
STATUTORY RULES OF NORTHERN IRELAND

2002 No. 355

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

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⁽¹⁾.

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.

(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

(1) S.R. 1999 No. 471, to which there are amendments not relevant to these Regulations

- (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)(2) 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”;
- (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

(2) 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))

(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(3) (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