

STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

[^{F1}PART IX

[^{F1}[^{F2}CHAPTER IA

ADOPTION LEAVE

F1 1999 NI 9

F2 2002 NI 2

Ordinary adoption leave

107A.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an ordinary adoption leave period.

[
^{F3}(1A) The conditions that may be prescribed under paragraph (1) include the condition mentioned in Article 107AB.]

(2) An ordinary adoption leave period is a period calculated in accordance with regulations made by the Department.

[
^{F4}(2A) Regulations under paragraph (2)]^{F5}—

- (a) may allow an employee to bring forward the date on which an ordinary adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions,
- (b) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,]

[may specify circumstances in which an employee may work for his employer during an
^{F6}(c)] ordinary adoption leave period without bringing the period to an end.]

[
^{F7}(2B) Provision under paragraph (2A)(a) is to secure that an employee may bring forward the date on which an ordinary adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107G or statutory shared parental pay in respect of the child.]

(3) Subject to Article 107C, an employee who exercises his right under paragraph (1)—

- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
- (b) is bound, for such purposes and to such extent as may be prescribed, by any obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and

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- (c) is entitled to return from leave to a job of a prescribed kind.
- (4) In paragraph (3)(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.
- (5) In paragraph (3)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to ordinary adoption leave and partly to maternity leave.
- (6) The Department may make regulations specifying matters which are, or, are not, to be treated as remuneration for the purposes of this Article.
- (7) The Department may make regulations making provision, in relation to the right to return under paragraph (3)(c), about—
- (a) seniority, pension rights and similar rights, and
- (b) terms and conditions of employment on return.

- F3** Art. 107A(1A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 8\(2\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(f\)](#)
- F4** Art. 107A(2A) inserted (1.9.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\), arts. 1\(3\), 13\(1\), Sch. 1 para. 32; S.R. 2006/344, art. 2\(b\)\(c\)](#)
- F5** Art. 107A(2A)(a)(b) and preceding punctuation mark inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(4\)\(a\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(c\)](#)
- F6** Words in art. 107A(2A) renumbered as art. 107A(2A)(c) (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(4\)\(b\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(c\)](#)
- F7** Art. 107A(2B) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 3\(4\)\(e\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(c\)](#)

Modifications etc. (not altering text)

- C1** Art. 107A applied (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\), regs. 1\(1\), 2](#)
- C2** [Art. 107A](#) amendment to earlier affecting provision S.R. 2015/100, reg. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 2 para. 12](#)

[^{F8}Ordinary adoption leave: prospective adopters with whom looked after children are placed

- 107AB.**—(1) The condition referred to in Article 107A(1A) is a condition as to the employee—
- (a) being an approved foster parent,
- (b) being an approved prospective adopter,
- (c) being notified by an authority that a child who is looked after by it is to be, or is expected to be, placed with the employee by the authority under Article 27(2)(a) of the Children (Northern Ireland) Order 1995, in the circumstances mentioned in paragraph (2), and
- (d) satisfying such further conditions as may be prescribed.
- (2) The circumstances referred to in paragraph (1)(c) are that the authority—
- (a) is considering adoption for the child, or

(b) 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.

(3) In this Article—

“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).

(4) 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 (3), in consequence of any modification or replacement of the regulations referred to in the definition.]

F8 Art. 107AB inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 8\(3\), 23\(1\); S.R. 2015/86, art. 3\(1\)\(f\)](#)

[^{F9}Power to apply Article 107A to other cases

107AC The Department may by regulations provide for Article 107A to have effect, with such modifications as may be prescribed, in relation to—

(a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,

(b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.]

F9 Art. 107AC substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\), art. 1\(1\), Sch. 1 para. 13\(10\)](#)

Additional adoption leave

107B.—(1) An employee who satisfies prescribed conditions may be absent from work at any time during an additional adoption leave period.

(2) An additional adoption leave period is a period calculated in accordance with regulations made by the Department.

[^{F10}(3) Regulations under paragraph (2)—

(a) may allow an employee [^{F11}to bring forward the date on which an additional adoption leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions,]

[^{F12}(aa) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date,]

(b) may specify circumstances in which an employee may work for his employer during an additional adoption leave period without bringing the period to an end.]

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[
^{F13}(3A) Provision under paragraph (3)(a) is to secure that an employee may bring forward the date on which an additional adoption leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards shared parental leave under Article 107G or statutory shared parental pay in respect of the child.]

- (4) Subject to Article 107C, an employee who exercises his right under paragraph (1)—
- (a) is entitled, for such purposes and to such extent as may be prescribed, to the benefit of the terms and conditions of employment which would have applied if he had not been absent,
 - (b) is bound, for such purposes and to such extent as may be prescribed by obligations arising under those terms and conditions (except in so far as they are inconsistent with paragraph (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.

(5) In paragraph (4)(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) In paragraph (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional adoption leave and partly to—

- (a) maternity leave, or
- (b) ordinary adoption leave,

or to both.

(7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this Article.

(8) The Department may make regulations making provision, in relation to the right to return under paragraph (4)(c), about—

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

- F10** Art. 107B(3) substituted (1.9.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), 13(1), **Sch. 1 para. 33**; S.R. 2006/344, **art. 2(b)(c)**
- F11** Words in art. 107B(3)(a) substituted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(a)**, 23(1); S.R. 2015/86, art. 3(1)(c)
- F12** Art. 107B(3)(aa) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(b)**, 23(1); S.R. 2015/86, art. 3(1)(c)
- F13** Art. 107B(3A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 3(5)(c)**, 23(1); S.R. 2015/86, art. 3(1)(c)

Modifications etc. (not altering text)

- C3** Art. 107B applied (15.3.2015) by [The Employment Rights \(Northern Ireland\) Order 1996 \(Application of Articles 107A, 107B, 107G, 107I, 112A and 112B to Parental Order Cases\) Regulations \(Northern Ireland\) 2015 \(S.R. 2015/100\)](#), regs. 1(1), **2**
- C4** [Art. 107B](#) amendment to earlier affecting provision S.R. 2015/100, reg. 2 (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 2 para. 12**

[^{F14}Power to apply Article 107B to other cases

107BA The Department may by regulations provide for Article 107B to have effect, with such modifications as may be prescribed, in relation to—

- (a) cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 and a child who is, or will be, the subject of the order,
- (b) cases which involve an employee who has applied, or intends to apply, for a parental order under section 54A of that Act and a child who is, or will be, the subject of the order.]

F14 Art. 107BA substituted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), [Sch. 1 para. 13\(11\)](#)

Redundancy and dismissal

107C.—(1) Regulations under Article 107A or 107B may make provision about—

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

during an ordinary or additional adoption leave period.

(2) Regulations made 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).

(3) Regulations under Article 107A or 107B may make provision—

- (a) for Article 107A(3)(c) or 107B(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an ordinary or additional adoption leave period.

Chapter IA: supplemental

107D.—(1) Regulations under Article 107A or 107B 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 this Chapter 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 ordinary or additional adoption leave;
- (g) make provision applying, modifying or excluding a statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to a person entitled to ordinary or additional adoption leave.

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^{F15}(1A) Where Article 107A or 107B has effect in relation to such cases as are described in Article 107AC or 107BA, regulations under Article 107A or 107B about evidence to be produced may require statutory declarations as to—

- (a) eligibility to apply for a parental order [^{F16}under section 54 or 54A of the Human Fertilisation and Embryology Act 2008] ,
- (b) intention to apply for such an order.]

(2) In Articles 107A [^{F17}, 107AB, 107BA, 107AC] and 107B “prescribed” means prescribed by regulations made by the Department.]]

F15 Art. 107D(1A) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), **ss. 10(4)**, 23(1); S.R. 2015/86, art. 3(1)(h)

F16 Words in art. 107D(1A)(a) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 1 para. 13(12)**

F17 Words in art. 107D(2) inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\)](#), s. 23(1), **Sch. 1 para. 4(6)**; S.R. 2015/86, art. 3(2)(d)

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

- Act applied with modifications by [S.R. 2023/156 reg. 15](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Pt. 7A inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- Ch. 5 inserted by [2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- art. 21(4B) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- art. 23(1)(zza) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- art. 70F inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- art. 70G inserted by [2020 c. 7 Sch. 7 para. 20](#)
- art. 71(1C) inserted by [2020 c. 7 Sch. 7 para. 21\(a\)](#)
- art. 72(8) inserted by [2020 c. 7 Sch. 7 para. 22\(b\)](#)
- art. 85ZS(3)(a)-(c) substituted for words by [2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- art. 95F(5A) inserted by [2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- art. 135E inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- art. 135G inserted by [2020 c. 7 Sch. 7 para. 25](#)
- art. 137(6D) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- art. 137(7N) inserted by [2020 c. 7 Sch. 7 para. 26\(b\)](#)
- art. 140(3)(fj) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- art. 140(3)(fl) inserted by [2020 c. 7 Sch. 7 para. 27](#)
- art. 143(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- art. 144(2)(ddd) inserted by [2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)