



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Work and Families Bill:
Departmental Briefing

26 March 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Sammy Douglas
Mr David Hilditch
Mr Chris Lyttle
Mr Fra McCann
Ms Bronwyn McGahan
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Mr Tom Evans	Department for Employment and Learning
Dr Alan Scott	Department for Employment and Learning

The Chairperson: I welcome Tom Evans, the deputy director of strategy in the European and employment relations division, and Dr Alan Scott of the employment relations policy and legislation branch. Tom and Alan, over to you.

Mr Tom Evans (Department for Employment and Learning): Thank you, Chair, for the opportunity for further engagement with the Committee on this policy area. Members have a very detailed paper, a copy of the draft Bill and the draft departmental response to the 2013 public consultation. All draft proposals, whether or not they get clearance from the Executive, will be subject to scrutiny by the Committee and the Executive. The Minister recently circulated the Executive paper in advance of formal consideration at an upcoming Executive meeting. The Minister wanted the Committee to have sight of the proposals so that, when we write to Ministers, we can feed back any comments made by various Ministers or the Committee. If the Executive give their approval, the Bill will be introduced, and you will have a further opportunity for scrutiny at Committee Stage. We are keen to support the Committee as it deems fit.

The Committee was briefed in May and September 2013 on the scope of the consultation. Then, we gave an overview of the main responses. There were 32 responses. Chairman, if you are happy, I will give a brief overview and highlight the key aspects of the paper.

The paper sets out what the draft Bill will propose to do. It will seek to create a new entitlement for employees to be absent from work on shared parental leave. It will also permit the qualifying birth parents, adopters and intended parents in surrogacy arrangements to qualify for shared parental leave. The draft Bill also makes provision for intended parents in surrogacy arrangements to avail themselves of paternity and adoption leave and pay. It sets in place enabling powers to allow notice

periods for paternity leave and pay to be equalised. It sets in place enabling powers to allow for future changes to be made to statutory paternity rights. Those changes are not forecast at this stage, but, as you continue to review the rights available to parents, it would allow that to happen.

The draft Bill provides for statutory adoption pay to be paid at 90% of earnings for the first six weeks. It creates a new right for employees and certain agency workers who have a qualifying relationship with a pregnant woman or her expected child to attend up to two antenatal appointments during the pregnancy. The draft Bill also creates a comparable right for secondary adopters and a new right for primary adopters to take paid leave to attend up to five introductory meetings before a child is placed.

Finally, the draft Bill makes the right to request — it is the right "to request" — flexible working available to all employees with 26 weeks of continuous service with their employer. Currently, that is restricted to people who have parental responsibilities. The intention is to retain the statutory procedure that governs flexible working arrangements. GB has moved to a code of practice. To be honest, all of the responses to the consultation said that they would prefer the statutory arrangement to be retained, so we are taking account of that. The Bill also includes a new technical amendment necessary to facilitate the consolidation of the current range of working time provisions into a single set of regulations. We are using the Bill to do some of the Department's business. Under the heading, "Better Regulation", we established a working group on which all key stakeholders were represented, including employers and employee groups, to look at the working time regulations. Currently, there are 11 sets of regulations, and one of the criticisms from employers and employees was that, in trying to comply with or operate these, they were found to be cumbersome. So a very positive working group got together and brought together a draft set of regulations that combines and consolidates all those regulations. That is not a policy change; it is very much a consolidation exercise, but it is one that requires primary legislation.

The last time we were with you, the Committee raised a few points, and I thought that it would be useful to come back on those. Mr Ramsey expressed concern about the potential impact of the proposals on small businesses. On the back of his comments, we included that issue in the public consultation. Our regulatory impact assessment acknowledged that small businesses may experience a disproportionate impact, particularly those that lack HR expertise. That is probably the case across the book of employment law. The Department will seek to put in place administrative arrangements that intend to minimise burdens. We aim to mirror as far as possible the arrangements already in place for the existing rights so that employers who have dealt with APS will be familiar with the systems. For employers with less experience, there will be clear and comprehensive guidance on how to comply.

Employee absence and leave are important for small businesses and can be a significant event in the working year. The sharing of leave will benefit many small businesses. It might mean key staff returning earlier than would have been the case under existing maternity leave rights. The Department will take further steps to minimise burdens. Parents will be asked to give a non-binding indication of their expected pattern of leave when notifying their employer of their intention to take shared parental leave. That should encourage them to consider their plans from the outset and give employers an early indication of the potential leave pattern. That should encourage open and honest discussion between the employer and the employee.

Eight weeks' notice of leave, or changes to it, will be required from an employee. Where agreement on leave cannot be reached, the employer will be able to require the employee to take all the shared parental leave as a single block rather than operating under multiple separate blocks. Multiple separate blocks of leave will suit many businesses, but not all. The Department also intends to limit to three the number of times an employee can notify his or her employer of leave, or changes to the pattern of leave, that he or she has taken. All of that is to try to minimise disruption, particularly for small businesses that may not have a dedicated HR function.

All those arrangements will come into force through regulations. The powers to make the regulations will be created and come before the Committee subsequent to the passage of the Bill.

Small employers will remain entitled to recoup 100% of any statutory payments that they make plus 3% compensation for the extra national insurance contributions payable. That compares favourably to a 92% recovery entitlement for larger firms. Creating a separate system for small businesses could reduce their flexibility to negotiate with employees on when leave is taken, denying them the opportunity to split the burden. Introducing more flexible arrangements can give small businesses an opportunity to manage the leave arrangements and work with the employees to negotiate leave arrangements that suit both parties.

It is acknowledged that the right to request flexible working can have a disproportionate impact on small businesses. However, employees have the right to make the request only once a year. So they have to think carefully about how the employer could accommodate the proposed working pattern. With the right to request, ultimately, the employer has the right to turn down a request where there are sound business reasons for doing so. Those conditions are already set out in legislation and will remain under the new arrangements.

Mr Hilditch raised the issue of whether enhanced flexible working rights can have a positive impact on absence figures. That is a fairly topical issue in the public sector and in the private sector. When we came here in September, we drew attention to research by the Chartered Institute of Personnel and Development (CIPD), which suggested that the right to request has a positive impact. There is a body of research that suggests that flexible working arrangements can have a beneficial impact on absenteeism and, indeed, productivity. Also, where flexible working enables people to remain in work, there can be lower staff turnover, with lower associated costs, and that is a particular issue for small businesses, for which the turnover of staff creates significant burdens.

I referred to the benefits of shared parental leave, which means that an individual may return to work earlier than expected. Earlier re-engagement in the workplace also helps with continuity of employment.

Some provisions relate to responsibilities of the Department for Social Development and the Department of Health, Social Services and Public Safety, so we have had ongoing discussions with lead policy officials about the public consultation, the draft policy response and the Bill itself. They are content with the Bill as drafted, and, as I said, we have continued to work closely with them, as we do normally in light of our shared responsibility for maternity leave arrangements.

In conclusion, this is an enabling Bill that contains significant regulation-making powers. As I said before, the key regulations will be subject to the confirmatory procedure, so there will be a separate opportunity for the Committee and the Assembly to scrutinise and debate the contents. If the Bill is introduced, there will be a Committee Stage, and we offer to support the Committee with that. Chairman, we are happy to take questions. Alan did an awful lot of the heavy lifting on the drafting of the instructions and working with the Office of the Legislative Counsel (OLC).

The Chairperson: Tom, thank you very much. When do you expect this to be in front of the Executive?

Mr Evans: The Minister has circulated the draft Executive paper, and we hope to get it on to the agenda of the next Executive meeting. I am not sure when that will be. There is urgency because we need to get the Bill into the Assembly to go through its stages so that the arrangements are in place for April 2015 at the latest. At this stage, we are behind the UK Government, who have already taken their Bill through Westminster.

Dr Alan Scott (Department for Employment and Learning): That is right. Although the rights apply to babies expected in April 2015, there is the possibility, of course, that babies could be born prematurely, and the rights would be applicable to their parents. We need to cater for that possibility. Ideally, the Bill will be introduced to the Assembly in April because that would, we hope, allow for the appropriate period of scrutiny and possibly enable the regulations to be brought in, ideally, in November so that we can cater for such cases.

The Chairperson: One concern mentioned in your paper is:

"Flexible working aspects of the Bill have been drafted, therefore, solely to remove the present condition which restricts the right to request flexible working to employed parents and carers of adult dependants. The effect will be to make the right to request available".

We have already enshrined in legislation that parents and carers of adult dependants have that right. My concern is that the new legislation will expand the right to request to everyone but remove the current legislative right.

Dr Scott: It removes the restriction of that right only to parents and carers, so parents and carers will be totally free to continue to request flexible working. It simply opens up the right to all other employees with the correct length of service, which is 26 weeks.

The Chairperson: Alan, can you guarantee that employed parents and carers of adult dependants will still have the legislative right?

Dr Scott: Yes, they will still have the legislative right to request flexible working, but that would be on the same basis as all other employees. So, they will have to approach a request through the same process, meaning that they will have to put a persuasive case to their employer saying how that employer can accommodate their request. They will have to talk to their employer about how that can be done and then follow the legislative steps that are set down. There is a facility for the employer to turn down such requests on business grounds. However, there is also an appeal facility so that, if the employer turns down the request, the employee can rethink the options and see whether there is a different way that they can be accommodated. Certainly, parents and carers will have the same right as other employees, which is a legislative right.

The Chairperson: So, does that mean that they will see no change?

Dr Scott: They will see no change.

The Chairperson: Tom, paragraph 19 states:

"taking into account Better Regulation principles, the Department has concluded that the process for dealing with requests is best supported through non-statutory guidance rather than legislation."

In your opening comments, I thought that you said that it was the other way round.

Dr Scott: There is a statutory process that every request must follow. It involves the employee setting out the request and how they propose to work in a flexible pattern and what that pattern would be. Their employer then responds to that. As I said, there is an appeal mechanism. So, that is the statutory aspect of it.

The guidance would then supplement that by setting out examples of how an employee might be able to construct a positive request that the employer could consider seriously. It also sets out all the detail that would need to be included in that to maximise its chances of being successful. So, that would be the non-statutory guidance's role.

Mr Evans: GB has moved the statutory process that governs it, so it is now covered by an ACAS code of practice. As happens often with codes of practice with further guidance, the plan is that we would retain the statutory process that governs it and provide supporting non-statutory guidance so that people understand how the statutory process works.

The Chairperson: So, there would be no change to the statutory process?

Mr Evans: No. The employer consultees and people representing employees said that the statutory process works well. We are always conscious when you get reasonable consensus about something, and just because it happens to change in GB, we feel that it is reasonable to retain the process if all parties appreciate it.

Mr P Ramsey: I want to go back to your earlier point about parents or carers. Kinship carers are coming to the table with a strong voice quite late in Northern Ireland. Will that same principle and effect in law be for kinship carers?

Dr Scott: Yes. Under the existing provisions, carers' right to request flexible working is restricted to near relatives, to someone who lives at the same address or to a spouse or partner. Under the new provisions, it will be available to all employees who have the correct 26-week service. So, that would include kinship carers if they meet the criteria as an employee and have the right length of service.

Mr P Ramsey: Following the original consultation that the Minister commenced last year, have there been any changes to the proposed outlined detail that we were presented with?

Mr Evans: Do you mean to the policy proposals?

Mr P Ramsey: Yes.

Mr Evans: No. The administrative arrangements that will support it, which are set out in the paper, will be debated as part of the regulations.

Dr Scott: In addition, there is the new provision in the Bill that deals with the working time regulations. That is a separate issue, but it is essentially a technical movement that has had widespread stakeholder agreement.

Mr P Ramsey: I was reflecting on the submissions that were made. Were there any diverse opinions on the original proposals to enable some form of amendment that would mean that those could be accepted?

Mr Evans: We made the responses available to the Committee. Employer representative bodies say that there is a burden on business and that they welcome any opportunity to reduce that. The regulation that will set out some of that detail will have to be scrutinised and debated. We are trying to put in place clear, unambiguous arrangements that reflect broadly how things operate now. A comment that we get, even from employer bodies, says, "Do not dramatically change administrative arrangements. We have systems in place that work well, so do not introduce new radical changes where they are not required".

Mr Ross: There is an acknowledgement that any further regulations will have an impact on small business owners. In Northern Ireland, 90% of businesses are small; therefore, there will be a disproportionate impact on businesses in Northern Ireland compared with the rest of the United Kingdom. I think that we all have to be mindful of that.

In December, the Minister of Enterprise, Trade and Investment launched the review of red tape. In January, the Prime Minister said that he wanted to remove or amend 3,000 regulations to make life easier for small businesses. What work is ongoing in the Department to remove regulations on small businesses? That may be either because the legislation is redundant as a result of a change in circumstances or is unnecessary. To sell this to small businesses as a good piece of legislation, we need to show that we appreciate that there is a burden on them. So, if we can say that the Department is working on removing some of the burden, it is an easier sell. Can you therefore give us an idea of what work is going on to remove regulations?

Mr Evans: The Minister has a target in the economic strategy to review all employment regulations in this Assembly's lifetime. Where the piece of work on the working time regulations is concerned, instead of us sitting back in Adelaide House or wherever working through this, we established project groups that have experts both from the employer and employee sides on those regulations to work with us to look at those regulations. I think that the Minister is not explicitly talking about deregulation. The Executive have committed to operate under a better regulation strategy. At some stages, they might say that some regulations are unnecessary but that others are, although the way that they are drafted and cast is not helpful for good business and does not have the clarity that employees need.

We are happy to come back on the better regulation strategy. What came out of it was that there was no gold-plating of the directive. There was the fairly minimum transposition of the directive, but 11 sets of regulations had evolved over the past 15 years, and there was a need to consolidate them. I think that there was also keen enthusiasm that the guidance that supports that should be of a higher quality. So, we produced at-a-glance guidance, which will be helpful to small employers. The Federation of Small Businesses was involved in that, as was the CBI. They were in the lead. We are not leading that. We are coordinating those pieces of work, because it is important that the trade union movement and business groups are involved.

We went through that same exercise with the conduct regulations that govern employment agencies. I think that we wrote to the Committee about the proposal to go out to consultation on those regulations. It was not purely a policy change on the working time directive; it was about consolidation. The next stage will be to review the next set of regulations that are significant and worth having a look at under the better regulation approach.

I am pleased that you asked the question. We could say, although it would not be a helpful presentational point, that we have removed 10 sets of regulations because of one set. That could seem to be an easy way to claim the removal of 10 sets. We have consolidated into an effective single set of regulations, with effective guidance. We want to take that through. We would be happy to share all that with the Committee when it feels that it is ready to consider that.

The Chairperson: Tom, I want to ask about something that Alan touched on when he made a point about the timeline and the Committee's work. I know that you said that you would be fully supportive of taking the Committee through the legislative process, and I appreciate that. Looking at table 15, I am aware of your timeline, but I want to let you know now that, because of the nature of this legislation and the detail of it, I do not intend it to be rushed through the Committee Stage unless there is a very valid reason for doing so. Although there are occasions when that is beneficial, there are things that may also have a detrimental effect. We will not delay it, but we will take our time to go through it, and that is when we will be looking for support from the Department.

Mr Evans: As you can see, it is a very substantial Bill, and we take your point.

The Chairperson: Thank you very much, gentlemen.