

EMPLOYMENT (AMENDMENT) BILL 2023

Explanatory Memorandum

1. This Bill is promoted in the House of Keys by Mr Tim Johnston, M.H.K., Minister for Enterprise.
2. *Clauses 1 and 2* contain, respectively, the short title of, and commencement provisions for, the resulting Act.
3. *Clause 3* merely stipulates that, in the succeeding clauses, references to sections are to sections of the *Employment Act 2006* unless the contrary is expressly indicated.
4. *Clause 4* declares that the *Employment Act 2006* is amended in the manner described in the succeeding clauses.
5. *Clause 5* amends section 8(1) by omitting the phrase “4 weeks after”, with the effect that an employer will have to give an employee a written statement under section 8 right at the beginning of the employee’s employment.
6. *Clause 6* amends section 44 with the effect that, where the Tribunal finds that an employer has unreasonably refused an employee time off for ante-natal care, the employer will have to pay to the employee twice the amount of the remuneration to which she would have been entitled if the time off had not been refused. Currently the employer is required to pay merely an amount equal to that remuneration.
7. *Clause 8* inserts the following new sections immediately after section 44:
 - 7.1 Section 44A (right to time off to accompany to ante-natal appointment), which permits an employee who has a qualifying relationship with a pregnant woman or her expected child to take time off during working hours to accompany her to an ante-natal appointment. The maximum number of instances of leave and the maximum hours off that may be taken are stipulated, as well as conditions precedent to being able to take the time off and the associated procedural steps. The section also defines key terms it uses, such as “qualifying relationship” and “working hours”.
 - 7.2 Section 44B (complaints to Tribunal), which authorises an employee to make a complaint to the Tribunal where the employee believes that the employer’s decision to deny leave under section 44A is unreasonable. The procedural steps are specified and other details, such as what the Tribunal must do if it finds the complaint well-founded and the manner in which compensation to be paid to the employee must be calculated, are stipulated.

- 7.3 Section 44C (right to paid time off to attend adoption appointments), which allows an employee to take time paid off during working hours to attend an adoption-related appointment. The section sets out conditions specific to whether the child is to be placed with the employee alone or with the employee and another person. It also specifies other conditions precedent and stipulates the maximum number of occasions on which, and the maximum number of hours for which, the employee may take time for this purpose. The section ends by defining key terms that it uses.
- 7.4 Section 44D (right to remuneration for time off under section 44C), the heading of which is self-explanatory. It also sets out the associated conditions and methods of calculation, as well as defining key terms it uses.
- 7.5 Section 44E (right to unpaid time off to attend adoption appointments), which allows an employee to take unpaid time off for adoption related purpose. This applies only where the child is to be placed with the employee and another person and the employee has elected to take time off on an unpaid basis. The section imposes other restrictions on an employee's ability to rely on its provisions. These include the number of occasions on which the employee may take leave, the maximum amount of time off that the employee may take, and the precise manner in which the appointment to be attended must have been arranged. The section also defines key terms that it uses.
- 7.6 Section 44F (complaint to Tribunal), which permits an employee aggrieved by the denial of leave under section 44C or 44E, or by the failure of the employer to pay to the employee the whole or part of any amount to which the employee is entitled under section 44D, to complain to the Tribunal. The relevant procedural steps are stipulated, as well as (among other things) the amount that the Tribunal must order be paid to the employee should it find the complaint well-founded. The method of calculating the amount payable to the employee in the event of a well-founded complaint is specified.
- 7.7 Section 44G (time off for dependants) allows an employee to take "a reasonable amount of time off" during working hours to attend to urgent matters pertaining to a dependant. These urgent matters include falling ill, giving birth, being assaulted, or dying. The section specifies the conditions precedent to the taking of this type of leave.
- 7.8 Section 44H (complaint to Tribunal) permits an employee to complain to the Tribunal of alleged unreasonableness of the employer's refusal to allow the employee time off under section 44G. As is the case with other similar sections previously discussed, the conditions and other relevant provisions in respect of this right to complain are specified in the section.

8. *Clause 8* amends section 50 by substituting subsection (1), thereby introducing a new definition of “protected disclosure”. The most significant feature of the new definition is that it includes disclosures which the person disclosing “reasonably believes ought to be disclosed in the public interest”. Also pertinent is that it requires the person disclosing the information to declare to the recipient, before making the disclosure, that it is a qualifying disclosure.
9. *Clause 9* amends sections 51, 53, 54, 55 and 56. The main amendment made is the removal from those sections of references to “good faith”. Also, in the interest of gender-neutral language, the clause replaces references to “he or she” in some of those sections with references to “the worker”.
10. *Clause 10* inserts a new section: section 54A (prescribed persons: duty to report on disclosures of information). It empowers the Department to make regulations requiring a person prescribed for the purposes of section 54 to produce an annual report on disclosures made to the person by workers. The clause specifies further detail regarding those regulations.
11. *Clause 11* inserts several new subsections into section 64 so as to strengthen an employee’s right not to be subjected to any detriment by the employer on account making or having made a protected disclosure.
12. *Clause 12* adds a paragraph (f) to the paragraphs in section 65(2). That paragraph refers to “any other leave for a family-related purpose for which this Act provides”, thereby widening the range of types of leave in respect of which an employee is legally insulated from being subjected to consequential detriment.
13. *Clause 13* inserts a new subsection, i.e. subsection (5A), into section 72. It allows the Tribunal to reduce by 25% any compensation payable to a person making a protected disclosure if it appears to the Tribunal that the disclosure was not made in good faith. However, the Tribunal may do so only if it considers doing so “just and equitable”.
14. *Clause 14* adds new paragraphs, i.e. (c) to (e), to the paragraphs in section 79(3). It also adds a new subsection, i.e. (3A). The new paragraphs pertain to permitting an employee to make adjustments to the date on which her ordinary maternity leave ends. The new subsection clarifies the purpose of the said new paragraph (c).
15. *Clause 15* substitutes section 81(3). The new subsection (3) gives greater power for regulations to amplify an employee’s ability to make adjustments to the dates of her additional maternity leave. The new subsection contains paragraphs (a) to (c), on the basis of which *clause 15* adds a new subsection, i.e. (3A), which clarifies the purpose of subsection (3)(c).
16. *Clause 16* inserts the following new sections immediately after section 89:
 - 16.1 Section 89A (parental bereavement leave)
 - 16.2 Section 89B (rights during and after bereavement leave)
 - 16.3 Section 89C (special cases)

16.4 89D (supplemental)

16.5 89E (application in relation to miscarriages and stillbirths)

All these new sections pertain to a regulation-making powers being given to the Department to thereby entitle an employee who is a bereaved parent to take leave on account of the bereavement.

17. *Clause 17* inserts a new subsection, i.e. (4A), into section 90. The effect of the new subsection is to ensure that an employee who takes leave under section 94A in respect of a child cannot take leave under section 90 in respect of that child.
18. *Clause 18* inserts a new subsection, i.e. (4A), into section 91 (which is a regulation-making section) and new paragraphs, i.e. (aa) and (bb), into section 91(5). The new subsection ensures that an employee who has taken leave under section 94C in respect of a child will not be permitted to take leave under section 91 in respect of that child. The new paragraphs are in similar vein.
19. *Clause 19* inserts new sections, i.e. 94A to 94G, all of which confer extensive regulation-making powers on the Department. The headings of them are sufficiently instructive:
- 19.1 Section 94A (entitlement to shared parental leave: birth)
 - 19.2 Section 94B (entitlement to leave under section 94A: further provision)
 - 19.3 Section 94C (entitlement to shared parental leave: adoption)
 - 19.4 Section 94D (entitlement to leave under section 94C: further provision)
 - 19.5 Section 94E (rights during and after shared parental leave)
 - 19.6 Section 94F (redundancy and dismissal)
 - 19.7 Section 94G (supplemental)
20. *Clause 20* adds a paragraph (f) to the paragraphs in section 114(3). That paragraph refers to “any other leave for a family-related purpose for which this Act provides”, making that one of the prescribed reasons dismissal for which will be regarded as unfair.
21. *Clause 21* inserts new sections, i.e. 118A to 118E, which all pertain to complaints made to the Tribunal. With this in mind, the headings of the new sections are sufficiently instructive:
- 21.1 Section 118A (interim relief pending determination of complaint)
 - 21.2 Section 118B (procedure on hearing of application and making of order)
 - 21.3 Section 118C (order for continuation of contract of employment)
 - 21.4 Section 118D (application for variation or revocation of order)
 - 21.5 Section 118E (consequences of failure to comply with order)
22. *Clause 22* inserts two new sections, i.e. 167A (regulations pertaining to rights under sections 44A and 44G) and 167B (regulations applying UK legislation to the Island).

23. The resulting Act is expected to have some financial and human resource implications, given the number of new types of leave for which it provides. As its provisions will be applicable to the Government as well, the Treasury will be required to pay additional remuneration costs on account of persons' being absent more frequently and, in some cases, being entitled to be paid for periods during which they were not performing their duties. In view of the potential length of some of the permitted periods of absence, it may be necessary for employers to hire persons on limited term appointments to provide cover for those on leave so as to ensure business continuity. Notwithstanding this, the member moving the Bill considers these additional costs justified in the interest of creating a fairer, more compassionate, more caring, and more family-oriented society. The Bill contains sufficient checks and balances to guard against abuse of the provisions for additional periods of leave and, therefore, the resulting Act is not expected to give rise to an unmanageable level of associated additional absences by employees. The expectation is that treating employees more fairly and compassionately will engender increased loyalty and result in greater productivity. The greater productivity is expected to amply compensate for the additional remuneration costs.
24. In the opinion of the member moving the Bill, the Bill's provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



Ellan Vannin

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EMPLOYMENT (AMENDMENT) BILL 2023

1 **A BILL** to amend the Employment Act 2006 to make further provision for
2 family leave rights and whistleblowing; and for connected purposes.

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **1 Short title**

4 The short title of this Act is the Employment (Amendment) Act 2023.

5 **2 Commencement**

6 (1) This Act (other than section 1 and this section) comes into operation on
7 such day or days as the Department for Enterprise may by order appoint.

8 (2) An order under subsection (1) may include such consequential,
9 incidental, supplementary, saving, transitional and transitory provision
10 as the Department for Enterprise considers necessary or expedient.

11 **3 Interpretation**

12 In this Act, a reference to a provision without more is to be construed as a
13 reference to the provision so numbered in the *Employment Act 2006*.

14 **4 Amendment of the Employment Act 2006**

15 The *Employment Act 2006* is amended as follows.

16 **5 Amendment of section 8**

17 In section 8(1), omit “4 weeks after”.

18 **6 Amendment of section 44**

19 In section 44(3)(a), for “equal to” substitute “that is twice the amount of”.

1 **7 Insertion of new sections: sections 44A to 44F**

2 Immediately after section 44, insert the following new sections —

3 | **“44A Right to time off to accompany to ante-natal appointment**

4 | [P.1996/18/57ZE and drafting]

- 5 (1) An employee who has a qualifying relationship with a
6 pregnant woman or her expected child is to be
7 permitted by his or her employer to take time off during
8 the employee’s working hours in order that he or she
9 may accompany the woman when she attends by
10 appointment at any place for the purpose of receiving
11 ante-natal care.
- 12 (2) In relation to any particular pregnancy, an employee is
13 not entitled to take time off for the purpose specified in
14 subsection (1) on more than two occasions.
- 15 (3) On each of those occasions, the maximum time off
16 during working hours to which the employee is entitled
17 is six and a half hours.
- 18 (4) An employee is not entitled to take time off for the
19 purpose specified in subsection (1) unless the
20 appointment is made on the advice of a registered
21 medical practitioner or registered midwife.
- 22 (5) Where the employer requests the employee to give the
23 employer a declaration signed by the employee, the
24 employee is not entitled to take time off for the purpose
25 specified in subsection (1) unless the employee gives
26 that declaration (which may be given in electronic form).
- 27 (6) The employee must state in the declaration —
- 28 (a) that the employee has a qualifying relationship
29 with a pregnant woman or her expected child;
- 30 (b) that the employee’s purpose in taking time off is
31 the purpose specified in subsection (1);
- 32 (c) that the appointment in question is made on the
33 advice of a registered medical practitioner or
34 registered midwife; and
- 35 (d) the date and time of the appointment.
- 36 (7) A person has a qualifying relationship with a pregnant
37 woman or her expected child if —
- 38 (a) the person is the husband, wife or civil partner of
39 the pregnant woman;
- 40 (b) the person, being of a different sex or the same sex,
41 lives with the pregnant woman in an enduring

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family relationship but is not a relative of the woman;

(c) the person is the father of the expected child; or

(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 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

[P.1996/18/57ZE and drafting]

(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).

1 (4) The amount payable to the employee is to be calculated
2 using the formula $A \times B \times 2$, where —

- 3 (a) A is the appropriate hourly rate for the employee;
4 and
5 (b) B is the number of working hours for which the
6 employee would have been entitled under section
7 44A to be absent if the time off had not been
8 refused.

9 (5) The appropriate hourly rate, in relation to an employee,
10 is the amount of one week's pay divided by the number
11 of normal working hours in a week for that employee
12 when employed under the contract of employment in
13 force on the day when the time off would have been
14 taken.

15 (6) But where the number of normal working hours differs
16 from week to week or over a longer period, the amount
17 of one week's pay shall be divided instead by —

- 18 (a) the average number of normal working hours
19 calculated by dividing by twelve the total number
20 of the employee's normal working hours during
21 the period of 12 weeks ending with the last
22 complete week before the day on which the time
23 off would have been taken; or
24 (b) where the employee has not been employed for a
25 sufficient period to enable the calculation to be
26 made under paragraph (a), a number which fairly
27 represents the number of normal working hours in
28 a week having regard to such of the considerations
29 specified in subsection (7) as are appropriate in the
30 circumstances.

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

- 32 (a) the average number of normal working hours in a
33 week which the employee could expect in
34 accordance with the terms of the employee's
35 contract; and
36 (b) the average number of normal working hours of
37 other employees engaged in relevant comparable
38 employment with the same employer.

39 *Right to time off to attend adoption appointments*

40 **44C Right to paid time off to attend adoption appointments**

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[P.1996/18/57Z] and drafting]

- (1) An employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee 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 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.
- (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 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 (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 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;

(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.

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(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*.

44D

Right to remuneration for time off under section 44C

[P.1996/18/57ZK and drafting]

(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 is 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 —

(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.

- 1 (5) A right to any amount under subsection (1) does not
2 affect any right of an employee in relation to
3 remuneration under the employee's contract of
4 employment ("contractual remuneration").
- 5 (6) Any contractual remuneration paid to an employee in
6 respect of a period of time off under section 44C goes
7 towards discharging any liability of the employer to pay
8 remuneration under subsection (1) in respect of that
9 period.
- 10 (7) Any payment of remuneration under subsection (1) in
11 respect of a period of time off under section 44C goes
12 towards discharging any liability of the employer to pay
13 contractual remuneration in respect of that period.

14 **44E Right to unpaid time off to attend adoption appointments**
15 [P.1996/18/57ZL and drafting]

- 16 (1) An employee who —
- 17 (a) has been notified by an adoption agency that a
18 child is to be, or is expected to be, placed for
19 adoption with the employee and another person
20 jointly; and
- 21 (b) has elected to exercise the right to take time off
22 under this section in connection with the adoption,
23 is entitled to be permitted by his or her employer to take
24 time off during the employee's working hours in order
25 that he or she may attend by appointment at any place
26 for the purpose of having contact with the child or for
27 any other purpose connected with the adoption.
- 28 (2) An employee may not make an election for the purposes
29 of subsection (1)(b) if —
- 30 (a) the employee has made an election for the
31 purposes of section 44C(2)(b) in connection with
32 the adoption; or
- 33 (b) the other person with whom the child is to be, or is
34 expected to be, placed for adoption has made an
35 election for the purposes of subsection (1)(b) in
36 connection with the adoption.
- 37 (3) An employee is not entitled to take time off under this
38 section on or after the date of the child's placement for
39 adoption with the employee.
- 40 (4) In relation to any particular adoption, an employee is
41 not entitled to take time off under this section on more
42 than two occasions.

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- (5) On each of those occasions, the maximum time off during working hours to which the 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 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.

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

5 (11) In this section, "adoption agency" must be construed in
6 accordance with the *Adoption Act 2021*.

7 **44F Complaint to Tribunal**

8 [P.1996/18/57ZM and drafting]

9 (1) An employee may present a complaint to the Tribunal
10 that his or her employer —

11 (a) has unreasonably refused to let him or her take
12 time off as required by section 44C or 44E; or

13 (b) has failed to pay the whole or any part of any
14 amount to which the employee is entitled under
15 section 44D.

16 (2) The Tribunal may not consider a complaint under this
17 section unless it is presented —

18 (a) before the end of the period of three months
19 beginning with the day of the appointment in
20 question; or

21 (b) within such further period as the Tribunal
22 considers reasonable in a case where it is satisfied
23 that it was not reasonably practicable for the
24 complaint to be presented before the end of that
25 period of three months.

26 (3) Where the Tribunal finds a complaint under subsection
27 (1) well-founded, it must make a declaration to that
28 effect.

29 (4) If the complaint is that the employer has unreasonably
30 refused to let the employee take time off as required by
31 section 44C, the Tribunal must also order the employer
32 to pay to the employee an amount that is twice the
33 amount of the remuneration to which the employee
34 would have been entitled under section 44D if the
35 employer had not refused.

36 (5) If the complaint is that the employer has failed to pay
37 the employee the whole or part of any amount to which
38 the employee is entitled under section 44D, the Tribunal
39 must also order the employer to pay to the employee the
40 amount which it finds due to the employee.

41 (6) If the complaint is that the employer has unreasonably
42 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

[P.1996/18/57A and drafting]

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

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

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

- (a) tells his or her employer the reason for his or her 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 or her employer for how long he or she 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;
- (c) a parent;
- (d) a person who lives in the same household as the employee, otherwise than by reason of being his or her 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**

[P.1996/18/57B and drafting]

(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 —

- 1 (a) shall make a declaration to that effect; and
 2 (b) may make an award of compensation to be paid
 3 by the employer to the employee.
 4 (4) The amount of compensation shall be such as the
 5 Tribunal considers just and equitable in all the
 6 circumstances having regard to —
 7 (a) the employer’s default in refusing to permit time
 8 off to be taken by the employee; and
 9 (b) any loss sustained by the employee which is
 10 attributable to the matters complained of.”

11 8 Amendment of section 50

- 12 (1) For subsection (1) of section 50, substitute the following —
 13 “(1) In this Part, a “qualifying disclosure” means any disclosure of
 14 information which the worker making the disclosure —
 15 (a) reasonably believes ought to be disclosed in the public
 16 interest and has the tendency to show one or more of the
 17 following —
 18 (i) that a criminal offence has been committed, is being
 19 committed, or is likely to be committed;
 20 (ii) that a person has failed, is failing, or is likely to fail,
 21 to comply with any legal obligation to which he or
 22 she is subject;
 23 (iii) that a miscarriage of justice has occurred, is
 24 occurring, or is likely to occur;
 25 (iv) that the health or safety of any individual has been, is
 26 being, or is likely to be, endangered;
 27 (v) that the environment has been, is being, or is likely to
 28 be, damaged; or
 29 (vi) that information tending to show any matter falling
 30 within any one of the preceding subparagraphs has
 31 been, is being or is likely to be, deliberately
 32 concealed; and
 33 (b) has, before making the disclosure, declared to the intended
 34 recipient of the disclosure that it is a qualifying
 35 disclosure.”
 36 (2) In subsection (5), for “paragraph (a) to (f) of subsection (1)” substitute
 37 “subparagraphs (i) to (vi) of subsection (1)(a)”.

9 Amendments of sections 51, 53, 54, 55 and 56: omission of “in good faith”

- (1) Omit “in good faith” from the following provisions —
- (a) section 51(1);
 - (b) section 53(b);
 - (c) section 54(1)(a); and
 - (d) section 56(1)(a).
- (2) In section 55(1) —
- (a) omit paragraph (a);
 - (b) in paragraph (b), for “he or she” substitute “the worker”;
 - (c) in paragraph (c), for “he or she” substitute “the worker”.
- (3) In section 56(1)(b), for “he or she” substitute “the worker”.

10 Insertion of new section: section 54A

Immediately after section 54, insert the following new section —

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

[P.1996/18/43FA and drafting]

- (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.”

11 Amendment of section 64

- (1) Immediately after section 64(1), insert the following new subsections —

“(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) For section 64(3), substitute the following —

“(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”.

12 Amendment of section 65

In section 65(2), after paragraph (e) insert the following —

“(f) any other leave for a family-related purpose for which this Act provides.”.

13 Amendment of section 72

Immediately after section 72(5), insert the following new subsection —

“(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%.”.

14 Amendment of section 79

(1) In section 79(3), insert the following paragraphs immediately after paragraph (b) —

“(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.”.

(2) Immediately after section 79(3), insert the following new subsection —

“(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.”.

15 Amendment of section 81

(1) For section 81(3), substitute the following —

“(3) Regulations under subsection (2) —

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- (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 for her employer during an additional maternity leave period without bringing the period to an end.”.

(2) Immediately after section 81(3), insert the following new subsection –

“(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.”.

16 Insertion of new sections: sections 89A to 89E

Immediately after section 89, insert the following new sections –

89A Parental bereavement leave
[P.1996/18/80EA and drafting]

- (1) The Department may 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.



(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 sections 89A to 89D in relation to miscarriages and stillbirths);

“week” means any period of seven days.

89B

Rights during and after bereavement leave

[P.1996/18/80EB and drafting]

(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;

(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;

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- (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

[P.1996/18/80C and drafting]

(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

[P.1996/18/80ED and drafting]

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;



- 1 (b) make provision requiring employers or
2 employees to keep records;
- 3 (c) make provision for the consequences of failure to
4 give notices, to produce evidence, to keep
5 records or to comply with other procedural
6 requirements;
- 7 (d) make provision for the consequences of failure to
8 act in accordance with a notice given by virtue of
9 paragraph (a);
- 10 (e) make special provision for cases where an
11 employee has a right which corresponds to a
12 right under section 89A and which arises under
13 the person's contract of employment or
14 otherwise;
- 15 (f) make provision modifying the effect of Schedule
16 6 (calculation of normal working hours and a
17 week's pay) in relation to an employee who is or
18 has been absent from work on leave under
19 section 89A;
- 20 (g) make provision applying, modifying or
21 excluding an enactment, in such circumstances
22 as may be specified and subject to any conditions
23 which may be specified, in relation to a person
24 entitled to take leave under section 89A;
- 25 (h) make consequential provision.

26 **89E Application in relation to miscarriages and stillbirths**

27 [P.1996/18/80EE and drafting]

28 In sections 89A to 89D —

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

35 **17 Amendment of section 90**

36 Immediately after section 90(4), insert the following new subsection —

37 “(4A) Provision under subsection (2)(b) must secure that, once an
38 employee takes leave under section 94A in respect of a
39 child, the employee may not take leave under this section
40 in respect of the child.”.

1 **18 Amendment of section 91**

- 2 (1) Immediately after section 91(4), insert the following new subsection —
- 3 | “(4A) Provision under subsection (2)(b) must secure that, once an
- 4 | employee takes leave under section 94C in respect of a
- 5 | child, the employee will not take leave under this section in
- 6 | respect of the child.”
- 7 (2) Immediately after section 91(5)(a), insert the following new paragraph —
- 8 | “(aa) make provision excluding the right to be absent on leave
- 9 | under this section in the case of an employee who has
- 10 | already exercised a right to be absent on leave under this
- 11 | section in connection with the same child;”.
- 12 (3) Immediately after section 91(5)(b), insert the following new paragraph —
- 13 | “(ba) make provision excluding the right to be absent on leave
- 14 | under this section in the case of an employee who has
- 15 | exercised a right to take time off under section 44C;”.

16 **19 Insertion of new sections: sections 94A to 94G**

- 17 (1) Immediately after section 94, insert the following new section —
- 18 | “94A **Entitlement to shared parental leave: birth**
- 19 | [P.1996/18/75E and drafting]
- 20 | (1) The Department may make regulations entitling an
- 21 | employee who satisfies specified conditions —
- 22 | (a) as to duration of employment;
- 23 | (b) as to being, or expecting to be, the mother of a
- 24 | child;
- 25 | (c) as to caring or intending to care, with another
- 26 | person (“P”), for a child;
- 27 | (d) as to entitlement to maternity leave;
- 28 | (e) as to the exercise of that entitlement and the
- 29 | extent of any such exercise;
- 30 | (f) as to giving notice of an intention to exercise an
- 31 | entitlement to leave under this subsection; and
- 32 | (g) as to the consent of P to the amount of leave
- 33 | under this subsection that the employee intends
- 34 | to take,
- 35 | to be absent from work on leave under this
- 36 | subsection for the purpose of caring for the child.
- 37 | (2) Regulations under subsection (1) may provide that
- 38 | the employee’s entitlement is subject to the
- 39 | satisfaction by P of specified conditions —
- 40 | (a) as to employment or self-employment;

- 1 (b) as to having earnings of a specified amount for
2 a specified period;
- 3 (c) as to caring or intending to care, with the
4 employee, for the child; and
- 5 (d) as to the relationship with the child or the
6 employee.

7 (3) Provision under subsection (1)(f) may require the
8 employee to give notice to the employer about —

- 9 (a) the amount of leave to which the employee
10 would be entitled if the entitlement were fully
11 exercised (disregarding for these purposes any
12 intention of P to exercise an entitlement to leave
13 under subsection (4));
- 14 (b) how much of the entitlement to leave the
15 employee intends to exercise;
- 16 (c) the extent to which P intends to exercise an
17 entitlement to leave under subsection (4).

18 (4) The Department may make regulations entitling an
19 employee who satisfies specified conditions —

- 20 (a) as to duration of employment;
- 21 (b) as to relationship with a child or expected child
22 or with the child's mother;
- 23 (c) as to caring or intending to care, with the
24 child's mother, for the child;
- 25 (d) as to giving notice of an intention to exercise an
26 entitlement to leave under this subsection; and
- 27 (e) as to the consent of the child's mother to the
28 amount of leave under this subsection that the
29 employee intends to take,

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

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

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

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(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
[P.1996/18/75F and drafting]

(1) Regulations under section 94A may 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)(c) 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

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- 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 —

- 1 (a) specify things which are, or are not, to be taken
2 as done for the purpose of caring for a child;
- 3 (b) make provision excluding the right to be absent
4 on leave under section 94A in respect of a child
5 where more than one child is born as a result of
6 the same pregnancy;
- 7 (c) specify a minimum amount of leave under
8 section 94A which may be taken;
- 9 (d) make provision about how leave under section
10 94A may be taken;
- 11 (e) specify circumstances in which an employee
12 may work for the employer during a period of
13 leave under section 94A without bringing the
14 particular period of leave, or the employee's
15 entitlement to leave under section 94A, to an
16 end;
- 17 (f) specify circumstances in which an employee
18 may be absent on leave under section 94A
19 otherwise than for the purpose of caring for a
20 child without bringing the person's entitlement
21 to leave under section 94A to an end.

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

24 (16) The Department may by regulations provide that the
25 following do not have effect, or have effect with
26 modifications specified by the regulations, in a case
27 where the mother of a child dies before another
28 person has become entitled to leave under section
29 94A in respect of the child —

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

35 **94C Entitlement to shared parental leave: adoption**

36 [P.1996/18/75G and drafting]

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

- 39 (a) as to the duration of employment;
40 (b) as to being a person with whom a child is, or is
41 expected to be, placed for adoption under the
42 law of the Island;

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- (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;

- 1 (c) as to caring or intending to care, with A, for the
2 child;
- 3 (d) as to giving notice of an intention to exercise an
4 entitlement to leave under this subsection; and
- 5 (e) as to the consent of A to the amount of leave
6 under this subsection that the employee intends
7 to take,
- 8 to be absent from work on leave under this
9 subsection for the purpose of caring for the child.

10 (5) Regulations under subsection (4) may provide that
11 the employee's entitlement is subject to the
12 satisfaction by A of specified conditions —

- 13 (a) as to employment or self-employment;
- 14 (b) as to having earnings of a specified amount for
15 a specified period;
- 16 (c) as to caring or intending to care, with the
17 employee, for the child;
- 18 (d) as to entitlement (or lack of entitlement) to
19 adoption leave; and
- 20 (e) as to the exercise of any such entitlement and
21 the extent of any such exercise.

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

- 24 (a) the amount of leave to which the employee
25 would be entitled if the entitlement were fully
26 exercised (disregarding for these purposes any
27 intention of A to exercise an entitlement to
28 leave under subsection (1));
- 29 (b) how much of the entitlement to leave the
30 employee intends to exercise;
- 31 (c) the extent to which A intends to exercise an
32 entitlement to leave under subsection (1).

33 **94D Entitlement to leave under section 94C: further provision**
34 [P.1996/18/75H and drafting]

35 (1) Regulations under section 94C are to include
36 provision for determining —

- 37 (a) the amount of leave under section 94C(1) or (4)
38 to which an employee is entitled in respect of a
39 child;
- 40 (b) when leave under section 94C(1) or (4) may be
41 taken;

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- (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 –

- 1 (a) provide for an employer, subject to such
2 restrictions as may be specified, to require an
3 employee who proposes to take non-
4 consecutive periods of leave under section 94C
5 to take that amount of leave as a single period
6 of leave; and
7
8 (b) provide for a single period of leave that is so
9 imposed on an employee to start with a day
10 proposed by the employee or, if no day is
11 proposed, with the first day of the first period
of leave proposed by the employee.

12 (10) Regulations under section 94C may provide for the
13 variation, subject to such restrictions as may be
14 specified, of –

- 15 (a) the period or periods during which an amount
16 of leave under section 94C is to be taken;
17
18 (b) the amount of leave under section 94C that the
19 employee previously specified in accordance
20 with provision under section 94C(3)(b) or (6)(b)
or subsection (13)(b) of this section.

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

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

- 26 (a) as to giving notice of an intention to vary the
27 amount of leave under section 94C to be taken
28 by the employee;
29
30 (b) if the employee proposes to vary the amount of
31 leave under section 94C(1) to be taken by the
32 employee, as to the consent of P to that
variation;
33
34 (c) if the employee proposes to vary the amount of
35 leave under section 94C(4) to be taken by the
36 employee, as to the consent of A to that
variation.

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

- 39 (a) the extent to which the employee has exercised
40 an entitlement to leave under section 94C(1) or
41 (4) in respect of the child;
42
43 (b) how much of the entitlement to leave the
employee intends to exercise;

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- (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

[P.1996/18/75I and drafting]

(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;

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- (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

[P.1996/18/75] and drafting]

(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

[P.1996/18/75K and drafting]

(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;

- 1 (d) make provision for the consequences of failure
 2 to act in accordance with a notice given by
 3 virtue of paragraph (a);
- 4 (e) make special provision for cases where an
 5 employee has a right which corresponds to a
 6 right under section 94A or 94C and which
 7 arises under the employee's contract of
 8 employment or otherwise;
- 9 (f) make provision modifying the effect of
 10 Schedule 6 in relation to an employee who is or
 11 has been absent from work on leave under
 12 section 94A or 94C;
- 13 (g) make provision applying, modifying or
 14 executing an enactment, in such circumstances
 15 as may be specified and subject to any
 16 conditions which may be specified, in relation
 17 to a person entitled to take leave under section
 18 94A or 94C.

19 (2) In subsection (1), "relevant person" means —

- 20 (a) a person who, in connection with an
 21 employee's claim to be entitled to leave under
 22 section 94A or 94C, is required to satisfy
 23 conditions specified in provision under section
 24 94A(2) or (5) or 94C(2) or (5); or
- 25 (b) a person who is an employer or former
 26 employer of such a person.

27 (3) Regulations under any of section 94A to 94D may
 28 make different provision for different cases or
 29 circumstances."

30 **20 Amendment of section 114**

31 In section 114(3), immediately after paragraph (e) insert —

32 (f) any other leave for a family-related purpose for which this Act
 33 provides."

34 **21 Insertion of new sections: sections 118A to 118E**

35 Immediately after section 118, insert the following new section —

36 **"118A Interim relief pending determination of complaint**

37 [P.1996/18/128 and drafting

38 (1) An employee who presents a complaint to the Tribunal that—

39 (a) he has been unfairly dismissed; and

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(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 the employer is willing, pending the determination or settlement of the complaint —

(a) to reinstate the employee (that is, to treat the employee in all respects as if the employee had not been dismissed); or

(b) if not, to re-engage the employee in another job on terms and conditions not less favourable than those which would have been applicable to the employee if the employee 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 the employee if the employee 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 the employee's employment following the dismissal.

(5) If the employer states that the employer is willing to reinstate the employee, the Tribunal shall make an order to that effect.

(6) If the employer —

(a) states that the employer is willing to re-engage the employee in another job;

(b) specifies the terms and conditions on which the employer is willing to do so,

the Tribunal shall ask the employee whether the employee 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 the employee's 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 the employer 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,

- 1 from the date of its termination (whether before or after the
2 making of the order) until the determination or settlement of the
3 complaint.
- 4 (2) Where the Tribunal makes such an order it shall specify in the
5 order the amount which is to be paid by the employer to the
6 employee by way of pay in respect of each normal pay period, or
7 part of any such period, falling between the date of dismissal and
8 the determination or settlement of the complaint.
- 9 (3) Subject to the following provisions, the amount so specified shall
10 be that which the employee could reasonably have been expected
11 to earn during that period, or part, and shall be paid —
- 12 (a) in the case of a payment for any such period falling wholly
13 or partly after the making of the order, on the normal pay
14 day for that period; and
- 15 (b) in the case of a payment for any past period, within such
16 time as may be specified in the order.
- 17 (4) If the amount is payable in respect only of part of a normal pay
18 period, the amount shall be calculated by reference to the whole
19 period and reduced proportionately.
- 20 (5) Any payment made to an employee by an employer under his
21 contract of employment, or by way of damages for breach of that
22 contract, in respect of a normal pay period, or part of any such
23 period, goes towards discharging the employer's liability in
24 respect of that period under subsection (2); and, conversely, any
25 payment under that subsection in respect of a period goes
26 towards discharging any liability of the employer under, or in
27 respect of breach of, the contract of employment in respect of
28 that period.
- 29 (6) If an employee, on or after being dismissed by his employer,
30 receives a lump sum which, or part of which, is in lieu of wages
31 but is not referable to any normal pay period, the Tribunal shall
32 take the payment into account in determining the amount of pay
33 to be payable in pursuance of any such order.
- 34 (7) For the purposes of this section, the amount which an employee
35 could reasonably have been expected to earn, the employee's
36 normal pay period and the normal pay day for each such period
37 shall be determined as if the employee had not been dismissed.
- 38 **118D Application for variation or revocation of order**
39 [P.1996/18/131 and drafting]
- 40 (1) At any time between —
- 41 (a) the making of an order under section 118B; and
42 (b) the determination or settlement of the complaint,

1 the employer or the employee may apply to the Tribunal for the
2 revocation or variation of the order on the ground of a relevant
3 change of circumstances since the making of the order.

- 4 (2) Sections 118A and 118B apply in relation to such an application
5 as in relation to an original application for interim relief except
6 that, in the case of an application by the employer, section
7 118A(4) has effect with the substitution of a reference to the
8 employee for the reference to the employer.

9 **118E Consequences of failure to comply with order**

10 [P.1996/18/132 and drafting]

- 11 (1) If, on an application of an employee, the Tribunal is satisfied that
12 the employer has not complied with the terms of an order for the
13 reinstatement or re-engagement of the employee under section
14 118B(5) or (7), the Tribunal shall —

15 (a) make an order for the continuation of the employee's
16 contract of employment; and

17 (b) order the employer to pay compensation to the employee.

- 18 (2) Compensation under subsection (1)(b) shall be of such amount
19 as the Tribunal considers just and equitable in all the
20 circumstances having regard —

21 (a) to the infringement of the employee's right to be reinstated
22 or re-engaged in pursuance of the order; and

23 (b) to any loss suffered by the employee in consequence of the
24 non-compliance.

- 25 (3) Section 118C applies to an order under subsection (1)(a) as in
26 relation to an order under section 118B.

- 27 (4) If, on the application of an employee, the Tribunal is satisfied
28 that the employer has not complied with the terms of an order
29 for the continuation of a contract of employment, subsection (5)
30 or (6) applies.

- 31 (5) Where the non-compliance consists of a failure to pay an amount
32 by way of pay specified in the order —

33 (a) the Tribunal shall determine the amount owed by the
34 employer on the date of the determination; and

35 (b) if on that date the Tribunal also determines the employee's
36 complaint that he has been unfairly dismissed, it shall
37 specify that amount separately from any other sum
38 awarded to the employee.

- 39 (6) In any other case, the Tribunal shall order the employer to pay
40 the employee such compensation as the Tribunal considers just
41 and equitable in all the circumstances having regard to any loss

1 | | suffered by the employee in consequence of the non-
2 | | compliance.”.

3 | **22 Insertion of new sections: sections 167A and 167B**

4 | Immediately after section 167, insert the following new sections —

5 | **“167A Regulations pertaining to rights under sections 44A and 44G**

- 6 | (1) With respect to—
- 7 | (a) the right to time off conferred by section 44A or 44G;
- 8 | (b) the rights to time off conferred by those sections taken
9 | together,
- 10 | the Department may by regulations do any one or more of the
11 | things listed in subsection (2).
- 12 | (2) Subject especially to sections 69, 70, 87, 88 and 89 of the
13 | *Interpretation Act 2015* (but without limiting the application of any
14 | other relevant provision of that Act), those things are —
- 15 | (a) prescribe whether the time off is to be paid or unpaid and, if
16 | the former, the basis on which the remuneration due is to be
17 | calculated;
- 18 | (b) vary the number of occasions specified in section 44A(2);
- 19 | (c) prescribe the number of occasions on which an employee
20 | may take time off under section 44G and how many of those
21 | occasions the employee is entitled to be paid for;
- 22 | (d) vary the maximum time off specified in section 44A(3);
- 23 | (e) prescribe matters that are relevant or irrelevant, as the case
24 | may be, to the determination of whether an amount of time
25 | off under section 44G is reasonable.

26 | **167B Regulations applying UK legislation to the Island**

- 27 | (1) Subject to subsection (2), the Department may by regulations
28 | apply to the Island as part of the law of the Island any one or more
29 | of the specified sections —
- 30 | (a) subject to such —
- 31 | (i) exceptions;
- 32 | (ii) adaptations;
- 33 | (iii) modifications; and
- 34 | (b) to such extent,
35 | as the Department thinks fit.
- 36 | (2) The Department must expressly provide in the regulations that
37 | they apply to no one other than —

- 1 (a) an employee who has applied or intends to apply for a
2 parental order under section 89 of the *Children and Young*
3 *Persons Act 2001*;
- 4 (b) a child to whom such a parental order pertains or is to
5 pertain, as the case may be.
- 6 (3) In subsection (1), “the specified sections” are the following
7 sections of the Employment Rights Act 1996 (of Parliament) –
- 8 (a) section 75A;
- 9 (b) section 75B;
- 10 (c) section 75D;
- 11 (d) section 75H;
- 12 (e) section 80B.”

IN THE KEYS

EMPLOYMENT (AMENDMENT) BILL 2023

A **BILL** to amend the Employment Act 2006 to make further provision for family leave rights and whistleblowing; and for connected purposes.

Leave to introduce in the House of Keys given by the Council of Ministers on 14 June 2023.

MR JOHNSTON

27 JUNE 2023