

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### [<sup>F1</sup>PART IX

### [<sup>F1</sup>[<sup>F2</sup>CHAPTER III

### PATERNITY LEAVE

**F1** 1999 NI 9

**F2** 2002 NI 2

#### Entitlement to paternity leave: birth

**112A.**—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a newborn, or expected, child, and
- (c) as to relationship with the child's mother,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the mother.

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's birth.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting the child's mother;
- (b) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) make provision about how leave under this Article may be taken.

(6) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (4) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(7) In this Article—

“newborn child” includes a child stillborn after twenty-four weeks of pregnancy;

“week” means any period of seven days.

### [<sup>F3</sup>Entitlement to additional paternity leave: birth

**112AA.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child, and
- (c) as to relationship with the child's mother,

to be absent from work on leave under this Article for the purpose of caring for the child, at a time when the child's mother satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the child's mother;
- (b) her entitlement (or lack of entitlement) to leave under this Part or to statutory maternity pay or maternity allowance;
- (c) whether, and to what extent, she is exercising or has exercised any such entitlement.

(3) Any regulations under this Article shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.

(5) Provision under paragraph (3)(b) shall secure that leave under this Article—

- (a) may not be taken before the end of a specified period beginning with the date of the child's birth, but
- (b) must be taken before the end of the period of twelve months beginning with that date.

(6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the child's mother has died before the end of the period mentioned in paragraph (5)(b).

(7) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) specify a minimum period which may be taken as leave under this Article;
- (d) make provision about how leave under this Article may be taken;
- (e) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.

(8) Where more than one child is born as a result of the same pregnancy, the reference in paragraph (5) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

(9) In this Article “week” means any period of seven days.]

**F3** Art. 112AA inserted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 5; S.R. 2010/295, art. 2(a)

## Entitlement to paternity leave: adoption

**112B** <sup>F4</sup>—(1) The Department shall make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed, or expected to be placed, for adoption under the law of any part of the United Kingdom, and
- (c) as to relationship with a person with whom the child is, or is expected to be, so placed for adoption,

to be absent from work on leave under this Article for the purpose of caring for the child or supporting the person by reference to whom he satisfies the condition under sub-paragraph (c).

(2) The regulations shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to leave under this Article in respect of a child he is entitled to at least two weeks' leave.

(4) Provision under paragraph (2)(b) shall secure that leave under this Article must be taken before the end of a period of at least 56 days beginning with the date of the child's placement for adoption.

(5) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child or supporting a person with whom a child is placed for adoption;
- (b) make provision excluding the right to be absent on leave under this Article in the case of an employee who exercises a right to be absent from work on adoption leave;
- (c) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is placed for adoption as part of the same arrangement;
- (d) make provision about how leave under this Article may be taken.

(6) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (4) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

(7) In this Article, “week” means any period of seven days.

(8) The Department may by regulations provide for this Article to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.

**F4** mod. by SR 2003/220

## [<sup>F5</sup>Entitlement to additional paternity leave: adoption

**112BB.**—(1) The Department may make regulations entitling an employee who satisfies specified conditions—

- (a) as to duration of employment,
- (b) as to relationship with a child placed for adoption under the law of any part of the United Kingdom, and
- (c) as to relationship with a person with whom the child is so placed for adoption (“the adopter”),

*Status: Point in time view as at 09/09/2010.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

to be absent from work on leave under this Article for the purpose of caring for the child, at a time when the adopter satisfies any conditions prescribed under paragraph (2).

(2) The conditions that may be prescribed under this paragraph are conditions relating to any one or more of the following—

- (a) any employment or self-employment of the adopter;
- (b) the adopter's entitlement (or lack of entitlement) to leave under this Part or to statutory adoption pay;
- (c) whether, and to what extent, the adopter is exercising or has exercised any such entitlement.

(3) Any regulations under this Article shall include provision for determining—

- (a) the extent of an employee's entitlement to leave under this Article in respect of a child;
- (b) when leave under this Article may be taken.

(4) Provision under paragraph (3)(a) shall secure that an employee is not entitled to more than 26 weeks' leave in respect of a child.

(5) Provision under paragraph (3)(b) shall secure that leave under this Article—

- (a) may not be taken before the end of a specified period beginning with the date of the child's placement for adoption, but
- (b) must be taken before the end of the period of twelve months beginning with that date.

(6) Paragraphs (4) and (5)(a) do not limit the provision that may be made under paragraph (3) in relation to cases where the adopter has died before the end of the period mentioned in paragraph (5) (b).

(7) Regulations under paragraph (1) may—

- (a) specify things which are, or are not, to be taken as done for the purpose of caring for a child;
- (b) make provision excluding the right to be absent on leave under this Article in the case of an employee who exercises a right to be absent from work on adoption leave;
- (c) make provision excluding the right to be absent on leave under this Article in respect of a child where more than one child is placed for adoption as part of the same arrangement;
- (d) specify a minimum period which may be taken as leave under this Article;
- (e) make provision about how leave under this Article may be taken;
- (f) specify circumstances in which an employee may work for his employer during a period of leave under this Article without bringing the period of leave to an end.

(8) Where more than one child is placed for adoption as part of the same arrangement, the reference in paragraph (5) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

(9) In this Article “week” means any period of seven days.

(10) The Department may by regulations provide for this Article to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.]

**F5** Art. 112BB inserted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 6; S.R. 2010/295, **art. 2(a)**

**Modifications etc. (not altering text)**

**C1** Art. 112BB applied (with modifications) (3.10.2010) by [Employment Rights \(Northern Ireland\) Order 1996 \(Application of Article 112BB to Adoptions from Overseas\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/303\)](#), **reg. 2**, Sch.

## Rights during and after paternity leave

**112C.**—(1) Regulations under Article 112A [<sup>F6</sup>or 112AA] shall provide—

- (a) that an employee who is absent on leave under that Article is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied if he had not been absent;
- (b) that an employee who is absent on leave under that Article is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1) of that Article), and
- (c) that an employee who is absent, on leave under that Article is entitled to return from leave to a job of a kind prescribed by regulations, subject to Article 112D(1).

(2) The reference in paragraph (1)(c) to absence on leave under Article 112A [<sup>F7</sup>or 112AA] includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that Article and partly to any one or more of the following—

[ leave under the other Article,]

<sup>F8</sup>(za)

- (a) maternity leave,
- (b) adoption leave, and
- (c) parental leave.

(3) Paragraph (1) shall apply to regulations under Article 112B [<sup>F9</sup>or 112BB] as it applies to regulations under Article 112A or 112AA.]

(4) In the application of paragraph (1)(c) to regulations under Article 112B [<sup>F10</sup>or 112BB] , the reference to absence on leave under that Article includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that Article and partly to anyone or more of the following—

[ leave under the other Article,]

<sup>F11</sup>(za)

- (a) maternity leave,
- (b) adoption leave,
- (c) parental leave, and
- (d) leave under Article 112A [<sup>F12</sup>or 112AA] .

(5) In paragraph (1)(a), “terms and conditions of employment”

- (a) includes matters connected with an employee's employment whether or not they arise under his contract of employment, but
- (b) does not include terms and conditions about remuneration.

(6) Regulations under [<sup>F13</sup>any of Articles 112A to 112BB] may specify matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(7) Regulations under [<sup>F14</sup>any of Articles 112A to 112BB] may make provision, in relation to the right to return mentioned in paragraph (1)(c), about—

- (a) seniority, pension rights and similar rights;
- (b) terms and conditions of employment on return.

**F6** Words in art. 112C(1) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 7(2); S.R. 2010/295, art. 2(a)

**Status:** Point in time view as at 09/09/2010.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- F7** Words in art. 112C(2) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(3)(a)**; S.R. 2010/295, **art. 2(a)**
- F8** Art. 112C(2)(za) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(3)(b)**; S.R. 2010/295, **art. 2(a)**
- F9** Words in art. 112C(3) substituted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(4)**; S.R. 2010/295, **art. 2(a)**
- F10** Words in art. 112C(4) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(5)(a)**; S.R. 2010/295, **art. 2(a)**
- F11** Art. 112C(4)(za) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(5)(b)**; S.R. 2010/295, **art. 2(a)**
- F12** Words in art. 112C(4)(d) inserted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(5)(c)**; S.R. 2010/295, **art. 2(a)**
- F13** Words in art. 112C(6) substituted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(6)**; S.R. 2010/295, **art. 2(a)**
- F14** Words in art. 112C(7) substituted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), **7(6)**; S.R. 2010/295, **art. 2(a)**

### Special cases

**112D.**—(1) Regulations under Article [<sup>F15</sup>112A, 112AA, 112B or 112BB] may make provision about—

- (a) redundancy, or
- (b) dismissal (other than by reason of redundancy),

during a period of leave under that Article.

(2) Provision by virtue of paragraph (1) may include—

- (a) provision requiring an employer to offer alternative employment;
- (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part XI).

- F15** Words in art. 112D(1) substituted (9.9.2010) by Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)), arts. 1(3), 13(1), **Sch. 1 para. 36**; S.R. 2010/295, **art. 2(b)(c)**

### Chapter III: supplemental

#### 112E

[<sup>F16</sup>(1)] Regulations under [<sup>F17</sup>any of Articles 112A to 112BB] may—

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
- (b) make provision requiring employers or employees to keep records;
- (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
- (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under [<sup>F17</sup>any of Articles 112A to 112BB] and which arises under his contract of employment or otherwise;

- (f) make provision modifying the effect of Chapter IV of Part I (calculation of a week's pay) in relation to an employee who is or has been absent from work on leave under [<sup>F17</sup>any of Articles 112A to 112BB] ;
- (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under [<sup>F17</sup>any of Articles 112A to 112BB] .

[<sup>F18</sup>(2) The persons on whom duties may be imposed by regulations under Article 112AA or 112BB include not only employees exercising rights by virtue of that Article and their employers but also—

- (a) in the case of Article 112AA, the mother of the child in question and any employer or former employer of hers, and
- (b) in the case of Article 112BB, the person by reference to whom the condition in paragraph (1)(c) of that Article is satisfied and any employer or former employer of that person.]]]

**F16** Art. 112E renumbered (9.9.2010) as art. 112E(1) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 37(3)**; S.R. 2010/295, **art. 2(b)(c)**

**F17** Words in art. 112E substituted (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 37(2)**; S.R. 2010/295, **art. 2(b)(c)**

**F18** Art. 112E(2) added (9.9.2010) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 37(3)**; S.R. 2010/295, **art. 2(b)(c)**

**Status:**

Point in time view as at 09/09/2010.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations.