



An Bille um Shaoire agus Sochar Tuismitheora, 2019
Parent's Leave and Benefit Bill 2019

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



**AN BILL UM SHAOIRE AGUS SOCHAR TUISMITHEORA,
2019
PARENT'S LEAVE AND BENEFIT BILL 2019**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of Bill

The purpose of the Bill is to provide for each parent of a child under one to have the right to two weeks parent's leave and for a corresponding social insurance benefit, to be called parent's benefit. The Bill provides for the Minister for Justice and Equality, with the consent of the Minister for Employment Affairs and Social Protection and the Minister for Public Expenditure and Reform, to increase the leave by order to a maximum of nine weeks. The Bill provides for the leave to apply where a child is born on or after 1 November 2019 or, in respect of a child being adopted, where the date of placement is on or after 1 November 2019.

PART 1

PRELIMINARY AND GENERAL

Section 1 (Short title and commencement) sets out the short title of the Bill which is to be the Parent's Leave and Benefit Bill 2019.

It provides for different provisions to be commenced at different times. All parts, with the exception of Part 5, will be commenced by the Minister for Justice and Equality. Part 5 will be commenced by the Minister for Employment Affairs and Social Protection.

Section 2 (Interpretation) is a standard interpretation section which defines the primary terms used throughout the Bill.

Section 3 (Voidance or modification of certain provisions in agreements) provides for the modification or voidance of agreements which would have the effect of preventing a person from availing of the provisions of this Act.

Section 4 (Expenses) is a standard provision which enables the expenses of the Minister for Justice and Equality to be paid out of monies provided by the Oireachtas. It provides general authority for the Minister for Justice and Equality, with the approval of the Minister for Public Expenditure and Reform, to expend monies provided by the Oireachtas.

PART 2

PARENT'S LEAVE

Section 5 (Entitlement to parent's leave) provides for an employee who is a 'relevant parent' of a child under one to have an entitlement to two weeks of parent's leave for a child born or placed for adoption on or after 1 November 2019. The leave cannot be transferred between parents other than in specified circumstances such as the death of a parent.

The 'relevant parent' entitled to the leave under this Bill (as defined in section 2) is:

- a parent of the child;
- a spouse, civil partner or cohabitant of the parent of the child;
- a parent of a donor-conceived child as provided for under section 5 of the Children and Family Relationships Act 2015;
- the adopting parent or parents of a child;
- the spouse, civil partner or spouse of the adopting parent of the child.
- each member of a married couple of the same sex, a couple that are civil partners of each other, or a cohabiting couple of the same sex.

Section 5 provides for the period of leave to be extended to a maximum of nine weeks by order of the Minister for Justice and Equality with the consent of the Minister for Employment Affairs and Social Protection and the Minister for Public Expenditure and Reform.

Section 6 (Notification of employer) sets out the notice requirements that will apply. An employee will be required to give six weeks' notice to his or her employer, setting out the expected date on which the leave will begin and the duration of the planned leave. It also sets out the documentation that must accompany an application for parent's leave.

Section 7 (Allocation of parent's leave) indicates that, with some exceptions, the leave applies in respect of a child under one or within a year of the date of adoption. Where there is a delay between the birth or adoption of a child born or placed for adoption on or after 1 November 2019 and the coming into operation of this provision, the one year limit runs from the date the provision commences. This is intended to ensure that a parent will not be at a disadvantage if there is a delay in the enactment or commencement of the provision.

Section 8 (Commencement of parent's leave where relevant parent entitled to maternity leave) sets out the sequence in which parent's leave must be taken where the parent also has an entitlement to maternity leave. The parent must take maternity leave before parent's leave. The parent must also take transferred paternity leave (where applicable) before parent's leave.

Section 9 (Commencement of parent's leave where relevant parent entitled to adoptive leave under section 6(1) of the Act of 1995) sets out the sequence in which parent's leave must be taken where the parent also has an entitlement to adoptive leave. The parent must take adoptive leave before parent's leave. The parent must also take transferred paternity leave (where applicable) before parent's leave.

Section 10 (Commencement of parent's leave for a relevant parent entitled to paternity leave) sets out the sequence in which parent's leave must be taken where the parent also has an entitlement to paternity leave. In this case, paternity and parent's leave can be taken in either order. Where

a father becomes entitled to leave under the Maternity Protection Act on the death of the mother, or an adopting father becomes entitled to leave under the Adoptive Leave Act on the death of the adopting mother, parent's leave will follow this.

Section 11 (Commencement of parent's leave (early confinement)) provides that where a child is born more than 4 weeks before the expected date of birth, the parent will be considered to have complied with the notice requirement if notice is given to the employer in the period of 7 days commencing on the date of birth.

Section 12 (Commencement of parent's leave (change in day of placement or date of confinement)) provides that where the date of placement of a child for adoption is postponed or where the child's birth occurs after the date selected by the employee as that on which parent's leave will begin, the parent will be entitled to select another date but must comply with the sequence of leave stipulated under sections 7 to 10.

Section 13 (Postponement of parent's leave by employer) allows an employer to postpone the commencement of a period of parent's leave where taking the leave would have a substantial adverse effect on the operation of the business because of:

- seasonal variations in the volume of work concerned;
- the unavailability of a replacement to carry out the employee's work;
- the nature of the employee's duties;
- the number of other employees also taking parent's leave;
- other relevant matters.

The employer cannot postpone the leave for more than 12 weeks.

Section 14 (Postponement of parent's leave in event of hospitalisation of child) provides that a parent who is entitled to or is on parent's leave may request the employer to postpone the leave on the hospitalisation of the child. The postponed leave must be taken within 7 days of the child's discharge from hospital or subsequently, by agreement with the employer.

Section 15 (Entitlement to parent's leave on death of child) provides for a parent to continue to have an entitlement to parent's leave if the child dies within the period during which the parent is eligible for parent's leave.

Section 16 (Entitlement of employed surviving parent to leave on death of relevant parent) provides for parent's leave to be transferred to the other parent on the death of a parent. It sets out the arrangements that apply to transferred parent's leave.

PART 3

EMPLOYMENT PROTECTION

Section 17 (Interpretation) provides that where a part of parent's leave is postponed, the part before postponement will be treated as a separate period of leave from that taken after postponement.

Section 18 (Preservation or suspension of rights while on parent's leave) sets out the employment rights applicable while the employee is on parent's leave. Absence on parent's leave will not affect the employee's rights other than to remuneration. A period of absence on parent's leave will not be treated as part of any other leave to which the employee is entitled. The employer can suspend probation, training or apprenticeship for the period of the employee's parent's leave.

Section 19 (Protection of employee from penalisation) provides that the employee is protected from penalisation, including dismissal, threat of dismissal, unfair treatment, unfavourable change in terms and conditions, for exercising the entitlement to parent's leave.

Section 20 (General right to return to work on expiration of parent's leave) provides that the employee has a right to return to work once the period of parent's leave has ended. The employee has the right to return to his / her normal and usual job and to terms and conditions that are no less favourable than those applying when the employee began the parent's leave.

Section 21 (postponement of return to work) provides that where there is an interruption or a cessation of work at the employee's place of employment, and it is unreasonable to expect the employee to return to work at the time, the employee may return when work resumes.

Section 22 (Provisions applying where employee not permitted to return to work) deals with the situation where the employee is not permitted to return to work by the employer. When this happens, the employee is deemed to have been dismissed by reason of redundancy and the provisions of the Redundancy Payments Acts will apply. The employee shall also be deemed to have been dismissed unfairly under the Unfair Dismissals Act unless there are substantial grounds justifying the dismissal.

PART 4

RESOLUTION OF DISPUTES

Section 23 (Disputes regarding entitlements under Act) provides that Part 4 will not apply to a dispute relating to the dismissal of an employee or to a member of the Defence Forces. It also sets out relevant definitions in this regard.

Section 24 (Decision under section 41 or 44 of Act of 2015) sets the remedies that an adjudication officer will be able to apply when adjudicating a dispute on parent's leave between an employee and an employer under the Workplace Relations Act 2015. These will include the grant to the employee of parent's leave or an award of compensation not exceeding the number of weeks' remuneration equivalent to the number of weeks of paid leave provided for under section 5 (2 weeks initially).

Section 25 (Burden of proof) provides that, where in any dispute, facts are established by an employee from which it may be presumed that there has been a breach of this Act, it shall be for the employer to prove the contrary.

PART 5

PARENT'S BENEFIT

Section 26 (Amendment of section 21 of Act of 2005) amends section 21 of the Social Welfare Consolidation Act 2005 to include parent's benefit as one of the benefits for which self-employed contributions will not be disregarded when determining whether contributions for the benefit are satisfied.

Section 27 (Amendment of section 39 of Act of 2005) amends section 39 of the Social Welfare Consolidation Act 2005 to add Parent's Benefit to the list of insurance based benefits covered under the Act.

Section 28 (Amendment of section 58 of Act of 2005) amends section 58 of the Social Welfare Consolidation Act 2005 with regard to conditions concerning entitlement to adoptive benefit. It should be read in tandem

with section 36 of Part 6 of this Bill which amends the Adoptive Leave Act 1995 to provide that an employee is not entitled to adoptive leave in respect of a child if his or her spouse, civil partner or cohabiting partner has already taken adoptive leave or maternity leave in respect of the child.

Section 29 (Parent's benefit) inserts a new Chapter 11B into the Social Welfare Consolidation Act 2005 to provide for parent's benefit. This will insert sections 61F to 61J into the Act.

Section 61F sets out the definitions that will apply. The categories of 'relevant parent' are the same as those set out in section 2.

Section 61G provides for the conditions for entitlement to and duration of the benefit. It provides that the relevant parent can qualify for parent's benefit if she or he is an employed contributor and it is certified by his / her employer that he or she is entitled to parent's leave or is in insurable self-employment. The eligible parent is one whose child is under 52 weeks or who has been placed for adoption with the parent less than 52 weeks previously.

The relevant parent will not be entitled to claim parent's benefit more than once where s/he has multiple births or adopts more than one child simultaneously. The benefit can be paid in a continuous period or in periods of 1 week. Parent's benefit will not be transferable between parents other than in the case of the death of a parent. The benefit can be postponed where the child is hospitalised but cannot be postponed for more than 7 days following the child's discharge from hospital. It can also be postponed for up to 12 weeks at the initiative of the employer under section 13 of the Bill and a similar arrangement is provided for the self-employed to take account of seasonal variations in the volume of their work.

Provision is also made for entitlement to benefit for up to 52 weeks following the birth or adoption of a child after 1 November 2019 in the event that the passage of this Bill occurs after this date.

This Chapter (in section 61H) sets out the contribution conditions for receipt of parent's benefit. A person who has satisfied the PRSI conditionality for maternity/paternity/adoptive benefit will be deemed to have satisfied the conditionality for parent's benefit. The employed contributor must have qualifying contributions of not less than 39 contribution weeks beginning with his / her entry into insurance, of which 39 must be in the second last complete contribution year before the benefit year in which parent's benefit is being claimed or 26 contribution weeks in each of the second and third last complete contribution years before the year in which parent's benefit is being claimed. Alternatively the contributor may have at least 39 qualifying contributions in the previous 12 month period.

The person in insurable self-employment must have a minimum of 52 contribution weeks in the second or third last complete contribution year before the year in which parent's benefit is being claimed. Where s/he has previously been an employed contributor, s/he must have 39 contribution weeks in the 12 months immediately preceding the period for which parent's benefit is being claimed.

This Chapter (section 61I) provides that the weekly rate of parent's benefit will be either €245 or equivalent to the illness benefit rate as appropriate.

Section 61J provides for the disqualification from parent's benefit where the parent engages in employment or self-employment.

Section 30 (Amendment of section 238B of Act of 2005) amends section 238B of the Social Welfare Consolidation Act 2005 to provide that back to

work family dividend may be paid where the parent is in receipt of parent's benefit.

Section 31 (Amendment of section 241 of Act of 2005) amends section 241 of the Social Welfare Consolidation Act 2005 to enable the provisions concerning claiming entitlement within a specific period to apply also to parent's benefit.

Section 32 (Amendment of section 248 of Act of 2005) amends section 248 of the Social Welfare Consolidation Act 2005 to include parent's benefit in the provisions concerning payments after death. This will provide that payment can continue to a parent in the event of the death of the child for which they are providing care.

PART 6

MISCELLANEOUS

Part 6 generally contains consequential or technical amendments to a number of Acts.

A more substantive provision is contained in *Section 36 (Amendment of the Act of 1995)* which provides that an employee is not entitled to adoptive leave in respect of a child if his or her spouse, civil partner or cohabiting partner has already taken adoptive or maternity leave in respect of the child.

Financial Implications

The cost of parent's benefit is estimated to be €1.5m in 2019, €22m in 2020 and €32m in a full year on an ongoing basis. The full year cost of introducing 9 weeks parental leave would be €142 million per annum.

The substitution costs for each two weeks of Parent's Leave for staff in front line service delivery areas of Health and Education are projected to cost €15m on an annualised basis, as an indicative figure.

*An Roinn Dlí agus Cirt agus Comhionannais,
Deireadh Fómhair, 2019.*