

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Paid Parental Leave Act 2010

Paid Parental Leave Amendment (More Support for Working Families) Rules 2024

Purpose

The Paid Parental Leave Amendment (More Support for Working Families) Rules 2024 (**Amendment Rules**) amend the *Paid Parental Leave Rules 2021 (Rules)*, to support the changes made by the *Paid Parental Leave Amendment (More Support for Working Families) Act 2024 (Amendment Act)* to the *Paid Parental Leave Act 2010 (Act)*. The changes made by the Amendment Rules include:

- Update references to the maximum number of concurrent Paid Parental Leave (**PPL**) days, in accordance with the increased maximum allowed by the Amendment Act.
- Introduce an additional prescribed condition by which a partnered claimant is not subject to the reserved period when two or more children are born as part of the same birth and any of those children is stillborn or has died.
- Introduce an additional prescribed condition by which a partnered claimant is not subject to the reserved period when two or more children are born as part of the same birth and any of those children:
 - were required to remain in hospital for or are likely to remain in hospital for a period of at least 18 weeks; or
 - has developed a complication or illness during gestation or immediately following the birth which requires higher care needs and medical care or treatment for a period of at least 18 weeks.
- Introduce a prescribed condition for claimants for children born because of a surrogacy arrangement.

Background

Changes to the Paid Parental Leave scheme

In 2023, the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* amended the Act to make the PPL scheme more accessible, more flexible and more gender-neutral. The Amendment Act enacts legislation to fully implement the Government's 2022-23 October Budget Measure to enhance and expand the PPL scheme.

Changes made by the Amendment Act include:

- Increasing the maximum flexible PPL day entitlement by 2 weeks each year from 1 July 2024 to 26 weeks (130 flexible PPL days) from 1 July 2026.
- Increasing the 'reserved period' for partnered claimants by 1 week each year from 1 July 2025 to 4 weeks (20 flexible PPL days) from 1 July 2026.
- Increasing the number of days that can be taken concurrently by multiple claimants to 4 weeks (20 flexible PPL days) from 1 July 2025.
- Making minor and technical amendments relating to eligibility for PPL for persons who claim PPL in exceptional circumstances, and the application of the work test to fathers and partners where the child is born prematurely.

Paid Parental Leave Rules

The Rules are made under section 298 of the Act for a number of purposes required or permitted by the Act. Among other things, the Amendment Rules amend the Rules to:

- Update references to the maximum number concurrent PPL days in accordance with the increased maximum allowed by the Amendment Act.
- Increase the period for which a birth mother relinquishing a child (for example, through adoption or by way of a surrogacy arrangement) is eligible for PPL.
- Introduce an additional prescribed condition by which a partnered claimant is not subject to the reserved period when a two or more children are born as part of the same birth and any of those children is stillborn or has died.
- Introduce an additional prescribed condition by which a partnered claimant is not subject to the reserved period when two or more children are born as part of the same birth and any of those children:
 - were required to remain in hospital for or are likely to remain in hospital for a period of at least 18 weeks; or
 - has developed a complication or illness during gestation or immediately following the birth which requires higher care needs and medical care or treatment for a period of at least 18 weeks.
- Introduce a prescribed condition for claimants for children born because of a surrogacy arrangement.
- Update references to provisions which are amended and/or re-numbered by the Amendment Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amendment Rules are disallowable.

Eligibility for parental leave pay

A person is eligible for PPL on a flexible PPL day for a child if the person is eligible under section 31AA of the Act, and is not ineligible under section 31AB.

Subsection 31AA(2) of the Act provides that a person is eligible on a flexible PPL day if they satisfy the Australian residency test on both the flexible PPL day and child's day of birth, they are caring for the child on that day, they are performing no more than one hour of paid work on that day and the person satisfies the work and income tests on that day (if they have not previously satisfied these tests).

Subsection 31AA(3) of the Act provides that a person is eligible if the child is stillborn or has died and they would have been eligible under subsection 31AA(2), but for that occurring.

Subsection 31AA(4) of the Act applies to all claimants except special PPL claimants in exceptional circumstances if they satisfy circumstances prescribed in the PPL Rules pursuant to paragraph 31AA(4)(e). Section 9 of the PPL Rules made pursuant to this section allows claimants to maintain eligibility when the person is not caring for the child on a day for specified reasons, or is performing more than one hour of paid work on a day for specified reasons.

Subsection 31AA(5) of the Act applies only to special PPL claimants in exceptional circumstances if they satisfy circumstances prescribed in the PPL Rules pursuant to paragraph 31AA(5)(d) of the Act. Section 10 of the PPL Rules made pursuant to this section allows these claimants to maintain eligibility when the person is not caring for the child on a day for specified reasons, or is performing more than one hour of paid work on a day for specified reasons.

Ineligibility for parental leave pay

Section 31AB of the Act governs when a person is ineligible for PPL on a flexible PPL day. A claimant, assuming they meet the eligibility requirements of section 31AA is eligible until such time they are ineligible under section 31AB – which, in most circumstances will be when the limits prescribed by section 31ABA of the Act have been reached.

Subsections 31AB(2) to (6) specify the maximum number of flexible PPL days particular claimants can be eligible for.

Subsection 31AB(2) applies to claimants who are not PPL claimants in exceptional circumstances and sets the relevant maximum entitlement relating to the child as per section 31ABA(1) – which, for children born prior to 1 July 2024 is 100 flexible PPL days, increasing to 130 for a child born on or after 1 July 2026.

Subsection 31AB(3) applies to claimants who are not PPL claimants in exceptional circumstances, are partnered at the time of their first effective claim for PPL, and do not meet prescribed conditions of a rule made pursuant to paragraph 31AB(3)(d). This sets the relevant limit for the claimant as per section 31ABA(2) – which for children born prior to 1 July 2024 is 90 flexible PPL days, increasing to 110 for a child born on or after 1 July 2026. This reserves the remaining flexible PPL days for the child for another claimant or claimants, generally expected to be their partner.

Section 21 of the Rules, as amended by the Amendment Rules, prescribes conditions for the purposes of paragraph 31AB(3)(d) of the Act. These provide that subsection 31AB(3) will not apply, and hence the ‘reserved period’ will not apply when:

- the person’s partner is incapable of caring for the child;
- the child is stillborn or has died or another child born during the same multiple birth as the child was stillborn or has died;
- the claimant is experiencing family or domestic violence, or the impacts of family or domestic violence;
- the claimant’s partner is deployed outside Australia as a defence force member;
- the child, or if they were part of a multiple birth – another child of the birth, was required to remain in hospital after the child’s birth, or has developed a complication or illness which requires medical care or treatment; or
- the claimant is a birth mother relinquishing care of the child.

If these circumstances apply, subsection 31AB(3) will not apply to the claimant, and thus the claimant can be eligible up to the limits defined by subsection 31AB(2) and be exempt from the ‘reserved period’.

Subsection 31AB(4) applies to claimants who are PPL claimants in exceptional circumstances and do not meet prescribed conditions of a rule made pursuant to paragraph 31AB(5)(c). This functions to set the relevant maximum entitlement relating to the child as per section 31ABA(1) – which, for children born prior to 1 July 2024 is 100 flexible PPL days, increasing to 130 days for a child born on or after 1 July 2026.

Subsection 31AB(5) applies to claimants who are PPL claimants in exceptional circumstances and meet prescribed conditions of a rule made pursuant to Paragraph 31AB(5)(c). This functions to set the relevant maximum entitlement relating to the child as per section 31ABA(1) – which, for children born prior to 1 July 2024 is 100 flexible PPL days, increasing to 130 days for a child born on or after 1 July 2026.

The Amendment Rules will insert section 21A into the Rules to prescribe conditions for the purposes of paragraph 31AB(5)(c) of the Act.

The prescribed conditions will be met where:

- The child is born because of a surrogacy arrangement.
- The relevant claimant has a partner at the time the relevant claimant makes their first effective claim in relation to the child.
- The relevant claimant does not satisfy any of subsections 21(2) to (7) of the Rules.

Subsections 21(2) to (7) of the Amendment Rules are described above, and include circumstances where the claimant's partner is incapable of caring for the child, or the child is stillborn or requires medical treatment.

Subsection 31AB(6) applies to claimants who are PPL claimants in exceptional circumstances, are partnered at the time of their first effective claim for PPL, and meet prescribed conditions of a rule made pursuant to paragraph 31AB(5)(c) (including new section 21A of the Rules). This sets the relevant limit for the claimant as per section 31ABA(2) – which, for a child born prior to 1 July 2024 is 90 flexible PPL days, increasing to 110 days for a child born on or after 1 July 2026. This reserves the remaining flexible PPL days for the child for another claimant or claimants, generally expected to be their partner.

New section 21A of the Rules ensures total and reserved period limits apply in respect of children born under surrogacy arrangements in a manner similar to those that apply for children born under other arrangements or circumstances.

Commencement

The Amendment Rules commence in accordance with Section 2 of the Amendment Rules. These provide that:

- All parts of the Amendment Rules unless otherwise noted will apply on the later of the day after the Amendment Rules are registered and immediately after the commencement of the Amendment Act; and
- In respect of Schedule 1, Part 2 of the Amendment Rules (Items 16 to 18) only, these are to commence on 1 July 2024.

Application

The Amendment Rules will apply in accordance with Section 2 and Item 18 of the Amendment Rules. These provide that:

- All parts of the Amendment Rules unless otherwise noted will apply on the later of the day after the Amendment Rules are registered and immediately after the commencement of the Amendment Act; and
- In respect of Schedule 1, Part 2 of the Amendment Rules (Items 16 to 18) only, these are to commence on 1 July 2024.

Section 89 of the Rules, as inserted by item 18, provides that the effective exemptions to the reserved period created under new paragraph 21(3)(a) and subsection 21(6A) will apply in relation to a claim made on or after 1 July 2024 for a flexible PPL day on or after 23 March 2024.

This aligns with subsection 57A(2) of the Act, which provides that a claimant can make a claim for a flexible PPL day up to 100 days before the date of the claim, with 23 March 2024 being 100 days before 1 July 2024 – the earliest day permitted by the Act for this exemption to be claimed and apply.

Consultation

The broader changes to the PPL scheme included in the Amendment Act and supported by the Amendment Rules were informed by a variety of sources, including:

- advice from the Women’s Economic Equality Taskforce,
- advice from members of the public and recipients of the payment,
- pre-budget submissions from stakeholders,
- petitions from members of the public (including those formally presented to parliament),
- feedback from industry groups,
- feedback from research bodies, and
- the September 2022 Jobs and Skills Summit.

Consultation on the Amendment Act was informed by the Senate Community Affairs Legislation Committee Inquiry into the Parental Leave Amendment (More Support for Working Families) Bill 2023, and the Amendment Rules are informed by this process and the report of 5 February 2024.

Regulation Impact Statement (RIS)

An addendum Impact Analysis was completed in consultation with the Office of Impact Analysis (OIA) in relation to the changes contained in the Amendment Act – OIA23-04993.

Availability of independent review

References to the Act include the Rules under section 6 of the Act. Decisions made under or informed by the Amendment Rules are reviewable decisions. These decisions are subject to internal and external merits review under Chapter 5 of the Act.

Explanation of the provisions

Section 1 states that the name of the instrument is the *Paid Parental Leave Amendment (More Support for Working Families) Rules 2024*.

Section 2 specifies that the Amendment Rules commence as follows:

- For Sections 1 to 4 and Schedule 1, Part 1: the later of:
 - the day after it is registered on the Federal Register of Legislation; and
 - immediately after the commencement of the Amendment Act; and
- For Schedule 1, Part 2: 1 July 2024.

Section 3 provides that the Amendment Rules are made under the *Paid Parental Leave Act 2010*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 to the Amendment Rules contains the amendments to the Rules.

Item 1 omits “to 10” from the section 7A simplified outline of Part 1A. This is to reflect that the Amendment Act will increase the total days for which parental leave pay can be payable to more than one person to 20 days from 1 July 2025.

Item 2 omits “the total of 10 flexible PPL days” and substitutes “that total” in the section 7A simplified outline of Part 1A. This is to reflect that the Amendment Act will increase the total days for which parental leave pay can be payable to more than one person to 20 days from 1 July 2025.

Item 3 omits “of 10” and substitutes “number of” in subsection 7B(1). This is to reflect that the Amendment Act will increase the total days for which parental leave pay can be payable to more than one person to 20 days from 1 July 2025.

Item 4 omits “of 10” and substitutes “number of” in subsections 7B(2) and (5). This is to reflect that the Amendment Act will increase the total days for which parental leave pay can be payable to more than one person to 20 days from 1 July 2025.

Item 5 amends the section 8 simplified outline of Part 2 to specify that Subdivision C of Division 1 of Part 2 prescribes conditions relating to ineligibility for parental leave pay on a flexible PPL day for a child. This is to better describe the operation of that Subdivision to reflect the amendments and insertions made in sections 21 and the new section 21A (Items 11 to 15 described below).

Item 6 amends the heading to section 9 to reflect the amendments to subsection 31AA(4) of the Act made by the Amendment Act and to better describe the person(s) to which the section applies, being persons other than special PPL claimants in exceptional circumstances.

Item 7 repeals subsection 9(1) and substitutes it with a simplified condition reflecting the amendments to section 31AA(4) made by the Amendment Act.

Item 8 amends the heading to section 10 to reflect the amendments to subsection 31AA(5) made by the Amendment Act and better describe the person(s) to which the section applies, being special PPL claimants in exceptional circumstances.

Item 9 repeals subsection 10(1) and substitutes it with a simplified condition reflecting the amendments to section 31AA(5) of the Act made by the Amendment Act.

Item 10 repeals and replaces paragraph 13(1)(b) of the PPL Rules to reflect the increase to the period of eligibility for birth mothers relinquishing children, with different periods of eligibility based on the year of birth of the child – increasing from 20 weeks before 1 July 2024 to 26 weeks after 1 July 2026.

The existing and amended PPL Act and Rules refer to entitlements to parental leave on a particular ‘day’ and in total amounts of ‘days’. The Act assumes a 5 day week. The references in this item to ‘weeks’ means a week of 7 days.

Item 11 amends the heading to section 21 to reflect the amendments to section 31AB(3) of the Act made by the Amendment Act and to more clearly describe the person(s) to which the section applies - being claimants who were partnered at the time of their first effective claim for PPL and who fall under subsection 31AB(3), meaning claimants who are not in exceptional circumstances to make a PPL claim.

Item 12 amends the reference in subsection 21(1) to reflect the updated reference to subsection 31AB(3)(d) made by the Amendment Act.

Item 13 amends the reference in subsection 21(1) from ‘circumstances’ to ‘conditions’ to reflect the new terminology used in subsection 31AB(3)(d) of the Amendment Act.

Item 14 omits the references in subsection 21(2) and (5) to subparagraph 31AB(3)(a)(i) of the Act and replaces these with a reference to the claimant ‘*at the time the claimant made their first effective claim*’.

This is a technical amendment only without functional change as these subsections will continue to refer to the partner referred to in subsection 31AB(3).

This amendment is necessitated by the new section 21A (inserted by Item 15) which applies to claims that may fall under subsections 31AB(4), (5) and (6) of the Act. Section 21A refers to and utilises the circumstances prescribed by subsections 21(2) to (7) as criteria for satisfying section 21A(2)(c), which is then used to determine whether a claimant will have the “reserved period” applied to their PPL entitlement, or whether they are exempt.

Removing reference to subsection 31AB(3) functions to align the criteria applied for this purpose for both exceptional circumstances and non-exceptional circumstances claimants.

Item 15 inserts a new section 21A.

Section 21A of the Amendment Rules prescribes a condition for the purposes of paragraph 31AB(5)(c) of the Amendment Act, which is met where:

- the child is born because of a surrogacy arrangement;

- the relevant claimant has a partner at the time and the relevant claimant makes their first effective claim in relation to the child; and
- the relevant claimant does not satisfy any of subsections 21(2) to (7) of the Rules.

The Explanatory Memorandum to the *Paid Parental Leave (More Support for Working Families) Bill 2023* provides that new subsections 31AB(5) and (6) of the Act ‘could prescribe conditions where the child is born because of a surrogacy arrangement and the relevant claimant or their partner (if any) is the gaining parent in this arrangement’. Paragraph 31AB(5)(c) of the Act is also the primary mechanism by which a Rule can vary the conditions which attach to the operation of subsections 31AB(4), (5) and (6) (other than whether exceptional circumstances apply, which relates more to the standing of the claimant rather than their eligibility).

Accordingly, Section 21A has two purposes:

- Firstly, to prescribe conditions which attract the operation of subsections 31AB(5) and (6) of the Act, which operate to determine the maximum total and ‘reserved period’ for parents in a surrogacy arrangement; and
- Secondly, to prescribe conditions which will operate to cause subsection 31AB(5)(c) of the Act not to apply, and hence subsection 31AB(4) will apply instead which operates to exclude the application of the ‘reserved period’ and the relevant claimant will then be able to claim up to the maximum entitlement prescribed by subsection 31ABA(1) of the Act.

The first purpose is realised through a condition in paragraph 21A(2)(a) that the child subject of the claim is born because of a surrogacy arrangement.

The second purpose is realised through a condition in paragraph 21A(2)(c) that the claimant does not satisfy any of subsections 21(2) to (7). These conditions are that:

- the person’s partner is incapable of caring for the child;
- the child is stillborn or died or was part of a multiple birth and has died;
- the claimant is experiencing family or domestic violence, or the impacts of family or domestic violence;
- the claimant’s partner is deployed outside Australia as a defence force member;
- the child, or if they were part of a multiple birth – one child of the birth, was required to remain in hospital after the child’s birth, or has developed a complication or illness which requires medical care or treatment; or
- the claimant is a birth mother relinquishing care of the child.

If the claimant satisfies any of these conditions, then they will then not satisfy paragraph 21A(2)(c) of the Rules and thus will not satisfy paragraph 31AB(5)(c) of the Act which means that their ineligibility is determined by subsection 31AB(4) and the ‘reserved period’ will no longer apply to them.

New section 21A of the Rules ensures total and reserved period limits apply in respect of children born under surrogacy arrangements in a manner similar to those that apply for children born under other arrangements or circumstances.

Item 16 repeals and replaces subsection 21(3) of the Rules which is one of the conditions by which paragraph 31AB(3)(d) of the Act will not apply, and thus the claimant will be exempt from the application of the 'reserved period'.

This new subsection extends the existing condition to include not only circumstances where a child is stillborn or has died, but to circumstances where the child and another child were part of the same multiple birth and the other child is stillborn or has died.

This operates to allow for an exemption to the 'reserved period' in such circumstances, where under the existing Rules such an exemption would not be applicable.

Item 17 inserts a new subsection 21(6A) of the Rules which is one of the conditions by which paragraph 31AB(3)(d) of the Act will not apply, and thus the claimant will be exempt from the application of the 'reserved period'.

This new subsection establishes that a claimant will satisfy the subsection if the child and another child were born during the same multiple birth and either:

- the other child was required to remain in hospital after the other child's birth or was hospitalised immediately after the other child's birth, and the other child is likely to remain in hospital for a period of at least 18 weeks; or
- the other child developed a complication or illness during gestation or immediately following birth which requires higher care needs and medical care or treatment for a period of at least 18 weeks.

This operates to allow for an exemption to the 'reserved period' in such circumstances, where under the existing Rules such an exemption would not be applicable.

Item 18 inserts a new Division 4 and Section 89 in Part 12 of the Rules. This provides that the amendments made by Items 16 and 17 above apply in relation to a claim for parental leave pay for a child that specifies a flexible PPL day for the child that is on or after 23 March 2024 regardless of when the event or circumstance described in paragraphs 21(3)(a) or (b) or (6A)(a) or (b), as inserted by that Part, occurs.

Pursuant to section 57A(2) of the Act, a claim can be made in respect of a flexible PPL day up to 100 days before the day on which the claim is made, with 23 March 2024 being the earliest possible day for which a claim for a flexible PPL day can be made if the day is claimed on 1 July 2024.

Section 89 of the Rules functions to allow a person claiming a flexible PPL day on or after 1 July 2024, in respect of a flexible PPL day that is on or after 23 March 2024 but prior to 1 July 2024, to access the reserved period exemptions created by new subsections 21(3) and (6A).

An example would be if a child is part of a multiple birth on or after 23 March 2024 and the other child died between 23 March 2024 and 1 July 2024, then after 1 July 2024 the parent or non-parent carer of the child would be able to receive an exemption to the reserved period for flexible PPL day during that period.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Paid Parental Leave Amendment (More Support for Working Families) Rules 2024

The Paid Parental Leave Amendment (More Support for Working Families) Rules 2024 (Amendment Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Amendment Rules amend the Paid Parental Leave Rules 2021 (Rules), to support the changes to the Paid Parental Leave Act 2010 (the Act) made by the Paid Parental Leave Amendment (More Support for Working Families) Act 2024 (Amendment Act).

The Act provides for the Paid Parental Leave (PPL) scheme, which is a Government-funded scheme designed to provide financial support to parents to take time off work after the birth or adoption of a child. The Rules are subordinate legislation made by the Minister for Social Services under section 298 of the Act. The Rules complement the Act by making provisions for certain people in less usual or exceptional circumstances to be able to make a claim or be eligible when they would not otherwise have entitlement under the Act.

The PPL scheme currently provides for 20 weeks (100 days) of payment, with 2 weeks (10 days) reserved for each parent and allows parents to take up to 2 weeks (10 days) concurrently. The changes made by the Amendment Act include:

- Extending the payment by 2 weeks (10 days) each year from 1 July 2024 up to 26 weeks (130 days) from 1 July 2026.
- Extending the 'reserved period' by one week each year from 1 July 2025 up to 4 weeks (20 days) from 1 July 2026.
- Applying the reserved period to PPL claimants in exceptional circumstances who are the gaining parent in a surrogacy arrangement and their partner.
- Increasing the number of days that can be taken concurrently by multiple claimants to 4 weeks (20 days) from 1 July 2025.
- Clarify the eligibility criteria for claimants in special circumstances.

Changes to the Rules are necessary to reflect the changes to the Act. Consequential to changes in the Amendment Act, the Amendment Rules:

- Introduces a new provision to enable the reserved period to be applied to gaining parents in surrogacy arrangements under the Act, consistent with the treatment of other parents,
- Updates references to the number of days that can be taken concurrently to 20 for births and adoptions on or after 1 July 2025,

- Extends the period a birth mother relinquishing care of their child can receive PPL to be consistent with the length of the maximum PPL entitlement under the Bill,
- Removes references to claimant types and residency requirements that will now be included in the Act,
- Amends Act references to reflect number changes and new provisions under the Amendment Act.

In addition, the Amendment Rules prescribes additional circumstances in which a partnered claimant can be exempt from the reserved ‘use it or lose it’ period in the instance of a multiple birth.

The changes to the PPL scheme under the Amendment Rules are beneficial to eligible families. The changes support the implementation of the Amendment Act, which aims to provide more financial support to parents following a birth or adoption, encourage fathers and partners to take time off work after a birth or adoption, and provide greater flexibility in how families can use their entitlement.

Human rights implications

This legislative instrument engages the following rights:

- the right to social security,
- the right to protection and assistance for families,
- the right to just and favourable conditions of work,
- the right to maternity leave,
- the right to respect for the family; and
- the rights of the child.

The right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognises the right of everyone to social security, and Article 26 of the *Convention on the Rights of Children* recognises the right of every child to benefit from social security.

The Amendment Rules engages these rights by ensuring the changes to the PPL scheme made by the Amendment Act are reflected in the eligibility provisions for claimants in less usual circumstances under the Rules, which extends the benefits provided by the PPL scheme to more families and more children who would otherwise not be eligible.

The right to protection and assistance for families

In relation to the right to protection and assistance for families, Article 10(2) of the ICESCR recognises that special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

The instrument maintains the ability for birth parents to continue to access payment under the PPL scheme in less usual circumstances under the improved parameters introduced by the Amendment Act.

The instrument also engages these rights by extending the period in which a birth parent relinquishing care of their child can receive their entitlement to 26 weeks from 1 July 2026, to support post birth recovery.

The additional exemptions to the reserved period prescribed in the Amendment Rules will allow birth parents and other claimants to access the period of payment that would be reserved for their partner in certain circumstances involving a multiple birth.

The right to just and favourable conditions of work

The UN Committee on Economic, Social and Cultural Rights has commented that Article 7 of the ICESCR, regarding the right of everyone to the enjoyment of just and favourable conditions of work, requires States Parties to take steps to 'reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members'.

The Amendment Rules maintains the ability for birth parents to continue to access payment under the PPL scheme in less usual circumstances under the improved parameters introduced by the Amendment Act.

The right to maternity leave

The right to maternity leave is contained within Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and Article 10(2) of the ICESCR. Article 11(2)(b) of the CEDAW requires States Parties 'to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances'.

The Amendment Rules supports the changes to Amendment Act to increase the length of the financial support available to birth parents relinquishing care of the child, to support post birth recovery.

The right to respect for the family

The right to respect for the family under article 23 of the Covenant on Civil and Political Rights (CCPR) is closely related to the prohibition under article 17 of the CCPR on unlawful or arbitrary interference with family.

The CCPR General comment No.19: Article 23 provides that spouses should have equal rights and responsibilities in the family.

This instrument engages this right by supporting both gaining parents in surrogacy arrangements to take time off work after a birth or adoption, by extending the reserved period to these parents.

The rights of the child

Article 3 of the Convention on the Rights of Children requires legislative bodies to consider the best interests of the child as a primary consideration. The principle applies to all actions concerning children and requires active measures to promote their survival, growth, and wellbeing, as well as measures to support and assist parents and others who have day-to-day responsibility for ensuring recognition of children's rights.

This instrument engages this right by supporting the extension of the limit on concurrency to 20 days, providing benefits to children of having parents take time off work at the same time.

Conclusion

The Rules are compatible with human rights because they impact the right to social security, protection and assistance for families, maternity leave and equal treatment, in a beneficial manner.

The Hon Amanda Rishworth MP, Minister for Social Services