

Employment (Amendment) Bill 2023 – Keeling Schedule (incorporating amendments agreed at Clauses Stage in the House of Keys)

This is a Keeling Schedule prepared by the Department for Enterprise for the Employment (Amendment) Bill 2023. The purpose of a Keeling Schedule is to aid understanding of legislation by showing amendments to legislation in context. In this case the Schedule shows how the Employment Act 2006 will be worded if the amendments made to the Employment Act 2006 by the Employment (Amendment) Bill 2023 are agreed to by the House of Keys and the Legislative Council.

This version incorporates amendments agreed at the Clauses Stage in the House of Keys.

The Schedule should be used alongside the [Employment \(Amendment\) Bill 2023](#) itself, as well as the [Explanatory Notes on the Bill](#).

Amendments and substitutions made to the Employment Act 2006 via the Bill as introduced are shown in **red** text.

The amendments to the Bill agreed at Clauses Stage in the House of Keys are shown in **blue** text and are footnoted.

Clauses 1 to 4 are introductory.

Clause 5

Section 8 of the Employment Act 2006 as amended by clause 5 of the Employment (Amendment) Bill 2023:

8 Written particulars of terms of employment

[P1996/18/1 and 3(1) and (2); 1991/19/1]

- (1) Not later than ~~4 weeks after~~ the beginning of an employee's employment with an employer, the employer shall give to the employee a written statement in accordance with the following provisions of this section.
- (2) An employer shall in a statement under this section —
 - (a) identify the parties;
 - (b) specify the date when the employment began; and
 - (c) specify the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).
- (3) A statement under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the statement is given or, where the employment terminated before the statement is given, one week before such termination —
 - (a) the scale or rate of remuneration, or the method of calculating remuneration,
 - (b) the intervals at which remuneration is paid (that is, whether weekly or monthly or by some other period),

- (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
 - (d) any terms and conditions relating to —
 - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
 - (ii) incapacity for work due to sickness or injury, including any provision for sick pay,
 - (iii) pensions and pension schemes, including the normal retiring age in the employment,
 - (e) the length of notice which the employee is obliged to give and entitled to receive to terminate his or her contract of employment,
 - (f) the title of the job which the employee is employed to do,
 - (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a limited term, the date or circumstances when it is to end,
 - (h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,
 - (i) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and
 - (j) where the employee is required to work outside the Island for a period of more than one month —
 - (i) the period for which he or she is to work outside the Island,
 - (ii) the currency in which remuneration is to be paid while he or she is working outside the Island,
 - (iii) any additional remuneration payable to him or her, and any benefits to be provided to or in respect of him or her, by reason of being required to work outside the Island, and
 - (iv) any terms and conditions relating to his or her return to the Island.
- (4) Subsection (3)(d)(iii) does not apply to the employees of any public authority if the employees' pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under an Act of Tynwald and the authority are required by any such provision to give to new employees information concerning their pension rights, or concerning the determination of questions affecting their pension rights.
- (5) Subject to subsection (6), every statement given to an employee under this section shall include a note —
- (a) specifying any disciplinary rules and procedures applicable to the employee, or referring to a document which is reasonably accessible to the employee and which specifies any such rules and procedures;
 - (b) specifying, by description or otherwise —
 - (i) a person to whom the employee can apply if he or she is dissatisfied with any disciplinary decision relating to him or her; and

- (ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his or her employment; and
 - (iii) the manner in which any such application should be made;
- (c) where there are further steps consequent upon any such application, explaining those steps or referring to a document which is reasonably accessible to the employee and which explains them.
- (d) [Repealed]
- (6) Subsection (5)(a) to (c) does not apply to rules, disciplinary decisions, grievances or procedures relating to health or safety at work.
- (7) The definition of week given by section 173(1) (general interpretation) does not apply for the purposes of this section.

Clause 6

Section 44 of the Employment Act 2006 as amended by clause 6 of the Employment (Amendment) Bill 2023:

44 Complaints to Tribunal

[P1996/18/57]

- (1) An employee may complain to the Tribunal that her employer —
 - (a) has unreasonably refused her time off as required by section 43, or
 - (b) has failed to pay her the whole or part of any amount to which she is entitled under section 43(4).
- (2) The Tribunal shall not entertain a complaint under subsection (1) unless it is presented within the period of 3 months beginning with the day of the appointment concerned, or 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 within the period of 3 months.
- (3) Where on a complaint under subsection (1) the Tribunal finds the complaint well-founded it shall make a declaration to that effect; and —
 - (a) if the complaint is that the employer has unreasonably refused the employee time off, the Tribunal shall order the employer to pay to the employee an amount ~~equal to~~ **that is twice the amount of** the remuneration to which she would have been entitled under section 43(4) if the time off had not been refused; and
 - (b) if the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under section 43(4), the Tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (4) Subject to subsection (5), a right to any amount under section 43(4) does not affect any right of an employee in relation to remuneration under her contract of employment (the “contractual remuneration”).
- (5) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under section 43(4) in respect of that period, and conversely any payment of remuneration under section 43(4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Clause 7

Sections 44A to 44H as inserted by clause 7 of the Employment (Amendment) Bill 2023:

44A

Right to time off to accompany to ante-natal appointment

- (1) An employee who has a qualifying relationship with a pregnant woman or her expected child is to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.
- (2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in subsection (1) on more than two occasions.
- (3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.
- (4) An employee is not entitled to take time off for the purpose specified in subsection (1) unless the appointment is made on the advice of a registered medical practitioner or registered midwife.
- (5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in subsection (1) unless the employee gives that declaration (which may be given in electronic form).
- (6) The employee must state in the declaration —
 - (a) that the employee has a qualifying relationship with a pregnant woman or her expected child;
 - (b) that the employee's purpose in taking time off is the purpose specified in subsection (1);
 - (c) that the appointment in question is made on the advice of a registered medical practitioner or registered midwife and
 - (d) the date and time of the appointment.
- (7) A person has a qualifying relationship with a pregnant woman or her expected child if —
 - (a) the person is the husband, wife or civil partner of the pregnant woman;
 - (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman;
 - (c) the person is the father of the expected child;
 - (d) the person is a relative of the pregnant woman.

- (8) For the purposes of subsection (7), a relative of the pregnant woman is her child¹, parent, grandparent, sister, brother, aunt or uncle.
- (9) The references to relationships in subsection (8) —
 - (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption; and
 - (b) include the relationship of a child with the child’s adoptive, or former adoptive, parents, but do not include any other adoptive relationships.
- (10) For the purposes of this section, working hours of an employee are to be taken to be any time when, in accordance with the employee’s contract of employment, the employee is required to be at work.

44B Complaints to Tribunal

- (1) An employee may present a complaint to the Tribunal that his or her employer has unreasonably refused to let him or her take time off as required by section 44A.
- (2) The Tribunal may not consider a complaint under this section unless it has presented —
 - (a) before the end of the period of three months beginning with the day of the appointment in question; 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 the Tribunal finds a complaint under subsection (1) well-founded, it must —
 - (a) make a declaration to that effect; and
 - (b) order the employer to pay the employee an amount determined in accordance with subsection (4).
- (4) The amount payable to the employee is to be calculated using the formula $A \times B \times 2$, where —
 - (a) A is the appropriate hourly rate for the employee; and
 - (b) B is the number of working hours for which the employee would have been entitled under section 44A to be absent if the time off had not been refused.
- (5) The appropriate hourly rate, in relation to an employee, is 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 would have been taken.

¹ Amendment made at Clauses Stage, House of Keys, 23 January 2024

(6) But 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 —

(a) 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 12 weeks ending with the last complete week before the day on which the time off would have been taken; or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (7) as are appropriate in the circumstances.

(7) The considerations referred to in subsection (6)(b) are —

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee's contract; and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

Right to time off to attend adoption appointments

44C Right to paid time off to attend adoption appointments

(1) An employee who has been notified by ~~an adoption agency~~ the relevant authority² that a child is to be, or is expected to be, placed for adoption with the employee alone is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

(2) An employee who —

(a) has been notified by ~~an adoption agency~~ the relevant authority³ that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly; and

(b) has elected to exercise the right to take time off under this section in connection with the adoption,

is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.

² Amendment made at Clauses Stage, House of Keys, 23 January 2024

³ Amendment made at Clauses Stage, House of Keys, 23 January 2024

- (3) An employee may not make an election for the purposes of subsection (2)(b) if —
 - (a) the employee has made an election for the purposes of section 44E(1)(b) in connection with the adoption; or
 - (b) the person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (2)(b) in connection with the adoption.
- (4) An employee is not entitled to take time off under this section on or after the date of the child's placement for adoption with the employee.
- (5) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than five occasions.
- (6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.
- (7) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the ~~adoption agency~~ relevant authority⁴ which made the notification described in subsection (1) or (2)(a).
- (8) An employee is not entitled to take time off under subsection (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).
- (9) An employee is not entitled to take time off under subsection (2) unless, if the employer requests it, the employee gives the employer —
 - (a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (2)(b) in connection with the adoption; and
 - (b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).
- (10) A document or declaration requested under subsection (8) or (9) may be given in electronic form.
- (11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this section has effect as if —
 - (a) the purposes specified in subsections (1) and (2) were the purposes of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;

⁴ Amendment made at Clause Stage, House of Keys, 23 January 2024

- (b) the references in subsections (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement;
- (c) the references in subsection (3) to the adoption were references to any of the adoptions that are part of the arrangement;
- (d) the reference in subsection (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;
- (e) the reference in subsection (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.

(12) For the purposes of this section, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.

~~(13) In this section, "adoption agency" must be construed in accordance with the Adoption Act 2021.⁵~~

44D Right to remuneration for time off under section 44C

(1) An employee who is permitted to take time off under section 44C is entitled 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.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under a contract of employment in force on the day when the time off it taken.

(3) But 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 —

(a) 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 12 weeks ending with the last complete week before the day on which the time off is taken; or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number of which fairly represents the number of normal working hours in a week having regard to such of the consequences specified in subsection (4) as are appropriate in the circumstances.

(4) The considerations referred to in subsection (3)(b) are —

⁵ Amendment made at Clauses Stage, House of Keys, 23 January 2024

- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of the employee’s contract; and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

- (5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under the employee’s contract of employment (“contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 44C does towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period.
- (7) Any payment of remuneration under subsection (1) in respect of a period of time off under section 44C goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

44E Right to unpaid time off to attend adoption appointments

- (1) An employee who —
 - (a) has been notified by ~~an adoption agency~~ the relevant authority⁶ that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly; and
 - (b) has elected to exercise the right to take time off under this section in connection with the adoption,
 is entitled to be permitted by his or her employer to take time off during the employee’s working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.
- (2) An employee may not make an election for the purposes of subsection (1)(b) if —
 - (a) the employee has made an election for the purposes of section 44C(2)(b) in connection with the adoption; or
 - (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (1)(b) in connection with the adoption.
- (3) An employee is not entitled to take time off under this section on or after the date of the child’s placement for adoption with the employee.
- (4) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than two occasions.

⁶ Amendment made at Clauses Stage, House of Keys

- (5) On each of those occasions, the maximum time off during working hours to which each employee is entitled is six and a half hours.
- (6) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the ~~adoption agency~~ relevant authority⁷ which made the notification described in subsection (1)(a).
- (7) An employee is not entitled to take time off under this section unless, if the employer requests it, the employee gives the employer —
 - (a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (1)(b) in connection with the adoption; and
 - (b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (6).
- (8) A declaration or document requested under subsection (7) may be given in electronic form.
- (9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this section has effect as if —
 - (a) the purposes specified in subsection (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that were part of the arrangement;
 - (b) the references in subsections (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement;
 - (c) the references in subsection (2) to the adoption were references to any of the adoptions that are part of the arrangement;
 - (d) the references in subsection (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;
 - (e) the reference in subsection (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.
- (10) For the purposes of this section, the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.
- ~~(11) In this section, "adoption agency" must be construed in accordance with the Adoption Act 2021.⁸~~

⁷ Amendment made at Clauses Stage, House of Keys, 23 January 2024

⁸ Amendment made at Clauses Stage, House of Keys, 23 January 2024

44F Complaint to Tribunal

- (1) An employee may present a complaint to the Tribunal that his or her employer —
 - (a) has unreasonably refused to let him or her take time off as required by section 44C or 44E; or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 44D.
- (2) The Tribunal may not consider a complaint under this section unless it is presented —
 - (a) before the end of the period of three months beginning with the day of the appointment in question; 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 the Tribunal finds a complaint under subsection (1) well-founded, it must make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 44C, the Tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under section 44D if the employer had not refused.
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under section 44D, the Tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.
- (6) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 44E, the Tribunal must also order the employer to pay to the employee an amount determined in accordance with subsection (7).
- (7) The amount payable to the employee is $A \times B \times 2$, where —
 - (a) A is the appropriate hourly rate for the employee determined in accordance with section 44D(2) to (4); and
 - (b) B is the number of working hours for which the employee would have been entitled under section 44E to be absent if the time off had not been refused.

Time off for dependants

44G Time off for dependants

- (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 arrangement 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 or her.

(2) Subsection (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 subsections (4) and (5), for the purposes of this section “dependant” means, in relation to an employee, —

- (a) a spouse or civil partner;
- (b) a child or grandchild⁹;
- (c) a parent or grandparent¹⁰;
- (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 subsection (1)(a) or (b), “dependant” includes, in addition to the persons mentioned in subsection (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 subsection (1)(d), “dependant” includes, in addition to the persons mentioned in subsection (3), any person who reasonably relies on the employee to make arrangements for the provision of care.

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

44H Complaint to the Tribunal

⁹ Amendment made at Clauses Stage, House of Keys, 23 January 2024

¹⁰ Amendment made at Clauses Stage, House of Keys, 23 January 2024

- (1) An employee may present a complaint to the Tribunal that his employer has unreasonably refused to permit him [or her] to take time off as required by section 44G.
- (2) The Tribunal shall not consider a complaint under this section 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 the Tribunal finds a complaint under subsection (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.».

Clause 8

Section 50 of the Employment Act 2006 as substituted by clause 8 of the Employment (Amendment) Bill 2023:

50 Disclosure qualifying for protection

[P1996/18/43B]

~~(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following —~~

- ~~(a) that a criminal offence has been committed, is being committed or is likely to be committed,~~
- ~~(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject,~~
- ~~(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,~~
- ~~(d) that the health or safety of any individual has been, is being or is likely to be endangered,~~
- ~~(e) that the environment has been, is being or is likely to be damaged, or~~
- ~~(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.~~

(1) In this Part, a “qualifying disclosure” means any disclosure of information which the worker making the disclosure —

(a) reasonably believes ought to be disclosed in the public interest and has the tendency to show one or more of the following —

- (i) that a criminal offence has been committed, is being committed, or is likely to be committed;
- (ii) that a person has failed, is failing, or is likely to fail, to comply with any legal obligation to which he or she is subject;
- (iii) that a miscarriage of justice has occurred, is occurring, or is likely to occur;
- (iv) that the health or safety of any individual has been, is being, or is likely to be, endangered;
- (v) that the environment has been, is being, or is likely to be, damaged; or
- (vi) that information tending to show any matter falling within any one of the preceding subparagraphs has been, or is likely to be, deliberately concealed; and

(b) has, before making the disclosure, declared to the intended recipient of the disclosure that it is a qualifying disclosure.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the Island or elsewhere, and whether the law applying to it is that of the Isle of Man or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence in the Island by making it.

- (4) A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
- (5) In this Part “**the relevant failure**”, in relation to a qualifying disclosure, means the matter falling within ~~paragraphs (a) to (f) of subsection (1)~~ subparagraphs (i) to (vi) of subsection (1)(a).

Clauses 9 and 10

Sections 51, 52, 53 54, 55 and 56 of the Employment Act 2006, as amended by Clauses 9 and 10 of the Employment (Amendment) Bill 2023:

51 Disclosure to employer or other responsible person

[P1996/18/43C]

- (1) A qualifying disclosure is made in accordance with this section if the worker makes it ~~in good faith~~ —
- (a) to his or her employer, or
 - (b) if the worker reasonably believes that the relevant failure relates to the act or failure to act of a person other than his or her employer, to the party exercising responsibility for and having legal control over the conduct of that person.
- (2) A worker who, in accordance with a procedure whose use by him or her is authorised by his or her employer, makes a qualifying disclosure to a person other than his or her employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his or her employer.

52 Disclosure to legal adviser

[P1996/18/43D]

A qualifying disclosure is made in accordance with this section if it is made in the course of obtaining legal advice.

53 Disclosure to Public Services Commission

[P1996/18/43E]

A qualifying disclosure is made in accordance with this section if —

- (a) the worker's employer is —
 - (i) an individual appointed under any enactment by the Public Services Commission or the Council of Ministers, or
 - (ii) a body any of whose members are so appointed, and
- (b) the disclosure is made ~~in good faith~~ to the Public Services Commission.

54 Disclosure to prescribed person

[P1996/18/43F]

- (1) A qualifying disclosure is made in accordance with this section if the worker —
- (a) makes the disclosure ~~in good faith~~ to a person prescribed by an order made by the Department for the purposes of this section, and
 - (b) reasonably believes —
 - (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.

- (2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

54A Prescribed persons: duty to report on disclosures of information

- (1) The Department may make regulations requiring a person prescribed for the purposes of section 54 to produce an annual report on disclosures of information made to the person by workers.
- (2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified —
 - (a) a worker who has made a disclosure;
 - (b) an employer or other person in respect of whom a disclosure has been made.
 - (3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements —
 - (a) that reports be laid before Tynwald;
 - (b) to publish the report on a website.
 - (4) The regulations may make provision about the time period within which a report must be produced and published.
- (5) Regulations under subsections (2) and (4) may make different provision for different prescribed persons.

55 Disclosure in other cases

[P1996/18/43G]

- (1) A qualifying disclosure is made in accordance with this section if —
- ~~(a) the worker makes the disclosure in good faith,~~
 - (b) ~~he or she~~ the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (c) ~~he or she~~ the worker does not make the disclosure for purposes of personal gain,
 - (d) any of the conditions in subsection (2) is met, and
 - (e) in all the circumstances of the case, it is reasonable for him or her to make the disclosure.
- (2) The conditions referred to in subsection (1)(d) are —
- (a) that, at the time he or she makes the disclosure, the worker reasonably believes that he or she will be subjected to a detriment by his or her employer if he or she makes a disclosure to his or her employer or in accordance with section 54,
 - (b) that, in a case where no person is prescribed for the purposes of section 54 in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he or she makes a disclosure to his or her employer, or

- (c) that the worker has previously made a disclosure of substantially the same information —
 - (i) to his or her employer, or
 - (ii) in accordance with section 54.
- (3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to —
 - (a) the identity of the person to whom the disclosure is made,
 - (b) the seriousness of the relevant failure,
 - (c) whether the relevant failure is continuing or is likely to occur in the future,
 - (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
 - (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 54 was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
 - (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him or her was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

56 Disclosure of exceptionally serious failure

[P1996/18/43H]

- (1) A qualifying disclosure is made in accordance with this section if —
 - (a) the worker makes the disclosure ~~in good faith,~~
 - (b) ~~he or she~~ the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (c) he or she does not make the disclosure for purposes of personal gain,
 - (d) the relevant failure is of an exceptionally serious nature, and
 - (e) in all the circumstances of the case, it is reasonable for him or her to make the disclosure.
- (2) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

Clause 11

Sections 64 of the Employment Act 2006 as amended by clause 11 of the Employment (Amendment) Bill 2023:

64 Protected disclosures

[P1996/18/47B]

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker has made a protected disclosure.

(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done —

(a) by another worker of W’s employer in the course of that other worker’s employment;

(b) by an agent of W’s employer with the employer’s authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker’s employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker’s employer.

(1D) In proceedings against W’s employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker —

(a) from doing that thing;

(b) from doing anything of that description.

(1E) A worker or agent of W’s employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if —

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act; and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

(2) This section does not apply where —

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal within the meaning of Part X (unfair dismissal).

~~(3) For the purposes of this section, “worker”, “worker’s contract”, “employment” and “employer” have the extended meaning given by section 58.~~

(3) For the purposes of this section, and of sections 71 and 72 as far as relating to this section, each of the following terms has the extended meaning given to it by section 58—

- (a) “worker”;
- (b) “worker’s contract”;
- (c) “employment”;
- (d) “employer”.

Clause 12

Section 65 of the Employment Act 2006 as amended by the Employment (Amendment) Bill 2023:

65 Leave for family and domestic reasons

[P1996/18/47C]

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her 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) ordinary or additional adoption leave,
 - (d) parental leave, or
 - (e) paternity leave.
 - (f) any other leave for a family-related purpose for which this Act provides.

Clause 13

Section 72 of the Employment Act 2006 as amended by clause 13 of the Employment (Amendment) Bill 2023:

72 Remedies

[P1992/52/149(5); P1996/18/49]

- (1) Where the Tribunal finds a complaint under section 71 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 complainant in respect of the act or failure to act to which the complaint relates.
- (2) The amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —
 - (a) the infringement to which the complaint relates, and
 - (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.

This is subject to subsections (2A) and (2B).

- (2A) Where —
 - (a) the detriment to which the worker is subjected is the termination of his or her contract, but
 - (b) that contract is not a contract of employment,any compensation awarded under this section must not exceed the limit specified in subsection (2B).
- (2B) The limit mentioned in subsection (2A) is the total of —
 - (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with section 142, if the worker had been an employee and the contract terminated had been a contract of employment; and
 - (b) the sum for the time being prescribed under section 144(1) (on the assumptions set out in paragraph (a)) as the limit for a compensatory award to a person calculated in accordance with section 143.

This subsection does not apply in a case to which section 61 (health and safety) or section 64 (protected disclosures) applies.

- (3) The loss shall be taken to include —
 - (a) any expenses reasonably incurred by the complainant in consequence of the act, or failure to act, to which the complaint relates; and
 - (b) loss of any benefit which the complainant might reasonably be expected to have had but for that act or failure to act.
- (4) In ascertaining the loss the Tribunal shall apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law.
- (5) Where the Tribunal finds that the act, or failure to act, to which the complaint relates was to any extent caused or contributed to by action of the complainant, it shall

reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.

(5A) In the case of a complaint under section 64, if it appears to the Tribunal that the protected disclosure was not made in good faith, the Tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the complainant ~~by no more than 25%~~¹¹.

(6) In the case of a complaint under section 67 (detriment: trade union membership or activities), in determining the amount of compensation to be awarded no account shall be taken of any pressure which was exercised on the employer by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised.

(7) If in proceedings on a complaint under section 67 —

(a) the complaint is made on the ground that the complainant has been subjected to detriment by an act or failure by the employer taking place for the sole or main purpose of compelling the complainant to be or become a member of any trade union or of a particular trade union or of one of a number of particular trade unions, and

(b) either the complainant or the employer claims in proceedings before the Tribunal that the employer was induced to act or fail to act in the way complained of by pressure which a trade union or other person exercised on him or her by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so,

the complainant or the employer may request the Tribunal to direct that the person who he or she claims exercised the pressure be joined as a party to the proceedings.

(8) The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the Tribunal has made a declaration that the complaint is well-founded.

(9) Where a person has been so joined as a party to proceedings and the Tribunal —

(a) makes an award of compensation, and

(b) finds that the claim mentioned in subsection (7)(b) is well-founded,

it may order that the compensation shall be paid by the person joined instead of by the employer, or partly by that person and partly by the employer, as the Tribunal may consider just and equitable in the circumstances.

¹¹ Amendment made at Clauses Stage, House of Keys, 23 January 2024

Clause 14

Section 79 of the Employment Act 2006 as amended by clause 14 of the Employment (Amendment) Bill 2023:

79 Ordinary maternity leave

[P1996/18/71]

- (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 subsection (2) —
 - (a) shall secure that no ordinary maternity leave period is less than 26 weeks;
 - (b) may allow an employee to choose, subject to any prescribed restrictions, the date on which an ordinary maternity leave period starts.
 - (c) may allow an employee to bring forward the date on which an ordinary maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
 - (d) may allow an employee in prescribed circumstances to revoke, or to be treated as revoking, the bringing forward of that date;
 - (e) may specify circumstances in which an employee may work for her employer during an ordinary maternity leave period without bringing the period to an end.
 - (3A) Provision under subsection (3)(c) is to secure that an employee may bring forward the date on which an ordinary maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 94A.
- (4) Subject to section 82 (redundancy and dismissal), an employee who exercises her right under subsection (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 any obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (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 section.
- (7) The Department may make regulations making provision, in relation to the right to return under subsection 4(c), about —
 - (a) seniority, pension rights and similar rights; and
 - (b) terms and conditions of employment on return.

Clause 15

Section 81 of the Employment Act 2006 as amended by clause 15 of the Employment (Amendment) Act 2023:

81 Additional maternity leave

[P1996/18/73]

- (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 subsection (2) may allow an employee to choose, subject to prescribed restrictions, the date on which an additional maternity leave period ends.~~

(3) Regulations under subsection (2) —

- (a) may allow an employee to bring forward the date on which an additional maternity leave period ends, subject to prescribed restrictions and subject to satisfying prescribed conditions;
- (b) may allow an employee in prescribed circumstances to revoke, or be treated as revoking, the bringing forward of that date;
- (c) may specify circumstances in which an employee may work or her employer during an additional maternity period without bringing the period to an end.

(3A) Provision under subsection (3)(a) is to secure that an employee may bring forward the date on which an additional maternity leave period ends only if the employee or another person has taken, or is taking, prescribed steps as regards leave under section 94A.

- (4) Subject to section 82 (redundancy and dismissal), an employee who exercises her right under subsection (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 subsection (1)), and
 - (c) is entitled to return from leave to a job of a prescribed kind.
- (5) In subsection (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) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.

- (7) The Department may make regulations specifying matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (8) The Department may make regulations making provision, in relation to the right to return under subsection (4)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

Clause 16

New sections 89A to 89E inserted into the Employment Act 2006 by the Employment (Amendment) Bill 2023:

89A Parental bereavement leave

(1) The Department ~~may~~ **must**¹² make regulations entitling an employee who is a bereaved parent to be absent from work on leave under this section.

(2) For the purposes of subsection (1), an employee is a “bereaved parent” if the employee satisfies conditions specified in the regulations as to relationship with a child who has died.

(3) The conditions specified under subsection (2) may be framed, in whole or in part, by reference to the employee’s care of the child before the child’s death.

(4) The regulations may include provision for determining —

(a) the extent of an employee’s entitlement to leave under this section in respect of a child;

(b) when leave under this section may be taken.

~~(5) Provision under subsection (4)(a) may secure that, where an employee is entitled to leave under this section in respect of a child, the employee is entitled to at least two weeks’ leave.¹³~~

(6) Provision under subsection (4)(b) may secure that leave under this section must be taken before the end of the period of at least 56 days beginning with the date of the child’s death.

(7) The regulations may secure that where a person is eligible under subsection (1) as the result of the death of more than one child, the person is entitled to leave in respect of each child.

(8) The regulations may make provision about how leave under this section is to be taken.

(9) In this section —

“child” means a person under the age of 18 (see also section 89E for the application of this Chapter in relation to miscarriages and stillbirths);

“week” means any period of seven days.

89B Rights during and after bereavement leave

(1) Regulations under section 89A may provide —

(a) that an employee who is absent on leave under that section 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 but for the absence;

¹² Amendment at Clauses Stage, House of Keys, 23 January 2024

¹³ Amendment at Clauses Stage, House of Keys, 23 January 2024

- (b) that an employee who is absent under that section 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 subsection (1) of that section); and
 - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 89C(1).
- (2) The reference in subsection (1)(c) to absence on leave under section 89A includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following —
 - (a) maternity leave;
 - (b) paternity leave;
 - (c) adoption leave;
 - (d) shared parental leave;
 - (e) parental leave.
- (3) In subsection (1)(a), “terms and conditions of employment” —
 - (a) includes matters connected with an employee’s employment whether or not they arise under the contract of employment; but
 - (b) does not include terms and conditions about remuneration.
- (4) Regulations under section 89A may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) Regulations under section 89A may make provision, in relation to the right to return mentioned in subsection (1)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

89C Special cases

- (1) Regulations under section 89A may make provision about —
 - (a) redundancy; or
 - (b) dismissal (other than by reason of redundancy),
 during a period of leave under that section.
- (2) Provision by virtue of subsection (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 X (unfair dismissal)).

89D Supplemental

Regulations under section 89A 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 paragraph (a);
- (e) make special provision for cases where an employee has a right which corresponds to a right under section 89A and which arises under the person's contract of employment or otherwise;
- (f) make provision modifying the effect of Schedule 6 (calculation of normal working hours and a week's pay) in relation to an employee who is or has been absent from work on leave under section 89A;
- (g) make provision applying, modifying or excluding an enactment, 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 section 89A;
- (h) make consequential provision.

89E Application in relation to miscarriages and stillbirths

In sections 89A to 89D —

- (a) references to a child include a child —
 - (i) miscarried before 24 weeks of pregnancy;
 - (ii) stillborn after 24 weeks of pregnancy; and
- (b) references to the death of a child are to be read, in relation to a miscarried or stillborn child, as references to the birth of the child.

Clause 17

Section 90 as amended by clause 17 of the Employment (Amendment) Bill 2023:

90 Paternity leave: birth

[P1996/18/80A]

- (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 section 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 section in respect of a child;
 - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he or she is entitled to at least 2 weeks’ leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the child’s birth.
 - (4A) Provision under subsection (2)(b) must secure that, once an employee takes leave under section 94A in respect of a child, the employee may not take leave under this section in respect of the child.
- (5) Regulations under subsection (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 section 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 section may be taken.
- (6) Where more than one child is born as a result of the same pregnancy, the reference in subsection (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 section —

“newborn child” includes a child stillborn after 24 weeks of pregnancy;

“week” means any period of 7 days.

Clause 18

Section 91 of the Employment (Amendment) Bill 2023 as amended by the Employment (Amendment) Bill 2023:

91 Paternity leave: adoption

[P1996/18/80B]

- (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 the Island, 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 section for the purpose of caring for the child or supporting the person by reference to whom he or she satisfies the condition under paragraph (c).

- (2) The regulations shall include provision for determining —
- (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
 - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) shall secure that where an employee is entitled to leave under this section in respect of a child he or she is entitled to at least 2 weeks’ leave.
- (4) Provision under subsection (2)(b) shall secure that leave under this section 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.

(4A) Provision under subsection (2)(b) must secure that, once an employee takes leave under section 94C in respect of a child, the employee will not take leave under this section in respect of the child.

- (5) Regulations under subsection (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;
 - (aa) make provision excluding the right to be absent on leave under this section in the case of an employee who, by virtue of provision under subsection (6A), has already exercised a right to be absent on leave under this section in connection with the same child;
 - (b) make provision excluding the right to be absent on leave under this section in the case of an employee who exercises a right to be absent from work on adoption leave;
 - (ba) make provision excluding the right to be absent on leave under this section in the case of an employee who has exercised a right to take time off under section 44C;

- (c) make provision excluding the right to be absent on leave under this section 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 section may be taken.
- (6) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (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.

Clause 19

Insertion of new sections 94A to 94G to the Employment Act 2006 by the Employment (Amendment) Bill 2023

94A

Entitlement to shared parental leave: birth

- (1) The Department may make regulations entitling an employee who satisfies specified conditions —
 - (a) as to duration of employment;
 - (b) as to being, or expecting to be, the mother of a child;
 - (c) as to caring or intending to care, with another person (“P”), for a child;
 - (d) as to entitlement to maternity leave;
 - (e) as to the exercise of that entitlement and the extent of any such exercise;
 - (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection; and
 - (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,to be absent from work on leave under this subsection for the purpose of caring for the child.
- (2) Regulations under subsection (1) may provide that the employee’s entitlement is subject to the satisfaction by P of specified conditions —
 - (a) as to employment or self-employment;
 - (b) as to having earnings of a specified amount for a specified period;
 - (c) as to caring or intending to care, with the employee, for the child; and
 - (d) as to the relationship with the child or the employee.
- (3) Provision under subsection (1)(f) may require the employee to give notice to the employer about —
 - (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4));
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which P intends to exercise an entitlement to leave under subsection (4).
- (4) 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 or expected child or with the child’s mother;

- (c) as to caring or intending to care, with the child’s mother, for the child;
 - (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection; and
 - (e) as to the consent of the child’s mother to the amount of leave under this subsection that the employee intends to take,
- to be absent from work on leave under this subsection for the purpose of caring for the child.

(5) Regulations under subsection (4) may provide that the employee’s entitlement is subject to the satisfaction by the child’s mother of specified conditions —

- (a) as to employment or self-employment;
- (b) as to having earnings of a specified amount for a specified period;
- (c) as to caring or intending to care, with the employee, for the child;
- (d) as to entitlement (or lack of entitlement) to maternity leave, or maternity allowance; and
- (e) as to the exercise of any such entitlement and the extent of any such exercise.

(6) Provision under subsection (4)(d) may require the employee to give notice to the employer about —

- (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of the child’s mother to exercise an entitlement to leave under subsection (1));
- (b) how much of the entitlement to leave the employee intends to exercise;
- (c) the extent to which the child’s mother intends to exercise an entitlement to leave under subsection (1).

94B Entitlement to leave under section 94A: further provision

(1) Regulations under section 94A are to include provision —

- (a) for determining the amount of leave under section 94A(1) or (4) to which an employee is entitled in respect of a child;
- (b) for determining when leave under section 94A(1) or (4) may be taken;
- (c) limiting the amount of any type of leave to which an employee is entitled, to the extent the Department reasonably considers appropriate in the circumstances.

(2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed —

- (a) in a case where the child’s mother became entitled to maternity leave, the relevant amount of time reduced by —
 - (i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of section 79(3)(c) or 81(3)(a), the amount of maternity leave taken by the child’s mother; or
 - (ii) except where subparagraph (i) applies, the amount of time between the beginning of her maternity leave and the time when her ordinary or additional maternity leave period, as curtailed by virtue of section 79(3)(ba) or 81(3)(a), comes to an end;
 - (b) in a case where the child’s mother became entitled to maternity allowance but not maternity leave, the relevant amount of time reduced by an amount determined —
 - (i) in accordance with paragraph (a); or
 - (ii) on such other basis as the Department may prescribe in regulations under this section.
- (3) In subsection (2) “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under section 94A.
 - (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account, in a case where another person is entitled to leave under section 94A in respect of the child, the amount of such leave taken by the other person.
 - (5) In reckoning for the purposes of subsection (2) the amount of maternity leave taken, a part of a week is to be treated as a full week.
 - (6) In reckoning for the purposes of subsection (4) the amount of leave under section 94A taken during a period of such leave, a part of a week is to be treated as a full week.
 - (7) Provision under subsection (1)(b) is to secure that leave under section 94A must be taken before the end of such period as may be specified by the regulations.
 - (8) Regulations under section 94A are to provide for the taking of leave under section 94A in a single period or in non-consecutive periods.
 - (9) Regulations under section 94A may —
 - (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 94A to take that amount of leave as a single period of leave;
 - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the

employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.

(10) Regulations under section 94A may provide for the variation, subject to such restrictions as may be specified, of —

- (a) the period or periods during which an amount of leave under section 94A may be taken;
- (b) the amount of leave under section 94A that the employee previously specified in accordance with provision under section 94A(3)(b) or (6)(b) or subsection (13)(b) of this section.

(11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.

(12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions —

- (a) as to giving notice of an intention to vary the amount of leave under section 94A to be taken by the employee;
- (b) if the employee proposes to vary the amount of leave under section 94A(1) to be taken by the employee, as to the consent of P to that variation;
- (c) if the employee proposes to vary the amount of leave under section 94A(4) to be taken by the employee, as to the consent of the child's mother to that variation.

(13) Provision under subsection (12)(a) may require an employee to give notice to the employer about —

- (a) the extent to which the employee has exercised an entitlement to leave under section 94A(1) or (4) in respect of the child;
- (b) how much of the entitlement to leave the employee intends to exercise;
- (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 94A in respect of the child;
- (d) the extent to which a person other than the employee intends to exercise such an entitlement.

(14) Regulations under section 94A 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 section 94A in respect of a child where more than one child is born as a result of the same pregnancy;
- (c) specify a minimum amount of leave under section 94A which may be taken;
- (d) make provision about how leave under section 94A may be taken;

- (e) specify circumstances in which an employee may work for the employer during a period of leave under section 94A without bringing the particular period of leave, or the employee's entitlement to leave under section 94A, to an end;
- (f) specify circumstances in which an employee may be absent on leave under section 94A otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 94A to an end.

(15) In this section, "week" means any period of seven days.

(16) The Department may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where the mother of a child dies before another person has become entitled to leave under section 94A in respect of the child —

- (a) section 94A(4)(b), (c), and (e);
- (b) section 94A(5);
- (c) section 94A(6)(c);
- (d) subsection (12)(c);
- (e) subsection (13)(c) and (d).

94C Entitlement to shared parental leave: adoption

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

- (a) as to the duration of employment;
- (b) as to being a person with whom a child is, or is expected to be, placed for adoption under the law of the Island;
- (c) as to caring or intending to care, with another person ("P"), for the child;
- (d) as to entitlement to adoption leave;
- (e) as to the exercise of that entitlement and the extent of any such exercise;
- (f) as to giving notice of an intention to exercise an entitlement to leave under this subsection; and
- (g) as to the consent of P to the amount of leave under this subsection that the employee intends to take,

to be absent from work on leave under this subsection for the purpose of caring for the child.

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions —

- (a) as to employment or self-employment;
- (b) as to having earnings of a specified amount for a specified period;
- (c) as to caring or intending to care, with the employee, for the child; and

- (d) as to relationship with the child or the employee.
- (3) Provision under subsection (1)(f) may require the employee to give notice to the employer about —
 - (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of P to exercise an entitlement to leave under subsection (4));
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which P intends to exercise an entitlement to leave under subsection (4).
- (4) 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, or expected to be placed, for adoption under the law of the Island or with a person (“A”) with whom the child is, or is expected to be, so placed;
 - (c) as to caring or intending to care, with A, for the child;
 - (d) as to giving notice of an intention to exercise an entitlement to leave under this subsection; and
 - (e) as to the consent of A to the amount of leave under this subsection that the employee intends to take,to be absent from work on leave under this subsection for the purpose of caring for the child.
- (5) Regulations under subsection (4) may provide that the employee’s entitlement is subject to the satisfaction by A of specified conditions —
 - (a) as to employment or self-employment;
 - (b) as to having earnings of a specified amount for a specified period;
 - (c) as to caring or intending to care, with the employee, for the child;
 - (d) as to entitlement (or lack of entitlement) to adoption leave; and
 - (e) as to the exercise of any such entitlement and the extent of any such exercise.
- (6) Provision under subsection (4)(d) may require the employee to give notice to the employer about —
 - (a) the amount of leave to which the employee would be entitled if the entitlement were fully exercised (disregarding for these purposes any intention of A to exercise an entitlement to leave under subsection (1));
 - (b) how much of the entitlement to leave the employee intends to exercise;

- (c) the extent to which A intends to exercise an entitlement to leave under subsection (1).

94D Entitlement to leave under section 94C: further provision

- (1) Regulations under section 94C are to include provision for determining —
 - (a) the amount of leave under section 94C(1) or (4) to which an employee is entitled in respect of a child;
 - (b) when leave under section 94C(1) or (4) may be taken;
 - (c) limiting the amount of any type of leave to which an employee is entitled, to the extent the Department reasonably considers appropriate in the circumstances.
- (2) Provision under subsection (1)(a) is to secure that, in a case where a person with whom the child is (or is expected to be) placed for adoption became entitled to adoption leave, the amount of leave to which an employee is entitled in respect of a child does not exceed the relevant amount of time reduced by —
 - (a) where the person’s adoption leave ends without the person’s ordinary or additional adoption leave period having been curtailed, the amount of adoption leave taken by that person; or
 - (b) except where paragraph (a) applies, the amount of time between the beginning of the person’s adoption leave and the time when the person’s ordinary or additional adoption leave period, as curtailed, comes to an end.
- (3) In subsection (2), “the relevant amount of time” means an amount of time specified in or determined in accordance with regulations under section 94C.
- (4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account, in a case where another person is entitled to leave under section 94C in respect of the child, the amount of such leave taken by the other person.
- (5) In reckoning for the purposes of subsection (2) the amount of adoption leave taken, a part of a week is to be treated as a full week.
- (6) In reckoning for the purposes of subsection (4) the amount of leave under section 94C taken during a period of such leave, a part of a week is to be treated as a full week.
- (7) Provision under subsection (1)(b) is to secure that leave under section 94C must be taken before the end of such period as may be prescribed by the regulations.
- (8) Regulations under section 94C are to provide for the taking of leave under section 94C in a single period or in non-consecutive periods.
- (9) Regulations under section 94C may —

- (a) provide for an employer, subject to such restrictions as may be specified, to require an employee who proposes to take non-consecutive periods of leave under section 94C to take that amount of leave as a single period of leave; and
 - (b) provide for a single period of leave that is so imposed on an employee to start with a day proposed by the employee or, if no day is proposed, with the first day of the first period of leave proposed by the employee.
- (10) Regulations under section 94C may provide for the variation, subject to such restrictions as may be specified, of —
- (a) the period or periods during which an amount of leave under section 94C is to be taken;
 - (b) the amount of leave under section 94C that the employee previously specified in accordance with provision under section 94C(3)(b) or (6)(b) or subsection (13)(b) of this section.
- (11) Provision under subsection (10)(a) may provide for variation to be subject to the consent of an employer in circumstances specified by the regulations.
- (12) Provision under subsection (10)(b) may require an employee to satisfy specified conditions —
- (a) as to giving notice of an intention to vary the amount of leave under section 94C to be taken by the employee;
 - (b) if the employee proposes to vary the amount of leave under section 94C(1) to be taken by the employee, as to the consent of P to that variation;
 - (c) if the employee proposes to vary the amount of leave under section 94C(4) to be taken by the employee, as to the consent of A to that variation.
- (13) Provision under subsection (12)(a) may require an employee to give notice to the employer about —
- (a) the extent to which the employee has exercised an entitlement to leave under section 94C(1) or (4) in respect of the child;
 - (b) how much of the entitlement to leave the employee intends to exercise;
 - (c) the extent to which a person other than the employee has exercised an entitlement to leave under section 94C in respect of the child;
 - (d) the extent to which a person other than the employee intends to exercise such an entitlement.
- (14) Regulations under section 94C 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 section 94C in respect of a child where more than one child is placed for adoption as part of the same arrangement;
- (c) specify a minimum amount of leave under section 94C which may be taken;
- (d) make provision about how leave under section 94C may be taken;
- (e) specify circumstances in which an employee may work for the employer during a period of leave under section 94C without bringing a particular period of leave, or the employee's entitlement to leave under section 94C, to an end;
- (f) specify circumstances in which an employee may be absent on leave under section 94C otherwise than for the purpose of caring for a child without bringing the person's entitlement to leave under section 94C to an end.

(15) In this section, "week" means any period of seven days.

(16) The Department may by regulations provide that the following do not have effect, or have effect with modifications specified by the regulations, in a case where a person who is taking adoption leave in respect of a child dies before another person has become entitled to leave under section 94C in respect of the child —

- (a) section 94C(4)(b), (c) and (e);
- (b) section 94C(5);
- (c) section 94C(6)(c);
- (d) subsection (12)(c);
- (e) subsection (13)(c) and (d).

(17) The Department may by regulations provide for section 94C and this section to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of the Island, with such modifications as the regulations may prescribe.

94E Rights during and after shared parental leave

(1) Regulations under section 94A or 94C are to provide —

- (a) that an employee who is absent on leave under that section 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 the employee had not been absent;
- (b) that an employee who is absent on leave under that section 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 section 94A(1) or (4) or 94C(1) or (4), as the case may be; and

- (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by the regulations, subject to section 94F(1).
- (2) In subsection (1)(a), “terms and conditions of employment” —
 - (a) includes matters connected with an employee’s employment whether or not they arise under the employee’s contract of employment; but
 - (b) does not include terms and conditions about remuneration.
- (3) The reference in subsection (1)(c) to absence on leave under section 94A or 94C includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under one of those sections and partly to any one or more of the following —
 - (a) leave under the other of those sections;
 - (b) maternity leave;
 - (c) paternity leave;
 - (d) adoption leave;
 - (e) parental leave;
 - (f) parental bereavement leave.
- (4) Regulations under section 94A or 94C may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) Regulations under section 94A or 94C may make provision, in relation to the right to return mentioned in subsection (1)(c), about —
 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.

94F Redundancy and dismissal

- (1) Regulations under section 94A or 94C may make provision about —
 - (a) redundancy; or
 - (b) dismissal (other than by reason of redundancy), during a period of leave under that section.
- (2) Provision made by virtue of subsection (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 X).

94G Supplemental

- (1) Regulations under section 94A or 94C may —

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by —
 - (i) employees;
 - (ii) employers; and
 - (iii) relevant persons;
 - (b) make provision requiring such persons 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 paragraph (a);
 - (e) make special provision for cases where an employee has a right which corresponds to a right under section 94A or 94C and which arises under the employee’s contract of employment or otherwise;
 - (f) make provision modifying the effect of Schedule 6 in relation to an employee who is or has been absent from work on leave under section 94A or 94C;
 - (g) make provision applying, modifying or executing an enactment, 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 section 94A or 94C.
- (2) In subsection (1), “relevant person” means —
- (a) a person who, in connection with an employee’s claim to be entitled to leave under section 94A or 94C, is required to satisfy conditions specified in provision under section 94A(2) or (5) or 94C(2) or (5); or
 - (b) a person who is an employer or former employer of such a person.
- (3) Regulations under any of section 94A to 94D may make different provision for different cases or circumstances.

Clause 20

Section 114 of the Employment Act 2006 as amended by the Employment (Amendment) Bill 2023:

114 Leave for family reasons

[P1996/18/99]

- (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 section “prescribed” means prescribed by regulations made by the Department.
- (3) A reason or set of circumstances prescribed under this section must relate to —
 - (a) pregnancy, childbirth or maternity,
 - (b) ordinary, compulsory or additional maternity leave,
 - (c) ordinary or additional adoption leave,
 - (d) parental leave, or
 - (e) paternity leave,
 - (f) any other leave for a family-related purpose for which this Act provides,and it may also relate to redundancy or other factors.
- (4) Regulations under this section may —
 - (a) make different provision for different cases or circumstances,
 - (b) apply any enactment, 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 section.

Clause 21

Insertion of new sections 118A to 118E to the Employment Act 2006 by the Employment (Amendment) Bill 2023:

118A Interim relief pending determination of complaint

[P.1996/18/128 and drafting]

- (1) An employee who presents a complaint to the Tribunal that—
 - (a) he has been unfairly dismissed; and
 - (b) the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure,may apply to the Tribunal for interim relief.
- (2) The Tribunal shall not entertain an application for interim relief unless it is presented to the Tribunal before the period of seven days immediately following the effective date of termination (whether before, on or after that date).
- (3) The Tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
- (4) The Tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
- (5) The Tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstance exist which justify it in doing so.

118B Procedure on hearing of application and making of order

[P.1996/18/129 and drafting]

- (1) This section applies where, on hearing an employee's application for interim relief, it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure.
- (2) The Tribunal shall announce its findings and explain to both parties (if present) —
 - (a) what powers the Tribunal may exercise on the application; and
 - (b) in what circumstances it will exercise them.
- (3) The Tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint —
 - (a) to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed); or
 - (b) if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.
- (4) For the purposes of subsection (3)(b), "terms and conditions not less favourable than those which would have been applicable to him if he had

not been dismissed” means, as regards seniority, pensions rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.

- (5) If the employer states that he is willing to reinstate the employer, the Tribunal shall make an order to that effect.
- (6) If the employer —
 - (a) states that he is willing to re-engage the employee in another job;
 - (b) specifies the terms and conditions on which he is willing to do so,the Tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
- (7) If the employee is willing to accept the job on those terms and conditions, the Tribunal shall make an order to that effect.
- (8) If the employee is not willing to accept the job on those terms and conditions —
 - (a) where the Tribunal is of the opinion that the refusal is reasonable, the Tribunal shall make an order for the continuation of his contract of employment; and
 - (b) otherwise, the Tribunal shall make no order.
- (9) If on a hearing of an application for interim relief the employer —
 - (a) fails to attend before the Tribunal; or
 - (b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3),the Tribunal shall make an order for the continuation of the employee’s contract of employment.

118C Order for continuation of contract of employment
[P.1996/18/130 and drafting]

- (1) An order under section 118B for the continuation of a contract of employment is an order that the contract of employment continue in force —
 - (a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters; and
 - (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.
- (2) Where the Tribunal makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the complaint.
- (3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid —

- (a) in the case of a payment for any such period falling wholly or partly after the making of the order, on the normal pay day for that period; and
 - (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If the amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under subsection (2); and, conversely, any payment under that subsection in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed by his employer, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the Tribunal shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this section, the amount which an employee could reasonably have been expected to earn, his normal pay period and the normal pay day for each such period shall be determined as if he had not been dismissed.

118D Application for variation or revocation of order
[P.1996/18/131 and drafting]

- (1) At any time between —
- (a) the making of an order under section 118B; and
 - (b) the determination or settlement of the complaint,
- the employer or the employee may apply to the Tribunal for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) Sections 118A and 118B apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, section 118A(4) has effect with the substitution of a reference to the employee for the reference to the employer.

118E Consequences of failure to comply with order
[P.1996/18/132 and drafting]

- (1) If, on an application of an employee, the Tribunal is satisfied that the employer has not complied with the terms of an order for the reinstatement or reengagement of the employee under section 118B(5) or (7), the Tribunal shall —
- (a) make an order for the continuation of the employee's contract of employment; and
 - (b) order the employer to pay compensation to the employee.

- (2) Compensation under subsection (1)(b) shall be of such amount as the Tribunal considers just and equitable in all the circumstances having regard —
 - (a) to the infringement of the employee's right to be reinstated or reengaged in pursuance of the order; and
 - (b) to any loss suffered by the employee in consequence of the non-compliance.
- (3) Section 118C applies to an order under subsection (1)(a) as in relation to an order under section 118B.
- (4) If, on the application of an employee, the Tribunal is satisfied that the employer has not complied with the terms of an order for the continuation of a contract of employment, subsection (5) or (6) applies.
- (5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order —
 - (a) the Tribunal shall determine the amount owed by the employer on the date of the determination; and
 - (b) if on that date the Tribunal also determines the employee's complaint that he has been unfairly dismissed, it shall specify that amount separately from any other sum awarded to the employee.
- (6) In any other case, the Tribunal shall order the employer to pay the employee such compensation as the Tribunal considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.

Clause 22

New sections 167A and 167B inserted into the Employment Act 2006 by clause 22 of the Employment (Amendment) Bill 2023:

167A Regulations pertaining to rights under sections 44A, 44C, 44E¹⁴ and 44G

- (1) With respect to—
- (a) the right to time off conferred by ~~section 44A or 44G~~ section 44A, 44C, 44E or 44G¹⁵;
 - (b) the rights to time off conferred by those sections ~~taken together~~¹⁶,
the Department may by regulations do any one or more of the things listed in subsection (2).
- (2) Subject especially to sections 69, 70, 87, 88 and 89 of the *Interpretation Act 2015* (but without limiting the application of any other relevant provision of that Act), those things are —
- (a) prescribe whether the time off is to be paid or unpaid and, if the former, the basis on which the remuneration due is to be calculated;
 - (b) vary the number of occasions specified in section 44A(2);
 - (c) prescribe the number of occasions on which an employee may take time off under section 44G and how many of those occasions the employee is entitled to be paid for;
 - (d) vary the maximum time off specified in section 44A(3);
 - (e) vary the number of occasions an employee is entitled to take time off to attend adoption appointments for the purposes specified in section 44C(5) and section 44E(4);
 - (f) vary the maximum number of hours the employee is entitled to take off during working hours for the purposes specified in section 44C(6) and section 44E(5);
 - (g) prescribe further procedures to supplement those contained in section 44F —
 - (i) for complaints to be made to the Tribunal;
 - (ii) pertaining to the declarations that the Tribunal may make,
in either of the circumstances specified in subsection (3);¹⁷
 - (h) prescribe matters that are relevant or irrelevant, as the case may be, to the determination of whether an amount of time off under section 44G is reasonable.
- (3) The circumstances referred in subsection (2)(h) are that the employer —
- (a) has failed to let an employee take paid or unpaid leave in accordance with section 44C and section 44E; or

¹⁴ Amendment made at Clauses Stage, House of Keys, 23 January 2024

¹⁵ Amendment made at Clauses Stage, House of Keys, 23 January 2024

¹⁶ Amendment made at Clauses Stage, House of Keys, 23 January 2024

¹⁷ Amendment made at Clauses Stage, House of Keys, 23 January 2024

(b) has failed to pay any amount to which the employee is entitled under section 44C or section 44E.¹⁸

167B Regulations applying UK legislation to the Island

- (1) Subject to subsection (2), the Department may by regulations apply to the Island as part of the law of the Island any one or more of the specified sections —
 - (a) subject to such —
 - (i) exceptions;
 - (ii) adaptations;
 - (iii) modifications; and
 - (b) to such extent,
as the Department thinks fit.
- (2) The Department must expressly provide in the regulations that they apply to no one other than —
 - (a) an employee who has applied or intends to apply for a parental order under section 89 of the *Children and Young Persons Act 2001*;
 - (b) a child to whom such a parental order pertains or is to pertain, as the case may be.
- (3) In subsection (1), “the specified sections” are following sections of the Employment Rights Act 1996 (of Parliament) —
 - (a) section 75A;
 - (b) section 75B;
 - (c) section 75D;
 - (d) section 75H;
 - (e) section 80B.

¹⁸ Amendment made at Clauses Stage, House of Keys, 23 January 2024