STATUTORY RULES OF NORTHERN IRELAND

2002 No. 355

EMPLOYMENT

Maternity and Parental Leave etc. (Amendment No. 3) Regulations (Northern Ireland) 2002

Made - - - -	*21st November 2002*
Coming into operation	*24th November 2002*

The Department for Employment and Learning(**1**) in exercise of the powers conferred on it by Articles 70C(2)(**2**), 103(1) to (4), (6) and (7), 105(1), (2), (4) and (7), 106(4), 107(1), 108(**3**) and 131(1)(**4**) of the Employment Rights (Northern Ireland) Order 1996(**5**) and now vested in it(**6**) and of every other power enabling it in that behalf, hereby makes the following Regulations–

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Maternity and Parental Leave etc. (Amendment No. 3) Regulations (Northern Ireland) 2002 and shall come into operation on 24th November 2002.

(2) In these Regulations, "the Principal Regulations" means the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999(**7**).

Application

2.—(1) The amendments to the Principal Regulations provided for in regulations 5 to 11, 13 and 14 below (all of which concern maternity leave), and the amendment in regulation 12 in so far as it relates to the right to return from maternity leave, have effect only in relation to employees whose expected week of childbirth begins on or after 6th April 2003.

(**1**) Formerly the Department of Higher and Further Education, Training and Employment; *see*2001 c. 15 (N.I.)
(**2**) Article 70C of the Employment Rights (N.I.) Order 1996 (S.I.1996/1919 (N.I. 16) was inserted by paragraph 3 of Part III of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 4(6) and (7) of Schedule 2 to the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**3**) Articles 103 to 108 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16) were substituted by Part I of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)). Articles 103 (4) and (7), 105 and 106 were amended by Article 14 of the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**4**) Article 131 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16)) was substituted by paragraph 8 of Part III of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)) and amended by paragraph 4(13) and (14) of Schedule 2 to the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))
(**5**) S.I. 1996/1919 (N.I. 16)
(**6**) *See*S.R. 1999 No. 481
(**7**) S.R. 1999 No. 471, to which there are amendments not relevant to these Regulations

(2) The amendment to the Principal Regulations provided for in regulation 12 in so far as it relates to the right to return after parental leave, has effect only in relation to employees returning from a period of leave begun on or after 6th April 2003.

Amendments to the Principal Regulations

3. The Principal Regulations shall be amended as provided in regulations 4 to 14.

4. In regulation 2(1) (interpretation)–

(a) after the definition of "the 1996 Order" insert–

""additional adoption leave" means leave under Article 107B of the 1996 Order;"

(b) in the definition of "job" omit "additional";

(c) after the definition of "parental responsibility" insert–

""statutory leave" means leave provided for in Part IX of the 1996 Order;".

5. In regulation 4 (entitlement to ordinary maternity leave)–

(a) in paragraph (1)(a), for "at least 21 days before the date on which she intends her ordinary maternity leave period to start", substitute "no later than the end of the fifteenth week before her expected week of childbirth";

(b) after paragraph (1) insert–

"(1A) 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 that is not reasonably practicable, as soon as is reasonably practicable.";

(c) in paragraph (2), for "The notification provided for in paragraph (1)(a)(iii)" substitute–

"Notification under paragraph (1)(a)(iii) or (1A)";

(d) in paragraph (3)–

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(iii) at the end of sub-paragraph (b) insert "and of the date on which her absence on that account began";

(e) in paragraph (4)–

(i) for "with" substitute "on the day which follows";

(ii) at the end of sub-paragraph (b) insert "and of the date on which the birth occurred".

6. In regulation 5(b) (entitlement to additional maternity leave: qualifying period of employment)–

(a) for "the eleventh week" substitute "the fourteenth week";

(b) for "a year" substitute "26 weeks".

7. In regulation 6 (commencement of maternity leave periods)–

(a) in paragraph (1)(a)–

(i) omit ", in accordance with regulation 4(1)(a)(iii),";

(ii) after "her employer" insert ", in accordance with regulation 4,";

(iii) after "to start," insert "or, if by virtue of the provision for variation in that regulation she has notified more than one such date, the last date she notifies,";

(b) in paragraph (1)(b)–

(i) before "the first day" insert "the day which follows";

(ii) for "the sixth week" substitute "the fourth week";

(c) in paragraph (2), for "with" substitute "on the day which follows".

8. In regulation 7 (duration of maternity leave periods)–

(a) in paragraph (1), for "18 weeks" substitute "26 weeks";

(b) in paragraph (4), for "29 weeks beginning with the week of childbirth" substitute "26 weeks from the day on which it commenced";

(c) after paragraph (5) insert–

"(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 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), (3)(b) or (4)(b), within 28 days of the date on which he received the notification;

(b) where the employer is notified under regulation 4(1A), within 28 days of the date on which the employee's ordinary maternity leave period commenced."

9. For regulation 9 substitute–

"**Application of terms and conditions during ordinary maternity leave**

9.—(1) An employee who takes ordinary maternity leave–

(a) is entitled, during the period of leave, to the benefit of all of 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 Article 103(4)(b)(**8**) of the 1996 Order.

(2) In paragraph (1)(a), "terms and conditions" has the meaning given by Article 103(5) of the 1996 Order, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of Article 103(4)(b) of the 1996 Order, only sums payable to an employee by way of wages or salary are to be treated as remuneration."

10. In regulation 11 (requirement to notify intention to return during a maternity leave period)–

(a) in paragraph (1)–

(i) after "she is entitled to" insert "both ordinary and";

(**8**) Article 103 of the Employment Rights (N.I.) Order 1996 (S.I. 1996/1919 (N.I.16)) was substituted by Part I of Schedule 4 to the Employment Relations (N.I.) Order 1999 (S.I. 1999/2790 (N.I. 9)). Article 103(4) was also amended by Article 14 of the Employment (N.I.) Order 2002 (S.I. 2002/2836 (N.I. 2))

(ii) for "21 days' " substitute "28 days' ";

(b) in paragraph (2), for "21 days'" substitute "28 days' ";

(c) after paragraph (4) insert–

"(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."

11. Omit regulation 12.

12. For regulation 18 substitute–

"**Right to return after maternity or parental leave**

18.—(1) An employee who returns to work after a period of ordinary maternity leave, or a period of parental leave of four weeks or less, which was–

(a) an isolated period of leave, or

(b) the last of two 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 four 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, or a period of parental leave of more than four weeks, whether or not preceded by another period of statutory leave, or

(b) a period of ordinary maternity leave, or a period of parental leave of four weeks or less, not falling with the description in paragraph (1)(a) or (b) above,

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 paragraphs (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 10 applies.

Incidents of the right to return

18A.—(1) An employee's right to return under regulation 18(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 (as the case may be) additional adoption leave 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 or additional adoption leave is subject to the requirements of paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1989(**9**) (equal treatment under pension schemes: maternity absence and family leave).

(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."

13. In regulation 19 (protection from detriment)–

(a) after paragraph (2)(e) insert–

"(ee) 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 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;";

(b) in paragraph (3), after "Article 103 of the 1996 Order" insert "and regulation 9".

14. In regulation 20(3) (reasons making dismissal unfair), after sub-paragraph (e), insert–

"(ee) 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 that 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;".

Sealed with the Official Seal of the Department for Employment and Learning on 21st November 2002.

L.S.

R. B. Gamble
A senior officer of the
Department for Employment and Learning

(**9**) S.I. 1989/1342 (N.I. 13)

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend provisions relating to maternity leave in the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 (S.R. 1999 No. 471), and also provisions in those Regulations concerning the right to return from parental leave. Some of the amendments concern provisions which implement provisions of Council Directive 92/85/EEC, relating to the safety and health of pregnant workers and workers who have recently given birth or are breastfeeding, and provisions of the Framework Agreement on Parental Leave annexed to Council Directive 96/34/EC.

The most significant changes are the extension of ordinary maternity leave from 18 to 26 weeks, and the extension of additional maternity leave so as to end 26 weeks from the end of ordinary maternity leave rather than 29 weeks after the week of childbirth (regulation 8(a) and (b)). An employee will qualify for additional maternity leave if she has been continuously employed for at least 26 weeks at the beginning of the 14th week before the expected week of childbirth ("e.w.c."), rather than, as previously, at least a year at the beginning of the 11th week before the e.w.c. (regulation 6).

The 1999 Regulations are amended to provide for notification of the date on which an employee intends her ordinary maternity leave period to start to be given to the employer before the end of the fifteenth week before the e.w.c., rather than 21 days before the intended start date as previously; however, there is a new provision for the employee to change the date subsequently provided that her employer is given 28 days' notice (regulation 5). Absence from work on account of pregnancy will cause an employee's ordinary maternity leave period to begin automatically if it is after the beginning of the fourth week before the e.w.c., rather than the sixth week before then as previously (regulation 7).

A new requirement is inserted for an employer notified of the commencement of an employee's maternity leave to notify the employee of the date on which it will end (regulation 8(c)). If no such notification is given by the employer, he is unable to prevent the employee from returning early (regulation 10(c)), and the employee is protected against detriment or dismissal if she fails to return on the due date (regulations 13 and 14). The requirement in regulation 12 of the 1999 Regulations for an employee entitled to additional maternity leave to notify her employer, if so requested, whether she intends to return to work at the end of a period of additional maternity leave is removed (regulation 11).

Provision is made for all of the rights and obligations in an employee's contract of employment, apart from the right to remuneration, to continue during an employee's ordinary maternity leave period (regulation 9), and for the employee to return from an isolated period of ordinary maternity leave to the job in which she was employed before her absence (regulation 12, which substitutes new regulations 18 and 18A in the 1999 Regulations). Provision to the same effect was made by Article 103 of the Employment Rights (Northern Ireland) Order 1996, but that Article was amended by Article 14 of the Employment (Northern Ireland) Order 2002 so as to provide for the extent to which rights and obligations continue to apply, and the kind of job to which an employee is entitled to return, to be determined in regulations.

Besides providing for the rights of an employee returning from an isolated period of ordinary maternity leave, the new regulations 18 and 18A of the 1999 Regulations make provision in respect of employees who return following ordinary maternity leave taken after another period of statutory leave. They carry forward provisions in the original regulation 18 concerning employees returning after additional maternity leave, and extend the provisions in that regulation concerning employees

returning from parental leave so as to cover cases where such leave is taken after ordinary maternity leave, paternity leave or adoption leave.