

## SCHEDULES

### SCHEDULE 4

Articles 9, 10 and 11.

#### LEAVE FOR FAMILY REASONS, ETC.

### PART I

#### MATERNITY LEAVE AND PARENTAL LEAVE NEW PART IX OF EMPLOYMENT RIGHTS ORDER

### “PART IX

#### CHAPTER I

#### MATERNITY LEAVE

#### **Ordinary maternity leave**

**103.**—(1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

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

(3) Regulations under paragraph (2)—

- (a) shall secure that no ordinary maternity leave period is less than 18 weeks;
- (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.

(4) Subject to Article 106, an employee who exercises her right under paragraph (1)—

- (a) is entitled to the benefit of the terms and conditions of employment which would have applied if she had not been absent,
- (b) is bound by any 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 the job in which she was employed before her absence.

(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 her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(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) An employee’s right to return under paragraph (4)(c) is a right to return—

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- (a) with her seniority, pension rights and similar rights as they would have been if she had not been absent (subject to paragraph 5 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment under pension schemes: maternity)), and
- (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

### **Compulsory maternity leave**

**104.**—(1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Department.

(3) Regulations under paragraph (2) shall secure—

- (a) that no compulsory leave period is less than two weeks, and
- (b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

(4) Subject to paragraph (5), any provision of or made under the Health and Safety at Work (Northern Ireland) Order 1978 shall apply in relation to the prohibition under paragraph (1) as if it were imposed by regulations under Article 17 of that Order.

(5) Article 31(1)(c) of the 1978 Order shall not apply in relation to the prohibition under paragraph (1); and an employer who contravenes that paragraph shall be—

- (a) guilty of an offence, and
- (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Additional maternity leave**

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

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

(3) Regulations under paragraph (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.

(4) Subject to Article 106, an employee who exercises her 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 she 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 her contract of employment, but
- (b) does not include terms and conditions about remuneration.

(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 (4)(c), about—

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

### **Redundancy and dismissal**

**106.**—(1) Regulations under Article 103 or 105 may make provision about redundancy during an ordinary or additional maternity leave period.

(2) Regulations under Article 103 or 105 may make provision about dismissal (other than by reason of redundancy) during an ordinary or additional maternity leave period.

(3) Regulations made by virtue of paragraph (1) or (2) 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).

(4) Regulations under Article 105 may make provision—

- (a) for Article 105(4)(c) not to apply in specified cases, and
- (b) about dismissal at the conclusion of an additional maternity leave period.

### **Articles 103 to 105: supplemental**

**107.**—(1) Regulations under Article 103, 104 or 105 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 for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements;
- (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
- (d) make special provision for cases where an employee has a right which corresponds to a right under this Chapter and which arises under her contract of employment or otherwise;
- (e) 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 maternity leave;
- (f) 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, compulsory or additional maternity leave.

(2) In Articles 103 to 105 “prescribed” means prescribed by regulations made by the Department.

## **CHAPTER II**

### **PARENTAL LEAVE**

#### **Entitlement to parental leave**

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

- (a) as to duration of employment, and

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- (b) as to having, or expecting to have, responsibility for a child, to be absent from work on parental leave for the purpose of caring for a child.
- (2) The regulations shall include provision for determining—
  - (a) the extent of an employee’s entitlement to parental leave in respect of a child;
  - (b) when parental leave may be taken.
- (3) Provision under paragraph (2)(a) shall secure that where an employee is entitled to parental leave in respect of a child he is entitled to a period or total period of leave of at least three months; but this paragraph is without prejudice to any provision which may be made by regulations for cases in which—
  - (a) a person ceases to satisfy conditions under paragraph (1);
  - (b) an entitlement to parental leave is transferred.
- (4) Provision under paragraph (2)(b) may, in particular, refer to—
  - (a) a child’s age, or
  - (b) a specified period of time starting from a specified event.
- (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;
  - (b) require parental leave to be taken as a single period of absence in all cases or in specified cases;
  - (c) require parental leave to be taken as a series of periods of absence in all cases or in specified cases;
  - (d) require all or specified parts of a period of parental leave to be taken at or by specified times;
  - (e) make provision about the postponement by an employer of a period of parental leave which an employee wishes to take;
  - (f) specify a minimum or maximum period of absence which may be taken as part of a period of parental leave;
  - (g) specify a maximum aggregate of periods of parental leave which may be taken during a specified period of time.

**Rights during and after parental leave**

- 109.—(1) Regulations under Article 108 shall provide—
  - (a) that an employee who is absent on parental leave 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) that an employee who is absent on parental leave 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 Article 108(1)), and
  - (c) that an employee who is absent on parental leave is entitled, subject to Article 110(1), to return from leave to a job of such kind as the regulations may specify.
- (2) In paragraph (1)(a) “terms and conditions of employment”—
  - (a) includes matters connected with an employee’s employment whether or not they arise under a contract of employment, but
  - (b) does not include terms and conditions about remuneration.

(3) Regulations under Article 108 may specify matters which are, or are not, to be treated as remuneration for the purposes of paragraph (2)(b).

(4) The regulations 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.

### **Special cases**

**110.**—(1) Regulations under Article 108 may make provision—

- (a) about redundancy during a period of parental leave;
- (b) about dismissal (other than by reason of redundancy) during a period of parental leave.

(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).

(3) Regulations under Article 108 may provide for an employee to be entitled to choose to exercise all or part of his entitlement to parental leave—

- (a) by varying the terms of his contract of employment as to hours of work, or
- (b) by varying his normal working practice as to hours of work,

in a way specified in or permitted by the regulations for a period specified in the regulations.

(4) Provision by virtue of paragraph (3)—

- (a) may restrict an entitlement to specified circumstances;
- (b) may make an entitlement subject to specified conditions (which may include conditions relating to obtaining the employer's consent);
- (c) may include consequential provision.

(5) Regulations under Article 108 may make provision permitting all or part of an employee's entitlement to parental leave in respect of a child to be transferred to another employee in specified circumstances.

(6) The reference in Article 109(1)(c) to absence on parental leave includes, where appropriate, a reference to a continuous period of absence attributable partly to maternity leave and partly to parental leave.

(7) Regulations under Article 108 may provide for specified provisions of the regulations not to apply in relation to an employee if any provision of his contract of employment—

- (a) confers an entitlement to absence from work for the purpose of caring for a child, and
- (b) incorporates or operates by reference to all or part of a collective agreement, or workforce agreement, of a kind specified in the regulations.

### **Supplemental**

**111.**—(1) Regulations under Article 108 may, in particular—

- (a) make provision about notices to be given and evidence to be produced by employees to employers, by employers to employees, and by employers to other employers;
- (b) make provision requiring employers or employees to keep records;

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- (c) make provision about other procedures to be followed by employees and employers;
  - (d) make provision (including provision creating criminal offences) specifying the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (e) make provision specifying the consequences of failure to act in accordance with a notice given by virtue of sub-paragraph (a);
  - (f) make special provision for cases where an employee has a right which corresponds to a right conferred by the regulations and which arises under his contract of employment or otherwise;
  - (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 parental leave.
- (2) The regulations may 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 parental leave.
- (3) Without prejudice to the generality of Article 108, the regulations may make any provision which appears to the Department to be necessary or expedient—
- (a) for the purpose of implementing Council Directive [96/34/EC](#) on the framework agreement on parental leave, or
  - (b) for the purpose of dealing with any matter arising out of or related to the United Kingdom's obligations under that Directive.

### **Complaint to industrial tribunal**

- 112.—**(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably postponed a period of parental leave requested by the employee, or
  - (b) has prevented or attempted to prevent the employee from taking parental leave.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the date (or last date) of the matters complained of, or
  - (b) 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 before the end of that period of three months.
- (3) Where an industrial tribunal finds a complaint under this Article well-founded it—
- (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
- (a) the employer's behaviour, and
  - (b) any loss sustained by the employee which is attributable to the matters complained of.”

## PART II

### TIME OFF FOR DEPENDANTS PROVISIONS TO BE INSERTED AFTER ARTICLE 85 OF THE EMPLOYMENT RIGHTS ORDER

#### *“Dependants”*

#### **Time off for dependants**

**85A.**—(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee’s working hours in order to take action which is necessary—

- (a) to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,
- (b) to make arrangements for the provision of care for a dependant who is ill or injured,
- (c) in consequence of the death of a dependant,
- (d) because of the unexpected disruption or termination of arrangements for the care of a dependant, or
- (e) to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2) Paragraph (1) does not apply unless the employee—

- (a) tells his employer the reason for his absence as soon as reasonably practicable, and
- (b) except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

(3) Subject to paragraphs (4) and (5), for the purposes of this Article “dependant” means, in relation to an employee—

- (a) a spouse,
- (b) a child,
- (c) a parent,
- (d) a person who lives in the same household as the employee, otherwise than by reason of being his employee, tenant, lodger or boarder.

(4) For the purposes of paragraph (1)(a) or (b) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee—

- (a) for assistance on an occasion when the person falls ill or is injured or assaulted, or
- (b) to make arrangements for the provision of care in the event of illness or injury.

(5) For the purposes of paragraph (1)(d) “dependant” includes, in addition to the persons mentioned in paragraph (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

(6) A reference in this Article to illness or injury includes a reference to mental illness or injury.

#### **Complaint to industrial tribunal**

**85B.**—(1) An employee may present a complaint to an industrial tribunal that his employer has unreasonably refused to permit him to take time off as required by Article 85A.

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- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
  - (a) before the end of the period of three months beginning with the date when the refusal occurred, or
  - (b) 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 before the end of that period of three months.
- (3) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—
  - (a) shall make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the employee.
- (4) The amount of compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—
  - (a) the employer’s default in refusing to permit time off to be taken by the employee, and
  - (b) any loss sustained by the employee which is attributable to the matters complained of.”

### PART III

#### CONSEQUENTIAL AMENDMENTS

##### *The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

1. In Article 8(3) after sub-paragraph (b) insert “or”.
2. In Article 21(5)(b) for head (i) substitute—

“(i) where the day before that on which the suspension begins falls during a period of ordinary or additional maternity leave, the day before the beginning of that period,”.
3. After Article 70B insert—

**“Leave for family and domestic reasons**

**70C.—**(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Department and which relates to—

  - (a) pregnancy, childbirth or maternity,
  - (b) ordinary, compulsory or additional maternity leave,
  - (c) parental leave, or
  - (d) time off under Article 85A.

(3) A reason prescribed under this Article in relation to parental leave may relate to action which an employee takes, agrees to take or refuses to take under or in respect of a collective or workforce agreement”.
4. In Article 71(1) for “or 70A” substitute “, 70A or 70C”.
5. In Articles 120(1)(c) and 121(3)(b) after “childbirth” insert “or on parental leave”.



6. In Article 124(4)(b) for “maternity leave period” substitute “ordinary or additional maternity leave period”.
7. In Article 130(6) for “Paragraphs (4) and (5) are” substitute “Paragraph (4) is”.
8. For Article 131 substitute—

**“Leave for family reasons**

**131.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a prescribed kind, or
  - (b) the dismissal takes place in prescribed circumstances.
- (2) In this Article “prescribed” means prescribed by regulations made by the Department.
- (3) A reason or set of circumstances prescribed under this Article must relate to—
- (a) pregnancy, childbirth or maternity,
  - (b) ordinary, compulsory or additional maternity leave,
  - (c) parental leave, or
  - (d) time off under Article 85A;

and it may also relate to redundancy or other factors.

(4) A reason or set of circumstances prescribed under paragraph (1) satisfies paragraph (3)(c) if it relates to action which an employee—

- (a) takes,
- (b) agrees to take, or
- (c) refuses to take,

under or in respect of a collective or workforce agreement which deals with parental leave.

(5) Regulations under this Article may apply any statutory provision, in such circumstances as may be specified and subject to any conditions specified, in relation to persons regarded as unfairly dismissed by reason of this Article”.

9. In Articles 143(2) and 144(2) for sub-paragraph (a) substitute—  
“(a) Article 131 applies;”.
10. In Article 143(2) after sub-paragraph (cc) insert—  
“(ccc) Article 135 applies in relation to time off under Article 85A;”.
11. In Article 144(2) after sub-paragraph (c) insert—  
“(cc) Article 135 applies in relation to time off under Article 85A;”.
12. In Article 152(1)(b) for “to 162” substitute “and 161”.
13. In Article 237(2)—
  - (a) after sub-paragraph (aa) insert—  
“(ab) Article 70C;”;
  - (b) in sub-paragraph (b) for “83 to 85” substitute “83 to 85B”.
14. In Article 243(1) after “Article 70,” insert “Article 70C,”.
15. In Article 244(2)—
  - (a) in sub-paragraph (b) for “and 70” substitute “, 70 and 70C”;

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- (b) in sub-paragraph (c) for “83 to 85” substitute “83 to 85B”;
- (c) in sub-paragraph (g) for head (i) substitute—
  - “(i) by Article 131, 132, 132A(d) or 134, or by Article 135 in its application in relation to time off under Article 85A.”.

**16.** In Article 251—

- (a) at the beginning of paragraph (1) insert “Subject to paragraph (1A),”;
- (b) after paragraph (1) insert—
  - “(1A) Regulations under Article 70C, 103, 104, 105, 108 or 131 shall—
    - (a) be laid before the Assembly as soon as may be after they are made;
    - (b) come into operation on such date as may be specified therein; and
    - (c) cease to have effect on the expiration of a period of six months from the date on which they came into operation unless, before the expiration of that period, they are approved by a resolution of the Assembly.”.