

STATES OF JERSEY



DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201-

Lodged au Greffe on 12th February 2019
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 11) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy J.A. Martin of St. Helier**

Minister for Social Security

Dated: 8th February 2019

REPORT

The Draft Employment (Amendment No. 11) (Jersey) Law 201- (the “draft Law”) would amend the [Employment \(Jersey\) Law 2003](#) (the “Employment Law”) to extend family friendly employment rights to provide the following –

1. 52 weeks of parental leave (combining maternity, adoption and parental leave) for all parents, including surrogate parents.
2. Time off work to attend appointments for adoptive and surrogate parents.
3. Breastfeeding rights – breaks and workplace facilities.
4. Paid leave where necessary on health and safety grounds for pregnant and breastfeeding women.

	CURRENT RIGHTS		SEPTEMBER 2019
Maternity leave	26 weeks of leave, of which 6 weeks paid at 100% of pay by the employer. No qualifying period.	⇒	<u>52 weeks</u> 52 weeks of leave for all parents, of which 6 weeks paid at 100% of pay by the employer, with no qualifying period.
Parental leave	26 weeks of leave, of which 2 weeks paid at 100% of pay by the employer. Can be taken in up to 3 blocks of leave.		Can be taken in up to 4 blocks of leave during a 3 year period.
Adoption leave	Paid and unpaid leave equivalent to maternity leave and parental leave.		Also available to adoptive and intended surrogate parents.
Surrogacy leave	Currently no right to leave for the intended surrogate parents.		
Surrogate parents – antenatal care	Currently no right to time off to attend appointments.	⇒	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid.
Adoptive parents – appointments	Currently no right to time off to attend adoption appointments.	⇒	Unlimited attendance at appointments – up to 10 hours paid, the rest unpaid.
Breastfeeding breaks	Currently no rights.	⇒	Right to request temporary variation to terms and conditions.
Breastfeeding facilities	Currently no rights.	⇒	Employers must take reasonable steps to provide facilities in the workplace.
Paid absence on health and safety grounds	Currently no rights.	⇒	Right to paid absence where a risk assessment prevents a pregnant or breastfeeding woman from carrying out her normal job and she cannot be allocated to other duties.

BACKGROUND

The proposed amendments to the Employment Law would introduce the second stage of improvements to family friendly rights for employees in Jersey following a recommendation from the Employment Forum (the “Forum”) in December 2017. This further extension of employment rights is seen as a progressive and inclusive approach that is intended to improve the position for parents in the workplace, give families more choice and flexibility to help meet their work and family responsibilities, and to encourage gender balance in childcare roles.

Relatively straightforward changes were achieved quickly by Regulations in September 2018, primarily to increase the existing periods of leave. More significant changes were proposed to follow one year later in September 2019, to give employers more time to prepare for a fundamental change to the parental leave system.

The former Minister for Social Security, Deputy S.J. Pinel of St. Clement (the “former Minister”), submitted law drafting instructions for both stages of the changes. A commitment was given in the report that accompanied the draft Regulations to the States Assembly in 2018 that all of the changes would be in place by September 2019, as the Forum had recommended.

The Employment Forum’s recommendation

The Forum is a non-political, independent body, which was set up under the Employment Law to consult on matters relating to the Employment Law at the direction of the Minister for Social Security. The members of the Forum are representatives of employers, employees and independent members.

In August 2016, the former Minister directed the Forum to consult on extending the existing family friendly employment rights, which had been in place since 2015. The Forum consulted during the period January to March 2017 and received 331 written responses, as well as detailed comments from a number of public stakeholder meetings. The Forum delivered its recommendation on 15th December 2017, which was presented as a Report to the States ([R.140/2017](#)).

September 2018 amendments

The following amendments to the Employment Law were introduced by Regulations from 1st September 2018¹ –

1. Increase maternity, adoption and parental leave to 26 weeks.
2. Increase paid maternity leave to 6 weeks.
3. Introduce 2 weeks of paid parental leave.
4. Introduce 6 weeks of paid adoption leave.
5. Introduce antenatal appointments for the father/partner.
6. Extend the right to request flexible working to all employees.

THE DRAFT LAW

The draft Law would introduce the following changes to the Employment Law from 1st September 2019 –

¹ <https://statesassembly.gov.je/assemblypropositions/2018/p.27-2018.pdf>

1. 52 weeks of parental leave for all parents

The draft Law merges the current separate rights to maternity, parental and adoption leave to provide a new system where all new parents would be independently entitled to 52 weeks of parental leave. Parental leave would be available to each of the following –

- i. The mother of the child.
- ii. The father/partner – the father of the child, or the person who is married to, the civil partner of, or the partner of the child’s mother or adopter. That person must also expect to have responsibility for the upbringing of the child.
- iii. The adoptive parent(s).
- iv. The intended parent(s) in a surrogacy arrangement.

Six weeks of the 52 week leave period would be paid by the employer at the employee’s normal rate of pay (replacing the current 6 weeks of maternity/adoption leave and 2 weeks of paid parental leave). Parental leave would be available from day 1 of employment, and parents would have the right to return to the same job (where that job still exists) after taking up to 52 weeks of parental leave.

Parents must give their employer notice of their intended leave dates. JACS will provide new model agreements, forms and templates to help employers. Administratively, the main difference for employers would be that the parent may take the 52 weeks of leave in up to 4 blocks, of no less than 2 weeks each, over a 3 year period. This would help to ensure that parents can use the full period of leave appropriately to suit the needs of their family.

This change might help to address the findings of the Jersey Lifestyle and Opinions Survey (2016) that around two-thirds of men had not taken any parental leave at all, and 92% of men said they would have liked to have taken more leave (69% of men said they were prevented from taking more leave because the length of leave was limited by their employer).

Providing longer defined periods of leave for each parent is considered to be more appropriate than a ‘shared leave’ system; partly because women tend to prefer to take all of their maternity leave rather than transferring it to the other parent, and so take-up of shared leave has been low in the UK. In Sweden, men have been found to be more likely to use a defined period of leave than a shared period of leave.² A defined leave approach may be more successful in addressing sex discrimination in the workplace, by enabling both parents to take an equal part in parental responsibility and encouraging a culture change in local workplaces.

2. Time off to attend appointments for adoptive parents

Adoptive parents would be entitled to attend an unlimited number of appointments relating to the adoption, of which up to 10 hours of appointments would be paid at the normal rate of pay, and the rest would be unpaid. The appointments must be in Jersey and the employer may request evidence (for example, official notification of an appointment schedule from the adoption agency, or an invitation to take part in an adoption assessment).

JACS guidance would provide more details to help employers manage this; for example, what an employer might expect in terms of a reasonable amount of time off,

² For more information on shared leave in the UK and Sweden, see pages 24–25 of the Forum’s recommendation.

and that employers should be notified in advance of the dates and times of appointments, where possible.

3. Time off to attend appointments for surrogate parents

The Employment Law currently provides that pregnant employees and those who have a ‘qualifying relationship’ with the pregnant employee may take time off to attend antenatal appointments. The draft Law extends the definition of ‘qualifying relationship’ so that, in addition to the father/partner, the intended parents in a surrogacy situation would also be entitled to an unlimited number of paid appointments to accompany a pregnant woman, of which up to 10 hours of appointments would be paid at the normal rate of pay and the rest unpaid.

The antenatal appointments must be in Jersey, and the employer may request evidence (for example, written notice of the time and date of the appointment, that the appointment is made on the advice of a medical practitioner, midwife or nurse, and confirmation that the employee is taking time off to attend an antenatal appointment with the expectant mother).

4. Breastfeeding breaks

The draft Law would give employees the right to request reasonable breaks from work for the purpose of breastfeeding or expressing breastmilk. On the basis that breastfeeding breaks are potentially a short-term and temporary arrangement, rather than a permanent change to terms and conditions of employment, provision is made for a temporary variation to terms and conditions relating to breastfeeding. Changes might include a longer lunch-break, combining lunch and tea-breaks, an extra break, shorter working hours, or different working hours.

Where the employee returns to work within 52 weeks of the child’s birth, she must be paid for any breaks for breastfeeding or expressing at the normal rate of pay for any time during that 52 week period. After the 52 week period, any breastfeeding or expressing breaks would be unpaid.

The 2017 Jersey Opinions and Lifestyle Survey found that 62% of adults agreed that employers should provide rest-breaks for breastfeeding mothers.

5. Breastfeeding facilities

The draft Law requires employers to take reasonable steps to provide facilities in the workplace for breastfeeding mothers to express and store milk, where an employee requests it.

It is recognised that, in many small workplaces, it may not be possible to provide dedicated facilities. Based on a recommendation from the Forum, the draft Law includes a ‘reasonable steps’ provision similar to that included in the [Discrimination \(Jersey\) Law 2013](#)³. This helps employers (and ultimately the Employment and Discrimination Tribunal) to determine when it might be reasonable for an employer to provide facilities in the workplace, taking into account various matters, including whether any steps would be effective, the cost, the resources available to the employer, and the size of the business.

³ Applies in relation to reasonable adjustments to avoid substantial disadvantage to a disabled person.

The 2017 Jersey Opinions and Lifestyle Survey found that 60% of adults agreed that employers should provide facilities for breastfeeding mothers.

6. Health and safety absence

The draft Law provides that an employee who is pregnant, breastfeeding, or who has recently given birth (within 6 months) would have the right to paid leave (sometimes known as paid suspension) where the following 2 conditions are met –

1. It is not reasonably practical for the employee to fulfil the usual requirements of her work, according to an assessment of significant risk undertaken in accordance with Article 3 of the [Health and Safety at Work \(Jersey\) Law 1989](#); and
2. It is not possible to allocate the employee to other duties, alter her duties, or make appropriate changes to the working environment.

An employee would have the right to paid leave if she has notified her employer of her pregnancy and she has not unreasonably refused suitable alternative employment.

7. Discrimination Law

Family friendly rights in the workplace are closely linked with protection against sex discrimination. ‘Sex’ and ‘pregnancy and maternity’ were introduced as protected characteristics under the [Discrimination \(Jersey\) Law 2013](#) in September 2015. Any less favourable treatment which has its root cause in pregnancy is likely to be seen by a Tribunal as direct discrimination, as pregnancy is a gender-specific condition. The draft Law would make a number of associated changes to the Discrimination Law to align the provisions, particularly in relation to the amalgamation of parental leave.

8. Detriment and dismissal

Employees will continue to be protected under the Employment Law against detrimental treatment for reasons relating to the existing rights, including pregnancy, giving birth, adoption and requesting flexible working. Detriment might include, for example, cancelling training for a woman who has recently become pregnant, or not promoting a man who has given notice of his intention to take parental leave.

The Employment Law also provides a number of “automatically” unfair reasons for dismissal where there is no qualifying period of employment and dismissal cannot be justified. This includes where the reason for a dismissal relates to an employee’s pregnancy, the adoption of a child, or requesting flexible working.

The draft Law would ensure that these 2 protections are extended to the new rights, including breastfeeding breaks and facilities, and taking or seeking to take up to 52 weeks of parental leave.

Strategic Priorities

A key objective for Customer and Local Services, as set out in the States of Jersey ‘Transition Report 2019’ ([R.155/2018](#)), is to “*Complete implementation of family friendly employment law changes.*”. Work to improve family friendly employment rights started in 2017, and the implementation of the proposed draft Law would complete the objective.

The extension of family friendly employment rights contributes both directly and indirectly to Ministers’ strategic priorities for the next 4 years, as outlined in the

Common Strategic Policy 2018–2022. These include putting children first, improving Islanders’ wellbeing and mental and physical health, creating a sustainable, vibrant economy and skilled local workforce for the future, and reducing income inequality and improving the standard of living.

❖ **Putting children first**

International evidence demonstrates the importance of a child’s early years, and of enabling parents to give their children the best possible start in life through the provision of high-quality accessible universal and targeted early years services. A Policy Development Board will bring forward policy development proposals across the term of government, ensuring that key connections are made to existing areas of policy work.

Research indicates that there are links between a period of maternity leave and health and societal benefits, including: stronger mother and child bonding, reduced post-natal depression, improved child cognitive development, increased rates of immunisation, increased rates and duration of breastfeeding, and improved child health and development in later life⁴.

The extension of family friendly rights will support the priority to put children first, giving parents greater choice relating to their children, providing early investment in the health of the mother and child in the weeks surrounding childbirth, and to ensure that breastfeeding does not have to be a financial choice for the mother.

The potential benefits to the proposed extension of the family friendly rights include: improved child health by spending more time with one or both parents in their first 3 years of life (e.g. bonding and cognitive development), and increasing the likelihood of exclusive breastfeeding for up to 52 weeks, improving child health and development.

One of the ambitions of Future Jersey⁵ is to improve breastfeeding rates. This indicator monitors the proportion of mothers who are breastfeeding (fully or partially) at 6–8 weeks. There has been significant progress in this indicator – in 2017 the proportion of babies being breastfed rose to 60%. Around 1 in 5 women in Jersey choose to breastfeed at 9–12 months⁶. It is likely that a small proportion of women will continue to breastfeed for longer than 12 months. (In the UK, less than 1 in 100 mothers breastfeed at 12 months.) Low prevalence of continued breastfeeding may be partially due to lack of adequate breaks and facilities in the workplace.

❖ **A skilled local workforce for the future**

Family friendly rights help to maximise the potential of the Island’s workforce by enabling increased participation rates, retention of appropriate skills in the workforce, and removing barriers to work, including a right to return to the same job on the same terms and conditions after a longer, more flexible period of parental leave for both parents. By introducing provisions to retain the skills of parents in the workplace, and ensuring that workplaces are more family friendly, such as workplace breastfeeding

⁴ www.europarl.europa.eu/document/activities/cont/201010/20101005ATT85068/20101005ATT85068EN.pdf

⁵ www.gov.je/Government/PlanningPerformance/FutureJersey/Examine/LearnGrow/Pages/BreastfeedingRates.aspx

⁶ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Breastfeeding%20Profile%202018%2020180329%20SJ.pdf>

rights, this will help to ensure that locally qualified people are available to work, and will support employers to retain and attract those locally qualified employees.

Even without specific employment rights, pregnancy and childbirth brings administrative implications for employers, particularly as Jersey has a high proportion of women in the workplace (86% according to the Jersey Opinions and Lifestyle Survey for 2018). However, the extended rights can create genuine benefits for employers in terms of productivity, retaining skills and reduced recruitment and training costs.

❖ **Reduce income inequality and improve the standard of living**

The improved employment rights would help to provide greater economic stability for families, with both parents entitled to take a longer period of leave over a 3 year period and return to the same job afterwards, on the same rate of pay. The changes would enable working parents to more effectively combine their parenting responsibilities with a job, and ultimately aims to address inequality (for example, reducing the gender pay gap⁷) by minimising discrimination against women in employment, encouraging a change in workplace attitudes towards the involvement of the father/partner in child care, and encouraging more fathers/partners to take longer periods of parental leave and share parental responsibility in a child's early years.

FINANCIAL AND MANPOWER IMPLICATIONS

Advice, conciliation and enforcement – JACS will continue to provide an independent advisory and conciliation service in relation to employment rights from its annual grant of £354,900 for 2019. JACS provides a free service to help employers prepare for the changes, with guidance on the website, advice on changing policies and procedures, template application forms, public and private training sessions, and the JACS outreach service will continue to support small businesses.

The Judicial Greffe holds a separate budget for the Tribunal Service, which includes dealing with complaints under the Employment Law. No additional funding or resources would be allocated to these bodies to specifically deal with the proposed extension to existing employment rights.

Human Resources – The cost implications of the proposed improvements to family friendly rights are expected to be relatively small. It is not known how many additional employees will become entitled and will choose to use these rights. However, estimates based on a number of assumptions are provided below to provide an indication of the potential cost to the Government of Jersey as an employer.

The potential additional cost of the proposed amendment is estimated to total around £206,000 per annum (an average of £31 per member or staff, per annum⁸). Any costs would be met from within existing resources.

1. Impact of 6 weeks' paid leave for all parents –

- Mothers taking maternity leave – 6 weeks' paid leave, no increase in cost. SoJ policy already provides equivalent.
- Primary adopter taking adoption leave – 6 weeks' paid leave, no increase in cost. SoJ policy already provides equivalent.

⁷ The difference between average wages earned by men and average wages earned by women in jobs at all levels across a workforce.

⁸ Based on 6,732 as the average number of full-time equivalent persons employed, reported in the States of Jersey Annual Report and Accounts 2017 (p.171).

- Fathers and partners of the mother or adopter – increase from 2 weeks’ to 6 weeks’ paid leave. SoJ policy currently provides 2 weeks of paid parental leave. Fifty-one staff took paternity leave in 2018, ranging from 6 to 57 days of leave and averaging approximately 10 days per employee. This means that, on average, fathers/partners took leave for the 2 paid weeks. If the paid period of leave increases to 6 weeks, it is estimated that 50 fathers/partners taking parental leave might take the full 6 week paid period in each year, which would mean an additional 4 weeks of paid leave each x £861⁹ per week = £3,444 per parent.

Potential cost: £172,200

2. Paid time off for appointments –

- 10 hours of paid time off work to attend antenatal appointments for surrogate parents – No SoJ policy. The number of surrogacy arrangements in Jersey is small (one each year at most). Estimate assuming one surrogacy in a 2 year period where both parents work for SoJ – one employee each year taking 10 hours of paid time off work x £21.53 per hour (£861/40 hours) = £215.30.

Potential cost: £215

- 10 hours of paid time off work to attend adoption appointments for adoptive parents – SoJ policy already provides equivalent – employees are entitled to reasonable paid time off to attend interviews and appointments with social workers, etc., after matching for adoption has been confirmed.

Potential cost: £0

3. Parental leave for surrogate parents –

- 6 weeks’ paid leave each. No SoJ policy. The number of surrogacy arrangements in Jersey is small (one each year at most). Estimate, on average, one employee each year taking 6 weeks’ leave x £861 per week = £5,166. This is an average assuming one surrogacy every 2 years, with both parents working for SoJ.

Potential cost £5,166

4. Paid leave on health and safety grounds –

- SoJ policy offers 6 weeks of paid leave with any further period of leave unpaid. The Law would provide an unlimited number of paid weeks of leave. If an employee were to be given paid leave for this reason, the estimated cost would be an additional 6 weeks’ pay at £861 per week (i.e. 12 weeks total per paid suspension) = 6 weeks x £861 per week = £5,166. However, instances are very rare, and so this is unlikely to bring a cost to SoJ. There are no recent SoJ records of paid leave for a pregnant or breastfeeding employee on health and safety grounds. In cases that have arisen, the employee’s role or duties have been changed to minimise any potential risks.

Potential cost: £0

⁹ The median annual earnings figure for full-time equivalent staff is £44,775 per annum, as reported in the [States’ Financial Report and Accounts 2017 \(p.170\)](#).

5. Breastfeeding facilities –

- under the current SoJ maternity policy, employees are encouraged to speak to their manager about facilities in the workplace for breastfeeding, or for expressing, before returning to work. The draft Law would require the SoJ to take reasonable steps to provide facilities in the workplace for breastfeeding mothers to express and store milk, where an employee requests it. This may bring a small cost in some cases, e.g. a fridge or seating for an existing office space. Around £10,000 may be necessary to bring facilities up to standard. However, a sum is not included in the potential cost because work is already underway to ensure that all departments have a well-being room, depending on the location and number of staff, and so any additional cost to the Government of Jersey is part of an existing initiative, rather than arising out of this proposed future law change.

Potential cost: £0

6. Breastfeeding breaks –

- The SoJ maternity policy asks employees to discuss short-term flexible working arrangements to accommodate breastfeeding on the basis that breaks from work for this purpose during working hours would normally be unpaid. Under the proposed draft Law, where an employee returns to work within 52 weeks of the child's birth, she must be paid for any breaks for breastfeeding or expressing at the normal rate of pay for any time during that 52 week period. After the 52 week period, any breastfeeding or expressing breaks would be unpaid. It is estimated that 20 employees each year might return to work after less than 52 weeks' parental leave and seek to temporarily vary their terms of employment for this purpose. It is also estimated that the employee will request a one hour paid break each day at £21.53 per hour (£861/40 hours) for a 3 month period, working a 5 day week. One hour x £21.53 x 5 days x 13 weeks = £1,399 per employee x 20 employees = £27,989. Experience of requests to use facilities at Cyril Le Marquand House in 2018 indicate that 4 mothers booked the well-being room for the purpose of expressing, in 30 minute slots around lunchtimes for a duration of around 2 months each.

Potential cost £27,989

Total potential cost: £205,570

Human Rights

No human rights notes are annexed because the Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This draft Law would further amend the Employment (Jersey) Law 2003 (the “Employment Law”), in three principal respects.

First, by *Article 3*, it would introduce a new Part 3B into the Employment Law, creating new rights for women who are pregnant (where it is not safe for them to continue working in their existing employment) and also for breastfeeding mothers. Where a woman continues to breastfeed following her return to work, new Articles 15H, 15I and 15J would enable her to request variations of terms and conditions of employment in order to permit reasonable breaks from work for the purpose of breastfeeding (which includes expressing breast milk). Under new Article 15K, employers are also required to provide facilities for employees who are breastfeeding.

Secondly, by *Article 4* this draft Law would amend, and substantially substitute, Part 5A of the Employment Law to update and consolidate the rights to leave for ante-natal and pre-adoption appointments and for parental leave, in the latter case extending the entitlement to a period of up to 52 weeks in total (beginning with a period of 6 weeks’ paid leave), for all parents including adoptive and surrogate parents. The 52 weeks need not be taken continuously, but must be taken in blocks of no less than 2 weeks, during the entitlement period (which runs from the beginning of the 11th week before the expected date of adoption or childbirth, and ends 3 years after the date of actual adoption or childbirth). Finally, *Articles 5 and 6* would make other minor and consequential amendments to the Employment Law and to the Discrimination (Jersey) Law 2013 respectively.

Article 1 is an interpretation provision for the purposes of this Law, and *Article 2* inserts a definition of “breastfeeding” into the interpretation provision in Article 1 of the Employment Law.

Article 7 gives the title by which this Law may be cited and provides for it to come into force on 1st September 2019.



Jersey

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Arrangement

Article

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Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 11) (JERSEY) LAW 201-

A LAW to amend further the Employment (Jersey) Law 2003

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, a reference to a Part or to an Article by number, and without any contrary indication, is to the Part or Article of the same number in the Employment (Jersey) Law 2003¹.

2 Article 1 (interpretation and application) amended

In Article 1(1) after the definition “affected employee” there is inserted –
“breastfeeding” includes the act of expressing breast milk;”.

3 New Part 3B inserted

After Part 3A (flexible working) there is inserted –

“PART 3B

RIGHTS IN RESPECT OF PREGNANCY AND BREASTFEEDING

“15G Entitlement to leave during pregnancy or breastfeeding

- (1) This Article applies in respect of an employee who notifies her employer in writing that she is pregnant, has given birth within the previous 6 months, or is breastfeeding.

- (2) An employee in respect of whom this Article applies is entitled, subject to paragraph (8), to leave for any period during which it is not reasonably practicable –
 - (a) for the employee to continue to fulfil any usual requirement of her employment, according to an assessment of significant risks undertaken in accordance with Article 3 of the Health and Safety at Work (Jersey) Law 1989²; and
 - (b) for the employer to allocate the employee to other duties, alter her duties, or make appropriate changes to the working environment to enable her to continue working.
- (3) Entitlement to leave under this Article is in addition to, and does not derogate from, any other entitlement of the employee to rest periods or to leave under this Part or Parts 3 and 3A.
- (4) Subject to paragraph (9), an employee is entitled to be paid for any period of leave to which she is entitled under this Article, at the rate of a week's pay determined in accordance with Schedule 1 and reduced pro rata.
- (5) The right to payment of remuneration under paragraph (4) does not affect a right of the employee to remuneration under her contract of employment.
- (6) Any remuneration paid to an employee under her contract of employment in respect of a period of leave under this Article goes towards discharging any liability of the employer, under paragraph (4), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (4) in respect of that period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.
- (7) Where during any period an employee is entitled to leave both under this Article and under a separate provision (including a provision of a relevant agreement) or another enactment, the employee may not exercise those rights separately but may, in taking leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.
- (8) An employer is not obliged to grant leave under this Article –
 - (a) where the employee has notified the employer that she is pregnant and the employee has failed, within a reasonable time of being requested in writing to do so, to provide a certificate of her pregnancy, from –
 - (i) a registered medical practitioner, or
 - (ii) a registered midwife;
 - (b) where the employer knows that the employee is not, or is no longer, a new or expectant mother;
 - (c) where the employer cannot establish that the employee remains a new or expectant mother.
- (9) An employer is not obliged to make payment for any period of leave under this Article where –

- (a) the employer has offered the employee suitable alternative employment at the same rate of pay as her existing employment; and
- (b) the employee has unreasonably refused that alternative employment.

(10) Where the employee's employment terminates –

- (a) after the commencement of a period of leave under this Article; but
- (b) before the time when (apart from this paragraph) that period would end,

the period of leave ends on the date of the termination.

15H Entitlement to request temporary variation of terms and conditions of employment for the purposes of breastfeeding

(1) An employee who is breastfeeding is entitled to apply to her employer for a variation of her terms and conditions of employment, if the variation relates to –

- (a) the hours during which the employee is required to work;
- (b) the times when the employee is required to work; or
- (c) the place where the employee is required to work,

and is solely for the purpose of enabling her to breastfeed.

(2) An application under this Article must –

- (a) state the purpose for which the variation is sought; and
- (b) specify the variation applied for and the period for which it is proposed to be effective.

(3) Where an employee has any right, arising under her contract of employment or otherwise, which corresponds to the entitlement conferred by paragraph (1) to make an application for a variation in her terms and conditions of employment –

- (a) the employee may not exercise both the entitlement conferred by paragraph (1) and the corresponding right, but may, in requesting a variation, rely on whichever of the entitlement, or the right, is the more favourable; and
- (b) if she relies, under sub-paragraph (a), on the corresponding right as more favourable, the provisions of Article 15I relating to an application under this Article apply, subject to such modifications as may be necessary, in relation to that right as though the exercise of it were such an application.

(4) Entitlement to request a variation of terms and conditions of employment under this Article is in addition to, and does not derogate from, an employee's right to request a change in those terms and conditions under Article 15A.

15I Employer's duties in relation to variation under Article 15H

- (1) Subject to paragraph (2), an employer to whom an application under Article 15H is made –
 - (a) must hold a meeting, at a time convenient to the employer and employee, to discuss the application within the period of 7 days beginning with the day on which the application is made;
 - (b) may agree to the variation as requested by the application, or vary the employee's terms and conditions in such other reasonable manner as may be agreed between the employer and the employee; and
 - (c) must give the employee notice of his or her decision on the application, within the period of 14 days beginning with the day on which the application is made.
- (2) Paragraph (1) does not apply where the employer –
 - (a) agrees to the variation as requested by the application; and
 - (b) gives notice of his or her decision to the employee, within the period of 7 days beginning with the day on which the application is made.
- (3) Where the employer's decision is to agree to a variation in the terms and conditions of the employee's employment, the notice under paragraph (1)(c) or (2)(b), as the case may be, must specify the agreed variation and the period for which it is to be effective.
- (4) Where the employer's decision is to refuse the application, a notice under paragraph (1)(c) must –
 - (a) specify the grounds for the refusal; and
 - (b) set out the appeal procedure for which provision is made by Article 15J.
- (5) If the period of the variation falls within the period of 52 weeks beginning with the birth of the child, paragraphs (1) and (2) to (5) of Article 55C (right to remuneration during time off to receive ante-natal care) apply in relation to the employee taking time off for breastfeeding in the same way as they would apply if the employee were taking time off for the purpose permitted by that Article.

15J Appeal against refusal of variation

- (1) An employee is entitled to appeal to her employer against –
 - (a) her employer's decision to refuse an application under Article 15H; or
 - (b) a failure by her employer to reach agreement as to a variation requested by such an application.
- (2) An appeal under this Article is made by giving notice of appeal to the employer –

- (a) within the period of 7 days beginning with the day on which notice of the decision is given, or the failure occurs; and
 - (b) setting out the grounds of appeal.
- (3) Subject to paragraph (4), within the period of 7 days beginning with the date on which notice of appeal is given, the employer must hold a meeting with the employee, at a time convenient to the employer and employee and any person representing the employee, to discuss the appeal.
- (4) Paragraph (3) does not apply where, within the period of 7 days beginning with the date on which notice of appeal is given, the employer –
- (a) having considered the appeal, grants the application (whether unconditionally or by way of an agreed variation of the employee's terms and conditions); and
 - (b) notifies the employee of the decision on the appeal, specifying any agreed variation and the period for which it is to be effective.
- (5) Where a meeting is held under paragraph (3), the employer must give the employee notice of his or her decision within the period of 7 days beginning with the date of the meeting.
- (6) The rights conferred by Article 78A and 78B (rights to be represented, and to complain to the Tribunal) apply in respect of any meeting under paragraph (3) as they do in respect of disciplinary and grievance hearings.

15K Employer's duty to provide facilities for breastfeeding

- (1) Paragraph (2) applies to an employer of an employee who –
- (a) continues to breastfeed, following her return to work; and
 - (b) gives notice to her employer that she requires facilities to be provided in the workplace for that purpose.
- (2) The employer must take all reasonable steps to provide facilities for breastfeeding in the employee's workplace, and in determining what steps are reasonable in the circumstances, the matters to be considered include (but are not limited to) –
- (a) the extent to which any steps are, or would be if taken, effective to provide suitable facilities;
 - (b) the extent to which any steps are, or would be if taken, practical;
 - (c) the cost of any steps which could be taken;
 - (d) the extent of the financial, administrative and other resources available to the employer, including any provided by a third party, for the purpose of taking such steps;
 - (e) the characteristics of the employer such as the nature and size of the employer's business.

15L Applications, notices and appeals under Part 3B

- (1) Unless the contrary is proved, an application under Article 15H or an appeal under Article 15J is taken as having been made on the day the application, or (as the case may be) the notice of appeal, is received by the employer.
- (2) An employer and an employee may agree to an extension of any of the periods referred to in this Part.
- (3) A notice or agreement under this Part must be in writing.

15M Complaints to Tribunal for breach of requirement under Part 3B

- (1) An employee may present a complaint to the Tribunal that her employer has contravened a requirement under this Part.
- (2) No complaint under this Article may be made –
 - (a) in respect of an application which has been disposed of by agreement or withdrawn; or
 - (b) unless or until the employer notifies the employee of a decision under Article 15J(4)(b) to reject the application on appeal.
- (3) The Tribunal must not consider a complaint under this Article unless the complaint is presented –
 - (a) before the end of the period of 8 weeks beginning with the relevant date; or
 - (b) within such further period as the Tribunal considers reasonable in a case where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period.
- (4) In paragraph (3)(a), reference to the “relevant date” is –
 - (a) in the case of a failure to pay remuneration in respect of leave in accordance with Article 15G(4), or in respect of time off for breastfeeding in accordance with Article 15I(5), the date which is 28 days after the date on which the employee would normally expect to receive remuneration for the period of leave in question;
 - (b) in the case of a refusal to grant leave, or to make appropriate changes to the employee’s work or working environment, under and in accordance with Article 15G, the date of the refusal;
 - (c) in the case of a failure to give notice of a decision, under or in accordance with Article 15I(1)(c) or 15J(5), the date by which such notice should have been given;
 - (d) in the case of a failure to provide facilities for breastfeeding in accordance with Article 15K, the date on which notice was given under paragraph (1)(b) of that Article;
 - (e) in any other case, the date of the contravention complained of.

15N Remedies for breach of Part 3B

Where the Tribunal finds a complaint presented under Article 15M well-founded, it must make a declaration to that effect and may –

- (a) make an order requiring the employer to reconsider an application under Article 15H, or a notice under Article 15K;
- (b) order the employer to pay remuneration due to the employee under Article 15G(4) or 15I(5); and
- (c) order the employer to pay compensation to the employee of an amount not exceeding 4 weeks' pay."

4 Part 5A amended

- (1) In the heading to Part 5A, the words "MATERNITY, ADOPTION AND" are deleted.
- (2) The sub-headings "CHAPTER 1" and "INTERPRETATION" are deleted.
- (3) In Article 55A(1) –
 - (a) in the definition "adopter" for "or, in a case where 2 people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of this Part" there is substituted "and in a case where 2 people have been matched jointly, includes each of those people;"
 - (b) after the definition "adopter" there is inserted –

" "adoption date" means the date on which a child is placed with an adopter or, in the case of overseas adoption, the date on which a child who is to be adopted by a person in Jersey enters Jersey;"
 - (c) for the definition "childbirth" there is substituted –

" "childbirth" includes, except where the context otherwise requires –

 - (a) the birth of a living child at the full term of pregnancy; and
 - (b) the birth of a child, whether living or dead, at any time after 24 weeks of pregnancy,

and for the purposes of this Part it is irrelevant whether the child is or is to be placed with a surrogate parent or not;"
 - (d) after the definition "childbirth", the definition "compulsory maternity leave period" is deleted, and there is inserted –

" "entitlement period" has the meaning given by Article 55D(2)(b);

"expected week of adoption" means the week, beginning with midnight between Saturday and Sunday, during which it is expected that the adoption date will occur;"
 - (e) the definitions "ordinary maternity leave" and "ordinary maternity leave period" are deleted;
 - (f) after the definition "overseas adoption" there is inserted –

“paid parental leave period” has the meaning given by Article 55E;

“parental leave” means the leave to which a person is entitled under Article 55D;”;

(g) after the definition “registered nurse” there is inserted –

“surrogate parent” means a person on whose application, under section 54 of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, an order of court has been made providing for a child to be treated in law as a child of that person, or a person who is a potential applicant for such an order;”;

(h) the definition “week of childbirth” is deleted.

(4) After Article 55A the sub-headings “CHAPTER 2” and “ANTE-NATAL CARE” are deleted.

(5) In Article 55B –

(a) for the heading there is substituted –

“Right to time off for ante-natal or pre-adoption appointments”;

(b) for paragraph (1) there is substituted –

“(1) An employee in relation to whom this Article applies as provided by paragraph (1A)(a), (1B)(a) or (1C)(a) is entitled to be permitted by his or her employer to take time off during the employee’s normal working hours, for the purpose stated in whichever of paragraphs (1A)(b), (1B)(b) or (1C)(b) is applicable in the employee’s case.”;

(c) in each of paragraphs (1A) and (1B) for “This Article applies –” there is substituted “This Article applies, subject to paragraph (2) –”;

(d) after paragraph (1B) there is inserted –

“(1C) This Article applies, subject to paragraphs (2) and (2A) –

(a) in relation to an employee who has been notified by an approved adoption society that –

(i) a child is to be, or is expected to be, placed for adoption with the employee, and

(ii) the society has arranged an appointment in Jersey to enable the employee to have contact with the child or for another purpose connected with the adoption;

(b) for the purpose of enabling the employee to keep that appointment.”;

(e) in paragraph (2)(a) for “(1A)” there is substituted “(1A)(a)”;

(f) in paragraph (2)(b) for “(1B)” there is substituted “(1B)(a)”;

(g) at the end of paragraph (2)(b) for the full stop there is substituted a semi-colon and there is inserted –

“(c) in the case of an employee to whom this Article applies by virtue of paragraph (1C)(a), a document showing –

- (i) the date and time of the appointment, and
 - (ii) that the appointment has been arranged by or at the request of the same adoption society which gave the notification described in paragraph (1C)(a).”;
- (h) after paragraph (2) there is inserted –
 - “(2A) An employee to whom this Article applies by virtue of paragraph (1C) is not entitled to take time off on or after the date of the child’s placement for adoption with the employee.”;
- (i) in paragraph (4)(c) –
 - (i) at the end of clause (i) the word “or” is deleted, and
 - (ii) at the end of clause (ii) for the full stop there is substituted a semi-colon and there is inserted –
 - “(iii) a potential applicant for a parental order, under section 54 of the Human Fertilisation and Embryology Act 2008 of the United Kingdom, in respect of the expected child.”;
- (j) after paragraph (4) there is inserted –
 - “(5) In a case where this Article applies by virtue of paragraph (1C)(a) and 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 Article has effect as if –
 - (a) the purpose specified in paragraph (1C)(b) were the purpose of having contact with any one or more of the children and any other purpose connected with any adoption which is part of the same arrangement; and
 - (b) the reference in paragraph (2A) to the date of the child’s placement for adoption were a reference to the date of placement of the first child to be so placed as part of the arrangement.
- (6) In a case where 2 people have been matched jointly with a child for adoption, this Article may apply by virtue of paragraph (1C)(a) to each of those people.”.
- (6) In Article 55C –
 - (a) in paragraph (1) for “(1A)” there is substituted “(1A)(a)”;
 - (b) in paragraph (1A) for “(1B)” there is substituted “(1B)(a) or (1C)(a)”;
 - (c) in paragraph (2) for the words “Schedule 1, divided” there is substituted “Schedule 1 divided (except where paragraph (3) applies”;
 - (d) in paragraph (3) the comma following the word “pay” is deleted.
- (7) After Article 55B the sub-headings “CHAPTER 3” and “MATERNITY LEAVE” are deleted, and for Chapters 3 to 5 there is substituted –

“55D Entitlement to parental leave

- (1) An employee to whom this Article applies is entitled to parental leave amounting to 52 weeks in total.
- (2) The total amount of parental leave –
 - (a) includes, and must begin with, a period of 6 weeks of paid parental leave under Article 55E; and
 - (b) must be taken in accordance with this Part at any time during, but not after the end of, the period (the “entitlement period”) which –
 - (i) begins no earlier than the beginning of the 11th week before the week in which childbirth, or placement for adoption, is expected to occur, and
 - (ii) ends on the date which is 3 years from the date of childbirth or placement for adoption.
- (3) Any period of unpaid parental leave is additional to the entitlement to paid parental leave under paragraph (2)(a).
- (4) This Article applies to any employee who –
 - (a) is the mother of a child, and fulfils the requirements in Article 55F;
 - (b) is a person who –
 - (i) has a qualifying relationship with the mother or adopter of a child,
 - (ii) fulfils the requirements in Article 55F, and
 - (iii) has, or expects to have, responsibility for the upbringing of the child, or the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; or
 - (c) is the adopter of a child, and fulfils the requirements in Article 55G.
- (5) For the purposes of this Article, a person has a “qualifying relationship” with a child or its mother if the person is –
 - (a) married to, or the civil partner or partner of –
 - (i) the child’s mother, or
 - (ii) where one person only is matched with the child, the child’s adopter;
 - (b) the father of the child; or
 - (c) a surrogate parent of the child.
- (6) For the purposes of this Article, an employee is treated –
 - (a) as having responsibility or the main responsibility for the upbringing of a child, if the employee would have had such a responsibility but for the fact that the child was stillborn after 24 weeks of pregnancy, or has died;

- (b) as married to, or the civil partner or partner of, a child's mother or adopter, even if the child's mother or adopter has died.
- (7) An employee's entitlement to leave under this Article is not affected –
- (a) by the birth of more than one child as a result of the same pregnancy; or
 - (b) in the case of an adoption –
 - (i) by the placement for adoption of more than one child, or
 - (ii) in the case of an overseas adoption, by more than one child being adopted, as part of the same arrangement.

55E Paid parental leave

- (1) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as paid parental leave (a "paid parental leave period").
- (2) An employee who would normally have been required, under his or her contract of employment, to work during a paid parental leave period –
 - (a) is entitled to be paid remuneration by his or her employer not exceeding, in total, 6 weeks' pay at the appropriate weekly rate;
 - (b) is entitled, during that period, to the benefit of all terms and conditions of employment which would have applied had he or she been at work during that period; and
 - (c) is bound, during that period, by any obligations arising under those terms and conditions, except as provided by paragraph (1).
- (3) For the purposes of paragraph (2)(a) the appropriate weekly rate is the amount of one week's pay, calculated in accordance with Schedule 1.
- (4) Any remuneration paid to an employee under a contract of employment in respect of a paid parental leave period goes towards discharging any liability of the employer, under paragraph (2), to pay remuneration in respect of that period, and conversely, any payment of remuneration under paragraph (2) in respect of such a period goes towards discharging any liability of the employer to pay remuneration under the employee's contract of employment in respect of that period.
- (5) Any remuneration to be paid by an employer to an employee under paragraph (2) is to be reduced by any amount received by the employee by way of short term incapacity allowance under Article 15 of the Social Security (Jersey) Law 1974³, or by way of

maternity allowance under Article 22 of that Law, in respect of the paid parental leave period.

55F Notification of intention to take parental leave: mothers and surrogate parents

- (1) The requirements mentioned in Article 55D(4)(a) and (b)(ii) are that –
 - (a) no later than the end of the 15th week before the expected week of childbirth, or as soon after the end of that week as is reasonably practicable, the employee notifies the employer in writing of –
 - (i) the pregnancy,
 - (ii) the expected week of childbirth,
 - (iii) the date on which the employee intends each parental leave period to start, and
 - (iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take;and
 - (b) if requested by the employer to do so, the employee provides a certificate from –
 - (i) a registered medical practitioner,
 - (ii) a registered midwife, or
 - (iii) a registered nurse,stating the expected week of childbirth.
- (2) An employee who has notified a date (the “original date”) under paragraph (1)(a)(iii) may vary the original date if the employee notifies the employer in writing of a new date, by whichever is the earlier of –
 - (a) 14 days before the original date; or
 - (b) 14 days before the new date,or, if neither is reasonably practicable, as soon as reasonably practicable.
- (3) Notification under paragraph (1)(a)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of childbirth.

55G Notification of intention to take parental leave: adopters

- (1) The requirements mentioned in Article 55D(4)(c) are that the employee –
 - (a) has notified the approved adoption society of his or her consent to the placement of a child or, in the case of overseas adoption, has received official notification of that adoption;

- (b) notifies the employer in writing of –
 - (i) the intended adoption,
 - (ii) the expected week of adoption,
 - (iii) the date on which the employee intends each parental leave period to start, and
 - (iv) the duration of each period of leave which, in accordance with Article 55H, the employee intends to take;and
 - (c) if requested by the employer to do so, provides evidence in writing of the expected week of adoption notified to the employer under paragraph (1)(b)(ii).
- (2) An employee who has notified a date (the “original date”) under paragraph (1)(b)(iii) may vary the original date if the employee notifies the employer in writing of a new date, by whichever is the earlier of –
- (a) 14 days before the original date; or
 - (b) 14 days before the new date,
- or, if neither is reasonably practicable, as soon as reasonably practicable.
- (3) Notification under paragraph (1)(b) must be given to the employer –
- (a) no later than 7 days after the date on which the employee receives official notification of having been matched with the child for the purposes of adoption or, in the case of overseas adoption, after the employee receives notice of the date on which the child is expected to enter Jersey; or
 - (b) in a case where it is not reasonably practicable to comply with sub-paragraph (a), as soon as is reasonably practicable.
- (4) Notification under paragraph (1)(b)(iii) or (2) must not specify a date earlier than the beginning of the 11th week before the expected week of adoption.

55H Period of parental leave

- (1) In the absence of any relevant agreement to more favourable effect between the employer and the employee, an employee may choose to take the parental leave (including paid parental leave) to which he or she is entitled under this Part –
 - (a) in no more than 4 separate periods during the entitlement period; and
 - (b) for no less than 2 weeks in the case of each such period.
- (2) Subject to paragraph (3), the calculation of a period of parental leave begins on –

- (a) the date notified under Article 55F(1)(a)(iii) or Article 55G(1)(b)(iii), as the case may be; or
 - (b) where the employee has notified a new date under Article 55F(2) or 55G(2), on that new date (or if a new date has been notified more than once, on the last such date).
- (3) In a case where –
- (a) an employee has chosen to begin a period of parental leave on the date on which the child is born or adopted; and
 - (b) he or she is at work on that date,
- the period of parental leave begins on the day after that date.
- (4) Where the employee’s employment terminates –
- (a) after the commencement of a period of parental leave; but
 - (b) before the time when (apart from this paragraph) that period would end,
- the period of parental leave ends on the date of the termination.

55I Application of terms and conditions during parental leave

- (1) This Article applies in respect of any period of parental leave other than paid parental leave under Article 55E.
- (2) An employer must not require an employee to work during any period which the employee is entitled to take, and does take, as parental leave.
- (3) An employee who takes parental leave –
 - (a) is entitled, during the period of that leave, to the benefit of all terms and conditions of employment, except those as to remuneration, which would have applied had he or she been at work during that period; and
 - (b) is bound during that period by any obligations arising under those terms and conditions except as provided by paragraph (2).
- (4) For the purposes of paragraph (3)(a), any wages or salary payable to, or bonus or commission for work done by, the employee which are attributable –
 - (a) to a period during which the employee is on parental leave, are to be treated as remuneration; and
 - (b) to a period (other than a parental leave period) before the beginning of any period of the employee’s parental leave, are not to be treated as remuneration.

55J Work during period of parental leave

- (1) An employee may carry out work for his or her employer without bringing a period of parental leave, or the entitlement period, to an end.

- (2) For the purposes of this Article, and subject to paragraph (3) –
 - (a) any work carried out on any day constitutes a day's work; and
 - (b) work means any work done under the employee's contract of employment and may include any training or other activity undertaken for the purposes of his or her employment.
- (3) Reasonable contact from time to time between an employee and his or her employer, for such purposes as discussing the employee's return to work –
 - (a) does not constitute work; and
 - (b) does not bring a period of parental leave, or the entitlement period, to an end.
- (4) This Article does not confer any right, on an employer, to require any work to be carried out during an employee's parental leave.
- (5) Any day's work carried out under this Article does not have the effect of extending the total duration of a period of parental leave or of the entitlement period.

55K Notification of intention to return to work

- (1) An employee who intends to return to work earlier than the end of a particular period of parental leave must give his or her employer not less than 2 weeks' notice in writing of the intended date of such return.
- (2) If an employee attempts to return to work earlier than the end of that period without complying with paragraph (1), the employer may, subject to paragraph (3), postpone the employee's return to such a date as will secure that the employer has 2 weeks' notice of the employee's return to work and, if the employer does so, the employer must notify the employee in writing of that date.
- (3) An employer may not, under paragraph (2), postpone an employee's return to work to a date occurring after the end of the particular period of parental leave in question.
- (4) Where an employee is notified of a postponed date for return to work under paragraph (2), the employer is under no obligation to pay remuneration to the employee until that postponed date (even if the employee returns to work before that date).

55L Right to return to work after parental leave

- (1) An employee returning to work immediately after a period of parental leave is entitled to return to the job in which he or she was employed immediately before that period.
- (2) The right conferred by paragraph (1) is a right to return –

- (a) with such seniority, pension rights and all other rights in relation to the employee's job as he or she would have had if he or she had not been absent on such leave; and
 - (b) on terms and conditions no less favourable than those which would have applied if he or she had not been so absent.”.
- (8) Before Article 55R the sub-headings “CHAPTER 6” and “CONTRACTUAL RIGHTS AND ACCESS TO TRIBUNAL” are deleted.
- (9) In Article 55R –
 - (a) for the heading there is substituted –

“Contractual rights to time off for ante-natal and pre-adoption appointments and for parental leave”;

 - (b) for paragraph (1)(a) there is substituted –
 - “ (a) is entitled to time off under this Part –
 - (i) for the purpose of attending an ante-natal or pre-adoption appointment, or
 - (ii) by way of parental leave; and”.
- (10) In Article 55S (complaints to Tribunal), for paragraph (4)(a) to (g) there is substituted –
 - “ (a) in the case of an alleged contravention of Article 55B(1), the date of the ante-natal appointment referred to in either Article 55B(1A) or 55B(1B), or of the pre-adoption appointment referred to in Article 55B(1C), whichever is the provision by virtue of which Article 55B(1) applies in the particular case;
 - (b) in the case of an alleged contravention of Article 55C(1) or (1A) or Article 55E(2), the date which is 28 days after the date on which the employee concerned would expect normally to receive remuneration for the period of time off under Article 55C or parental leave under Article 55E;
 - (c) in the case of an alleged contravention of rights connected with parental leave conferred by any of Articles 55D(1) to (3), 55E, 55F(2), or 55H to 55L, the date of the day immediately following the day on which the particular period of parental leave in question ends;
 - (d) in any other case, the date of the contravention complained of.”.
- (11) In Article 55T (remedies for breach of Part 5A), in paragraph (1)(a) for “Article 55D(2) or (3)” there is substituted “Article 55E(2) or (3)”.

5 Minor and consequential amendments

- (1) In Article 31 (the right not to suffer detriment), in paragraph (3)(c) –
 - (a) for “Part 3A, 5A or 5B” there is substituted “Part 3A, 3B, 5A or 5B”;

- (b) in clause (iii) after “Part 3A” there is inserted “or 3B”;
 - (c) in clause (iv) “Chapter 2, 3 4 or 5 of” is deleted;
 - (d) in clause (v) for “during her maternity leave period or during his or her adoption leave period” there is substituted “during his or her parental leave period”;
 - (e) in clause (vi) “maternity leave, adoption leave or” is deleted.
- (2) In Article 58 (change of employer) at the end there is inserted –
- “(7) Nothing in this Article derogates from Regulation 14 of the Companies (Demerger) (Jersey) Regulations 2018⁴ (which has effect to provide that, among other matters, a period of employment with a demerging company is to be treated as a period of employment with the demerged company, and the demerger is not to be treated as interrupting the continuity of that period).”.
- (3) In Article 67 (dismissal for family or other reasons), in paragraph (1) –
- (a) in sub-paragraph (c) after “Part 3A” there is inserted “or 3B”;
 - (b) in sub-paragraph (d) “Chapter 2, 3 4 or 5 of” is deleted;
 - (c) in sub-paragraph (e) for “during her maternity leave period or during his or her adoption leave period” there is substituted “during his or her parental leave period”;
 - (d) in sub-paragraph (f) “maternity leave, adoption leave or” is deleted.
- (4) In Article 71 (replacements), in paragraph (2) for “maternity leave (whether compulsory or ordinary, as defined in Article 55A(1)), adoption leave under Chapter 4 of Part 5A, or parental leave under Chapter 5 of that Part” there is substituted “parental leave under Part 5A”.
- (5) In Article 104 (Regulations and Orders) paragraph (3B) is deleted.

6 Consequential amendments

In the Discrimination (Jersey) Law 2013⁵ –

- (a) in Article 6 (what constitutes direct discrimination) –
 - (i) for sub-paragraphs (6)(b) and (c) there is substituted –
 - “(b) her exercising or seeking to exercise the right to parental leave.”;
 - (ii) for sub-paragraph (7)(a) there is substituted –
 - “(a) if she has the right to parental leave –
 - (i) at the end of her entitlement period, or
 - (ii) if earlier, when she returns to work after the pregnancy or (as the case may be) the end of her final period of parental leave.”;
 - (iii) in sub-paragraph (7)(b) for “2 weeks” there is substituted “18 weeks”;
 - (iv) in sub-paragraph (9) “who has given birth within the previous 26 weeks” is deleted;

- (v) for paragraph (10) there is substituted –
“(10) In this Article “entitlement period” and “parental leave” have the same meanings as are given to those expressions by Part 5A of the Employment (Jersey) Law 2003⁶.”;
- (b) in Schedule 2 –
 - (i) paragraph 22 is deleted;
 - (ii) in paragraph 23, in sub-paragraph (b) for “maternity leave” there is substituted “parental leave”; and
 - (iii) in the heading to paragraph 24 for “maternity pay” there is substituted “paid parental leave”.

7 Citation and commencement

This Law may be cited as the Employment (Amendment No. 11) (Jersey) Law 201- and comes into force on 1st September 2019.

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- 1 *chapter 05.255*
 - 2 *chapter 05.300*
 - 3 *chapter 26.900*
 - 4 *R&O.71/2018*
 - 5 *chapter 15.260*
 - 6 *chapter 05.255*