

Reference No: 30/2006; **Date:** 17/10/2006

Circular 30/2006:- Adoptive Leave Act

17 October 2006

Circular 30/06: Adoptive Leave Act 2005

A Dhuine Uasail,

Adoptive Leave Legislation

1. I am directed by the Minister for Finance to refer to the Adoptive Leave Act, 2005 and to say that the arrangements applying to civil servants in relation to adoptive leave are, in general, as specified in that Act and the earlier Adoptive Leave Act 1995. This Circular provides a summary of the main provisions of the Adoptive Leave Act 1995 (referred to in this Circular as “**the Principal Act**”) and the Adoptive Leave Act 2005 (referred to in this Circular as “**the Act**”). It is not intended as a legal interpretation of the various Acts, and Departments should acquaint themselves with the legal provisions of the appropriate legislation.

General

2. The Adoptive Leave Act, 2005 other than Sections 9 and 10 came into effect on 28 November 2005.

S.I No.16 of 2006 - Adoptive Leave Act 2005 (Commencement) Order 2006 - commenced Sections 9 and 10 of the Adoptive Leave Act 2005.

S.I No. 52 of 2006 - Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2006 - brought into effect increases in adoptive leave as announced in the context of the Budget 2006.

The Adoptive Leave Act 2005 (**the Act**) and its related Statutory Instruments (listed below) amends and extends the Adoptive Leave Act 1995 (**the Principal Act**):

S.I. No. 667 of 2004 Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2004

S.I. No. 724 of 2005 Adoptive Leave Act 2005 (Commencement) Order 2005

S.I. No. 16 of 2006 Adoptive Leave Act 2005 (Commencement) Order 2006

S.I. No. 52 of 2006 Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2006

The Adoptive Leave Act 2005 should be read in conjunction with the Adoptive Leave Act 1995 and its related Statutory Instruments which include:

S.I. No. 64 of 1995 Adoptive Leave Act, 1995 (Commencement) Order, 1995

S.I. No. 93 of 1995 Social Welfare Act, 1995 (Section 11) (Commencement) Order, 1995

S.I. No 94 of 1995 Social Welfare (Consolidated Payments Provisions) (Amendment) (No.2) Regulations, 1995

S.I. No 195 of 1995 Adoptive Leave (Referral of Disputes and Appeals) (Part V) Regulations, 1995.

S.I. No 196 of 1995 Adoptive Leave (Calculation of Weekly Remuneration) Regulations, 1995.

TO/All Departments* etc

[*Department should be read as Department/Office throughout this Circular]

3. Subject to the conditions outlined in (a) - (f) below, adoptive leave is available to

civil servants who are either adopting mothers or adopting father as defined in Section 2 of the Principal Act.

(a) With effect from 1st March 2006 adoptive leave will consist of 20 consecutive weeks from the day of placement of the child with the adopting officer.

(b) The granting of adoptive leave is conditional on the adopting officer, having as soon as is reasonably practicable, but not later than four weeks before the expected day of placement, informed the Personnel Officer in writing of the intention to take adoptive leave, the expected day of placement and submitting a certificate of placement or other documentation as appropriate (Section 7 of the Principal Act refers).

(c) Where the day of placement is postponed, commencement of the period of adoptive leave shall also be postponed subject to the adopting officer informing the Personnel Officer of the expected new day of placement as soon as is reasonably practicable.

(d) Subject to sub-paragraph (e) below, while on adoptive leave, an officer shall be deemed for all purposes (other than remuneration and superannuation benefits) to have been in employment. Adoptive leave is, therefore, fully reckonable for service, seniority and annual leave entitlement. An officer on adoptive leave should be given the benefit of any public holiday falling within the period of adoptive leave by having it granted immediately after adoptive leave or, in the case of someone who is taking additional adoptive leave (see paragraph 7 below), by having it granted immediately after additional adoptive leave.

Personnel Officers are obliged to ensure that all Circulars and Office Notices (especially those announcing promotion competitions, whether internal or interdepartmental, for which the officer is eligible) are sent to officers while on adoptive leave.

(e) In the case of an officer who is on probation at the commencement of adoptive leave, the period of probation will stand suspended during adoptive leave (and during additional adoptive leave where applicable) and will be completed by the officer on his/her return to work.

(f) Where the placement of the child with the adopting officer is for a period of less than the period of leave from employment to which the adopting parent is entitled (other than as a result of the death of the child), the adopting officer shall inform the Personnel Officer in writing of the date of termination of placement as soon as is reasonably practicable but not later than seven days after the date of termination of placement. The officer shall then be required to return to work on a date specified by the Personnel Officer, but no later than the date on which the adoptive leave or additional adoptive leave would have expired.

Payment while on Adoptive Leave

4. Neither the Adoptive Leave Act 1995 nor the Adoptive Leave Act 2005 confer an entitlement to remuneration while on adoptive leave. However, Section 4(4) of the Principal Act allows an employer to make more favourable arrangements for an

adopting parent. Therefore, subject to paragraph 5 below, a civil servant on adoptive leave will be given full pay (in general the term 'full pay' means an officer's normal rate of pay).

5. An officer who is (or was) fully insured under the Social Welfare Acts and who fulfils certain contribution conditions may be entitled to adoptive benefit from the Department of Social and Family Affairs. Information about this allowance is available from Personnel Units in Departments/Offices. An officer on adoptive leave, who is entitled to adoptive benefit from the Department of Social and Family Affairs, will receive payment from his/her Department on the basis provided for in paragraph 4 above or an amount equivalent to the full rate of benefit to which s/he is entitled, whichever is the greater, provided he or she:

(i) signs a mandate authorising the Department of Social and Family Affairs to pay any benefit due to him/her under the social insurance system directly to his/her employing Department;

(ii) makes the necessary claims for social insurance benefit to the Department of Social and Family Affairs within the required time limits and complies with whatever requirements are laid down by that Department as a condition of claiming benefit.

6. Adoptive leave does not reckon as part of any other leave (including sick leave or annual leave) to which the employee is entitled. Therefore, an officer who has gone on sick leave at half pay or unpaid sick leave will resume full pay upon commencement of adoptive leave subject to the terms of paragraphs 4 - 5 above.

Summary of Adoptive Leave entitlements

Adoptive Leave commencing on or before 28th February 2006	16 weeks
Adoptive Leave commencing on or after 1st March 2006	20 weeks
Adoptive Leave commencing on or after 1st March 2007	24 weeks

Additional adoptive leave

7. At the end of adoptive leave an officer is entitled to take further leave, known as "additional adoptive leave" (unpaid adoptive leave) of up to twelve consecutive weeks immediately following paid adoptive of leave. The granting of additional adoptive leave is conditional on an officer who intends to avail of such leave notifying the Personnel Officer at least four weeks before the date on he which the adoptive leave is due to end.

8. In the case of a foreign adoption, where the officer 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 subject to the conditions specified in Section 8 of the Principal Act.

Additional Adoptive Leave and service for promotion and increment purposes

9. Following agreement at the Equality sub-committee of General Council it was decided that with effect from 1st January 2000, additional adoptive leave as provided for under Circular 2/1997 was counted as service for promotion and increment purposes. In addition an Order dated 8th February 2001 extended the period of additional adoptive leave to 8 weeks and it has been decided that the additional 4 weeks were also covered by the agreement made at the Equality sub-committee of General Council.

Personnel Officers should ensure that all Circulars and Office Notices (especially those announcing promotion competitions, whether internal or interdepartmental, for which the officer is eligible) are sent to officers while on additional adoptive leave.

No payment will be made in respect of an absence on additional adoptive leave.

Summary of Additional Adoptive Leave entitlements

Additional Adoptive Leave commencing on or before 28th February 2006	8 weeks
Additional Adoptive Leave commencing on or after 1st March 2006	12 weeks
Additional Adoptive Leave commencing on or after 1st March 2007	16 weeks

Time off to attend certain pre-adoption classes and meetings

10. Adopting parents are entitled to time off during work hours without loss of pay to attend preparation classes and pre-adoption meetings with social workers/health board officials required during the pre-adoption process (Section 7, subsection 1 of the Act refers) The categories of persons to whom this time off does not apply are outlined in Section 7, subsection 2 of the Act and any queries regarding this should be referred to the Personnel Officer of the parent department.

Foreign Adoptions – Flexi Leave

11. Taking into account the unique circumstances surrounding foreign adoptions, General Council Agreed Report 1350 allows the relevant absences from duty to be dealt with in accordance with the special provisions under the Guidelines for the operation of Flexible Working Hours for exceptional professional visits (i.e. medical or dental appointments) and for marital breakdown or separation. Up to a maximum of 4 FWH credits or a total of 14 hours' credit, whichever is the more favourable for the officer concerned, may be granted in respect of foreign adoptions.

Protection of employment rights on additional adoptive leave

12. With effect from 28th November 2005 an employee's absence from work on additional adoptive leave counts for all employment rights (except remuneration, superannuation benefits) associated with the employment such as annual leave and seniority (Section 12 of (2) Adoptive Leave Act 2005 refers).

Termination of additional adoptive leave on sickness of adopting parent

13. Section 8 of paragraph (2) of the Adoptive Leave Act 2005 amends the Principal Act by the insertion of a section covering the termination of additional adoptive leave on the sickness of the adopting parent. The adopting mother, adopting father who is entitled to, or is on, adoptive leave on the death of the adopting mother or adopting father may terminate unpaid additional adoptive leave in the event of her/his illness with the agreement of the employer. They may request the employer in writing to terminate the additional adoptive leave. If the employer agrees to terminate the leave it shall terminate on a date agreed by the employee and the employer that is not earlier than the date on which the sickness began and not later than the date on which the leave would have ended in accordance with the notification of intention to take it, given by the employee to the employer.

The employer shall notify the employee of the decision on the request to terminate as soon as is reasonably practicable after its receipt. On the termination of the additional adoptive leave the absence from work of the employee owing to sickness after the termination shall be treated in the same way as any other absence from work of the employee owing to sickness and the employee shall cease to be entitled to any additional adoptive leave not by then taken.

Postponement of leave on hospitalisation of child

14. Section 9 of the Adoptive Leave Act 2005 amends the Principal Act by the insertion of a section covering the postponement of leave on the hospitalisation of the child. In the event of hospitalisation of the child, the employee may request the employer in writing to postpone the whole of the adoptive leave and any additional adoptive leave, the part of adoptive leave not by then taken and any additional adoptive leave or the whole of the additional adoptive leave or any part not by then taken as appropriate.

If the employer agrees to the request the employee shall either continue to work or return to work on a date agreed by the employee and employer that is not later than the date on which the leave concerned is due to end. The leave concerned shall be postponed or postponed with effect from the date agreed between the employee and employer and the employee shall be entitled to the leave or the part of the leave not taken by reason of the postponement. The postponed leave shall be taken as a continuous period beginning not later than 7 days after the child is discharged from hospital or such other date as may be agreed between the employer and the employee.

Absence from work owing to sickness having postponed the taking of additional adoptive leave

15. Section 10 of the Adoptive Leave Act 2005 amends the Principal Act by the insertion of a section covering the treatment of an absence from work owing to sickness, where the employee has postponed the taking of additional adoptive. Where an employee postpones adoptive or additional adoptive leave and returns to work and

subsequently is absent from work due to sickness, the employee is deemed to have commenced postponed leave on the first day of such absence unless the employee notifies the employer in writing as soon as reasonably practicable of her or his decision to forfeit the right to postponed leave.

On receipt of the notification from the employee, the absence from work of the employee owing to sickness shall be treated in the same way as any other absence from work of the employee owing to sickness and the employee shall cease to be entitled to the postponed leave.

Adoptive leave for fathers due to the death of the adopting mother

16. For adoptive leave commencing on or after **1st March 2006**, if an adopting mother should die, the adopting father shall be entitled to leave (to be known as ‘adoptive leave’) from his employment. The adoptive leave shall be for a period of –

- a) Where the adopting mother dies on or after the day of placement, 20 weeks less the period between the date of placement and the date of her death or
- b) In any other case, 20 weeks.

The additional adoptive leave for the purposes of section 10(1) (as amended by section 6 of the Act of 2005) of the Act of 1995 shall be for a period of -

- a) in case the adopting mother dies on or after the expiration of 20 weeks from the day of placement, 12 weeks less the period between the date of that expiration and the date of her death, or
- b) in any other case, 12 weeks.

In cases of adoptive leave commencing on or after **1st March 2007** the adoptive leave for the adopting father shall be for a period of –

- a) Where the adopting mother dies on or after the day of placement, 24 weeks less the period between the date of placement and the date of her death or
- b) In any other case, 24 weeks.

The additional adoptive leave for the purposes of section 10(1) (as amended by section 6 of the Act of 2005) of the Act of 1995 shall be for a period of -

- a) in case the adopting mother dies on or after the expiration of 24 weeks from the day of placement, 16 weeks less the period between the date of that expiration and the date of her death, or
- b) in any other case, 16 weeks.

This period of leave may be extended by order made by the Minister of Justice, Equality and Law Reform with the consent of the Minister for Social and Family

Affairs and the Minister for Finance. Details of the conditions governing such leave are available from Personnel Section.

Summary of Main Provisions

In summary the following are the main changes that impact on adoptive leave arrangements for civil servants, together with their application in the civil service.

(A) Intention to take adoptive leave: notification period

The adopting officer shall, as soon as is reasonably practicable, but not later than four weeks before the expected date of placement, inform the Personnel Officer in writing of their intention to take adoptive leave, submitting documentation in accordance with Section 7 of the Principal Act. If the date of placement is postponed, commencement of the adoptive leave shall also be postponed. The adopting officer shall inform the Personnel Officer of the revised day of placement as soon as is reasonably practicable.

(B) Protection of Employment Rights

While on adoptive or additional adoptive leave, an officer shall be deemed for all purposes (other than remuneration and superannuation benefits) to have been in employment. The absence is, therefore, fully reckonable for service, seniority, annual leave entitlement, public holidays and privilege days. Personnel Officers are obliged to ensure that all Circulars and Office Notices (especially those announcing promotion competitions, whether internal or interdepartmental, for which the officer is eligible) are sent to officers who are on adoptive or additional adoptive leave.

(C) Time off to attend pre-adoption classes/meetings and FWH credits for foreign adoptions

Adopting parents are entitled to time off during work hours without loss of pay to attend preparation classes and pre-adoption meetings with social workers/health board officials required during the adoption process, in accordance with Section 7 of the Principal Act. In order to accommodate the unique circumstances surrounding foreign adoptions, up to a maximum of 4 FWH credits or a total of 14 hours' credit, whichever is the more favourable for the officer concerned, may be granted in respect of these adoptions.

(D) Termination of additional adoptive leave on sickness of adopting parent

Employees may seek to have additional adoptive leave terminated in the event of illness, subject to the agreement of the employer. The balance of untaken additional adoptive leave is forfeit if this entitlement is exercised.

Requests to terminate the leave and move to sick leave must be made in writing and be accompanied by medical evidence supporting the request, and should be dealt with in the same way as other applications for sick leave, and treated in the same way as any other sick leave.

(E) Postponement of leave on hospitalisation of the child

Employees may postpone the period of adoptive leave/additional adoptive leave in the event of the hospitalisation of the child, subject to the agreement of the employer. Requests to postpone the leave must be made in writing and be accompanied by evidence from the hospital of the child's hospitalisation. The leave may be resumed not later than 7 days after the discharge of the child from hospital. Evidence of the date of discharge will also be required.

(F) Leave entitlements

Adoptive Leave

Adoptive Leave commencing on or before 28th February 2006	16 weeks
Adoptive Leave commencing on or after 1st March 2006	20 weeks
Adoptive Leave commencing on or after 1st March 2007	24 weeks

Additional Adoptive Leave

Additional Adoptive Leave commencing on or before 28th February 2006	8 weeks
Additional Adoptive Leave commencing on or after 1st March 2006	12 weeks
Additional Adoptive Leave commencing on or after 1st March 2007	16 weeks

Resolution of disputes

17. Any dispute in relation to entitlements under the Acts may be referred to the Parent Department in the first instance, who may in turn refer the matter to this Department. In addition, the Principal Act provides for referral of a dispute in relation to entitlements under this Act to a Rights Commissioner (Sections 31 - 40 of the Principal Act refer). Where appropriate, however, the grievance procedure may also be used for the resolution of such disputes.

Confidentiality

18. Departments are asked to ensure that all matters relating to adoptive leave are treated in strict confidence and that, as far as possible, routine aspects of these matters are handled by only one officer.

Queries

19. Queries in relation to this Circular should be addressed to the Personnel Section of your Department.

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Michael Errity
Assistant Secretary