STATUTORY RULES OF NORTHERN IRELAND

2002 No. 355

EMPLOYMENT

Maternity and Parental Leave etc. (Amendment No. 3) Regulations (Northern Ireland) 2002

Made - - - -	*21st November 2002*
Coming into operation	*24th November 2002*

The Department for Employment and Learning(**1**) in exercise of the powers conferred on it by Articles 70C(2)(**2**), 103(1) to (4), (6) and (7), 105(1), (2), (4) and (7), 106(4), 107(1), 108(**3**) and 131(1)(**4**) of the Employment Rights (Northern Ireland) Order 1996(**5**) and now vested in it(**6**) and of every other power enabling it in that behalf, hereby makes the following Regulations–

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Maternity and Parental Leave etc. (Amendment No. 3) Regulations (Northern Ireland) 2002 and shall come into operation on 24th November 2002.

(2) In these Regulations, "the Principal Regulations" means the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(**7**).

Application

2.—(1) The amendments to the Principal Regulations provided for in regulations 5 to 11, 13 and 14 below (all of which concern maternity leave), and the amendment in regulation 12 in so far as it relates to the right to return from maternity leave, have effect only in relation to employees whose expected week of childbirth begins on or after 6th April 2003.

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)
(**2**) Article 70C of the Employment Rights (N.I.) Order 1996 (S.I.1996/1919 (N.I. 16) was inserted by paragraph 3 of Part III of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 4(6) and (7) of Schedule 2 to the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**3**) Articles 103 to 108 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16) were substituted by Part I of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)). Articles 103 (4) and (7), 105 and 106 were amended by Article 14 of the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**4**) Article 131 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16)) was substituted by paragraph 8 of Part III of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 4(13) and (14) of Schedule 2 to the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**5**) S.I. 1996/1919 (N.I. 16)
(**6**) *See*S.R. 1999 No. 481
(**7**) S.R. 1999 No. 471, to which there are amendments not relevant to these Regulations

(2) The amendment to the Principal Regulations provided for in regulation 12 in so far as it relates to the right to return after parental leave, has effect only in relation to employees returning from a period of leave begun on or after 6th April 2003.

Amendments to the Principal Regulations

3. The Principal Regulations shall be amended as provided in regulations 4 to 14.

4. In regulation 2(1) (interpretation)–

(a) after the definition of "the 1996 Order" insert–

""additional adoption leave" means leave under Article 107B of the 1996 Order;"

(b) in the definition of "job" omit "additional";

(c) after the definition of "parental responsibility" insert–

""statutory leave" means leave provided for in Part IX of the 1996 Order;".

5. In regulation 4 (entitlement to ordinary maternity leave)–

(a) in paragraph (1)(a), for "at least 21 days before the date on which she intends her ordinary maternity leave period to start", substitute "no later than the end of the fifteenth week before her expected week of childbirth";

(b) after paragraph (1) insert–

"(1A) An employee who has notified her employer under paragraph (1)(a)(iii) of the date on which she intends her ordinary maternity leave period to start may subsequently vary that date, provided that she notifies her employer of the variation at least–

(a) 28 days before the date varied, or

(b) 28 days before the new date,

whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable.";

(c) in paragraph (2), for "The notification provided for in paragraph (1)(a)(iii)" substitute–

"Notification under paragraph (1)(a)(iii) or (1A)";

(d) in paragraph (3)–

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(iii) at the end of sub-paragraph (b) insert "and of the date on which her absence on that account began";

(e) in paragraph (4)–

(i) for "with" substitute "on the day which follows";

(ii) at the end of sub-paragraph (b) insert "and of the date on which the birth occurred".

6. In regulation 5(b) (entitlement to additional maternity leave: qualifying period of employment)–

(a) for "the eleventh week" substitute "the fourteenth week";

(b) for "a year" substitute "26 weeks".

7. In regulation 6 (commencement of maternity leave periods)–

(a) in paragraph (1)(a)–

(i) omit ", in accordance with regulation 4(1)(a)(iii),";

(ii) after "her employer" insert ", in accordance with regulation 4,";

(iii) after "to start," insert "or, if by virtue of the provision for variation in that regulation she has notified more than one such date, the last date she notifies,";

(b) in paragraph (1)(b)–

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(c) in paragraph (2), for "with" substitute "on the day which follows".

8. In regulation 7 (duration of maternity leave periods)–

(a) in paragraph (1), for "18 weeks" substitute "26 weeks";

(b) in paragraph (4), for "29 weeks beginning with the week of childbirth" substitute "26 weeks from the day on which it commenced";

(c) after paragraph (5) insert–

"(6) An employer who is notified under any provision of regulation 4 of the date on which, by virtue of any provision of regulation 6, an employee's ordinary maternity leave period will commence or has commenced shall notify the employee of the date on which–

(a) if the employee is entitled only to ordinary maternity leave, her ordinary maternity leave period will end, or

(b) if the employee is entitled to both ordinary and additional maternity leave, her additional maternity leave period will end.

(7) The notification provided for in paragraph (6) shall be given to the employee–

(a) where the employer is notified under regulation 4(1)(a)(iii), (3)(b) or (4)(b), within 28 days of the date on which he received the notification;

(b) where the employer is notified under regulation 4(1A), within 28 days of the date on which the employee's ordinary maternity leave period commenced."

9. For regulation 9 substitute–

"**Application of terms and conditions during ordinary maternity leave**

9.—(1) An employee who takes ordinary maternity leave–

(a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if she had not been absent, and

(b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in Article 103(4)(b)(**8**) of the 1996 Order.

(2) In paragraph (1)(a), "terms and conditions" has the meaning given by Article 103(5) of the 1996 Order, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of Article 103(4)(b) of the 1996 Order, only sums payable to an employee by way of wages or salary are to be treated as remuneration."

10. In regulation 11 (requirement to notify intention to return during a maternity leave period)–

(a) in paragraph (1)–

(**8**) Article 103 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16)) was substituted by Part I of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)). Article 103(4) was also amended by Article 14 of the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))