



THE EMPLOYMENT ACT 2006

THE MATERNITY LEAVE REGULATIONS 2007

(as amended by the Maternity Leave (Amendment) Regulations 2007 SD No 463/07)

Coming into operation

1st April 2007

In exercise of the powers conferred on the Department of Trade and Industry by sections 65, 79, 80, 81, 82, 83, 114, and 174 of the Employment Act 2006¹, and of all other enabling powers, the following Regulations are hereby made:—

Preliminary

1. Citation and commencement

These Regulations may be cited as the Maternity Leave Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 1st April 2007.

2. Interpretation

In these Regulations —

"the Act" means the Employment Act 2006;

"additional adoption leave" means leave under section 96 of the Act;

"additional maternity leave" means leave under section 81 of the Act;

"child" means a person under the age of 18;

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

"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, 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 section 79 of the Act;

¹ 2006 c. 21
Price £2.00

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"parental leave" means leave under section 84 or 85 of the Act;

"statutory leave" means leave provided for in Part VII of the Act.

(2) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Schedule 5 to the Act, as if that provision were a provision of the Act.

3. Application

(1) These Regulations have effect only in relation to employees whose expected week of childbirth begins on or after 30th September 2007.

(2) Regulation 16 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 1st April 2007.

(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

(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 17 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 112 of the Act) falls on or after 1st April 2007.

Entitlement to maternity leave

4. Entitlement to ordinary maternity leave

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

(a) [no later than the end of the fifteenth week before her expected week of childbirth]*, 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

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- (ii) a registered midwife,
stating the expected week of childbirth.

(2) 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 not reasonably practicable, as soon as it is reasonably practicable.

- (3) The notification provided for in paragraph (1)(a)(iii) or (2) —
 - (a) shall be given in writing, if the employer so requests, and
 - (b) shall not specify a date earlier than the beginning of the 11th week before the expected week of childbirth.

(4) Where, by virtue of regulation 6(1)(b), an employee's ordinary maternity leave period commences with the day which follows the first day after the beginning of the 4th 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 and of the date on which her absence on that account began.

(5) Where, by virtue of regulation 6(2), an employee's ordinary maternity leave period commences on the day which follows 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 birth that she has given birth and of the date on which the birth occurred.

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

** inserted by Maternity Leave (Amendment) Regulations 2007 SD No 463/07 with effect from 1st July.*

5. Entitlement to additional maternity leave

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

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

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- (b) she has, at the beginning of the 14th week before the expected week of childbirth, been continuously employed for a period of not less than 26 weeks.

Maternity leave periods

6. Commencement of maternity leave periods

- (1) Subject to paragraph (2), an employee's ordinary maternity leave period commences with the earlier of —
 - (a) the date which she notifies to her employer, in accordance with regulation 4, as the date on which she intends her ordinary maternity leave period to start, or, if by virtue of regulation 4(2) she has notified more than one such date, the last date she notifies, and
 - (b) the day which follows the first day after the beginning of the 4th 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 childbirth occurs, her ordinary maternity leave period commences on the day which follows 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.

7. Duration of maternity leave periods

- (1) Subject to paragraphs (2) and (5), an employee's ordinary maternity leave period continues for the period of 26 weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 10 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 provision of —
 - (a) an enactment, or
 - (b) an instrument under an enactment,other than a provision for the time being specified in an order under section 74(2) of the Act.
- (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 26 weeks from the day on which it commenced.
- (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) 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 maternity leave 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), (4)(b) or (5)(b), within 28 days of the date on which he received the notification;
- (b) where the employer is notified under regulation 4(2), within 28 days of the date on which the employee's ordinary maternity leave period commenced.

Application of terms and conditions during maternity leave

8. Application of terms and conditions during ordinary maternity leave

- (1) An employee who takes ordinary maternity leave —
 - (a) is entitled, during the period of leave, to the benefit of all 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 section 79(4)(b) of the Act.
- (2) In paragraph (1)(a), "terms and conditions" has the meaning given by section 79(5) of the Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 79 of the Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

9. Application of terms and conditions during additional maternity leave

An employee who takes additional maternity leave —

- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to —
 - (i) notice of the termination of the employment contract by her employer;
 - (ii) compensation in the event of redundancy, or
 - (iii) disciplinary or grievance procedures;

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- (b) is bound, during that period, by her implied obligation to her employer of good faith and any terms and conditions of her employment relating to —
 - (i) notice of the termination of the employment contract by her;
 - (ii) the disclosure of confidential information;
 - (iii) the acceptance of gifts or other benefits, or
 - (iv) the employee's participation in any other business.

Maternity leave: supplemental

10. Compulsory maternity leave

The prohibition in section 80 of the Act, 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 2 weeks which commences with the day on which childbirth occurs.

11. Redundancy during maternity leave

(1) This regulation applies where, during an employee's ordinary or additional maternity leave 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.

12. Contractual rights to maternity leave

- (1) This regulation applies where an employee is entitled to —
 - (a) ordinary maternity leave; or
 - (b) additional maternity leave,

(referred to in paragraph (2) as a "statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.

- (2) In a case where this regulation applies —
 - (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the 2 rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
 - (b) the provisions of the Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Return to work

13. Requirement to notify intention to return during a maternity leave period

(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 both ordinary and additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 28 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 28 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.

(5) This regulation does not apply in a case where the employer did not notify the employee in accordance with regulation 7(6) and (7) of the date on which the relevant maternity leave period would end.

14. Right to return after maternity leave

(1) An employee who returns to work after a period of ordinary maternity leave which was —

- (a) an isolated period of leave, or

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- (b) the last of 2 or more consecutive periods of statutory leave which did not include any period of additional maternity leave or additional adoption leave, or a period of parental leave of more than 4 weeks,

is entitled to return to the job in which she was employed before her absence.

- (2) An employee who returns to work after —
 - (a) a period of additional maternity leave, whether or not preceded by another period of statutory leave, or
 - (b) a period of ordinary maternity leave, not falling within the description in paragraph (1)(a) or (b),

is entitled to return from leave to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances.

(3) The reference in paragraph (1) and (2) to the job in which an employee was employed before her absence is a reference to the job in which she was employed

- (a) if her return is from an isolated period of statutory leave, immediately before that period began;
- (b) if her return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 11 (redundancy) applies.

15. Incidents of the right to return

(1) An employee's right to return under regulation 14(1) or (2) is a right to return —

- (a) with her seniority, pension rights and similar rights —
 - (i) in a case where the employee is returning from additional maternity leave, or consecutive periods of statutory leave which included a period of additional maternity leave or additional adoption leave, as they would have been if the period or periods of her employment prior to her additional maternity leave or additional adoption leave, as the case may be, were continuous with the period of employment following it;
 - (ii) in any other case, as they would have been if she had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if she had not been absent.

(2) The provision in paragraph (1)(a)(i) concerning the treatment of periods of additional maternity leave is subject to the requirements of paragraphs 5, 5B and 6 (equal treatment under pension schemes: maternity absence, adoption leave

and family leave) of Schedule 5 to the Social Security Act 1989 (an Act of Parliament)², as it has effect in the Island³.

(3) The provisions in paragraph (1)(a)(ii) and (b) for an employee to be treated as if she had not been absent refer to her absence —

- (a) if her return is from an isolated period of statutory leave, since the beginning of that period;
- (b) if her return is from consecutive periods of statutory leave, since the beginning of the first such period.

Employment protection

16. Protection from detriment

(1) An employee is entitled under section 65 of the Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

(2) The reasons referred to in paragraph (1) are that the employee —

- (a) is pregnant;
- (b) has given birth to a child;
- (c) is the subject of a relevant requirement, or a relevant recommendation, as defined by section 74(2) of the Act;
- (d) took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) took or sought to take additional maternity leave; or
- (f) failed to return after a period of ordinary or additional maternity leave in a case where —
 - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that that period had not ended, or
 - (ii) the employer gave her less than 29 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date.

(3) For the purposes of paragraph (2)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 79 of the Act and regulation 8 during that period.

(4) Paragraph (1) does not apply in a case where the detriment in question amounts to dismissal within the meaning of Part X of the Act.

² 1989 c.24

³ GC 422/89

(5) Paragraph (2)(b) only applies where the act or failure to act takes place during the employee's ordinary or additional maternity leave period.

(6) For the purposes of paragraph (5) —

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

(7) For the purposes of paragraph (6), 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 were to be done.

17. Unfair dismissal

(1) An employee who is dismissed is entitled under section 114 of the Act to be regarded for the purposes of Part X of the Act as unfairly dismissed if —

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant, and regulation 11 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part X of the Act as unfairly dismissed if —

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The kinds of reason referred to in paragraphs (1) and (2) are reasons connected with —

- (a) the pregnancy of the employee;
- (b) the fact that the employee has given birth to a child;
- (c) the application of a relevant requirement, or a relevant recommendation, as defined by section 74(2) of the Act;
- (d) the fact that she took, sought to take or availed herself of the benefits of, ordinary maternity leave;
- (e) the fact that she took or sought to take additional maternity leave; or

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- (f) the fact that she failed to return after a period of ordinary or additional maternity leave in a case where –
 - (i) the employer did not notify her, in accordance with regulation 7(6) and (7) or otherwise, of the date on which the period in question would end, and she reasonably believed that the period had not ended, or
 - (ii) the employer gave her less than 28 days' notice of the date on which the period in question would end, and it was not reasonably practicable for her to return on that date.
- (4) Paragraphs (1)(b) and (3)(b) only apply where the dismissal ends the employee's ordinary or additional maternity leave period.
- (5) For the purposes of paragraph (3)(d), a woman avails herself of the benefits of ordinary maternity leave if, during her ordinary maternity leave period, she avails herself of the benefit of any of the terms and conditions of her employment preserved by section 79 of the Act and regulation 8 during that period.
- (6) Paragraph (1) does not apply in relation to an employee if –
 - (a) immediately before the end of her additional maternity leave period (or, if it ends by reason of dismissal, immediately before the dismissal) the number of employees employed by her employer, added to the number employed by any associated employer of his, did not exceed 5, and
 - (b) it is not reasonably practicable for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances or for an associated employer to offer her a job of that kind.
- (7) Paragraph (1) does not apply in relation to an employee if –
 - (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit her to return to a job which is both suitable for her and appropriate for her to do in the circumstances;
 - (b) an associated employer offers her a job of that kind, and
 - (c) she accepts or unreasonably refuses that offer.
- (8) Where on a complaint of unfair dismissal any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (6) or (7), it is for the employer to show that the provisions in question were satisfied in relation to the complainant.

18. Calculation of a week's pay

Where —

- (a) under Schedule 6 to the Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the

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employee in respect of a period of 12 weeks ending on a particular date (referred to as "the calculation date");

- (b) during a week in that period, the employee was absent from work on ordinary or additional maternity leave or parental leave, and
- (c) remuneration is payable to the employee in respect of that week under her contract of employment, but the amount payable is less than the amount that would be payable if she were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

FOR INFORMATION AND REFERENCE ONLY - NOT LEGISLATIVE TEXT

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, made under the Employment Act 2006, make provision for an employee's right to take unpaid maternity leave (in place of the right to return to work under Part III of the Employment Act 1991). The right applies where the child is born or expected to be born on or after 30th September 2007, and the protection against detriment or dismissal because the right is exercised arises where the detriment or dismissal occurs on or after 1st April 2007 (regulation 3).

Regulations 4 to 7 confer a right to take "ordinary maternity leave" of 26 weeks, and (in the case of an employee with 26 weeks' qualifying service) "additional maternity leave" of 26 weeks. Regulation 8 provides that an employee is entitled during her absence on ordinary maternity leave to the benefit of all of her terms and conditions of employment (apart from the right to remuneration, which is excluded by section 79(5)(b) of the Act), and is subject to all of the obligations under those terms and conditions except where inconsistent with the right to leave. Regulation 9 confers more limited rights during a period of additional maternity leave.

Regulation 10 specifies the employees to whom, and the period during which, the prohibition on working in section 80 of the Act applies. Regulation 11 entitles an employee who is made redundant while on maternity leave to be offered suitable alternative employment. Regulation 12 entitles an employee who has contractual maternity rights to claim whichever of those rights and the statutory rights is more advantageous.

Regulations 13 to 15 make provision for the employee's return to work after maternity leave. Under regulations 16 and 17 an employee entitled to maternity leave is protected against detriment or dismissal attributable to the fact that she took or sought to take such leave. Regulation 18 makes special provision for the calculation of a week's pay while an employee is on maternity leave.

