

GENERAL SCHEME OF A WORK LIFE BALANCE AND MISCELLANEOUS PROVISIONS BILL 2022

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Long Title

An Act to amend the Parental Leave Act 1998 to make provision for leave for medical care purposes and a right to request flexible working arrangements for employees with children up to a specified age for caring purposes as set out in Articles 6 and 9 of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and to ensure an employee who requests to take or takes such leave or flexible working arrangements for caring purposes has their employment rights protected; to amend the Maternity Protection Act 1994 to extend the period of calculable breastfeeding for an employee's entitlement to time off from work or a reduction of working hours for breastfeeding and to ensure transgender males that become pregnant fall within the scope of the Act; to amend the Adoptive Leave Act 1995 to address anomalies that refer to the adopting or surviving parent as either masculine or feminine when such parents can be either male or female; to amend the Family Leave and Miscellaneous Provisions Act 2021 to remove an anomaly in the schedule at section 7; to amend the Workplace Relations Act 2015 to remove a lacuna created by the commencement of the Children and Family Relationship Act 2015 to ensure the legislative intention behind that Act is achieved; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

Head 1 Preliminary and General – Short title and commencement

Provide that –

“PART 1
Preliminary and General

Short title and commencement

- 1— (1) This Act may be cited as the XXX Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.”

Explanatory Note:

This is a standard statutory provision.

HEAD 2 Interpretation

In this Act—

“civil partners” shall be construed in accordance with section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

“cohabitant” shall be construed in accordance with section 172(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

“contract of employment” means,

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency (within the meaning of the Protection of Employees (Temporary Agency Work) Act 2012), and is acting in the course of that business, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

“employee” means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and includes a part-time employee and a fixed-term employee; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014), or of a harbour authority or health board, or a member of staff of an education and training board shall be deemed to be an employee employed by the authority or board, as the case may be;

“employer”, in relation to an employee—

(a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or

worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of contract of employment is liable to pay the remuneration of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer, and

(b) includes, where appropriate, the successor of the employer or an associated employer of the employer;

“household” means, a person who lives alone or 2 or more persons who live together;

“Minister” means the Minister for Children, Equality, Disability, Integration and Youth

Explanatory Note:

This is a standard provision which sets out the definitions of key terms used in the General Scheme. Further definitions may be identified during the drafting process.

HEAD 3 Amendment of PART II of the Parental Leave Act 1998 – Parental Leave and Force Majeure Leave – Right to request flexible working arrangements for caring purposes

Provide that –

The Parental Leave Act 1998 is amended –

(a) by the insertion of the following section after section 6:

“Right to request flexible working arrangements for caring purposes

6A. — (1) An employee with an entitlement under section 6(1) may request, in accordance with subsection (5), changes to his or her working arrangements and or hours and or patterns, for caring purposes, to apply for a set period of time.

(2) An employee who provides personal care or support to a person specified in subsection (3) who is in need of significant care or support for a serious medical reason may request, in accordance with subsection (5), changes to his or her working arrangements and or hours and or patterns, for caring purposes, to apply for a set period of time.

(3) The persons referred to in subsection (2) are—

- (a) a person of whom the employee is the parent or adoptive parent,
- (b) the spouse or civil partner of the employee,
- (c) a person to whom the employee is in loco parentis,
- (d) the cohabitant of the employee
- (e) a parent or grandparent of the employee,
- (f) a brother or sister of the employee, and

(g) a person other than one specified in any of paragraphs (a) to (f), who lives in the same household as the employee.

(4) A period of flexible working arrangements for caring purposes shall not commence before a time when the employee concerned has completed six months continuous employment with the employer from whose employment the leave is taken.

(5) An employee who proposes to request changes referred to in subsection (1) or (2) shall, as soon as reasonably practicable but not later than 6 weeks before the proposed commencement of the set period concerned, give to his or her employer a request in writing signed by the employee, which shall specify the nature of the changes requested and the date of commencement and duration of the set period requested.

(6) An employer who receives a request made in accordance with subsection (5) shall consider that request, having regard to his or her needs and the employees needs and, as soon as reasonably practicable but not later than 4 weeks after such receipt, shall —

(a) comply with subsection (10), or

(b) inform the employee in writing of the grounds for postponement of the commencement of the flexible working arrangements, or

(c) inform the employee in writing that the request has been refused and the grounds for the refusal.

(7) Where an employer experiences difficulty in assessing the viability of a request referred to in subsection (5) by an employee to change their working arrangements,

with the agreement of the employee only, the 4 week period to return a decision referred to in subsection (6) may be extended by a further 8 weeks.

(8) Before informing the employee of a postponement of the commencement of flexible working arrangements referred to in subsection (6)(b), an employer shall consult with the employee in relation to the proposed postponement.

(9) Where an employer is satisfied that the commencement of flexible working arrangements for caring purposes at the time specified in the request referred to in subsection (5) would have a substantial adverse effect on the operation of his or her business, profession or occupation, by reason of seasonal variations in the volume of the work concerned, the unavailability of a person to carry out the duties of the employee in the employment, the nature of those duties, the number of employees in the employment or the number thereof whose period of flexible working arrangements for caring purposes, or parts of whose periods, of flexible working arrangements for caring purposes will fall within the period specified in the said request or any other relevant matters, the employer may, by notice in writing given to the employee not later than 4 weeks before the intended commencement of the flexible working arrangements for caring purposes, postpone the commencement of the flexible working arrangements for caring purposes to such time not later than 6 months after the date of commencement specified in the request referred to in subsection (5) as may be agreed upon by the employer and the employee.

(10) An employer complies with this subsection where he or she and the employee concerned prepare and sign an agreement setting out —

(a) the changes to the employees working arrangements and or hours and or patterns, and

(b) the date of the commencement and duration of the set period, as may be agreed between them.

(11) An employer shall retain the agreement referred to in subsection (10) and shall give a copy of it to the employee concerned who shall retain it.

(12) Before the date on which an agreement referred to in subsection (10) is signed, the employee may, by notice in writing signed by him or her and given to the employer, revoke a request under subsection (5) given by him or her.”

(13) If after the date on which an agreement referred to in subsection (10) is signed (whether or not the flexible working arrangements for caring purposes to which it relates has commenced)-

(a) the employer concerned or his or her successor and the employee concerned so agree, the flexible working arrangements for caring purposes or part thereof may be postponed to such time as may be so agreed upon, the period of such arrangements may be curtailed in such manner and to such extent as may be so agreed upon or the form of the arrangements may be varied in such manner as may be so agreed upon, and in such a case the agreement referred to in subsection (10) shall be amended accordingly.

(14) If after the date on which an agreement referred to in subsection (10) is signed and the period of the flexible working arrangements for caring purposes has not commenced-

(a) the employee concerned becomes sick such that the employee is unable to care for the person the subject of the flexible working arrangements for caring purposes to which the agreement referred to in subsection (10)

relates, then the employee may, by notice in writing given to the employer concerned or his or her successor, as soon as is reasonably practicable after becoming sick, and accompanied by the relevant evidence in respect of the sickness —

- (i) postpone the commencement of the arrangements to such time as the employee is no longer sick,

and in such a case the agreement referred to in subsection (10) shall be deemed to be amended accordingly.

(15) In subsection (14)(a), 'relevant evidence', in relation to an employee, means —

(a) a medical certificate —

- (i) stating that the employee named in the certificate is, by reason of the sickness specified in the certificate, unable to care for the person named in the certificate, and

- (ii) signed by a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 1978,

or

(b) if the employee does not have a medical certificate referred to in paragraph (a), such evidence as the employer concerned or his or her successor may reasonably require in order to show that the employee is, by reason of sickness, unable to care for the person concerned.

(16) After the date on which an agreement referred to in subsection (10) is signed and prior to the expiration of the period of flexible working, the employee may by notice in writing signed by him or her and given to the employer, request an early return to the original working arrangements, hours or pattern, or all as the case may be, that he or she held immediately before the commencement of the period. Such

notice shall outline the change in circumstances that would justify the early return to the original working arrangements.

(17) An employer who receives a request made in accordance with subsection (16) shall consider that request, having regard to his or her needs and the employees needs and, as soon as reasonably practicable but not later than 4 weeks after such receipt, shall respond to the employee in writing signed by him or her.

(18) On the expiration of the period of flexible working the employee concerned shall be entitled to return to the original working arrangements, hours or pattern, or all as the case may be, that he or she held immediately before the commencement of the period.

Explanatory note

The proposed amendment to *PART II of the Parental Leave Act 1998 – Parental Leave and Force Majeure Leave*, inserting a new section 6A into the Act is intended to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers*.

The Head intends to provide for the right for employees with children up to a specified age, which shall be at least eight years (aligned with parents with an entitlement to parental leave in Ireland), and for carers as defined in Article 3 of the above-mentioned Directive, to request flexible working arrangements for caring purposes.

The Directive provides:

“Member States may limit the commencement of flexible working arrangements to a period of work qualification which shall not exceed 6 months. An employer has a duty to give reasons where a request is refused or its implementation is postponed. An employee has a right to return to normal working patterns at the end of a flexible working arrangement and a right to request an earlier return to normal working patterns if circumstances change.”

HEAD 4 Amendment of PART II of the Parental Leave Act 1998 – Parental Leave and Force Majeure Leave – Leave for medical care purposes

Provide that –

The Parental Leave Act 1998 is amended–

(a) by the insertion of the following section after section 13:

“Leave for medical care purposes

13A. — (1) An employee shall be entitled to leave without pay from his or her employment, to be known and referred to in this Act as “leave for medical care purposes”, where, for serious medical reasons, the employee is required to provide personal care or support to a person specified in subsection (2).

(2) The persons referred to in subsection (1) are—

- (a) a person of whom the employee is the parent or adoptive parent,
- (b) the spouse or civil partner of the employee,
- (c) a person to whom the employee is in loco parentis,
- (d) the cohabitant of the employee
- (e) a parent or grandparent of the employee,
- (f) a brother or sister of the employee, and
- (g) a person other than one specified in any of paragraphs (a) to (f), who lives in the same household as the employee.

(3) When an employee takes or intends to take leave for medical care purposes, he or she shall, as soon as reasonably practicable, give to his or her employer in writing, confirmation that he or she has taken or intends to take such leave.

(4) A confirmation under subsection (3) shall specify the date of commencement of the leave for medical care purposes concerned and its duration and contain a statement of the facts entitling the employee to the leave for medical care purposes and shall be signed by the employee concerned.

(5) An employer shall retain a confirmation given to him or her under subsection (3) and shall give a copy of it to the employee concerned who shall retain it.

(6) An employee who has given a confirmation to his or her employer under subsection (3) shall, if the employer so requests, furnish to the employer such evidence as the employer may reasonably require in relation to —

(a) the employees relationship with the person in respect of whom the leave for medical care purposes is sought, within the meaning of section 6(2),

(b) the nature of the personal care or support required by the person in respect of whom the leave for medical care purposes is sought, and

(c) medical certification of the serious medical issue of the person in respect of whom the leave for medical care purposes is sought.

(7) Where the confirmation under subsection (3) is given to an employer in advance of the commencement of the leave, an employer may require evidence under subsection (6) in advance of the commencement of the leave.

(8) On the expiration of the period of leave for medical care purposes the employee concerned shall be entitled to return to the original working arrangements, hours or

pattern, or all as the case may be, that he or she held immediately before the commencement of the period.

(9) Leave for medical care purposes shall consist of one or more days on which, but for the leave, the employee would be working in the employment concerned but shall not exceed 5 days in any calendar year.

(10) Leave for medical care purposes shall not be taken in periods of less than one day.

Explanatory note:

The proposed amendment to *PART II of the Parental Leave Act 1998 – Parental Leave and Force Majeure Leave* inserting a new section 13A “*Leave for medical care purposes*” into the Act, is intended to transpose Article 6 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers*.

The Head intends to provide for 5 days of carers’ leave (unpaid) per employee, per year.

The Directive provides:

Member States are required to ensure that each worker has a right to a minimum of five working days of carers’ leave per year. Carers’ leave is defined in the Directive as “*leave from work for workers in order to provide personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State.*”

This leave must be available for a relative defined as the employee’s son, daughter, mother, father, spouse or civil partner or for a person who lives in the same household as the employee and is in need of significant care or support for a serious medical condition. The leave may be defined by a reference period other than a year but must equate to no less than five working days per year. The allocation may be granted on the basis of per case or of per person in need of care or support. Subsection (9) provides for the leave on a per case basis.

At the end of the leave period, employees are entitled to return to their jobs or equivalent posts which are to be no less favourable than those they were in prior to taking the leave. Employees are also entitled to benefit from any improvements in working conditions to which they would have been entitled if they had not taken the leave.

The leave cannot be taken in periods of less than one day. Neither a period of work qualification nor prior notice of the leave is required. However recital 27 of the Directive states that Member States can require prior medical certification of the need for significant care or support for a serious medical reason. This is provided for at subsection (7).

**HEAD 5: Amendment of PART III of the Parental Leave Act 1998 – Employment Rights
– protection of employment rights – Leave for medical care purposes**

Provide that –

The Parental Leave Act 1998 is amended–

(a) at section 14 by the insertion of the following subsections after subsection (5):

“(6) An employee shall, while on leave for medical care purposes, be regarded for all purposes relating to his or her employment (other than his or her right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment) as still working in the employment and none of his or her other rights relating to the employment shall be affected by the leave.

(7) Absence from employment while on leave for medical care purposes shall not be treated as part of any other leave from employment (including sick leave, annual leave, adoptive leave, maternity leave and force majeure leave) to which the employee concerned is entitled.

(8) Where—

(a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes leave for medical care purposes, and

(b) his or her employer considers that the employee's absence from employment while on leave for medical care purposes would not be consistent with the continuance of the probation, training or apprenticeship,

the employer may require that the probation, training or apprenticeship be suspended during the period of the leave for medical care purposes and be completed by the employee at the end of that period.”

Explanatory note:

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights* is related to the amendment at Head 4 which inserts a new section 13A into the Act to

transpose Article 6 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers*.

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights* provides for an amendment to section 14 of the Act that ensures the employment rights of an employee who is on “*leave for medical care purposes*” are protected in line with Article 10 (1) and 10 (3) of the above-mentioned Directive.

**HEAD 6: Amendment of PART III of the Parental Leave Act 1998 – Employment Rights
– return to work – Leave for medical care purposes**

Provide that –

The Parental Leave Act 1998 is amended–

(a) Section 15 is amended–

- i. at subsection (1) by the insertion of “or leave for medical care purposes” after “(*the period*)”
- ii. at subsection (2) by the insertion of “or leave for medical care purposes” after “parental leave”

and

- iii. at subsection (3) by the insertion of “or leave for medical care purposes” after “parental leave”.

Explanatory note:

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights – Return to work – Leave for medical care purposes* is related to the amendment at Head 4 which inserts a new section 13A into the Act to transpose Article 6 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers*.

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights – Return to work – Leave for medical care purposes*, provides for an amendment to section 15 of the Act that ensures employees who take leave for medical care purposes are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable than those held prior to taking the leave, and to benefit from any improvement in working conditions to which they would have been entitled had they not taken the leave. In line with Article 10 (2) of the above-mentioned Directive.

HEAD 7: Amendment of PART III of the Parental Leave Act 1998 – Employment Rights – protection of employees from penalisation – Leave for medical care purposes and right to request flexible working arrangements for caring purposes

Provide that –

The Parental Leave Act 1998 is amended–

(a) in section 16A(1) by–

- i. by the insertion of “or leave for medical care purposes” after “parental leave”

and

- ii. by the insertion of “under section 6A(1) or” after “to make a request”.

Explanatory note:

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights – protection of employees from penalisation – Leave for medical care purposes and right to request flexible working arrangements* is related to the amendments at Head 3 which inserts a new section 6A into the Act to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers* and Head 4 which inserts a new section 13A into the Act to transpose Article 6 of the aforementioned Directive.

The proposed amendment to *PART III of the Parental Leave Act 1998 – Employment Rights – protection of employees from penalisation – Leave for medical care purposes and right to request flexible working arrangements*, provides for an amendment to section 16A of the Act that ensures the protection of employees from penalisation, including dismissal, where

they propose to exercise, or exercise their right to take leave for medical care purposes or make a request for flexible working arrangements for caring purposes, in line with Articles 11 and 12(1) of the above-mentioned Directive.

Head 8 Amendment of PART IV of the Parental Leave Act 1998 – resolution of Disputes – Decision under section 41 or 44 of Workplace Relations Act 2015 – Leave for medical care purposes and flexible working arrangements for care purposes

Provide that –

The Parental Leave Act 1998 is amended–

(a) in section 21 by –

- i. the insertion of “or leave for medical care purposes or flexible working arrangements for care purposes” after “parental leave” at subsection (1)(a).
- ii. by the insertion of “or flexible working arrangements for care purposes” after “parental leave” at subsection (3)
- iii. by the insertion of “or section 6A.(4) respectively” after “section 6(3) at subsection (3).
- iv. by the insertion of “or flexible working arrangements for care purposes” after “parental leave” at subsection (4)
- v. by the insertion of “or under section 6A.(9) respectively” after “section 11(1)” on both occasions at subsection (4)
- vi. by the insertion of “or commencement of such working arrangements” after “taking of such leave” in paragraph (a) of subsection (4)
- vii. by the insertion of “or section 6A.(5) respectively” after “under section 8(1)” in paragraph (a) of subsection (4).
- viii. by the insertion of “or flexible working arrangements for care purposes” after “parental leave” at subsection (5)
- ix. by the insertion of “or under section 6A.(9) respectively” after “section 11(1)” at subsection (5)

- x. by the insertion of “or commencement of such working arrangements” after “taking of such leave” in paragraph (a) of subsection (5)
- xi. by the insertion of “or section 6A.(5) respectively” after “under section 8(1)” in paragraph (a) of subsection (5)
- xii. by the insertion of “or under section 6A.(9) respectively” after “section 11(1)” in subsection (5).
- xiii. by the insertion of “or flexible working arrangements for care purposes” after “parental leave” where it appears in paragraph (a) of subsection (6)
- xiv. by the insertion of “or commenced” after “taken” in paragraph (b) of subsection (6) on both occasions where it appears.
- xv. by the insertion of “or flexible working arrangements for care purposes” after “parental leave” where it appears in paragraph (a) of subsection (7)
- xvi. by the insertion of “or commenced” after “taken” in paragraph (b) of subsection (7) on both occasions where it appears.

and

- xvii. by the insertion of “or agreement” after “confirmation document” at subsection (8).

Explanatory note:

The proposed amendment to *PART IV of the Parental Leave Act 1998 – resolution of Disputes – Decision under section 41 or 44 of Workplace Relations Act 2015 – Leave for medical care purposes and flexible working arrangements for care purposes* is related to the amendments at Head 3 which inserts a new section 6A into the Act to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers* and Head 4 which inserts a new section 13A into the Act to transpose Article 6 of the aforementioned Directive.

The proposed amendment to *PART IV of the Parental Leave Act 1998 – resolution of Disputes – Decision under section 41 or 44 of Workplace Relations Act 2015 – Leave for medical care purposes and flexible working arrangements for care purposes*, provides for an amendment to section 21 of the Act that ensures that a decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 may contain a direction relating to a dispute arising from an employee proposing to exercise or exercising their right to take leave for medical care purposes or make a request for flexible working arrangements for caring purposes in line with Articles 12 and 13 of the above-mentioned Directive.

**Head 9 Amendment of PART V of the Parental Leave Act 1998 – Miscellaneous –
Amendment of enactments – Leave for medical care purposes and flexible
working arrangements for care purposes**

Provide that –

The Parental Leave Act 1998 is amended–

- (a) in section 25(3) by the insertion of “or section 13A.(8)” after “section 15”

and

(b) in section 27(1) by–

- i. the deletion of the word “and” between the words “parental leave” and “*force majeure* leave” and by the insertion of a “,” in its place
- ii. by the insertion of “, leave for medical care purposes and flexible working arrangements for care purposes” after “*force majeure* leave” where those words first appear, and
- iii. by the insertion of “or leave for medical care purposes or flexible working arrangements for care purposes” after “*force majeure* leave” where it next appears.

and

(c) at subsection (2) by

- i. the deletion of the word “and” at the end of paragraph (a) and
- ii. by the insertion of the following paragraphs after paragraph (b)
 “(c) where the record is in respect of leave for medical care purposes, for a period of 3 years, and

 (d) where the record is in respect of flexible working arrangements for care purposes, for a period of 3 years,”

and

- (d) at subsection (4) by the insertion of “or (c) or (d)” after “paragraph (a) or (b)”.

Explanatory note:

The proposed amendment to *PART V of the Parental Leave Act 1998 – Miscellaneous – Amendment of enactments – Leave for medical care purposes and flexible working arrangements for care purposes* is related to the amendment at Head 4 which inserts a new section 13A into the Act which provides for leave for medical care purposes to transpose Article 6 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers*.

The proposed amendment to *PART V of the Parental Leave Act 1998 – Miscellaneous – Amendment of enactments – Leave for medical care purposes and flexible working arrangements for care purposes*, provides for an amendment to section 25 to include where an employee who was on leave for medical care purposes and is not permitted to return to work, is deemed dismissed and falls within the Unfair Dismissals Acts, the Redundancy Payments Acts and the Minimum Notice and Terms of Employment Acts.

The proposed amendment to *PART V of the Parental Leave Act 1998 – Miscellaneous – Amendment of enactments – Leave for medical care purposes and flexible working arrangements for care purposes*, provides for an amendment to section 27 to require employers to make and retain records in relation to leave for medical care purposes and flexible working arrangements for care purposes in line with Article 12 (3) of the above-mentioned Directive.

**Head 10 Amendment of section 2 of Maternity Protection Act 1994 – Interpretation
– Employee who is breastfeeding**

Provide that –

The Maternity Protection Act 1994 is amended–

(a) in section 2(1) by the replacement of

“ “employee who is breastfeeding” means at any time an employee whose date of confinement was not more than twenty-six weeks earlier, who is breastfeeding and who has informed her employer of her condition;”

with

“ “employee who is breastfeeding” means at any time an employee whose date of confinement was not more than one hundred and four weeks earlier, who is breastfeeding and who has informed his or her employer of his or her condition;”.

Explanatory note

This proposed amendment to section 2 of the *Maternity Protection Act 1994* is intended to amend the definition of an “employee who is breastfeeding” to extend the period of calculable breastfeeding (for an entitlement to time off from work or a reduction of working hours for breastfeeding set out under section 15B of the Act) from 26 weeks post confinement to 104 weeks post confinement.

The proposed amendment also intends to provide a transgender male who has in accordance with the *Gender Recognition Act 2015*, obtained a gender recognition certificate and subsequently gives birth, to fall within the scope of the definition of an employee who is breastfeeding.

**Head 11 Amendment of section 7(2) of Maternity Protection Act 1994 –
Interpretation of Part II – references to an employee for the purposes of
entitlement to maternity leave are references to a female employee only**

Provide that –

The Maternity Protection Act 1994 is amended–

(a) by the deletion of section 7(2).

Explanatory note

The proposed deletion of section 7(2) is intended to provide for a transgender male who has in accordance with the *Gender Recognition Act 2015*, obtained a gender recognition certificate and subsequently becomes pregnant, to fall within the scope of the Maternity Protection Act 1994.

Section 7(2) provides that any reference in Part II of the Act of 1994 are references to a female employee only. This excludes an individual such as a pregnant transgender male who has in accordance with the Gender Recognition Act 2015, obtained a gender recognition certificate and subsequently gives birth, to an entitlement to maternity leave.

Should section 7(2) be deleted it is possible to rely on provisions of the Interpretation Act 2005 (Section 4(1) and section 18(b)(ii)) to read a reference to “her” in the 1994 Act as gender neutral.

“4. — (1)A provision of this Act applies to an enactment except in so far as the contrary intention appears in this Act, in the enactment itself or, where relevant, in the Act under which the enactment is made.”

“18.—The following provisions apply to the construction of an enactment:

(b) Gender.

(ii) In an Act passed on or after 22 December 1993, and in a statutory instrument made after that date, a word importing the feminine gender shall be read as also importing the masculine gender”.

Head 12 Amendment of section 16(1) of Maternity Protection Act 1994 – reference to "woman" for the purposes of entitlement to maternity leave

Provide that –

The Maternity Protection Act 1994 is amended–

- (a) in section 16(1) by the replacement of “woman” with “person”.

Explanatory note

The proposed amendment is intended to provide a transgender male who has in accordance with the *Gender Recognition Act 2015*, obtained a gender recognition certificate and subsequently becomes pregnant, to fall within the scope of the Maternity Protection Act 1994.

Should section 7(2) of the Maternity protection Act 1994 be deleted (see Head 11), it is possible to rely on Section 4(1), 18(b)(ii) and section 6 of the Interpretation Act 2005 to read a reference to “her” in the 1994 Act as gender neutral or to include a transgender male / male pregnant employee.

However the reference to “woman” in section 16(1) of the 1994 Act could be interpreted as excluding the application of s.18(b)(ii) of the Interpretation Act 2005. For the avoidance of doubt, “woman” is being substituted for a gender neutral term, such as “person”.

Head 13 Amendment to section 7(3) of the Adoptive Leave Act 1995 – Notification of Employer

Provide that –

The Adoptive Leave Act 1995 is amended–

- (a) in section 7(3) by the insertion of “his or” before “her employer”.

Explanatory note

The purpose of this Head is to amend an anomaly in the Adoptive Leave Act 1995 whereby the amendments brought under the Family Leave and Miscellaneous Provisions Act 2021 refer to the qualifying adopter as “her” only, when the qualifying adopter can be either a male or female adopter.

**Head 14 Amendment to section 9(3)(d) of the Adoptive Leave Act 1995 – Entitlement
of adopting father to adoptive leave in certain circumstances**

Provide that –

The Adoptive Leave Act is amended –

- (a) in section 9(3)(d) by the substitution of “surviving parent” for “adopting father”.

Explanatory note

The purpose of this Head is to amend an anomaly in the Adoptive Leave Act 1995 whereby the amendments brought under the Family Leave and Miscellaneous Provisions Act 2021 provided ‘the adopting father’ only, with an entitlement to adoptive leave in certain circumstances where the qualifying adopter is deceased, when in fact, the surviving parent can be either a male or female parent.

Head 15 Amendment to section 19(1) of the Adoptive Leave Act 1995 – Right to suitable alternative employment in certain circumstances on return to work

Provide that –

The Adoptive Leave Act is amended –

(a) Section 19(1) is amended –

- i. by the insertion of “him or” after “permit” and before “her to return to work”.
- ii. by the insertion of “he or” after “in accordance with that section,” and before “she shall be entitled”.

Explanatory note

The purpose of this Head is to amend an anomaly in the Adoptive Leave Act 1995 whereby the amendments brought under the Family Leave and Miscellaneous Provisions Act 2021 refer to an adopting parent as “her” and “she” only, in the subsection, when the adopting parent can be either a male or female adopter.

**Head 16 Amendment to section 7 of the Family Leave and Miscellaneous Provisions
Act 2021 – Miscellaneous amendments of Act of 1995**

Provide that –

The Family Leave and Miscellaneous Provisions Act 2021 is amended–

- (a) in section 7 by the deletion of “the qualifying adopter” for “the adopting mother” at reference number 41. (a) of the Schedule.

Explanatory note

The purpose of this Head is to amend an anomaly in the Adoptive Leave Act 1995 whereby reference 41 (a) of the schedule unnecessarily provides at section 10(1)(a) for a substitution of “(a) “the qualifying adopter” for “the adopting mother”.

Reference 41 (c) of the schedule also provides at section 10(1)(a) for a substitution of “(c) “the qualifying adopter” for “the adopting mother”. This provision is correct.

**Head 17 Amendment to section 2 of the Workplace Relations Act 2015 –
Interpretation**

Provide that –

The Workplace Relations Act 2015 is amended—

(a) in section 2—

(i) by the renumbering of the section as subsection (1),

(ii) in subsection (1), by the insertion of the following definitions:

“ ‘Act of 2015’ means the Children and Family Relationships Act 2015;

‘expectant father’ shall be construed in accordance with subsection (2) inserted by section [Insert section of this Act when drafted] of the [Insert name of this Act when agreed] Act;

‘other parent’ means a person (other than the mother) who is, under section 5 of the Act of 2015, a parent of a child;”,

and

(iii) by the insertion of the following subsection after subsection (1):

“(2) In this Act, a reference to an expectant father includes a person who has given his or her consent in accordance with section 11 of the Act of 2015 to a DAHR procedure (within the meaning of section 4 of that Act) where that procedure results in a pregnancy.”,

Explanatory note

This Head provides for the amendment of section 2 (Interpretation) of the Workplace Relations Act 2015 and is related to the amendments at Head 18.

Head 18 provides for the amendment of section 41(7)(c)(iii) (Presentation of complaints and referral of disputes) of the Workplace Relations Act 2015 to reflect the legislative intention behind section 176(f) of the Children and Family Relationships Act 2015.

Section 176(f) of the Children and Family Relationships Act 2015 amended section 31 (Procedure for referral of disputes to rights commissioner) of the Maternity Protection Act 1994 to extend the right to the father to the father 'or other parent' of the child, in circumstances where the mother of the child had died, to refer a dispute to the Rights Commissioner. This amendment recognised that the other parent may not necessarily be the child's father.

Section 176 of the Children and Family Relationships Act 2015 came into operation on 4 May 2020, as provided by paragraph (2)(f) of the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2019 (S.I. No. 624 of 2019).

However, section 31 had already been repealed by section 8 of the Workplace Relations Act 2015. That repeal came into effect on 1 October 2015, as provided for by the Workplace Relations Act 2015 (Commencement) (No. 2) Order 2015 (S.I. No. 401 of 2015).

The time limit provisions for the 1994 Act are now found in section 41(7)(c) of the Workplace Relations Act 2015.

The Children and Family Relationships Act 2015 was enacted shortly before the Workplace Relations Act 2015 (6 April 2015 and 20 May 2015 respectively). While there was contact between the Department of Justice and Equality and the Department of Enterprise Business and Innovation regarding the possibility of the Workplace Relations Bill being amended if the Children and Family Relationships Bill was enacted first, no amendments were in fact made to the Workplace Relations Bill to take account of the provisions of the Children and Family Relationships Bill.

It would therefore appear necessary to bring forward amendments to section 41(7)(c)(iii) of the Workplace Relations Act 2015 to reflect the legislative intention behind section 176(f) of the Children and Family Relationships Act 2015, to recognise and provide for circumstances where the mother of the child has died and the other parent may not necessarily be the

child's father and to allow that other parent to present a complaint to the Director General of the Workplace Relations Commission.

The amendment to section 2 inserting the definition of 'other parent' provided for under section 5 of the Act of Children and Family Relationships Act 2015 restricts the definition of 'other parent' to mean the husband, civil partner or cohabitant of the mother as the case may be.

The amendment to section 2 inserting the definition of 'expectant father' to include a person, being the spouse, civil partner or cohabitant of the intending mother concerned, who consents (under section 11 of the Children and Family Relationships Act 2015) to be the parent of a child born as a result of a DAHR procedure ensures the 'expectant father' referred to in section 41(7)(c)(ii) of the Workplace Relations Act 2015 is not restricted to its general meaning.

**Head 18 Amendment to section 41 of the Workplace Relations Act 2015 –
Presentation of complaints and referral of disputes**

Provide that –

The Workplace Relations Act 2015 is amended—

(a) in section 41, by the substitution in subsection (7)(c)(iii) of “father or other parent” for “father”.

Explanatory note

This Head provides for the amendment of section 41 (7)(c)(iii) (Presentation of complaints and referral of disputes) of the Workplace Relations Act 2015 to reflect the legislative intention behind section 176(f) of the Children and Family Relationships Act 2015.

Section 176(f) of the Children and Family Relationships Act 2015 amended section 31 (Procedure for referral of disputes to rights commissioner) of the Maternity Protection Act 1994 to extend the right to the father to the father ‘or other parent’ of the child, in circumstances where the mother of the child had died, to refer a dispute to the Rights Commissioner. This amendment recognised that the other parent may not necessarily be the child’s father.

Section 176 of the Children and Family Relationships Act 2015 came into operation on 4 May 2020, as provided by paragraph (2)(f) of the Children and Family Relationships Act 2015 (Commencement of Certain Provisions) Order 2019 (S.I. No. 624 of 2019).

However, section 31 had already been repealed by section 8 of the Workplace Relations Act 2015. That repeal came into effect on 1 October 2015, as provided for by the Workplace Relations Act 2015 (Commencement) (No. 2) Order 2015 (S.I. No. 401 of 2015).

The time limit provisions for the 1994 Act are now found in section 41(7)(c) of the Workplace Relations Act 2015.

The Children and Family Relationships Act 2015 was enacted shortly before the Workplace Relations Act 2015 (6 April 2015 and 20 May 2015 respectively). While there was contact between the Department of Justice and Equality and the Department of Enterprise Business and Innovation regarding the possibility of the Workplace Relations Bill being amended if the Children and Family Relationships Bill was enacted first, no amendments were in fact made to the Workplace Relations Bill to take account of the provisions of the Children and Family Relationships Bill.

It would therefore appear necessary to bring forward amendments to section 41(7)(c)(iii) of the Workplace Relations Act 2015 to reflect the legislative intention behind section 176(f) of the Children and Family Relationships Act 2015, to recognise and provide for circumstances where the mother of the child has died and the other parent may not necessarily be the child's father and to allow that other parent to present a complaint to the Director General of the Workplace Relations Commission.

**Head 19 Amendment to Schedule 3 of the Redundancy Payments Act 1967 –
Continuous Employment**

Provide that –

The Redundancy Payments Act 1967 is amended—

(a) in paragraph 5(c)(ii) of Schedule 3, by the insertion of “or leave for medical care purposes or flexible working arrangements for caring purposes” after “*force majeure leave*”

and

(b) in paragraph 8A(b)(ii) of Schedule 3, by the insertion of “or leave for medical care purposes or flexible working arrangements for caring purposes” after “*force majeure leave*”

Explanatory note

This Head is related to the amendments at Head 3 which inserts a new section 6A into the Parental Leave Act 1998 which provides a right to request flexible working arrangements for caring purposes to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers* and Head 4 which inserts a new section 13A into the Parental Leave Act 1998 which provides for leave for medical care purposes to transpose Article 6 of the aforementioned Directive.

This Head is intended to provide for the amendment of Schedule 3 of the Redundancy Payments Act 1967 to provide that an employee’s absence relating to leave for medical care purposes or flexible working arrangements for caring purposes will not result in a break in the continuity of employment and will fall within a period of reckonable service for the purposes of redundancy entitlements, in line with Article 10 of the above-mentioned Directive. Flexible working arrangements are included in this head to cover instances of flexible working schedules including or akin to the shorter working year.

This policy is in line with parental leave and *force majeure* leave, whereby Section 25 of the Parental Leave Act 1998 amended the Schedule to include parental leave and *force majeure* leave in both paragraphs.

Head 20 Amendment to section 6 of the Unfair Dismissals Act 1977 – unfair dismissal

Provide that –

The Unfair Dismissals Act 1977 is amended—

- (a) in section 6(2)(dd), by the insertion of “, leave for medical care purposes or flexible working arrangements for caring purposes” after “*force majeure leave*”

Explanatory note

This Head is related to the amendments at Head 3 which inserts a new section 6A into the Parental Leave Act 1998 which provides a right to request flexible working arrangements for caring purposes to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers* and Head 4 which inserts a new section 13A into the Parental Leave Act 1998 which provides for leave for medical care purposes to transpose Article 6 of the above-mentioned Directive.

This Head is intended to provide for the amendment of section 6(2)(dd) of the Unfair Dismissals Act 1967, inserting that a dismissal either wholly or mainly on the grounds of an employee exercising or proposing to exercise their right of leave for medical care purposes or to request flexible working arrangements for caring purposes, shall be deemed unfair, in line with Article 12 of the above-mentioned Directive.

This policy is in line with parental leave and *force majeure* leave, whereby Section 25 of the Parental Leave Act 1998 amended the section to include parental leave and *force majeure* leave.

Head 21 Amendment to the Organisation of Working Time Act 1997

Provide that –

The Organisation of Working Time Act 1997 is amended—

(a) in section 15(4)(aa), by the insertion of “, leave for medical care purposes or flexible working arrangements for caring purposes” after “*force majeure leave within the meaning of the Parental Leave Act 1998*”

and

(b) in section 16(5)(cc), by the insertion of “, leave for medical care purposes or flexible working arrangements for caring purposes within the meaning of the Parental Leave Act 1998” after “*force majeure leave*”

Explanatory note

This Head is related to the amendments at Head 3 which inserts a new section 6A into the Parental Leave Act 1998 which provides a right to request flexible working arrangements for caring purposes to transpose Article 9 of *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers* and Head 4 which inserts a new section 13A into the Parental Leave Act 1998 which provides for leave for medical care purposes to transpose Article 6 of the above-mentioned Directive.

This head is intended to provide for the amendment of sections 15 and 16 of the Organisation of Working Time Act 1997 to provide that a reference period for weekly working hours or for night work shall not include a period of absence while on leave for medical care purposes or flexible working arrangements for caring purposes, in line with Article 10(3) of the above-mentioned Directive.

This policy is in line with parental leave and *force majeure* leave, whereby Section 25 of the Parental Leave Act 1998 amended the section to include parental leave and *force majeure* leave.