

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – Time Off Work: Ante-Natal Care Etc

Section 127: Time off work to accompany to ante-natal appointments

643. *Subsection (1)* inserts new sections 57ZE to 57ZI in the Employment Rights Act 1996 (ERA) and *subsection (2)* amends sections 47C, 99 and 225 of the ERA.
644. New section 57ZE creates a right for an employee to take time off during working hours to accompany a pregnant woman to an ante-natal appointment made on the advice of a designated health care professional. The right is available to:
- The husband, civil partner or partner of the pregnant woman;
 - The father or parent of the pregnant woman's expected child; and
 - An intended parent in a surrogacy situation who meets specified conditions.
645. The right to take time off under section 57ZE can be exercised on up to two occasions for a maximum of six and a half hours on each occasion. An employee is not entitled to take time off unless the employee gives the employer (if the employer so requests) a declaration in the specified form.
646. New section 57ZF provides that an employee who is unreasonably refused time off by an employer may present a complaint to an employment tribunal within the designated time limits. If the complaint is substantiated, the tribunal must make an order to this effect and must award compensation of twice the hourly salary of the employee for the period of absence.
647. New section 57ZG creates a right for certain agency workers to take time off during working hours to accompany a pregnant woman to an ante-natal appointment made on the advice of a designated health care professional. The right is available to:
- The husband, civil partner or partner of the pregnant woman;
 - The father or parent of the pregnant woman's expected child; and
 - An intended parent in a surrogacy situation who meets specified conditions.
648. The right to take time off under section 57ZG can be exercised on up to two occasions for a maximum of six and a half hours on each occasion. An agency worker is not entitled to take time off unless the agency worker gives the temporary work agency or hirer (if either of them so request) a declaration in the specified form.
649. New section 57ZH provides that an agency worker unreasonably refused time off by the temporary work agency, the hirer, or both, may present a complaint to an employment tribunal within the designated time limits. If the complaint is substantiated, the tribunal must make an order to this effect and must award compensation of twice the hourly

salary of the agency worker for the period of absence. Where both the temporary work agency and hirer have unreasonably refused time off, the tribunal can apportion the compensation according to each party's relative fault.

- 650. New section 57ZI sets out which agency workers have the right to time off under section 57ZG.
- 651. *Subsection (2)(a) and (b)* amend sections 47C and 99 of the ERA to give an employee a right not to be subjected to a detriment and a right not to be unfairly dismissed, as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment. A similar right for an agency worker not to be subjected to a detriment is created in section 129.
- 652. *Subsection (2)(c)* amends section 225 of the ERA to provide that the calculation date to be used for determining a week's pay for an employee is the date of the appointment in question.

Section 128: Time off work to attend adoption appointments

- 653. This section inserts new sections 57ZJ to 57ZS into Part VI of the ERA, and makes provision for employed single adopters, or employed adoptive couples, to take time off to attend appointments relating to the placement of a child for adoption or for "Fostering for Adoption" (as to which, see the commentary on section 2). The purpose of the appointments is to enable the adopter(s) to bond with the child and to meet with professionals involved in the care of the child, thus increasing the chances of the adoption being successful.

Section 57ZJ: Right to paid time off to attend adoption appointments

- 654. Section 57ZJ creates a new right for employees to take paid time off work to attend adoption appointments.
- 655. Subsection (1) creates a right for an employed single adopter who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with him or her, to take time off to attend an appointment for the purpose of having contact with the child or for any other purpose connected with the adoption (an "adoption appointment").
- 656. Subsection (2) creates a right for an employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, to take time off to attend an adoption appointment, provided they have elected to exercise the right to take time off under this subsection.
- 657. Subsection (3) provides that the employee cannot elect to take time off under subsection (2) if they have already elected to take time off under section 57ZL(1)(b) (unpaid time off), or if the other joint adopter, being an employee or an agency worker, has already elected to take time off under subsection (2)(b) or section 57ZN(2)(b).
- 658. Subsection (4) provides that an employee is not entitled to take time off to attend adoption appointments under section 57ZJ on or after the date of the child's placement for adoption with the employee.
- 659. Subsection (5) limits the number of adoption appointments that may be taken under section 57ZJ to no more than five for any particular adoption.
- 660. Subsection (6) limits the maximum amount of time off for each adoption appointment to six and a half hours.
- 661. Subsection (7) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.

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662. Subsection (8) provides a single adopter is not entitled to take time off under subsection (1) unless he or she provides their employer upon request with a document showing the date and time of the adoption appointment in question and that it has been arranged by an adoption agency.
663. Subsection (9) provides that a joint adopter employee is not entitled to take time off under subsection (2), unless the employee provides their employer upon request with a document that shows the date and time of the adoption appointment and a signed declaration stating that they have made an election to take time off under subsection (2) (b).
664. Subsection (10) provides that the document that shows the date and time of the appointment or the declaration relating to the election under subsection (8) or (9) can be in electronic form.
665. Subsection (11) makes provision to modify the operation of section 57ZJ where more than one child is to be, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter) so that, where the adoption appointments relate to the adoption of more than one child: the election under subsection (2)(b) relates to all the children, the maximum number of adoption appointments remains five in total, and the date after which no time off can be taken to attend an adoption appointment is the placement date of the first child.
666. Subsection (12) provides that the working hours of an employee are to be taken to be any time in accordance with the employee's contract of employment that they are required to be at work.
667. Subsection (13) provides that in section 57ZJ "adoption agency" has the meaning given in section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

Section 57ZK: Right to remuneration for time off for adoption appointments

668. Subsection (1) makes provision for an employee entitled to attend adoption appointments under section 57ZJ to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent at the appropriate hourly rate.
669. Subsection (2) makes provision that the hourly rate will be the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.
670. Subsection (3) makes provision that where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken. Or, where an employee has not been employed for a sufficient period to enable the calculation based on twelve weeks to be made, a number is used which fairly represents the number of normal working hours in a week, having regard to specified considerations.
671. Subsection (4) stipulates the specific considerations required to be borne in mind by section 57ZK(3) when choosing a number of weeks to divide the employee's salary by when the employee has not been employed for twelve weeks.
672. Subsection (5) provides that any amount of remuneration for time off under subsection (1) does not affect any right to contractual remuneration. However, subsections (6) and (7) provide that any contractual remuneration paid by an employer

for time off under section 57ZJ will go towards discharging any liability of that employer to pay remuneration under section (1), and vice versa.

Section 57ZL: Right to unpaid time off to attend adoption appointments

673. Subsection (1) creates a right for an employed adopter who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with him or her and another person jointly, to take time off to attend an appointment for the purpose of having contact with the child or for any other purpose connected with the adoption (an “adoption appointment”), provided he or she has elected to take time off under subsection (1)(b).
674. Subsection (2) provides that an employee may not elect to take time off under subsection (1) if they have already elected to take paid time off under section 57ZJ, or if the other joint adopter has already elected to take unpaid time off under subsection (1) (b) or under section 57ZP(1)(b).
675. Subsection (3) provides that an employee is not entitled to take time off to attend adoption appointments under section 57ZJ on or after the date of the child’s placement for adoption with the employee.
676. Subsections (4) and (5) limit the number of adoption appointments that may be taken under section 57ZL to two appointments of six and a half hours each.
677. Subsection (6) provides that the adoption appointment must have been arranged by or at the request of the adoption agency which made the notification of the placement or the expected placement for adoption.
678. Subsection (7) provides that an employee is not entitled to take time off under this section unless he or she provides their employer upon request with a document showing the date and time of the adoption appointment in question and that it has been arranged by an adoption agency, and a signed declaration that he or she has made an election for the purposes of subsection (1)(b). The declaration or document may be in electronic form (subsection (8)).
679. Subsection (9) makes provision to modify the operation of section 57ZL where more than one child is to be, or is expected to be, placed as part of the same arrangement (for example, where siblings are to be placed with the same adopter) so that, where the adoption appointments relate to the adoption of more than one child: the election under subsection (1)(b) relates to all the children, the maximum number of adoption appointments remains two in total and the date after which no time off can be taken to attend an adoption appointment is the placement date of the first child.
680. Subsection (10) provides that the working hours of an employee are to be taken to be any time in accordance with the employee’s contract of employment that they are required to be at work.
681. Subsection (11) provides that in section 57ZJ “adoption agency” has the meaning given in section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

Section 57ZM: Complaint to employment tribunal

682. This section provides that an employee who is unreasonably refused time off under section 57ZJ or 57ZL to attend an adoption appointment by an employer, or is not paid amounts due under section 57ZK may present a complaint to an employment tribunal within the designated time limits. If the complaint is substantiated, the tribunal must make an order to this effect. The tribunal must also, where the complaint is that time off was refused, award compensation of twice the hourly rate multiplied by the number of hours absence the employee would have been entitled to had it not been refused. If the

complaint is that amounts due under section 57ZK are unpaid, the tribunal must also order payment of the unpaid amount.

Section 57ZN: Right to paid time off to attend adoption appointments: agency workers

683. Section 57ZN makes provision for agency workers to take paid time off to attend adoption appointments that is equivalent to that for employees in section 57ZJ. Subsection (12) provides that for the purposes of this section, an agency worker's working hours are any time when the agency worker is required to be at work in accordance with the terms under which the agency worker is working (temporarily) for the hirer.

Section 57ZO: Right to remuneration for time off to attend adoption appointments: agency workers

684. Section 57ZO makes provision for agency workers who are permitted to take time off under section 57ZN that is equivalent to that for employees under section 57ZK. Subsection (1) provides that the temporary work agency must pay remuneration at the appropriate hourly rate for the hours for which the agency worker is entitled to be absent. Subsection (2) sets out how the hourly rate should be calculated in general, but subsection (3) sets out how the calculation should be made in situations where the number of an agency worker's normal working hours differs from week to week.

Section 57ZP: Right to unpaid time off to attend adoption appointments: agency workers

685. Section 57ZP makes provision for agency workers to take unpaid time off to attend adoption appointments that is equivalent to the right for employees to take unpaid time off under section 57ZL. Subsection (10) provides that for the purposes of this section the working hours of an agency worker are any time when he or she is required to be at work (temporarily) for the hirer.

Section 57ZQ: Complaint to employment tribunal: agency workers

686. This section makes provision for agency workers to make complaints to tribunals in respect of refusal of permission to take time off (under section 57ZN or 57ZP) or failure to pay sums due (under section 57ZO) that is equivalent to the provision made for employees under section 57ZM.

Section 57ZR: Agency workers: supplementary

687. This section provides (subsection (1)) that the rights to paid and unpaid time off, and the right to present a complaint to a tribunal, do not apply if the agency worker has not completed the qualifying period, or if there is a break between assignments which means that he or she is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations 2010. Subsection (2) makes clear that the rights to paid and unpaid time off do not impose any duty on the hirer or agency which extends beyond the original intended duration of the assignment. Subsection (3) makes clear that if a person is entitled to take paid or unpaid time off as an employee, then they are excluded from taking paid time or unpaid time off as an agency worker.

Section 129: Right not to be subjected to detriment: agency workers

688. *Subsection (1)* amends section 47C of the ERA to give agency workers a right not to be subjected to a detriment by the temporary work agency or hirer on certain grounds. The grounds are that the agency worker:

- Took or sought to take time off for an ante-natal appointment under section 57ZA or 57ZG of the ERA;

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- Received or sought to receive remuneration under section 57ZB of the ERA for time off to attend an ante-natal appointment (only available to pregnant women);
 - Took or sought to take time off for an adoption appointment under section 57ZN or 57ZP of the ERA; or
 - Received or sought to receive remuneration under section 57ZO of the ERA for time off to attend an adoption appointment (only available to the primary adopter).
689. *Subsection (2)* amends section 48 of the ERA to allow an agency worker who has been subjected to such a detriment to present a complaint to an employment tribunal. It is for the temporary work agency or the hirer to show the ground on which any act or deliberate failure to act was done.
690. *Subsection (3)* amends section 49 of the ERA to provide that if such a complaint is well-founded, the tribunal shall make a declaration to that effect and may award compensation to be paid to the agency worker by the temporary work agency, the hirer, or both.

Section 130: Time off work for ante-natal care: increased amount of award

691. *Subsection (1)* amends section 57 of the ERA to increase the amount of compensation that must be ordered by an employment tribunal which finds that a pregnant employee has unreasonably been refused time off work under section 55 of the ERA to attend an ante-natal appointment. The amount is increased from the hourly salary of the employee for the period of absence to twice that amount.
692. *Subsection (2)* amends section 57ZC of the ERA to increase the amount of compensation that must be ordered by an employment tribunal which finds that a pregnant agency worker has unreasonably been refused time off work under section 57ZA of the ERA to attend an ante-natal appointment. The amount is increased from the hourly salary of the agency worker for the period of absence to twice that amount.