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Maternity Protection Act, 1994



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MATERNITY PROTECTION ACT, 1994

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Number 34 of 1994

MATERNITY PROTECTION ACT, 1994

AN ACT TO IMPLEMENT COUNCIL DIRECTIVE 92/85/EEC OF 19 OCTOBER 1992 ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH AT WORK OF PREGNANT WORKERS AND WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING, TO REENACT WITH AMENDMENTS THE PROVISIONS OF THE MATERNITY PROTECTION OF EMPLOYEES ACTS, 1981 AND 1991, TO ENTITLE A MALE EMPLOYEE TO LEAVE IN CERTAIN CASES WHERE THE MOTHER OF HIS CHILD DIES, TO EXTEND AS A CONSEQUENCE OF THE ABOVE-MENTIONED PROVISIONS THE PROTECTION AGAINST UNFAIR DISMISSALS CONFERRED BY THE UNFAIR DISMISSALS ACT, 1977 , AND TO PROVIDE FOR RELATED MATTERS. [27th December, 1994]

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 Maternity Protection Act, 1994.

(2) This Act shall come into operation on such day as may be fixed by order made by the Minister, and different days may be so fixed for different provisions and for different purposes.

Interpretation. **2.—**(1) In this Act—

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

“the 1981 Act” means the Maternity Protection of Employees Act, 1981 ;

“the 1989 Act” means the Safety, Health and Welfare at Work Act, 1989 ;

“the 1992 Directive” means Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

“additional maternity leave” has the meaning assigned by section 14 ;

“associated employer” has the meaning assigned by section 27 (3);

“the Authority” means the National Authority for Occupational Safety and Health;

“confinement” and “the date of confinement” have the meanings respectively assigned to them by section 41 of the Social Welfare (Consolidation) Act, 1993 ;

“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;

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

“employee who has recently given birth” means at any time an employee whose date of confinement was not more than 14 weeks earlier and who has informed her employer of her condition;

“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;

“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;

“job” has the meaning assigned by section 26 (3);

“maternity leave” has the meaning assigned by section 8;

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

“pregnant employee” means an employee who is pregnant and who has informed her employer of her condition;

“successor” has the meaning assigned by section 26 (1);

“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 the employee's wages shall be deemed to be the employer.

(3) Subject to *subsections (1) and (2)*, expressions used in this Act have the same meaning as in the 1992 Directive.

(4) 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.

(5) 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.

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

Orders and regulations.

3.—(1) The Minister may, in relation to any provision of this Act relating to notification (or confirmation of notification), by order vary any such provision.

(2) An order under this Act may contain such consequential, supplementary and ancillary provisions, including any provisions modifying any provision of this Act, as the Minister considers necessary or expedient.

(3) Any power under this Act to make an order includes power to amend or revoke an order made in the exercise of that power.

(4) Where an order is proposed to be made under this Act, other than an order under section 1, 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 the draft has been passed by each such House.

(5) 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 twenty-one 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) A provision in any 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.

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

(3) Nothing in this Act shall be construed as prohibiting any agreement from containing any provision more favourable to an employee than any provision in *Parts II to VI*.

(4) References in this section to an agreement are to any agreement, whether a contract of employment or not, and whether made before or after the commencement of this Act.

Expenses.

5.—Any expenses incurred by the Minister or the Minister for Enterprise and Employment 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.

Repeal of 1981 Act, as amended.

6.—(1) The Maternity Protection of Employees Acts, 1981 and 1991 (which are replaced by the provisions of this Act) are hereby repealed.

(2) The repeal by this Act of the Maternity Protection of Employees Acts, 1981 and 1991 does not affect the construction of any reference in any other Act which defines "employee" or "employer" or any other expression by reference to those Acts (or the 1981 Act alone).

(3) In section 37 (4) (a) of the Social Welfare (Consolidation) Act, 1993 for "the Maternity Protection of Employees Act, 1981" there shall be substituted "the *Maternity Protection Act, 1994*".

(4) In so far as any order or regulation made, notification given or other thing done under an enactment repealed by this Act could have been made, given or done under a corresponding provision of this Act, it shall have effect as if so made, given or done.

(5) Where a period of time specified in any enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.

PART II

Maternity Leave

Interpretation of **7.**—(1) In this Part “the minimum period of maternity leave” has the meaning assigned by *Part II*. *section 8*.

(2) References in this Part to an employee are references to a female employee only.

(3) References in this Part to a pregnant employee include, as respects any time before the expiry of her maternity leave, an employee who was pregnant immediately before that leave began.

Entitlement to maternity leave. **8.**—(1) Subject to this Part, a pregnant employee shall be entitled to leave, to be known (and referred to in this Act) as “maternity leave”, from her employment for a period (in this Part referred to as “the minimum period of maternity leave”) of not less than 14 consecutive weeks.

(2) The Minister may by order, made with the consent of the Minister for Social Welfare and the consent of the Minister for Finance, amend *subsection (1)* so as to extend the period mentioned in that subsection.

Notification to employer. **9.**—(1) Entitlement to the minimum period of maternity leave shall be subject to a pregnant employee—

(a) having, as soon as reasonably practicable but not later than four weeks before the commencement of maternity leave, notified in writing her employer (or caused her employer to be so notified) of her intention to take maternity leave; and

(b) having, at the time of the notification, given to her employer or produced for her employer's inspection a medical or other appropriate certificate confirming the pregnancy and specifying the expected week of confinement.

(2) A notification under this section may be revoked by a further notification in writing by the employee concerned to her employer.

Allocation of minimum period of maternity leave. **10.**—(1) Subject to *subsection (2)* and *sections 11 to 13*, the minimum period of maternity leave shall commence on such day as the employee selects, being not later than four weeks before the end of the expected week of confinement, and shall end on such day as she selects, being not earlier than four weeks after the end of the expected week of confinement.

(2) Where an employee is employed under a contract for a fixed term and that term expires before the day which, apart from this subsection, would be the last day of her maternity leave, then—

(a) notwithstanding any other provision in this Part, the last day of her maternity leave shall be the day on which the term expires; and

(b) nothing in this Part shall affect the termination of the employee's contract of employment on that day.

Variation in allocation of minimum period of maternity leave. **11.**—(1) Where it is certified by a registered medical practitioner or otherwise to the satisfaction of the Minister and the Minister for Social Welfare that, for an employee specified in the certificate, the minimum period of maternity leave should for a medical reason so specified commence on a date so specified, and the certificate is produced for inspection by the employer concerned within such period as may be prescribed by regulations made by the Minister under this section, the minimum period of maternity leave for that employee shall commence on the date so specified.

(2) Where a certificate under this section is issued and the requirement in *subsection (1)* relating to the production of the certificate for the employer's inspection is complied with, the employee specified in the certificate—

(a) shall be taken to have informed her employer of her pregnancy (if she had not previously done so); and

(b) shall be deemed to have complied also with *section 9 (1) (a)*.

Extension of maternity leave. **12.**—(1) Where the date of confinement of a pregnant employee occurs in a week after the expected week of confinement, the minimum period of maternity leave shall be extended by such number of consecutive weeks (subject to a maximum of four consecutive weeks) after the week in which the date of confinement occurs as ensures compliance with *section 10*.

(2) Where the minimum period of maternity leave is proposed to be extended under this section, the employee concerned shall—

(a) as soon as practicable after the proposal for such extension, notify in writing her employer (or cause her employer to be so notified) of the proposed extension; and

(b) as soon as practicable after the date of confinement, confirm in writing to her employer the notification under *paragraph (a)* and specify the duration of the extension.

Commencement of maternity leave (early confinement). **13.**—(1) Where, in relation to a pregnant employee, the date of confinement occurs in a week that is four weeks or more before the expected week of confinement, the employee shall, where the circumstances so require, be deemed to have complied with *section 9 (1)* (a) if the notification required by that section is given in the period of 14 days commencing on the date of confinement.

(2) Notwithstanding *section 10 (1)*, but subject to regulations under *section 11*, the minimum period of maternity leave for an employee referred to in *subsection (1)* shall be a period of not less than 14 consecutive weeks commencing on whichever of the following is the earlier—

(a) the first day of maternity leave taken in accordance with *section 10*; and

(b) the date of confinement.

Entitlement to additional maternity leave. **14.**—(1) An employee who has taken maternity leave shall, if she so wishes, be entitled in accordance with this section to further leave, to be known (and referred to in this Act) as “additional maternity leave”, for a maximum period of four consecutive weeks commencing immediately after the end of her maternity leave.

(2) An employee shall be entitled to additional maternity leave, whether or not the minimum period of maternity leave has been extended under section 12.

(3) Entitlement to additional maternity leave shall be subject to an employee having notified in writing her employer (or caused her employer to be so notified) in accordance with subsection (4) of her intention to take such leave.

(4) Notification under subsection (3) shall be given either at the same time as the relevant notification under section 9 or not later than four weeks before the date which would have been the employee's expected date of return to work under Part IV if she had not taken the additional maternity leave.

(5) A notification under this section may be revoked by a further notification in writing given by or on behalf of the employee concerned to her employer not later than four weeks before the date which would have been her expected date of return to work under Part IV if she had not taken the additional maternity leave.

(6) The Minister may by order amend subsection (1) so as to extend the period of four consecutive weeks mentioned in that subsection.

Right to time off from work for antenatal or post-natal care. **15.**—(1) For the purpose of receiving ante-natal or post-natal care or both, an employee shall be entitled to time off from her work, without loss of pay, in accordance with regulations made under this section by the Minister.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision in relation to all or any of the following matters—

- (a) the amount of time off to which an employee shall be entitled under this section;
- (b) the terms or conditions relating to such time off;
- (c) the notice to be given in advance by an employee so entitled to her employer (including any circumstances in which such notice need not be given);
- (d) the evidence to be furnished by an employee so entitled to her employer of any appropriate medical or related appointment.

Entitlement of employed father to leave on death of mother. **16.**—(1) If a woman (in this section referred to as “the mother”) who has been delivered of a living child dies at any time before the expiry of the fourteenth week following the week of her confinement, the father of the child (if he is employed under a contract of employment) shall be entitled in accordance with this section to leave from his employment for a period ending as follows—

- (a) if the mother dies before the expiry of the tenth week following the week of her confinement, the period ends at the end of that tenth week; and
- (b) if the mother dies at any time after the expiry of that tenth week, the period ends at the end of the fourteenth week following the week of her confinement.
- (2) Entitlement to leave under *subsection (1)* shall be subject to the father—
- (a) notifying his employer in writing (or causing his employer to be so notified) not later than the day on which his leave begins of the death of the mother, of his intention to take leave under *subsection (1)* and of the length of the leave to which he believes he is so entitled; and
- (b) if requested by his employer, causing his employer to be supplied, as soon as is reasonably practicable, with a copy of the death certificate made in respect of the mother and of the birth certificate in respect of the child.
- (3) The period of leave under *subsection (1)* shall commence within 7 days of the mother's death; and in this section—
- (a) a period of such leave which ends as mentioned in *paragraph (a)* of *subsection (1)* is referred to as "*subsection (1) (a) leave*"; and
- (b) a period of such leave which ends as mentioned in *paragraph (b)* of that subsection is referred to as "*subsection (1) (b) leave*".
- (4) A father who has taken *subsection (1) (a) leave* shall, if he so wishes, be entitled to further leave for a maximum period of four consecutive weeks commencing immediately after the end of his *subsection (1) (a) leave*.
- (5) Entitlement to further leave under *subsection (4)* shall be subject to the father having notified in writing his employer (or caused his employer to be so notified) in accordance with *subsection (6)* of his intention to take such leave.
- (6) Notification under *subsection (5)* shall be given either at the same time as the notification under *subsection (2) (a)* or (if it is later) not later than four weeks before the date which would have been the father's expected date of return to work under *Part IV* if he had not taken the further leave under *subsection (4)*.
- (7) A notification under this section may be revoked by a further notification in writing given by or on behalf of the father to his employer—
- (a) if it relates to *subsection (1) (a) leave* or *subsection (1) (b) leave*, not later than the day on which the leave is due to begin; and
- (b) if it relates to leave under *subsection (4)*, not later than the latest date on which, under *subsection (6)*, the notification which is to be revoked could have been given.

(8) The Minister may by order, made with the consent of the Minister for Social Welfare and with the consent of the Minister for Finance, amend *subsections (1) and (4)* so as to extend the periods mentioned in those subsections.

(9) Any reference in this section to the week of the mother's confinement is a reference to the week in which fell the date of her confinement.

PART III

Leave to Protect Health and Safety of Pregnant Employees, etc.

Employees to whom *Part III* applies.

17.—This Part applies to—

- (a) pregnant employees;
- (b) employees who have recently given birth; and
- (c) employees who are breastfeeding.

Leave on health and safety grounds.

18.—(1) If, by regulations under the 1989 Act implementing the 1992 Directive, an employer is required to move an employee to whom this Part applies to other work (whether as a result of a risk assessment or because the employee cannot be required to perform night work), but—

- (a) it is not technically or objectively feasible for the employer to move the employee as required by the regulations, or
- (b) such a move cannot reasonably be required on duly substantiated grounds, or
- (c) the other work to which the employer proposes to move the employee is not suitable for her,

the employee shall be granted leave from her employment under this section.

(2) Where an employee is granted leave under this section, she shall be entitled to receive, on request to her employer, a certificate, in such form as may be determined by regulations—

- (a) stating that she has been granted leave for whichever of the reasons in *paragraphs (a) to (c) of subsection (1)* is appropriate in the circumstances and containing such supplementary information as the regulations may require; and
- (b) specifying the date on which the leave began and its expected duration.

(3) For the purposes of *subsection (1) (c)*, other work is suitable for an employee if it is—

- (a) of a kind which is suitable in relation to the employee concerned, as an employee to whom this Part applies; and
- (b) appropriate for the employee to do in all the circumstances.

(4) For the first 21 days of leave granted to an employee by an employer under this section in any relevant period, the employee shall be entitled to receive from the employer remuneration of an amount determined in accordance with regulations.

(5) Regulations under *subsection (2)* or *subsection (4)* shall be made by the Minister after consultation with—

- (a) the Minister for Finance;
- (b) the Minister for Social Welfare; and
- (c) the Minister for Enterprise and Employment.

(6) In *subsection (4)* "relevant period", in relation to an employee, means the period beginning with her pregnancy and continuing beyond any confinement resulting from that pregnancy until she ceases to be an employee who has recently given birth or, as the case may be, an employee who is breastfeeding.

(7) Regulations under *subsection (4)* may provide that such day or days as may be determined under the regulations shall be left out of account in calculating the 21 days referred to in that subsection.

Ending of leave **19.**—(1) Subject to *subsection (2)* and *section 20*, leave granted to an employee under *section 18* shall end—

where no
change of
circumstances.

- (a) in the case of leave granted to a pregnant employee, immediately before her maternity leave begins; and
- (b) in any other case, on the date on which she ceases to be an employee to whom this Part applies.

(2) Where an employee to whom leave is granted under *section 18* is employed under a contract for a fixed term and that term expires before the day which, apart from this subsection, would be the day on which that leave would end, then—

- (a) the last day of the leave so granted to her shall be the day on which the term expires; and
- (b) nothing in this Part shall affect the termination of the employee's contract of employment on that day.

Ending of leave **20.**—(1) If an employee to whom leave has been granted under *section 18* as being an *section 18* employee who is breastfeeding ceases breastfeeding, she shall, at the earliest practical on change of time, notify her employer in writing that she has so ceased.
circumstances.

(2) Without prejudice to *subsection (1)*, if, during a period of leave granted to an employee under *section 18*, the employee becomes aware that her condition is no longer such that she is vulnerable to the risk by virtue of which she was granted the leave, she shall at the earliest practical time notify her employer in writing that she is no longer at risk.

(3) Where an employer receives notification from an employee under *subsection (1)* or *subsection (2)*, and has no reason to believe that, if the employee returned to work, she would be vulnerable to risk as an employee to whom this Part applies—

(a) the employer shall take all reasonable measures to enable the employee to return to work in the job which she held immediately before the start of her leave and shall then notify her in writing that she can resume work in that job; and

(b) the leave granted to the employee under *section 18* shall end seven days after the notification under *paragraph (a)* is received by her or, if it is earlier, on the day she returns to work.

(4) If, during a period of leave granted to an employee under *section 18*, her employer—

(a) either takes whatever measures are necessary to ensure that she will no longer be exposed to any risk by virtue of which she was granted the leave or becomes able to move the employee as mentioned in *section 18 (1)*, and

(b) notifies the employee in writing that she can return to work without exposure to that risk or, as the case may be, that other work is available to her which is suitable for her as mentioned in *section 18 (3)*,

the leave granted to the employee under *section 18* shall end seven days after the notification under *paragraph (b)* is received by her or, if it is earlier, on the day she returns to work or, as the case may be, takes up the other work.

PART IV

Employment Protection

Interpretation of **21.**—(1) In this Part—

Part IV.

“natal care absence”, in relation to an employee, means a period of absence from her work to which the employee is entitled in accordance with regulations under *section 15*; and

“protective leave” means—

(a) maternity leave;

(b) additional maternity leave;

(c) leave to which a father is entitled under *subsection (1)* or *subsection (4)* of *section 16*
; or

(d) leave granted under *section 18*.

(2) Where protective leave of one description is immediately followed by protective leave of another description, the time on leave shall be treated for the purposes of this Part as one continuous period of protective leave.

Preservation or suspension of certain rights, etc. while on protective leave, etc.

22.—(1) During a period of absence from work by an employee while on—

- (a) maternity leave,
- (b) *subsection (1) (a)* leave, as defined in section 16 (3), or
- (c) leave granted under section 18,

and during a period of natal care absence, the employee shall be deemed to have been in the employment of the employer and, accordingly, while so absent the employee shall, subject to *subsection (6)* and section 24, be treated as if she had not been so absent; and such absence shall not affect any right (other than, except in the case of natal care absence, the employee's right to remuneration during such absence), whether conferred by statute, contract or otherwise, and related to the employee's employment.

(2) In respect of a period of absence from work by an employee while on—

- (a) additional maternity leave,
- (b) *subsection (1) (b)* leave, as defined in section 16 (3), or
- (c) further leave under section 16 (4),

the period of employment before such absence shall be regarded as continuous with the employee's employment following such absence in respect of any right (other than the right to remuneration during such absence) whether conferred by statute, contract or otherwise, and related to the employee's employment.

(3) Nothing in this section affects—

- (a) an employee's right to be offered suitable alternative employment under section 27;
or
- (b) an employee's right to remuneration in accordance with section 18 (4).

(4) A period of absence from work while on protective leave shall not be treated as part of any other leave (including sick leave or annual leave) to which the employee concerned is entitled.

(5) An employee 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 work on protective leave if the employee does not receive any reckonable earnings (within the meaning of that Act) in respect of that week.

(6) Where *subsection (1)* applies during a period of absence by an employee while she is on leave granted under section 18 , nothing in this section shall entitle her to benefits under section 4 of the Holidays (Employees) Act, 1973 in respect of a public holiday (within the meaning of that Act) falling during that period of absence.

Voidance of
certain
purported
terminations of
employment,
etc.

23.—Each of the following shall be void:

- (a) any purported termination of an employee's employment while the employee is absent from work on protective leave;
- (b) any purported termination of an employee's employment during a period of natal care absence;
- (c) any notice of termination of an employee's employment given while the employee is absent from work on protective leave and expiring subsequent to such a period of absence;
- (d) any notice of termination of an employee's employment given during a period of natal care absence and expiring subsequent to such a period;
- (e) any purported suspension from an employee's employment imposed while the employee is absent from work on protective leave, or during a period of natal care absence.

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

24.—Any notice of termination of employment given in respect of an employee or any suspension from employment imposed on an employee—

- (a) before the receipt by the employee's employer of a notification under section 9 , 12 , 14 , 15 or 16 (or, where appropriate, under section 28), or
- (b) before the production for the employer's inspection of a certificate under section 11 ,

and due to expire during the employee's absence from work on protective leave or (as the case may require) during a period of natal care absence shall be extended by the period of absence from work on protective leave or, as the case may be, the period of natal care absence.

Provisions regarding periods of probation, training and apprenticeship.

25.—(1) During an employee's absence from work while on protective leave, being an employee who, starting with the commencement of her employment with the employer—

(a) is on probation in that employment, or

(b) is undergoing training in relation to that employment, or

(c) is employed under a contract of apprenticeship,

the probation, training or apprenticeship shall stand suspended during such absence and shall be completed by the employee on her return to work after such absence.

(2) The Minister may by regulations prescribe a period or periods of training in relation to which *subsection (1)* shall not apply.

General right to return to work on expiry of protective leave.

26.—(1) Subject to this Part, on the expiry of a period during which an employee was absent from work while on protective leave, the employee 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 the employee's 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 the period of absence,

(b) in the job which the employee held immediately before the start of that period, and

(c) under the contract of employment under which the employee 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 the employee 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 the employee if she had not been so absent from work.

(2) For the purposes of *subsection (1) (b)*, where the job held by an employee immediately before the start of the period of her absence on protective leave was not the employee's normal or usual job, the employee shall be entitled to return to work, either in her normal or usual job or in that job as soon as is practicable without contravention by the employee or the employer of any provision of a statute or instrument made under statute.

(3) In this section "job", in relation to an employee, 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 work in certain circumstances on return to work. **27.**—(1) Where an employee is entitled to return to work in accordance with *section 26* but it is not reasonably practicable for the employer or the successor to permit the employee to return to work in accordance with that section, the employee shall, subject to this Part, be entitled to be offered by the employer, the successor or an associated employer suitable alternative work under a new contract of employment.

(2) Work under a new contract of employment constitutes suitable alternative work for the purposes of this Act if—

- (a) the work required to be done under the contract is of a kind which is suitable in relation to the employee concerned and appropriate for the employee to do in the circumstances; and
- (b) the terms or conditions of the contract relating to the place where the work under it is required to be done, the capacity in which the employee concerned is to be employed and any other terms or conditions of employment are not substantially less favourable to the employee than those of her contract of employment immediately before the start of the period of absence from work while on protective leave.

(3) For the purposes of this Act one employer shall be taken to be associated with another—

- (a) if one is a body corporate of which the other (whether directly or indirectly) has control; or
- (b) if both are bodies corporate of which a third person (whether directly or indirectly) has control.

Notification of intention to return to work. **28.**—(1) Entitlement to return to work in accordance with section 26 or to be offered suitable alternative work under section 27 shall be subject to an employee who has been absent from work while on protective leave in accordance with this Act having, not later than four weeks before the date on which she expects to return to work, notified in writing (or caused to be so notified) the employer or, where the employee is aware of a change of ownership of the undertaking concerned, the successor, 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—

(a) for an employee's failure to give notification under *subsection (1)*, or

(b) for an employee giving such notification otherwise than within the specified time limits,

the rights commissioner or the Tribunal, as the case may be, shall extend the time for giving the notification.

(3) In the absence of reasonable grounds—

(a) failure to give notification under *subsection (1)*, or

(b) the giving of such notification otherwise than within the specified time limits,

are matters that may be taken into account by a rights commissioner, the Tribunal or the Circuit Court in determining the employee's rights under the 1977 Act, this Act or any other relevant enactment, so far as the remedies of re-instatement, re-engagement or compensation are concerned.

Postponement of return to work. **29.**—Where, because of an interruption or cessation of work at an employee's place of employment, existing on the date specified in a notification under section 28 given by the employee, it is unreasonable to expect the employee to return to work on the date specified in the notification, the employee may return to work instead when work resumes at the place of employment after the interruption or cessation, or as soon as reasonably practicable after such resumption.

PART V

Resolution of Disputes

Reference of disputes to which Part V applies. **30.**—(1) Subject to *subsection (2)*, this Part applies to any dispute between an employee and the relevant employer relating to any entitlement of the employee under Parts II to IV (or any matter arising out of or related to such an entitlement) other than—

(a) a dispute relating to the dismissal of an employee; or

(b) a dispute as to a matter which is within the competence of the Authority under the 1989 Act;

and in the following provisions of this Part "dispute" means one to which this Part applies.

(2) This Part does not apply where the employee is in employment as a member of the Defence Forces and, accordingly, in the following provisions of this Part, "employee" does not include an employee in such employment.

(3) In this Part "the relevant employer", in relation to an employee, means the employee's employer or, where appropriate, the successor or an associated employer.

(4) Either the employee or the relevant employer may refer a dispute to a rights commissioner.

(5) The Minister may make regulations for the purposes of this Part, and in this Part "prescribed" means prescribed by such regulations.

(6) In *subsection (1) (a)* "dismissal" has the same meaning as in the 1977 Act except that, in applying that definition for the purposes of *subsection (1) (a)*, the expressions "employer" and "contract of employment", where used in that definition, shall be given the same meanings as in this Act.

Procedure for
referral of
disputes to
rights
commissioner.

31.—(1) The referral of a dispute shall be initiated by the employee or the relevant employer giving a notice in writing, containing such particulars (if any) as may be prescribed, to a rights commissioner—

(a) within the period of six months from the date on which the employer is informed of the initial circumstances relevant to the dispute, that is to say, that the employee is pregnant, has recently given birth or is breastfeeding or, in the case of an employee who is the father of a child, that the child's mother has died; or

(b) if the rights commissioner is satisfied that exceptional circumstances prevented the giving of the notice within the period specified in *paragraph (a)*, within such period, not exceeding 12 months from the date so specified, as the rights commissioner considers reasonable.

(2) As soon as may be after a rights commissioner has received a notice under *subsection (1)* from one party to the dispute, the rights commissioner shall give a copy of the notice to the other party.

(3) Proceedings on the reference of a dispute to a rights commissioner shall be conducted otherwise than in public.

(4) The rights commissioner shall hear the parties to the dispute and any evidence tendered by them.

(5) The rights commissioner shall furnish the Tribunal with a copy of each decision given by the rights commissioner under this Part.

Redress.

32.—(1) On the hearing of a dispute 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) If a decision or determination under *subsection (1)* is in favour of the employee then, without prejudice to the power to give directions under that subsection, the rights commissioner or Tribunal may order such redress for the employee as the rights commissioner or Tribunal considers appropriate, either or both of the following—

(a) the grant of leave for such period as may be so specified;

(b) an award of compensation in favour of the employee to be paid by the relevant employer.

(3) Compensation under *subsection (2) (b)* 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 employee's employment calculated in such manner as may be prescribed.

(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.

Appeal from
decision of
rights
commissioner.

33.—(1) A party concerned may appeal to the Tribunal from a decision of a rights commissioner in relation to a dispute 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 four 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) 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 oaths to be administered to persons attending as witnesses at the hearing.

(5) Any person who, upon examination on oath authorised under *subsection (4)*, wilfully and corruptly gives false evidence or wilfully and corruptly swears anything which is false, shall be guilty of an offence and, on conviction thereof, be liable to the penalties for wilful and corrupt perjury.

(6) 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, and a person to whom such a notice has been given who—

(a) fails without just cause to attend in accordance with the notice, or

(b) having so attended, fails without just cause to give evidence or to produce any document to which the notice relates,

shall be guilty of an offence and liable on summary conviction thereof to a fine not exceeding £1,000.

(7) Proceedings for an offence under *subsection (6)* may be brought and prosecuted by the Minister.

(8) 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 (6)* 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 (6)*, be sufficient evidence of the matters so stated unless the contrary is shown.

Appeal to High Court on point of law.

34.—(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.

35.—(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.

36.—(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 employee, 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 employee, 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

decisions and

determinations.

37.—(1) A decision of a rights commissioner or 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.

(2) Where a decision of a rights commissioner or a determination of the Tribunal does not provide as mentioned in *subsection (1)*, the decision or determination shall be deemed, for the purposes of this section, to provide that it shall be carried out within four weeks from the date on which it is communicated to the parties.

(3) If a party fails to carry out the terms of a decision of a rights commissioner or of a determination of the Tribunal in relation to a dispute within the period appropriate under *subsection (1)* or *subsection (2)*, the Circuit Court shall, on application to it in that behalf by

—

(a) the other party, or

(b) the Minister, if of the 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 that party to carry out the decision or determination in accordance with its terms.

(4) In *subsection (3)*, 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 references in this section 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 the abandonment.

(5) In an order under this section providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the relevant employer to pay to the employee 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 four weeks after the date on which the decision or determination concerned is communicated to the parties and ending on the date of the order.

(6) 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.

PART VI

Amendments and Application of Other Enactments

Amendments relating to unfair dismissal. **38.**—(1) At the beginning of subsection (1) of section 2 of the 1977 Act (which excludes certain employees) there shall be inserted “Except in so far as any provision of this Act otherwise provides”, and in paragraph (a) of that subsection the words from “and whose” shall be omitted.

(2) In section 2 (2) of the 1977 Act (which specifies dismissals in relation to which that Act does not apply) for paragraph (c) (inserted by the 1981 Act) there shall be substituted—

“(c) 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 another employee who is absent from work while on protective leave or natal care absence, within the meaning of Part IV of the *Maternity Protection Act, 1994*, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.”.

(3) At the beginning of each of sections 3 and 4 of the 1977 Act (which relate to dismissal during probation, training or apprenticeship) there shall be inserted “Except in so far as any provision of this Act otherwise provides”.

(4) In section 6 (2) of the 1977 Act (which specifies the matters which cause a dismissal resulting from any of those matters to be deemed to be an unfair dismissal) for paragraphs (f) and (g) (the latter inserted by the 1981 Act) there shall be substituted—

“(f) the employee's pregnancy, giving birth or breastfeeding or any matters connected therewith,

(g) the exercise or proposed exercise by the employee of a right under the *Maternity Protection Act, 1994*, to any form of protective leave or natal care absence, within the meaning of *Part IV* of that Act.”.

(5) After section 6 (2) of the 1977 Act there shall be inserted—

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

Amendment of Schedule 3 to Redundancy Payments Act, 1967. **39.**—In Schedule 3 to the Redundancy Payments Act, 1967, in paragraph 5 (which specifies periods which do not breach continuity of employment) for subparagraph (1) (d) (inserted by the 1981 Act) there shall be substituted—

“(d) a period during which an employee was absent from work while on protective leave or natal care absence, within the meaning of *Part IV* of the *Maternity Protection Act, 1994*.”.

Provisions applying where employee not permitted to return to work. **40.**—(1) This section applies to an employee who, having duly complied with section 28, is entitled under *Part IV* to return to work but is not permitted to do so by the relevant employer, as defined in section 30 (3), and in this section, in relation to such an employee, “the expected date of return” means the date notified under section 28 (1) as the date on which the employee expected to return to work.

(2) For the purposes of the Redundancy Payments Acts, 1967 to 1991, an employee to whom this section applies who is also an employee to whom those Acts apply shall be deemed to have been dismissed by reason of redundancy, the date of dismissal being deemed to be the expected date of return.

(3) For the purposes of the Minimum Notice and Terms of Employment Act, 1973, the contract of employment of an employee to whom this section applies who is also an employee to whom that Act applies shall be deemed to have been terminated on the expected date of return.

(4) For the purposes of the 1977 Act—

(a) an employee to whom this section applies who is also an employee to whom that Act applies shall be deemed to have been dismissed on the expected date of return; and

(b) the dismissal shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

Protection of
employee's
rights on
insolvency of
employer.

41.—(1) In the Protection of Employees (Employers' Insolvency) Act, 1984 , section 6 (which provides for certain amounts to be paid out of the Redundancy and Employees' Insolvency Fund) shall be amended in accordance with this section.

(2) In subsection (2) (a), for subparagraph (v) there shall be substituted—

“(v) any amount which an employer is required to pay by virtue of—

(I) a determination under section 8 (1) or 9 (1) or an order under section 10 (2) of the 1977 Act, or

(II) a decision, determination or order under Part V of the *Maternity Protection Act, 1994*,

and made, in any case, not earlier than the commencement of the relevant period.”.

(3) In subsection (4) (c), after subparagraph (iii) there shall be inserted—

“(iv) A payment shall not be made under this section in respect of an amount to which a decision under Part V of the *Maternity Protection Act, 1994*, relates unless—

(I) in case an appeal from the decision to the Tribunal is brought under the Part in question, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.

(v) A payment shall not be made under this section in respect of an amount to which a determination under Part V of the *Maternity Protection Act, 1994*, relates unless—

(I) in case an appeal from the determination is brought to the High Court under the Part in question, the appeal is withdrawn, or

(II) in case there is no appeal, the time for bringing such an appeal has expired.”.

Acts Referred to

<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>Holidays (Employees) Act, 1973</u>	1973, No. 25
<u>Local Government Act, 1941</u>	1941, No. 23
<u>Maternity Protection of Employees Act, 1981</u>	1981, No. 2
Maternity Protection of Employees Acts, 1981 and 1991	
<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
Redundancy Payments Acts, 1967 to 1991	
<u>Safety, Health and Welfare at Work Act, 1989</u>	1989, No. 7
<u>Social Welfare (Consolidation) Act, 1993</u>	1993, No. 27
<u>Unfair Dismissals Act, 1977</u>	1977, No. 10