



STATUTORY INSTRUMENTS.

S.I. No. 442 of 2016



SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (NO. 2) (PATERNITY BENEFIT)
REGULATIONS 2016

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SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) (AMENDMENT) (NO. 2) (PATERNITY BENEFIT) REGULATIONS 2016

I, LEO VARADKAR, Minister for Social Protection, in exercise of the powers conferred on me by section 4 (adapted by the Social and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 186 of 2010)) of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), and by sections 61B and 61E (inserted by section 31 of the Paternity Leave and Benefit Act 2016 (No. 11 of 2016)), 244, 247 and 255 of the Social Welfare Consolidation Act 2005, hereby make the following Regulations:

Citation and construction

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Paternity Benefit) Regulations 2016.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2016 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2016.

Interpretation

2. In these Regulations “Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

Commencement

3. These Regulations come into operation on 1 September 2016.

Definitions

4. Article 3 of the Principal Regulations is amended by the insertion of the following definition:

“‘paternity leave’ has the meaning assigned to it by section 6(1) of the Paternity Leave and Benefit Act 2016 (No. 11 of 2016);”.

Paternity benefit

5. Part 2 of the Principal Regulations is amended by the insertion of the following Chapter after Chapter 4:

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 9th August, 2016.

“CHAPTER 4A

*Paternity Benefit**Definitions*

43A. In this Chapter—

‘expected week of confinement’ has the meaning assigned to it by section 47(1)(a);

‘relevant day’ has the meaning assigned to it by section 61A(1);

‘relevant parent’ has the same meaning as it has in section 61A(1);

‘surviving parent’ has the meaning assigned to it by section 61A(1).

Expected week of confinement and duration of paternity benefit in certain cases

43B. (1) The expected week of confinement to be specified in any certificate pursuant to section 61B(1)(b)(ii)(I) shall not be more than 16 weeks after the week in which the certificate is given.

(2) Where in respect of a claim to paternity benefit it is certified by a registered medical practitioner or otherwise to the satisfaction of an officer of the Minister that a woman has been confined, and no such certificate as is referred to in clause (I) of section 61B(1)(b)(ii) has been given, the said clause shall for the purpose of that claim, be modified and shall apply as if the said clause required that it had been certified by a registered medical practitioner or otherwise to the satisfaction of an officer of the Minister that the woman concerned had been confined.

(3) In the case of a person to whom sub-article (2) applies, paternity benefit shall, subject to article 43D, be payable for such 2 week period as may be determined by a deciding officer.

Volunteer development workers — qualifying conditions

43C. (1) (a) Subject to paragraph (b), a volunteer development worker shall be entitled to paternity benefit where that person would otherwise qualify therefor but for the fact that the contribution conditions in section 61C are not satisfied.

(b) For the purposes of paragraph (a), the claimant must have qualifying contributions in respect of not less than 39 contribution weeks in the period beginning with the person’s entry into insurance and ending immediately before the relevant day.

(2) (a) Subject to paragraph (b), a person who ceases to be a volunteer development worker shall be entitled to paternity benefit in respect of any claim made in the benefit year in which that person returns to the State from a developing country or in the next succeeding benefit year where the person would otherwise qualify

therefor but for the fact that the contribution conditions in section 61C are not satisfied.

- (b) For the purposes of paragraph (a), the claimant must have qualifying contributions in respect of not less than 39 contribution weeks in the period beginning with the person's entry into insurance and ending immediately before the relevant day.

Disqualification

43D. (1) Subject to sub-article (2), a relevant parent or a surviving parent, as the case may be, shall be disqualified for receiving paternity benefit for such period as may be determined by a deciding officer if, during the period for which the benefit is payable, the relevant parent or surviving parent, as the case may be, engages in any form of insurable employment, insurable (occupational injuries) employment, insurable self-employment, any employment referred to in paragraph 1, 2, 3 or 6 of Part 2 of Schedule 1 to the Principal Act or any self-employment referred to in paragraph 1 or 5 of Part 3 of Schedule 1 to the said Act.

(2) A disqualification referred to in sub-article (1) shall commence not earlier than the first day on which the relevant parent or surviving parent, as the case may be, engages in any employment referred to in sub-article (1).

Postponement of paternity benefit in certain circumstances

43E. For the purposes of section 61B(9), the payment of paternity benefit may be postponed to the date of confinement and shall be payable within the period specified in section 61B(7)(b)(ii).

Postponement of paternity benefit during hospitalisation of child

43F. For the purposes of section 61B(10), the maximum period for which the payment of paternity benefit may be postponed is 6 months.”.

Information to be given when making a claim

6. Article 181 of the Principal Regulations is amended by the substitution of the following sub-article for sub-article (3):

“(3) The employer of a claimant for maternity benefit, adoptive benefit or paternity benefit, as the case may be, shall, on being so required by an officer of the Minister, furnish to the Minister, the following information relating to that claimant—

(a) certification that the claimant is entitled to—

(i) maternity leave under the Act of 1994,

(ii) adoptive leave under the Adoptive Leave Act 1995 (No. 2 of 1995),

or

(iii) paternity leave under the Paternity Leave and Benefit Act 2016 (No. 11 of 2016),

as the case may be,

- (b) the amount of the claimant's gross earnings derived from that employment in respect of any period, and
- (c) any other relevant particulars that may be required for the purposes of determining a claim for maternity benefit, adoptive benefit or paternity benefit, as the case may be.”.

Nomination of employer to receive payment of certain benefits

7. Article 201A(1) (inserted by article 2 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 6) (Payments to Nominated Persons) Regulations 2015 (S.I. No. 408 of 2015)) of the Principal Regulations is amended—

- (a) in paragraph (c), by the substitution of “benefit,” for “benefit, and”,
- (b) in paragraph (d), by the substitution of “benefit, and” for “benefit.”, and
- (c) by the insertion of the following paragraph after paragraph (d):

“(e) paternity benefit.”.

Payment of guardian’s payment with other social welfare payments

8. Article 222 of the Principal Regulations is amended—

- (a) in sub-article (2), by the substitution of “adoptive benefit, paternity benefit” for “adoptive benefit”, and
- (b) in sub-article (3), by the insertion of the following paragraph after paragraph (d):

“(da) paternity benefit.”.

Payment of maternity, health and safety, adoptive or paternity benefit at reduced rate with other social welfare payments

9. The Principal Regulations are amended by the substitution of the following article for article 223A (inserted by article 4 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 1) (Overlapping Benefits) Regulations 2012 (S.I. No. 38 of 2012)):

“Payment of maternity, health and safety, adoptive or paternity benefit at reduced rate with other social welfare payments

223A. (1) Notwithstanding subsection (1) and (2) of section 247, where in respect of any period maternity benefit, health and safety benefit, adoptive benefit or paternity benefit and any payment specified in sub-article (7) would be payable to or in respect of a person,

such maternity benefit, health and safety benefit, adoptive benefit or paternity benefit, as the case may be, and such payment specified in sub-article (7) may, subject to article 223E, be paid, in the manner provided for in this article, to or in respect of that person during that period.

(2) Subject to sub-articles (3) to (7), where maternity benefit, health and safety benefit, adoptive benefit or paternity benefit is payable in accordance with sub-article (1) in respect of any period—

(a) no increase in that benefit shall be paid in respect of a qualified child during that period, and

(b) such maternity benefit, health and safety benefit, adoptive benefit or paternity benefit (exclusive of any increase in respect of a qualified child, where appropriate) shall be reduced by half during that period.

(3) Where in respect of any period a person is in receipt of—

(a) widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension or a payment referred to in paragraph (a) of the definition of 'relevant payment' in section 178(1) at a rate less than that specified in Part 1 of Schedule 2 to the Principal Act, or

(b) widow's (non-contributory) pension, widower's (non-contributory) pension, surviving civil partner's (non-contributory) pension, one-parent family payment or a payment referred to in paragraph (b) or (c) of the definition of 'relevant payment' in section 178(1) at a rate less than that specified in Part 1 of Schedule 4 to the Principal Act by reason of means, and during that period that person is also entitled to maternity benefit, health and safety benefit, adoptive benefit or paternity benefit, the amount payable to that person by way of such maternity benefit, health and safety benefit, adoptive benefit or paternity benefit shall be calculated in accordance with sub-articles (4) and (5).

(4) The amount of maternity benefit, health and safety benefit, adoptive benefit or paternity benefit payable to or in respect of a person to whom sub-article (3) applies shall be the aggregate of—

(a) the difference between the amount of such reduced pension or payment specified in paragraph (a) or (b) of sub-article (3) and the maximum scheduled rate of such pension or payment, as the case may be, appropriate to that person's circumstances, and

(b) one-half of the rate of maternity benefit, health and safety benefit, adoptive benefit or paternity benefit, as the case

may be, (exclusive of any increase in respect of a qualified child, where appropriate) payable to that person,

but the amount of benefit so payable shall not exceed—

- (i) in the case of maternity benefit, the rate of such benefit payable in accordance with section 49 and, where paragraph (b) of section 49(1) applies, the rate of such maternity benefit shall be inclusive of any increase in respect of a qualified child,
- (ii) in the case of health and safety benefit, the rate of such benefit appropriate to that person's circumstances (inclusive of any increase in respect of a qualified child),
- (iii) in the case of adoptive benefit, the rate of such benefit payable in accordance with section 60 and, where paragraph (b) of section 60(1) applies, the rate of such adoptive benefit shall be inclusive of any increase in respect of a qualified child, and
- (iv) in the case of paternity benefit, the rate of such benefit payable in accordance with section 61D (inclusive of any increase in respect of a qualified child).

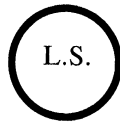
(5) In sub-article (4) 'scheduled rate' means—

- (a) the rate of widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension or a payment referred to in paragraph (a) of the definition of 'relevant payment' in section 178(1), appropriate to the person's circumstances, as set out in Part 1 of Schedule 2 to the Principal Act, or
- (b) the rate of widow's (non-contributory) pension, widower's (non-contributory) pension, surviving civil partner's (non-contributory) pension, one-parent family payment or a payment referred to in paragraph (b) or (c) of the definition of 'relevant payment' in section 178(1), appropriate to the person's circumstances, as set out in Part 1 of Schedule 4 to the Principal Act, as the case may be.

(6) Notwithstanding sub-articles (1) to (5), maternity benefit, health and safety benefit, adoptive benefit or paternity benefit shall not be payable to or in respect of a person in respect of any period during which that person is in receipt of a payment specified in sub-article (7) and is also in receipt of a blind pension payable in accordance with article 224.

(7) The following payments are specified for the purposes of sub-articles (1) and (6)—

- (a) death benefit by way of widow's pension, widower's pension or surviving civil partner's pension,
- (b) widow's (contributory) pension, widower's (contributory) pension or surviving civil partner's (contributory) pension,
- (c) a payment referred to in paragraphs (a) to (c) of the definition of 'relevant payment' in section 178(1),
- (d) widow's (non-contributory) pension, widower's (non-contributory) pension or surviving civil partner's (non-contributory) pension, or
- (e) one-parent family payment.”.



GIVEN under my Official Seal,
3 August 2016.

LEO VARADKAR,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Paternity Leave and Benefit Act 2016 provides for 2 weeks of paternity leave and an associated social welfare benefit. Part 5 of that Act amends the Social Welfare Consolidation Act 2005 to provide for the new social welfare payment to be known as paternity benefit.

These Regulations, which come into effect from 1st September 2016, insert a new Chapter 4A into Part 2 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

The Regulations—

- provide that persons employed abroad as volunteer development workers may qualify for paternity benefit without having to satisfy the condition attached to the scheme that the person be in employment. They also set out the contribution conditions to be satisfied by a volunteer development worker in order to qualify for paternity benefit,
- outline the circumstances where a person may be disqualified from receiving paternity benefit and provide for the period of postponement of paternity benefit in certain circumstances,
- specify the information to be supplied by employers for the purpose of determining a claim to paternity benefit,
- provide that recipients of paternity benefit may nominate their employer to receive that benefit on their behalf, and
- provide for consequential amendments to existing claims and payments and overlapping payments provisions arising from the introduction of the new scheme.

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