



**AN BILLE UM CHOSAINT MHÁITHREACHAIS (LEASÚ)
2003
MATERNITY PROTECTION (AMENDMENT) BILL 2003**

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The Bill amends the Maternity Protection Act 1994 to improve maternity protection for employees. The Bill implements the recommendations made by the *Working Group on the Review and Improvement of the Maternity Protection Legislation* which was set up in accordance with commitments in the Government Action Programme for the Millennium and the Programme for Prosperity and Fairness. The implementation of the Working Group's recommendations will fulfil a statutory component of the Work/Life Balance Programmes to which the Government is committed under Sustaining Progress. The recommendation to increase maternity leave and (unpaid) additional maternity leave was implemented by means of the Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001 (S.I. No. 29 of 2001) and is incorporated into this Bill.

The main provisions of the Bill are as follows:

- provision, subject to the employer's agreement, for the termination of (unpaid) additional maternity leave in the event of sickness;
- provision, subject to the employer's agreement, for the postponement of maternity leave/additional maternity leave in the event of the hospitalisation of the child;
- provision for expectant mothers to attend one set of ante-natal classes without loss of pay;
- provision of a once off right to fathers to paid time off to attend the last 2 ante-natal classes;
- provision for breastfeeding mothers who have given birth within the previous 4 months with an entitlement, without loss of pay, to either breastfeeding breaks, where breastfeeding facilities are provided by the employer or a reduction of working hours and;
- provision that an employee's absence from work on additional maternity leave will count for all employment rights associated with the employment (except remuneration and superannuation benefits), such as seniority and annual leave.

It also provides for some technical amendments to the Maternity Protection Act 1994 (the Principal Act) to clarify that certain provisions apply to both female and male employees.

Provisions of the Bill

Section 1 (Interpretation) is a standard provision dealing with interpretation.

Section 2 (Entitlement to maternity leave) amends section 8 of the Principal Act. The employee's existing statutory entitlement, as provided by the Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001 (S.I. No. 29 of 2001), to 18 weeks' maternity leave is incorporated into this Bill. Provision is also made for the postponement of part of maternity leave in accordance with *section 6* of this Bill. It also provides that the Minister may, by order made with the consent of both the Minister for Finance and the Minister for Social and Family Affairs, extend the period of leave.

Section 3 (Amendment of section 13 of Principal Act) incorporates the provisions of *section 2* of this Bill into section 13 of the Principal Act, which safeguards the employee's entitlement to a minimum period of maternity leave, where premature births are concerned.

Section 4 (Amendment of section 14 of Principal Act) incorporates an employee's existing statutory entitlement, as provided by the Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001 (S.I. No. 29 of 2001), to an optional 8 weeks' (unpaid) additional maternity leave, subject to prior written notification being furnished to the employer. Provision is also made for the postponement of all or part of such leave in accordance with *section 6* of this Bill. It also provides that the Minister may by order extend the period of leave.

Section 5 (Termination of additional maternity leave in event of sickness of mother) provides that, in the event of the sickness of the employee, and following a request made by the employee, the employer may agree to terminate her period of additional maternity leave. The employee's absence from work due to sickness following such termination shall be treated in the same manner as any absence from work of the employee due to sickness. The employee shall not be entitled to the untaken period of additional maternity leave. *Section 10* of the Bill applies similar provisions to fathers.

Section 6 (Postponement of maternity leave or additional maternity leave in event of hospitalisation of child) provides that in the event of the hospitalisation of the child, and following a request made by the employee, the employer may agree to postpone her maternity leave/additional maternity leave and allow her to return to work on an agreed date. Maternity leave may only be postponed in the case of an employee who has taken at least 14 weeks maternity leave, 4 of which are after the end of the week of confinement. The employee shall be entitled, having notified her employer, to take the postponed maternity leave/additional maternity leave in one continuous block known as *resumed leave* commencing not later than 7 days after the discharge of the child from hospital.

This section also provides that, in the event of an absence from work due to sickness during the period of postponement, an employee is deemed to have commenced her *resumed leave* on the first day of such absence unless the employee opts to forfeit her right to *resumed leave* and the absence from work in these circumstances shall be treated in the same manner as any absence from work due to sickness. Notification procedures are altered to account for postponement and resumption of leave. Regulations under this section will provide for the maximum period of postponement of leave and the evidence to be furnished to the employer of the hospitalisation,

and the discharge from hospital, of the child. *Section 11* of the Bill applies similar provisions to fathers.

Section 7 (Entitlement to time off from work to attend ante-natal classes) provides that a pregnant employee is entitled to time off work, without loss of pay, for the purpose of attending one set of ante-natal classes (other than the last 3 classes in such a set which, ordinarily, are attended in the final weeks of pregnancy while the employee is on maternity leave) and those classes may be attended during one or more pregnancies. Provision is also made for a once off entitlement for an expectant father (if he is employed under a contract of employment) to time off work, without loss of pay, 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. Regulations under this section will provide for: the amount of time off to be allowed for attendance at ante-natal classes; the terms or conditions relating to such time off; the notification procedures; and the evidence of attendance to be furnished to the employer.

Section 8 (Entitlement to time off from work or reduction of working hours for breastfeeding) provides that an employee who is breastfeeding and has informed her employer that she is doing so, shall be entitled until the child is 4 months old, without loss of pay, to either:

- breastfeeding breaks, where facilities for breastfeeding are provided in the workplace, or;
- a reduction of working hours.

The employer shall not be required to provide facilities for breastfeeding in the workplace if the provision of such facilities would give rise to more than a nominal cost. In such a case, the employer shall be required to agree a reduction of working hours with the employee. Provision is also made for the notification of the employer in the event of the cessation of breastfeeding by the employee. Regulations under this section will provide for: the amount of time off and the number and frequency of breastfeeding breaks to be allowed; the reduction of working hours to be allowed; the terms or conditions relating to breastfeeding breaks/reduction of working hours; the notification procedures; and the evidence to be furnished to the employer in relation to the date of confinement.

Section 9 (Amendment of Section 16 of Principal Act) incorporates the father's existing statutory entitlement to leave where the mother dies during the period of her maternity leave. Consequential amendments are provided to deal with a situation where the father's leave under section 16 of the Principal Act (as amended by *section 9* of this Bill) is postponed or terminated or where the mother's leave was postponed or terminated prior to her death.

Section 10 (Termination of leave in event of sickness of father) and *section 11 (Postponement of leave under section 16 of Principal Act in event of hospitalisation of child)* correspond with *sections 5* and *6* respectively.

Section 12 (Amendment of section 21 of Principal Act) provides for consequential amendments to section 21 of the Principal Act to incorporate the postponement provisions under *sections 6* and *11* of this Bill. The definition of "protective leave" is amended and it is provided that the period of leave taken prior to postponement and the period of *resumed leave* shall be treated as separate periods of protective leave.

Section 13 (Amendment of section 22 of Principal Act) amends section 22 of the Principal Act which is concerned with employment rights. This section provides:

- that, similar to the provisions under section 14(1) of the Parental Leave Act 1998 which apply to an employee on parental leave, an employee absent from work on additional maternity leave (or an equivalent leave entitlement under section 16 of the Principal Act) shall be treated as if he or she had not been absent so that all employment rights and obligations (except the right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment) shall be unaffected during such leave;
- that an employee absent from work to attend ante-natal classes or to breastfeed in accordance with *section 7* or *8* of this Bill, respectively, shall be treated as if she or he had not been absent so that all employment rights shall be unaffected during such absence;
- for consequential amendments to section 22 of the Principal Act.

Section 14 (Amendment of section 23 of Principal Act) renders void any purported termination of or suspension from employment during an absence from work to attend ante-natal classes or to breastfeed, or any notice given of termination during such an absence expiring subsequent to the absence.

Section 15 (Amendment of section 24 of Principal Act) provides for the extension of any notice of termination of employment or suspension beyond the last absence to attend an ante-natal class or to breastfeed by the duration of such absence.

Section 16 (Amendment of section 25(1) of Principal Act) amends section 25(1) of the Principal Act to clarify that the provisions regarding periods of probation, training and apprenticeship apply to both female and male employees who are absent from work on protective leave.

Section 17 (Amendment of section 26 of Principal Act) amends section 26 of the Principal Act to provide that, on return to work, an employee is entitled to benefit from any improvement to the terms or conditions of employment to which she or he would have been entitled had she or he not been absent from work on protective leave.

Section 18 (Amendment of section 27(2) of Principal Act) ensures compliance with *Directive 2002/73/EC*¹ by providing that in the event of an employee who returns to work on the expiration of protective leave but resumption of the same work is not practicable and suitable alternative work is offered, the terms or conditions of such employment shall not be less favourable to the employee than those of her contract of employment immediately before protective leave. It also provides that such terms or conditions shall incorporate any improvement to which the employee would have been entitled had she or he not been absent from work on such leave.

¹ Directive 2002/73/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Section 19 (Amendment of section 28 of Principal Act) amends the notification procedures in relation to a return to work in the event of the postponement of leave under this Bill.

Section 20 (Amendment of section 31(1) of Principal Act) provides for a technical amendment to section 31(1) of the Principal Act to take account of the entitlement, under *section 7* of this Bill, for an expectant father to attend ante-natal classes.

Section 21 (Amendments relating to unfair dismissal) provides for the necessary amendments to sections 2 and 6 of the Unfair Dismissals Act 1977 to take account of the new rights to time off to attend ante-natal classes and in respect of breastfeeding under this Bill.

Section 22 (Amendment of Schedule 3 to Redundancy Payments Act 1967) amends Schedule 3 of the Redundancy Payments Act 1967 (which specifies periods which do not breach continuity of employment) to incorporate periods of absence from work to attend ante-natal classes or to breastfeed.

Section 23 (Amendment of section 40(1) of Principal Act) amends the definition of “the expected date of return” in section 40(1) of the Principal Act to provide for postponed leave under this Bill.

Section 24 (Revocation of Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001), revokes the Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001 (S.I. No. 29 of 2001) as its provisions have been incorporated into this Bill.

Section 25 (Short title, collective citation and commencement) contains standard provisions dealing with the short title, citation and commencement.

Financial Implications

No significant costs are anticipated in connection with this legislation either in relation to its administration or in relation to compliance with its terms by individual employers and employees. Direct costs will be incurred in the provision of paid time off to attend ante-natal classes, the preservation of employment rights (except remuneration and superannuation benefits) while on additional maternity leave, such as seniority and annual leave, and the provision of either breastfeeding breaks, where breastfeeding facilities are provided (subject to nominal cost), or a reduction of working hours, without loss of pay.

The foregoing factors apply equally to the Exchequer in its position as employer to the public service.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Bealtaine, 2003.