



---

**AN BILLE UM SHAOIRE DO THUISMITHEOIRÍ (LEASÚ)  
2004  
PARENTAL LEAVE (AMENDMENT) BILL 2004**

---

*Mar a tionscnaíodh  
As initiated*

---

**ARRANGEMENT OF SECTIONS**

Section

1. Interpretation.
2. Entitlement to parental leave.
3. Amendment of section 7 of Principal Act.
4. Amendment of section 8 of Principal Act.
5. Amendment of section 10 of Principal Act.
6. Amendment of section 11 of Principal Act.
7. Amendment of section 15 of Principal Act.
8. Amendment of section 16 of Principal Act.
9. Protection of employees from penalisation.
10. Codes of practice.
11. Short title and collective citation.

ACTS REFERRED TO

Adoptive Leave Act 1995	1995, No. 2
Employment Equality Act 1998	1998, No. 21
Medical Practitioners Act 1978	1978, No. 4
Parental Leave Act 1998	1998, No. 30
Redundancy Payments Acts 1967 to 2003	
Unfair Dismissals Acts 1977 to 2001	



---

AN BILLE UM SHAOIRE DO THUISMITHEOIRÍ (LEASÚ)  
2004  
PARENTAL LEAVE (AMENDMENT) BILL 2004

---

# BILL

5

*entitled*

AN ACT TO AMEND AND EXTEND THE PARENTAL  
LEAVE ACT 1998.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

10 “Minister” means the Minister for Justice, Equality and Law Reform;

“Principal Act” means the Parental Leave Act 1998.

(2) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any other enactment including this Act.

15 2.—The Principal Act is amended by substituting the following for section 6:

Entitlement to parental leave.

“Entitlement to parental leave.

20

6.—(1) Subject to this Act, an employee who is a relevant parent in respect of a child shall be entitled to leave from his or her employment, to be known and referred to in this Act as ‘parental leave’, for a period of 14 working weeks to enable him or her to take care of the child.

(2) Subject to sections 10(4) and 11(6), a period of parental leave shall end—

25

(a) subject to paragraphs (b) and (c), not later than the day on which the child concerned attains the age of 8 years,

(b) subject to paragraph (c), in the case of a child who—

30

(i) is the subject of an adoption order, and

(ii) has, on or before the date of the

making of that order, attained  
the age of 3 years but not 8  
years,

not later than the expiration of the period of 2 years  
beginning on that date, or 5

(c) if the child concerned has a disability,  
not later than the day on which the  
child—

(i) attains the age of 16 years, or

(ii) ceases to have that disability or 10  
any other disability,

whichever first occurs.

(3) A period of parental leave shall not com-  
mence before a time when the employee concerned 15  
has completed one year's continuous employment  
with the employer from whose employment the  
leave is taken.

(4) Subject to this Act, an employee shall be en-  
titled to parental leave in respect of each child of 20  
which he or she is a relevant parent.

(5) A person who is a relevant parent in more  
than one capacity in respect of a child shall not be  
entitled to parental leave in more than one such  
capacity in respect of the child.

(6) Where 2 or more relevant parents in respect 25  
of a child are entitled to parental leave in respect of  
the child, none of the parents shall be entitled to—

(a) the parental leave of any other parent  
in respect of the child, or

(b) transfer any part of the period of his 30  
or her parental leave to any other  
parent in respect of the child.

(7) Notwithstanding subsection (3), where an  
employee—

(a) will not have completed one year's 35  
continuous employment with his or  
her employer on the latest day for  
commencing a period of parental  
leave having regard to subsection  
(2), but 40

(b) has completed 3 months of such em-  
ployment on the latest day for com-  
mencing a period of such leave pro-  
vided for by this subsection,

the employee shall, subject to this Act, be entitled 45  
to parental leave for a period of one week for each  
month of continuous employment that he or she has  
completed with the employer at the time of the com-  
mencement of the leave.

(8) Where, before the relevant day, a person who is a relevant parent in respect of a child—

5 (a) has taken 14 weeks parental leave in respect of the child (and irrespective of whether the leave consisted of a continuous period or a number of periods), or

10 (b) has not taken 14 weeks parental leave in respect of the child (and irrespective of whether the person was prevented from taking all or any of the parental leave by the operation of subsection (3) of this section as in force before the relevant day),

15 then, on and after the relevant day—

20 (c) if paragraph (a) is applicable, nothing in this Act as amended by the relevant Act shall entitle the person to any further period of parental leave in respect of that child, and

25 (d) if paragraph (b) is applicable, this Act as amended by the relevant Act shall apply to so much of the 14 weeks of parental leave referred to in that paragraph as was not taken before the relevant day in respect of that child.

(9) In this section—

30 ‘adopting parent’ means an adopting father, adopting mother or sole male adopter within the meaning of the definitions of ‘adopting father’, ‘adopting mother’ and ‘sole male adopter’ respectively in section 2 of the Adoptive Leave Act 1995 but as if, in each of those definitions, the words ‘or is to be placed’ were omitted;

‘adoptive parent’, in relation to a child, means a person in whose favour an adoption order in respect of the child has been made and is in force;

40 ‘disability’, in relation to a child, means an enduring physical, sensory, mental health or intellectual impairment of the child such that the level of care required for the child is substantially more than the level of care that is generally required for children of the same age who do not have any such impairment;

45 ‘relevant Act’ means the *Parental Leave (Amendment) Act 2004*;

‘relevant day’ means the day on which *section 2* of the relevant Act comes into operation;

50 ‘relevant parent’, in relation to a child, means a person who is—

(a) the natural parent, the adoptive parent

or the adopting parent in respect of the child, or

(b) acting *in loco parentis* to the child.”.

Amendment of section 7 of Principal Act.

3.—Section 7 of the Principal Act is amended— 5

(a) in subsection (1)—

(i) in paragraph (a), by deleting “or”; and

(ii) by inserting the following after paragraph (a):

“(aa) subject to subsection (1A), 2 separate periods— 10

(i) each consisting of not less than 6 weeks, and

(ii) not exceeding 14 weeks in total, or”;

(b) by inserting the following after subsection (1):

“(1A) Subject to subsection (1B), where parental leave 15  
in respect of a child is taken by an employee pursuant to  
subsection (1)(aa), then in respect of that child the em-  
ployee is not entitled to take the second period of parental  
leave unless not less than 10 weeks have elapsed since the  
first period of parental leave ended. 20

(1B) The employer concerned (or representatives of  
the employer and other employers) and the employee con-  
cerned (or representatives of the employee and other  
employees) may agree to a shorter period than the 10  
weeks referred to in subsection (1A), either in a particular 25  
case or a class of cases.”;

(c) in subsection (2)(b), by substituting “referred to in para-  
graph (a) or (aa)” for “of 14 weeks referred to in para-  
graph (a)”;

(d) in subsection (3), by substituting “Subject to subsection 30  
(3A), where” for “Where”; and

(e) by inserting the following after subsection (3):

“(3A) Subsection (3) shall not apply to—

(a) any period of parental leave proposed to be 35  
taken by an employee—

(i) in respect of a child who has attained the age  
of 7 years before or on the date of com-  
mencement of this subsection, and

(ii) before the 1st anniversary of that date,

if the operation of section 6(2)(a) would prevent 40  
the employee from taking all or any part of that  
parental leave after that date, or

(b) any period of parental leave proposed to be  
taken by an employee—

(i) in respect of a child who has attained the age of 15 years before or on the date of commencement of this subsection, and

(ii) before the 1st anniversary of that date,

5 if the operation of section 6(2)(c) would prevent the employee from taking all or any part of that parental leave after that date.”.

4.—Section 8 of the Principal Act is amended by substituting the following for subsection (6):

Amendment of section 8 of Principal Act.

10 “(6) An employee who has given a notice to his or her employer under subsection (1) shall, if the employer so requests, furnish to the employer such evidence as the employer may reasonably require in relation to—

15 (a) the date of birth of the child in respect of whom the parental leave is sought,

(b) the employee being a relevant parent, within the meaning of section 6(9), of the child, and

(c) if relevant, the disability, within the meaning of section 6(9), of the child.

20 (7) Where an employee proposes to take parental leave in respect of a child pursuant to section 7(1)(aa), then the notice under subsection (1) required to be given by the employee shall, for the purposes of this Act, be treated as—

25 (a) one such notice if the employee complies with that requirement by giving one notice specifying the 2 periods of parental leave proposed to be taken, and

(b) 2 such notices if the employee complies with that requirement by giving 2 notices each specifying one of the periods of parental leave proposed to be taken,

30 and the other provisions of this Act (including section 11) shall be construed accordingly.”.

5.—Section 10 of the Principal Act is amended—

Amendment of section 10 of Principal Act.

(a) by substituting the following for subsection (2):

35 “(2) Notwithstanding subsection (1), if, after the date of a confirmation document (whether or not the period of parental leave to which it relates has commenced)—

40 (a) the employer concerned or his or her successor and the employee concerned so agree, the leave or part of it may be postponed to such time as may be so agreed upon, the period of such leave may be curtailed in such manner and to such extent as may be so agreed upon or the form of the leave may be varied in such manner as may be so agreed upon, and in such a case the confirmation document shall be amended accordingly, or

45

(b) the employee concerned becomes sick such that the employee is unable to care for the child the subject of the parental leave to which the confirmation document relates, then the employee may, by notice in writing given to the employer concerned or his or her successor, as soon as is reasonably practicable after becoming sick, and accompanied by the relevant evidence in respect of the sickness— 5

(i) if the period of parental leave has not commenced, postpone the taking of the leave to such time as the employee is no longer sick, or 10

(ii) if the period of parental leave has commenced, suspend the taking of the balance of the leave to such time as the employee is no longer sick, 15

and in such a case the confirmation document shall be deemed to be amended accordingly.”;

(b) in subsection (3), by substituting “subsection (2)(a)” for “subsection (2)”; 20

(c) by inserting the following after subsection (3):

“(4) If, solely because of the postponement or suspension under subsection (2)(b) of the taking of parental leave, or of the taking of the balance of parental leave, as the case may be, the period of the parental leave ends by virtue of the operation of section 6(2), then the event which causes that period to so end shall be deemed, for the purposes of this Act, to have occurred after the end of that period. 25 30

(5) In subsection (2)(b), ‘relevant evidence’, in relation to an employee, means—

(a) a medical certificate—

(i) stating that the employee named in the certificate is, by reason of the sickness specified in the certificate, unable to care for the child named in the certificate, and 35

(ii) signed by a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 1978; or 40

(b) if the employee does not have a medical certificate referred to in paragraph (a), such evidence as the employer concerned or his or her successor may reasonably require in order to show that the employee is, by reason of sickness, unable to care for the child concerned.”. 45

6.—Section 11 of the Principal Act is amended by substituting the following for subsection (6):

“(6) If, solely because of the postponement under this section of the commencement of parental leave, the period of 50

the parental leave ends by virtue of the operation of section 6(2), then the event which caused that period to so end shall be deemed, for the purposes of this Act, to have occurred after the end of that period.

5 (6A) Where a notice under section 8(1) by an employee to his or her employer falls within section 8(7)(a), then, subject to any agreement between the employee and the employer, any postponement under this section of the commencement of parental leave must apply to both periods of proposed parental leave the subject of the notice.”

7.—Section 15(1)(c) of the Principal Act is amended by substituting “and (in either case) under terms or conditions—” Amendment of section 15 of Principal Act.

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

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

if he or she had not been so absent from work” for “and (in either case) under terms or conditions not less favourable to the employee than those that would have been applicable to him or her if he or she had not been so absent from work”.

8.—Section 16(2) of the Principal Act is amended— Amendment of section 16 of Principal Act.

(a) in paragraph (a), by substituting “circumstances,” for “circumstances, and”;

25 (b) by substituting the following for paragraph (b):

“(b) the terms or conditions of the contract—

30 (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 his or her contract of employment immediately before the start of the period of absence from work while on parental leave, and

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

40 (c) the continuity of service is preserved.”.

9.—The Principal Act is amended by inserting the following in Part III after section 16: Protection of employees from penalisation.

“Protection of employees from penalisation.

16A.—(1) An employer shall not penalise an employee for proposing to exercise or having exercised his or her entitlement to parental leave or *force majeure* leave.

(2) Penalisation of an employee includes— 5

- (a) dismissal of the employee,
- (b) unfair treatment of the employee, including selection for redundancy, and
- (c) an unfavourable change in the conditions of employment of the employee. 10

(3) If a penalisation of an employee, in contravention of subsection (1), constitutes a dismissal of the employee, as referred to in subsection (2)(a), the employee may institute proceedings under the Unfair Dismissals Acts 1977 to 2001 in respect of that dismissal and such dismissal may not be referred to a rights commissioner under Part IV. 15

(4) An employee who is entitled to return to work in the employment concerned in accordance with section 15 but is not permitted by his or her employer to do so— 20

(a) shall be deemed to have been dismissed on the date on which he or she was entitled to so return to work and the dismissal shall be deemed, for the purposes of the Unfair Dismissals Acts 1977 to 2001, to have been an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal, and 25 30

(b) shall be deemed for the purposes of the Redundancy Payments Acts 1967 to 2003, to have had his or her contract of employment with his or her employer terminated on the date aforesaid.”. 35 40

Codes of practice.

**10.**—The Principal Act is amended by inserting the following into Part V immediately before section 23:

“Codes of practice.

22A.—(1) The Equality Authority may, or if requested to do so by the Minister shall, prepare for submission to the Minister a draft code of practice for the purposes of providing practical guidance as to the steps that may be taken for complying with one or more provisions of this Act. 45

(2) Before submitting a draft code of practice under subsection (1) to the Minister, the Equality Authority shall consult such other Minister of the Government or other person or body as the 50

Equality Authority considers appropriate or as the Minister may direct.

5 (3) After a draft code of practice has been submitted under subsection (1), the Minister may by order declare that the draft—

(a) is an approved code of practice for the purposes of this Act, or

10 (b) as amended by the Minister after consultation with the Equality Authority, is an approved code of practice for the purposes of this Act,

and an order under this subsection shall set out the text of the approved code of practice to which it relates.

15 (4) In any proceedings under this Act before a court, the Employment Appeals Tribunal or a rights commissioner, an approved code of practice shall be admissible in evidence and, if any provision of the code appears to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

20 (5) The Minister may, by order, after consultation with the Equality Authority, revoke or amend an approved code of practice.

25 (6) Every order made under subsection (3) or (5) shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

30 (7) In this section, ‘Equality Authority’ means the Equality Authority as construed in accordance with section 38(1) of the Employment Equality Act 1998.”

35 **11.—(1)** This Act may be cited as the Parental Leave (Amendment) Act 2004.

Short title and collective citation.

(2) The Principal Act and this Act may be cited together as the Parental Leave Acts 1998 and 2004.