



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Work and Families Bill:
Department for Employment and Learning

24 September 2014

NORTHERN IRELAND ASSEMBLY

Committee for Employment and Learning

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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 Phil Flanagan
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 from the Department Mr Tom Evans, the deputy director of strategy in the European and employment relations division, and Dr Alan Scott from the employment relations policy and legislation branch.

This is the Committee's chance to deliberate on the clauses of the Work and Families Bill. It will be the Committee's time to think through any issues that members may have. Members will have the opportunity to raise any concerns or suggest amendments. Members should read the relevant clauses and paragraphs of the Bill along with the related commentary in the explanatory and financial memorandum. To assist with that, the Committee Clerk has provided a paper bringing together all the issues raised by respondents to the Committee's call for evidence.

Members, you will note that the Bill is the vehicle for a number of more detailed regulations. All the issues raised by respondents will be dealt with in the regulations rather than in the Bill itself. The Examiner of Statutory Rules has looked at the delegated powers and believes that DEL has approached the regulations correctly by bringing forward the important regulations by the confirmatory process. As I said, the Examiner's report is in members' packs.

To proceed through the Bill systematically, I will go through each part and ask the Committee whether it has any issues to raise. DEL officials are present to answer any questions that members may have. After we have finished going through the Bill, I will go through the issues that are outside the Bill's strict remit. Members, are you content that we proceed in that manner?

Members indicated assent.

The Chairperson: Members, Part 1, which comprises clause 1, deals with defined expressions. The clause provides definitions of terms and expressions used throughout the Bill. No specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: Part 2 deals with shared rights to leave and pay. Part 2 consists of 13 clauses — clauses 2 to 14 — covering three broad areas: shared parental leave; statutory shared parental pay; and other statutory rights. No specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: Part 3 deals with time off work for antenatal care and adoption appointments. Part 3 consists of four clauses — clauses 15 to 18 — including rights to attend antenatal appointments and a right for agency workers not to be subjected to detriment. No specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: I will move on to Part 4 — clauses 19 and 20 — which covers other employment rights and miscellaneous provisions. The two clauses deal with flexible working and the procedure for regulations as to a prescribed amount of annual leave. No specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: I will move on to Part 5 — clauses 21 to 24 — which covers general provisions. The four clauses include repeals and commencement dates. No specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: I will move on to schedules 1 and 2. Schedule 1 outlines the minor and consequential amendments, and schedule 2 outlines a list of repeals. Again, no specific issues were raised in the consultation. Are members content?

Members indicated assent.

The Chairperson: That is that bit completed. There are two happy men at the bottom of the table.

I will now go through the issues raised by the respondents and detailed in the Clerk's paper. The Department's response to those issues is also detailed there. Members, as you have already read the Clerk's paper, I will progress through the issues by their headings, and members can make comment on any that they wish to consider further.

The first issue to be considered in regulations is that a two-week negotiation period may not be long enough. Issues were raised by the Confederation of British Industry (CBI), but the Department's responses are there. Are members content?

Members indicated assent.

The Chairperson: Are you content with the Department's response?

Members indicated assent.

The Chairperson: Next is the EEF, and its concern that the proposals provide scope for an employee to make and then withdraw a request, resulting in wasted employer time. Members, the concerns are there. The paper states:

"The Department does not intend to set specific requirements around how employers and employees engage in discussion."

Members, do you wish to note anything further? Are you content with the Department's response?

Members indicated assent.

The Chairperson: The EEF made the following points about the process for requesting leave:

"an employee's initial notification of leave should be binding; employers should be able to veto an unsuitable period of leave; the two week period during which an employer must consider a leave request is too short."

Members, there was no Department response on any of those points. Tom or Alan, do you want to comment? Sorry, the Department's response is there. Apologies for that, Tom; I put you under pressure there. Members, are you content to note and accept the Department's response to those three concerns raised by the EEF?

Members indicated assent.

The Chairperson: Next is that the cut-off point for parents taking shared parental leave should be 52 weeks from the start of maternity leave rather than from the birth of the child. The Department's response is there. Are you content to note it?

Members indicated assent.

The Chairperson: Next is the right to return to the same job or a similar job when returning from periods of leave totalling up to 26 weeks. The CBI raised issues. The Department's response to and clarification of those issues is in the paper.

Mr Douglas: May I clarify something? The Department's response states:

"The right of return thereafter is a right to return to the same job, subject to that being reasonably practicable."

What does that mean, Tom?

Mr Tom Evans (Department for Employment and Learning): It means that, in the world of business, that job may not be there any more for some reason. In the past six years, we have had some difficult times. It does not mean that a person is treated any differently in that situation. It is for employers to demonstrate that they took every step to try to meet the honour of that commitment, but it may not be statutory.

Mr Douglas: Are there guidelines? Is there a checklist?

Dr Alan Scott (Department for Employment and Learning): There is not a checklist as such. It really comes down to whether an employer had a genuine reason. Rather than having specific requirements, that would be assessed should a case go to tribunal. It would be assessed on the merits of the situation.

Mr Douglas: OK. Thank you.

The Chairperson: Are members content?

Members indicated assent.

The Chairperson: On keeping in touch (KIT) days, the issues raised by the Confederation of British Industry (CBI) and the Irish Congress of Trade Unions (ICTU) are at paragraphs 43 and 44. The Department's response is at paragraphs 45 to 47. Are members content with the Department's response?

Members indicated assent.

The Chairperson: On the day one right to shared parental leave and pay, issues raised by ICTU are at paragraphs 48 and 49. Are members content to note the Department's response at paragraphs 50 to 52?

Members indicated assent.

The Chairperson: The EEF believes that employers will find it difficult to arrange cover for employees absent on shared parental leave. The Department's response is at paragraph 53. Are members content?

Members indicated assent.

The Chairperson: On allowing parents to take leave in one-week blocks, the issues raised by ICTU and the CBI are at paragraphs 54 and 55. The Department's response is at paragraphs 56 and 57. Are members content to note that response?

Members indicated assent.

The Chairperson: The amount of statutory pay available was an issue raised by ICTU and is at paragraphs 58 to 60. The Department's response, which is at paragraphs 61 to 64, covers clause 12 as well. Are members content to note?

Members indicated assent.

The Chairperson: The EEF suggested that uptake of the right to shared parental leave was likely to be low. There is a response from the Department at paragraphs 65 to 67. Are members content with the response?

Members indicated assent.

The Chairperson: The next issue is flexible working. Clause 19 extends the right to request flexible working. There is a comment from the CBI at paragraph 69 and from ICTU at paragraphs 70 to 72. The Department's response runs from paragraph 73 to paragraph 76. Are members content with the response to those concerns?

Members indicated assent.

The Chairperson: The EEF representatives suggested that the application of the flexible working right to parents of children expected to be born or adopted in April 2015 leaves little time for employers to make necessary adjustments to systems. They propose the development of at-a-glance guidance, model documents, online toolkits and a dedicated helpline to provide information on the new rights.

The Department's response is at paragraphs 77 and 78. It acknowledges that it is a short timeline but gives an assurance that guidance and online tools will be made available as quickly as possible. Are members content with that response?

Mr Buchanan: Yes, provided that all the tools required will be available as soon as possible after the legislation is implemented.

Mr Evans: The Minister has just had a round of meetings with stakeholders, including employer bodies, and I was with him for those. We will establish a group that embraces all those organisations so that we can give them early notice and take them through it. Alan sits on a UK-wide body. Once we have real clarity on the shape of the Bill and where the regulations are going, we will do that. It is a real challenge, but we will make every effort to work with and advise the organisations whose staff work the existing arrangements. We will also work with the Labour Relations Agency (LRA). At an event on Friday, I met colleagues from Citizens Advice as well. We recognise that this is a challenge, but we will do our best.

The Chairperson: Are members content with that response?

Members indicated assent.

The Chairperson: We turn to user-friendly processes. The EEF and CBI pointed out the high proportion of SMEs in Northern Ireland and how this may adversely affect them. Their concerns run through paragraphs 79 to 84. The Department's response is at paragraph 85, where we have the assurance:

"the Department is committed to developing regulations that minimise the administration associated with the implementation of the new rights".

That is a guarantee, Tom, is it not?

Mr Evans: We will do our level best, Chairman.

The Chairperson: OK. Are members content with that?

Members indicated assent.

The Chairperson: Members, the EEF enquired about the arrangements that will be in place for recouping overpayments of statutory shared parental pay. The organisation also wishes there to be a provision allowing employers to communicate in order to verify information included in leave requests. The response from the Department is at paragraphs 86 to 91.

Are members content with the Department's response and the HMRC obligation?

Members indicated assent.

The Chairperson: The EEF sought assurance that there is no sex discrimination risk should employers continue to offer enhanced occupational maternity pay once shared parental rights are in place. Paragraph 92 states:

"An occupational maternity scheme can only be offered to a woman on maternity leave."

Tom, will you clarify how that affects things?

Mr Evans: Some companies offer enhanced occupational schemes. The issue is a company paying that enhancement to a woman but not to a male or secondary adopter. There is potential for indirect discrimination. It probably will not happen very often, but it will be very much for the employer to take care of it. We need to flag to employers the dangers of potential discrimination in how they operate this.

Dr Scott: The issue is that companies are perfectly entitled to continue to offer occupational maternity rights, as they do at the moment. They may wish to offer an occupational shared parental scheme as well, but, if they choose to do that, they would have to offer it to men and women. They do not have to, but, as soon as a woman ends her maternity leave and goes on shared parental leave, it will really be down to the firm whether to continue offering an occupational scheme into the shared parental phase of the leave. If it does, that offer has to be available to the partner as well.

The Chairperson: Thank you. Are members content?

Members indicated assent.

The Chairperson: Let us turn to the guidance. At paragraphs 95 and 96 are comments from the CBI and the EEF on at-a-glance guides in the legislation. The Department's response is at paragraphs 97 and 98. Are members content?

Members indicated assent.

The Chairperson: Alignment with legislation in Great Britain is dealt with at paragraphs 99 and 100. Issues were raised by ICTU and the CBI. The response from the Department is there. Are members content to note it?

Mr Flanagan: Does the Department have a response?

The Chairperson: Tom?

Mr Evans: Chairman, I do not have to hand all the papers that you have. Obviously, this is a briefing that we have given you at another time. What is this on?

The Chairperson: The alignment with the legislation in Great Britain.

Mr Evans: We have said that, if the policy proposals were appropriate for Northern Ireland, this is an area, given the wider administration of the system, in which there is probably a benefit in their being aligned. That is what we are trying to do. Alan and other colleagues have been working with colleagues in the Department for Business Innovation and Skills (BIS) and the Department for Work and Pensions (DWP) to ensure that anything that we are doing is consistent. If the Bill produces provisions that are the same as those in GB, we will look to mirror its regulations as best we can.

Mr Flanagan: Tom, there is a difference of opinion between the employers and the employees' representatives. How do you propose to make both sides happy?

Mr Evans: Do you mean whether we should —

Mr Flanagan: The CBI argues that we should align with what is happening in Britain; ICTU argues that the Executive need to be serious about addressing inequality and should go beyond what is proposed in Britain. Where does the Department stand?

Mr Evans: It is similar to the argument in the broader employment law agenda here. One school of thought is that it is anti-competitive not to mirror the rest of the UK; another view is that we should develop arrangements that are in the best interests of the economy and citizens of Northern Ireland.

The Minister will look at each policy to see what the best scenario is. We have not aligned with the rest of the UK on some parts of the employment system. We did not, for example, repeal the statutory procedure for discipline and dismissal, and we do not have the same qualifying period for unfair dismissal. The Minister will take a view on each of the policies to see what is appropriate. He has committed to doing that and gave a commitment in the economic strategy to look at developing an employment law system that meets the needs of business but protects employees. He will make those decisions on an individual basis.

Mr Flanagan: I get the feeling that you are dodging the issue because the Department has not yet made a decision. Is that the case? If that is the case, it is fine.

Mr Evans: No, the decision is what is in the content of the report —

Mr Flanagan: Tom, we will let you see the two paragraphs that we are referring to

Mr Evans: Yes, not having the papers in front of me makes we wonder whether I am off-message.

Having looked at the papers, I think that I have answered the question. In the wider employment law remit, the CBI has always promoted the idea that we should mirror the GB legislation and has used the word "parity". ICTU is of the view that the Minister has an opportunity to go beyond what is in UK and European legislation on particular rights.

What I said before I read the papers, and it stands, is that the Minister will take a view on an individual basis. He has not set a policy of parity, nor has he set a policy of deliberately not following it. It will depend on the policy area and what he believes to be the unique needs of the Northern Ireland community.

The Chairperson: Are you content with that, Phil?

Mr Flanagan: Yes.

The Chairperson: "Another individual" is a person with whom parental leave could be shared. I understand that the Department is not proposing to allow parents to nominate another individual as a person with whom parental leave would be shared. The Department's response is at paragraph 103.

Mr Flanagan: Could that issue be included as part of the future review proposed in the papers that you gave us? There is provision for a review of the system. Is that review limited to what it can consider, or could it reconsider other issues, the merits of which you are not yet convinced?

Mr Evans: The Minister has given a commitment to review all the legislation and policies that it introduces at some point after they have been in operation. If issues have been raised by stakeholders, individual employers or whatever, the Minister will take account of those in seeing whether there is merit in initiating a formal review. We did that with the agency workers regulations, and the Minister would be disposed to doing that if he deemed it necessary. The Committee might also want to bring to the attention of the Minister issues raised in evidence sessions.

The Chairperson: OK. Are members content?

Members indicated assent.

The Chairperson: Paid leave will not accompany rights for partners to attend antenatal appointments. That issue was raised by ICTU. As there are no comments on that, are members content to move on?

Members indicated assent.

The Chairperson: OK. Pat Ramsey —

Mr Flanagan: Sorry, does the Department have a response to that? All that we have is one side of the argument. Do you have the papers there, Tom?

Mr Evans: It introduces a right to attend antenatal appointments, but it will be an unpaid right. That is in line with the rights set out in the agency workers regulations.

The Chairperson: Pat Ramsey expressed disappointment that kinship care is not dealt with in the Bill and said that he wished there to be a meeting between departmental officials and Kinship Care Northern Ireland. Pat, your comments and the responses to them are in the papers.

Mr P Ramsey: Clearly, Chair, this is quite a complex legal minefield. I appreciate the very detailed response that Tom and Fiona provided. Kinship carers are grappling with the situation and trying to get designation. I realise that there is no legal definition. We might revisit at a later stage, but there is no way that I will compromise the Bill.

The Chairperson: Thanks, Pat. Are members content?

Members indicated assent.

The Chairperson: There are no other issues with the Bill at this stage. Tom and Alan, thank you very much.

Mr Evans: What is the next stage, Chair?

The Chairperson: The formal clause-by-clause consideration of the Bill, which is next week.

Mr Evans: Do you want us here for that?

The Chairperson: Yes, please.

Mr Evans: That is fine. Thank you very much.