, before the notified day of return (or the end of the period of twenty-nine weeks), she gives the employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she will be incapable of work on the notified day of return (or the end of that period).

(4) Where an employee has once exercised a right of postponement or extension under paragraph (3)(a) or (b), she shall not again be entitled to exercise a right of postponement or extension under that paragraph in connection with the same return to work.

(5) If an employee has notified a day of return but there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work on the notified day of return, she may instead return to work when work resumes after the interruption or as soon as reasonably practicable afterwards.

(6) If—

- (a) no day of return has been notified;
- (b) there is an interruption of work (whether due to industrial action or some other reason) which renders it unreasonable to expect the employee to return to work before the end of the period of twenty-nine weeks beginning with the week in which childbirth occurred, or which appears likely to have that effect; and
- (c) in consequence, the employee does not notify a day of return,

the employee may exercise her right to return in accordance with paragraph (1) so that she returns to work at any time before the end of the period of twenty-eight days from the end of the interruption notwithstanding that she returns to work outside the period of twenty-nine weeks.

(7) Where the employee has either—

- (a) exercised the right under paragraph (3)(b) to extend the period during which she may exercise her right to return; or
- (b) refrained from notifying the day of return in the circumstances described in paragraph (6),

the other of those paragraphs shall apply as if for the reference to the end of the period of twenty-nine weeks there were substituted a reference to the end of the further period of four weeks or, as the case may be, of the period of twenty-eight days from the end of the interruption of work.

### **Supplementary**

**24.**—(1) Schedule 2 shall have effect for the purpose of supplementing the preceding Articles in relation to an employee's right to return to work under Article 20.

(2) Article 30 also has effect for that purpose.

(3) Subject to paragraph (4), in Article 30 and Schedule 2 “notified day of return” has the same meaning as in Article 23.

(4) Where—

- (a) an employee's return is postponed under paragraph (2) or (3)(a) of Article 23; or
- (b) the employee returns to work on a day later than the notified day of return in the circumstances described in paragraph (5) of that Article,

then, subject to paragraph (4) of that Article, references in those paragraphs and in Article 30 and Schedule 2 to the notified day of return shall be construed as references to the day to which the return is postponed or that later day.

### **Contractual rights**

**25.**—(1) An employee who has the right to return to work under Article 20 and a right to return to work after absence because of pregnancy or childbirth under a contract of employment or otherwise may not exercise the two rights separately but may, in returning to work, take advantage of whichever right is, in any particular respect, the more favourable.

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(2) The provisions of Articles 20, 22 to 24 and 30 and paragraphs 1 to 4 of Schedule 2 shall apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (1) as they apply to the exercise of the right to return to work under Article 20.

### **Suspension from work on maternity grounds**

**26.**—(1) For the purposes of Articles 27 and 28 an employee is suspended on maternity grounds where, in consequence of—

- (a) any requirement imposed by or under any relevant statutory provision; or
- (b) any recommendation in any relevant provision of a code of practice issued or approved under Article 18 of the Health and Safety at Work (Northern Ireland) Order 1978,

she is suspended from work by her employer on the ground that she is pregnant, has recently given birth or is breastfeeding a child.

(2) For the purposes of this Article, Articles 27 and 28 and Article 32 an employee shall be regarded as suspended from work only if, and so long as, she continues to be employed by her employer, but is not provided with work or (disregarding alternative work for the purposes of Article 27) does not perform the work she normally performed before the suspension.

(3) For the purposes of paragraph (1) a provision is a “relevant” statutory provision or provision if it is for the time being specified as a relevant statutory provision or provision in an order made by the Department under this paragraph.

### **Right to offer of alternative work**

**27.**—(1) Where an employer has available suitable alternative work for an employee the employee has a right to be offered to be provided with it before being suspended on maternity grounds.

(2) For alternative work to be suitable for an employee for the purposes of this Article—

- (a) the work must be of a kind which is both suitable in relation to her and appropriate for her to do in the circumstances; and
- (b) the terms and conditions applicable to her for performing the work, if they differ from the corresponding terms and conditions applicable to her for performing the work she normally performs under her contract of employment, must not be substantially less favourable to her than those corresponding terms and conditions.

(3) An employee may present a complaint to an industrial tribunal that her employer has failed to offer to provide her with work in contravention of paragraph (1).

(4) An industrial tribunal shall not entertain a complaint under paragraph (3) unless it is presented to the tribunal before the end of the period of three months beginning with the first day of the suspension, or 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 within the period of three months.

(5) Where the tribunal finds the complaint well-founded it may make an award of compensation to be paid by the employer to the employee.

(6) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to the infringement of the complainant’s right under paragraph (1) by the employer’s failure complained of and to any loss sustained by the complainant which is attributable to that failure.

### **Right to remuneration on suspension**

**28.**—(1) An employee who is suspended on maternity grounds shall be entitled to be paid remuneration by her employer while she is so suspended.

(2) An employee shall not be entitled to remuneration under this Article in respect of any period during which her employer has offered to provide her with work which is suitable alternative work for the purposes of Article 27 and the employee has unreasonably refused to perform that work.

(3) The amount of remuneration payable by an employer to an employee under this Article shall be a week's pay in respect of each week of the period of suspension; and if in any week remuneration is payable in respect only of part of that week the amount of a week's pay shall be reduced proportionately.

(4) Subject to paragraph (5), a right to remuneration under this Article shall not affect any right of an employee in relation to remuneration under her contract of employment (in paragraph (5) referred to as "contractual remuneration").

(5) Any contractual remuneration paid by an employer to an employee in respect of any period shall go towards discharging the employer's liability under this Article in respect of that period; and, conversely, any payment of remuneration in discharge of an employer's liability under this Article in respect of any period shall go towards discharging any obligation of the employer to pay contractual remuneration in respect of that period.

(6) An employee may present a complaint to an industrial tribunal that her employer has failed to pay the whole or any part of remuneration to which she is entitled under this Article.

(7) An industrial tribunal shall not entertain a complaint relating to remuneration under this Article in respect of any day unless the complaint is presented to the tribunal before the end of the period of three months beginning with that day, or 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 within the period of three months.

(8) Where an industrial tribunal finds a complaint under paragraph (6) well-founded the tribunal shall order the employer to pay the complainant the amount of remuneration which it finds is due to her.

(9) For the purposes of Part II of Schedule 2 to the No. 1 Order as it applies for the calculation of a week's pay for the purposes of this Article, the calculation date is the day before the suspension referred to in Article 26(1) begins or, where that day falls within an employee's maternity leave period or within the further period up to the day on which an employee exercises her right to return to work under Article 20, the day before the beginning of the maternity leave period.

### **Dismissal on ground of pregnancy or childbirth**

**29.** An employee shall be treated for the purposes of the No. 1 Order as unfairly dismissed if—

- (a) the reason (or, if there is more than one, the principal reason) for her dismissal is that she is pregnant or any other reason connected with her pregnancy;
- (b) her maternity leave period is ended by the dismissal and the reason (or, if there is more than one, the principal reason) for her dismissal is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (c) the reason (or, if there is more than one, the principal reason) for her dismissal, where her contract of employment was terminated after the end of her maternity leave period, is that she took, or availed herself of the benefits of, maternity leave;
- (d) the reason (or, if there is more than one, the principal reason) for her dismissal, where—

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- (i) before the end of her maternity leave period, she gave to her employer a certificate from a registered medical practitioner stating that by reason of disease or bodily or mental disablement she would be incapable of work after the end of that period; and
  - (ii) her contract of employment was terminated within the four week period following the end of her maternity leave period in circumstances where she continued to be incapable of work and the certificate relating to her incapacity remained current,
- is that she has given birth to a child or any other reason connected with her having given birth to a child;
- (e) the reason (or, if there is more than one, the principal reason) for her dismissal is a requirement or recommendation such as is referred to in Article 26(1); or
  - (f) her maternity leave period is ended by the dismissal, and the reason (or, if there is more than one, the principal reason) for her dismissal is that she is redundant and Article 19 has not been complied with.

For the purposes of paragraph (c) a woman “takes maternity leave” if she is absent from work during her maternity leave period and a woman “avails herself of the benefits of maternity leave” if, during her maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by Article 14 during that period.

#### **Failure to permit to return treated as dismissal**

**30.** Where an employee has the right to return to work under Article 20 and has exercised it in accordance with Article 23 but is not permitted to return to work, then, subject to Article 31, she shall be treated for the purposes of—

- (a) the provisions of the No. 1 Order relating to unfair dismissal; and
- (b) the provisions of the Act of 1965 relating to redundancy,

as if she had been employed until the notified day of return, and, if she would not otherwise be so treated, as having been continuously employed until that day, and as if she had been dismissed with effect from that day for the reason for which she was not permitted to return.

#### **Exclusion of Article 30(a) in certain cases**

**31.—**(1) Article 30(a) shall not apply in relation to an employee if—

- (a) immediately before the end of her maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed five; and
- (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with Article 20, or for him or an associated employer to offer her employment under a contract of employment satisfying the conditions specified in paragraph (3).

(2) Article 30(a) shall not apply in relation to an employee if—

- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to work in accordance with Article 20; and
- (b) he or an associated employer offers her employment under a contract of employment satisfying the conditions specified in paragraph (3); and
- (c) she accepts or unreasonably refuses that offer.

- (3) The conditions referred to in paragraphs (1) and (2) are—
- (a) that the work to be done under the contract is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances; and
  - (b) that the provisions of the contract as to the capacity and place in which she is to be employed and as to the other terms and conditions of her employment are not substantially less favourable to her than if she had returned to work in accordance with Article 20.

(4) Paragraph (1) shall not apply in relation to the employment of a person by the managers of a voluntary school within the meaning of the Education and Libraries (Northern Ireland) Order 1986.

(5) Where on a complaint of unfair dismissal any question arises as to whether the operation of Article 30(a) is excluded by paragraph (1) or (2), it shall be for the employer to show that the provisions of that paragraph were satisfied in relation to the complainant.

### **Dismissal of replacement**

**32.—**(1) Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the resumption of work by another employee who is, or will be, absent wholly or partly because of pregnancy or childbirth; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee,

then, for the purposes of Article 22(1)(b) of the No. 1 Order, but without prejudice to the application of Article 22(3) of that Order, the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the end of a suspension such as is referred to in Article 26 of another employee; and
- (b) dismisses the first-mentioned employee in order to make it possible to allow the resumption of work by the other employee,

then, for the purposes of Article 22(1)(b) of the No. 1 Order, but without prejudice to the application of Article 22(3) of that Order, the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.