

THE WORK AND FAMILIES (NORTHERN IRELAND) ORDER

2006 NO. 1947 (N.I. 16)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Work and Families (Northern Ireland) Order 2006 (“the Order”) was made on 19th July 2006.
2. This Explanatory Memorandum has been prepared by the Department for Employment and Learning (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order replicates measures in the Work and Families Act 2006 (2006 c. 18).

BACKGROUND AND POLICY OBJECTIVES

4. The Order is designed to extend leave and pay entitlements for working parents of new-born or newly-adopted children; to permit the widening of the existing right to request flexible working; to provide a power to alter annual leave entitlements; and to allow a one-off increase in the maximum amount of a week’s pay for the purposes of certain calculations.

CONSULTATION

5. Proposals concerning aspects of the measures’ implementation were the subject of public consultation both in Northern Ireland and in Great Britain during the spring of 2005. A Northern Ireland-specific regulatory impact assessment and equality screening document were further consulted upon between August and September 2005. Responses from Northern Ireland stakeholders to both consultations were broadly positive and the Department, in its response, indicated that it would bring forward an Order in Council containing measures corresponding to those in the Work and Families Bill.
6. The Government proposed in its 2005 election manifesto that it would extend the existing entitlement to four weeks’ annual leave. Consultation will take place before regulations are made in this area.

MAIN ELEMENTS OF THE ORDER

7. Articles 3, 4 and 13 of the Order establish a framework for extending maternity and adoption leave and pay entitlements following the birth or adoption of a child. Articles 5 to 13 set out the broad parameters for a new right intended to enable fathers of birth or adopted children to take additional statutory paternity pay and leave under specified circumstances. Article 14 widens the scope of the existing law on flexible working. Article 15 allows provision to be made with regard to annual leave entitlement. Article 16 provides a power to increase, on one occasion, the maximum amount of a week’s

pay which may be taken into account in the calculation of certain payments (for example, redundancy payments). Schedule 1 contains supplementary amendments to existing legislation.

COMMENTARY ON ARTICLES

8. Comments are not given where the wording is self-explanatory.
9. Article 3 increases the maximum maternity pay period from 26 to 52 weeks. Article 4 does likewise in relation to the maximum adoption pay period.
10. Articles 5 and 6 respectively make provision for the introduction of a new statutory right to additional paternity leave for employees who are either 'birth' or adoptive parents. These provisions entitle an employee to be absent from work to care for a child where each parent meets certain conditions and has certain entitlements. Many of these conditions and entitlements, including the extent of leave entitlement within specified broad parameters, may be set out in regulations. Article 7 provides for regulations to specify the extent to which a person on additional paternity leave is entitled to benefit from the same terms and conditions of employment as would have applied had no leave been taken.
11. Articles 8 and 9 respectively provide for additional statutory paternity pay in relation to 'birth' and adopted children. Currently, statutory paternity pay is available to an employed earner who meets certain conditions. Under both Articles, regulations may prescribe the conditions under which a claimant will be entitled to payment of additional statutory paternity pay. These include the employee's status and earnings, relationship with the child and the mother or adopter, and the nature and timing of the mother's or adopter's return to work.
12. Article 10 makes general provision regarding additional statutory paternity pay, including a requirement for the claimant to give notice to his employer of the date from which he expects liability for payment to commence and the date on which he expects it to end. The time by which the notice must be given will be dealt with in regulations. Regulations may also specify evidential requirements.
13. Article 11 makes the claimant's employer liable, in most circumstances, for payments of additional statutory paternity pay. The intention is to establish a regime comparable to that used at present for statutory paternity pay: employers are responsible for making payments of statutory paternity pay but are reimbursed for so doing. Payments may be made in advance to aid cash flow.
14. Article 12 provides that regulations may prescribe the amount of additional statutory paternity pay to be payable weekly. The additional statutory paternity pay period is limited in several ways: among these, it may begin no earlier than the mother's or the adopter's return to work and it may last no longer than the end of the mother's or the adopter's pay period. Except in cases to be prescribed by regulations, additional statutory paternity pay will not be payable for any week during which the claimant works for an employer.
15. Article 13 gives effect to supplementary amendments contained within Schedule 1 to the Order.

*This Explanatory Memorandum refers to the Work and Families
(Northern Ireland) Order 2006 (N.I. 16)*

16. Article 14 amends flexible working provisions in the Employment Rights (Northern Ireland) Order 1996, extending the right to request flexible working to enable persons to care for persons who fall within prescribed groups.
17. Article 15 provides that the Department may, by regulations, award workers the right to a prescribed amount of annual leave in each leave year. Exceptional cases may also be prescribed in regulations. Workers are currently entitled to four weeks' paid annual leave.
18. Article 16 provides the Department with a one-off order-making power to increase the amount of redundancy payment, the basic award for unfair dismissal and certain other compensation payments including those due on insolvency (including arrears of pay and holiday pay). These payments are calculated with reference to the amount of the employee's weekly pay which, for the purposes of the calculation, is subject to a statutory maximum. The statutory maximum is normally increased by way of a mandatory mechanism to track changes in the retail prices index. The order-making power in Article 16 allows the weekly limit to be increased, on one occasion only, without reference to this mechanism.
19. Many of the paragraphs set out in Schedule 1 make amendments to other legislation to rename "paternity leave" as "ordinary paternity leave" and "statutory paternity pay" as "ordinary statutory paternity pay". This is to avoid any potential confusion over terminology once employees become entitled to additional statutory paternity pay and additional paternity leave.
20. Other paragraphs of Schedule 1 make amendments to ensure that, where appropriate, statutory provisions which currently apply in relation to paternity leave or statutory paternity pay will also apply in relation to additional paternity leave or additional statutory paternity pay.
21. Schedule 1 also contains a number of amendments intended to make changes to maternity allowance, statutory maternity pay, statutory adoption pay and statutory paternity pay to ease administration for employers and to assist the returning employee's reintegration into the workforce. These include powers to make regulations allowing a woman to work for a certain period of time during her maternity leave without losing statutory payments.

COMMENCEMENT

22. Articles 1 and 2 of the Order will come into operation 7 days following the making of the Order.
23. The remaining provisions of the Order will come into operation in accordance with commencement orders made by the Department.

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