



An Bille um Shaoire agus Sochar Atharthachta, 2016
Paternity Leave and Benefit Bill 2016

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Explanatory Memorandum



**AN BILLE UM SHAOIRE AGUS SOCHAR ATHARTHACHTA,
2016
PATERNITY LEAVE AND BENEFIT BILL 2016**

EXPLANATORY MEMORANDUM

The purpose of this Bill is to give effect to the decision in Budget 2016 to provide for 2 weeks' paternity leave and an associated social welfare benefit.

At one level the Bill deals with a simple issue – the creation of 2 weeks' paternity leave and a paternity benefit. However, there were also quite complex issues in relation to the interplay with Maternity and Adoptive leave that had to be resolved in the preparation of the Bill. These relate to rare and tragic situations that the leave and benefit regimes must cater for, including stillbirth, death of a newborn baby, or death of one of the parents. Essentially, the Bill takes a humane approach. If the baby is stillborn or dies, the entitlement to paternity leave still continues and if one parent dies, the other parent inherits whatever paternity leave has not been taken.

The Bill also provides for same sex couples on an equal basis with other couples.

Main Provisions

Part 1 Preliminary and General, contains preliminary and general provisions.

Section 1 contains the short title and standard citations, construction and commencement provisions.

Section 2 defines a number of terms used in the Bill. One of the key terms is 'relevant parent', which means the father in most family circumstances. However, the definition has been drafted also to provide for same sex couples. Paternity leave can be taken by one person only, save in the case of adoption, where the Bill allows for circumstances where the father will have taken paternity leave, by ensuring that the adoptive father can subsequently also take paternity leave.

Section 3 clarifies that the Minister has a power to make regulations in relation to anything said to be prescribed in the Bill.

Section 4 is a standard provision in equality and employment rights legislation which prohibits private employment contracts from reducing the statutory rights of employees.

Section 5 is a standard provision to provide that expenses incurred by the Minister in the administration of this Act shall be paid out by moneys provided by the Oireachtas.

Part 2 Paternity Leave, creates an entitlement of 2 weeks' paternity leave and governs the operation of paternity leave.

Section 6 is one of the most important provisions in the Bill as it creates the entitlement to 2 weeks' paternity leave to be taken as one continuous period of two weeks (except as provided for in section 12).

Section 7 contains a number of provisions that set out the process by which the relevant parent notifies his or her employer of the intention to take paternity leave, and the documentation required to be submitted to the employer. Paternity leave must usually be applied for 4 weeks in advance.

Section 8 provides that paternity leave can be taken at any time commencing on the date of the birth (or placement in the case of an adoption) and ending not later than 26 weeks thereafter. This means that a couple can choose to avail of the leave at the time of the birth, or at the end of the period of paid maternity leave (thus if they chose, they can have 28 weeks continual paid maternity/paternity leave) or any time in between.

Section 9 provides for relaxation of the normal notification period in cases where the date of confinement occurs four or more weeks before the expected date, subject to a minimal notification period of 14 days.

Section 10 provides for postponement of paternity leave that has been applied for but not taken, in the event of the postponement of the day of placement or the date of confinement.

Section 11 provides for postponement of paternity leave that has been applied for but not taken, in the event of sickness of the relevant parent.

Section 12 provides for postponement of paternity leave (either in whole or in part) in the event of hospitalisation of the child.

Section 13 provides that a father (or other relevant parent) who is entitled to but has not taken paternity leave may take that paternity leave at the end of a period of maternity leave that is transferred to the father on the death of a mother during her maternity leave (this transfer is provided for in section 16 of the Maternity Protection Act 1994).

Section 14 makes similar provisions to section 13 in the case of adoption and the death of an adopting mother.

Section 15 provides for transfer of paternity leave to the mother (or other surviving parent) where a father or other relevant parent dies while having an entitlement to paternity leave that has not been used.

Section 16 contains a number of provisions that deal with the abuse of paternity leave. A key requirement is that paternity leave must be used for the care of the child to which the leave relates.

Section 17 provides for the maintenance of paternity leave records by an employer.

Part 3 Employment Protection, relates to the protection of the employment of employees who avail of paternity leave.

Section 18 is a technical provision which establishes that where paternity leave or part of such leave is legitimately postponed, the times on leave before and after such postponement are treated as separate periods of leave.

Section 19 provides for preservation and suspension of certain employment rights while on paternity leave and is in line with the existing legislation in this regard as it relates to maternity and adoptive leave.

Section 20 is also an employment rights protection provision which voids purported terminations of employment if the employee is absent

from work on paternity leave at the time. It follows the maternity leave regime in that regard.

Section 21 provides that certain notices of termination or suspension of employment must be extended if notice is given before the employee begins a period of paternity leave or before the receipt by the employee's employer of a notification of intention to take paternity leave. Again, it follows the arrangements for other types of family leave.

Section 22 prohibits penalisation of an employee for proposing to exercise or for having exercised his or her entitlement to paternity leave, and is a standard provision in equality legislation.

Section 23 again is a standard provision, which provides for a general right to return to work on expiry of paternity leave.

Section 24 sets out the arrangements in relation to an employee notifying the employer of his or her return to work on the expiry of a period of paternity leave.

Section 25 provides for delayed return to work in case of an interruption or cessation of work at an employee's place of employment.

Section 26 sets out the provisions that apply where an employee is not permitted to return to work.

Part 4 Resolution of Disputes, dovetails with the reformed and streamlined redress mechanisms provided for in the Workplaces Relations Act 2015.

Section 27 is a technical provision, which excludes the Defence Forces from the application of this Part and also excludes disputes involving dismissals (which are dealt with under Unfair Dismissals legislation).

Section 28 relates to decisions made under section 41 or 44 of the Workplace Relations Act 2015 and the remedies that an adjudication officer or the Labour Court, as applicable, may order if the decision is in favour of the employee.

Section 29 is a required feature of gender equality legislation. In essence, it provides that, in any proceedings where the established facts carry a presumption of discrimination, it is for the respondent to prove the contrary.

Part 5 Paternity Benefit, provides for the amendments to the Social Welfare Acts to provide a new social welfare payment to be known as Paternity Benefit.

Section 30 includes Paternity Benefit in the description of benefits in section 39 of the Social Welfare Consolidation Act 2005.

Section 31 amends the social welfare code to create a scheme of paternity leave, including the arrangements for entitlement to and duration of paternity benefit, outlines the social insurance contributions that will be required and the conditions for receipt of paternity benefit, details the rate of paternity benefit that will be paid and allows regulations to be made to outline the circumstances where a person may be disqualified from receiving paternity benefit.

Part 6 Miscellaneous, mainly focuses on consequential and technical amendments to other primary legislation.

Section 32 amends Schedule 3 to the Redundancy Payments Act 1967 to take account of paternity leave.

Section 33 amends Section 6 of the Unfair Dismissals Act 1977 to include dismissal arising from the exercise or proposed exercise of the right to avail of paternity leave.

Section 34 amends the Maternity Protection 1994 to ensure that a mother to whom paternity leave is transferred on the death of her partner can take that transferred leave at the end of any remaining period of paid maternity leave to which she is entitled.

Section 35 amends the Adoptive Leave Act 1995 to ensure that an adopting parent to whom paternity leave is transferred on the death of the other parent can take that transferred leave at the end of any remaining period of paid adoptive leave to which she is entitled.

Section 36 amends Section 126 of the Taxes Consolidation Act 1997 to provide for taxation of paternity benefit.

Section 37 amends the Workplace Relations Act 2015 to ensure that disputes in relation to paternity leave are covered by the adjudication and redress procedures set out in that Act.

Department of Justice and Equality,
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