

2008 No. 374

EMPLOYMENT

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2008

Made - - - - 1st September 2008

Coming into operation - 1st October 2008

Approved by resolution of the Assembly on 10th November 2008

The Department for Employment and Learning(**a**) makes the following Regulations, in exercise of the powers conferred by Articles 70C(2)(**b**), 105(4), (6) and (7), 107B(4), (7) and (8)(**c**) and 131(1)(**d**) of the Employment Rights (Northern Ireland) Order 1996(**e**), and now vested in it(**f**):

Citation and commencement

1. These Regulations may be cited as the Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 1st October 2008.

Application

2.—(1) The amendments to the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(**g**) provided for in these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 5th October 2008.

(2) The amendments to the Paternity and Adoption Leave Regulations (Northern Ireland) 2002(**h**) provided for in these Regulations have effect only in relation to an employee with whom

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- (a) Formerly the Department of Higher and Further Education, Training and Employment; *See* 2001 c. 15 (N.I.)
- (b) Article 70C was inserted by paragraph 3 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and paragraph (2) was amended by sub-paragraphs 6 and 7 of paragraph 4 of Schedule 2 to the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)). Further amendments which are not relevant to these Regulations have been made to Article 70C by paragraph 29 of Schedule 1 to the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16))
- (c) Articles 103 to 112 were substituted by Part I of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999. Paragraph (3) of Article 103 was substituted by paragraph 30 of Schedule 1 to the 2006 Order. Paragraph (3) of Article 105 was substituted by paragraph 31 of Schedule 1 to the 2006 Order. The word “prescribed” in Article 105(3) of the 1996 Order is defined in Article 107(2) of that Order. Paragraph (4) of Article 106 was modified by Article 14(5) of the 2002 Order
- (d) Article 131 was substituted by paragraph 8 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999. Further amendments which are not relevant to these Regulations have been made to Article 131 by sub-paragraphs 13 and 14 of paragraph 4 of Schedule 2 to the 2002 Order and paragraph 40 of Schedule 1 to the 2006 Order
- (e) S.I. 1996/1919 (N.I. 16)
- (f) *See* S.R. 1999 No. 481 Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999
- (g) S.R. 1999 No. 471, as previously amended by S.R. 2002 No. 135, S.R. 2002 No. 355 and S.R. 2006 No. 372
- (h) S.R. 2002 No. 377, as amended by S.R. 2004 No. 116, S.R. 2005 No. 48 (C. 5) and S.R. 2005 No. 520

a child is expected to be placed for adoption, where the placement is expected to occur on or after 5th October 2008.

(3) For the purposes of paragraph (2) the date on which the child is actually placed for adoption is immaterial.

(4) The amendments to the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 applied to adoption from overseas by virtue of and as modified by the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003(a) have effect only where the adopter's child enters Northern Ireland on or after 5th October 2008.

(5) For the purposes of paragraph (4)—

“adopter”, in relation to a child, means a person by whom the child has been or is to be adopted or, in a case where the child has been or is to be adopted by two people jointly, whichever of them has elected to take adoption leave in respect of the child;

“adoption from overseas” means the adoption of a child who enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom;

“enters Northern Ireland” means enters Northern Ireland from outside the United Kingdom in connection with or for the purposes of adoption.

Amendments to the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999

3. The Maternity and Parental Leave etc. Regulations (Northern Ireland) are amended in accordance with regulations 4 to 7.

Application of terms and conditions during ordinary maternity leave and additional maternity leave

4.—(1) In regulation 9 (application of terms and conditions during ordinary maternity leave)—

- (a) in the heading, after “ordinary maternity leave”, insert “and additional maternity leave”;
- (b) in paragraph (1), after “ordinary maternity leave”, insert “or additional maternity leave”;
- (c) in paragraph (1)(b), for “the exception in Article 103(4)(b)”, substitute “the exceptions in Articles 103(4)(b) and 105(4)(b)”;
- (d) in paragraph (2), for “Article 103(5)”, substitute “Articles 103(5) and 105(5)”;
- (e) in paragraph (3), for “Article 103(4)(b)”, substitute “Articles 103 and 105” ; and
- (f) after paragraph (3) insert—

“(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security (Northern Ireland) Order 1989(b), nothing in paragraph (1)(a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraph 5 of that Schedule.”.

(2) In regulation 17(1) (application of terms and conditions during periods of leave), omit “additional maternity leave or”.

Incidents of the right to return after ordinary maternity leave or additional maternity leave

5. In regulation 18A (incidents of the right to return)—

- (a) for paragraph (1)(a), substitute—

“(a) with her seniority, pension rights and similar rights as they would have been if she had not been absent, and”,

(a) S.R. 2003 No. 222

(b) 1989 No. 1342 (N.I. 13)

(b) for paragraph (2), substitute—

“(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security (Northern Ireland) Order 1989, nothing in paragraph (1)(a) concerning the treatment of additional maternity leave shall be taken to impose a requirement which exceeds the requirements of paragraphs 5 and 6 of that Schedule.”, and

(c) in paragraph (3), for “in paragraph (1)(a)(ii) and (b)” substitute “in paragraph (1)”.

Protection from detriment

6. In regulation 19 (protection from detriment)—

(a) in paragraph (2)(d), after “ordinary maternity leave” insert “or additional maternity leave”,

(b) omit paragraph (2)(e)(i), and

(c) after paragraph (3) insert—

“(3A) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of additional maternity leave if, during her additional maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by Article 105 of the 1996 Order and regulation 9 during that period.”.

Unfair dismissal

7. In regulation 20 (unfair dismissal)—

(a) in paragraph (3)(d), after “ordinary maternity leave” insert “or additional maternity leave”,

(b) omit paragraph (3)(e)(i), and

(c) for paragraph (5) substitute—

“(5) Paragraphs (3) and (3A) of regulation 19 apply for the purposes of paragraph (3)(d) as they apply for the purposes of paragraph (2)(d) of that regulation.”.

Amendments to the Paternity and Adoption Leave Regulations (Northern Ireland) 2002

8. The Paternity and Adoption Leave Regulations (Northern Ireland) 2002 are amended in accordance with regulations 9 and 10.

Application of terms and conditions during ordinary adoption leave and additional adoption leave

9.—(1) In regulation 19 (application of terms and conditions during ordinary adoption leave)—

(a) in the heading, after “ordinary adoption leave”, insert “and additional adoption leave”,

(b) in paragraph (1), after “ordinary adoption leave”, insert “or additional adoption leave”,

(c) in paragraph (1)(b), for “the exception in Article 107A(3)(b)”, substitute “the exceptions in Articles 107A(3)(b) and 107B(4)(b)”,

(d) in paragraph (2), for “Article 107A(4)”, substitute “Articles 107A(4) and 107B(5)”, and

(e) in paragraph (3), for “Article 107A”, substitute “Articles 107A and 107B”.

(2) Regulation 21 (application of terms and conditions during additional adoption leave) is revoked.

Incidents of the right to return from adoption leave

10. In regulation 27 (incidents of the right to return from adoption leave)—

(a) for paragraph (1)(a) substitute—

“(a) with his seniority, pension rights and similar rights as they would have been if he had not been absent, and”,

(b) for paragraph (2), substitute—

“(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security (Northern Ireland) Order 1989, nothing in paragraph (1)(a) concerning the treatment of additional adoption leave shall be taken to impose a requirement which exceeds the requirements of paragraphs 5, 5B and 6 of that Schedule.”, and

(c) in paragraph (3), for “in paragraph (1)(a)(ii) and (b)”, substitute “in paragraph (1)”.

Sealed with the Official Seal of the Department for Employment and Learning on 1st September 2008.



Sir Reg Empey
Minister for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend provisions in two Statutory Rules relating to statutory maternity leave and adoption leave, namely the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 (S.R. 1999 No. 471) (“the 1999 Regulations”) and the Paternity and Adoption Leave Regulations (Northern Ireland) 2002 (S.R. 2002 No. 377) (“the 2002 Regulations”).

The amendments have effect in relation to an employee whose expected week of childbirth begins on or after 5th October 2008, an employee whose child is expected to be placed with him for adoption on or after that date or, in cases of overseas adoption as defined in the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 222), an adopter whose child enters Northern Ireland on or after the same date.

Regulations 4 to 7 remove distinctions between the rights of employees on ordinary maternity leave and those of employees on additional maternity leave. Regulation 4 amends regulations 9 and 17 of the 1999 Regulations, so that an employee taking additional maternity leave is, like an employee taking ordinary maternity leave, entitled to the benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if she had not been absent. This does not include terms and conditions about remuneration, as defined in regulation 9 of the 1999 Regulations. Regulation 5 amends regulation 18A of the 1999 Regulations, so that the seniority, pension and similar rights of an employee returning from additional maternity leave are, like those of an employee returning from ordinary maternity leave, unaffected by her absence. The amendments to regulations 9, 17 and 18A do not affect the accrual of rights under employment-related benefit schemes governed by the Social Security (Northern Ireland) Order 1989. Regulations 6 and 7 respectively amend regulations 19 and 20 of the 1999 Regulations to align the protection of employees taking additional maternity leave with that for employees taking ordinary maternity leave.

Regulations 9 and 10 remove distinctions between the rights of employees on ordinary adoption leave and those of employees on additional adoption leave. Regulation 9 amends regulation 19 and revokes regulation 21 of the 2002 Regulations, so that an employee taking additional adoption leave is, like an employee taking ordinary adoption leave, entitled to the benefit of (and bound by any obligations arising from) all the terms and conditions of employment which would have applied if the employee had not been absent. This does not include terms and conditions about remuneration, as defined in regulation 19 of the 2002 Regulations. Regulation 10 amends regulation 27 of the 2002 Regulations, so that the seniority, pension and similar rights of an employee returning from additional adoption leave are, like those of an employee returning from ordinary adoption leave, unaffected by the absence. The amendments to regulations 19 and 27 and the revocation of regulation 21 do not affect the accrual of rights under employment-related benefit schemes governed by the Social Security (Northern Ireland) Order 1989.

OFMdfM has produced a Regulatory Impact Assessment which considers, amongst other things, the impact of the proposed amendments to maternity leave legislation. A separate assessment of the impact of the proposed changes to adoption leave legislation is available on request from the Department for Employment and Learning.

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