

Adoptive Leave Act, 1995



Number 2 of 1995

ADOPTIVE LEAVE ACT, 1995

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

1. Short title and commencement.
2. Interpretation.
3. Orders and regulations.
4. Voidance or modification of certain provisions in agreements.
5. Expenses.

PART II

Adoptive leave

6. Entitlement of employed adopting mother (or sole male adopter) to a minimum period of adoptive leave.
7. Notification of employer.
8. Entitlement of employed adopting mother (or sole male adopter) to additional adoptive leave.
9. Entitlement of adopting father to adoptive leave in certain circumstances.
10. Entitlement of adopting father to additional adoptive leave in certain circumstances.
11. Entitlement of adopting father to additional adoptive leave before day of placement in certain circumstances.
12. Placements of less than fourteen weeks duration.
13. Certificate of placement to be issued.
14. Evidence as to certificate of placement.

PART III

Provisions Relating to Employment Contracts

15. Preservation or suspension of certain rights, etc. while on adoptive leave.
16. Voidance of certain purported terminations of employment, etc.
17. Extension of certain notices of termination of employment or of certain suspensions.
18. General right to return to work on expiry of adoptive leave or additional adoptive leave.
19. Right to suitable alternative employment in certain circumstances on return to work.
20. Notification of intention to return to work.
21. Postponement of return to work.
22. Amendment of section 1 of Act of 1977.

PART IV

Amendment or Application of Other Enactments

Unfair Dismissals Act, 1977

23. Amendment of section 2(2) of Act of 1977.
24. Amendment of section 6(2) of Act of 1977.
25. Amendment of section 6 of Act of 1977.
26. Adopting parent not permitted to return to work.

Redundancy Payments Act, 1967

27. Amendment of section 2 of Act of 1967.
28. Amendment of Schedule 3 to Act of 1967.
29. Adopting parent not permitted to return to work.

Minimum Notice and Terms of Employment Act, 1973

30. Adopting parent not permitted to return to work.

PART V

Disputes Relating to Entitlement

31. Definition.
32. Disputes regarding entitlement under this Act.
33. Redress.
34. Referral of disputes to rights commissioner.
35. Appeal from decision of rights commissioner.
36. Appeal to High Court on point of law.
37. Service of documents.
38. Provisions relating to winding up and bankruptcy.
39. Enforcement of decision of rights commissioner and determination of Tribunal.
40. Extension of Protection of Employees (Employers' Insolvency) Act, 1984.

PART VI

Miscellaneous and Transitional Provisions

41. Alternative notification procedure.
42. Right to adoptive leave where child placed before commencement of Act.
43. Right to additional adoptive leave where child placed before commencement of Act.
44. Notification of intention to return to work in respect of leave taken under sections 42 and 43.



Number 2 of 1995

ADOPTIVE LEAVE ACT, 1995

AN ACT TO ENTITLE FEMALE EMPLOYEES, AND IN CERTAIN CIRCUMSTANCES MALE EMPLOYEES, TO EMPLOYMENT LEAVE FOR THE PURPOSE OF CHILD ADOPTION, TO EXTEND TO THEM THE PROTECTION AGAINST UNFAIR DISMISSAL CONFERRED BY THE UNFAIR DISMISSALS ACT, 1977 , AND TO PROVIDE FOR CONNECTED MATTERS. [15th March, 1995]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title and commencement.

1.—(1) This Act may be cited as the Adoptive Leave Act, 1995.

(2) This Act shall come into operation on such day as the Minister shall by order appoint.

Interpretation.

2.—(1) In this Act, except where the context otherwise requires—

“the Act of 1967” means the Redundancy Payments Act, 1967 ;

“the Act of 1977” means the Unfair Dismissals Act, 1977 ;

“adoptive leave” has the meaning assigned to it by section 6

“additional adoptive leave” has the meaning assigned to it by section 8

“adopting father” means a male employee in whose care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption, where the adopting mother has died;

“adopting mother” means a woman, including an employed adopting mother, in whose care a child (of whom she is not the natural mother) has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption;

“adopting parent” means employed adopting mother, adopting father or sole male adopter;

“associated employer” shall be construed in accordance with section 19 (3);

“certificate of placement” has the meaning assigned to it by section 13 ;

“contract of employment” means, subject to *subsection (2)*—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with a person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, 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;

“day of placement” means—

(a) the day on which the child is placed physically in the care of the adopting parent with a view to the making of an adoption order, or

(b) the day on which the child is placed physically in the care of the adopting parent with a view to the effecting of a foreign adoption, or

(c) in the case of a foreign adoption, where the child has not previously been placed in the care of the adopting parent, the day on which the child has been so placed following the adoption;

“employed adopting mother” means a female employee in whose care a child (of whom she is not the natural mother) has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption;

“employee”, subject to *subsection (2)*, means (except in Part IV) a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

“employer”, subject to *subsection (2)*, means, in relation to an employee, 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;

“foreign adoption” has the meaning assigned to it by the Adoption Act, 1991 ;

“health board” means a health board established pursuant to the Health Act, 1970 ;

“the Minister” means the Minister for Equality and Law Reform;

“prescribed” means prescribed by order or regulation under this Act;

“registered adoption society” means a body of persons entered in the Adoption Societies Register kept by An Bord Uchtála under Part IV of the Adoption Act, 1952 ;

“sole male adopter” means a male employee who is not an adopting father within the meaning of this Act and in whose sole care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption;

“the successor” has the meaning assigned to it by section 18;

“the Tribunal” means the Employment Appeals Tribunal.

(2) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces) or otherwise as 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, under a contract of service;

(b) an officer or servant of a local authority, for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be, under a contract of service; and

(c) in relation to an employee whose contract of employment falls (or, where the employment has ceased, fell) within *paragraph (b)* of the definition of “contract of employment” in *subsection (1)*, the person who is liable to pay her wages shall be deemed to be her employer.

(3) In this Act, a reference to a Part or section is to a Part or section of this Act, unless it is indicated that reference to some other enactment is intended.

(4) In this Act, a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(5) In this Act, a reference to any enactment includes a reference to that enactment as amended by any other enactment including this Act.

Orders and regulations. **3.—**(1) An order or regulation under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

(2) The Minister may by order amend or revoke an order under this Act, including an order under this subsection.

(3) Where an order is proposed to be made under this Act, a draft of the order shall be laid before both Houses of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(4) Before making an order or regulation under this Act, the Minister shall consult such organisations or other bodies of persons representative of employers and such organisations or other bodies of persons representative of trades unions or bodies analogous to trades unions as the Minister considers appropriate.

(5) *Subsections (1) to (4)* do not apply to an order under section 1 (2).

(6) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Voidance or
modification of certain
provisions in
agreements.

4.—(1) In this section “agreement” means an agreement, whether a contract of employment or not, and whether made before or after the commencement of this Act.

(2) A provision in an agreement shall be void in so far as it purports to exclude or limit the application of any provision of this Act or is inconsistent with any provision of this Act.

(3) A provision in an agreement which is or becomes less favourable in relation to an adopting parent than a similar or corresponding entitlement conferred on her by this Act shall be deemed to be so modified as to be not less favourable to her.

(4) Nothing in this or any other enactment shall be construed as prohibiting the inclusion in an agreement of a provision (subsequently referred to in this section as “the additional provision”) in relation to adoption, in addition to those required by this Act, the effect of which would be to render the agreement more favourable to an adopting parent than it would be if it did not include the additional provision.

(5) The inclusion of the additional provision in an agreement shall not, by reason of the fact that it applies to an adopting parent only, confer any right under this or any other enactment on an employee who is not an adopting parent.

Expenses.

5.—Any expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART II

Adoptive Leave

Entitlement of employed adopting mother (or sole male adopter) to a minimum period of adoptive leave. **6.**—Subject to this Part, an employed adopting mother (or sole male adopter) shall be entitled to leave, referred to in this Act as “adoptive leave”, from her employment for a period (“the minimum period of adoptive leave”), beginning on the day of placement, of not less than 10 consecutive weeks, or such other period as the Minister may, with the consent of the Minister for Social Welfare and the Minister for Finance, by order prescribe.

Notification of employer. **7.**—(1) In the case of an adoption other than a foreign adoption, entitlement to the minimum period of adoptive leave shall be subject to an employed adopting mother (or sole male adopter)—

(a) having, as soon as is reasonably practicable but not later than 4 weeks before the expected day of placement, caused her employer to be notified in writing of her intention to take adoptive leave, and

(b) having, as soon as is reasonably practicable, caused her employer to be notified in writing of the expected day of placement, and

(c) causing her employer to be supplied with the certificate of placement as soon as is reasonably practicable but not later than 4 weeks after the day of placement.

(2) In the case of a foreign adoption, entitlement to the minimum period of adoptive leave shall be subject to an employed adopting mother (or sole male adopter)—

(a) having, as soon as is reasonably practicable but not later than 4 weeks before the expected day of placement, caused her employer to be notified in writing of her intention to take adoptive leave, and

(b) having, as soon as is reasonably practicable, caused her employer to be notified in writing of the expected day of placement, and

(c) (i) having caused her employer to be supplied with a copy of the declaration made pursuant to section 5 (1) (iii) (II) of the Adoption Act, 1991 , before the expected day of placement, if not already supplied, and

(ii) causing her employer to be supplied with particulars in writing of the placement as soon as is reasonably practicable after the day of placement.

(3) A notification under this section may be revoked by a further notification in writing by or on behalf of the employed adopting mother (or sole male adopter) to her employer.

(4) Where the day of placement is postponed, commencement of the period of adoptive leave shall also be postponed subject to the employed adopting mother (or sole male adopter) causing her employer to be notified of the expected new day of placement as soon as is reasonably practicable.

Entitlement of employed adopting mother (or sole male adopter) to additional adoptive leave.

8.—(1) Subject to this section, an employed adopting mother (or sole male adopter) who has taken adoptive leave shall, if she so requests, be entitled to further leave, referred to in this Act as “additional adoptive leave”, for a maximum period of 4 consecutive weeks or such other period as the Minister may, with the consent of the Minister for Social Welfare and the Minister for Finance, by order prescribe and, subject to the provisions of *subsection (5)*, commencing immediately after the end of her adoptive leave.

(2) Entitlement to additional adoptive leave, in a situation other than one to which *subsection (5)* applies, shall be subject to an employed adopting mother (or sole male adopter) having caused her employer to be notified in writing of her intention to take such leave.

(3) Notification under *subsection (2)* shall be given either at the same time as the relevant notification under *section 7 (1) (a) or (2) (a)* or not later than 4 weeks before the date which would have been the expected date of her return to work if the employed adopting mother (or sole male adopter) had not taken the additional adoptive leave.

(4) A notification under *subsection (2)* may be revoked by a further notification in writing by or on behalf of the employed adopting mother (or sole male adopter) to her employer not later than 4 weeks before the date which would have been the expected date of her return to work if the employed adopting mother (or sole male adopter) had not taken the additional adoptive leave.

(5) In the case of a foreign adoption, where the employed adopting mother (or sole male adopter) requires a period of additional adoptive leave before the day of placement, for the purposes of familiarisation with the child who is to be adopted, some or all of the additional adoptive leave may be taken before the day of placement.

(6) Entitlement to additional adoptive leave under *subsection (5)* shall be subject to the employed adopting mother (or sole male adopter)—

(a) having caused her employer to be notified in writing not later than 4 weeks before the date on which she intends to take such leave, of the intended date of commencement of such additional adoptive leave, and

(b) having caused her employer to be supplied with a copy of the declaration made pursuant to *section 5 (1) (iii) (II) of the Adoption Act, 1991* .

(7) A notification under *subsection (6) (a)* may be revoked by a further notification in writing by or on behalf of the employed adopting mother (or sole male adopter) to her employer.

(8) A period of additional adoptive leave under *subsection (5)* shall expire immediately before the day of placement.

Entitlement of adopting father to adoptive leave leave (“adoptive leave”) from his employment for one of the following periods as may be appropriate—
circumstances.

(a) 10 weeks, or

(b) in a case where the adopting mother dies on or after the day of placement, 10 weeks less a period equivalent to the period beginning on the day of placement and ending on the date of her death, or

(c) such other period as the Minister may, with the consent of the Minister for Social Welfare and the Minister for Finance, by order prescribe.

(2) Entitlement to a period of leave under *subsection (1)* shall be subject to the adopting father—

(a) (i) having, as soon as is reasonably practicable before the commencement of the leave, caused his employer to be notified in writing of his intention to take such leave, or

(ii) in a case where the adopting mother died after the day of placement, causing his employer to be notified in writing of his intention to take such leave no later than the day on which he commences the leave, and

(b) having, as soon as is reasonably practicable, caused his employer to be notified in writing of the day or expected day of placement, as may be appropriate, and

(c) (i) in the case of an adoption other than a foreign adoption, causing his employer to be supplied with the certificate of placement as soon as is reasonably practicable but not later than 4 weeks after the day of placement or 4 weeks after the commencement of the leave whichever is the later, or

(ii) in the case of a foreign adoption,

(I) causing his employer to be supplied with a copy of the declaration made pursuant to section 5 (1) (iii) (II) of the Adoption Act, 1991, as soon as is reasonably practicable but not later than 4 weeks after the commencement of the leave, and

(II) causing his employer to be supplied with particulars in writing of placement as soon as is reasonably practicable,

and

(d) causing, if requested, his employer to be supplied with a copy of the death certificate made in respect of the deceased adopting mother as soon as is reasonably practicable.

(3) The period of adoptive leave referred to in *subsection (1)* shall commence within 7 days of the death of the adopting mother or on the day of placement whichever is the later.

(4) A notification under this section may be revoked by a further notification in writing by or on behalf of the adopting father to his employer.

(5) Where the day of placement is postponed, commencement of the period of adoptive leave shall also be postponed subject to the adopting father causing his employer to be notified of the expected new day of placement as soon as is reasonably practicable.

Entitlement of adopting father to additional adoptive leave in certain circumstances. **10.**—(1) Where an adopting mother dies, the adopting father shall, if he so requests, be entitled to leave (“additional adoptive leave”) from his employment for one of the following periods as may be appropriate—

(a) 4 weeks, or

(b) in a case where the adopting mother dies on or after the expiration of 10 weeks from the day of placement, 4 weeks less a period equivalent to the period beginning on the day immediately following the expiration of 10 weeks from the day of placement and ending on the date of her death, or

(c) such other period as the Minister may, with the consent of the Minister for Social Welfare and the Minister for Finance, by order prescribe.

(2) Entitlement to a period of leave under *subsection (1)* shall be subject to an adopting father complying with *section 9 (2)* as adapted by *subsection (3)*.

(3) For the purposes of this section, references in *section 9 (2)* to adoptive leave shall be construed as including references to additional adoptive leave and references therein to *subsection (1)* of that section shall be construed as including references to *subsection (1)* of this section.

(4) Where an adopting father has already complied with the provisions of *section 9 (2) (b), (c) and (d)*, it shall not be necessary for him to comply with those provisions as adapted by *subsection (3)* in order to satisfy the requirements of *subsection (2)*.

(5) The period of additional adoptive leave referred to in *subsection (1)* shall commence within 7 days of the death of the adopting mother or, where the adopting father was on adoptive leave, on the day immediately following the end of such leave.

(6) A notification under this section may be revoked by a further notification in writing by or on behalf of the adopting father to his employer.

Entitlement of adopting father to additional adoptive leave before day of placement in certain circumstances. **11.**—(1) In the case of a foreign adoption, where the adopting mother dies and the adopting father requires a period of additional adoptive leave before the day of placement, for the purposes of familiarisation with the child who is to be adopted, some or all of the additional adoptive leave under *section 10* may be taken immediately before the day of placement.

(2) Entitlement to a period of leave under *subsection (1)* shall be subject to the adopting father—

- (a) having, as soon as is reasonably practicable, caused his employer to be notified in writing of his intention to take such additional adoptive leave before the day of placement, and
- (b) causing his employer to be supplied with a copy of the declaration made pursuant to *section 5 (1) (iii) (II)* of the *Adoption Act, 1991*, as soon as is reasonably practicable but not later than 4 weeks after commencement of the leave, and
- (c) causing, if requested, his employer to be supplied with a copy of the death certificate made in respect of the deceased adopting mother as soon as is reasonably practicable.

(3) The period of additional adoptive leave referred to in *subsection (1)* shall commence as soon as is reasonably practicable after the death of the adopting mother.

(4) A notification under this section may be revoked by a further notification in writing by or on behalf of the adopting father to his employer.

(5) Where the expected day of placement is postponed, commencement of the period of additional adoptive leave under this section shall also be postponed subject to the adopting father causing his employer to be notified of the expected new day of placement as soon as is reasonably practicable.

Placements of less than fourteen weeks duration. **12.**—(1) Where the placement of the child with the adopting parent is for a period of less than 14 weeks (other than as a result of the death of the child), the adopting parent shall cause her employer to be notified in writing of the date of termination of placement as soon as is reasonably practicable but not later than 7 days after the date of termination of placement.

(2) On receipt by her employer of a notification under *subsection (1)*, the adopting parent shall be required to return to work on such date as is convenient to her employer but not later than the date on which the notified period of adoptive leave or, as the case may be, the notified period of additional adoptive leave expires.

(3) In the case of a foreign adoption, where an adopting parent takes additional adoptive leave before the day of placement and no placement takes place, she shall return to work on the day on which the notified period of such leave expires, at the latest, and shall cause her employer to be notified of the intended date of her return to work as soon as is reasonably practicable.

(4) In a case to which *subsection (2)* relates an employer shall give the adopting parent one week's notice of the day on which she is required to return to work.

(5) Where, in the opinion of a rights commissioner or the Tribunal, there are reasonable grounds for an adopting parent's failure to give a notice under this section or for an adopting parent giving it otherwise than within the time limits specified thereunder, the rights commissioner or Tribunal, as the case may be, shall extend the time for service of the said notice.

(6) In the absence of reasonable grounds, failure to give notice under this section or the giving of it otherwise than in the time limits specified thereunder are matters that may be taken into account by a rights commissioner, the Tribunal or Circuit Court in determining the adopting parent's rights under the Act of 1977, this Act or any other relevant enactment so far as the remedies of re-instatement, re-engagement or compensation are concerned.

Certificate of placement to be issued. **13.**—(1) An adopting parent shall, if she so requests, be issued with a certificate (“the certificate of placement”) by—

(a) the health board which arranges the placing of the child with the adopting parent, or

(b) the registered adoption society which arranges the placing of the child with the adopting parent.

(2) The certificate of placement referred to in *subsection (1)* shall be issued, no later than 7 days from the date of receipt of the request, by the health board or registered adoption society, as may be appropriate.

(3) The certificate of placement referred to in *subsection (1)* shall state the following—

(a) the date on which it is issued,

(b) the day of placement,

(c) the sex and date of birth of the child,

(d) the name and address of the adopting parent or parents,

and shall be signed by a person authorised to issue such a certificate on behalf of the issuing authority.

(4) The certificate of placement when being issued in accordance with *subsection (1) (a)* may be issued on behalf of the health board by its chief executive officer.

(5) In *subsection (4)* “chief executive officer” includes a person acting as deputy chief executive officer in accordance with section 13 of the Health Act, 1970 .

(6) Where the placing of the child with the adopting parent or parents was arranged otherwise than by a health board or registered adoption society and an application for an adoption order has been received by An Bord Uchtála from an adopting parent or parents, An Bord Uchtála shall, on receipt of a request from an adopting parent for a certificate (“the certificate of placement”), issue the adopting parent with a certificate of placement.

(7) The certificate of placement referred to in *subsection (6)* shall be issued, no later than 7 days from the date of receipt of the request, by An Bord Uchtála.

(8) The certificate of placement referred to in *subsection (6)* shall state the following—

- (a) the date on which it is issued,
- (b) the date of the application for an adoption order,
- (c) the day of placement as stated in the application,
- (d) the sex and date of birth of the child,
- (e) the name and address of the adopting parent or parents,

and shall be signed by an officer of An Bord Uchtála authorised to issue such a certificate in that behalf.

Evidence as to certificate of placement. **14.**—The certificate of placement or a copy thereof certified by the body which issued the certificate of placement to be a true copy shall, unless the contrary is proved, be evidence of the matters referred to therein in any proceedings arising out of or relating to the exercise or attempted exercise by an adopting parent of her rights under this Act.

PART III

Provisions Relating to Employment Contracts

Preservation or suspension of certain rights, etc. while on adoptive leave. **15.**—(1) During her absence from work while on adoptive leave, an adopting parent shall be deemed to have been in the employment of her employer and, accordingly, while so absent she shall, subject to *subsection (5)*, be treated as if she had not been so absent and such absence shall not affect any right related to her employment, other than her right to remuneration during her absence, whether conferred on her by statute, contract or otherwise.

(2) During the absence from work of an adopting parent while on additional adoptive leave, the period of employment before such absence shall be regarded as continuous with her employment following such absence in respect of any right related to her employment, whether conferred on her by statute, contract or otherwise (other than her right to remuneration, which during such absence, shall stand suspended).

(3) Nothing in this section shall affect the right of an adopting parent to be offered suitable alternative employment under section 19.

(4) A period of absence from her work by an adopting parent while on adoptive leave or additional adoptive leave shall not be treated as part of any other leave (including sick leave or annual leave) to which the adopting parent is entitled.

(5) Where, starting with the commencement of her employment with her employer, an adopting parent is on probation in that employment, is undergoing training in relation to that employment or is employed under a contract of apprenticeship, her probation, training or apprenticeship shall stand suspended during any absence from her work on adoptive leave or additional adoptive leave and shall be completed by her on her return to work after such absence.

(6) An adopting parent shall be deemed not to be an employed contributor for the purposes of the Social Welfare (Consolidation) Act, 1993, for any contribution week (within the meaning of that Act) in a period of absence from her work on adoptive leave or additional adoptive leave if she does not receive any reckonable earnings (within the meaning of that Act) in respect of that week.

(7) The Minister may by regulations prescribe a period or periods of training in relation to which *subsection (5)* shall not apply.

Voidance of certain
purported terminations
of employment, etc.

16.—Each of the following shall be void:

- (a) any purported termination of or suspension from the employment of an adopting parent while she is absent from work on adoptive leave or additional adoptive leave;
- (b) any notice of termination of the employment of an adopting parent given while she is absent from her work on adoptive leave or additional adoptive leave and expiring subsequent to such absence.

Extension of certain
notices of termination
of employment or of
certain suspensions.

17.—Any notice of termination of her employment given in respect of any adopting parent or any suspension from her employment imposed on such an adopting parent before a period of leave under this Act, whether it be adoptive leave or additional adoptive leave, commences and due to expire during her absence from work on adoptive leave or additional adoptive leave shall be extended by the period of her absence from work on adoptive leave or additional adoptive leave.

General right to return to work on expiry of adoptive leave or additional adoptive leave. **18.**—(1) On the expiry of a period during which an adopting parent was absent from work while on adoptive leave or additional adoptive leave, she shall be entitled to return to work—

- (a) with the employer with whom she was working immediately before the start of that period or, where during her absence from work there was a change of ownership of the undertaking in which she was employed immediately before her absence, with the owner (in this Act referred to as “the successor”) of the undertaking at the expiry of her period of absence,
- (b) in the job which she held immediately before the start of that period, and
- (c) under the contract of employment under which she was employed immediately before the start of that period or, where a change of ownership such as is referred to in *paragraph (a)* has occurred, under a contract of employment with the successor which is identical to the contract under which she was employed immediately before the start of that period, and (in either case) under terms or conditions not less favourable than those that would have been applicable to her if she had not been so absent from work.

(2) For the purpose of *subsection (1) (b)*, where the job held by an adopting parent immediately before the start of the period of her absence on adoptive leave or additional adoptive leave was not her normal or usual job, she shall be entitled to return to work, either in her normal or usual job or in that job as soon as is practicable.

(3) In this section, “job”, in relation to an adopting parent, means the nature of the work which she is employed to do in accordance with her contract of employment and the capacity and place in which she is so employed.

Right to suitable alternative employment in certain circumstances on return to work. **19.**—(1) Where an adopting parent is entitled to return to work under *section 18* but it is not reasonably practicable for her employer or the successor to permit her to return to work in accordance with that section, she shall be entitled to be offered by her employer, the successor or an associated employer suitable alternative employment in accordance with a new contract of employment.

(2) The following provisions shall apply to a new contract of employment under this section—

- (a) the work required to be done under it shall be of a kind which is suitable in relation to the employee concerned and appropriate for her to do, and

(b) its terms or conditions relating to the place where the work under it is required to be done, the capacity in which the adopting parent concerned is to be employed and any other terms or conditions of employment are not substantially less favourable to her than those of her contract of employment immediately before the start of her period of absence from work while on adoptive leave or additional adoptive leave.

(3) For the purposes of this section two employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control and references hereafter in this Act to associated employer shall be construed accordingly.

Notification of intention to return to work. **20.**—(1) An adopting parent who has been on adoptive leave or additional adoptive leave shall, not later than 4 weeks before the date on which she expects to return to work, cause her employer (or, where she is aware of a change of ownership of the undertaking concerned, the successor) to be notified in writing of her intention to return to work and of the date on which she expects to return to work.

(2) Where, in the opinion of a rights commissioner or the Tribunal, there are reasonable grounds for an adopting parent's failure to give the notice under *subsection (1)* or for an adopting parent giving it otherwise than in the time limits specified thereunder, the rights commissioner or Tribunal, as the case may be, shall extend the time for service of the said notice.

(3) In the absence of reasonable grounds, failure to give notice under *subsection (1)* or the giving of it otherwise than in the time limits specified thereunder are matters that may be taken into account by a rights commissioner, the Tribunal or Circuit Court in determining the adopting parent's rights under the Act of 1977, this Act or any other relevant enactment so far as the remedies of reinstatement, re-engagement or compensation are concerned.

(4) Notwithstanding *subsection (1)*, where an adopting father's entitlement to leave under this Act amounts to 4 weeks or less he shall, at the same time as he causes his employer to be notified in writing of his intention to take such leave, cause his employer to be notified in writing of his intention to return to work and of the date on which he expects to return to work.

Postponement of return to work. **21.**—Where, because of an interruption or cessation of work at her place of employment, existing on the date specified in a notification given under *section 12 (3)* or *20* or on the date on which an adopting parent is required to return to work under *section 12 (2)*, as the case may be, it is unreasonable to expect an adopting parent to return to work on such date, she may return to work instead when work resumes at the place of employment after the interruption or cessation, or as soon as is reasonably practicable after such resumption.

PART IV

Amendment or Application of Other Enactments

Unfair Dismissals Act, 1977

Amendment of section 1 of Act of 1977. **22.**—Section 1 of the Act of 1977 is hereby amended by the insertion after “In this Act—” and before “contract of employment” of the following:

“‘adopting parent’ means an employee who is an employed adopting mother, an adopting father or sole male adopter within the meaning of section 2 (1) of the *Adoptive Leave Act, 1995*”.

Amendment of section 2 (2) of Act of 1977. **23.**—Section 2 (2) of the Act of 1977 (which specifies dismissals in relation to which that Act does not apply) is hereby amended by the insertion after paragraph (c) (inserted by the Maternity Protection Act, 1994) of the following:

“, or

(d) dismissal where the employee's employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an adopting parent who is absent from work while on adoptive leave or additional adoptive leave under the *Adoptive Leave Act, 1995*, and the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the adopting parent.”.

Amendment of section 6 (2) of Act of 1977. **24.**—Section 6 (2) of the Act of 1977 (which specifies the matters which cause a dismissal resulting from any of those matters to be an unfair dismissal) is hereby amended by the insertion after paragraph (g) (inserted by the Maternity Protection Act, 1994) of the following paragraph:

“(h) the exercise or contemplated exercise by an adopting parent of her right under the *Adoptive Leave Act, 1995*, to adoptive leave or additional adoptive leave.”.

Amendment of section 6 of Act of 1977. **25.**—Section 6 of the Act of 1977 is hereby amended by the substitution of the following subsection for subsection (2A) (inserted by the Maternity Protection Act, 1994):

“(2A) Sections 3 and 4 of this Act do not apply to a case falling within paragraph (f), (g) or (h) of subsection (2) of this section and, for the purposes of those paragraphs, ‘employee’ and ‘adopting parent’ include a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2 (1) of this Act.”.

Adopting parent not permitted to return to work. **26.**—(1) This section applies to an adopting parent within the meaning of section 1 of the Act of 1977 as amended by section 22 who, having complied with section 20, is entitled to return to work but is not permitted to do so by her employer, the successor or an associated employer.

(2) For the purposes of the Act of 1977 an adopting parent shall be deemed to have been dismissed on the date specified in the relevant notification under section 20 (1), and the dismissal shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

Redundancy Payments Act, 1967

Amendment of section 2 of Act of 1967. **27.**—Section 2 of the Act of 1967 is hereby amended by the insertion after the definition of “the Act of 1952” and before “business” of the following:

“‘adopting parent’ means an employee who is an employed adopting mother, an adopting father or sole male adopter within the meaning of section 2 (1) of the *Adoptive Leave Act, 1995*”.

Amendment of Schedule 3 to Act of 1967. **28.**—Schedule 3 to the Act of 1967 is hereby amended by the insertion after paragraph 5 (1) (d) (inserted by the Maternity Protection Act, 1994) of the following paragraph:

“(e) a period during which an adopting parent was absent from her work while on adoptive leave or additional adoptive leave under the *Adoptive Leave Act, 1995*”.

Adopting parent not permitted to return to work. **29.**—(1) This section applies to an adopting parent within the meaning of section 2 of the Act of 1967 as amended by section 27 who, having complied with section 20, is entitled to return to work but is not permitted to do so by her employer, the successor or an associated employer.

(2) For the purposes of the Act of 1967, an adopting parent shall be deemed to have been dismissed by reason of redundancy, the date of dismissal being deemed to be the date specified in the relevant notification under section 20 (1).

Minimum Notice and Terms of Employment Act, 1973

Adopting parent not permitted to return to work. **30.**—(1) This section applies to an adopting parent who, having complied with section 20 (1), is entitled to return to work but is not permitted to do so by her employer, the successor or an associated employer and who is an employee to whom the Acts referred to in *subsection (2)* apply.

(2) For the purposes of the Minimum Notice and Terms of Employment Acts, 1973 to 1991, the contract of employment of an adopting parent to whom this section applies shall be deemed to have been terminated on the date specified in the relevant notification under section 20 (1).

PART V

Disputes Relating to Entitlement

Definition. **31.**—In this Part “relevant employer” means the employer, successor or associated employer, as may be appropriate.

Disputes regarding entitlement under this Act. **32.**—(1) This Part does not apply to an adopting parent who is in employment as a member of the Defence Forces.

(2) Any dispute other than—

(a) a dispute relating to a dismissal, including a dismissal within the meaning of the Act of 1977 or, the termination of a contract of employment, or

(b) a claim under Part IV of the Act of 1967 as extended by section 29, or

(c) a dispute under section 11 of the Minimum Notice and Terms of Employment Act, 1973, as extended by section 30,

between an adopting parent and the relevant employer, relating to the adopting parent's entitlements under this Act (or to any matter arising out of or related to such entitlements), may be referred by either party to the dispute to a rights commissioner.

(3) A rights commissioner shall hear the parties to a dispute under this Part and any evidence relevant to the dispute tendered by them.

(4) The Minister may make regulations for the purposes of this Part.

Redress. **33.**—(1) On the hearing of a dispute under this Part, a rights commissioner or the Tribunal shall—

(a) in the case of a rights commissioner, make a decision in relation to the dispute, or

(b) in the case of the Tribunal, make a determination in relation to the dispute, and may give to the parties concerned such directions as the rights commissioner or the Tribunal, as the case may be, considers necessary or expedient for the resolution of the dispute.

(2) A decision or determination under *subsection (1)* shall, if the rights commissioner or Tribunal, as the case may be, considers it appropriate, include an award of compensation in favour of the adopting parent to be paid by the relevant employer.

(3) Compensation under this section shall be of such amount as the rights commissioner or Tribunal deems just and equitable having regard to all the circumstances of the case but shall not exceed 20 weeks' remuneration in respect of the adopting parent's employment calculated in accordance with regulations made under section 32.

(4) In this section "remuneration" includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

(5) The decision of a rights commissioner or determination of the Tribunal shall be in writing and shall be communicated to the parties by the rights commissioner or Tribunal, as the case may be.

Referral of disputes to rights commissioner.

34.—(1) Referral of a dispute under this Part shall be initiated by giving a notice in writing, containing such particulars (if any) as may be prescribed, to a rights commissioner—

(a) (i) not later than 6 months from the day of placement or, in circumstances where no placement takes place, within the period of 6 months from the date on which the employer receives the first notification of the adopting parent's intention to take leave under this Act, whether it be adoptive leave or additional adoptive leave, or

(ii) in the case of an adopting father, not later than 6 months from the date on which the adopting mother died, or

(b) if the rights commissioner is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner considers reasonable,

and a copy of the notice shall be given by the rights commissioner to the other party to the dispute as soon as may be after the receipt of the notice by the rights commissioner.

(2) Proceedings under this Part before a rights commissioner shall be conducted otherwise than in public.

(3) A rights commissioner shall furnish the Tribunal with a copy of a decision given under this Part.

Appeal from decision of rights commissioner.

35.—(1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner in relation to a dispute referred under this Part and the Tribunal shall hear the parties and any evidence relevant to the appeal tendered by them and shall make a determination in relation to the appeal.

(2) An appeal under this section shall be initiated by a party by giving, within 4 weeks of the date on which the decision to which it relates was given to the parties concerned, a notice in writing to the Tribunal (containing such particulars (if any) as may be prescribed) and the Tribunal shall give a copy of the notice to the other party concerned as soon as may be after the receipt by it of the notice.

(3) A witness before the Tribunal on an appeal under this section shall be entitled to the same immunities and privileges as if the witness were a witness before the High Court.

(4) (a) The Tribunal shall, on the hearing of an appeal under this section, have power to take evidence on oath and for that purpose may cause to be administered oaths to persons attending as witnesses at such hearing.

(b) Any person who, upon examination on oath authorised under this subsection, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, shall be guilty of an offence and, upon being convicted thereof, shall be liable to the penalties for wilful and corrupt perjury.

(c) The Tribunal may, by giving notice in that behalf in writing, require any person to attend at such time and place as is specified in the notice, to give evidence in relation to any matter referred to the Tribunal under this section or to produce any documents in that person's possession, custody or control which relate to any such matter.

(d) A person to whom a notice under *paragraph (c)* has been given and who fails, without just cause, to attend in accordance with the notice or who, having so attended, refuses to give evidence or fails, without just cause, to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £1,000.

(5) Proceedings for an offence under *paragraph (b)* or *(d)* of *subsection (4)* may be brought and prosecuted by the Minister.

(6) A document purporting to be signed by the chairman or vice-chairman of the Tribunal stating that—

(a) a person named in the document was, by a notice under *subsection (4) (c)*, required to attend before the Tribunal on a day and at a time and place specified in the document, to give evidence or produce a document,

(b) a sitting of the Tribunal was held on that day and at that time and place, and

(c) the person did not attend before the Tribunal in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or failed to produce the document, shall, in a prosecution of the person for an offence under *subsection (4) (d)*, be sufficient evidence of the matters so stated, unless the contrary is shown.

Appeal to High Court on point of law. **36.**—(1) The Tribunal may refer a question of law arising in proceedings before it under this Part to the High Court for determination by it.

(2) A party to proceedings before the Tribunal under this Part may appeal to the High Court from a determination of the Tribunal on a point of law.

Service of documents. **37.**—(1) Service of a notice or other document on any person for the purpose of or in relation to any proceedings under this Part may be effected by delivering it to the person to whom it relates or by sending a copy of the document by registered prepaid post in an envelope addressed to the person to be served at that person's last known residence or place of business in the State.

(2) In the case of a company to which the Companies Act, 1963, applies such service may be effected by delivering the document to, or by sending a copy of the document by registered prepaid post in an envelope addressed to, the company at its registered office.

(3) In the case of a body corporate to which *subsection (2)* does not apply or any unincorporated body of persons, such service may be effected by sending a copy of the document by registered prepaid post in an envelope addressed to the body at any place in the State where that body conducts its business or in such other manner as an originating summons may be served on such a body under The Rules of the Superior Courts.

Provisions relating to winding up and bankruptcy. **38.**—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable under this Part by the company to an adopting parent, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act.

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act, 1988, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable under this Part by the bankrupt or arranging debtor, as the case may be, to an adopting parent, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under that Act.

Enforcement of
decision of rights
commissioner and
determination of
Tribunal.

39.—(1) (a) A decision of a rights commissioner and a determination of the Tribunal in proceedings under this Part may provide that the decision or determination shall, be carried out before a specified date.

(b) Where a decision of a rights commissioner or a determination of the Tribunal does not so provide, it shall be deemed, for the purposes of this section, to provide that it shall be carried out within 4 weeks from the date on which it is communicated to the parties.

(2) (a) If a party fails to carry out the terms of a decision of a rights commissioner or determination of the Tribunal in relation to a dispute referred under this Part within the period as provided in accordance with *subsection (1)*, the Circuit Court shall, on application to it in that behalf by—

(i) the other party concerned, or

(ii) the Minister, if of opinion that it is appropriate to make the application having regard to all the circumstances,

without hearing the party in default or any evidence (other than in relation to the failure), make an order directing the party in default to carry out the decision or determination in accordance with its terms

(b) In *paragraph (a)*, the reference to a decision of a rights commissioner or a determination of the Tribunal is a reference to such a decision or determination, as the case may be, in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned and the reference to the date on which the decision or determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(3) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, in case the order relates to the payment of compensation, direct the relevant employer to pay to the adopting parent concerned interest on the compensation at the rate referred to in section 22 of the Courts Act, 1981, in respect of the whole or any part of the period beginning 4 weeks after the date on which the decision of a rights commissioner or the determination of the Tribunal, as the case may be, is communicated to the parties and ending on the date of the order.

(4) Proceedings under this section shall be heard in the county in which the relevant employer ordinarily resides or carries on any profession, business or occupation.

Extension of Protection of Employees (Employers' Insolvency) Act, 1984. —
40.—In section 6 of the Protection of Employees (Employers' Insolvency) Act, 1984

(a) the references in subparagraph (v) of subsection (2) (a) to a determination or order shall be construed as including references to a decision, determination or order under Part V, and

(b) the references in subparagraph (i) of subsection (4) (c) to a determination shall be construed as including references to a decision or determination under Part V and the reference in clause (II) of the said subparagraph, to section 10 (4) of the Act of 1977 shall be construed as including a reference to section 35 or 36, as may be appropriate.

PART VI

Miscellaneous and Transitional Provisions

Alternative notification procedure. —
41.—(1) Where an adopting parent commences employment within a period of 6 weeks before the day of placement she shall, as soon as is reasonably practicable but not later than the day on which she commences adoptive leave, cause her employer to be notified in writing of her intention to take adoptive leave, and where such notification is given, the provisions of section 7 (1) (a), 7 (2) (a) or 9 (2) (a) (i), as the case may be, shall not apply in respect of that period of leave.

(2) Where an adopting parent commences employment within a period of 6 weeks before the day of placement and wishes to take a period of additional adoptive leave before the day of placement under section 8 (5) or section 11, as the case may be, the adopting parent shall, as soon as is reasonably practicable, but no later than the day on which she commences such leave, cause her employer to be notified in writing of her intention to take additional adoptive leave before the day of placement, and when such notification is given the provisions of section 8 (6) (a) or 11 (2) (a), as the case may be, shall not apply in respect of that period of leave.

(3) Where a child is to be placed with an adopting parent within the period of 6 weeks beginning on the commencement of this Act, the adopting parent shall, as soon as is reasonably practicable but not later than the day of placement, cause her employer to be notified in writing of her intention to take adoptive leave, and where such notification is given, the provisions of section 7 (1) (a), 7 (2) (a) or 9 (2) (a) (i), as the case may be, shall not apply in respect of that period of leave.

(4) Where a child is to be placed with an adopting parent within the period of 6 weeks beginning on the commencement of this Act and the adopting parent wishes to take a period of additional adoptive leave before the day of placement under *section 8 (5)* or *section 11*, as the case may be, the adopting parent shall, as soon as is reasonably practicable, but no later than the day on which she commences such leave, cause her employer to be notified in writing of her intention to take additional adoptive leave before the day of placement, and when such notification is given the provisions of *section 8 (6) (a)* or *11 (2) (a)*, as the case may be, shall not apply in respect of that period of leave.

(5) An employer, who receives a notification under this section within 2 weeks of the notified day of commencement of the leave, may require the adopting parent to delay commencement of the leave, in respect of which the notification was given, for up to 2 weeks from the day on which the notification was received.

Right to adoptive leave where child placed before commencement of Act. **42.**—(1) Where a child has been placed with an adopting parent at any time within the period of 10 weeks before the commencement of this Act—

(a) the adopting parent shall be entitled to adoptive leave for a period of 10 weeks less a period equivalent to the period beginning on the day of placement and ending on the date of commencement of this Act, or

(b) the adopting father shall, in circumstances where the adopting mother dies after the commencement of this Act, be entitled to leave for a period of 10 weeks less a period equivalent to the period beginning on the day of placement and ending on the date of the adopting mother's death.

(2) The adopting parent shall commence a period of leave referred to in *subsection (1) (a)* within the period of 7 days beginning on the date of commencement of this Act and shall, as soon as is reasonably practicable but not later than the day on which the leave is commenced, cause her employer to be notified in writing of her intention to take such leave.

(3) The adopting father shall commence a period of leave referred to in *subsection (1) (b)* within the period of 7 days beginning on the date of the death of the adopting mother and shall, as soon as is reasonably practicable but not later than the day on which the leave is commenced, cause his employer to be notified in writing of his intention to take such leave.

(4) (a) In the case of an adoption other than a foreign adoption, entitlement to leave under *subsection (1) (a)* shall be subject to an adopting parent causing her employer to be supplied with the certificate of placement as soon as is reasonably practicable but not later than 4 weeks after the commencement of the leave.

(b) In the case of a foreign adoption, entitlement to leave under *subsection (1) (a)* shall be subject to an adopting parent—

(i) causing her employer to be supplied with a copy of the declaration made pursuant to section 5 (1) (iii) (II) of the Adoption Act, 1991, before the commencement of the leave, and

(ii) causing her employer to be supplied with particulars in writing of the placement as soon as reasonably practicable.

(5) *Paragraphs (b), (c) and (d) of section 9 (2)* shall apply in respect of an adopting father taking leave under *subsection (1) (b)*.

(6) An employer who receives a notification under this section may require the adopting parent to delay commencement of the leave, in respect of which the notification was given, for up to 2 weeks from the notified day of commencement of the leave.

Right to additional
adoptive leave where
child placed before
commencement of Act.

43.—(1) Where an adopting parent takes leave under section 42 she shall be entitled, if she so requests, to additional adoptive leave for a period of 4 weeks.

(2) The adopting parent shall commence a period of leave referred to in *subsection (1)* immediately upon the expiration of the period of adoptive leave under section 42 and shall cause her employer to be notified in writing of her intention to take such leave—

(a) at the same time as the notification of her intention to take leave under section 42 (2) is given, or

(b) not later than 4 weeks before the date on which she intends to take the leave, whichever is the later.

Notification of intention
to return to work in
respect of leave taken
under sections 42 and
43.

44.—(1) An adopting parent who has been on adoptive leave under section 42 or additional adoptive leave under section 43 shall cause her employer (or, where she is aware of a change of ownership of the undertaking concerned, the successor) to be notified in writing of her intention to return to work and of the date on which she expects to return to work—

(a) at the same time that she causes her employer to be notified of her intention to take leave under either of those sections, or

(b) not later than 4 weeks before the date on which she expects to return to work, whichever is the later.

(2) *Subsections (2) and (3) of section 20* shall apply to an adopting parent taking leave under *sections 42* and *43* and the references in those subsections to *subsection (1)* shall be construed as including a reference to *subsection (1)* of this section.

	Acts Referred to
<u>Adoption Act, 1952</u>	1952, No. 25
<u>Adoption Act, 1991</u>	1991, No. 14
<u>Bankruptcy Act, 1988</u>	1988, No. 27
<u>Civil Service Regulation Act, 1956</u>	1956, No. 46
<u>Companies Act, 1963</u>	1963, No. 33
<u>Courts Act, 1981</u>	1981, No. 11
<u>Employment Agency Act, 1971</u>	1971, No. 27
<u>Health Act, 1970</u>	1970, No. 1
<u>Local Government Act, 1941</u>	1941, No. 23
<u>Maternity Protection Act, 1994</u>	1994, No. 34
<u>Minimum Notice and Terms of Employment Act, 1973</u>	1973, No. 4
<u>Protection of Employees (Employers' Insolvency) Act, 1984</u>	1984, No. 21
<u>Redundancy Payments Act, 1967</u>	1967, No. 21
<u>Social Welfare (Consolidation) Act, 1993</u>	1993, No. 27
<u>Unfair Dismissals Act, 1977</u>	1977, No. 10
<u>Worker Protection (Regular Part-Time Employees) Act, 1991</u>	1991, No. 5