



Northern Ireland  
Assembly

Committee for Employment and Learning

# OFFICIAL REPORT (Hansard)

Parental Leave: DEL Briefing

1 May 2013



Rights to statutory paid and unpaid leave for working parents currently operate on a de facto UK basis, and any of the paid entitlements are administered by HM Revenue and Customs (HMRC).

The proposal is that mothers and primary adopters will continue to be entitled to take the full amount of their maternity and adoption leave and pay: 52 weeks' leave, with 39 weeks being paid at the statutory rate. There is no intention to create any pressure on mothers or primary adopters to share these entitlements or to return to work early. Rather, the objective is to create more choice and flexibility for working parents. Neither is there any intention to change the existing entitlement for fathers to take up two weeks' paternity leave and pay, again based on the statutory rate.

When a mother or primary adopter wants to share leave and pay, the new right to shared parental leave will make that possible. Once a mother or primary adopter ends their paid maternity or adoption leave, either by returning to work or reaching a previously specified date, the balance of that leave and pay entitlement will be available to both parents as shared parental leave and pay. Parents will need to agree what proportion of leave will be taken by each of them and agree that arrangement with their respective employers. Parents may be on leave separately or together in one-week blocks. That gets to the heart of it; they will take their own decisions, and sometimes it will suit working parents to be off together for particular childcare reasons. If agreement on multiple leave periods cannot be reached with employers, the default position is that a continuous block of leave must be taken by either parent.

Shared parental leave will replace the current and somewhat less flexible system of additional paternity leave and pay. That allows a child's father or secondary adopter to take the unused pay and leave as a single block but only after the mother or primary adopter has returned to work. Under the current arrangements, once the mother or primary adopter has returned to work, they cannot go back and use further leave. That identifies the flexibility of the proposed new arrangements. The new system will allow the remaining pay and leave to be available to both parents: each would be able to take time off in agreed patterns, which could include being off work alternatively or at the same time. Changes will also extend entitlement to marginal groups, such as parents who are fostering, adopting or using a surrogacy arrangement.

It is planned that the new rights will be introduced in GB from April 2015, but the timescales are more demanding than that. It will cover parents of babies who are born prematurely from late 2014, so will probably have to be in place and commenced from autumn 2014. That puts some pressure on the Northern Ireland Assembly to agree whether or not to follow the GB model. Given the urgency, the proposed consultation will focus on the GB proposals and ask whether these should be replicated and what alternatives should be explored. Following the consultation, the Minister will report the findings to the Committee and the Executive. If there is consensus from the consultation process that we should follow the GB approach, there are two legislative options. It will need primary legislation, so it could be through a dedicated Assembly Bill, or through a legislative consent motion, allowing the change to be made through the current Westminster legislation. Obviously, we will have to negotiate that arrangement with the GB officials.

A second proposal deals with the right to request flexible working. This will propose to extend the right to request flexible working to cover all employees rather than parents of children up to age of 17 or, if the child has a disability, up to age of 18, or for carers. In Great Britain, most employed parents and carers have a legal right to ask for a change in work patterns: a flexible working request. Their employer is legally obliged to consider the request and can turn it down only on established business grounds that are set out in the legislation. The UK Government want to make the right available to all employees in GB as well as improving the process for that request being placed and considered in line with better regulation principles. Their intention is that a code of practice will be developed.

It is envisaged that the new arrangements will operate from April 2015. The Department consulted on flexible working policy as recently as 2009, and, at that time, opinion was divided. Nevertheless, there is still stakeholder interest, and the Department proposes to consult. There is not the same time pressure. Whatever the outcome of the consultation, we could take forward the flexible working arrangements separately if that were appropriate. We are finalising the consultation document. Chairman, we would appreciate the Committee's views on that before we send the document to print and issue it.

That is a summary, and we are happy to pick up on questions.

**The Chairperson:** Thank you, Tom. Alan, have you anything to add?

**Dr Alan Scott (Department for Employment and Learning):** I have nothing to add at the minute. I am happy to take the Committee's questions.

**The Chairperson:** Tom, you said that the process will involve either a Northern Ireland Bill or the legislative consent procedure and that you are looking for consensus from the stakeholders. What is the boundary for it no longer to be possible to follow the legislative consent motion procedure?

**Mr Evans:** We are exploring that with our counterparts in the Department for Business, Innovation and Skills (BIS). As I said, the Bill is at Report Stage, and there is probably a cut-off time for Northern Ireland to be included in the legislation. I think that it is the autumn, Alan.

**Dr Scott:** That is correct. The cut-off time is when the Bill reaches one of its later stages in Parliament. At that stage, it will be necessary to table any amendments to the GB Bill. After a certain stage, it will not be possible to do that, so if we were to decide to go down that route, we would need to instruct parliamentary counsel over there to include Northern Ireland-related amendments in the Bill.

**Mr Evans:** We are building in some contingency because, whatever we do, we will have to give to our Office of the Legislative Counsel (OLC) a core briefing. We are at least creating that flexibility so that, if the stakeholders think that the GB proposals are worth taking forward, we could use the legislative consent motion. It may be that the Minister and the Executive think that it is better to have a debate in the Assembly, and, in any case, there would have to be a debate on the legislative consent motion.

**The Chairperson:** For a timeline to bring the legislation into Northern Ireland, is one process not quicker than the other?

**Mr Evans:** If we go down the route of using the legislative consent motion, our timeline would be the same as GB's and would come in from autumn 2014 for premature babies but commence from April 2015. If we go for our own Bill, we have the potential for greater flexibility, but any benefits are usually administered on a UK-wide basis with HMRC, and we would have to enter into a negotiation with HMRC about some flexibilities. BIS officials are now looking at those flexibilities so that the Assembly's hands are not tied.

**The Chairperson:** How far have you got in your negotiations with the Department for Social Development (DSD), the Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Enterprise, Trade and Investment (DETI) so that, if we bring something forward, we will not get any internal resistance from the Executive?

**Dr Scott:** We engaged with those Departments at an early stage. At this point, they are content to take the proposals forward in the format in which we propose to consult on them. At a later stage, if it is determined that there is an appetite to do something different in Northern Ireland from the GB model, they are receptive.

At present, DSD is responsible for statutory maternity payments, which is the extent of its remit. DHSSPS has an interest in general adoption arrangements and, of course, the right to statutory adoption pay and leave would have an impact on that. It is important to ensure that adoptive parents' rights are transposed appropriately into Northern Ireland if there are any differences between adoption law here and GB.

**Mr F McCann:** You said that mixed opinions were expressed in a previous consultation. What was the opposition to moving this forward?

**Dr Scott:** With regard to the flexible working proposal?

**Mr F McCann:** Yes.

**Dr Scott:** There was a feeling at the time that extending the right to all employees could have a negative impact in two ways. Employers feared that they would face a large number of requests that would take up a lot of administrative processing time. The difficulty would be in prioritising those requests and deciding who would be the priority recipients of flexible working.

At the time, our equality impact assessment (EQIA) questioned whether extending the right to flexible working to all employees would dilute its effectiveness for existing categories of people who are able

to request it, such as parents and carers of adults. As part of this consultation, we will ask people whether they feel that there is potential for negative impacts, either from an equality or a business perspective, and whether there is a way in which we can mitigate those impacts.

In the GB consultation, they have said that they do not believe that there will be a negative impact. They believe that it is wrong to assume that there is a finite amount of flexible work that is to be shared out. They believe that flexible working can be rolled out more widely and could be advantageous to employers in retaining people who might otherwise feel that they cannot retain an attachment to their workplace. The jury is out, but we will welcome that debate as part of the consultation.

**Mr F McCann:** I had another point, but I have forgotten what it is.

**The Chairperson:** We will come back to it.

**Mr Flanagan:** Your briefing paper states that the Bill will enhance working parents' rights. How will it do that?

**Mr Evans:** The Bill will give greater flexibility to working parents. Under the current arrangements, a mother or a primary adopter is entitled to 52 weeks' maternity or adoption leave, 39 weeks of which is paid. When a mother or primary adopter decides to return early, the residual amount of that leave with pay is available to the father or secondary adopter.

The new proposal allows parents or adopters to share the totality of the leave in a way that suits them best. Under the current arrangements, once a mother returns, say, after 26 weeks, she is not able to benefit from the remaining 13 weeks. The proposal gives her flexibility for any foreseen or unforeseen commitments or requirements, and she can balance her working patterns with her needs and those of the father or secondary adopter. It creates flexibility; there is no increase in entitlements.

**Dr Scott:** At the moment, it is not possible for a mother and father to take paid leave entitlement at the same time. Under the new system, that will be possible through an application from each person to his or her employer for shared parental leave to be taken at the same time. It does not have to be taken at the same time, but that is a possibility under the new arrangements.

**Mr Flanagan:** Can an employer refuse to comply with that?

**Dr Scott:** If a person wants to take the leave as a number of separate blocks, it is possible to ask an employer for that. If that does not suit an employer, the default arrangement will be a single block of leave to start when a parent nominates it to start.

**Mr Flanagan:** I am sorry; I did not understand that answer.

**Dr Scott:** When shared parental leave starts, it will be possible for parents to arrange it so that, for example, one parent might take the leave in April, the second parent might take it in May, and then the first parent might take it in June. There is flexibility: even after a return to work, a parent can go back on leave. If that arrangement for separate blocks of leave to be taken on separate occasions does not suit an employer, the default arrangement is for a single block of leave that starts on a date specified by the parent in question.

**Mr Flanagan:** Instead of taking staggered leave, both parents could opt to take the first three months off.

**Dr Scott:** Yes, they could. They could both decide to be off at the same time, or one parent could take three months off and the second parent could take the following three months off.

**Mr Flanagan:** When a child is born with a disability or special needs, is there any provision to allow parents extra flexibility?

**Dr Scott:** There is no specific provision for that.

**Mr Flanagan:** Has that been considered?

**Dr Scott:** Is has not been considered in this context in the GB consultation. I think that it is considered as a general right that will be applicable. However, if people want to put forward suggestions as part of the consultation, we would certainly look at them.

**Mr Flanagan:** Was that fed into the previous consultation process?

**Dr Scott:** No. It has not been part of the shared parental leave consultation. It does factor into flexible working. The right to request flexible working is available to parents with children up to the age of 18 who have a disability and to carers of adults, which will often mean people with a disability.

**Mr Ross:** We hear all the time from businesses about red tape, bureaucracy and so on. All the political parties have talked about trying to reduce that burden. To what degree will employers view this as an additional layer of bureaucracy?

**Mr Evans:** In all consultations, the concern for employers is the additional burden. If the proposals come in, new systems will need to be put in place. We undertook a preliminary impact assessment on that. The issue is to minimise disruption to existing systems so that whatever new system is introduced does not place significant additional burdens on that. It will be discussed in the consultation.

**Mr Ross:** The majority of businesses in Northern Ireland are small or family-owned. Are you concerned that this will be a problem for those small businesses that perhaps do not have the capacity to deal with additional administrative work?

**Mr Evans:** That may come out of the consultation. Under the current arrangements, we have not had great concerns about the process of handling requests for maternity and paternity leave. That has not been pointed out.

**Mr Ross:** So there is no great expectation that there would be that sort of response.

**Mr Evans:** No, but I would never want to presume anything. The consultation will need to explore those issues.

**Dr Scott:** One element of the design of the new right is to make the administrative process of applying for leave and responding to those requests as similar to the existing arrangements as possible so that employers already understand the process. For flexible working, the Government in GB are planning to reduce the statutory process and replace it with a code of practice that suggests how things should be done. That should cut down on the level of bureaucracy.

**Mr Evans:** On that point, we have an established group of stakeholders that includes the Confederation of British Industry (CBI) and the Federation of Small Businesses (FSB), and we will brief them. It will not simply be a consultation. In the consultation document and through the briefings, we will raise the Committee's points to generate some feedback.

**Mr Allister:** Will this flexibility — both working flexibility and the switching of parental leave — apply equally to employers with five employees or 500 employees?

**Mr Evans:** At this stage, there is nothing in the proposals that would create different arrangements depending on the scale of an employer.

**Mr Allister:** Is there any recognition that the burden placed on small employers would be proportionately greater?

**Mr Evans:** We would need to explore that in the consultation. I would imagine —

**Mr Allister:** Does the draft consultation document explore that?

**Mr Evans:** It does not, but we can certainly add a question to the document about the potential impacts for smaller employers.

**Mr Allister:** Do you not think that that is a legitimate concern?

**Mr Evans:** As we do in all consultations, we will raise that with the various representative bodies for smaller employers. We will discuss that with them.

**Mr Allister:** Does the GB legislation make any distinction?

**Mr Evans:** It does not.

**Dr Scott:** The sole distinction it makes is in the reimbursement of small employers for payments of statutory maternity and paternity pay and so on. Smaller employers below a certain level of national insurance contribution are fully reimbursed for those payments. In fact, they are reimbursed at a level of 103% and get a slight amount of compensation. Larger employers are reimbursed at a level of 92%. There is some concession.

**Mr Allister:** If you are moving to a hokey-cokey approach to parental leave, do you not think that the impact on small employers might be very substantial?

**Mr Evans:** Again, we could explore that in the consultation. I suppose that the issue here is that the 11% additional remuneration they get through HMRC payments probably —

**Mr Allister:** No. It is 3% above 100%.

**Mr Evans:** Yes, but larger employers get only 92%.

**Mr Allister:** Yes, but surely 103% is comparable with 100%.

**Mr Evans:** Well —

**Mr Allister:** The compensation to them is 3%.

**Mr Evans:** That is right, but I was thinking about the differential between the —

**Mr Allister:** No. It does not help small employers if larger employers get less.

**Mr Evans:** The issue is to get an understanding of the administrative arrangements so that they are simple and straightforward for employers to deal with. The consultation not only will look at the policy issues but will look at the administrative arrangements. We will ask particular questions.

**Mr Allister:** In employment law, there are precedents of exemptions for small businesses.

**Mr Evans:** No.

**Mr Allister:** Historically, have there not been exemptions?

**Mr Evans:** No. There are no exemptions for small employers in the current book of employment law. You will know that the issue of whether there should be exemptions has been raised in the wider consultation, particularly on some of the employment rights. At this stage, there are no exemptions. There was quite a significant response, even from the employer representative bodies, that it might create more difficulties in their understanding of when they need to apply to a law and when they do not.

**Mr Allister:** Has there been any regulatory impact assessment?

**Mr Evans:** Yes. Alan, do you want to cover the costing? A total of £1.5 million has been set aside for transitional arrangements.

**Dr Scott:** Yes, and £750,000 for recurring costs across employers. We feel that —

**Mr Allister:** In Northern Ireland?

**Dr Scott:** Yes. We feel that that may depend very much on the employer concerned. A small employer such as you are talking about, who employs a woman to do a vital function in the workplace could find that that woman will return from maternity leave earlier than would otherwise have been the case because there is greater scope for sharing. In some cases, it may have a positive impact; in others, it may not.

**Mr Allister:** What happens if a husband has the key role in a small business, and he takes off? That might have a detrimental effect.

**Dr Scott:** Yes. It has the potential to have a positive impact on some small businesses or businesses generally and to have a more severe impact on other businesses. It will average out.

**Mr Allister:** Proportionately, however, the impact on a small business must be higher. Does the regulatory impact assessment reflect that?

**Dr Scott:** In putting out the consultation document, we will have to review what we are putting into the regulatory system to ensure that those concerns are reflected and ask the questions that you are — rightly — asking this morning.

**Mr Evans:** In the consultation document, we are using the documentation on the administrative arrangements in GB. We will ask whether there are differential impacts for small business employers.

**The Chairperson:** Following on from Jim's point, if a husband and wife in a small business both decide to pick up on the option to take the first three months off together, is there any allowance or caveat for that?

**Mr Evans:** Do you mean a two-person business with —

**The Chairperson:** No. I am thinking of a family business with five employees that perhaps employs a husband and wife who both decide to take up the option of the shared leave for the first three months.

**Mr Evans:** We have not taken detailed consideration of situations in which people are working in the same employment. That was not looked at in the GB consultation.

**Dr Scott:** No, it was not.

**Mr Evans:** I suppose that that goes back to Alan's earlier point about flexibility. It may be that a business is not able to support that degree of flexibility. The default position would be that leave would need to be taken in single blocks when required. That is when the flexibility would be in some way curtailed by a business not being able to support a week-on, week-off arrangement. In those circumstances, when that happens, that would probably be the default position, which is now what the statutory entitlement is.

**Mr Douglas:** Alan mentioned costs and the reimbursement levels of 103% and 92% in response to Jim's question about potential costs to local businesses. Do you envisage any costs at all for the Northern Ireland Executive?

**Dr Scott:** Those are costs from the Northern Ireland national insurance fund, which are currently met through HM Revenue and Customs, and there is a UK-wide administrative arrangement. If we decided to make separate arrangements here, we would need to consider the impact of going down that road. At the moment, the model is costed on a UK-wide basis. The costs that we have included in our regulatory impact assessment, which we will publish with the consultation, will reflect the difference in the Northern Ireland position.

**Mr Douglas:** So you do not envisage any costs to the Northern Ireland Executive or the Assembly?

**Mr Evans:** No. Obviously, in a consultation, someone might say that we should increase the paid entitlement to, perhaps, 52 weeks. That is probably when the UK Government will say that we would have to sustain that arrangement. That significant factor would have to be considered, and it would be

an Executive decision. As always, these matters are cross-cutting, and the Minister would have to go to the Executive.

**Dr Scott:** Certainly, any decision that arises out of this will have to go to the Executive, and all the costs will be put up front; if there are any additional costs, those will be made absolutely clear at the time.

**Mr Douglas:** Obviously, someone has researched this issue to show how beneficial it is for parents. I have children, and I would say that it is beneficial. Can you say something about the research that shows the benefits for mothers and fathers?

**Dr Scott:** There is wider research that shows that a father's early involvement in a child's life is beneficial for later educational outcomes. If we can do something to encourage that involvement from an early stage, that has to be positive.

**Mr Evans:** It is about parents self-determining how they share. It will depend on the location of their workplace, the location of schools and a range of issues that determine wider flexibility. There is research to promote that.

**Mr F McCann:** Chair, I was going to ask a question earlier about DSD. You said that there were concerns in DSD about the statutory maternity payment. What are those concerns?

**Dr Scott:** I am sorry; I did not mean to convey the impression that DSD had concerns. That Department has the legislative responsibility for statutory maternity pay and maternity allowance, which are part of this package. It is appropriate for us to liaise with DSD throughout the process to ensure that it is on board and that it forms a total package that works well together.

**Mr F McCann:** Was it on board?

**Dr Scott:** Yes. We have been liaising with DSD, and it was approached before we put a paper to the Executive. It is content with the position that we go out to consultation now and bring a further paper to the Executive on the basis of the outcome of the consultation.

**Mr Evans:** It is tracking progress through its counterparts in the UK Administration.

**The Chairperson:** Tom and Alan, thank you very much for your time. We look forward to seeing the consultation paper before it goes out so that we can raise any further concerns. I hope that the issues that the Committee has raised have been useful to you.