

**Reference No:** E103/1/79; **Date:** 31/01/97

**Circular 2/1997:- Adoptive Leave**

*A Dhuine Uasail*

1. I am directed by the Minister for Finance to refer to the Adoptive Leave Act, 1995 and to say that the arrangements applying to civil servants in relation to adoptive leave are, in general, as specified in that Act. This Circular provides a summary of the main provisions of the Adoptive Leave Act, 1995 (referred to in this Circular as "the Act") and the relevant Statutory Instruments as they apply to civil servants. This Circular supersedes Circular 20/83 and all previous directives and/or clarifications to Personnel Officers in relation to adoptive leave.

**General**

2. The Adoptive Leave Act, 1995 came into effect on 20 March 1995. It should be read in conjunction with its related Statutory Instruments which currently 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*

3. Subject to the conditions outlined in (a) - (f) below, adoptive leave is available to all women civil servants and to male civil servants who are sole male adopters as defined in Section 2 of the Adoptive leave Act, 1995. The term "adopting officer" as used below means adopting mother or sole male adopter.

(a) Adoptive leave will consist of 10 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 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 must be deemed for all purposes (other than remuneration) 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.

(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 fourteen weeks (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. The Act does not confer an entitlement to remuneration while on adoptive leave. However, Section 4(4) of the Act allows an employer to include an additional provision provided it makes the arrangement more favourable to an adopting parent than if that provision were omitted. Therefore, subject to paragraph 5 below, a civil servant on adoptive leave will be given full pay, except where s/he has been appointed for a fixed term of less than 26 weeks. An officer who has been appointed for a fixed term of less than 26 weeks will be given the same rate of pay s/he would receive if s/he were absent on sick leave; as In the amount of payment (if any) may vary according to the length of continuous service given, it would be advisable to check with the Personnel Section.

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 Welfare. Information about this allowance is available from Personnel Units in re Departments/Offices. An officer on adoptive leave who is entitled to adoptive benefit from the Department of Social Welfare, 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 s/he

(i) signs a mandate authorising the Department of Social Welfare to pay any benefit due re 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 Welfare 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.

**Additional adoptive leave**

7. At the end of adoptive leave an officer is entitled to take further leave, known as "additional adoptive leave" of up to four consecutive weeks immediately following 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 Act.

9. Absence while on additional adoptive leave does not reckon for any purpose. An officer on additional adoptive leave is not given the benefit of any public holiday falling within the period of additional adoptive leave unless it falls on the first or last day of the leave. No payment will be made in respect of an absence on additional adoptive leave.

#### **Adoptive leave for fathers**

10. Under certain circumstances, if the adopting mother dies within fourteen weeks of the day of placement, an adopting father (who is not a sole male adopter as defined in the Act) may be entitled to leave of up to fourteen weeks. Details of the conditions governing such leave are available from Personnel Section.

#### **Resolution of disputes**

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

#### **Confidentiality**

12. 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**

13. Queries in relation to this Circular should be addressed to the Personnel Section of your Department. Personnel Officers should read this Circular in conjunction with Confidential Circular 1/97 (Adoptive Leave - Information for Personnel Officers).

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**J McGovern**  
*Assistant Secretary*