



Number 30 of 1998

PARENTAL LEAVE ACT, 1998

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

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

PART II

Parental Leave and *Force Majeure* Leave

6. Entitlement to parental leave.
7. Manner in which parental leave may be taken.
8. Notice of parental leave.
9. Confirmation of parental leave.
10. Postponement, curtailment and variation of parental leave by parties concerned.
11. Postponement by employer of parental leave.
12. Abuse of parental leave.
13. Leave on grounds of *force majeure*.

PART III

Employment Rights

Section

- 14. Protection of employment rights.
- 15. Return to work.
- 16. Right to alternative employment.

PART IV

Resolution of Disputes

- 17. "Dispute".
- 18. Reference of disputes to rights commissioner.
- 19. Appeal from decision of rights commissioner.
- 20. Appeal to High Court on point of law.
- 21. Redress.
- 22. Enforcement of decisions of rights commissioner and determinations of Tribunal.

PART V

Miscellaneous

- 23. Notices.
- 24. Winding up and bankruptcy.
- 25. Amendment of enactments.
- 26. Extension of Protection of Employees (Employers' Insolvency) Act, 1984.
- 27. Records.
- 28. Review of Act.

Acts Referred to

Adoption Act, 1952	1952, No. 25
Bankruptcy Act, 1988	1988, No. 27
Civil Service Regulation Act, 1956	1956, No. 46
Companies Act, 1963	1963, No. 33
Courts Act, 1981	1981, No. 11
Employment Agency Act, 1971	1971, No. 27
Employment Equality Act, 1998	1998, No. 21
Freedom of Information Act, 1997	1997, No. 13
Local Government Act, 1941	1941, No. 23
Maternity Protection Act, 1994	1994, No. 34
Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
Minimum Notice and Terms of Employment Acts, 1973 to 1991	
Organisation of Working Time Act, 1997	1997, No. 20
Protection of Employees (Employers' Insolvency) Act, 1984	1984, No. 21
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Acts, 1967 to 1991	
Unfair Dismissals Act, 1977	1977, No. 10
Unfair Dismissals Acts, 1977 to 1993	



Number 30 of 1998

PARENTAL LEAVE ACT, 1998

AN ACT TO IMPLEMENT COUNCIL DIRECTIVE 96/34/EC OF 3 JUNE 1996 ON THE FRAMEWORK AGREEMENT ON PARENTAL LEAVE CONCLUDED BY UNICE, CEEP AND THE ETUC, FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [8th July, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Parental Leave Act, 1998. Short title and commencement.

(2) This Act shall come into operation on the 3rd day of December, 1998.

2.—(1) In this Act— Interpretation.

“adoption order” means an order under section 9 of the Adoption Act, 1952;

“confirmation document” has the meaning assigned to it by section 9;

“contract of employment” means—

- (a) a contract of service or apprenticeship, or
- (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

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

“date”, in relation to a confirmation document, means the date on which it is signed by the parties thereto or the later of the dates on which it is so signed;

“employee” means a person of any age who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a member of the Garda Síochána or the Defence Forces or a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the head (within the meaning of the Freedom of Information Act, 1997), of the public body (within the meaning aforesaid) in which he or she is employed and an officer or servant of a local authority for the purposes of the Local Government Act, 1941, or of a harbour authority, health board or vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be;

“employer”, in relation to an employee—

- (a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the remuneration of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer, and
- (b) includes, where appropriate, the successor or an associated employer of the employer;

“*force majeure* leave” shall be construed in accordance with *section 13(1)*;

“job”, in relation to an employee, means the nature of the work that the employee is employed to do in accordance with his or her contract of employment and the capacity and place in which he or she is employed;

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

“parental leave” shall be construed in accordance with *section 6(1)*;

“prescribed” means prescribed by the Minister by regulations;

“successor”, in relation to an employer, shall be construed in accordance with *section 15(1)*;

“the Tribunal” means the Employment Appeals Tribunal.

(2) For the purposes of this Act, 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 “associated employer” shall be construed accordingly.

(3) In this Act— Pt.I S.2

- (a) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other provision is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

(4) A word or expression used in this Act and also in Council Directive 96/34/EC of 3 June, 1996, shall have the same meaning in this Act as in that Directive.

3.—(1) The Minister may— Regulations.

- (a) by regulations provide for any matter referred to in this Act as prescribed or to be prescribed, and
- (b) make regulations generally for the purpose of giving effect to this Act and, if in any respect any difficulty arises during the period of two years after the commencement of this section in bringing into operation this Act, by regulations do anything which appears to be necessary or expedient for enabling this Act to have full effect.

(2) Before making a regulation under this Act, the Minister shall consult with persons whom he or she considers to be representative of employers generally and persons whom he or she considers to be representative of employees generally in relation to the regulation.

(3) A regulation under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

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

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. Voidance or modification of certain provisions in agreements.

(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 the inclusion in an agreement of a provision more favourable to an employee than any provision in *Parts II to V*.

Pt.I S.4

(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 passing of this Act.

Expenses.

5.—Any expenses incurred by the Minister or the Minister for Enterprise, Trade 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.

PART II

Parental Leave and *Force Majeure* Leave

Entitlement to parental leave.

6.—(1) Subject to this Act, an employee who is the natural or adoptive parent of a child shall be entitled to leave from his or her employment, to be known and referred to in this Act as “parental leave”, for a period of 14 working weeks to enable him or her to take care of the child.

(2) The entitlement to parental leave shall apply only in respect of a child born on or after the 3rd day of June, 1996, or a child in whose case an adoption order has been made on or after that date.

(3) A period of parental leave shall end—

(a) not later than the day on which the child concerned attains the age of 5 years, or

(b) in the case of a child who is the subject of an adoption order and who had attained the age of 3 years, but had not attained the age of 8 years, on or before the date of the making of that order, not later than the expiration of the period of 2 years beginning on that date.

(4) A period of parental leave shall not commence before a time when the employee concerned has completed one year’s continuous employment with the employer from whose employment the leave is taken.

(5) Subject to this Act, an employee shall be entitled to parental leave in respect of each child of which he or she is the natural or adoptive parent.

(6) An adoptive parent who is also the natural parent of the child concerned shall, subject to this Act, be entitled to parental leave as a natural parent, but not as an adoptive parent, in respect of the child.

(7) Where both of the parents of a child are entitled to parental leave in respect of the child, neither of the parents shall be entitled to the parental leave of the other parent or may transfer any part of the period of his or her parental leave to the other parent.

(8) Notwithstanding *subsection (4)*, where an employee will not have completed one year’s continuous employment with his or her employer on the latest day for commencing a period of parental leave having regard to *subsection (3)* but has completed 3 months of such employment on the latest day for commencing a period of such leave provided for by this subsection, the person shall, subject to this

Act, be entitled to parental leave for a period of one week for each month of continuous employment that he or she has completed with the employer at the time of the commencement of the leave. Pt.II S.6

(9) In this section “adoptive parent”, in relation to a child, means a person in whose favour an adoption order in respect of the child has been made and is in force.

7.—(1) Subject to this Act, parental leave may consist of—

Manner in which parental leave may be taken.

- (a) a continuous period of 14 weeks, or
- (b) with the agreement of the employer or representatives of the employer and other employers and the employee or representatives of the employee and other employees, a number of periods each of which comprises—
 - (i) one or more days on which, but for the leave, the employee would be working in the employment concerned,
 - (ii) one or more hours during which, but for the leave, the employee would be working in the employment concerned, or
 - (iii) any combination of periods referred to in *subparagraphs (i) and (ii)*.

(2) (a) Parental leave taken by an employee pursuant to *subsection (1)(b)* shall be such that the number of hours during which, but for the leave, the employee would be working in the employment concerned equals—

- (i) the number of hours during which the employee worked in the employment concerned in such continuous period of 14 weeks before the commencement of the leave as may be determined by the employee concerned and the employer, or
- (ii) if the employee and the employer fail to determine a period for the purposes of *subparagraph (i)*, 14 times the average number of hours per week during which the employee worked in the employment in each of the periods of 14 weeks ending immediately before the commencement of each week in which he or she takes any of the leave.

(b) In determining a period of 14 weeks referred to in *paragraph (a)*, holidays (including public holidays) to which the employee concerned is entitled or days on which he or she is absent from work on sick leave, maternity leave, adoptive leave, or *force majeure* leave shall be excluded and a corresponding number of days immediately before the commencement of the period shall be included and time spent on parental leave by the employee shall be deemed to be time spent by him or her at work in the employment concerned.

(3) Where an employee is entitled to parental leave in respect of more than one child and the children concerned are not children of a multiple birth, the period of parental leave taken by him or her in any period of 12 months shall not, without the consent of the employer, exceed that provided for in *subsection (1)*.

Pt.II S.7

(4) (a) Where any holiday (other than a public holiday) to which an employee is entitled falls during a period of parental leave of the employee and on a day when (but for the leave and the holiday) the employee would be working in the employment concerned, the holiday shall be taken at such other time as may be determined by the employer concerned pursuant to section 20 of the Organisation of Working Time Act, 1997.

(b) Where any public holiday to which an employee is entitled falls during a period of parental leave of the employee and on a day when (but for the leave and the holiday) the employee would be working in the employment concerned, a day shall be added to the period of parental leave that the employee is entitled to take.

Notice of parental leave.

8.—(1) When an employee proposes to take parental leave, he or she shall, as soon as reasonably practicable but not later than 6 weeks before the commencement of the leave, give notice in writing of the proposal to his or her employer.

(2) A notice under *subsection (1)* shall specify the date of commencement of the parental leave concerned and its duration and the manner in which it is proposed to be taken and shall be signed by the employee concerned.

(3) Before the date of the confirmation document concerned, an employee may, by notice in writing signed by him or her and given to his or her employer, revoke a notice under *subsection (1)* given by him or her and, if the employee does so, he or she shall not be entitled to take parental leave at the time specified in the latter notice.

(4) Notwithstanding *subsection (1)*, where leave purporting to be parental leave is taken by an employee who is entitled to parental leave but who has not complied with *subsection (1)* in relation to the leave, the employer may, at his or her discretion, treat the leave as parental leave and this Act shall apply accordingly.

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

(6) An employee who has given a notice to his or her employer under *subsection (1)* shall, if the employer so requests, furnish to him or her such evidence as he or she may reasonably require in relation—

(a) in the case of a child as respects whom an adoption order is in force, to the adoptive parents, the date of birth of the child and the date of the making of the order, and

(b) in the case of any other child, to the employee being a parent of the child and the date of birth of the child.

Confirmation of parental leave.

9.—(1) Where an employee has given a notice under *section 8(1)* to his or her employer, they shall, not less than 4 weeks before the commencement of the parental leave concerned, prepare and sign a document (referred to in this Act as “a confirmation document”) specifying the date of commencement of the leave, its duration and the manner in which it will be taken.

(2) Where leave is treated as parental leave pursuant to *section 8(4)*, a confirmation document in relation to the leave shall be prepared and signed by the employer and the employee concerned as soon as may be. Pt.II S.9

(3) An employer shall retain a confirmation document signed by him or her and shall give a copy of it to the employee concerned who shall retain it.

10.—(1) Subject to this Act, when a confirmation document has been prepared and signed in accordance with *section 9*, the employee concerned shall not be entitled to work in the employment concerned during the period of parental leave specified in the document. Postponement, curtailment and variation of parental leave by parties concerned.

(2) Notwithstanding *subsection (1)*, if, after the date of a confirmation document (whether or not the period of parental leave to which it relates has commenced), the employer concerned or his or her successor and the employee concerned so agree, the leave or part of it may be postponed to such time as may be so agreed upon, the period of such leave may be curtailed in such manner and to such extent as may be so agreed upon or the form of the leave may be varied in such manner as may be so agreed upon, and in such a case the confirmation document shall be amended accordingly.

(3) Where parental leave is curtailed under *subsection (2)* or *Part IV*, the parental leave not taken by reason of the curtailment may be taken at such other time as may be agreed upon by the parties concerned.

11.—(1) Subject to this section, where an employee has given a notice under *section 8(1)* to his or her employer and the employer is satisfied that the taking of parental leave at the time specified in the notice would have a substantial adverse effect on the operation of his or her business, profession or occupation by reason of seasonal variations in the volume of the work concerned, the unavailability of a person to carry out the duties of the employee in the employment, the nature of those duties, the number of employees in the employment or the number thereof whose periods, or parts of whose periods, of parental leave will fall within the period specified in the said notice or any other relevant matters, the employer may, by notice in writing given to the employee not later than 4 weeks before the intended commencement of the leave, postpone the commencement of the leave to such time not later than 6 months after the date of commencement specified in the relevant notice under *section 8(1)* as may be agreed upon by the employer and the employee. Postponement by employer of parental leave.

(2) Before giving a notice under this section to an employee, an employer shall consult with the employee in relation to the proposed postponement of parental leave.

(3) A notice under *subsection (1)* shall contain a statement in summary form of the grounds for the postponement of the commencement of the parental leave concerned.

(4) The commencement of parental leave in respect of a particular child may not be postponed more than once under this section unless a ground for the postponement is seasonal variation in the volume of the work concerned; and, where that is a ground for the postponement, such commencement in respect of a particular child may not be postponed more than twice.

Pt.II S.11

(5) *Subsection (1)* does not apply to parental leave in relation to which a confirmation document has been signed by the parties concerned.

(6) If, solely because of the postponement under this section of the commencement of parental leave—

(a) the child concerned attains the age of 5 years, or

(b) in the case of a child who is the subject of an adoption order and who had attained the age of 3 years, but had not attained the age of 8 years, on or before the date of the making of that order, the period of 2 years beginning on that date expires during the period of parental leave to which the employee concerned is entitled,

then, the attainment or, as the case may be, the expiration, aforesaid shall be deemed, for the purposes of this Act, to have occurred after the end of the period of parental leave aforesaid.

(7) An employer shall retain a copy of a notice under this section given by him or her to an employee of his or hers and the employee shall retain the notice.

(8) In this section, references to parental leave include references to a period of parental leave specified in *section 7(1)(b)*.

Abuse of parental leave.

12.—(1) The entitlement to parental leave is subject to the condition that it is used to take care of the child concerned.

(2) Where an employer has reasonable grounds for believing that an employee of his or hers who is on parental leave is not using the leave for the purpose of taking care of the child concerned, the employer may, by notice in writing given to the employee, terminate the leave and the notice shall contain a statement in summary form of the grounds for terminating the leave and shall specify the day (being a day not later than the date of the end of the period of the leave specified in the confirmation document concerned nor, subject to the foregoing requirement, earlier than 7 days after the date of the receipt by the employee concerned of the notice).

(3) Where parental leave is terminated under *subsection (2)*, the employee concerned shall return to his or her employment on the day specified in the notice under that subsection concerned and any period between the date of such return and the date of the end of the period of the leave specified in the confirmation document concerned shall be deemed not to be parental leave.

(4) Where an employee gives his or her employer a notice under *section 8(1)* and the employer has reasonable grounds for believing that the employee is not entitled to the parental leave concerned, the employer may, by notice in writing given to the employee, refuse to grant the leave to the employee and, if the employer does so, the employee shall not be entitled to take the parental leave concerned.

(5) A notice under *subsection (4)* shall contain a statement in summary form of the grounds for refusing to grant the parental leave concerned.

(6) Where an employer proposes to give a notice under *subsection (2)* or *(4)* to an employee of his or hers, the employer shall, before

giving the notice, give notice in writing of the proposal to the employee and the notice shall contain a statement in summary form of the grounds for terminating, or, as the case may be, refusing to grant, the parental leave concerned and a statement that the employee may within 7 days of the receipt of the notice make representation to the employer in relation to the proposal; and any such representations made by an employee to an employer within the period aforesaid shall be considered by the employer before he or she decides whether to give a notice under *subsection (2)*, or as the case may be, *subsection (4)* to the employee.

(7) A person shall retain a notice under this section given to him or her and a copy of a notice under this section given by him or her.

13.—(1) An employee shall be entitled to leave with pay from his or her employment, to be known and referred to in this Act as “*force majeure* leave”, where, for urgent family reasons, owing to an injury to or the illness of a person specified in *subsection (2)*, the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable.

Leave on grounds of *force majeure*.

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

- (a) a person of whom the employee is the parent or adoptive parent,
- (b) the spouse of the employee or a person with whom the employee is living as husband or wife,
- (c) a person to whom the employee is in *loco parentis*,
- (d) a brother or sister of the employee,
- (e) a parent or grandparent of the employee, and
- (f) persons of such other (if any) class or classes as may be prescribed.

(3) When an employee takes *force majeure* leave, he or she shall, as soon as reasonably practicable thereafter, by notice in the prescribed form given to his or her employer, confirm that he or she has taken such leave and the notice shall specify the dates on which it was taken and contain a statement of the facts entitling the employee to *force majeure* leave.

(4) *Force majeure* leave shall consist of one or more days on which, but for the leave, the employee would be working in the employment concerned but shall not exceed 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months.

(5) A day on which an employee is absent from work on *force majeure* leave in an employment for part only of the period during which he or she is required to work in the employment on that day shall be deemed, for the purposes of *subsection (4)*, to be one day of *force majeure* leave.

PART III

Employment Rights

Protection of
employment rights.

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

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

(3) Where—

- (a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes parental leave, and
- (b) his or her employer considers that the employee's absence from employment while on parental leave would not be consistent with the continuance of the probation, training or apprenticeship,

the employer may require that the probation, training or apprenticeship be suspended during the period of the parental leave and be completed by the employee at the end of that period.

(4) An employee shall, while on *force majeure* leave, be regarded for all purposes relating to his or her employment as still working in the employment concerned and none of his or her rights relating to the employment shall be affected by the leave.

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

Return to work.

15.—(1) On the expiration of a period of parental leave (being, in a case where parental leave has been terminated under *section 12*, the period specified in the confirmation document concerned) (“the period”), the employee concerned shall be entitled to return to work—

- (a) with the employer with whom he or she was working immediately before the start of the period or, where during the employee's absence from work there was or were a change or changes of ownership of the undertaking in which he or she was employed immediately before the absence, the owner on the expiration of the period (“the successor”),
- (b) in the job that the employee held immediately before the commencement of the period, and

[1998.]

Parental Leave Act, 1998.

[No. 30.]

Pt.III S.15

(c) under the contract of employment under which the employee was employed immediately before the commencement of the 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 that is identical to the contract under which the employee was employed immediately before such commencement, and (in either case) under terms or conditions not less favourable to the employee than those that would have been applicable to him or her if he or 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 commencement of a period of parental leave to which he or she is entitled was not the employee's normal or usual job, he or she shall be entitled to return to work, either in his or 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 provision made under statute.

(3) Where, because of an interruption or cessation of work at an employee's place of employment, existing on the expiration of a period of parental leave taken by the employee, it is unreasonable to expect the employee to return to work on such expiration, 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.

16.—(1) Where an employee is entitled to return to work pursuant to *section 15* but it is not reasonably practicable for the employer to permit the employee to return to work in accordance with that section, the employee shall be entitled to be offered by his or her employer suitable alternative employment under a new contract of employment.

Right to alternative employment.

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

(a) it is of a kind that 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 his or her contract of employment immediately before the commencement of the period of absence from work while on parental leave.

PART IV

Resolution of Disputes

17.—In this Part—

“Dispute”.

“dispute” shall be construed in accordance with *section 18*.

Pt.IV
Reference of
disputes to rights
commissioner.

18.—(1) This Part does not apply to a member of the Defence Forces.

(2) Any dispute or difference between an employee and his or her employer relating to the entitlements of the employee under this Act (or to any matter arising out of or related to those entitlements or otherwise arising under this Act) other than a dispute or difference—

(a) relating to a dismissal from employment, including a dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 1993,

(b) consisting of a question to which section 39(15) of the Redundancy Payments Act, 1967, applies, or

(c) a dispute to which section 11 of the Minimum Notice and Terms of Employment Act, 1973, applies,

may be referred by either of those parties to a rights commissioner, and in the subsequent provisions of this Part “dispute” means a dispute or difference which is or may be referred as aforesaid.

(3) A rights commissioner shall hear the parties to a dispute and receive any relevant evidence tendered by either of them.

(4) A reference under *subsection (2)* shall be made by giving to a rights commissioner a notice in writing containing such particulars (if any) as may be prescribed and a copy of the notice shall be given by the commissioner to the other party to the dispute.

(5) A notice under *subsection (4)* shall be given as soon as reasonably may be after the occurrence of the dispute concerned and in any event not later than 6 months after the occurrence of the dispute.

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

(7) A rights commissioner shall furnish a copy of each decision made by him or her under this Part to the Tribunal.

Appeal from
decision of rights
commissioner.

19.—(1) A party concerned may appeal to the Tribunal from a decision or direction of a rights commissioner under *section 21* and the Tribunal shall receive any relevant evidence tendered by a party to the dispute.

(2) An appeal under this section shall be initiated by a party to the dispute concerned giving to the Tribunal, as soon as may be and in any event not later than 4 weeks from the date on which the decision was given to the party, 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 person whose evidence has been, is being or is to be given before the Tribunal, or who produces or sends a document to the Tribunal, pursuant to a notice under *subsection (4)* or who is required by such a notice to give evidence or produce a document to the Tribunal or to attend before the Tribunal and there to give evidence or produce a document shall be entitled to the same privileges and immunities as if the person were a witness before the High Court.

(4) The Tribunal may, by giving notice in that behalf in writing, require any person to attend before the Tribunal on a date and at a time and place specified in the notice and there to give evidence and to produce any document in his or her possession or power specified in the notice or to send to the Tribunal any document in his or her possession or power specified in the notice or require a person in attendance before the Tribunal pursuant to a notice under this subsection to produce to the Tribunal any document in his or her possession or power specified in the requirement. Pt.IV S.19

(5) Paragraphs (a) and (e) of subsection (17) of section 39 of the Redundancy Payments Act, 1967, shall apply for the purposes of this section as it applies for the purposes of the said section 39 with the modification that “£1,500” shall be substituted for “£150” and with any other necessary modifications.

(6) Proceedings for an offence under the said subsection (17), as applied by this section, may be brought and prosecuted by the Minister.

(7) If a person gives false evidence before the Tribunal in proceedings under this section in such circumstances that, if the person had given the evidence before a court, the person would be guilty of perjury, the person shall be guilty of an offence and shall be liable on conviction on indictment thereof to the penalties applying to perjury.

20.—(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. Appeal to High Court on point of law.

(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.

21.—(1) On the hearing of a dispute, a rights commissioner or the Tribunal shall— Redress.

(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, in the decision or determination, as the case may be, 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) Under *subsection (1)*, the rights commissioner or the Tribunal may order such redress for the party concerned as the rights commissioner or the Tribunal, as the case may be, considers appropriate, having regard to all the circumstances and to the provisions of this Act, and specifies, including either or both of the following:

(a) the grant of parental leave of such length to be taken at such time or times and in such manner as may be so specified,

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

Pt.IV S.21

(3) Compensation under *subsection (2)(b)* shall be of such amount as the rights commissioner or the Tribunal deems just and equitable having regard to all the circumstances but shall not exceed 20 weeks' remuneration in respect of the employee's employment calculated in such manner as may be prescribed.

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

(5) A rights commissioner or the Tribunal may, if the commissioner or the Tribunal considers it reasonable to do so, having regard to the illness or other incapacity of the employee concerned or any other circumstance direct that parental leave be taken at a time that does not accord with *section 6(3)*.

(6) Without prejudice to the generality of *subsections (1) and (2)*, where, on a reference under *section 18(2)* or an appeal under *section 19(1)*, a rights commissioner or the Tribunal is satisfied that the taking of parental leave at the time specified in the notice under *section 8(1)* concerned would have a substantial adverse effect by reason of any of the matters specified in *section 11(1)*, the commissioner or the Tribunal, as the case may be, may, if the commissioner or the Tribunal considers it reasonable to do so, direct that the commencement of the leave be postponed for a specified period (whether or not being the period specified in the relevant notice under *section 11(1)*).

(7) Without prejudice to the generality of *subsections (1) and (2)*, where, on a reference under *section 18(2)* or an appeal under *section 19(1)*, a rights commissioner or the Tribunal considers that it is reasonable to do so because of a serious and substantial change in any circumstances affecting the employer or the employee, the commissioner or the Tribunal may direct that the period of parental leave concerned be curtailed or that its form be varied or its commencement postponed for a specified period or that parental leave not taken by reason of curtailment as aforesaid be taken at a specified time.

(8) Where appropriate, the confirmation document concerned shall be amended by the parties to it so as to accord with a decision, determination or direction under this section.

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

Enforcement of decisions of rights commissioner and determinations of Tribunal.

22.—(1) (a) If a person fails or refuses to comply with a decision of a rights commissioner under this Part ("a decision"), or a determination of the Tribunal under this Act ("a determination"), the Circuit Court shall, on application to it in that behalf by—

(i) the other party concerned, or

(ii) the Minister, if he or she is of opinion that it is appropriate to do so having regard to all the circumstances,

make an order directing that party to carry out the decision or determination in accordance with its terms.

(b) In *paragraph (a)*, the reference to a decision or a determination 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. Pt.IV S.22

(2) Notwithstanding *subsection (1)*, where, in proceedings under that subsection, the Circuit Court is satisfied that, owing to lapse of time, it would not be possible to comply with an order under that subsection, that Court shall make an order providing for such redress as it considers appropriate having regard to the provisions of this Act and all the circumstances.

(3) 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 employer concerned 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 4 weeks after the date on which the decision or determination concerned 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.

PART V

Miscellaneous

23.—(1) The giving of a notice or other document to a person for the purposes of proceedings under this Act may be effected by delivering it to the person or by sending a copy of it by registered prepaid post in an envelope addressed to the person at the person's last known residence or place of business. Notices.

(2) In the case of a company to which the Companies Act, 1963, applies, such a document may be given by delivering it, or sending a copy of it 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 an unincorporated body of persons, such a document may be given by sending a copy of it to the body at any place in the State where it carries on business or in such other manner as an originating summons may be served on the body under rules of court.

(4) A rights commissioner may, if he or she considers it reasonable to do so having regard to all the circumstances, extend by a specified period (not exceeding 6 weeks) the period of time within which a notice under this Act (other than *section 19(2)*) is required to be given.

(5) The Tribunal may, if it considers it reasonable to do so having regard to all the circumstances, extend by a specified period the time within which a notice under *section 19(2)* is required to be given.

(6) Time may be extended under *subsection (4)* or *(5)* after the expiration of the period of time concerned.

[No. 30.] *Parental Leave Act, 1998.* [1998.]

Pt.V
Winding up and
bankruptcy.

24.—(1) There shall be included among the debts that, 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, any compensation payable under this Act 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 of court.

(2) There shall be included among the debts that, 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, any compensation payable under this Act 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 rules of court.

Amendment of
enactments.

25.—(1) The Redundancy Payments Act, 1967, is hereby amended by the substitution in paragraph 5(1) of Schedule 3 of the following clause for clause (d) (inserted by the Maternity Protection Act, 1994):

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

(2) Section 6 of the Unfair Dismissals Act, 1977, is hereby amended—

(a) by the insertion in subsection (2), after paragraph (d), of the following paragraph:

“(dd) the exercise or proposed exercise by the employee of the right to parental leave or *force majeure* leave under and in accordance with the *Parental Leave Act, 1998*,”

and

(b) the insertion, after subsection (2A) (inserted by the Maternity Protection Act, 1994), of the following subsection:

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

(3) An employee who is entitled to return to work in the employment concerned in accordance with *section 15* but is not permitted by his or her employer to do so—

(a) shall be deemed to have been dismissed on the date on which he or she was entitled to return to work as aforesaid and the dismissal shall be deemed, for the purposes of the Unfair Dismissal Acts, 1977 to 1993, to have been an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal,

[1998.] *Parental Leave Act, 1998.* [No. 30.]

(b) shall be deemed for the purposes of the Redundancy Payments Acts, 1967 to 1991, to have been dismissed by reason of redundancy on the date aforesaid, and

Pt.V S.25

(c) shall be deemed for the purposes of the Minimum Notice and Terms of Employment Acts, 1973 to 1991, to have had his or her contract of employment with his or her employer terminated on the date aforesaid.

(4) The Organisation of Working Time Act, 1997, is hereby amended—

(a) in section 15, by the insertion in subsection (4), after paragraph (a), of the following paragraph:

“(aa) any period during which the employee was absent from work while on parental leave or *force majeure* leave,”,

and

(b) in section 16, by the insertion in subsection (5), after paragraph (c), of the following paragraph:

“(cc) any period during which the employee was absent from work while on parental leave or *force majeure* leave,”.

(5) The Employment Equality Act, 1998, is hereby amended by the insertion in section 39, after paragraph (b), of the following paragraph:

“(bb) to provide information to the public on the working of the *Parental Leave Act, 1998*,”.

26.—(1) Section 6 of the Protection of Employees (Employers’ Insolvency) Act, 1984 (as amended by the Maternity Protection Act, 1994) shall be amended in accordance with this section.

Extension of Protection of Employees (Employers’ Insolvency) Act, 1984.

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

“(II) a decision, determination or order under Part V of the Maternity Protection Act, 1994, or *Part IV* of the *Parental Leave Act, 1998*,”.

(3) In subsection (4)(c)—

(a) for subparagraph (iv) (other than clauses (I) and (II) thereof) there shall be substituted—

“(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, or *Part IV* of the *Parental Leave Act, 1998*, relates unless—”,

and

(b) for subparagraph (v) (other than clauses (I) and (II) thereof) there shall be substituted—

“(v) A payment shall not be made under this section in respect of an amount to which a determination

[No. 30.] *Parental Leave Act, 1998.* [1998.]

Pt.V S.26

under Part V of the Maternity Protection Act, 1994, or *Part IV* of the *Parental Leave Act, 1998*, relates unless—”.

Records.

27.—(1) An employer shall make a record of the parental leave and *force majeure* leave taken by his or her employees showing the period of employment of each employee and the dates and times upon which each employee was on parental leave or *force majeure* leave.

(2) A record made under this section shall be retained by the employer concerned for a period of 8 years and, if the Minister specifies the form of such records (which he or she is hereby empowered to do), the record shall be in that form or a form to the like effect.

(3) Notices, or copies of notices, required by this Act to be retained by a person shall be retained by the person for a period of one year.

(4) An employer who contravenes *subsection (1) or (2)* of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(5) An inspector (within the meaning of the Organisation of Working Time Act, 1997) may, for the purposes of this section, exercise any of the powers conferred on him or her by that Act.

(6) Proceedings for an offence under this section may be brought and prosecuted by the Minister.

Review of Act.

28.—The Minister shall, not earlier than 2 years and not later than 3 years after the commencement of this Act, after consultation with persons whom he or she considers to be representative of employers generally and persons whom he or she considers to be representative of employees generally, conduct a review of the operation of this Act and shall prepare a report in writing of the findings of the review and shall cause copies of the report to be laid before each House of the Oireachtas.