



Northern Ireland  
Assembly

Committee for Employment and Learning

# OFFICIAL REPORT (Hansard)

Work and Families Bill:  
Department for Employment and Learning

10 September 2014



procedure. That is the detailed working. We will have to come to the Committee to try to explain them.

We are very conscious of the issue of additional burdens. What we are endeavouring to achieve with the system that is in place is for the new arrangements to come in with as little upheaval to the systems that employers currently have. In the development of regulations, we are keeping very close to the GB initiative. Obviously, Committee Stage is hugely important to that. When we go through Committee Stage, we will have a very good understanding of how the Bill will look and what that might mean in terms of how we might replicate regulations that are already developed in the rest of the UK.

We concur with the points that were made by Michelle about the need for guidance, online tools and support mechanisms. Our objective will be to try to put them in place as quickly as we can.

In terms of the burdens of securing temporary replacements when people are on different leave patterns, again, the guidance will be provided. The reality is that, when some parents do not take the leave as a block, it means that it is an extended time away from the workplace and it is more difficult to reintegrate them into the workplace. There is a fine balance between the benefits of early engagement with keeping-in-touch facilities and things like that against the issue of getting short-term cover.

Going on to the light touch —

**The Chairperson:** Maybe I will just stop you there, Tom. The employer has the right to say no.

**Mr Evans:** There is always that default. When somebody says that they want to take it in a pattern, and the employer cannot agree to it, it then defaults to a single block of leave. That will be it. I suppose that there is a right to request. That comes out of flexible working. Again, it is a right to request, but you cannot say, "I am having this". The employer, for good business reasons, may be able to say, "Look, I am sorry at this stage. The business might change". I suppose that when we introduce new arrangements, the polarised extreme scenarios always have to be looked at to see how we could accommodate them. Many employers sit down with their employees. Some of those notification periods are set down in law, but the reality of it is that, hopefully, in good working relationships, when a woman finds herself pregnant or a couple decide to adopt, they will have early engagement with their employers and will address those issues.

In terms of knowing about the other employer and, I suppose, the validation that there would not be any overcommitment or that it would not go beyond statutory entitlements, the Department has never had the intention that employers have to go and almost police this. Alan is on a UK-wide advisory body looking at those issues. HMRC is involved in that process. HMRC is obviously always after people when there is deliberate fraud but will be, I think, sympathetic when there is slight over-claiming by accident. I think that it will take time. There was never the intention, nor will there be, that employers, when they receive a request for shared parental leave and the partner of that person is with another employer, should go to start that. They can do so if they wish to, but it is not something that we expect to happen.

I want to talk again about the need for a dedicated help line. We fund the Labour Relations Agency, which provides a service. We will be working. I know that a colleague is sitting in the Public Gallery listening to this and will report back. That is hugely important. I do think that we may have some campaign-specific promotion of this. As regards the idea of online tools and mechanisms that make it easier for employers, I think that the EEF made some very persuasive arguments that these are new arrangements that will take time to bed in. I have to say that, I suppose, for the greater good of being able to share parental rights, there will be an issue of taking time for any new arrangements to bed in.

Again, I think we went back on the issue of the continuous block —

**The Chairperson:** Tom, I just want to come back in on your point about there being time to bed in. What is your timeline for the Bill?

**Mr Evans:** Your plan for Committee Stage is to report by November time, I think. It would be our intention, depending on the extent of any amendments and whatever, that the Bill would receive Royal Assent early next year with a view that arrangements would commence in April 2015. I think that is the timeline. We will not be able to start firming up the regulations, which are the detail of it, until we know the shape of the Bill post-Committee Stage. It is at that stage that we need to start engaging

with the key stakeholders and thinking about the kinds of guidance and online tools that would be developed. However, if the Bill is not hugely different from what the UK arrangements are, we will be able to avail ourselves of the work that is already being done. Alan is in a regular teleconference arrangement. We are conscious of the need to build that process in.

I suppose that the issue then is about what happens when employers get it wrong and make errors. Again, I think, as I said, HMRC is looking for either employers or employees who defraud deliberately. It is worthwhile reiterating any financial aspects. I think that the pay for employers is 92%. Small employers can be reimbursed up to 103% of costs. Clawback facility arrangements are in place for the current arrangements. Those would apply under the new arrangements if they come in.

The issue of potential discrimination was raised. The Department certainly does not, in any way, want to discourage good employers from providing enhanced contractual maternity pay arrangements. It would not do that. We will want to avoid that in the way in which the system is designed. We are happy to have discussions with employer bodies around those arrangements.

Those were the sorts of issues that were raised. I have just gone down the list. I do not think that I have missed any. I think that I have picked up in general terms the issues that were raised.

**The Chairperson:** The eight-week notice was also raised, Tom, with regard to notification.

**Dr Alan Scott (Department for Employment and Learning):** I think that the issue that was raised was that maybe eight weeks was not seen as sufficient, particularly the two weeks of initial negotiation time between the employer and employee. It is important to bear in mind that the two weeks start with the written notification of the intention to request parental leave but, in good practice arrangements between the employer and employee, we envisage and will put into the guidance that employers and employees should engage before that. It means that the two weeks is not necessarily as restrictive as it would seem. Also, at the very outset of the leave, the employee would be required to give an indication of what they intend their pattern of leave to be. So, right from the outset, an employer will be aware of what the intentions are and will hopefully start to engage with the employee about those intentions so that there is good practice in the workplace. Two weeks is the statutory limit. Hopefully, we envisage that good practice will enable better and more focused discussions over a longer period.

**The Chairperson:** With regard to the sharing of systems or information between the two employers, if there are two involved, does the Department have thoughts or a mechanism in place for working or will that solely be left to the individuals?

**Dr Scott:** Part of the evidential requirements that an employee will have to submit is around the leave that the other person intends to take or has taken. Now, an employer does not have to check up on that with the other employer; they can do if they want to, but, as Tom said, we do not envisage a policing role for employers. HMRC is the body that would look after that side of things. If it felt that there was an instance of fraud or that the system was being abused, it would look into that. However, as Tom indicated, it is the intention of HMRC to take a risk-based approach to this. So, if a genuine mistake was made, a light-touch approach would be taken.

**Mr Evans:** At this stage, we see it as being done very much more on a good-faith basis.

**The Chairperson:** In the regulations, will any penalties be stipulated?

**Dr Scott:** Under the existing systems, there are penalties for fraudulent activity. Those are taken up through HMRC. The arrangements would be the same as they are under the current arrangements; for example, the existing system of additional paternity leave and pay.

**Mr P Ramsey:** Good afternoon. You are very welcome.

The employer organisation referenced a number of areas. You have not gone into them all, but I think it is important that you go through the Hansard report and provide the members with a written response. We need to tie down in some way guidance in the area of maternity leave and the potential for sex discrimination claims, along with guidance on tracking pay between employers, and the Chair mentioned some other areas.

Could we address, at some stage, awareness and education in the lead-in time before the legislation comes in? You confirmed that you are keen to look at an online toolkit and helpline. I am keen to hear how that goes.

It is also important that, as members raise issues, you tweak the regulations to prevent amendments coming forward from members. I have consistently raised the issue of kinship carers here and in the Chamber. It surprises and shocks me that they are not referenced, given the level of acceptance in debates in the Chamber of the need for them to be referenced. There is a case to be made, knowing as we do the relevance of kinship care across Northern Ireland now. If a mother or a granny receives a child as a result of someone being ill or a death, the immediate concern is what employment rights are available to them. We have to tie that down to ensure that kinship carers are referenced in the regulations to enable them to have peace of mind and comfort. Is there any reason why kinship care was not referenced?

**Mr Evans:** You have raised it. Kinship care is quite a difficult issue. This initially was about the sharing of parental entitlements. I understand the point you made. By definition, there are formal and informal arrangements in kinship care. The lead on that policy lies probably in DHSSPS and, on the benefits side, the Department for Social Development. We will look at the Hansard report — you made that point — and give a written response to each of the issues raised. Those points are helpful to us as a reference point as we move forward. It is not that the Department does not want to do something; it is just difficult to know how we can take it forward. You have raised the point about kinship care, but it is not something that was raised in the GB process. As I say, we will have to consult other Departments on the issues, but we will write to you on that basis.

**Mr P Ramsey:** Could I make a suggestion to try to progress it a bit? There is a formal organisation, Kinship Care Northern Ireland. I suggest that you meet them. I will go along; it would just be a brief meeting to go through the rationale and reasons for it. It might have a higher profile in Northern Ireland than it has in GB. Certainly, there is no reason why we could not do that.

**The Chairperson:** Members, does anybody else have a question?

**Mr Douglas:** Yes, Chair.

Thank you very much for your presentation. I think it was the ICTU that said that something like 30,000 pregnant women lost their job. I am not quite sure what date that figure is for. What is the situation in Northern Ireland at the moment, Tom? Will the new legislation help the situation?

**Mr Evans:** I do not think that the changes will change that. Women should not lose their job and there are redress facilities for that; that is what employment tribunals are for. If an employer terminates somebody's employment because they are pregnant, that should not happen. I am not sure whether there are any figures for tribunals hearing those, but this does not change that. Women's rights are established and do not change; they are not diminished by this.

**Mr Douglas:** I think that the ICTU was quoting from the Equality Commission's research.

**Mr Evans:** But this would not diminish the rights that are in place. Employers should not discriminate against a woman who finds herself pregnant. I am not saying that it has not happened; I am saying that it should not happen and that there are legal redress mechanisms to deal with it.

**Mr Douglas:** How does this fit in with European directives and legislation?

**Dr Scott:** There is nothing specific in European legislation requiring the sharing of parental leave. There are requirements around maternity and unpaid parental leave, but this is in advance of what is required under European law.

**Mr Evans:** We transposed the parental leave directive some time ago, and came to the Committee. The reality was that Northern Ireland and the UK as a whole were already far outliving the minimum requirements of that directive. That may not have been the case in other member countries.

**Mr Douglas:** OK. Thank you.

**The Chairperson:** Tom and Alan, thank you very much again. We will see you before we finish this and get it to the Chamber.