



Number 34 of 1994

MATERNITY PROTECTION ACT 1994

REVISED

Updated to 20 March 2013

This Revised Act is an administrative consolidation of the *Maternity Protection Act 1994*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Electoral (Amendment) (Dáil Constituencies) Act 2013* (7/2013), enacted 20 March 2013, and all statutory instruments up to and including *Health Insurance Act 1994 (Section 11E(2)) Regulations 2013* (S.I. No. 93 of 2013), made 22 March 2013, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Maternity Protection Acts 1994 and 2004: This Act is one of a group of Acts included in this collective citation to be construed together as one (*Maternity Protection (Amendment) Act 2004*, s. 27(2)). The Acts in the group are:

- *Maternity Protection Act 1994* (34/1994)
- *Maternity Protection (Amendment) Act 2004* (28/2004)

Other Acts dealing with employment leave are the *Adoptive Leave Acts 1995 and 2005*, the *Parental Leave Acts 1998 and 2006* and the *Carers Leave Act 2001*.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Maternity Protection (Amendment) Act 2004* (28/2004)
- *Employment Equality Act 1998* (21/1998)
- *Pensions Act 1990* (25/1990)

All Acts up to and including *Electoral (Amendment) (Dáil Constituencies) Act 2013* (7/2013), enacted 20 March 2013, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 139 of 2011)
- *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2010* (S.I. No. 217 of 2010)
- *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006)
- *Maternity Protection (Postponement of Leave) Regulations 2004* (S.I. No. 655 of 2004)
- *Maternity Protection (Protection of Mothers Who Are Breastfeeding) Regulations 2004* (S.I. No. 654 of 2004)
- *Maternity Protection (Time Off For Ante-Natal Classes) Regulations 2004* (S.I. No. 653 of 2004)
- *Maternity Protection Act, 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001)
- *Maternity Protection (Maximum Compensation) Regulations 1999* (S.I. No. 134 of 1999)
- *Justice (Alteration of Name of Department and Title of Minister) Order 1997* (S.I. No. 298 of 1997)
- *Equality and Law Reform (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (S.I. No. 297 of 1997)
- *Maternity Protection (Health and Safety Leave Remuneration) Regulations 1995* (S.I. No. 20 of 1995)
- *Maternity Protection (Health and Safety Leave Certification) Regulations 1995* (S.I. No. 19 of 1995)
- *Maternity Protection (Time Off For Ante-Natal and Post-Natal Care) Regulations 1995* (S.I. No. 18 of 1995)
- *Maternity Protection (Disputes and Appeals) Regulations 1995* (S.I. No. 17 of 1995)
- *Maternity Protection Act, 1994 (Commencement) Order 1995* (S.I. No. 16 of 1995)

All statutory instruments up to and including *Health Insurance Act 1994 (Section 11E(2)) Regulations 2013* (S.I. No. 93 of 2013), made 22 March 2013, were considered in the preparation of this revision.



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AN ACT TO IMPLEMENT COUNCIL DIRECTIVE 92/85/EEC OF 19 OCTOBER 1992 ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH AT WORK OF PREGNANT WORKERS AND WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING, TO REENACT WITH AMENDMENTS THE PROVISIONS OF THE MATERNITY PROTECTION OF EMPLOYEES ACTS, 1981 AND 1991, TO ENTITLE A MALE EMPLOYEE TO LEAVE IN CERTAIN CASES WHERE THE MOTHER OF HIS CHILD DIES, TO EXTEND AS A CONSEQUENCE OF THE ABOVE-MENTIONED PROVISIONS THE PROTECTION AGAINST UNFAIR DISMISSALS CONFERRED BY THE UNFAIR DISMISSALS ACT, 1977, AND TO PROVIDE FOR RELATED MATTERS. [27th December, 1994]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Functions transferred and terms “Department of Community, Equality and Gaeltacht Affairs” and “Minister for Community, Equality and Gaeltacht Affairs” construed (1.04.2011) by *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 139 of 2011), arts. 2, 3 and sch., subject to transitional provisions in arts. 4-8.
2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Justice and Law Reform.
- (2) References to the Department of Community, Equality and Gaeltacht Affairs contained in any Act or instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be read as references to the Department of Justice and Law Reform.
3. (1) The functions vested in the Minister for Community, Equality and Gaeltacht Affairs by or under any of the Acts mentioned in the Schedule are transferred to the Minister for Justice and Law Reform.
- (2) ...
- (3) References to the Minister for Community, Equality and Gaeltacht Affairs contained in any Act or instrument made under such Act and relating to any functions transferred by this Article shall, from the commencement of this Order, be read as references to the Minister for Justice and Law Reform.

- C2** Act included in collective citation (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 27(2), S.I. No. 652 of 2004.

Short title, collective citation and commencement.

27.— ...

(2) The Principal Act and this Act may be cited together as the Maternity Protection Acts 1994 and 2004.

Editorial Notes:

- E1** Previous affecting provision: functions transferred and terms “Department of Justice, Equality and Law Reform” and “Minister for Justice, Equality and Law Reform” construed as Department of/Minister for Community, Rural and Gaeltacht Affairs (1.06.2010) by *Equality, Integration, Disability and Human Rights (Transfer of Departmental Administration and Ministerial Functions) Order 2010* (S.I. No. 217 of 2010), arts. 2-3 and sch., subject to transitional provisions in arts. 4-8.
- E2** Previous affecting provision: functions transferred and terms “Department of Equality and Law Reform” and “Minister for Equality and Law Reform” construed as Department of/Minister for Justice (8.07.1997) by *Equality and Law Reform (Transfer of Departmental Administration and Ministerial Functions) Order 1997* (S.I. No. 297 of 1997), arts. 2-4 and sch., subject to transitional provisions in arts. 5-9. Name of Department of/Minister for Justice changed to Department of/Minister for Justice, Equality and Law Reform (9.07.1997) by *Justice (Alteration of Name of Department and Title of Minister) Order 1997* (S.I. No. 298 of 1997).

PART I

PRELIMINARY AND GENERAL

Short title and commencement.

1.—(1) This Act may be cited as the Maternity Protection Act, 1994.

(2) This Act shall come into operation on such day as may be fixed by order made by the Minister, and different days may be so fixed for different provisions and for different purposes.

Annotations

Editorial Notes:

- E3** Power pursuant to subs. (2) exercised (30.01.1995) by *Maternity Protection Act, 1994 (Commencement) Order 1995* (S.I. No. 16 of 1995).

2. The 30th day of January, 1995, is hereby fixed as the day on which the Maternity Protection Act, 1994 shall come into operation.

Interpretation.

2.—(1) In this Act—

“the 1977 Act” means the Unfair Dismissals Act, 1977;

“the 1981 Act” means the Maternity Protection of Employees Act, 1981;

“the 1989 Act” means the Safety, Health and Welfare at Work Act, 1989;

“the 1992 Directive” means Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breast-feeding;

“additional maternity leave” has the meaning assigned by *section 14*;

“associated employer” has the meaning assigned by *section 27 (3)*;

“the Authority” means the National Authority for Occupational Safety and Health;

“confinement” and “the date of confinement” have the meanings respectively assigned to them by *section 41* of the Social Welfare (Consolidation) Act, 1993;

“contract of employment” means, subject to *subsection (2)*—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with a person who is carrying on the business of an employment agency, within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract),

whether the contract is express or implied and if express, whether it is oral or in writing;

“employee”, subject to *subsection (2)*, means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

“employee who has recently given birth” means at any time an employee whose date of confinement was not more than 14 weeks earlier and who has informed her employer of her condition;

“employee who is breastfeeding” means at any time an employee whose date of confinement was not more than twenty-six weeks earlier, who is breastfeeding and who has informed her employer of her condition;

“employer”, subject to *subsection (2)*, means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

“job” has the meaning assigned by *section 26 (3)*;

“maternity leave” has the meaning assigned by *section 8*;

“the Minister” means the Minister for Equality and Law Reform;

“pregnant employee” means an employee who is pregnant and who has informed her employer of her condition;

“successor” has the meaning assigned by *section 26 (1)*;

“the Tribunal” means the Employment Appeals Tribunal.

(2) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service;

(b) an officer or servant of a local authority for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be, under a contract of service; and

(c) in relation to an employee whose contract of employment falls (or, where the employment has ceased, fell) within *paragraph (b)* of the definition of “contract of employment” in *subsection (1)*, the person who is liable to pay the employee’s wages shall be deemed to be the employer.

(3) Subject to *subsections (1) and (2)*, expressions used in this Act have the same meaning as in the 1992 Directive.

(4) In this Act a reference to a Part or section is to a Part or section of this Act, unless it is indicated that reference to some other enactment is intended.

(5) In this Act a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(6) In this Act a reference to an enactment includes a reference to that enactment as amended by any other enactment, including this Act.

Annotations

Editorial Notes:

- E4** The *Safety, Health and Welfare At Work Act 1989* was repealed (1.09.2005) and replaced by *Safety, Health and Welfare At Work Act 2005* (10/2005), s. 4 and sch. 2 pt. 1, S.I. No. 328 of 2005.

Orders and regulations.

3.—(1) The Minister may, in relation to any provision of this Act relating to notification (or confirmation of notification), by order vary any such provision.

(2) An order under this Act may contain such consequential, supplementary and ancillary provisions, including any provisions modifying any provision of this Act, as the Minister considers necessary or expedient.

(3) Any power under this Act to make an order includes power to amend or revoke an order made in the exercise of that power.

(4) Where an order is proposed to be made under this Act, other than an order under *section 1*, a draft of the order shall be laid before both Houses of the Oireachtas, and the order shall not be made until a resolution approving the draft has been passed by each such House.

(5) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Voidance or modification of certain provisions in agreements.

4.—(1) A provision in any agreement shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

(2) A provision in any agreement which is or becomes less favourable in relation to an employee than a similar or corresponding entitlement conferred on the employee by this Act shall be deemed to be so modified as to be not less favourable.

(3) Nothing in this Act shall be construed as prohibiting any agreement from containing any provision more favourable to an employee than any provision in *Parts II to VI*.

(4) References in this section to an agreement are to any agreement, whether a contract of employment or not, and whether made before or after the commencement of this Act.

Expenses.

5.—Any expenses incurred by the Minister or the Minister for Enterprise and Employment in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeal of 1981 Act, as amended.

6.—(1) The Maternity Protection of Employees Acts, 1981 and 1991 (which are replaced by the provisions of this Act) are hereby repealed.

(2) The repeal by this Act of the Maternity Protection of Employees Acts, 1981 and 1991 does not affect the construction of any reference in any other Act which defines “employee” or “employer” or any other expression by reference to those Acts (or the 1981 Act alone).

(3) In section 37 (4) (a) of the Social Welfare (Consolidation) Act, 1993 for “the Maternity Protection of Employees Act, 1981” there shall be substituted “the *Maternity Protection Act, 1994*”.

(4) In so far as any order or regulation made, notification given or other thing done under an enactment repealed by this Act could have been made, given or done under a corresponding provision of this Act, it shall have effect as if so made, given or done.

(5) Where a period of time specified in any enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.

Annotations

Editorial Notes:

- E5** The *Social Welfare (Consolidation) Act 1993* was repealed (1.12.2005) by *Social Welfare (Consolidation) Act 2005* (26/2005), s. 360 and sch. 7, S.I. No. 923 of 2005. The amendment in subs. (3) above had already been superseded (5.04.1995) by *Social Welfare Act 1995* (3/1995), s. 13(1)(d), commenced on enactment.

PART II

MATERNITY LEAVE

Interpretation of Part II.

7.—(1) In this Part “the minimum period of maternity leave” has the meaning assigned by section 8.

(2) References in this Part to an employee are references to a female employee only.

(3) References in this Part to a pregnant employee include, as respects any time before the expiry of her maternity leave, an employee who was pregnant immediately before that leave began.

Entitlement to maternity leave.

F1[8.—(1) Subject to this Part, a pregnant employee shall be entitled to leave, to be known (and referred to in this Act) as ‘maternity leave’, from her employment for a period (in this Part referred to as ‘the minimum period of maternity leave’ of not less than—

(a) F2[26 consecutive weeks], or

(b) F3[26 weeks] part of which is postponed in accordance with section 14B,
as may be appropriate.

(2) The Minister may by order, made with the consent of the Minister for Social and Family Affairs and the consent of the Minister for Finance, amend subsection (1) and section 13(2) so as to extend the period mentioned in each of those subsections.]

Annotations

Amendments:

- F1** Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 2, S.I. No. 652 of 2004.
- F2** Substituted (1.02.2007) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 8(a), in effect as per art. 2.
- F3** Substituted (1.02.2007) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 8(b), in effect as per art. 2.

Modifications (not altering text):

- C3** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...
No. 34 of 1994	Maternity Protection Act 1994	Sections 8(2), 16(8) and 18(5)(a)
...

Editorial Notes:

- E6** Power pursuant to section exercised (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), arts. 4 and 8, in force as per art. 2.
- E7** Previous affecting provision: section amended (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order, 2006* (S.I. No. 51 of 2006), art. 4, superseded by art. 8 of the same instrument above.
- E8** Previous affecting provision: section amended (8.02.2001) by *Maternity Protection Act, 1994 (Extension of Periods of Leave) Order, 2001* (S.I. No. 29 of 2001), art. 4; revoked (18.10.2004) by *Maternity Protection Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.

Notification to employer.

9.—(1) Entitlement to the minimum period of maternity leave shall be subject to a pregnant employee—

- (a) having, as soon as reasonably practicable but not later than four weeks before the commencement of maternity leave, notified in writing her employer (or caused her employer to be so notified) of her intention to take maternity leave; and
- (b) having, at the time of the notification, given to her employer or produced for her employer's inspection a medical or other appropriate certificate confirming the pregnancy and specifying the expected week of confinement.

(2) A notification under this section may be revoked by a further notification in writing by the employee concerned to her employer.

Allocation of minimum period of maternity leave.

10.—(1) Subject to *subsection (2)* and *sections 11 to 13*, the minimum period of maternity leave shall commence on such day as the employee selects, being F4[not later than two weeks before the end of the expected week of confinement], and shall end on such day as she selects, being not earlier than four weeks after the end of the expected week of confinement.

(2) Where an employee is employed under a contract for a fixed term and that term expires before the day which, apart from this subsection, would be the last day of her maternity leave, then—

- (a) notwithstanding any other provision in this Part, the last day of her maternity leave shall be the day on which the term expires; and
- (b) nothing in this Part shall affect the termination of the employee's contract of employment on that day.

Annotations**Amendments:**

- F4** Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004 (28/2004)*, s. 3, S.I. No. 652 of 2004.

Variation in allocation of minimum period of maternity leave.

11.—(1) Where it is certified by a registered medical practitioner or otherwise to the satisfaction of the Minister and the Minister for Social Welfare that, for an employee specified in the certificate, the minimum period of maternity leave should for a medical reason so specified commence on a date so specified, and the certificate is produced for inspection by the employer concerned within such period as may be prescribed by regulations made by the Minister under this section, the minimum period of maternity leave for that employee shall commence on the date so specified.

(2) Where a certificate under this section is issued and the requirement in *subsection (1)* relating to the production of the certificate for the employer's inspection is complied with, the employee specified in the certificate—

(a) shall be taken to have informed her employer of her pregnancy (if she had not previously done so); and

(b) shall be deemed to have complied also with *section 9 (1) (a)*.

Extension of
maternity leave.

12.—(1) Where the date of confinement of a pregnant employee occurs in a week after the expected week of confinement, the minimum period of maternity leave shall be extended by such number of consecutive weeks (subject to a maximum of four consecutive weeks) after the week in which the date of confinement occurs as ensures compliance with *section 10*.

(2) Where the minimum period of maternity leave is proposed to be extended under this section, the employee concerned shall—

(a) as soon as practicable after the proposal for such extension, notify in writing her employer (or cause her employer to be so notified) of the proposed extension; and

(b) as soon as practicable after the date of confinement, confirm in writing to her employer the notification under *paragraph (a)* and specify the duration of the extension.

Commencement
of maternity
leave (early
confinement).

13.—(1) Where, in relation to a pregnant employee, the date of confinement occurs in a week that is four weeks or more before the expected week of confinement, the employee shall, where the circumstances so require, be deemed to have complied with *section 9 (1) (a)* if the notification required by that section is given in the period of 14 days commencing on the date of confinement.

F5[(2) Notwithstanding *section 10(1)*, but subject to regulations under *section 11*, the minimum period of maternity leave for an employee referred to in *subsection (1)* shall be a period of not less than—

(a) **F6**[26 consecutive weeks], or

(b) **F6**[26 weeks] part of which is postponed in accordance with *section 14B*,

as may be appropriate, commencing on whichever of the following is the earlier—

(i) the first day of maternity leave taken in accordance with *section 10*, or

(ii) the date of confinement.]

Annotations

Amendments:

F5 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 4, S.I. No. 652 of 2004.

F6 Substituted (1.02.2007) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 9(a) and (b), in force as per art. 2.

Editorial Notes:

E9 Previous affecting provision: subs. (2) substituted (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 5, in force as per art. 2 and superseded by art. 9 of the same instrument above.

E10 Previous affecting provision: subs. (2) substituted (8.02.2001) by *Maternity Protection Act, 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001), art. 5, in force as per art. 2; revoked (18.10.2004) by *Maternity Protection Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.

Entitlement to additional maternity leave.

14.—F7[(1) An employee who has taken maternity leave shall, if she so wishes, be entitled in accordance with this section to further leave from her employment, to be known (and referred to in this Act) as ‘additional maternity leave’, for a maximum period of—

(a) F8[16 consecutive weeks] commencing immediately after the end of her maternity leave, or

(b) F8[16 weeks], all or part of which is postponed in accordance with section 14B, commencing either in accordance with that section or immediately after the end of her maternity leave,

as may be appropriate.]

(2) An employee shall be entitled to additional maternity leave, whether or not the minimum period of maternity leave has been extended under section 12.

(3) F7[Subject to section 14B, entitlement to additional maternity leave] shall be subject to an employee having notified in writing her employer (or caused her employer to be so notified) in accordance with *subsection (4)* of her intention to take such leave.

(4) Notification under *subsection (3)* shall be given either at the same time as the relevant notification under *section 9* or not later than four weeks before the date which would have been the employee’s expected date of return to work under *Part IV* if she had not taken the additional maternity leave.

(5) A notification under this section may be revoked by a further notification in writing given by or on behalf of the employee concerned to her employer not later than four weeks before the date which would have been her expected date of return to work under *Part IV* if she had not taken the additional maternity leave.

F7[(6) The Minister may by order amend subsection (1) so as to extend the period mentioned in that subsection.]

Annotations

Amendments:

F7 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004 (28/2004)*, s. 5, S.I. No. 652 of 2004.

F8 Substituted (1.02.2007) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 10(a) and (b), in force as per art. 2.

Editorial Notes:

E11 Power pursuant to section exercised (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), in force as per art. 2.

E12 Power pursuant to section exercised (8.02.2001) by *Maternity Protection Act, 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001); revoked (18.10.2004) by *Maternity Protection Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.

- E13** Previous affection provision: subs. (1)(a) and (b) substituted (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 6, in force as per art. 2; superseded by art. 10 of the same instrument above.
- E14** Previous affecting provision: subs. (1) substituted (8.02.2001) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001), art. 6, in force as per art. 2); revoked (18.10.2004) by *Maternity Protection Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.

F9 [Termination of additional maternity leave in event of sickness of mother.

14A.—(1) If, at any time—

(a) during the last 4 weeks of maternity leave whether or not part of such leave is postponed under section 14B and where, in accordance with section 14(4), an employee has, or is deemed under section 14B(3) to have, notified her employer, or caused her employer to be notified, of her intention to take additional maternity leave, or

(b) during the additional maternity leave whether or not such leave or part of it is postponed under section 14B,

an employee who is sick wishes to terminate the additional maternity leave, she may request in writing (or cause a written request to be submitted to) her employer to terminate the additional maternity leave.

(2) An employer who receives a request under subsection (1) may agree to terminate the additional maternity leave of the employee concerned and, if the employer does so, the additional maternity leave shall terminate on a date agreed by the employee and the employer that is not earlier than the date of the commencement of the employee's sickness and not later than the date on which the additional maternity leave would have ended in accordance with the notification given by the employee to the employer under section 14(4) or 14B(8), as the case may be.

(3) An employer who receives a request under subsection (1) shall notify the employee concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(4) Where the additional maternity leave of an employee is terminated under this section—

(a) the absence from work of the employee due to sickness following such termination shall be treated in the same manner as any absence from work of the employee due to sickness, and

(b) the employee shall not be entitled to the additional maternity leave or the part of it not taken by her at the date of such termination.]

Annotations

Amendments:

- F9** Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s.6, S.I. No. 652 of 2004.

F10 [Postponement of maternity leave or additional maternity leave in event of hospitalisation of child.

14B.—(1) Subject to subsection (2), an employee who is on maternity leave or is entitled to, or is on, additional maternity leave may, if the child in connection with whose birth she is on, or is entitled to, that leave (in this section referred to as 'the child') is hospitalised, request in writing (or cause a written request to be submitted to) her employer to postpone—

(a) part of the maternity leave,

(b) part of the maternity leave and the additional maternity leave, or

(c) the additional maternity leave or part of it.

as may be appropriate, in accordance with this section.

(2) An employee may make a request under paragraph (a) or (b) of subsection (1) to postpone part of her maternity leave with effect from a date she selects only if the period of maternity leave taken by her on that date is not less than 14 weeks and not less than 4 of those weeks are after the end of the week of confinement.

(3) Notwithstanding the fact that an employee who is on maternity leave has not in accordance with section 14(4) notified her employer in writing (or caused her employer to be so notified) of her intention to take additional maternity leave, she shall be deemed, for the purposes of making a request under paragraph (b) or (c) of subsection (1), to have complied with section 14(4).

(4) An employer who receives a request under subsection (1) may agree to postpone the leave concerned and, if the employer does so—

(a) the employee concerned shall return to work on a date agreed by her and the employer that is not later than the date on which the leave concerned is due to end in accordance with the notification given, or deemed under subsection (3) to have been given, by the employee to the employer under section 9 or 14, as the case may be,

(b) the leave concerned shall be postponed with effect from the date agreed under paragraph (a), and

(c) the employee concerned shall be entitled to—

(i) the part of the maternity leave,

(ii) the part of the maternity leave and the additional maternity leave, or

(iii) the additional maternity leave or the part of it,

as the case may be, not taken by her by reason of the postponement (in this section referred to as 'resumed leave') in accordance with regulations made under this section by the Minister to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital.

(5) An employer who receives a request under subsection (1) shall notify the employee concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(6) Where, following the postponement of leave under this section, an employee returns to work in accordance with subsection (4)(a) and during the period of the postponement she is absent from work due to sickness, the employee shall be deemed to commence resumed leave on the first day of such absence unless she notifies her employer in writing (or causes her employer to be so notified) as soon as reasonably practicable that she does not wish to commence such leave and, following such notification—

(a) the absence from work of the employee due to sickness shall be treated in the same manner as any absence from work of the employee due to sickness, and

(b) the employee shall not be entitled to the resumed leave.

(7) Without prejudice to the generality of subsection (4), regulations under this section may make provision in relation to either or both of the following matters:

(a) the maximum period of postponement of leave under this section, and

(b) the evidence to be furnished by an employee to her employer of the hospitalisation, and the discharge from hospital, of the child.

(8) Entitlement to resumed leave shall, subject to subsection (10), be subject to an employee having notified her employer in writing (or caused her employer to be so notified) as soon as reasonably practicable but not later than the day on which the leave begins of her intention to commence such leave.

(9) A notification under subsection (8) may be revoked by a further notification in writing given by or on behalf of the employee concerned to her employer within the period specified in that subsection for the giving of the notification concerned.

(10) An employer may, at the discretion of the employer, waive the right to receive a notification in accordance with subsection (8).

(11) Where an employee's leave is postponed under this section—

(a) subject to paragraphs (b) and (c), the employee shall comply with subsection (1A), in lieu of subsection (1), of section 28,

(b) the employee shall not, in relation to returning to work under subsection (4)(a), be required to comply with section 28, and

(c) the employee shall, if deemed under subsection (6) to be on resumed leave, comply with subsection (1B), in lieu of subsection (1) or (1A), of section 28.]

Annotations

Amendments:

F10 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 7, S.I. No. 652 of 2004.

Modifications (not altering text):

C4 Application of section affected (18.10.2004) by *Maternity Protection (Postponement of Leave) Regulations, 2004* (S.I. No. 655 of 2004), regs. 3 and 4, in force as per reg. 1(2).

3. The maximum period of postponement of leave under section 14B or 16B of the Principal Act is 6 months.

4. The evidence to be furnished by an employee or an employed father to her or his employer, if so requested by the employer, for the purposes of section 14B or 16B, as the case may be, of the Principal Act shall be—

(a) a letter or other appropriate document from the hospital in which the child concerned is hospitalised confirming the hospitalisation, and

(b) a letter or other appropriate document from the hospital concerned or the child's medical practitioner confirming that the child has been discharged from hospital and the date of that discharge.

Editorial Notes:

E15 Power pursuant to section exercised (18.10.2004) by *Maternity Protection (Postponement of Leave) Regulations 2004* (S.I. No. 655 of 2004).

Right to time off from work for antenatal or post-natal care.

15.—(1) For the purpose of receiving ante-natal or post-natal care or both, an employee shall be entitled to time off from her work, without loss of pay, in accordance with regulations made under this section by the Minister.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision in relation to all or any of the following matters—

- (a) the amount of time off to which an employee shall be entitled under this section;
- (b) the terms or conditions relating to such time off;
- (c) the notice to be given in advance by an employee so entitled to her employer (including any circumstances in which such notice need not be given);
- (d) the evidence to be furnished by an employee so entitled to her employer of any appropriate medical or related appointment.

Annotations

Editorial Notes:

- E16** Power pursuant to section exercised (30.01.1995) by *Maternity Protection (Time Off For Ante-Natal and Post-Natal Care) Regulations 1995* (S.I. No. 18 of 1995).

F11 [Entitlement to time off from work to attend ante-natal classes.

15A.—(1) Subject to subsection (3), a pregnant employee shall be entitled to time off from her work, without loss of pay, in accordance with regulations made under this section by the Minister, for the purpose of attending one set of ante-natal classes (other than the last 3 classes in such a set) and those classes may be attended by her during one or more pregnancies.

(2) Subject to subsection (3), an expectant father of a child (if he is employed under a contract of employment) shall be entitled once only to time off from his work, without loss of pay, in accordance with regulations made under this section by the Minister, for the purpose of attending the last 2 ante-natal classes in a set of such classes attended by the expectant mother of their child before the birth of the child.

(3) Subsection (1) or (2) shall not apply—

(a) to a member of the Defence Forces who is—

- (i) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
- (ii) engaged in operational duties at sea,
- (iii) engaged in operations in aid of the civil power,
- (iv) engaged in training that is directly associated with any of the activities referred to in subparagraphs (i), (ii) and (iii) of this paragraph, or
- (v) engaged in any other duty outside the State,

(b) if the Chief of Staff of the Defence Forces in exceptional circumstances so directs, to a member of the Defence Forces who is required to perform a duty which is, in the opinion of the Chief of Staff of the Defence Forces, of a special or urgent nature for so long as the member is performing the duty,

(c) to a member of the Garda Síochána who is on the direction, or with the consent, of the Commissioner of the Garda Síochána serving outside the State performing duties of a police character or advising others on, or monitoring them in, the performance of such duties or any related duties for so long as the member is so serving, and

(d) if the Commissioner of the Garda Síochána in exceptional circumstances so directs, to a member of the Garda Síochána who is required to perform a duty which is, in the opinion of the Commissioner of the Garda Síochána, of a special or urgent nature for so long as the member is performing the duty.

(4) Without prejudice to the generality of subsections (1) and (2), regulations under this section may make provision in relation to all or any of the following matters:

- (a) the amount of time off to be allowed for attendance at ante-natal classes;
- (b) the terms or conditions relating to such time off;
- (c) the notice to be given in advance by a pregnant employee or an expectant father entitled to time off under this section to her or his employer;
- (d) the evidence to be furnished by a pregnant employee or an expectant father so entitled to her or his employer of ante-natal classes that she or he is to attend.]

Annotations

Amendments:

- F11** Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 8, S.I. No. 652 of 2004.

Editorial Notes:

- E17** Power pursuant to section exercised (18.10.2004) by *Maternity Protection (Time Off For Ante-Natal Classes) Regulations 2004* (S.I. No. 653 of 2004).

F12[Entitlement to time off from work or reduction of working hours for breastfeeding.

15B.—(1) An employee who is breastfeeding shall be entitled, without loss of pay, at the option of her employer to either—

- (a) time off from her work for the purpose of breastfeeding in the workplace in accordance with regulations made under this section by the Minister where facilities for breastfeeding are provided in the workplace by her employer, or
- (b) a reduction of her working hours in accordance with regulations made under this section by the Minister for the purpose of breastfeeding otherwise than in the workplace.

(2) An employer shall not be required to provide facilities for breastfeeding in the workplace if the provision of such facilities would give rise to a cost, other than a nominal cost, to the employer.

(3) Without prejudice to the generality of subsection (1), regulations under this section may make provision in relation to all or any of the following matters:

- (a) the amount of time off and the number and frequency of breastfeeding breaks to which an employee is entitled under paragraph (a) of that subsection;
- (b) the reduction of working hours to which an employee is entitled under paragraph (b) of that subsection;
- (c) the terms or conditions relating to time off under paragraph (a), or to a reduction of working hours under paragraph (b), of that subsection;
- (d) the notice to be given in advance by an employee to her employer in relation to the proposed exercise by her of her entitlement under this section;
- (e) the evidence to be furnished by such an employee to her employer in relation to the date of confinement.

(4) If an employee who has exercised her entitlement under subsection (1) ceases to breastfeed, she shall, at the earliest practical time, notify her employer in writing that she has so ceased.

(5) In this section 'breastfeeding' means breastfeeding a child or expressing breast milk and feeding it to a child immediately or storing it for the purpose of feeding it to the child at a later time.]

Annotations

Amendments:

F12 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 9, S.I. No. 652 of 2004.

Editorial Notes:

E18 Power pursuant to section exercised (18.10.2004) by *Maternity Protection (Protection of Mothers Who Are Breastfeeding) Regulations 2004* (S.I. No. 654 of 2004).

Entitlement of employed father to leave on death of mother.

16.—F13[(1) If a woman who has been delivered of a living child (in this section referred to as 'the mother') dies at any time before the expiry of the F14[fortieth week] following the week of her confinement, the father of the child (if he is employed under a contract of employment) shall be entitled in accordance with this section to leave from his employment for a period ending as follows—

(a) if the mother dies before the expiry of the F14[twenty-fourth week] following the week of her confinement, the period ends, subject to section 16B, at the end of that F14[twenty-fourth week], and

(b) if the mother dies at any time after the expiry of that F14[twenty-fourth week], the period ends, subject to sections 16A and 16B, at the end of the F14[fortieth week] following the week of her confinement.]

(2) Entitlement to leave under *subsection (1)* shall be subject to the father—

(a) notifying his employer in writing (or causing his employer to be so notified) not later than the day on which his leave begins of the death of the mother, of his intention to take leave under *subsection (1)* and of the length of the leave to which he believes he is so entitled; and

(b) if requested by his employer, causing his employer to be supplied, as soon as is reasonably practicable, with a copy of the death certificate made in respect of the mother and of the birth certificate in respect of the child.

F13[(3) Subject to section 16B, the period of leave under subsection (1) shall commence within 7 days of the mother's death; and in this section and sections 16A and 16B—

(a) a period of leave which ends as mentioned in paragraph (a) of subsection (1) is referred to as 'subsection (1)(a) leave', and

(b) a period of leave which ends as mentioned in paragraph (b) of that subsection is referred to as 'subsection (1)(b) leave'.

(4) A father who has taken subsection (1)(a) leave shall, if he so wishes, be entitled to further leave from his employment for a maximum period of—

(a) F14[16 consecutive weeks] commencing immediately after the end of his subsection (1)(a) leave, or

(b) F14[16 weeks], all or part of which is postponed in accordance with section 16B, commencing either in accordance with that section or immediately after the end of his subsection (1)(a) leave,

as may be appropriate.]

(5) F13[Subject to section 16B, entitlement to further leave under subsection (4)] shall be subject to the father having notified in writing his employer (or caused his employer to be so notified) in accordance with subsection (6) of his intention to take such leave.

(6) Notification under subsection (5) shall be given either at the same time as the notification under subsection (2) (a) or (if it is later) not later than four weeks before the date which would have been the father's expected date of return to work under Part IV if he had not taken the further leave under subsection (4).

(7) A notification under this section may be revoked by a further notification in writing given by or on behalf of the father to his employer—

(a) if it relates to subsection (1) (a) leave or subsection (1) (b) leave, not later than the day on which the leave is due to begin; and

(b) if it relates to leave under subsection (4), not later than the latest date on which, under subsection (6), the notification which is to be revoked could have been given.

(8) The Minister may by order, made with the consent of the Minister for Social Welfare and with the consent of the Minister for Finance, amend subsections (1) and (4) so as to extend the periods mentioned in those subsections.

(9) Any reference in this section to the week of the mother's confinement is a reference to the week in which fell the date of her confinement.

Annotations

Amendments:

- F13** Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 10, S.I. No. 652 of 2004.
- F14** Substituted (1.02.2007) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 11(a) and (b), in force as per art. 2.

Modifications (not altering text):

- C5** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.
2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.
- (2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.
3. The functions conferred on the Minister for Finance by or under the provisions of —
- (a) the enactments specified in Schedule 1, and
- (b) the statutory instruments specified in Schedule 2,
- are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...
No. 34 of 1994	Maternity Protection Act 1994	Sections 8(2), 16(8) and 18(5)(a)
...

Editorial Notes:

- E19** Power pursuant to section exercised (1.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2004).
- E20** Power pursuant to section exercised (08.02.2001) by *Maternity Protection Act, 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001); revoked (18.10.2004) by *Maternity Protection (Amendment) Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.
- E21** Previous affecting provision: Section 16(1) amended (01.02.2006) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006* (S.I. No. 51 of 2006), art. 7, in force as per art. 2; superseded by art. 11 of the same instrument above.
- E22** Previous affecting provision: Section 16(1) substituted (08.02.2001) by *Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001* (S.I. No. 29 of 2001), art. 7, in force as per art. 2; revoked (18.10.2004) by *Maternity Protection (Amendment) Act 1994 (28/2004)*, s. 26, S.I. No. 652 of 2004.

F15 Termination of leave in event of sickness of father.

16A.—(1) If, at any time—

(a) during the last 4 weeks of subsection (1)(a) leave, whether or not such leave or part of it is postponed under section 16B and where, in accordance with section 16(6), a father has, or is deemed under section 16B(2) to have, notified his employer, or caused his employer to be notified, of his intention to take further leave under section 16(4), or

(b) during subsection (1)(b) leave or a period of further leave under section 16(4), whether or not such leave or a part of it is postponed under section 16B,

a father who is sick wishes to terminate his subsection (1)(b) leave or a period of further leave under section 16(4), as the case may be, he may request in writing (or cause a written request to be submitted to) his employer to terminate that leave.

(2) An employer who receives a request under subsection (1) may agree to terminate the leave concerned of the father concerned and, if the employer does so, the leave concerned shall terminate on a date agreed by the father and the employer that is not earlier than the date of the commencement of the father's sickness and not later than the date on which the leave concerned would have ended in accordance with

the notification given by the father to the employer under subsection (2)(a) or (6) of section 16 or section 16B(7), as the case may be.

(3) An employer who receives a request under subsection (1) shall notify the father concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(4) Where the leave of a father is terminated under this section—

(a) the absence from work of the father due to sickness following such termination shall be treated in the same manner as any absence from work of the father due to sickness, and

(b) the father shall not be entitled to the subsection (1)(b) leave or further leave under section 16(4), as the case may be, or the part of such leave not taken by him at the date of such termination.]

Annotations

Amendments:

F15 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 11, S.I. No. 652 of 2004.

F16 [Postpone-
ment of leave
under section 16
in event of hospi-
talisation of
child.

16B.—(1) A father who is entitled to, or is on, leave under section 16 may, if the child in connection with whose birth he is entitled to, or is on, that leave (in this section referred to as 'the child') is hospitalised, request in writing (or cause a written request to be submitted to) his employer to postpone—

(a) his subsection (1)(a) leave or part of such leave,

(b) his subsection (1)(a) leave or part of such leave and a period of further leave under section 16(4),

(c) his subsection (1)(b) leave or a period of further leave under section 16(4), as the case may be, or part of such leave, as may be appropriate, in accordance with this section.

(2) Notwithstanding the fact that a father who is on subsection (1)(a) leave has not in accordance with section 16(6) notified his employer in writing (or caused his employer to be so notified) of his intention to take further leave under section 16(4), he shall be deemed, for the purposes of making a request under paragraph (b) or (c) of subsection (1), to have complied with section 16(6).

(3) An employer who receives a request under subsection (1) may agree to postpone the leave concerned and, if the employer does so—

(a) the father concerned shall continue to work, or return to work on a date agreed by him and the employer that is not later than the date on which the leave concerned is due to end in accordance with the notification given, or deemed under subsection (2) to have been given, by the father to the employer under section 16, as may be appropriate,

(b) the leave concerned shall be postponed or postponed with effect from the date agreed under paragraph (a), as may be appropriate, and

(c) the father concerned shall be entitled to—

(i) the subsection (1)(a) leave or the part of such leave,

(ii) the subsection (1)(a) leave or the part of such leave and the period of further leave under section 16(4).

(iii) the subsection (1)(b) leave or the period of further leave under section 16(4), as the case may be, or the part of such leave,

as the case may be, not taken by him by reason of the postponement (in this section referred to as 'resumed leave') in accordance with regulations made under this section by the Minister to be taken in one continuous period commencing not later than 7 days after the discharge of the child from hospital.

(4) An employer who receives a request under subsection (1) shall notify the father concerned in writing of the employer's decision in relation to the request as soon as reasonably practicable following the receipt of it.

(5) Where, following the postponement of leave under this section, a father returns to work in accordance with subsection (3)(a) and during the period of the postponement he is absent from work due to sickness, the father shall be deemed to commence resumed leave on the first day of such absence unless he notifies his employer in writing (or causes his employer to be so notified) as soon as reasonably practicable that he does not wish to commence such leave and, following such notification—

(a) the absence from work of the father due to sickness shall be treated in the same manner as any absence from work of the father due to sickness, and

(b) the father shall not be entitled to the resumed leave.

(6) Without prejudice to the generality of subsection (3), regulations under this section may make provision in relation to either or both of the following matters:

(a) the maximum period of postponement of leave under this section, and

(b) the evidence to be furnished by a father to his employer of the hospitalisation, and the discharge from hospital, of the child.

(7) Entitlement to resumed leave shall, subject to subsection (9), be subject to a father having notified his employer in writing (or causing his employer to be so notified) as soon as reasonably practicable but not later than the day on which the leave begins of his intention to commence such leave.

(8) A notification under subsection (7) may be revoked by a further notification in writing given by or on behalf of the father concerned to his employer within the period specified in that subsection for the giving of the notification concerned.

(9) An employer may, at the discretion of the employer, waive the right to receive a notification in accordance with subsection (7).

(10) Where a father's leave is postponed under this section—

(a) subject to paragraphs (b) and (c), the father shall comply with subsection (1A), in lieu of subsection (1), of section 28,

(b) the father shall not, in relation to returning to work under subsection (3)(a), be required to comply with section 28, and

(c) the father shall, if deemed under subsection (5) to be on resumed leave, comply with subsection (1B), in lieu of subsection (1) or (1A), of section 28.]

Annotations

Amendments:

F16 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 12, S.I. No. 652 of 2004.

Modifications (not altering text):

- C6** Application of section affected (18.10.2004) by *Maternity Protection (Postponement of Leave) Regulations 2004* (S.I. No. 655 of 2004), regs. 3 and 4, in force as per reg. 1(2).

3. The maximum period of postponement of leave under section 14B or 16B of the Principal Act is 6 months.

4. The evidence to be furnished by an employee or an employed father to her or his employer, if so requested by the employer, for the purposes of section 14B or 16B, as the case may be, of the Principal Act shall be—

- (a) a letter or other appropriate document from the hospital in which the child concerned is hospitalised confirming the hospitalisation, and
- (b) a letter or other appropriate document from the hospital concerned or the child's medical practitioner confirming that the child has been discharged from hospital and the date of that discharge.

Editorial Notes:

- E23** Power pursuant to section exercised (18.10.2004) by *Maternity Protection (Postponement of Leave) Regulations 2004* (S.I. No. 655 of 2004).

PART III**LEAVE TO PROTECT HEALTH AND SAFETY OF PREGNANT EMPLOYEES, ETC.**

Employees to whom *Part III* applies.

17.—This Part applies to—

- (a) pregnant employees;
- (b) employees who have recently given birth; and
- (c) employees who are breastfeeding.

Leave on health and safety grounds.

18.—(1) If, by regulations under the 1989 Act implementing the 1992 Directive, an employer is required to move an employee to whom this Part applies to other work (whether as a result of a risk assessment or because the employee cannot be required to perform night work), but—

- (a) it is not technically or objectively feasible for the employer to move the employee as required by the regulations, or
- (b) such a move cannot reasonably be required on duly substantiated grounds, or
- (c) the other work to which the employer proposes to move the employee is not suitable for her,

the employee shall be granted leave from her employment under this section.

(2) Where an employee is granted leave under this section, she shall be entitled to receive, on request to her employer, a certificate, in such form as may be determined by regulations—

- (a) stating that she has been granted leave for whichever of the reasons in *paragraphs (a) to (c) of subsection (1)* is appropriate in the circumstances and containing such supplementary information as the regulations may require; and
- (b) specifying the date on which the leave began and its expected duration.

(3) For the purposes of *subsection (1) (c)*, other work is suitable for an employee if it is—

(a) of a kind which is suitable in relation to the employee concerned, as an employee to whom this Part applies; and

(b) appropriate for the employee to do in all the circumstances.

(4) For the first 21 days of leave granted to an employee by an employer under this section in any relevant period, the employee shall be entitled to receive from the employer remuneration of an amount determined in accordance with regulations.

(5) Regulations under *subsection (2)* or *subsection (4)* shall be made by the Minister after consultation with—

(a) the Minister for Finance;

(b) the Minister for Social Welfare; and

(c) the Minister for Enterprise and Employment.

(6) In *subsection (4)* “relevant period”, in relation to an employee, means the period beginning with her pregnancy and continuing beyond any confinement resulting from that pregnancy until she ceases to be an employee who has recently given birth or, as the case may be, an employee who is breastfeeding.

(7) Regulations under *subsection (4)* may provide that such day or days as may be determined under the regulations shall be left out of account in calculating the 21 days referred to in that subsection.

Annotations

Modifications (not altering text):

- C7** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year	Short Title	Provision
(1)	(2)	(3)
...
No. 34 of 1994	Maternity Protection Act 1994	Sections 8(2), 16(8) and 18(5)(a)
...

Editorial Notes:

E24 Power pursuant to subs. (2) exercised (30.01.1995) by *Maternity Protection (Health and Safety Leave Remuneration) Regulations 1995* (S.I. No. 20 of 1995).

E25 Power pursuant to subs. (4) exercised (30.01.1995) by *Maternity Protection (Health and Safety Leave Certification) Regulations 1995* (S.I. No. 19 of 1995).

Ending of leave under *section 18* where no change of circumstances.

19.—(1) Subject to *subsection (2)* and *section 20*, leave granted to an employee under *section 18* shall end—

(a) in the case of leave granted to a pregnant employee, immediately before her maternity leave begins; and

(b) in any other case, on the date on which she ceases to be an employee to whom this Part applies.

(2) Where an employee to whom leave is granted under *section 18* is employed under a contract for a fixed term and that term expires before the day which, apart from this subsection, would be the day on which that leave would end, then—

(a) the last day of the leave so granted to her shall be the day on which the term expires; and

(b) nothing in this Part shall affect the termination of the employee's contract of employment on that day.

Ending of leave under *section 18* on change of circumstances.

20.—(1) If an employee to whom leave has been granted under *section 18* as being an employee who is breastfeeding ceases breastfeeding, she shall, at the earliest practical time, notify her employer in writing that she has so ceased.

(2) Without prejudice to *subsection (1)*, if, during a period of leave granted to an employee under *section 18*, the employee becomes aware that her condition is no longer such that she is vulnerable to the risk by virtue of which she was granted the leave, she shall at the earliest practical time notify her employer in writing that she is no longer at risk.

(3) Where an employer receives notification from an employee under *subsection (1)* or *subsection (2)*, and has no reason to believe that, if the employee returned to work, she would be vulnerable to risk as an employee to whom this Part applies—

(a) the employer shall take all reasonable measures to enable the employee to return to work in the job which she held immediately before the start of her leave and shall then notify her in writing that she can resume work in that job; and

(b) the leave granted to the employee under *section 18* shall end seven days after the notification under *paragraph (a)* is received by her or, if it is earlier, on the day she returns to work.

(4) If, during a period of leave granted to an employee under *section 18*, her employer—

- (a) either takes whatever measures are necessary to ensure that she will no longer be exposed to any risk by virtue of which she was granted the leave or becomes able to move the employee as mentioned in *section 18 (1)*, and
- (b) notifies the employee in writing that she can return to work without exposure to that risk or, as the case may be, that other work is available to her which is suitable for her as mentioned in *section 18 (3)*,

the leave granted to the employee under *section 18* shall end seven days after the notification under *paragraph (b)* is received by her or, if it is earlier, on the day she returns to work or, as the case may be, takes up the other work.

PART IV

EMPLOYMENT PROTECTION

Interpretation of
Part IV.

21.—(1) In this Part—

“natal care absence”, in relation to an employee, means a period of absence from her work to which the employee is entitled in accordance with regulations under *section 15*; and

“protective leave” means—

- (a) maternity leave;
- (b) additional maternity leave;
- (c) leave to which a father is entitled under *subsection (1)* or *subsection (4)* of *section 16*; or
- (d) leave granted under *section 18*.

(2) Where protective leave of one description is immediately followed by protective leave of another description, the time on leave shall be treated for the purposes of this Part as one continuous period of protective leave.

F17[(3) Where—

- (a) maternity leave,
- (b) additional maternity leave, or
- (c) leave to which a father is entitled under *subsection (1)* or *(4)* of *section 16*,

or part of such leave is postponed in accordance with *section 14B* or *16B*, as may be appropriate, the time (if any) on leave before such postponement and the time on leave after such postponement shall be treated for the purposes of this Part as separate periods of protective leave.]

Annotations

Amendments:

- F17** Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s.13, S.I. No. 652 of 2004.

Preservation or suspension of certain rights, etc. while on protective leave, etc.

22.—(1) During a period of absence from work by an employee while on—

- (a) maternity leave,
- (b) *subsection (1) (a) leave*, as defined in *section 16 (3)*, or
- (c) leave granted under *section 18*,

and during a period of natal care absence, the employee shall be deemed to have been in the employment of the employer and, accordingly, while so absent the employee shall, subject to *subsection (6)* and *section 24*, F18[*be treated as if she or he had not been so absent*]; and such absence shall not affect any right (other than, except in the case of natal care absence, the employee's right to remuneration during such absence), whether conferred by statute, contract or otherwise, and related to the employee's employment.

F18[(2) In respect of a period of absence from work by an employee while on—

- (a) additional maternity leave,
- (b) *subsection (1)(b) leave* within the meaning of *section 16*, or
- (c) further leave under *section 16(4)*,

the employee shall be deemed to have been in the employment of the employer and accordingly, while so absent the employee shall, subject to *section 24*, be treated as if she or he had not been so absent; and such absence shall not affect any right or obligation (other than the employee's right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment during such absence), whether conferred or imposed by statute, contract or otherwise, and related to the employee's employment.

(2A) In respect of a period of absence from work by an employee while—

- (a) attending ante-natal classes in accordance with *section 15A*, or
- (b) breastfeeding in accordance with *section 15B*,

the employee shall be deemed to have been in the employment of the employer and accordingly, while so absent the employee shall, subject to *section 24*, be treated as if she or he had not been so absent; and such absence shall not affect any right, whether conferred by statute, contract or otherwise, and related to the employee's employment.]

(3) Nothing in this section affects—

- (a) an employee's right to be offered suitable alternative employment under *section 27*; or
- (b) an employee's right to remuneration in accordance with *section 18 (4)*.

(4) A period of absence from work while on protective leave shall not be treated as part of any other leave (including sick leave or annual leave) to which the employee concerned is entitled.

(5) An employee shall be deemed not to be an employed contributor for the purposes of the Social Welfare (Consolidation) Act, 1993, for any contribution week (within the meaning of that Act) in a period of absence from work on protective leave if the employee does not receive any reckonable earnings (within the meaning of that Act) in respect of that week.

(6) Where *subsection (1)* applies during a period of absence by an employee while she is on leave granted under *section 18*, nothing in this section shall entitle her to benefits under *section 4* of the Holidays (Employees) Act, 1973 in respect of a public holiday (within the meaning of that Act) falling during that period of absence.

Annotations**Amendments:**

F18 Substituted and inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 14, S.I. No. 652 of 2004.

Editorial Notes:

E26 The *Holidays (Employees) Act 1973* was repealed (30.09.1997) and replaced by *Organisation of Working Time Act 1997* (20/1997), s. 9, sch. 4 and s. 21, S.I. No. 392 of 1997.

Voidance of certain purported terminations of employment, etc.

23.—Each of the following shall be void:

(a) any purported termination of an employee's employment while the employee is absent from work on protective leave;

(b) any purported termination of an employee's employment during a period of natal care absence;

F19[(bb) any purported termination of an employee's employment during a period of absence from work to attend ante-natal classes in accordance with section 15A;

(bbb) any purported termination of an employee's employment during a period of absence from work for breastfeeding in accordance with section 15B;]

(c) any notice of termination of an employee's employment given while the employee is absent from work on protective leave and expiring subsequent to such a period of absence;

(d) any notice of termination of an employee's employment given during a period of natal care absence and expiring subsequent to such a period;

F19[(dd) any notice of termination of an employee's employment given during a period of absence from work to attend ante-natal classes in accordance with section 15A and expiring subsequent to such a period;

(ddd) any notice of termination of an employee's employment given during a period of absence from work for breastfeeding in accordance with section 15B and expiring subsequent to such a period;]

F20[(e) any purported suspension from an employee's employment imposed while the employee is absent from work on protective leave, during a period of natal care absence or during a period of absence from work to attend ante-natal classes in accordance with section 15A or for breastfeeding in accordance with section 15B.]

Annotations**Amendments:**

F19 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 15(a) and (b), S.I. No. 652 of 2004.

F20 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 15(c), S.I. No. 652 of 2004.

Extension of certain notices of termination of employment or of certain suspensions.

24.—Any notice of termination of employment given in respect of an employee or any suspension from employment imposed on an employee—

(a) before the receipt by the employee's employer of a notification under F21[section 9, 12, 14, 14B, 15, 15A, 15B, 16 or 16B] (or, where appropriate, under section 28), or

(b) before the production for the employer's inspection of a certificate under section 11,

F22[and due to expire during the employee's absence from work on protective leave, during a period of natal care absence or during a period of absence from work to attend ante-natal classes in accordance with section 15A or for breastfeeding in accordance with section 15B shall be extended by the period of such absence.]

Annotations

Amendments:

F21 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 16(a), S.I. No. 652 of 2004.

F22 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 16(b), S.I. No. 652 of 2004.

Provisions regarding periods of probation, training and apprenticeship.

25.—(1) During an employee's absence from work while on protective leave, being an employee who, starting with F23[the commencement of her or his employment with the employer]—

(a) is on probation in that employment, or

(b) is undergoing training in relation to that employment, or

(c) is employed under a contract of apprenticeship,

the probation, training or apprenticeship shall stand suspended during such absence and shall be completed by the employee F23[on his or her return to work after such absence].

(2) The Minister may by regulations prescribe a period or periods of training in relation to which subsection (1) shall not apply.

Annotations

Amendments:

F23 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 17, S.I. No. 652 of 2004.

General right to return to work on expiry of protective leave.

26.—(1) Subject to this Part, on the expiry of a period during which an employee was absent from work while on protective leave, the employee shall be entitled to return to work—

(a) F24[with the employer with whom she or he was working immediately before the start of that period or, where during the employee's absence from work there was a change of ownership of the undertaking in which she or he was employed immediately before her or his absence], with the owner (in this Act referred to as "the successor") of the undertaking at the expiry of the period of absence,

(b) in the job which the employee held immediately before the start of that period, and

(c) under the contract of employment under which the employee was employed immediately before the start of that period, or, where a change of ownership such as is referred to in *paragraph (a)* has occurred, under a contract of employment with the successor which is identical to the contract under which the employee was employed immediately before the start of that period, F25[and (in either case) under terms or conditions —

(i) not less favourable than those that would have been applicable to the employee, and

(ii) that incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled,

if she or he had not been so absent from work.]

(2) For the purposes of *subsection (1) (b)*, where the job held by an employee immediately before the start of the period of F24[her or his absence on protective leave] was not the employee's normal or usual job, the employee shall be entitled to return to work, either in F24[her or his normal or usual job] or in that job as soon as is practicable without contravention by the employee or the employer of any provision of a statute or instrument made under statute.

(3) In this section "job", in relation to an employee, means the nature of F24[the work which she or he is employed to do in accordance with her or his contract of employment and the capacity and place in which she or he is so employed].

Annotations

Amendments:

F24 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 18(a), (c) and (d), S.I. No. 652 of 2004.

F25 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 18(b), S.I. No. 652 of 2004.

Right to suitable alternative work in certain circumstances on return to work.

27.—(1) Where an employee is entitled to return to work in accordance with *section 26* but it is not reasonably practicable for the employer or the successor to permit the employee to return to work in accordance with that section, the employee shall, subject to this Part, be entitled to be offered by the employer, the successor or an associated employer suitable alternative work under a new contract of employment.

(2) Work under a new contract of employment constitutes suitable alternative work for the purposes of this Act if—

(a) the work required to be done under the contract is of a kind which is suitable in relation to the employee concerned and appropriate for the employee to do in the circumstances; and

F26[(b) the terms or conditions of the contract—

(i) relating to the place where the work under it is required to be done, the capacity in which the employee concerned is to be employed and any other terms or conditions of employment are not less favourable to the employee than those of her or his contract of employment immediately before the start of the period of absence from work while on protective leave, and

(ii) incorporate any improvement to the terms or conditions of employment to which the employee would have been entitled if she or he had not been so absent from work during that period.]

(3) For the purposes of this Act one employer shall be taken to be associated with another—

- (a) if one is a body corporate of which the other (whether directly or indirectly) has control; or
- (b) if both are bodies corporate of which a third person (whether directly or indirectly) has control.

Annotations

Amendments:

F26 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s.19, S.I. No. 652 of 2004.

Notification of intention to return to work.

28.—(1) F27[Subject to sections 14B(11) and 16B(10), entitlement to return to work] in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work while on protective leave in accordance with this Act having, not later than four weeks before F27[the date on which she or he expects to return to work], notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of F27[her or his intention to return to work] and of F27[the date on which she or he expects to return to work].

F28[(1A) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work on resumed leave within the meaning of section 14B or 16B, as the case may be, having notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of her or his intention to return to work and of the date on which she or he expects to return to work—

(a) if the period of resumed leave concerned is 4 weeks or less—

- (i) at the same time as the relevant notification is given by the employee under section 14B(8) or 16B(7), as the case may be, or
- (ii) if the employer waives the right to receive such notification, not later than the day on which the employee expects to return to work,

or

(b) if the period of resumed leave concerned is more than 4 weeks, not later than 4 weeks before the date on which the employee expects to return to work.

(1B) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work and been deemed under subsection (6) of section 14B or subsection (5) of section 16B, as the case may be, to be on resumed leave within the meaning of whichever of those sections is appropriate having, not later than the date on which she or he expects to return to work, notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, of her or his intention to return to work and of the date on which she or he expects to return to work.]

(2) Where, in the opinion of a rights commissioner or the Tribunal, there are reasonable grounds—

F27[(a) for an employee's failure to give notification under subsection (1), (1A) or (1B), as may be appropriate, or]

(b) for an employee giving such notification otherwise than within the specified time limits,

the rights commissioner or the Tribunal, as the case may be, shall extend the time for giving the notification.

(3) In the absence of reasonable grounds—

F27[(a) failure to give notification under subsection (1), (1A) or (1B), as may be appropriate, or]

(b) the giving of such notification otherwise than within the specified time limits,

are matters that may be taken into account by a rights commissioner, the Tribunal or the Circuit Court in determining the employee's rights under the 1977 Act, this Act or any other relevant enactment, so far as the remedies of re-instatement, re-engagement or compensation are concerned.

Annotations

Amendments:

F27 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 20(a) and (c), S.I. No. 652 of 2004.

F28 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 20(b), S.I. No. 652 of 2004.

Postponement of return to work.

29.—Where, because of an interruption or cessation of work at an employee's place of employment, existing on the date specified in a notification under *section 28* given by the employee, it is unreasonable to expect the employee to return to work on the date specified in the notification, the employee may return to work instead when work resumes at the place of employment after the interruption or cessation, or as soon as reasonably practicable after such resumption.

PART V

RESOLUTION OF DISPUTES

Reference of disputes to which *Part V* applies.

30.—(1) Subject to *subsection (2)*, this Part applies to any dispute between an employee and the relevant employer relating to any entitlement of the employee under *Parts II to IV* (or any matter arising out of or related to such an entitlement) other than—

(a) a dispute relating to the dismissal of an employee; or

(b) a dispute as to a matter which is within the competence of the Authority under the 1989 Act;

and in the following provisions of this Part “dispute” means one to which this Part applies.

(2) This Part does not apply where the employee is in employment as a member of the Defence Forces and, accordingly, in the following provisions of this Part, “employee” does not include an employee in such employment.

(3) In this Part “the relevant employer”, in relation to an employee, means the employee’s employer or, where appropriate, the successor or an associated employer.

(4) Either the employee or the relevant employer may refer a dispute to a rights commissioner.

(5) The Minister may make regulations for the purposes of this Part, and in this Part “prescribed” means prescribed by such regulations.

(6) In *subsection (1) (a)* “dismissal” has the same meaning as in the 1977 Act except that, in applying that definition for the purposes of *subsection (1) (a)*, the expressions “employer” and “contract of employment”, where used in that definition, shall be given the same meanings as in this Act.

Annotations

Editorial Notes:

- E27** The *Safety, Health and Welfare At Work Act 1989* was repealed (1.09.2005) and replaced by *Safety, Health and Welfare At Work Act 2005* (10/2005), s. 4 and sch. 2 pt. 1, S.I. No. 328 of 2005.
- E28** Power pursuant to section exercised (18.05.1999) by *Maternity Protection (Maximum Compensation) Regulations 1999* (S.I. No. 134 of 1999).
- E29** Power pursuant to section exercised (30.01.1995) by *Maternity Protection (Disputes and Appeals) Regulations 1995* (S.I. No. 17 of 1995).

Procedure for referral of disputes to rights commissioner.

31.—(1) The referral of a dispute shall be initiated by the employee or the relevant employer giving a notice in writing, containing such particulars (if any) as may be prescribed, to a rights commissioner—

F29[(a) within the period of 6 months from the date on which the employer is informed of the initial circumstances relevant to the dispute, that is to say—

(i) that the employee is pregnant, has recently given birth or is breastfeeding,

(ii) in the case of an employee who is the expectant father of a child, that the expectant mother of the child is pregnant, or

(iii) in the case of an employee who is the father of a child, that the child’s mother has died, or]

(b) if the rights commissioner is satisfied that exceptional circumstances prevented the giving of the notice within the period specified in *paragraph (a)*, within such period, not exceeding 12 months from the date so specified, as the rights commissioner considers reasonable.

(2) As soon as may be after a rights commissioner has received a notice under *subsection (1)* from one party to the dispute, the rights commissioner shall give a copy of the notice to the other party.

(3) Proceedings on the reference of a dispute to a rights commissioner shall be conducted otherwise than in public.

(4) The rights commissioner shall hear the parties to the dispute and any evidence tendered by them.

(5) The rights commissioner shall furnish the Tribunal with a copy of each decision given by the rights commissioner under this Part.

Annotations

Amendments:

F29 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s.21, S.I. No. 652 of 2004.

Editorial Notes:

E30 Power pursuant to section exercised (30.01.1995) by *Maternity Protection (Disputes and Appeals) Regulations 1995* (S.I. No. 17 of 1995).

Redress.

32.—(1) On the hearing of a dispute a rights commissioner or the Tribunal shall—

(a) in the case of a rights commissioner, make a decision in relation to the dispute, or

(b) in the case of the Tribunal, make a determination in relation to the dispute,

and may give to the parties concerned such directions as the rights commissioner or the Tribunal, as the case may be, considers necessary or expedient for the resolution of the dispute.

(2) If a decision or determination under *subsection (1)* is in favour of the employee then, without prejudice to the power to give directions under that subsection, the rights commissioner or Tribunal may order such redress for the employee as the rights commissioner or Tribunal considers appropriate, either or both of the following—

(a) the grant of leave for such period as may be so specified;

(b) an award of compensation in favour of the employee to be paid by the relevant employer.

(3) Compensation under *subsection (2) (b)* shall be of such amount as the rights commissioner or Tribunal deems just and equitable having regard to all the circumstances of the case but shall not exceed 20 weeks' remuneration in respect of the employee's employment calculated in such manner as may be prescribed.

(4) In this section "remuneration" includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

(5) The decision of a rights commissioner or determination of the Tribunal shall be in writing and shall be communicated to the parties by the rights commissioner or Tribunal, as the case may be.

Annotations

Editorial Notes:

E31 Power pursuant to section exercised (18.05.1999) by *Maternity Protection (Maximum Compensation) Regulations 1999* (S.I. No. 134 of 1999).

Appeal from decision of rights commissioner.

33.—(1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner in relation to a dispute and the Tribunal shall hear the parties and any

evidence relevant to the appeal tendered by them and shall make a determination in relation to the appeal.

(2) An appeal under this section shall be initiated by a party by giving, within four weeks of the date on which the decision to which it relates was given to the parties concerned, a notice in writing to the Tribunal (containing such particulars (if any) as may be prescribed) and the Tribunal shall give a copy of the notice to the other party concerned as soon as may be after the receipt by it of the notice.

(3) A witness before the Tribunal on an appeal under this section shall be entitled to the same immunities and privileges as if the witness were a witness before the High Court.

(4) The Tribunal shall, on the hearing of an appeal under this section, have power to take evidence on oath and for that purpose may cause oaths to be administered to persons attending as witnesses at the hearing.

(5) Any person who, upon examination on oath authorised under *subsection (4)*, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, shall be guilty of an offence and, on conviction thereof, be liable to the penalties for wilful and corrupt perjury.

(6) The Tribunal may, by giving notice in that behalf in writing, require any person to attend at such time and place as is specified in the notice, to give evidence in relation to any matter referred to the Tribunal under this section or to produce any documents in that person's possession, custody or control which relate to any such matter, and a person to whom such a notice has been given who—

(a) fails without just cause to attend in accordance with the notice, or

(b) having so attended, fails without just cause to give evidence or to produce any document to which the notice relates,

shall be guilty of an offence and liable on summary conviction thereof to a fine not exceeding £1,000.

(7) Proceedings for an offence under *subsection (6)* may be brought and prosecuted by the Minister.

(8) A document purporting to be signed by the chairman or vice-chairman of the Tribunal stating that—

(a) a person named in the document was by a notice under *subsection (6)* required to attend before the Tribunal on a day and at a time and place specified in the document, to give evidence or produce a document,

(b) a sitting of the Tribunal was held on that day and at that time and place, and

(c) the person did not attend before the Tribunal in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or failed to produce the document,

shall, in a prosecution of the person for an offence under *subsection (6)*, be sufficient evidence of the matters so stated unless the contrary is shown.

Annotations

Editorial Notes:

- E32** Power pursuant to section exercised (30.01.1995) by *Maternity Protection (Disputes and Appeals) Regulations 1995* (S.I. No. 17 of 1995).

F30[Burden of proof.

33A.—(1) In this section—

‘discrimination’ means—

- (a) a failure, which gives rise to a dispute, to comply with a provision of Parts II to IV, or
- (b) an unfair dismissal (within the meaning of the 1977 Act) of an employee resulting wholly or mainly from—
 - (i) the employee’s pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith, or
 - (ii) the exercise or proposed exercise by the employee of the right under this Act to any form of protective leave or natal care absence, within the meaning of Part IV, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*);

‘employee’, in relation to proceedings under the 1977 Act, has the meaning assigned to it by that Act;

‘indirect discrimination’ shall be construed in accordance with section 22 (as amended by Regulation 4(b) of the European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001)) of the Employment Equality Act 1998 insofar as that section relates to discrimination on the gender ground within the meaning of that Act;

‘proceedings’ means—

- (a) any proceedings under this Part before—
 - (i) a rights commissioner dealing with a dispute referred to the rights commissioner by an employee, or
 - (ii) the Tribunal,
 or
- (b) any proceedings under the 1977 Act before a rights commissioner, the Tribunal or the Circuit Court in which a claim is made by an employee for redress under that Act for unfair dismissal on the grounds that the dismissal resulted wholly or mainly from—
 - (i) the employee’s pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith, or
 - (ii) the exercise or proposed exercise by the employee of the right under this Act to any form of protective leave or natal care absence, within the meaning of Part IV, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*),

and includes any subsequent proceedings, including proceedings on appeal, arising from the claim.

(2) Where in any proceedings facts are established by an employee from which it may be presumed that there has been discrimination or indirect discrimination in relation to him or her, it shall be for the respondent to prove the contrary.

(3) This section is without prejudice to section 6(6) of the 1977 Act or any other enactment or rule of law in relation to the burden of proof in proceedings which may be more favourable to such an employee.

(4) Nothing in this section shall operate to reduce the existing level of protection for employees in relation to the burden of proof in proceedings.

(5) The European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001 (S.I. No. 337 of 2001) are revoked insofar as they apply to proceedings (within the meaning of this section).]

Annotations

Amendments:

F30 Inserted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 22, S.I. No. 652 of 2004.

Appeal to High Court on point of law.

34.—(1) The Tribunal may refer a question of law arising in proceedings before it under this Part to the High Court for determination by it.

(2) A party to proceedings before the Tribunal under this Part may appeal to the High Court from a determination of the Tribunal on a point of law.

Service of documents.

35.—(1) Service of a notice or other document on any person for the purpose of or in relation to any proceedings under this Part may be effected by delivering it to the person to whom it relates or by sending a copy of the document by registered prepaid post in an envelope addressed to the person to be served at that person's last known residence or place of business in the State.

(2) In the case of a company to which the Companies Act, 1963 applies such service may be effected by delivering the document to, or by sending a copy of the document by registered prepaid post in an envelope addressed to, the company at its registered office.

(3) In the case of a body corporate to which *subsection (2)* does not apply or any unincorporated body of persons, such service may be effected by sending a copy of the document by registered prepaid post in an envelope addressed to the body at any place in the State where that body conducts its business or in such other manner as an originating summons may be served on such a body under The Rules of the Superior Courts.

Provisions relating to winding up and bankruptcy.

36.—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable under this Part by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act.

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable under this Part by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under that Act.

Enforcement of
decisions and
determinations.

37.—(1) A decision of a rights commissioner or a determination of the Tribunal in proceedings under this Part may provide that the decision or determination shall be carried out before a specified date.

(2) Where a decision of a rights commissioner or a determination of the Tribunal does not provide as mentioned in *subsection (1)*, the decision or determination shall be deemed, for the purposes of this section, to provide that it shall be carried out within four weeks from the date on which it is communicated to the parties.

(3) If a party fails to carry out the terms of a decision of a rights commissioner or of a determination of the Tribunal in relation to a dispute within the period appropriate under *subsection (1)* or *subsection (2)*, the Circuit Court shall, on application to it in that behalf by—

(a) the other party, or

(b) the Minister, if of the opinion that it is appropriate to make the application having regard to all the circumstances,

without hearing the party in default or any evidence (other than in relation to the failure), make an order directing that party to carry out the decision or determination in accordance with its terms.

(4) In *subsection (3)*, the reference to a decision of a rights commissioner or a determination of the Tribunal is a reference to such a decision or determination, as the case may be, in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned; and references in this section to the date on which the decision or determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of the abandonment.

(5) In an order under this section providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the relevant employer to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning four weeks after the date on which the decision or determination concerned is communicated to the parties and ending on the date of the order.

(6) Proceedings under this section shall be heard in the county in which the relevant employer ordinarily resides or carries on any profession, business or occupation.

PART VI

AMENDMENTS AND APPLICATION OF OTHER ENACTMENTS

Amendments
relating to unfair
dismissal.

38.—(1) At the beginning of subsection (1) of section 2 of the 1977 Act (which excludes certain employees) there shall be inserted “Except in so far as any provision of this Act otherwise provides”, and in paragraph (a) of that subsection the words from “and whose” shall be omitted.

(2) In section 2 (2) of the 1977 Act (which specifies dismissals in relation to which that Act does not apply) for paragraph (c) (inserted by the 1981 Act) there shall be substituted—

“(c) dismissal where the employee’s employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of another employee who is absent from work while on protective leave or natal care absence, within the meaning of *Part IV* of the *Maternity Protection Act, 1994*, and the

dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.”.

(3) At the beginning of each of sections 3 and 4 of the 1977 Act (which relate to dismissal during probation, training or apprenticeship) there shall be inserted “Except in so far as any provision of this Act otherwise provides”.

(4) In section 6 (2) of the 1977 Act (which specifies the matters which cause a dismissal resulting from any of those matters to be deemed to be an unfair dismissal) for paragraphs (f) and (g) (the latter inserted by the 1981 Act) there shall be substituted—

“(f) the employee’s pregnancy, giving birth or breastfeeding or any matters connected therewith,

(g) the exercise or proposed exercise by the employee of a right under the *Maternity Protection Act, 1994*, to any form of protective leave or natal care absence, within the meaning of *Part IV* of that Act,”.

(5) After section 6 (2) of the 1977 Act there shall be inserted—

“(2A) Sections 3 and 4 do not apply to a case falling within paragraph (f) or (g) of subsection (2) and, for the purposes of those paragraphs, “employee” includes a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2 (1).”.

Annotations

Editorial Notes:

- E33** The amendments made by subss. (2) and (4) to the *Unfair Dismissals Act 1977* were superseded (18.10.2004) by amendments made by the *Maternity Protection (Amendment) Act 2004* (28/2005), s. 23, S.I. No. 652 of 2004. The amendment made by subs. (5) was superseded (20.03.1995) by an amendment made by *Adoptive Leave Act 1995* (2/1995), s. 25, S.I. No. 64 of 1995.

Amendment of Schedule 3 to Redundancy Payments Act, 1967.

39.—In Schedule 3 to the Redundancy Payments Act, 1967, in paragraph 5 (which specifies periods which do not breach continuity of employment) for subparagraph (1) (d) (inserted by the 1981 Act) there shall be substituted—

“(d) a period during which an employee was absent from work while on protective leave or natal care absence, within the meaning of *Part IV* of the *Maternity Protection Act, 1994*.”.

Annotations

Editorial Notes:

- E34** This amendment to the *Redundancy Payments Act 1967* was superseded (2.07.2001) by an amendment by *Carer’s Leave Act 2001* (19/2001), s. 26, commenced on enactment.

Provisions applying where employee not permitted to return to work.

40.—(1) This section applies to an employee who, having duly complied with *section 28*, is entitled under *Part IV* to return to work but is not permitted to do so by the relevant employer, as defined in *section 30 (3)*, and in this section, in relation to such an employee, “the expected date of return” means F31[the date notified under subsection (1), (1A) or (1B), as may be appropriate, of *section 28*] as the date on which the employee expected to return to work.

(2) For the purposes of the Redundancy Payments Acts, 1967 to 1991, an employee to whom this section applies who is also an employee to whom those Acts apply shall be deemed to have been dismissed by reason of redundancy, the date of dismissal being deemed to be the expected date of return.

(3) For the purposes of the Minimum Notice and Terms of Employment Act, 1973, the contract of employment of an employee to whom this section applies who is also an employee to whom that Act applies shall be deemed to have been terminated on the expected date of return.

(4) For the purposes of the 1977 Act—

- (a) an employee to whom this section applies who is also an employee to whom that Act applies shall be deemed to have been dismissed on the expected date of return; and
- (b) the dismissal shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

Annotations

Amendments:

- F31** Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s.25, S.I. No. 652 of 2004.

Protection of employee's rights on insolvency of employer.

41.—(1) In the Protection of Employees (Employers' Insolvency) Act, 1984, section 6 (which provides for certain amounts to be paid out of the Redundancy and Employees' Insolvency Fund) shall be amended in accordance with this section.

(2) In subsection (2) (a), for subparagraph (v) there shall be substituted—

“(v) any amount which an employer is required to pay by virtue of—

(I) a determination under section 8 (1) or 9 (1) or an order under section 10 (2) of the 1977 Act, or

(II) a decision, determination or order under *Part V* of the *Maternity Protection Act, 1994*,

and made, in any case, not earlier than the commencement of the relevant period.”.

(3) In subsection (4) (c), after subparagraph (iii) there shall be inserted—

“(iv) A payment shall not be made under this section in respect of an amount to which a decision under *Part V* of the *Maternity Protection Act, 1994*, relates unless—

(I) in case an appeal from the decision to the Tribunal is brought under the Part in question, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.

(v) A payment shall not be made under this section in respect of an amount to which a determination under *Part V* of the *Maternity Protection Act, 1994*, relates unless—

(I) in case an appeal from the determination is brought to the High Court under the Part in question, the appeal is withdrawn, or

(II) in case there is no appeal, the time for bringing such an appeal has expired.”.

Annotations**Editorial Notes:**

E35 These amendments to *Protection of Employees (Employers’ Insolvency) Act 1984*, s. 6(2) and (4) remain current but have been amended further. Subs. (2)(a)(v)(II) was superseded (3.12.1998) by an amendment made by *Parental Leave Act 1998* (30/1998), s. 26(1) and (2), commenced as per s. 1(2) and was superseded in turn (2.07.2001) by an amendment made by *Carer’s Leave Act 2001* (19/2001), s. 30(a), commenced on enactment.

Subs. (4)(c)(iv) and (v) were superseded (3.12.1998) by an amendment made by *Parental Leave Act 1998* (30/1998), s. 26(1) and (3), commenced as per s. 1(2) and superseded in turn (2.07.2001) by *Carer’s Leave Act 2001* (19/2001), s. 30(b), commenced on enactment.

ACTS REFERRED TO

Bankruptcy Act, 1988	1988, No. 27
Civil Service Regulation Act, 1956	1956, No. 46
Companies Act, 1963	1963, No. 33
Courts Act, 1981	1981, No. 11
Employment Agency Act, 1971	1971, No. 27
Holidays (Employees) Act, 1973	1973, No. 25
Local Government Act, 1941	1941, No. 23
Maternity Protection of Employees Act, 1981	1981, No. 2
Maternity Protection of Employees Acts, 1981 and 1991	
Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
Protection of Employees (Employers' Insolvency) Act, 1984	1984, No. 21
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Acts, 1967 to 1991	
Safety, Health and Welfare at Work Act, 1989	1989, No. 7
Social Welfare (Consolidation) Act, 1993	1993, No. 27
Unfair Dismissals Act, 1977	1977, No. 10