STATUTORY RULES OF NORTHERN IRELAND

1999 No. 471

EMPLOYMENT

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

Made - - - -	*24th November 1999*
Coming into operation	*15th December 1999*

The Department of Economic Development, in exercise of the powers conferred on it by Articles 70C(2) and (3), 103(1) to (3) and (6), 104(1) and (2), 105(1), (2), (4) and (7), 106(1), (3) and (4), 107(1), 108(1), (2) and (5), 109(1) and (4), 110(1), (2) and (7), 111(1) and (2), 131(1) and 251(**1**) of the Employment Rights (Northern Ireland) Order 1996(**2**), and of every other power enabling it in that behalf, hereby makes the following Regulations—

Part I

General

Citation and commencement

1. These Regulations may be cited as the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 and shall come into operation on 15th December 1999.

Interpretation

2.—(1) In these Regulations—

"the 1996 Order" means the Employment Rights (Northern Ireland) Order 1996;

"additional maternity leave" means leave under Article 105 of the 1996 Order;

"business" includes a trade or profession and includes any activity carried on by a body of persons (whether corporate or unincorporated);

(**1**) Article 70C was inserted into the Employment Rights (Northern Ireland) Order 1996 by paragraph 3 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999 (S.I.1999/2790 (N.I. 9)), Articles 103 to 111 of the 1996 Order were substituted by Article 9 and Part I of Schedule 4 to the 1999 Order, and Article 131 was substituted by paragraph 8 of Part III of Schedule 4 to the 1999 Order. The word "prescribed" in Article 70C is defined in paragraph (2) of that Article; the same word in Articles 103 to 105 is defined in Article 105(2) and in Article 131 it is defined in paragraph (2) of that Article. Article 251 was amended by paragraph 16 of Part III of Schedule 4 to the Employment Relations (Northern Ireland) Order 1999

(**2**) S.I. 1996/1919 (N.I. 16)

"child" means a person under the age of eighteen;

"childbirth" means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy;

"collective agreement" means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(**3**), the trade union parties to which are independent trade unions within the meaning of that Article;

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"disability living allowance" means the disability leaving allowance provided for in Part III of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**4**);

"employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

"employer" means the person by whom an employee is (or, where the employment has ceased, was) employed;

"expected week of childbirth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that childbirth will occur and "week of childbirth" means the week beginning with midnight between Saturday and Sunday, in which childbirth occurs;

"job", in relation to an employee returning after additional maternity leave or parental leave, means the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed;

"ordinary maternity leave" means leave under Article 103 of the 1996 Order;

"parental leave" means leave under regulation 13(1);

"parental responsibility" has the meaning given by Article 6 of the Children (Northern Ireland) Order 1995(**5**);

"workforce agreement" means an agreement between an employer and his employees or their representatives in respect of which the conditions set out in Schedule 1 are satisfied.

(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter III of Part I of the 1996 Order, as if that provision were a provision of that Order.

(3) For the purposes of these Regulations any two employers shall be treated as associated if—

(a) one is a company of which the other (directly or indirectly) has control; or

(b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Application

3.—(1) The provisions of Part II of these Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 30th April 2000.

(2) Regulation 19 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 15th December 1999.

(3) For the purposes of paragraph (2)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period; and

(**3**) S.I. 1992/807 (N.I. 5)
(**4**) 1992 c. 7
(**5**) S.I. 1995/755 (N.I. 2)

(b) a failure to act is to be treated as done when it was decided on.

(4) For the purposes of paragraph (3), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(5) Regulation 20 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of Article 129 of the 1996 Order) falls on or after 15th December 1999.

Part II

Maternity Leave

Entitlement to ordinary maternity leave

4.—(1) An employee is entitled to ordinary maternity leave provided that she satisfies the following conditions—

(a) at least 21 days before the date on which she intends her ordinary maternity leave period to start, or, if that is not reasonably practicable, as soon as is reasonably practicable, she notifies her employer of—

(i) her pregnancy;

(ii) the expected week of childbirth, and

(iii) the date on which she intends her ordinary maternity leave period to start, and

(b) if requested to do so by her employer, she produces for his inspection a certificate from—

(i) a registered medical practitioner, or

(ii) a registered midwife,

stating the expected week of childbirth.

(2) The notification provided for in paragraph (1)(*a*)(iii)—

(a) shall be given in writing, if the employer so requests, and

(b) shall not specify a date earlier than the beginning of the eleventh week before the expected week of childbirth.

(3) Where, by virtue of regulation 6(1)(*b*), an employee's ordinary maternity leave period commences with the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable that she is absent from work wholly or partly because of pregnancy.

(4) Where, by virtue of regulation 5(2), an employee's ordinary maternity leave period commences with the day on which childbirth occurs—

(a) paragraph (1) does not require her to notify her employer of the date specified in that paragraph, but

(b) (whether or not she has notified him of that date) she is not entitled to ordinary maternity leave unless she notifies him as soon as is reasonably practicable after the date that she has given birth.

(5) The notification provided for in paragraphs (3)(*b*) and (4)(*b*) shall be given in writing, if the employer so requests.

Entitlement to additional maternity leave

5. An employee who satisfies the following conditions is entitled to additional maternity leave—

(a) she is entitled to ordinary maternity leave, and

(b) she has, at the beginning of the eleventh week before the expected week of childbirth, been continuously employed for a period of not less than a year.

Commencement of maternity leave periods

6.—(1) Subject to paragraph (2), an employee's ordinary maternity leave period commences with the earlier of—

(a) the date which, in accordance with regulation 4(1)(*a*)(iii), she notifies to her employer as the date on which she intends her ordinary maternity leave period to start, and

(b) the first day after the beginning of the sixth week before the expected week of childbirth on which she is absent from work wholly or partly because of pregnancy.

(2) Where the employee's ordinary maternity leave period has not commenced by virtue of paragraph (1) when the childbirth occurs, her ordinary maternity leave period commences with the day on which childbirth occurs.

(3) An employee's additional maternity leave period commences on the day after the last day of her ordinary maternity leave period.

Duration of maternity leave periods

7.—(1) Subject to paragraphs (2) and (5), an employee's ordinary maternity leave period continues for the period of 18 weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 8 if later.

(2) Subject to paragraph (5), where any requirement imposed by or under any relevant statutory provision prohibits the employee from working for any period after the end of the period determined under paragraph (1) by reason of her having recently given birth, her ordinary maternity leave period continues until the end of that later period.

(3) In paragraph (2) "relevant statutory provision" means a statutory provision (within the meaning given by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954)(**6**)) other than a provision for the time being specified in an order under Article 98(2) of the 1996 Order.

(4) Subject to paragraph (5), where an employee is entitled to additional maternity leave her additional maternity leave period continues until the end of the period of 29 weeks beginning with the week of childbirth.

(5) Where the employee is dismissed after the commencement of an ordinary or additional maternity leave period but before the time when (apart from this paragraph) that period would end, the period ends at the time of the dismissal.

(**6**) 1954 c. 33 (N.I.)

Compulsory maternity leave

8. The prohibition in Article 104 of the 1996 Order, against permitting an employee who satisfies prescribed conditions to work during a particular period, (referred to as a "compulsory maternity leave period") applies—

(a) in relation to an employee who is entitled to ordinary maternity leave, and

(b) in respect of the period of two weeks which commences with the day on which childbirth occurs.

Exclusion of entitlement to remuneration during ordinary maternity leave

9. For the purposes of Article 103 of the 1996 Order which includes provision excluding the entitlement of an employee who exercises her right to ordinary maternity leave to the benefit of terms and conditions of employment about remuneration, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

Redundancy during maternity leave

10.—(1) This regulation applies where, during an employee's ordinary or additional maternity period it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and

(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.

Requirement to notify intention to return during a maternity leave period

11.—(1) An employee who intends to return to work earlier than the end of her ordinary maternity leave period or, where she is entitled to additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 21 days' notice of the date on which she intends to return.

(2) If an employee attempts to return to work earlier than the end of a maternity leave period without complying with paragraph (1), her employer is entitled to postpone her return to a date such as will secure, subject to paragraph (3), that he has 21 days' notice of her return.

(3) An employer is not entitled under paragraph (2) to postpone an employee's return to work to a date after the end of the relevant maternity leave period.

(4) If an employee whose return to work has been postponed under paragraph (2) has been notified that she is not to return to work before the date to which her return was postponed, the employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.