

Committee for Employment and Learning

Report on the Work and Families Bill (NIA Bill 34/11-15)

Together with the Minutes of Proceedings of the Committee relating to the Report,
Minutes of Evidence and Written Submissions

Ordered by the Committee for Employment and Learning
to be printed 8 October 2014

Remit, Powers and Membership

The Committee for Employment and Learning is a Statutory Departmental Committee of the Northern Ireland Assembly established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48 of the Northern Ireland Assembly. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Employment and Learning and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Employment and Learning.

The Committee has eleven Members, including a Chairperson and Deputy Chairperson, with a quorum of five. The Membership of the Committee since 1 September 2012 has been as follows:

Mr Robin Swann (Chairperson)^{1, 2}

Mr Thomas Buchanan MLA (Deputy Chairperson)

Mr Sammy Douglas MLA³

Mr Phil Flanagan MLA⁴

Mr David Hilditch MLA⁵

Mr Chris Lyttle MLA

Mr Fra McCann MLA

Ms Bronwyn McGahan MLA⁶

Mr Pat Ramsey MLA

Mr Alastair Ross MLA⁷

Ms Claire Sugden MLA⁸

1 With effect from 19 February 2013 Mr Basil McCrea is no longer Chairperson nor a member of the Committee.
 2 With effect from 27 February 2013 Mr Robin Swann became Chairperson of the Committee.
 3 Mr Sammy Douglas replaced Mr Sydney Anderson on 11 February 2013.
 4 Mr Phil Flanagan replaced Ms Michelle Gildernew on 10 September 2012.
 5 Mr David Hilditch replaced Mr David McIlveen on 1 October 2012.
 6 Ms Bronwyn McGahan replaced Mr Barry McElduff on 21 January 2013.
 7 Mr Alastair Ross replaced Mr George Robinson on 28 January 2013.
 8 Ms Claire Sugden replaced Mr David McClarty on 12 May 2014.

List of Abbreviations

CBI	Confederation of British Industries
EEF NI	Engineering Employers Federation Northern Ireland
EQIA	Equality Impact Assessment
HMRC	Her Majesty's Revenue and Customs
ICTU	Irish Congress of Trade Unions
SME	Small and Medium Enterprise
SPP	Statutory Paternity Pay

Table of Contents

Remit, Powers and Membership	i
List of Abbreviations	ii
Report	
Executive Summary	1
Introduction	4
Consideration of the Bill	5
Clause by Clause Consideration of the Bill	9
Consideration of Key Issues	13
Appendix 1	
Minutes of Proceedings	29
Appendix 2	
Minutes of Evidence	41
Appendix 3	
Written Submissions	75
Appendix 4	
List of Witnesses	105
Appendix 5	
Correspondence	109

Executive Summary

1. The purpose of the Bill is to provide a legislative framework enabling Northern Ireland leave and pay entitlements to continue to match those available to working parents in Great Britain. The Bill also facilitates extension of the right to request flexible working to all employees with an appropriate length of service.
2. The Bill sets out a legislative framework allowing for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child (shared parental leave and pay). It goes on to make consequential adjustments to other rights for working parents to ensure that they appropriately interface with the new provisions. It also abolishes the right to additional paternity leave and pay, which the new system replaces and builds upon.
3. Provision is made allowing foster parents who are a child's intended adoptive parents to access adoption pay and leave, and intended parents in surrogacy arrangements to avail of paternity and adoption leave and pay.
4. The Bill provides for statutory adoption pay to be paid at 90% of earnings for the first six weeks. It also facilitates paid time off work for primary adopters to attend up to five introductory meetings before a child is placed with them for adoption; and unpaid time off for secondary adopters to attend two such meetings. A similar right to take unpaid time off work is provided for the partners of new mothers to attend ante-natal appointments.
5. The Bill facilitates extension of the current right to request flexible working to all employees having an appropriate length of service with their employer.
6. Finally, the Bill introduces a minor technical amendment in support of a programme, developed as part of the Department's Employment Law Review, to consolidate working time regulations.
7. As set out by the Department for Employment and Learning the Bill's provisions will:
 - i. create a new entitlement, with appropriate regulation making powers, for employees to be absent from work on "shared parental leave" for the purposes of caring for a newly born or adopted child;
 - ii. permit qualifying birth parents, adopters and intended parents in surrogacy arrangements to qualify for "shared parental pay";
 - iii. make provision for intended parents in surrogacy arrangements to avail of paternity and adoption leave and pay;
 - iv. set in place powers allowing notice periods for paternity leave and pay to be equalised;
 - v. set in place powers which, following a future review and subject to Assembly confirmation of relevant regulations, would allow statutory paternity rights to be made more generous;
 - vi. provide for statutory adoption pay to be paid at 90% of earnings for the first six weeks;
 - vii. remove the current entitlements to additional paternity leave and pay (given that these entitlements are being replaced by shared parental entitlements);
 - viii. create 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 ante-natal appointments during the pregnancy;
 - ix. create a comparable right for secondary adopters;

- x. create a new right for primary adopters to take paid leave to attend up to five introductory meetings before a child is placed with them for adoption;
 - xi. remove the current requirement that an employee must have parental or caring responsibility in order to make a flexible working request;
 - xii. the Bill also contains provision to allow foster parents who are a child's intended adoptive parents to access adoption pay and leave arrangements, including shared parental leave.
8. The Committee formally considered the Work and Families Bill on 1 October 2014 and was content with the Bill as drafted.
9. The Committee however considered a range of issues outside the Clauses of the Bill which were raised by key stakeholders that are relevant to the Regulations and Guidance which will flow from the Bill.

The Two week negotiation period may not be long enough

10. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Employees making and then withdrawing a request for shared leave

11. The Committee accepts the Department's position on this issue.

The process for requesting leave

12. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

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

13. The Committee accepts the Department's position on this issue.

Right to return to the same or a similar job when returning from periods of leave totalling up to 26 weeks

14. The Committee accepts the Department's position on this issue.

Keeping in Touch days

15. The Committee accepts the Department's position on this issue.

Day one right to shared parental leave and pay

16. The Committee accepts the Department's position on this issue.

Arranging cover for employees on shared parental leave

17. The Committee accepts the Department's position on this issue.

Allowing parents to take leave in one week blocks

18. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Amount of statutory pay available and uptake of the right to shared parental leave is likely to be low

19. The Committee accepts the Department's position on this issue but wishes to receive further information on how and when the Department will review up-take of shared parental leave including the Terms of Reference.

Flexible working

20. The Committee accepts the Department's position on this issue.

New right to begin for parents of children expected to be born or adopted in April 2015

21. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

User Friendly processes

22. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Arrangements that will be in place for recouping overpayments and allowing employers to communicate to verify information

23. The Committee accepts the Department's position on this issue.

Fear of being open to sex discrimination

24. The Committee accepts the Department's position on this issue.

Guidance

25. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Alignment with legislation in Great Britain

26. The Committee accepts the Department's position on this issue.

Another individual as a person with whom parental leave could be shared

27. The Committee accepts the Department's position on this issue.

Paid leave for partners to attend antenatal appointments

28. The Committee accepts the Department's position on this issue.

Kinship carers

29. The Committee accepts the Department's position on this issue.
30. The Committee considered the Report on its Scrutiny of the Bill on 8 October 2014 and ordered for the Report to be printed.

Introduction

31. The Work and Families Bill was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 12 May 2014.
32. The Minister for Employment and Learning made the following statement under section 9 of the Northern Ireland Act 1998:

The Bill will allow for a sharing of leave and pay between working parents that better reflects the needs of modern families. It will also help businesses to retain and progress talented individuals, particularly women, and enhance the flexibility of the Northern Ireland labour market.
33. The Bill sets out a legislative framework allowing for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child (shared parental leave and pay). It goes on to make consequential adjustments to other rights for working parents to ensure that they appropriately interface with the new provisions. It also abolishes the right to additional paternity leave and pay, which the new system replaces and builds upon.
34. During the period covered by this report, the Committee considered the Bill and related issues at seven meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.
35. At its meeting on 7 May 2014 the Committee agreed a motion to extend the Committee Stage of the Bill to 30 November 2014. The motion to extend was supported by the Assembly on 12 June 2014.
36. The Committee had before it the Work and Families Bill and the Explanatory and Financial Memorandum that accompanied the Bill. On referral of the Bill, the Committee wrote on 12 May 2014 to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 23 June 2014.
37. A total of seven organisations responded to the request for written evidence and a copy of the submissions received by the Committee are included at Appendix 3.

Consideration of the Bill

38. The Work and Families Bill has five parts, 24 Clauses and two schedules. It consists of:
- Part 1 - Defined Expressions: This provides definitions of terms and expressions used throughout the Bill;
- Part 2 - Shared rights to leave and pay: Part 2 consists of 13 Clauses covering three broad areas:
- Shared parental leave;
 - Statutory shared parental pay; and
 - Other statutory rights.
- Part 3 - Time off work: Ante-natal care, adoption appointments: This consists of four Clauses including rights to attend ante-natal appointments and a right not to be subjected to detriment for agency workers;
- Part 4 - Other employment rights, miscellaneous: This has two Clauses on flexible working and the procedure for regulations as to a prescribed amount of annual leave; and
- Part 5 - General provisions: This contains four Clauses including repeals and commencement dates.
39. The Committee first considered the proposals in the Bill on 1 May 2013 when Departmental officials set out the policy context and its plan to consult on the shared parental leave proposals. The officials advised the Committee that during the Assembly debate on 16 April 2013, on the Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013, which had been supported by the Committee and increased the entitlement to unpaid parental leave from 13 weeks to 18 weeks, the Minister noted that responses to the public consultation on implementing the Directive in Northern Ireland had indicated a desire for consideration of wider changes to rights for working parents.
40. Also during this briefing on 1 May 2013 the Departmental officials advised that on 4 February 2013, the UK Government had introduced a Children and Families Bill for Great Britain with proposals on a wide range of measures including a framework for significant changes to statutory paid and unpaid leave entitlements associated with the birth or adoption of a child and an extension of the right to request flexible working to cover all employees (rather than, as at present, parents and carers).
41. The Department therefore advised that it would consult on introducing the GB legislation in Northern Ireland.
42. The Committee sought clarification at that time on the Minister's consideration of adopting the GB legislation by way of a Legislative Consent Motion and was informed that given that the Children and Families Bill for Great Britain was at report stage it was unlikely that the Department's consultation would be finished in time to allow for a Legislative Consent Motion and that a Northern Ireland process would allow for more flexibility in timing and proposals.
43. The Committee also questioned officials on negotiations with other relevant Departments to ensure that there would be no resistance from the Executive and was assured that the relevant Departments of Social Development, the Department of Health, Social Services and Public Safety and the Department of Enterprise, Trade and Investment had been involved from an early stage and were content with the proposals.
44. The officials were asked to explain what the range of opinions was that had been put forward. The officials outlined the concerns voiced by employers in the consultation on flexible working proposals regarding extending the right to all employees and that this could have a negative
-

impact in two ways. Firstly that employers feared that they would face a large number of requests that would take up a lot of administrative processing time and secondly the 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. The officials pointed out that these issues were to be addressed in the consultation.

45. The Committee also asked the Department to explain why no specific provision was being included for parents whose child has a disability and were advised by the Department that it had not been part of the shared parental leave consultation. However it does factor into flexible working and 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.
46. The Committee also sought assurance that the Bill would not lead to significant additional burdens on employers and more red tape, especially given the high proportion of Small and Medium Enterprises (SMEs) in Northern Ireland and the reasons for treating large companies and SMEs the same in the legislation. The Committee also explored how the proposals could impact on employers in practice. The Committee was content that these issues were to be explored in the consultation.
47. On 25 September 2013 the Departmental officials returned to the Committee to brief on the responses received to the consultation and the Department's proposals going forward. The Committee noted that of the 32 responses of stakeholders to the consultation, that the consensus was that respondents were positively disposed towards the main proposals and that the legislation should correspond to those in Great Britain. The Committee once again asked questions about any disproportionate impact on SMEs and was assured by the officials that the Department would seek to put in place arrangements that minimise the administrative burden for all employers and working parents.
48. The Committee received a further briefing from Departmental officials on the principles of the Bill on 26 March 2014. The Committee asked for clarification on the impact of the Bill on flexible working for carers and parents and the officials explained that there was no change but that the Bill will extend the right to request flexible working to all employees who have the necessary period of service (which is currently 26 weeks).
49. The Committee also examined the process to be followed for requesting flexible working and the statutory and non-statutory aspects of this.
50. Another issue raised by the Committee was how the legislation sat with the Department of Enterprise, Trade and Investment commitment to reduce red tape and get rid of redundant regulations and the officials explained that the inclusion in the Bill of the consolidation of working time regulations would assist in this aim.
51. The Committee received the Bill on 12 May 2014 and went out to consultation to 79 organisations on the same day with a closing date of 23 June 2014.
52. The Committee considered written evidence received from seven stakeholders, and took oral evidence from Departmental officials and the Engineering Employers Federation Northern Ireland.

Written responses

53. One of the written responses was from the Minister for Health, Social Services and Public Safety, advising that he was content with the provisions in the Bill for fostering and adoption and pay and leave conditions which impact on the remit of his Department. The Minister indicated that he had agreed the relevant Clauses and that his officials would continue to provide assistance to the Department in the preparation of secondary legislation.

-
54. In addition, the Committee for Social Development provided a nil response.
55. The Citizens Advice Bureau advised that it supports the Clauses of the Bill and feels that it takes into consideration the points raised in its original consultation submission in August 2013. The Citizens Advice Bureau also states that the implementation of the Bill will allow working family's greater flexibility, control and choice over care arrangements for children during the early stages of their lives.
56. The Labour Relations Agency made the general point that any amendment to existing employment legislation or new employment rights deriving from the proposals should be clear, concise and unambiguous if satellite legislation is to be avoided. The Labour Relations Agency also made the point that the Bill needed to be mindful of challenges in the Northern Ireland micro firm economy in understanding and complying with contemporary employment law.
57. The remaining three responses from the Engineering Employers Federation Northern Ireland (EEF NI), the Confederation of British Industries Northern Ireland (CBI) and the Irish Congress of Trade Unions Northern Ireland Committee (ICTU) made more substantial responses. However they drew heavily on their responses to the Department's consultation on general proposals rather than on the details contained in the Bill (appendix 3). As a result a number of their comments are relating to issue, the details of which are not contained in the Bill but will be outlined in secondary legislation which will be established only if the Bill is passed. As the EEF NI points out:
- Throughout the Bill it refers to the fact the "The Department may make Regulations..." and "Regulations are to provide for..". Consequently, it is clear that the Regulations, and not the Bill, will provide the detail of how these rights will operate in practice.*
58. The comments on the Bill are therefore extremely limited given that it simply sets the foundation for the main rights which the Department has agreed will be taken forward.
59. The EEF NI, whilst broadly supportive of the main provisions, voices the concern of its members about how these rights will operate in practice and how the Department will balance the rights against the needs of employers who need to be able to continue to operate their business effectively.
60. These sentiments are shared by the CBI which prefaces its comments by stating that:
- Our comments below reflect mainly on the administrative and practical implications of the Bill and how these can be managed in the best interests of employers and employees.*
61. The CBI also gives qualified support for the Bill. It supports the reform of the existing system but warns that for reform to have the confidence and backing of the business community it is imperative that, in a time of continuing economic challenge where the burden of red tape must continue to be reduced, the system is simple so as to be truly effective. It states that too much process, little notice and inflexible demands on companies could undermine the proposals in the Bill.
62. ICTU points out that while it supported the Department's proposals outlined in its consultation it is disappointed that the new Bill does not address many of its original concerns. ICTU point out that there are a number weaknesses in the shared parental leave and pay scheme and believes that it will not lead to a substantial change in the number of fathers/partners taking time off work to care for children because it lacks sufficient incentives.
63. ICTU argues that international evidence shows that fathers are most likely to take leave that is clearly available solely to them on the basis that if they do not use it they lose it and that shared entitlements are mostly used by mothers. ICTU feels that the absence of reserved leave for fathers means they are less likely to apply.
-

64. Among the general comments outlined by the respondents there are a number of more specific issues addressed. Although the Clauses of the Bill were not referred to, the issues raised were attributed to the relevant parts of the Bill for consideration by the Committee.
65. The respondents did not often refer to the specific Clauses and much of the comments made are not set out in this legislation but will be developed in the subsequent regulations if the Bill is passed.

Examiner of Statutory Rules

66. The Examiner of Statutory Rules has reported on the Bill with respect to the subsequent regulations and noted that he was content.

There are powers to make subordinate legislation throughout the Bill, mostly by way of amendments to the Employment Rights (Northern Ireland) Order 1996 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992. The Department has explained that the more significant regulations are subject to confirmatory procedure, while more minor regulations are subject to negative resolution. This seems to be appropriate, especially when viewed against the structure of the legislation being amended and also against the 2014 Act.

There are also several places where the draft affirmative procedure has been used (subordinate legislation cannot be made until a draft of it has been laid before, and approved by a resolution of, the Assembly), and these also seem to be an appropriate level of scrutiny.

67. The Committee considered the Report on its Scrutiny of the Bill on 8 October 2014 and ordered for the Report to be printed.

Clause by Clause Consideration of the Bill

68. The Committee deliberated on the Clauses of the Bill and on the issues raised by stakeholders on 24 September 2014 and at its meeting on 1 October 2014 the Committee formally considered the Clauses of the Bill.

Part 1 Defined expressions in this Act

Clause 1. Defined expressions in this Act

69. Clause 1 defines the two main expressions in this Act; “the Employment Rights Order” and “the Contributions and Benefits Act”.
70. The Committee agreed that it was content with Clause 1 as drafted.

Part 2 Shared Rights to Leave and Pay

71. Part 2 consists of 13 Clauses covering; Shared parental leave; Statutory shared parental pay; and other statutory rights. This is the section of the Bill which was most commented on in the submissions.

Clause 2. Shared parental leave

72. Clause 2 creates a new entitlement for employees to be absent from work on shared parental leave for the purposes of caring for a child. This means that qualifying working parents will now be able to share leave remaining when a woman ends her maternity leave or a person ends his or her adoption leave. The total amount of leave available to both parents will not be more than is available in total at present; however, there will be greater flexibility, where parents choose to use it, in how leave is shared.
73. The Committee agreed that it was content with Clause 2 as drafted.

Clause 3: Exclusion or curtailment of other statutory rights to leave

74. Clause 3 deals with bringing ordinary maternity or adoption leave to an end early. This is necessary before parents can gain access to shared parental leave. Shared parental leave is entirely optional and it will be for individuals to decide whether they wish to do this.
75. The Committee agreed that it was content with Clause 3 as drafted.

Clause 4: Abolition of additional paternity leave

76. Clause 4 repeals the statutory right to additional paternity leave, which is no longer required given the introduction of the more flexible system of shared parental leave.
77. The Committee agreed that it was content with Clause 4 as drafted.

Clause 5: Statutory shared parental pay

78. Clause 5 establishes a new entitlement to shared parental pay for qualifying birth parents, adopters and intended parents in surrogacy arrangements. This means that qualifying working parents will now be able to share statutory pay entitlement remaining when a woman ends her statutory maternity pay or maternity allowance or a person ends his or her statutory adoption pay entitlement. The total amount of statutory pay available to both parents will not be more than is available in total at present; however, there will be greater flexibility, where parents choose to use it, in how it is shared.
79. The Committee agreed that it was content with Clause 5 as drafted.

Clause 6. Exclusion or curtailment of other statutory rights to pay

80. Clause 6 allows for the reduction of a person's maternity allowance period, maternity pay period or adoption pay period to allow the individual to access the new system of shared parental leave and pay. As with shared parental leave, shared parental pay is only available when these individual periods have ended. It is for the individual concerned to decide whether and when to end a statutory pay period early in order to allow for the sharing of statutory pay entitlement.

81. The Committee agreed that it was content with Clause 6 as drafted.

Clause 7. Abolition of additional paternity pay

82. Clause 7 repeals the right to additional statutory paternity pay. This right is no longer required as it is being replaced with the more flexible statutory shared parental pay arrangements.

83. The Committee agreed that it was content with Clause 7 as drafted.

Clause 8. Other statutory rights to leave of prospective adopters with whom looked after children are placed

84. Clause 8 allows existing paternity and adoption leave rights to include fostering for adoption arrangements i.e. arrangements where a child is placed with approved foster parents who are also approved prospective adopters, with a view to the child being adopted.

85. The Committee agreed that it was content with Clause 8 as drafted.

Clause 9. Other statutory rights to pay of prospective adopters with whom looked after children are placed

86. Clause 9 has the same purpose, in respect of statutory paternity and adoption pay.

87. The Committee agreed that it was content with Clause 9 as drafted.

Clause 10. Other statutory rights to leave of applicants for parental orders

88. Clause 10 makes provision for intended parents in surrogacy arrangements, who are entitled and intend to make an application for a parental order, to be entitled to paternity leave and to adoption leave in respect of the child who is the subject of the order. Surrogate mothers are not entitled to maternity leave.

89. The Committee agreed that it was content with Clause 10 as drafted.

Clause 11. Other statutory rights to pay of applicants for parental orders

90. Clause 11 makes similar provision in respect of statutory paternity pay and statutory adoption pay in respect of the child who is the subject of the order.

91. The Committee agreed that it was content with Clause 11 as drafted.

Clause 12. Statutory paternity pay: notice requirement and period of payment

92. Clause 12 allows the Department to set the period of notice a person must give in order to take statutory paternity pay. The Department is also empowered to set the number of weeks of statutory paternity pay in regulations subject to a minimum of two weeks. Regulations may further be made to enable paternity pay to be taken in non-consecutive periods of not less than one week.

93. This Clause allows for potential future changes to the way in which statutory paternity pay is provided. This would allow a policy decision to be taken to reserve a specific period of paid leave for fathers, as happens in some international examples.

94. There are no plans at present to alter paternity leave and pay but any such change would be subject to Assembly scrutiny.
95. The Committee agreed that it was content with Clause 12 as drafted.

Clause 13. Rate of statutory adoption pay

96. Clause 13 provides for statutory adoption pay to be paid at an earnings related level (90% of a person's normal weekly earnings) for the first six weeks and a lower prescribed weekly rate for the remaining 33 weeks. The objective is to align arrangements for statutory adoption pay more closely with those for statutory maternity pay, supporting the important role that adoptive parents play in society.
97. The Committee agreed that it was content with Clause 13 as drafted.

Clause 14. Further amendments

98. Clause 14 gives effect to Schedule 1, which contains minor and consequential amendments.
99. The Committee agreed that it was content with Clause 14 as drafted.

Part 3 Time Off Work: Ante-Natal Care, Adoption Appointments

Clause 15. Time off work to accompany to ante-natal appointments

100. Clause 15 gives employees and qualifying agency workers a 'day one' right to attend up to two antenatal appointments, on an unpaid basis. The right will be available to an individual husband, civil partner or partner of a pregnant woman and to intended parents in surrogacy cases.
101. The Committee agreed that it was content with Clause 15 as drafted.

Clause 16. Time off work for ante-natal care: increased amount of award

102. Clause 16 increases the amount of compensation that an industrial tribunal will order where it finds that a pregnant employee or agency worker has unreasonably been refused time off work to attend an antenatal appointment.
103. The Committee agreed that it was content with Clause 16 as drafted.

Clause 17. Time off work to attend adoption appointments

104. Clause 17 allows primary adopters paid time off work to attend up to five pre-adoption appointments and secondary adopters unpaid time off to attend up to two such appointments. These appointments would be for the purposes of getting to know and bond with the looked after child. Meeting the child, and professionals involved in the care of the child, should increase the chances of the adoption being successful.
105. The Committee agreed that it was content with Clause 17 as drafted.

Clause 18. Right not to be subjected to detriment: agency workers

106. Clause 18 provides that agency workers may not be subjected to detriment as a result of exercising the right to take time off work for antenatal appointments or pre-adoption appointments.
107. The Committee agreed that it was content with Clause 18 as drafted.

Part 4 Other Employment Rights: Miscellaneous

Clause 19. Flexible working: removal of requirement to be a carer

108. Clause 19 extends the right to request flexible working to all employees who have the necessary period of service with their employer (currently 26 weeks). Currently, the right is restricted to parents and carers. The nature of the right will not change; employers will continue to have the right to turn down a request on business grounds.
109. The Committee agreed that it was content with Clause 19 as drafted.

Clause 20. Procedure for regulations as to prescribed amount of annual leave

110. Clause 20 makes a technical amendment to Article 15 of the Work and Families (Northern Ireland) Order 2006, dealing with annual leave. This replaces the requirement for such regulations to be subject to confirmatory procedure with a requirement for them to be subject instead to the draft affirmative procedure. This is for consistency with other regulation making powers concerning annual leave.
111. The Committee agreed that it was content with Clause 20 as drafted.

Part 5 General Provisions

Clause 21. Supplementary, incidental and consequential etc. provision

112. Clause 21 is a standard provision empowering the Department to make supplementary, incidental, consequential, transitional, transitory or saving provision.
113. The Committee agreed that it was content with Clause 21 as drafted.

Clause 22. Repeals

114. Clause 22 gives effect to the repeals in Schedule 2.
115. The Committee agreed that it was content with Clause 22 as drafted.

Clause 23. Commencement

116. Clause 23 is a standard provision allowing the Department to make commencement orders bringing the provisions of the Bill into operation on one or more dates.
117. The Committee agreed that it was content with Clause 23 as drafted.

Clause 24. Short Title

118. Clause 24 provides for the Short Title of the Work and Families Act (Northern Ireland) 2014.
119. The Committee agreed that it was content with Clause 24 as drafted.

Schedules

Schedule 1 Minor and consequential amendments

120. The Committee agreed that it was content with Schedule 1 as drafted.

Schedule 2 Repeals

121. The Committee agreed that it was content with Schedule 2 as drafted.

Long Title

122. The Committee agreed that it was content with Long Title as drafted.

Consideration of Key Issues

123. Despite the fact that the Committee was content with the Clauses of the Bill as drafted, a range of issues were raised which will be legislated for in the Regulations which the Bill allows for. These issues raised by stakeholders are outlined below along with the Committee's recommendation.

Two week negotiation period may not be long enough

124. The CBI view is that the proposed system of allowing a two week discussion period as the initial part of an eight weeks' notice period is sensible. However, they believe that there are practical concerns regarding instances when this two week negotiation period might be impossible for certain employers to implement. For example, in cases when an employee's line manager is on annual leave or for employees who work on shift patterns which do not coincide with their manager's, this negotiation period might need to be significantly longer. For smaller businesses in particular, there are likely to be occasions when staffing levels are low and dealing with requests within two weeks will be impossible.
125. The CBI warns that the period of notice could prove difficult as ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly. The CBI states that *businesses need to understand their employees' intentions as soon as possible to effectively plan resource in advance and reduce the operational and financial impact of manpower planning, absence cover and training. Ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly for businesses – particularly smaller enterprises and those whose employees cover niche roles where training is required.*
126. The CBI recommends that the two week negotiation period should therefore be a minimum guideline rather than a requirement.

Department's response

127. The Department's response is that its proposal is to require employees to provide eight weeks' notice; a set period of two weeks at the outset of (and included within) that eight week period is intended to facilitate negotiation between the employer and employee to agree the leave arrangements. The purpose of the Department's decision is to allow employers to know their employees' definite leave plans at least six weeks before any leave starts. However it is appreciated that there will inevitably be some situations where agreement to proposed leave patterns cannot be reached.
128. For this reason, the Department intends to provide in regulations that when employers and employees cannot agree arrangements within the allocated two week timeframe, the employer may be able to require that the employee take the full amount of leave requested in one continuous block, starting on a date of the employee's choosing (providing that date does not fall before the end of the minimum notice period from when the notification was originally submitted). The objective is to provide certainty for both parties in advance of leave commencing.
129. Outside this two week period, flexibility and scope for further negotiation will be provided by the fact that the employee will need to give a non-binding indication of intention when requesting shared parental leave, and will have up to three opportunities to notify, at least eight weeks in advance, the actual period or pattern of leave. Any changes that are mutually agreed between the employer and employee will not count towards the cap of three notifications.

Committee view

130. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

The proposals provide scope for an employee to make and then withdraw a request, resulting in wasted employer time

131. The EEF NI express concern that if someone puts in a request, they can withdraw it in favour of a discontinuous period of leave, thereby chunking it into three periods. The request can be withdrawn even though the company might have considered and agreed it. That would not count as a request. This could waste a lot of time considering requests that employees subsequently withdraw — understandably, perhaps, because the reciprocal employer has not agreed their partner's request, meaning that the request no longer makes any sense to them. However, the administrative burden will already have been placed on employers. An employer could be in the position of having taken time considering a request, looking into getting a replacement, yet the employee is back to having three tickets and three requests.

Department's response

132. It is appropriate that employees have the option to withdraw requests as circumstances can change very quickly around the birth or adoption of a child; and it is essential that working parents have flexibility to respond to these changes. It is equally important that employers have sufficient information and certainty to enable them to plan for employees' periods of absence.
133. The proposed approach requiring employees to give eight weeks' notice in advance of taking leave seeks to balance these potentially competing needs.
134. The Department does not intend to set specific requirements around how employers and employees engage in discussion. One or a number of meetings may be appropriate for some, while e-mails or phone calls may suit others. As with all leave requests, employers should allocate sufficient time to considering the request, proportionate to what is being asked for and its expected impact on the business. Where circumstances change, a request is withdrawn and a new one lodged, it will be in both parties' best interests to work together to agree a leave pattern. Subsequent requests are likely to require less detailed discussion as each party's general position will already be known. Where the employer cannot agree the proposed pattern, the default position remains that the employee will be entitled to take the leave as a single block.
135. The Department does not envisage that withdrawing requests will be the norm where employers and employees maintain good communication and are exploring options from the outset.

Committee view

136. The Committee accepts the Department's position on this issue.

The process for requesting leave

137. The EEF NI made the points that an employee's initial notification of leave should be binding, that employers should be able to veto an unsuitable period of leave and that the two weeks for considering a leave request is too short.

Department's response

138. The arrangements being put in place are that employees will have to provide a non-binding indication of their expected pattern of leave as part of the notification of their eligibility and intention to take shared parental leave. Although this will not constitute a formal notice to

take leave, it should provide the employer with an early understanding of the employee's thinking around proposed leave patterns and act as a trigger for informal discussions.

139. An employee must give a separate written notice at least eight weeks before the start of any period of shared parental leave. The notice must state when the leave will start and end, and can request more than one period of leave. The first two weeks following receipt of written notification from the employee afford time for formal discussion and consideration of the request. It will be in both parties' interests to engage in meaningful discussion; employees who want their request to succeed will benefit from engaging realistically and constructively with their employer from an early date.
140. If the employee has asked for a single continuous period of leave, that request may not be refused. This corresponds to the 'default continuous block' arrangement.
141. If the employee's request is for separate periods of leave, the employer has three options: to agree, refuse, or propose alternative dates. If agreement between employer and employee cannot be reached within two weeks, the employee can withdraw the request, or take the leave requested as a single continuous period.
142. A majority of employers and employees should be able to come to an agreement about how the leave may be taken. However, the Department recognises that some employers may have difficulties accommodating more flexible leave patterns. This is why there will be a default position enabling employers to require employees to take the leave they have requested in one continuous block.
143. An employee will have up to three opportunities to notify a period or pattern of leave with at least eight weeks' notice (in addition to the non-binding indication). The Department will provide that changes that are mutually agreed between the employer and employee will not count towards the cap.
144. There will be no limit on variations agreed between the employee and employer.

Committee view

145. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

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

146. The CBI states that it is essential 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 so that the exact start date and other cut-off dates in the system can be known from the outset and communicated in advance without problem.

Department's response

147. The Department response points out that it had sought opinions as to whether the cut-off point for parents taking shared parental leave should be 52 weeks from start of maternity leave or 52 weeks from birth. It notes that while opinions were divided on this, it concluded that it is most appropriate for the cut-off point to be set at 52 weeks from the birth of the child. One respondent to the Committee's consultation continued to advocate that a period 52 weeks from the start of maternity leave was preferable.
148. The Department is content that opting for a cut-off 52 weeks from the birth of the child is the appropriate approach. This is in keeping with the arrangements in place for the existing right to additional paternity leave, so should be a familiar premise for employers and employees. It will maximise the amount of leave potentially available to the partner who is sharing entitlement. Ending entitlement 52 weeks from the start of maternity leave could, in effect,

reduce the amount of leave a partner could share by up to 11 weeks (given that a woman can commence maternity leave as early as 11 weeks before the expected week of birth). This measure is consistent with the Department's objective of maximising choice and flexibility for parents during the first year.

Committee view

149. The Committee accepts the Department's position on this issue.

Right to return to the same or a similar job when returning from periods of leave totalling up to 26 weeks

150. The CBI has raised concern about the employee's right to return to the same or a similar job after taking a period of time off on parental leave. It points out that while most employers strive to guarantee that an employee will return to the same role, "*in instances where there is the potential for an employee to take significant periods of parental leave spanning across 12 months, this can be impossible. A company might require the need for restructuring in order to remain competitive and successful during the considerable period in which an employee is on leave. This may be the case in particular for businesses which are expanding or businesses which are facing financial difficulties.*"

151. The CBI therefore makes the suggestion "*that employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark to the benefit of both parties. This will give employers the flexibility necessary to adapt to changes in the economic and structural landscape of their business and this is at no detriment to employees who will still return to a similar position at the company.*"

Department's response

152. The Department has responded to this issue advising that in its proposals, employees returning from any period of leave that includes maternity, paternity, adoption and shared parental leave totalling 26 weeks or fewer in aggregate will have the right to return to the same job, even if the leave is taken in discontinuous blocks. The right of return thereafter is a right to return to the same job, subject to that being reasonably practicable. One respondent expressed concern about the business impacts of the Department's 'aggregated leave' proposal.
153. The Department remains of the view that its proposal strikes the right balance between protection for individuals and flexibility for business. Failure to make provision of this kind risks discouraging the use of shared parental leave in the flexible manner intended, as individuals may be reluctant to apply for leave in separate blocks for fear that breaking continuity of leave will result in a lesser right of return.
154. The Department does not consider that the option envisaged will place an additional burden on business. Employers already track the number of weeks of family-related leave that each employee takes as part of normal payroll management, and so it should be relatively simple to add up the number of weeks of leave to determine the correct right of return.
155. The legal requirement, to be set out in regulations under new Article 107K(1)(c), will be that an employee has the right to return to the same job (if taking less than 26 weeks' aggregated leave); and to the same job unless that is not reasonably practicable (if returning from more than 26 weeks' aggregated leave). In most cases, employers will not even have to consider this issue as it will be only in limited circumstances, such as during major restructuring, that an employer would have to consider returning an employee to a job other than the one in which the employee worked before starting leave.

Committee view

156. The Committee accepts the Department's position on this issue.

Keeping in Touch days

157. The CBI support the proposal in respect of the Keeping in Touch (KIT) days stating that if mothers and fathers are sharing their parental leave, it is only appropriate that they share their 10 KIT days rather than being given ten each. This is proportionate to the scale of days required to effectively keep in touch. Any more than ten days in total is unnecessary, especially in the case of micro businesses where businesses would be absorbing the additional cost of paying for an employee to be present in the workplace during their leave, whilst also potentially financing the cost of a replacement.
158. However ICTU welcomes the Department's decision to allow for up to 20 Keep in Touch days.

Department's response

159. The Department points out that in the consultation, respondents were asked if they considered that up to 10 KIT days per parent during shared parental leave was the right number. The Department has outlined that it now considers that it is appropriate to provide for up to 20 KIT days per person on shared parental leave. This is the option that has been adopted in Great Britain and the Department wishes to ensure that working parents in Northern Ireland are not disadvantaged in this regard. There is no adverse impact on employers because KIT days can only be taken by mutual agreement between employee and employer.
160. The Department remains of the view that the 20 days proposed is reasonable in that it creates more potential flexibility to work during leave without bringing leave entitlement to an end. This could be very useful, for example, where an individual is able to return to work for a particular task, project, training course or event to the benefit of the employer. It could also be helpful in assisting an individual to reintegrate back into work as part of a phased return from leave.
161. The Department does not consider that the increase in the number of KIT days potentially available will be detrimental to employers given the requirement for mutual agreement to their use.

Committee view

162. The Committee accepts the Department's position on this issue.

Day one right to shared parental leave and pay

163. ICTU noted its concern that if the new legislation does not allow for a day one right to shared parental leave and pay that this will exclude the very low paid and those on short term contracts, a growing proportion of the workforce.
164. ICTU advise that it pointed out, in its submission to the consultation on Sharing Parental Rights that the proposed new rights should be available as day one rights. ICTU believe that not only will this will ensure that no group of workers is disadvantaged but also that it will be much easier for employers to understand and administer. ICTU is therefore extremely disappointed to learn that the Department does not propose to make paternity/parental leave a day one right.

Department's response

165. The Department response is that Clause 2(2) of the Bill establishes the new right to shared parental leave and permit the Department to make regulations that may specify conditions of entitlement for birth and adoptive parents, respectively, who intend to share parental leave. One such condition concerns duration of employment and permits the Department, by way of regulations, to determine how long a person needs to be in employment to qualify for the entitlement.

166. The Department points out that in its consultation it indicated that, to qualify for shared parental leave, it is envisaged that the parent/carer must have at least 26 weeks' continuous service with the same employer at the 15th week before the baby's due date and still be working for the same employer when he or she intends to take the leave. A comparable length of service requirement is envisaged in respect of adoptions.

167. The Bill in fact does not restrict the Department's ability to specify conditions as to length of service, so in effect could, as presently drafted, allow for shared parental rights to operate from day one by specifying accordingly in regulations. However, in exercising its power to make regulations, the Department will wish to achieve a balance, within the package of new rights taken as a whole, between flexibility for working families and certainty for employers. The Department takes the view that the length of service qualifying condition of 26 weeks is appropriate in that it will give employers a greater degree of certainty that when they take on a new employee, that employee will not be immediately absent from the workplace on shared parental leave. A 26 week period is consistent with the period that applies to the existing additional paternity leave and pay arrangements that are being superseded by shared parental leave and pay. Moving away from this arrangement would be likely to incur significant additional costs.

Committee view

168. The Committee accepts the Department's position on this issue.

Difficulty arranging cover for employees absent on shared parental leave

169. The EEF NI believes that employers will find it difficult to arrange cover for employees who are absent on shared parental leave.

Department's response

170. As already noted, there will be no requirement for an employer to agree to multiple periods of leave; where agreement cannot be reached, leave will default to a single block. Cover for these situations will need to be arranged in much the same way as currently to cover absence on additional paternity leave.

171. Where leave is not being taken as a single block, but as multiple periods separated by time back at work, there may in fact be scope for employers to reduce reliance on cover from agency staff. Employees who remain closer to and more engaged with the workplace may be able to deal with issues during their periods back at work which would otherwise fall to be dealt with by someone providing temporary cover.

Committee view

172. The Committee accepts the Department's position on this issue.

Allowing parents to take leave in one week blocks

173. There is a difference of opinion between ICTU and the CBI on the matter of taking leave in one week blocks. ICTU expresses its disappointment that the Department has chosen not to make parental leave more flexible. ICTU pointed out that only allowing parents to take leave in one week blocks is highly inflexible and will discourage shared parenting. ICTU advocate a system whereby parents could take unpaid leave as both single days or in blocks of less than one week. This would facilitate parents to attend special occasions such as sports days.

174. The CBI however feels that allowing parents to take leave in a minimum of one week blocks would be very difficult for employers – especially small businesses - to manage. They argue that it would make it practically impossible to hire someone on a temporary basis to cover a period of time which is made up of start/stop periods even if the notice given by the employee is sufficient.

Department's response

175. The Department view is that Articles 107F(1) and 107I(1) provide for regulations to determine the amount of shared parental leave and when it may be taken. In accordance with paragraph (8) of each respective Article, provision must be made in such regulations for the taking of shared parental leave in a single period or in non-consecutive periods. The effect of this is to allow the leave to be taken more flexibly than in a single consecutive block.
176. The Department maintains that the one week minimum is appropriate. Unlike maternity or adoption leave, shared parental leave may be stopped and started. This means that parents can mix periods of work with periods of leave to better balance their professional and domestic responsibilities.

Committee view

177. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Amount of statutory pay available and uptake of the right to shared parental leave is likely to be low

178. ICTU point out that Clause 5 establishes a new entitlement to shared parental pay for qualifying birth parents, adopters and intended parents in surrogacy arrangements. This means that qualifying working parents will now be able to share statutory pay entitlement remaining when a woman ends her statutory maternity pay or maternity allowance or a person ends his or her statutory adoption pay entitlement. The total amount of statutory pay available to both parents will not be more than is available in total at present; however, there will be greater flexibility, where parents choose to use it, in how it is shared.
179. ICTU point out that the biggest deterrent for fathers/partners taking parental leave is because they cannot afford to do so. To achieve significant change in parenting roles and more choice for low income families, the issue of very low pay for those taking time off to care for children needs to be addressed. ICTU disagree with the Department in its view that the proposed rates of pay for fathers and partners are appropriate and strongly believe that this will deter take up of shared parenting opportunities. ICTU note that the Department has given a commitment to 'keep the uptake of shared parental leave and pay by fathers and partners under review'.
180. ICTU note that the Department has given a commitment to 'keep the uptake of shared parental leave and pay by fathers and partners under review' and requests to see a clear terms of reference for this review including a timetable and how the Department would propose to monitor uptake.

Department's response

181. Other issues raised in response to the Committee's consultation related the suggestion that the Bill does not go far enough in establishing new employment rights for parents.
182. The first of these was that there is no enhanced standalone leave or pay provision for fathers/partners.
183. The Department has stated its intention to keep the system of shared parental leave as simple as possible for both employers and employees and believes that the system proposed is a balanced package. The Department has considered the overall financial implications of any policy proposals and the fact that any statutory financial support has to take account of affordability for both employers and taxpayers. In light of this the Department considers the proposed rates of pay for fathers and partners to be appropriate. However, as was noted by the same respondent who raised this issue, the Department has made a commitment to keep the uptake of shared parental leave and pay by fathers and partners under review.

184. Clause 12 of the Bill contains enabling powers that could facilitate such a review in future without the need for primary legislation. These powers would enable future regulations to make Statutory Paternity Pay (SPP) available for non-consecutive periods consisting of individual periods of a week or a number of weeks.
185. The Department acknowledges that the uptake of the existing additional paternity leave and pay arrangements is quite low, and that this pattern may continue in the early stages following the implementation of the provisions contained in the Work and Families Bill. The Department is seeking to achieve a more fundamental and systemic change to the way working families share their parental responsibilities. While initial uptake is likely to be low, the Department believes that it should increase with time as the sharing of parental leave becomes more widely accepted and culturally embedded.
186. The new system of shared parental rights should also help to address some of the more negative impacts that women experience in terms of disengagement from the workplace. There is clear evidence that the pay differential between women and men is relatively low in respect of full-time employment. Where that differential becomes more pronounced is for those women who are in part-time employment. The introduction of more flexible parental rights is designed to create more long-term structural change in the way working families care for their children that allows women to remain in full-time employment and compete on a fair and equitable basis within the labour market.
187. The Department also considers that the introduction of the added choice and flexibility that the new rights offer will have positive societal impacts. Evidence shows that fathers/partners want to play a greater role in the upbringing of their children, and that this involvement can be beneficial in terms of children's social and educational outcomes.

Committee view

188. The Committee accepts the Department's position on this issue but wishes to receive further information on how and when the Department will review up-take of shared parental leave including the Terms of Reference.

Flexible working

189. Clause 19 extends the right to request flexible working to all employees who have the necessary period of service with their employer (currently 26 weeks). Currently, the right is restricted to parents and carers. The nature of the right will not change; employers will continue to have the right to turn down a request on business grounds.
190. The concept of flexible working is one that is strongly supported by the broad membership of the CBI and it points out that many of its members would take the view that they are already well ahead of legislation on this. The CBI points out that a flexible workforce can lead to better engagement, flexible staffing and more diverse talent pool and therefore it supports reform, "*albeit with several areas for further clarity and review*".
191. ICTU welcome the Department's decision to retain the statutory process governing the right to request flexible working. However it remains concerned that the Bill does not propose to remove the 26 weeks continuous service eligibility rule for those who wish to request flexible working.
192. ICTU points out that it advocated that the right to request flexible working should be a day one right and that having the 26 week qualifying period will exclude many parents and carers, particularly lone parents, who find themselves in precarious employment of limited duration including zero hours contracts.
193. ICTU is concerned about the equality impact of this proposal believing that it may have a disproportionate negative impact on women.

Department's response

194. The Department also recognises that some employers may have difficulties accommodating more flexible leave patterns. This is why the Bill includes a provision for a default position enabling employers to require employees to take the leave they have requested in one continuous block.
195. A majority of employers and employees should be able to come to an agreement about how the leave may be taken. However, the default provision offers additional certainty for employers in cases where agreement is not possible.
196. Clause 19 of the Bill amends Article 112F of the Employment Rights Order to remove the requirement that an employee must have parental or caring responsibility in order to make a request to an employer to change the employee's terms and conditions with respect to hours and location of work. The effect of this is to extend the right to request flexible working to all employees who have the necessary period of service (currently 26 weeks). One respondent was dissatisfied with the retention of the qualifying period and suggested that the right to request should become a 'day one' right.
197. It is the Department's considered view that employers need to have certainty over terms and conditions when recruiting new employees; a 'day one' right to request would remove that certainty. Employees need to understand that, when taking up new employment, it is unlikely that they will be able to immediately amend terms and conditions, as vacancies are filled on the basis of employer needs at the point of recruitment. Without this qualifying period, employees could be encouraged to take up employment offers which do not suit their needs in the mistaken belief that, once employed, those unsuitable patterns could be easily altered.

Committee view

198. The Committee accepts the Department's position on this issue.

New right to begin for parents of children expected to be born or adopted in April 2015

199. The EEF NI representatives suggested that the application of the 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 went on to propose the development at-a-glance guidance, model documents and online toolkits, and a dedicated helpline to provide information on the new rights.

Department's response

200. The Department recognises that the timescales envisaged are short. However, it does not believe that the introduction of shared parental rights should be delayed, as this would disadvantage Northern Ireland's working parents. The Department will ensure that guidance and online tools are made available as quickly as possible following passage of the legislation to assist employers and employees to prepare for the new rights' introduction. While final versions of these materials cannot be provided until the shape of the provisions is agreed, the Department intends to engage with stakeholders by providing, as early as possible, draft copies of proposed guidance, and is already looking at the possibility of producing model documentation and online tools.
201. It should also be noted that the Labour Relations Agency already provides a free and confidential helpline service which will be able to offer employers and employees information about the new rights. The Department will be working with the Agency to ensure that it is able to provide effective information to both employers and employees on the practical operation of the new rights.

Committee view

202. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

User Friendly processes

203. Both the EEF NI and the CBI point out that the high proportion of SMEs in Northern Ireland and the fact that the rights outlined in the Bill disproportionately impact on the small employer mean that the secondary legislation coming from the Bill reflects the difficulty faced by these employers. The CBI believes that the Bill has the *"capability to add additional complexity to the system which would be damaging and highly disruptive for businesses to administer. Avoiding such complexities is vital to retaining business support and it is imperative that government across the UK seeks to create a system which is straightforward and easy to use."*
204. The CBI advises that:
- i. In order to help businesses with this planning, employees should be required to provide an honest and reasonable preliminary plan establishing patterns and periods of leave. The government needs to provide a form which employees can present to employers indicating their intended patterns of shared parental leave with an eight weeks' notice period in advance of the start of the mother's maternity leave.
 - ii. Government should produce comprehensive guidance stipulating what is and is not appropriate for employers and employees in this situation, and strongly encourage employees to present employers with their plan at the earliest possible opportunity. It is essential, of course, that employers retain the right to say no to requests.
205. The CBI also points out that minimising the administrative burden on businesses must be at the heart of the government's aims and argues that this will allow parties to focus discussions on issues of substance, and will minimise the opportunity for disputes based on process.
206. The CBI points out that there are worries that employees might complete the form inaccurately due to both lack of clarity in the current draft form and their own lack of understanding of their entitlements and recommends that the form needs to be more precise, with supporting information and guidance for both employers and employees.
207. Further suggestions from the CBI to simplify the procedure further include aligning *"paternity pay and notice period at the end of the 15th week before the expected week of child birth as there is no obvious reason to retain differential notice periods and the risk of confusion such a system brings. The current required notice periods have led to uncertainty and employee queries. A simple, clear system would avoid unnecessary hassle and make it easier for employees to fill out their self-declaration form."*
208. CBI also states that it is essential 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 so that the exact start date and other cut-off dates in the system can be known from the outset and communicated in advance without problem.

Department's response

209. The Bill provides that regulations dealing with the key elements of the new rights will be subject to the confirmatory procedure. The intention is to ensure that the Assembly has an opportunity to debate their content. The Department gives its assurance that it is committed to developing regulations that minimise the administration associated with the implementation of the new rights, and that appropriate user-friendly guidance will also be put in place.

Committee view

210. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Arrangements that will be in place for recouping overpayments and allowing employers to communicate to verify information

211. The EEF NI inquired as to the arrangements that will be in place for recouping overpayments of statutory shared parental pay. The organisation also wishes to see provision allowing employers to communicate so as to be able to verify information that is included in leave requests.

Department's response

212. Employers will be able to recover overpayments of statutory shared parental pay in the same way as overpayments of additional paternity pay are recovered at present.
213. Employers will not be liable in the event of an employee claiming too much leave.
214. While employers will be able to request the contact details of a claimant's partner if they wish – as they can under the current additional paternity arrangements – they will not be expected to perform detailed checks.
215. In the event of fraud being detected, employers will use their own policies to determine how the employee is dealt with by them in the same way that they would in the event of other misconduct coming to light.
216. Her Majesty's Revenue and Customs (HMRC) will use a risk based regime to identify parents who have claimed beyond their entitlement to shared parental pay. Individual claimants can be linked via their national insurance numbers. Penalties comparable to those in place for abuse of other statutory rights to paid leave will be put in place.
217. Employers failing or refusing to operate the scheme correctly could incur civil penalties. Penalties could also be imposed on employees who fraudulently or negligently give incorrect information, or who make a false statement or declaration. In these circumstances, the employer would not be penalised for having paid a statutory payment in good faith.

Committee view

218. The Committee accepts the Department's position on this issue.

Fear of being open to sex discrimination

219. The EEF NI sought assurance that there is no sex discrimination risk where employers continue to offer enhanced occupational maternity pay once shared parental rights are in place.

Department's response

220. An occupational maternity scheme can only be offered to a woman on maternity leave.
221. If an occupational scheme is offered to a mother on shared parental leave, it could constitute sex discrimination if such a scheme were not offered to fathers/partners of the mother.
222. It will be entirely at the discretion of employers whether they wish to offer occupational parental schemes for men and women sharing parental leave once maternity leave has ended.

Committee view

223. The Committee accepts the Department's position on this issue.

Guidance

224. The CBI agrees with the EEF NI that the success of the legislation depends on good guidance. For the changes in the Bill to succeed, the CBI also believe it imperative that detailed, practical and understandable guidance for both employers and employees is published well in advance of April 2015 so that all involved can familiarise themselves with the new processes. That will require the legislation to be kept as clear and practicable as is feasible so that effective, user friendly and timely guidance can be published.
225. The EEF NI advocates the use of "At a Glance Guides" setting out the main rights with supplemental Guidance providing further detail on particular aspects of the rights. The EEF NI also suggests that standard documents would be helpful such as the Notification Document of the intended leave pattern.

Department's response

226. The Bill provides that regulations dealing with the key elements of the new rights will be subject to the confirmatory procedure. The intention is to ensure that the Assembly has an opportunity to debate their content. The Department gives the assurance that it is committed to developing regulations that minimise the administration associated with the implementation of the new rights, and that appropriate user-friendly guidance will also be put in place.
227. Consequently, as some respondents have acknowledged, the successful implementation of the new rights provided for within the Bill will be dependent on the preparation of effective regulations, supported by appropriate guidance and other materials designed to assist employers and employees in operating the new systems.

Committee view

228. The Committee considers that the Department's response is adequate but will seek the Department's assurance that the associated guidance has been reviewed by key stakeholders.

Alignment with legislation in Great Britain

229. On this issue there is a difference of opinion between ICTU and the CBI. The CBI view is that while employment law is devolved to Northern Ireland, in this particular aspect it remains wise to follow whatever lead Great Britain takes on the issue – notably in respect of the amount of subsidiary companies that operate in Northern Ireland whose parent company is based in Great Britain.
230. On the other hand the ICTU view is that if the Northern Ireland Executive was serious about addressing inequality in society and creating a culture of shared parenting, that the proposals needed to go beyond what was contained in the UK proposals.

Department's response

231. The Department's view is that it should remain in line with the legislation in GB to make the operations of schemes transferrable for businesses operating across the UK.

Committee view

232. The Committee accepts the Department's position on this issue.

Another individual as a person with whom parental leave could be shared

233. ICTU understand that the Department is not proposing to allow parents to nominate another individual as a person with whom parental leave could be shared and it is disappointed that one of the reasons for not doing so has been given as “*such an approach would represent a substantial departure from the system proposed and would remove the benefits of consistency across the UK*”.

234. ICTU disagree with this and point out that the Northern Ireland Executive has an opportunity with this piece of employment legislation to reduce inequalities. Facilitating this would particularly benefit lone parents who may wish to share their entitlement with the child's grandparent for example.

Department's response

235. The Department did consider whether it might be feasible to allow a single parent to nominate another individual, for example a close family member, as a person with whom parental leave and pay could be shared. However, it was decided that, at this time, such an approach would complicate administration for employers and might be more open to abuse. It would also represent a substantial departure from the system proposed; would remove the benefits of consistency across the UK; and would incur additional costs. This remains the Department's position.

Committee view

236. The Committee accepts the Department's position on this issue.

Paid leave will not accompany rights for partners to attend antenatal appointments

237. While ICTU welcomes the commitment to establish rights for partners to attend antenatal and pre adoption appointments, it is disappointed that paid leave will not accompany these rights. ICTU draw to the Committee's attention the impact on those in low paid employment of having to take unpaid leave for these important appointments.

238. ICTU argues that if this right is to “encourage shared parenting from as early a stage as possible”, then it is going to be made much more likely if the leave is paid. The restriction to two appointments is, in ICTU's view, inadequate and it suggests that the right to time off should be for a reasonable period of time and should also apply to agency workers as a day one right.

Department's response

239. The Department advised that partners will have the right to attend antenatal and pre adoption appointments but that it will remain un-paid.

Committee view

240. The Committee accepts the Department's position on this issue.

Kinship carers

241. Pat Ramsey MLA expressed disappointment that the issue of kinship care is not dealt with by the Bill and indicated that he would wish to see a meeting between Departmental officials and Kinship Care Northern Ireland.

Department's response

242. The Department's preliminary investigations into addressing this matter by way of the present Bill have indicated that incorporating such a provision is likely to be very challenging and would compromise the ability to secure passage of the Bill. The following issues are offered for the Committee's further consideration.

243. There is significant doubt that kinship care lies within the legislative scope of this Bill. Kinship care is a cross-cutting issue in which the Department is not the lead department. There are certainly implications for the lead policy department, the Department for Health, Social Services and Public Safety, and, potentially, the Department for Social Development, arising out of any proposed changes. Action to legislate on the matter would therefore require further public consultation, legal advice, engagement with affected departments and Executive agreement. All of these actions would not be possible to achieve within the life cycle of this Bill.
244. The Department's initial investigations further indicate that the following issues would require consideration before statutory leave could be provided for kinship carers.
245. There does not appear to be an established and accepted legal definition of what precisely constitutes kinship care. There will be a need to identify a particular target group to which the arrangements ought to extend.
246. Introducing such a provision at the same time as shared parental leave is likely to be perceived as an additional burden on employers.
247. This measure has not been the subject of public consultation; nor has it been impact assessed.
248. It is unclear how evidential requirements could be sufficiently tightly drawn to allow for coverage of 'informal' kinship care arrangements.
249. Although formal kinship care arrangements should be easier to evidence as, typically, they concern fostering and the involvement of Social Services, it may be legally problematic to establish differential treatment between formal arrangements for foster parents who are not kinship carers and those who are.
250. As the length of informal kinship care arrangements can vary considerably, it will be necessary to consider questions such as what the qualifying length of placement should be for such an arrangement to fall within the legislative provisions for statutory leave.
251. Kinship carers are provided with an allowance where formal kinship arrangements are in place. This is not available to working parents or adoptive parents. Provision of two types of payment to kinship carers and only statutory shared parental pay to birth or adoptive parents is likely to give rise to questions of fairness.
252. Seeking to address this complex area as part of this Bill is likely to significantly delay implementation, resulting in regulations not becoming operative as envisaged by April 2015. As well as disadvantaging Northern Ireland's working parents *vis à vis* their counterparts in Great Britain, delay risks incurring additional costs for government and employers. Costs could arise if HMRC is required to continue to administer the current additional paternity leave and pay system in Northern Ireland alongside the new shared parental leave and pay system in Great Britain. Employers operating across the UK will also face costs if they are required to understand and operate two separate systems.
253. For all of these reasons, the Department believes that it is not possible to bring kinship care arrangements within the scope of the Work and Families Bill that is currently before the Committee.

Committee view

254. The Committee accepts the Department's position on this issue.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Wednesday, 26 March 2014

Room 29, Parliament Buildings

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

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Johnny Lawless (Clerical Supervisor)
Ms Noreen Hayward (Clerical Officer)

Apologies: Mr Phil Flanagan MLA
Mr David McClarty MLA

10:00 am The meeting opened in public session.

10. Departmental Briefing on the Work and Families Bill

11:20 am The Departmental officials joined the meeting.

The Committee was briefed by Mr Tom Evans, Deputy Director, Strategy, European and Employment Relations Division and Dr Alan Scott, Employment Relations Policy and Legislation Branch.

The briefing was followed by a question and answer session.

11:39 am Mr Sammy Douglas left the meeting.

11:47 am The Departmental officials left the meeting.

11:47 am Mr Pat Ramsey left the meeting.

The Committee considered a list of organisations to write to requesting written submissions on the Work and Families Bill when it is at Committee Stage.

Agreed: The Committee agreed the list of organisations.

The Committee considered a draft signposting advertisement and a draft press release on the Work and Families Bill when it is at Committee Stage.

Agreed: The Committee agreed a draft signposting advert and a draft press release and that they are issued when the Bill comes to Committee at Committee Stage.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
9 April 2014

[EXTRACT]

Wednesday, 7 May 2014

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Chairperson)
Mr Sammy Douglas MLA
Mr David Hilditch MLA
Mr Chris Lyttle MLA
Mr Fra McCann MLA
Ms Bronwyn McGahan MLA
Mr Pat Ramsey MLA
Mr Alastair Ross MLA

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Johnny Lawless (Clerical Supervisor)
Ms Noreen Hayward (Clerical Officer)

Apologies: Mr Thomas Buchanan MLA (Deputy Chairperson)
Mr Phil Flanagan MLA

10:07am The meeting opened in public session.

2. Chairpersons Business

The Committee agreed to move to agenda item 2.

- The Committee considered an offer from Departmental officials to brief the Committee on the Work and Families Bill.

Agreed: The Committee agreed to meet informally today to receive a briefing on the Work and Families Bill.

Agreed: The Committee agreed to forward the Delegated Powers Memorandum for the Bill to the Examiner of Statutory Rules on 13 May.

Agreed: The Committee agreed that the consultation period for the Committee stage of the Bill will be for 6 weeks.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
28 May 2014

[EXTRACT]

Wednesday, 4 June 2014

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Chairperson)
Mr Sammy Douglas MLA
Mr David Hilditch MLA
Mr Phil Flanagan MLA
Mr Chris Lyttle MLA
Mr Fra McCann MLA
Ms Bronwyn McGahan MLA
Mr Pat Ramsey MLA
Mr Alastair Ross MLA
Ms Claire Sugden MLA

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Assembly Clerk)
Mr Johnny Lawless (Clerical Supervisor)
Ms Noreen Hayward (Clerical Officer)

Apologies: Mr Thomas Buchanan MLA (Deputy Chairperson)

10:00 am The meeting opened public session.

2. Chairpersons Business

Agreed: The Committee agreed to publish the responses received to the consultation on the Work and Families Bill on the Committee webpage

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
11 June 2014

[EXTRACT]

Wednesday, 10 September 2014

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Chairperson)
Mr Thomas Buchanan MLA (Deputy Chairperson)
Mr Sammy Douglas MLA
Mr Phil Flanagan MLA
Mr David Hilditch MLA
Mr Chris Lyttle MLA
Mr Fra McCann MLA
Mr Pat Ramsey MLA
Mr Alastair Ross MLA

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Noreen Hayward (Clerical Officer)

Apologies: Ms Bronwyn McGahan MLA
Ms Claire Sugden MLA

10:02 am The meeting opened in public session.

9. Work and Families Bill - Engineering Employers Federation NI

12:00 pm The representatives joined the meeting.

12:01 pm Mr Ross left the meeting.

The Committee was briefed by Ms Michelle McGinley, Employment Lawyer and Ms Kathryn McCormick, Employment Lawyer.

The briefing was followed by a question and answer session.

12:17 pm Mr McCann left the meeting.

12:33 pm The representatives left the meeting.

10. Work and Families Bill - Departmental Briefing

12:33 pm The Departmental officials joined the meeting.

The Committee was briefed by Mr Tom Evans, Deputy Director, Strategy, European and Employment Relations Division and Dr Alan Scott, Employment Relations Policy and Legislation Branch.

The briefing was followed by a question and answer session.

Agreed: The officials agreed to review the Hansard of the Engineering Employers Federation NI evidence and respond to the issues raised.

12:52 pm The Departmental officials left the meeting.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
17 September 2014

[EXTRACT]

Wednesday, 24 September 2014

Room 29, Parliament Buildings

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

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Clerk)
Ms Noreen Hayward (Clerical Officer)
Mr Malcolm Collins (Clerical Officer)

Apologies: Ms Claire Sugden MLA

10:05 am The meeting opened in public session.

1. Work and Families Bill – Deliberation

11:23 am The representatives joined the meeting.

The Committee was briefed by Mr Tom Evans, Deputy Director, Strategy, European and Employment Relations Division and Dr Alan Scott, Employment Relations Policy and Legislation Branch.

The Committee considered the Clauses, Schedules of the Work and Families Bill, the key issues raised by Stakeholders that related to the Bill and the Department's response to the issues.

The Committee was content to note the key issues raised by the Stakeholders and the Department's response.

11:48 am The representatives left the meeting.

12:54 pm The Chairperson adjourned the meeting.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
1 October 2014

[EXTRACT]

Wednesday, 1 October 2014

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Chairperson)
Mr Thomas Buchanan MLA (Deputy Chairperson)
Mr Sammy Douglas MLA
Mr David Hilditch MLA
Ms Anna Lo MLA
Ms Bronwyn McGahan MLA
Mr Pat Ramsey MLA
Mr Alastair Ross MLA
Ms Claire Sugden MLA

In Attendance: Mrs Cathie White (Assembly Clerk)
Mr Vincent Gribbin (Assistant Clerk)
Mr Johnny Lawless (Clerical Supervisor)
Ms Noreen Hayward (Clerical Officer)

Apologies: Mr Fra McCann MLA

10:02 am The meeting opened in public session.

7. **Work and Families Bill – Clause by Clause Consideration**

The Committee commenced formal clause by clause consideration of the Work and Families Bill.

Clause 1 - Defined expressions of this Act.

Question put and agreed:

“That the Committee is content with Clause 1 as drafted”

Clause 2 - Shared Parental Leave.

Question put and agreed:

“That the Committee is content with Clause 2 as drafted”

Clause 3 - Exclusion or curtailment of other statutory rights to leave.

Question put and agreed:

“That the Committee is content with Clause 3 as drafted”

Clause 4 - Abolition of additional paternity leave.

Question put and agreed:

“That the Committee is content with Clause 4 as drafted”

Clause 5 - Statutory shared paternal pay.

Question put and agreed:

“That the Committee is content with Clause 5 as drafted”

Clause 6 - Exclusion or curtailment of other statutory rights to pay.

Question put and agreed:

“That the Committee is content with Clause 6 as drafted”

Clause 7 - Abolition of additional paternity pay.

Question put and agreed:

“That the Committee is content with Clause 7 as drafted”

Clause 8 - Other statutory rights to leave of prospective adopters with whom looked after children are placed

Question put and agreed:

“That the Committee is content with Clause 8 as drafted”

Clause 9 - Other statutory rights to pay of prospective adopters with whom looked after children are placed

Question put and agreed:

“That the Committee is content with Clause 9 as drafted”

Clause 10 - Other statutory rights to leave of applicants for parental orders

Question put and agreed:

“That the Committee is content with Clause 10 as drafted”

Clause 11 - Other statutory rights to pay of applicants for parental orders

Question put and agreed:

“That the Committee is content with Clause 11 as drafted”

Clause 12 - Statutory paternity pay: notice requirement and period of payment

Question put and agreed:

“That the Committee is content with Clause 12 as drafted”

Clause 13 - Rate of statutory adoption pay

Question put and agreed:

“That the Committee is content with Clause 13 as drafted”

Clause 14 - Further amendments

Question put and agreed:

“That the Committee is content with Clause 14 as drafted”

Clause 15 - Time off work to accompany to ante-natal appointments

Question put and agreed:

“That the Committee is content with Clause 15 as drafted”

Clause 16 - Time off work for ante-natal care: increased amount of award

Question put and agreed:

“That the Committee is content with Clause 16 as drafted”

Clause 17 - Time off work to attend adoption appointments

Question put and agreed:

“That the Committee is content with Clause 17 as drafted”

Clause 18 - Right not to be subjected to detriment: agency workers

Question put and agreed:

“That the Committee is content with Clause 18 as drafted”

Clause 19 - Flexible working: removal of requirement to be a carer

Question put and agreed:

“That the Committee is content with Clause 19 as drafted”

Clause 20 - Procedure for regulations as to prescribed amount of annual leave

Question put and agreed:

“That the Committee is content with Clause 20 as drafted”

Clause 21 - Supplementary, incidental and consequential etc. provision

Question put and agreed:

“That the Committee is content with Clause 21 as drafted”

Clause 22 - Repeals

Question put and agreed:

“That the Committee is content with Clause 22 as drafted”

Clause 23 - Commencement

Question put and agreed:

“That the Committee is content with Clause 23 as drafted”

Clause 24 - Short title

Question put and agreed:

“That the Committee is content with Clause 24 as drafted”

Schedule 1 - Minor and consequential amendments

Question put and agreed:

“That the Committee is content with Schedule 1 as drafted”

Schedule 2 - Repeals

Question put and agreed:

“That the Committee is content with Clause Schedule 2 as drafted”

Long Title of the Bill

Question put and agreed:

“That the Committee is content with the Long Title as drafted”

Agreed: The Committee agreed to request a research paper on kinship carers in other jurisdictions.

10:55 am The Chairperson adjourned the meeting.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning
8 October 2014

[EXTRACT]

Wednesday, 8 October 2014

Room 29, Parliament Buildings

Present: Mr Robin Swann MLA (Chairperson)
 Mr Thomas Buchanan MLA (Deputy Chairperson)
 Mr Phil Flanagan MLA
 Mr William Irwin MLA
 Ms Anna Lo MLA
 Mr Fra McCann MLA
 Ms Bronwyn McGahan MLA
 Mr Pat Ramsey MLA
 Ms Claire Sugden MLA

In Attendance: Mrs Cathie White (Assembly Clerk)
 Mr Vincent Gribbin (Assistant Clerk)
 Mr Johnny Lawless (Clerical Supervisor)
 Mr Stephen Magee (Clerical Supervisor)
 Ms Noreen Hayward (Clerical Officer)

Apologies: Mr David Hilditch MLA
 Mr Alastair Ross MLA

10:02 am The meeting opened in public session.

8. Work and Families Bill – Consideration of Draft Report

■ The Committee considered a draft report on the Work and Families Bill as follows:

Agreed: That the Committee Remit, Powers and Membership, Table of Contents and List of Abbreviations stands part of the Report.

Agreed: That the Executive Summary, paragraphs 1 to 37, stands part of the Report.

Agreed: That the Consideration of the Bill, paragraphs 38 to 68, stands part of the Report.

Agreed: That the Clause by Clause Consideration of the Bill, paragraphs 69 to 123, stands part of the Report.

Agreed: That the Consideration of Key Issues, paragraphs 124 to 254, stands part of the Report.

Agreed: That the Appendices stand part of the Report.

Agreed: The Committee agreed that it was content for the Chairperson to approve the extract of the Minutes of Proceedings of today's meeting for inclusion in the report.

11:34 am Mr McCann re-joined the meeting.

Agreed: The Committee agreed to order the Report on the Work and Families Bill (NIA 198/11-16) to be printed.

Agreed: The Committee agreed that an electronic copy of the Bill report should be sent to all organisations and individuals who provided evidence to the Committee on the Bill.

Mr Robin Swann MLA

Chairperson, Committee for Employment & Learning

15 October 2014

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

26 March 2014

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	<i>Department for</i>
Dr Alan Scott	<i>Employment and Learning</i>

1. **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.
2. **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.
3. 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.
4. 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.
5. 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.
6. 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.

7. 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.

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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).
17. **The Chairperson:** Tom, thank you very much. When do you expect this to be in front of the Executive?
18. **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.
19. **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.
20. **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”.*
21. 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.
22. **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.
23. **The Chairperson:** Alan, can you guarantee that employed parents and carers of adult dependants will still have the legislative right?
24. **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.
25. **The Chairperson:** So, does that mean that they will see no change?
26. **Dr Scott:** They will see no change.
27. **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.”*
28. In your opening comments, I thought that you said that it was the other way round.
29. **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.
30. 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.
31. **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.
32. **The Chairperson:** So, there would be no change to the statutory process?
33. **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.
34. **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?
35. **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.
36. **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?
37. **Mr Evans:** Do you mean to the policy proposals?
38. **Mr P Ramsey:** Yes.
39. **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.
40. **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.
41. **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?
42. **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".
43. **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.
44. 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?
45. **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.
46. 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.
47. 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.
48. 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.
49. **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.
50. **Mr Evans:** As you can see, it is a very substantial Bill, and we take your point.
51. **The Chairperson:** Thank you very much, gentlemen.

10 September 2014

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
 Mr Pat Ramsey
 Mr Alastair Ross

Witnesses:

Ms Kathryn McCormick	<i>Engineering Employers' Federation</i>
Ms Michelle McGinley	<i>Federation Northern Ireland</i>

52. **The Chairperson:** I welcome Michelle McGinley and Kathryn McCormick, who are employment lawyers. The session will be reported by Hansard because it is one of our briefings on the Bill. Members have the Engineering Employers' Federation (EEF) submission to the Committee and its submission to the Department's consultation. Michelle and Kathryn, you are very welcome. Over to you.
53. **Ms Michelle McGinley (Engineering Employers' Federation Northern Ireland):** I very much appreciate the opportunity to attend today and have some input into this process. First, I would like to apologise for the absence of our director, Peter Bloch. Unfortunately, he is engaged in a tribunal hearing this afternoon and unable to attend.
54. I will start by giving a bit of background: mine, Kathryn's and that of the Engineering Employers' Federation, as many of the Committee might not be aware of us. I have been an employment lawyer for over 15 years — I do not want to be too specific on the length of time — and I have specialised at all times in advising employers. I have never advised employees. Kathryn joined us in 2009 when she qualified and has worked predominantly in advising employers.
55. The EEF is a bit of a misnomer. We are the Engineering Employers' Federation, but we are perhaps more aptly the employers' federation because our range of industries spans a number of sectors including aerospace, technology, call centres, charities and food. We are quite a big organisation, and our membership stands at about 137 companies. We are a not-for-profit organisation. The way that we operate is that a company pays a membership fee, and we provide employment law advice and representation at the tribunal, regardless of that company's size. We have some very big members with over 1,000 employees and some very small members with 10 or fewer. All get the same service. The membership fee is based on the salary bill so that it is a fair reflection of the fee that they should pay.
56. Before I go on to look at the Work and Families Bill, perhaps I could just note the disappointment of our members in employment law in Northern Ireland. We had the employment law review process, which I heard the Minister speak of this morning. There is a real disappointment that that has not been taken forward by now. We have been given timelines of the spring of this year and the end of this year, and it now looks like it will be the spring of next year. Those are changes that, in our members' view, would help them more to improve and grow as we come out of recession. We are really disappointed when it comes to, for example, shared parental leave, working time regulations and the extension to flexible working. We seem to be tinkering around with real changes that could make real differences to business. Although they are commendable on their own, we would have liked the employment review

- to be taken forward in preference to the shared parental leave provisions.
57. I will now look at the Work and Families Bill. You have our input into the consultation process back in 2013 and our comments to the Committee in June of this year. Hopefully, this will be taken as constructive and not too critical, but I think that you would have got a more structured and effective response to the call for evidence in June had questions been asked of the people targeted. I think that an open question on a very legalistic Bill was not particularly helpful for those attempting to respond to it and give you the information that you were looking for. Also, before coming here today, if we had had a wee bit more direction on key areas or key themes that were of interest to your members, I think that we might have been more effective in our communication to you. In future, if questions were asked, you might get more meaningful responses.
58. On concerns about the Bill, the first thing that I would say is that we commend the Bill's ethos of trying to retain more females in the workplace. Businesses like that because it means that they get the best person from the widest possible pool. That is to be commended, and I think that all businesses would say that that is a good thing. It is also best to ensure a better work/life balance: if employees are happy in the workplace, they work more effectively. Businesses are all for having happy employees who will be more productive in the workplace.
59. I question, though, whether it will be effective through the provision of shared parental leave. We all know that the uptake of additional paternity leave was extremely low. I think that the figure in GB was less than 1%. There is speculation and real concern that this sharing of parental leave will not achieve what we are trying to do. It might start a culture change, which may be what the Committee is attempting to achieve, but the projections for the uptake of shared parental leave are very low. I think that they expect between 3% and 5% of fathers to take it up. I am not sure whether all the changes that we are about to engage in will achieve the aim that we are setting out to achieve.
60. Another preliminary point before I look at the provisions is the question of timing. I am not sure when the Committee sees the Bill being implemented. It seems from the Department's response that we will follow in the footsteps of GB in how this right will be brought into effect. GB suggests that it will apply to births due on or after 5 April. Working to that timescale would give very little time for employers to prepare, plan, train and put policies in place. I think that the Work and Families Bill is up for Royal Assent in January 2015. Regulations will come only after that because the Work and Families Bill paves the way for those. Employers need to know what the changes are and what is coming into place before they can make those changes to their policies. If we are looking at an implementation date of April 2015, most employers will find it extremely tight, if not impossible, to make changes.
61. From the employees' perspective, for a deadline of April, there are some pre-birth rights in the Work and Families Bill such as those relating to attending antenatal appointments and, indeed, early births. Realistically, people giving birth in January could have access to these rights if their due date was on or after 5 April. I think that the Committee might need to look realistically at when this should be brought in. If we are to follow in the footsteps of GB — it seems from the Department's response that we will — when should we introduce it in Northern Ireland? We have been working with our counterparts in GB on this. Their view is that the regulations should be in place for at least seven months before applying to births. So, for February, you might be looking at a September or October implementation date for the expected week of childbirth and when the rights crystallise.
62. Whatever decisions the Committee makes, I urge you to give enough notification to employers to make the changes so that they can comply with

- these new laws and to ensure that they are not on the back foot in comparison with their counterparts in GB, who already have final regulations and draft regulations. I understand that the Advisory, Conciliation and Arbitration Service (ACAS) is drafting a guide on what these new rights will mean. At the minute, we are on the back foot. It will be unfair on employers if they are expected to catch up too quickly. Those are my preliminary comments on the Bill.
63. It will come as no surprise to the Committee that the concerns of employers fall into two strands: the administrative burden of the provisions; and the difficulties in finding a replacement or cover for periods of leave. I will divide my comments into those two main areas of employers' concerns.
64. I noted that, at Second Stage, the Minister said that the cost would be no higher than what employers have paid out in maternity pay and so it will be cost-neutral in that sense. That ignores the administration element of these new rights. The Department has always said that it would try to alleviate or minimise the administrative burden of the Bill. We have no idea yet how it proposes to do that. We all know that Northern Ireland is made up predominately of small and medium-sized businesses with no dedicated HR function. They are being expected to get to grips with the new rights, the eligibility criteria — from an employment law perspective, they are difficult to get your head around — the notification requirements, the ability to request a change, which requests will be counted, and which requests will be null and void, meaning that an employee goes back to having three requests. That is all very difficult to understand.
65. If you are looking at the administrative burden, one of the key things that you need to look at doing is simplifying it into guidance. I do not think that it is right to provide a guidance book of 40 pages and expect a small business with no dedicated HR to grapple with that. I think that you need to look at at-a-glance guides, simple headlines and signposting to more detailed guidance notes on what they need to know more about, rather than giving them a guide and saying, "Here is what you need to know about shared parental leave and what you need to do." You might want to develop sample policies for them to put into place in the workplace. You also might want to develop model documents. GB is looking at that for notification, eligibility documents and the request to change. If the Committee were to recommend that model documents be put in place, that would go some way to alleviate the administrative burden.
66. The consensus seems to be that there should be as light a touch as possible, and we and our members agree with that. We do not want to be regulated too much on how we deal with requests: for Northern Ireland, sample rather than compulsory documents would be preferable.
67. The legislation is, as I said, extremely complicated: it is hard to understand what type of requests count, when they can change and how to recalculate how much leave a person has, because it is all based on the reciprocal employer and employee and what leave and pay they take. There is also an administrative burden on two employers keeping tabs on who is taking what and who is now entitled to what.
68. Perhaps there could be something along the lines of online toolkits, whereby a company simply types in, for example, "Joe Bloggs has the qualifying period of 26 weeks. He has x here and did x in the past 66 weeks". That could remove some of the decision-making processes for employers. By going online and typing in criteria, they would be told that an employee is entitled to x amount of leave and x amount of pay. Something like that would be extremely helpful for all businesses. It also may be extremely helpful for employees. This right is very much based on employees knowing what they are entitled to and asking employers for those entitlements. If they get it wrong, the whole thing could fall apart. Kathryn will come to that later.

69. This is probably not realistic, given what we have just heard about the budget and constraints in finance, but you might decide to have a dedicated helpline in the infancy of the rights going live so that employers can phone up and understand how they navigate requests for shared parental leave. Maybe the Labour Relations Agency (LRA) could provide that — good advice or an information system. It is fond of providing information rather than advising, but it might be worth doing so that small employers could phone up and ask for advice. For many of our members, that issue does not always come to the fore because they have our service and we can advise them, but it is about getting this right for all businesses in Northern Ireland.
70. Part of the cost of the administrative burden is the awful cost in time spent deciding whether someone is eligible when considering their request. The way, as I understand it, that the provisions may operate in GB — I have to confess that I am not an expert in this and am still getting to know it — is that, if someone puts in a request, they can withdraw it if it is a request for a discontinuous period of leave, thereby chunking it into three periods. The request can be withdrawn even though the company might have considered and agreed it. That would not count as a request. So an awful lot of time could be wasted considering requests that employees subsequently withdraw — understandably, perhaps, because the reciprocal employer has not agreed their partner's request, meaning that the request no longer makes any sense to them. However, the administrative burden will already have been placed on employers. An employer could be in the position of having taken time considering a request, looking into getting a replacement, yet the employee is back to having three tickets and three requests.
71. That brings me to the next key area and concern for employers, which is arranging cover/a replacement. The legislation is based on people being able to take time away from the workplace to care for their child, which is great, but you have to look at the employer's perspective, too. If an employee tells me, "I'll be in for six weeks, out for four weeks, I might come in for three weeks and then be out for eight weeks", how can I plan cover? That is a real difficulty for an employer.
72. It seems that we will be giving some flexibility to parents to choose when to take their leave. However, at the minute, it is probably loaded in favour of the employee rather than the business, which may have difficulty getting a replacement who is suitably trained and has the skills to cover that specific period. I will give an example, which my counterparts in GB gave to the Department for Business, Innovation & Skills (BIS). A finance director puts in a request for shared parental leave coming up to the end of the tax year. As I understand it, if the request is for a continuous block of six weeks including April, the employer has absolutely no ability to say no. The employer will not be able to get a replacement who knows the business and can take it through the end of the tax year, and that will create a huge difficulty. The only way round the difficulties of arranging cover and replacement is to think about giving more certainty, at an earlier stage, to the amount of leave and when it will be taken. Perhaps we should not follow in the footsteps of GB by allowing employees to give only eight weeks' notice of any single chunk of leave that they want to take, and the employer has no ability to refuse it.
73. Maybe we should think about what we can do in Northern Ireland that might be more tailored to our small and medium-sized businesses, because one person's absence can cause any business to struggle. If you place an obligation on employees to declare at an early stage whether they are taking shared parental leave and how and when they propose to do so — make it a binding notification — that would go a long way to help employers to plan the necessary cover. If we operate like GB, employers

- will have just eight weeks' notice of any intended leave period. An employee who wants to be clever will, for example, put in eight weeks' notice for six weeks and another eight weeks' notice for a further three weeks, and, under GB provisions, neither period can be refused.
74. You might also want to consider an ability for an employer to say no to leave at times when it does not suit them, in the same way as we do for leave and holidays. We can say no to a holiday request, but we cannot deny the holiday; employees must be allowed to take it within a reasonable period. Giving employers an ability to veto an unsuitable period of leave might help businesses in Northern Ireland.
75. The Department has said that the period for considering a request will be 14 days. That is extremely tight for small and medium-sized businesses, and we urge some extension. We had asked for 28 days or maybe a 21-day period as a compromise.
76. Those are employers' biggest concerns about shared parental leave and they fall into the two strands that I mentioned earlier: the administrative burden and the difficulties in finding a replacement, including the cost, which can be higher than a permanent employee by the time that recruitment agency fees or paid or you have taken time out to attend to it.
77. I will pass you over to my colleague Kathryn. She will talk about other issues with the Bill, such as what happens when we get it wrong and give the wrong leave.
78. **Ms Kathryn McCormick (Engineering Employers' Federation Northern Ireland):** Thank you, Michelle. As Michelle stated, a concern for the Engineering Employers' Federation and our members is what happens when the employer or the employee gets it wrong. On the face of it, these are general rights to share parental or maternity leave, but the finer details are very complicated. Michelle outlined what would happen if an employee requests a period of leave, withdraws it and submits numerous requests thereafter. The exercising of these rights are dependent on employees knowing their entitlements, knowing what time they wish to take as leave and providing accurate information to employers. Potentially, therefore, they are dependent on two employees and two employers and the information between those parties being accurate. Also, all must be notified of any changes because it will be difficult for employers to track not only periods of leave but periods of pay. Our members and other employers are concerned about what would happen if they overpaid someone's entitlement to shared parental leave. Who will bear that loss? Will the cost be borne by the employer or will there be penalties for overpaying or recouping? We understand that BIS in GB has given a commitment that there will no recoupment of payments in excess of the statutory entitlements. We are keen for that to apply to employers here in Northern Ireland.
79. These rights will be quite complicated, in that an employee can chop and change periods of leave to be in and out of the business, and another employee — their partner — will share that period of leave. Therefore, as Michelle also stated, at-a-glance guides and signposting on rights, entitlements and eligibility are extremely important, as are online ways for employers to track an employee's entitlement to leave or pay. We encourage the Committee to look at those.
80. There is a responsibility and a burden on employers, who will need to rely on the information provided by their employees being correct, but there does not appear to be an obligation or compulsory requirement for employees to provide consent to contact the other employer. Therefore, we ask that, if an employee does not provide consent to contact his or her partner's employer, an employer, because of the inability to confirm or verify the periods of leave or pay, should be entitled to refuse any period of leave requested.

81. Finally, I want to raise the issue of discrimination. Some employers in Northern Ireland, including some of our members, offer enhanced or contractual maternity pay. There is a concern that the new scheme will give rise to claims of sex discrimination if employers do not choose to offer enhanced/contractual pay for shared parental leave. There was guidance in the past, and a recent case in England found that there is no sex discrimination in failing to offer enhanced paternity leave from the additional paternity leave regulations. However, we ask that some clear guidance be given by the Department or the Committee so that, if employers choose to continue with any enhanced maternity pay schemes, they will not be penalised or will be protected from sex discrimination claims by male counterparts who wish to avail themselves of the shared parental leave scheme but would not, of course, receive enhanced shared parental pay.
82. I will now pass back to Michelle to summarise our concerns.
83. **Ms McGinley:** The only other point to make on discrimination is that, if there is no clear indication from the Department that it will not be considered discriminatory not to enhance shared parental leave under provisions similar to enhanced maternity pay, you might find that employers start to phase out enhanced maternity schemes, which is really not what any of us want. It is a real concern for employers, and some are thinking about whether they should continue their enhancements for new employees or phase them out.
84. Does the Committee have any particular questions?
85. **The Chairperson:** Michelle, I am going back to your earlier concern about insulting the Committee. When we asked for submissions on the Bill, they came from stakeholders who had already consulted the Department or us. At this stage, we do not send out formal questions to which stakeholders can specifically reply. This is the opportunity for stakeholders to come in front of the Committee so that we can take on their concerns, rather than placing our specific concerns in writing. As I am sure you are aware, we are a cross-party scrutiny Committee. Maybe you were unaware of that and of why you were coming here. I wanted to clear that up for you.
86. **Ms McGinley:** From our perspective, if we had been given key themes that emerged from the public consultation that the Committee was looking out — not in the form of direct questions but just to direct us to specific areas— it would have been much more helpful.
87. **The Chairperson:** That is not how the system works. It is for you to come — from the public consultation —
88. **Ms McGinley:** It is unfortunate, as, I think, the responses you received in June showed. You did not really get meaty responses from that consultation.
89. **The Chairperson:** Neither did the Department. Those are the stakeholders that we engaged with. Aside from that, we have heard some of your concerns and you have represented your membership.
90. If there is a delay in the timeline and implementation here compared with the GB legislation, is there a potential for discrimination, given that multiple employers could be employing people in GB and here?
91. **Ms McGinley:** I do not think that there would be legal discrimination claims. Some females, and males with partners who have a due date of 5 April — knowing that this also applies to adoption etc — will be disadvantaged because they will not benefit from it. If the Bill passes in January, you will give yourself only a three-month window for regulations. As I understand it, there are five sets of regulations in GB at present, and they are still drilling down on the details of those, making sure that there are no inconsistencies, and drafting guidance. That leaves a very short period, not only for you to pass the legislation, but, once it is passed, for employers and employees to understand

- it. I cannot envisage discrimination cases in the legal sense, per se, but there will be —
92. **The Chairperson:** Inequalities. The Committee has an assurance that some of the regulations will be subject to affirmative resolution, so they will also have to be passed. I can see the departmental officials looking at me. They are up next, so they are listening to your concerns. We can get clarity on that.
93. **Mr P Ramsey:** Good morning, everyone, and welcome. That was an interesting presentation that put into perspective the difficulties experienced by employers. I honestly thought that this was a general tidying-up exercise to give equality to employees in maternity leave and paternity leave. Have you had discussions with officials on some of the ideas and suggestions?
94. **Ms McGinley:** We consulted DEL on the employment law review: we had a number of meetings with it. I do not believe that we have had a meeting with them directly about the Work and Families Bill. We put in a detailed response, in 2013, on the sharing of parental leave and the way forward as part of that consultation.
95. **Mr P Ramsey:** I have other questions, but I want to say this first: I take your point that your organisation represents not only engineering but a multitude of types of employer. What level of membership do you have?
96. **Ms McGinley:** In the sense of —
97. **Mr P Ramsey:** Statistically, is it 200? Is it 500?
98. **Ms McGinley:** We have 137 companies, including quite a number of the bigger employers in Northern Ireland with several thousand employees, right down to the smaller employers. We probably have more bigger than smaller employers.
99. **Mr P Ramsey:** They pay a membership fee, as a result of which they can access the information.
100. **Ms McGinley:** Yes, unlimited access.
101. **Mr P Ramsey:** What about legal representation?.
102. **Ms McGinley:** Yes, they get legal representation at a tribunal as well.
103. **Mr P Ramsey:** What would happen if a non-affiliated small company approached you? What would you say to it?
104. **Ms McGinley:** It is a not-for-profit organisation, so all members —
105. **Mr P Ramsey:** What about a non-member company with only three or four employees?
106. **Ms McGinley:** Any small company can approach us. We would probably assist if we could, and, if it wanted to become a member, we would give it membership details. As I said, it is a not-for-profit organisation: we have our own committee, president and chairman. We provide an equal service to all employers. The fee is based on a company's salary bill: it is a percentage of the wages that it pays, so it is fair and equitable across the board.
107. **Mr P Ramsey:** One of the fundamental issues both of you raised was the administrative burden on very small companies. As the Chair outlined, the departmental officials will, hopefully, be able to give us some help on that. The two ideas that you tabled — an online toolkit and a dedicated helpline — are, one would imagine, common sense. I agree with you on those, and I hope that the officials might help.
108. **Ms McGinley:** It is a question of finance.
109. **Mr P Ramsey:** In other places with this type of legislation, is there a lead-in time for implementation, awareness and education?
110. **Ms McGinley:** Indeed.
111. **Mr P Ramsey:** Are there helplines in other places?
112. **Ms McGinley:** There are. The Information Commissioner's Office (ICO) will answer questions on whistleblowing, and the Labour Relations

- Agency, which we rate highly, provides a great service. It cannot advise, but it will give information to the smaller members. The Federation of Small Businesses tried to do something, and I am not sure what information and advice the Confederation of British Industry (CBI provides). These rights are extremely complicated. I find it difficult getting my head round the eligibility, the notification, the request and how they interact with each other. We are still coming up with questions that we have no answers to.
113. **Mr P Ramsey:** There was me thinking that it was common sense.
114. **Ms McGinley:** The headliners — the three requests — sound very simple, but, when you get down to the detail, it is a bit of a nightmare.
115. **Mr Flanagan:** Thank you for your presentation; it was very useful. I acknowledge that this will produce problems for employers of all sizes, particularly for microbusinesses and small employers. We need to be aware of that and that it will mean such a change when we are passing legislation. However, I think that it is only right that we move the laws on to afford equality to people who want maternity and paternity leave. It needs to be done in a way that is mindful of the impact that it will have on employers. Some of the suggestions that you have given us are straightforward. I do not think there are enough places for employers to go to access help, support and guidance. It is usually too late; the problem has already started by the time they have somewhere to go. I completely agree with a proposal of that nature. I know that the timeline is of great interest to you. Pat and I were sitting here looking at all of the questions we were going to ask, and I asked Pat if it would have made more sense to have the Department officials on first. Pat said, “No. Have them come in after and then they can answer all the questions”.
[Laughter.]
116. **Mr P Ramsey:** That is true.
117. **Mr Flanagan:** You have raised a number of questions. We are going to go through the Bill in a detailed way, and we will take your comments on board. You have identified a number of problems. To be honest, we would rather have solutions. I do not want to go through all of the problems that you have identified, but can you come back to us with solutions and something that you think would be workable and that would allow people to have more flexibility, but that would also meet the needs of your members?
118. **Ms McGinley:** We can come back. I do not know whether you want me to come back in writing, but there are some suggestions about how we could deviate from the GB position but give more certainty to smaller employers. The first tick is on whether the person is going to avail themselves of the option of taking shared parental leave and then how it is going to be divvied up between the two partners. If certainty can be brought in at an earlier stage, it would be a greater help in terms of planning for the business, getting a replacement in and understanding where the gaps are.
119. You mentioned the administrative burden. If it helps, I can provide in writing the summary that I provided this morning to the Committee.
120. **The Chairperson:** Thank you very much, Michelle and Kathryn.

10 September 2014

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 Pat Ramsey

Witnesses:

Mr Tom Evans	Department for
Dr Alan Scott	Employment and Learning

121. **The Chairperson:** I welcome Mr Tom Evans and Dr Alan Scott. Following the input from the Engineering Employers' Federation (EEF), it is over to you.
122. **Mr Tom Evans (Department for Employment and Learning):** Thank you for the invite. It probably is as well that we have come after the EEF. As usual, we have a prepared script that contains a sense of what might have come out of the presentation, and the broader issues that were raised in response to your call for evidence. There are quite a lot of issues. I will abandon the script and try to deal with the issues, if that is reasonable.
123. **The Chairperson:** Yes, that would be preferable.
124. **Mr Evans:** I tried to write them down, and I will go through them fairly promptly. The uptake of additional paternity pay is quite low. I think the introduction of the new arrangements is probably to, over a longer term, structurally change the way in which working families care for their children and, at the same time, have full and meaningful engagement in the workplace. I noted Michelle say that, traditionally, women are disengaged from the workplace for a length of time and that that impacts on where they sit on the opportunity structure. I think that the argument that the Minister would have is that this is about a more long-term, structural, systemic change in the way in which working families operate in caring for their children.
125. Much of the detail is about the concern around the detail of administrative arrangements. I am conscious, Chair, that there was a significant response from a range of employer bodies and a range of bodies that would represent employees. We are trying to balance how we respond to that. Much of the administrative arrangement will end up being framed in subordinate legislation and regulations. The procedures that the legislation allows for will be either the confirmatory or negative resolution procedure. That is the detailed working. We will have to come to the Committee to try to explain them.
126. 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.
127. 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.
128. 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.
129. Going on to the light touch —
130. **The Chairperson:** Maybe I will just stop you there, Tom. The employer has the right to say no.
131. **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.
132. 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.
133. 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.
134. Again, I think we went back on the issue of the continuous block —
135. **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?
136. **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.
137. 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.
138. 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.
139. 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.
140. **The Chairperson:** The eight-week notice was also raised, Tom, with regard to notification.
141. **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.
142. **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?
143. **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.
144. **Mr Evans:** At this stage, we see it as being done very much more on a good-faith basis.
145. **The Chairperson:** In the regulations, will any penalties be stipulated?
146. **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.
147. **Mr P Ramsey:** Good afternoon. You are very welcome.

148. 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.
149. 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.
150. 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?
151. **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.
152. **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.
153. **The Chairperson:** Members, does anybody else have a question?
154. **Mr Douglas:** Yes, Chair.
155. 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?
156. **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.
157. **Mr Douglas:** I think that the ICTU was quoting from the Equality Commission's research.
158. **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.

159. **Mr Douglas:** How does this fit in with European directives and legislation?
160. **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.
161. **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.
162. **Mr Douglas:** OK. Thank you.
163. **The Chairperson:** Tom and Alan, thank you very much again. We will see you before we finish this and get it to the Chamber.

24 September 2014

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	<i>Department for</i>
Dr Alan Scott	<i>Employment and Learning</i>

164. **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.
165. 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.
166. 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.

167. 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.

168. **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.

169. **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.

170. **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.

171. **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.

172. **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.

173. **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.

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

175. 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.

176. 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.

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

Members indicated assent.

178. **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."

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

Members indicated assent.

180. **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."

181. 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.

182. **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.

183. **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.

184. **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."

185. What does that mean, Tom?
186. **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.
187. **Mr Douglas:** Are there guidelines? Is there a checklist?
188. **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.
189. **Mr Douglas:** OK. Thank you.

190. **The Chairperson:** Are members content?

Members indicated assent.

191. **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.

192. **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.

193. **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.

194. **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.

195. **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.

196. **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.

197. **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.

198. **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.

199. 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?

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

201. **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.

202. **The Chairperson:** Are members content with that response?

Members indicated assent.

203. **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".

204. That is a guarantee, Tom, is it not?

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

206. **The Chairperson:** OK. Are members content with that?

Members indicated assent.

207. **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.

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

Members indicated assent.

209. **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."

210. Tom, will you clarify how that affects things?

211. **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.

212. **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.

213. **The Chairperson:** Thank you. Are members content?

Members indicated assent.

214. **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.

215. **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?
216. **Mr Flanagan:** Does the Department have a response?
217. **The Chairperson:** Tom?
218. **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?
219. **The Chairperson:** The alignment with the legislation in Great Britain.
220. **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.
221. **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?
222. **Mr Evans:** Do you mean whether we should —
223. **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?

224. **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.
225. The Minister will look at each policy to see what is the best scenario. 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.
226. **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.
227. **Mr Evans:** No, the decision is what is in the content of the report —
228. **Mr Flanagan:** Tom, we will let you see the two paragraphs that we are referring to
229. **Mr Evans:** Yes, not having the papers in front of me makes we wonder whether I am off-message.
230. 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.

231. 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.

232. **The Chairperson:** Are you content with that, Phil?

233. **Mr Flanagan:** Yes.

234. **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.

235. **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?

236. **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.

237. **The Chairperson:** OK. Are members content?

Members indicated assent.

238. **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.

239. **The Chairperson:** OK. Pat Ramsey —

240. **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?

241. **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.

242. **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.

243. **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.

244. **The Chairperson:** Thanks, Pat. Are members content?

Members indicated assent.

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

246. **Mr Evans:** What is the next stage, Chair?

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

248. **Mr Evans:** Do you want us here for that?

249. **The Chairperson:** Yes, please.

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

1 October 2014

Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
 Mr Sammy Douglas
 Ms Anna Lo
 Ms Bronwyn McGahan
 Mr Pat Ramsey
 Mr Alastair Ross

251. **The Chairperson:** I advise the Committee that this is the Committee's formal consideration of the clauses of the Bill. I also remind members that the Committee deliberated on the clauses at last week's meeting and was content. Again, I remind members that formal clause-by-clause consideration is the last opportunity to discuss the clauses, and any decisions will be final. On completion of the formal clause-by-clause consideration, I will go through the issues that are outside the strict remit of the Bill. On that basis, I will go through the Work and Families Bill and group the clauses about which the Committee has previously indicated that it is content.
252. Starting with clause 1, I will invite members to indicate whether they are content with the clause as drafted, whether there are any issues they wish to highlight and/or any amendments they wish to propose or whether they wish to reject the clause in its entirety. DEL officials are present to answer any questions that members may have.

Clause 1 (Defined expressions in this Act)

253. **The Chairperson:** Clause 1 provides definitions of terms and expressions used throughout the Bill.
- Question, That the Committee is content with clause 1 put and agreed to.*
254. **The Chairperson:** Part 2, comprising clauses 2 to 14, deals with shared rights to leave and pay. I seek members' views on part 2, which consists of 13

clauses considering three broad areas: shared parental leave, statutory shared parental pay and other statutory rights. Members, are you content with those three areas and the clauses?

Question, That the Committee is content with clauses 2 to 14 put and agreed to.

255. **The Chairperson:** Part 3, comprising clauses 15 to 18, deals with time off work for antenatal care and adoption appointments. I seek members' views on part 3, which consists of four clauses, including rights to attend antenatal appointments and the right for agency workers not to be subjected to detriment. Are members content?

Question, That the Committee is content with clauses 15 to 18 put and agreed to.

256. **The Chairperson:** Part 4, comprising clauses 19 and 20, deals with other miscellaneous employment rights. This is two clauses on flexible working and the procedure for regulations as to a prescribed amount of annual leave. I seek Committee members' views on that.

Question, That the Committee is content with clauses 19 and 20, put and agreed to.

257. **The Chairperson:** Part 5, comprising clauses 21 to 24, is the general provisions. I seek members' views on part 5, which contains four clauses, including repeals and commencement dates. Are members content?

Question, That the Committee is content with clauses 21 to 24 put and agreed to.

Schedules 1 and 2 agreed to.

Long title agreed to.

258. **The Chairperson:** Thank you, members. That was painless.

259. We will now go through the issues raised by respondents and considered at last

- week's meeting. The Clerk's paper, which is at page 245, summarises the issues raised and provides recommendations to the Department for inclusion in the Committee report.
260. The first issue — these are mostly in regard to regulations rather than the Bill itself — is that the two-week negotiation period may not be long enough. From last week's Committee meeting, the Committee feels that the Department's response is adequate but seeks the Department's assurance that the associated guidance has been reviewed by key stakeholders. Are members content with that recommendation?
- Members indicated assent.*
261. **The Chairperson:** Members, a further issue is that of employees making and then withdrawing a request for shared leave. Last week, the Committee accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
262. **The Chairperson:** Members, next is the process for requesting leave. The Committee felt that the Department's response was adequate but sought the Department's assurance that the associated guidance has been reviewed by key stakeholders. Are members content?
- Members indicated assent.*
263. **The Chairperson:** 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. Members, at last week's meeting, the Committee accepted the Department's position on this issue. The detail is listed there. Are members content?
- Members indicated assent.*
264. **The Chairperson:** Members, next is the right to return to the same or a similar job when returning from periods of leave totalling up to 26 weeks. Members, at last week's meeting, the Committee accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
265. **The Chairperson:** Members, next is the day-one right to shared parental leave and pay. At last week's meeting, the Committee accepted the Department's position on this issue. Are members content?
- Members indicated assent.*
266. **The Chairperson:** Members, on the keeping-in-touch days, the Committee accepted the Department's position on the issue last week as well. Are members content?
- Members indicated assent.*
267. **The Chairperson:** Arranging cover for employees on shared parental leave — again, last week, the Committee accepted the Department's position. Are members content?
- Members indicated assent.*
268. **The Chairperson:** On allowing parents to take leave in one-week blocks, the Committee felt that the Department's response was adequate but did seek DEL's assurance that the associated guidance has been reviewed by key stakeholders. Are members content?
- Members indicated assent.*
269. **The Chairperson:** Members, the amount of statutory pay available — again, the Committee accepted the Department's position on the issue but wished to receive further information on how and when the Department will review uptake of shared parental leave, including the terms of reference. Are members content with that?
- Members indicated assent.*
270. **The Chairperson:** Flexible working — again, the Committee accepted the Department's position on this issue last week.
271. New right to begin for parents of children expected to be born or adopted in April 2015. This was in regard mostly to the time frame of the Bill. The Committee felt that the Department's response was adequate but will seek DEL's assurance

- that the associated guidance has been reviewed by key stakeholders. Are members content with that?
- Members indicated assent.*
272. **The Chairperson:** The issue of user-friendly processes came through from a number of stakeholder submissions that we received. Last week, the Committee felt that the Department's response was adequate, but, again, it seeks DEL's assurance that the associated guidance has been reviewed by key stakeholders. Are members content?
- Members indicated assent.*
273. **The Chairperson:** Members, arrangements will be in place for recouping overpayments and allowing employers to communicate to verify information. The Committee accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
274. **The Chairperson:** On fear of being open to sex discrimination, the Committee accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
275. **The Chairperson:** Members, in regard to guidance, the Committee felt that the Department's response was adequate but sought the Department's assurance that the associated guidance will be reviewed by key stakeholders. Are members content?
- Members indicated assent.*
276. **The Chairperson:** Members, on alignment with legislation in GB, the Committee again accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
277. **The Chairperson:** Another individual as a person with whom parental leave could be shared — again, members of the Committee accepted the Department's position.
- Members indicated assent.*
278. **The Chairperson:** On the issue of paid leave for partners to attend antenatal appointments, again, the Committee accepted the Department's position on the issue. Are members content?
- Members indicated assent.*
279. **The Chairperson:** Members, one of the issues that Pat raised was kinship carers. Again, there was quite a lengthy response on that. Last week, the Committee accepted the Department's position on the issue.
280. **Mr P Ramsey:** Separate to that, is it possible to get some research paper on kinship care and how it is acknowledged or recognised in other places? It is a hugely relevant subject here for future reference.
281. **The Chairperson:** We can do that, Pat, separate from this. Are members content with the recommendation that we accepted last week?
- Members indicated assent.*
282. **The Chairperson:** OK, members, those are all the queries and concerns that were raised at last week's meeting. Are members content with the recommended actions?
- Members indicated assent.*
283. **The Chairperson:** That is us, members. Thank you. There is nothing else on the Work and Families Bill. Members, there will be a draft report to formalise and agree at next week's meeting. Are members content with that time frame?
- Members indicated assent.*

8 October 2014

Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
 Mr Thomas Buchanan (Deputy Chairperson)
 Mr Phil Flanagan
 Mr William Irwin
 Ms Anna Lo
 Mr Fra McCann
 Ms Bronwyn McGahan
 Mr Pat Ramsey
 Ms Claire Sugden

284. **The Chairperson (Mr Swann):** I advise members that the Committee has completed its scrutiny of the Bill and formally considered the clauses of the Bill last week. The draft report, including the issues raised by the Committee and stakeholders is in members' packs. In its consideration, the Committee was content with the Bill, as drafted, has not proposed any amendments and supports the Bill. It has, however, made a number of points and issues that are outside the Bill that it wishes the Department to be mindful of when it prepares its regulations and guidance.
285. I advise members that the purpose of this session is to agree the text of the report. I will proceed through the report section by section, rather than through paragraphs or anything else, and ask members whether they are content with the report.
286. Are members content with the contents page at page 1 of the report, as drafted?
- Members indicated assent.*
287. **The Chairperson (Mr Swann):** Are members content with the list of abbreviations at page 2 of the report, as drafted?
- Members indicated assent.*
288. **The Chairperson (Mr Swann):** Remit, powers and membership is at page 3 and 4 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
289. **The Chairperson (Mr Swann):** The executive summary is at pages 5 to 8 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
290. **The Chairperson (Mr Swann):** The introduction is at page 9 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
291. **The Chairperson (Mr Swann):** The consideration of the Bill is at pages 10 to 15 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
292. **The Chairperson (Mr Swann):** The clause-by-clause consideration of the Bill is at pages 16 to 21 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
293. **The Chairperson (Mr Swann):** The consideration of key issues is at pages 22 to 42 of the report. Are members content with that section of the report, as drafted?
- Members indicated assent.*
294. **The Chairperson (Mr Swann):** Are members content that the extracts of the minutes of proceedings are in appendix 1 to the report?
- Members indicated assent.*
295. **The Chairperson (Mr Swann):** Are members content that the minutes of evidence are in appendix 2 to the report?

Members indicated assent.

296. **The Chairperson (Mr Swann):** Are members content that the written submissions are in appendix 3 to the report?

Members indicated assent.

297. **The Chairperson (Mr Swann):** Are members content that the list of witnesses is in appendix 4 to the report?

Members indicated assent.

298. **The Chairperson (Mr Swann):** Are members content that the correspondence is in appendix 5 to the report?

Members indicated assent.

299. **The Chairperson (Mr Swann):** If the Committee is content, I wish to seek agreement for the report to be printed. Are members in agreement for an extract of today's minute to be signed off by me for inclusion in the report, and can I seek your agreement to order the report on the Work and Families Bill (NIA 198/11-16) to be printed? Is the Committee content?

Members indicated assent.

300. **The Chairperson (Mr Swann):** Do members also agree that an electronic copy of the Bill report should be provided to all the organisations that provided evidence to the Committee on the Bill?

Members indicated assent.

301. **The Chairperson (Mr Swann):** Members, that concludes our consideration of the Work and Families Bill.



Northern Ireland
Assembly

Appendix 3

Written Submissions

Confederation of British Industry



NI 12 13

CBI Northern Ireland response to the Department for Employment and Learning's consultation on Sharing Parental Rights, Extending Flexibility at Work.

Introduction

CBI Northern Ireland is an independent, non-party political organisation funded entirely by its members in industry and commerce. Across the UK, the CBI speaks for some 240,000 businesses which together employ around a third of the private sector workforce. Our membership in Northern Ireland includes businesses from all sectors and of all sizes. It includes the majority of the top 100 companies, small and medium-sized enterprises (SMEs), social enterprises, manufacturers and sectoral associations.

CBI Northern Ireland welcomes the opportunity to respond to the Department's consultation on Sharing Parental Rights, Extending Flexibility at Work.

Overview comments

The introduction of a shared parental leave system is a real chance to revolutionise the approach to working parents. The current system is antiquated and is based on an assumption of mothers being children's primary care provider. It works for neither families nor employers, who suddenly find knowledge and expertise is lost from the workplace for extended periods of time. The CBI therefore supports reform of the existing system.

However, for reform to have the confidence and backing of the business community it is imperative that, in a time of continuing economic challenge where the burden of red tape must continue to be reduced, the system is simple so as to be truly effective. Too much process, little notice and inflexible demands on companies could undermine the proposals in the consultation. We must also bear in mind the fact that reform will have a more disproportionate impact on smaller businesses – many of whom see only one period of maternity or paternity per decade – and that steps must be taken to mitigate against unduly damaging these firms.

The concept of flexible working is one that is strongly supported by the broad membership of the CBI – indeed many members would take the view that they are already well ahead of the legislative game on this. A flexible workforce can lead to better engagement, flexible



David Fry Senior Policy Adviser

DL: 028 9010 1102 **E:** david.fry@cbi.org.uk

CBI Northern Ireland 2nd Floor Hamilton House 3 Joy Street Belfast BT2 8LE

T: +02890 101100 **F:** +02890 101119 **E:** ni.mail@cbi.org.uk **W:** www.cbi.org.uk/ni

Director-General: John Cridland CBE President: Sir Michael Rake

Registered No: RC000139 (England and Wales) Registered Office: CBI Centre Point 103 New Oxford Street London WC1A 1DU

staffing and more diverse talent pool. It is for these reasons that we, much like compatriots in Great Britain, support reform – albeit with several areas for further clarity and review.

Comments on the consultation

As we have said, we support reform of the current system. However the proposals detailed in this consultation do have the capability to add additional complexity to the system which would be damaging and highly disruptive for businesses to administer. Avoiding such complexities is vital to retaining business support and it is imperative that government across the UK seeks to create a system which is straightforward and easy to use.

We would therefore look to make three major points in respect of the proposed reforms:

- **The system must ensure employers and employees can work together to pre-plan appropriate patterns of leave – ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly**

The proposal detailed on page 14 of the consultation, relating to question 6, is we believe insufficient. Businesses need to understand their employees' intentions as soon as possible to effectively plan resource in advance and reduce the operational and financial impact of manpower planning, absence cover and training. Ensuring temporary staff cover for short period of leave with only eight weeks' notice could prove both challenging and costly for businesses – particularly smaller enterprises and those whose employees cover niche roles where training is required.

In order to help businesses with this planning, employees should be required to provide an honest and reasonable preliminary plan establishing patterns and periods of leave. The government needs to provide a form which employees can present to employers indicating their intended patterns of shared parental leave with an eight weeks' notice period in advance of the start of the mother's maternity leave.

Government should produce comprehensive guidance stipulating what is and is not appropriate for employers and employees in this situation, and strongly encourage employees to present employers with their plan at the earliest possible opportunity. It is essential, of course, that employers retain the right to say no to requests.

It is our view that the proposal in paragraph 3.38 in respect of taking shared parental leave in a minimum of one week blocks would be very difficult for employers – especially small businesses - to manage. This would make it practically impossible to hire someone on a temporary basis to cover a period of time which is made up of start/stop periods even if the notice given by the employee is sufficient.

The proposed system of allowing a two week discussion period as the initial part of the eight weeks' notice period is sensible. However, there are practical concerns regarding instances when this two week negotiation period might be impossible for certain employers to implement. For example, in cases when an employee's line manager is on annual leave or for employees who work on shift patterns which do not coincide with their manager's, this negotiation period might need to be significantly longer. For smaller businesses in

particular, there are likely to be occasions when staffing levels are low and dealing with requests within two weeks will be impossible. The two week negotiation period should therefore be a minimum guideline rather than a requirement.

- **The administrative procedure needs to be as straightforward as possible for both employers and employees, with a clear form, well-established timescales and sufficient supporting guidance**

Minimising the administrative burden on businesses must be at the heart of the government's aims. This will allow parties to focus discussions on issues of substance, and will minimise the opportunity for disputes based on process.

The CBI agrees with the system of self-declaration from parents as it reduces the administrative burden on employers, and our members believe that being able to request a birth certificate/matching certificate is sufficient evidence.

However, there are worries that the employee might complete the form inaccurately due to both lack of clarity in the current draft form and their own lack of understanding of their entitlements. The form needs to be more precise, with supporting information and guidance for both employers and employees. Exhibit 1 sets out some key changes required in the form.

Exhibit 1: Recommendations for the shared parental leave form (ShPL1)

On the form itself, there needs to be:

- a clear place for biographical information, including National Insurance Number
- a reminder of what the qualifying conditions are for the scheme

Particular phrases are vague and need to be edited as follows:

- the reference to the date maternity leave ended should say 'date maternity leave ended *or will end*' and the same for paternity pay dates.
- 'Balance of leave/pay remaining' should read 'Balance of *statutory* leave/pay remaining.
- the second half of the form where partners indicate how they intend to divide the remaining leave could be clearer. An explanation at the beginning of this section would be useful. For example, '*We request that the remaining balance of leave and pay will be shared in the following way.*'

More background information is absolutely essential to the functioning of the shared parental leave system. The CBI would therefore recommend that the form also comes with the following:

- a summary sheet detailing all relevant information. This information should include for example the difference between maternity leave and pay entitlements and an explanation that the 'balance of pay remaining' should be indicated as the number of weeks' pay remaining rather than a numerical calculation of the remaining pay.
- a template of a complete form and a template letter for the employer to confirm the request for parental leave has been accepted or declined.

To simplify the procedure further, it would be appropriate to align paternity pay and notice period at the end of the 15th week before the expected week of child birth as there is no obvious reason to retain differential notice periods and the risk of confusion such a system brings. The current required notice periods have led to uncertainty and employee queries.

A simple, clear system would avoid unnecessary hassle and make it easier for employees to fill out their self-declaration form.

Similarly, it is essential 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 so that the exact start date and other cut-off dates in the system can be known from the outset and communicated in advance without problem.

- **Employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark**

Most employers strive to guarantee that an employee will return to the same role after taking a period of time off on parental leave.

However, in instances where there is the potential for an employee to take significant periods of parental leave spanning across 12 months, this can be impossible. A company might require the need for restructuring in order to remain competitive and successful during the considerable period in which an employee is on leave. This may be the case in particular for businesses which are expanding or businesses which are facing financial difficulties.

We would therefore suggest that employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark to the benefit of both parties. This will give employers the flexibility necessary to adapt to changes in the economic and structural landscape of their business and this is at no detriment to employees who will still return to a similar position at the company.

Separate to the above points, we support the proposal in respect of the Keeping in Touch days. If mothers and fathers are sharing their parental leave, it is only appropriate that they share their 10 KIT days rather than being given ten each. This is proportionate to the scale of days required to effectively keep in touch. Any more than ten days in total is unnecessary, especially in the case of micro businesses where businesses would be absorbing the additional cost of paying for an employee to be present in the workplace during their leave, whilst also potentially financing the cost of a replacement.

We also strongly take the view that, while employment law is devolved to Northern Ireland as the consultation notes, in this particular aspect it remains wise to follow whatever lead Great Britain takes on the issue – notably in respect of the amount of subsidiary companies that operate in Northern Ireland whose parent company is based in GB.

CBI Northern Ireland
August 2013

Citizens Advice Bureau

Citizens Advice is the largest advice charity in Northern Ireland working against poverty and meeting the information and advice needs of over 89,000 people per year in bureaux and over 310,000 people online via Adviceguide, our self-help website. Our bureaux deal with over 305,000 issues across a wide range of advice categories, including benefits, debt, consumer, employment and housing issues. We also represent the public at almost 2700 social security appeal tribunals a year. Advice is available to all communities from 28 main offices across Northern Ireland and from over 110 other outlets.

We welcome the opportunity to respond to the call for evidence on the Work and Families Bill. Citizens Advice supports the clauses of the Bill, and feels that it takes into consideration the points raised in our original consultation submission in August 2013. The implementation of the Bill will allow working families greater flexibility, control and choice over care arrangements for children during the early stages of their lives.

Citizens Advice looks forward to the introduction of the Bill.

Committee for Social Development



COMMITTEE FOR SOCIAL DEVELOPMENT
Room 284, Parliament Buildings, Stormont, Belfast BT4 3XX
Tel: 028 9052 1864

To: Cathie White, Clerk to the Employment and Learning Committee
From: Kevin Pelan, Clerk to the Committee for Social Development
Date: 20 June 2014
Subject: Work and Families Bill

At its meeting on the 29 May 2014, the Committee for Social Development noted your memo of 13 May 2014 regarding the Work and Families Bill.

The Committee provided no comment on the clauses of the Bill and I am therefore writing to advise you of a nil response.

Dr Kevin Pelan
Ext 21864

Engineering Employers Federation Northern Ireland

ENGINEERING EMPLOYERS' FEDERATION NORTHERN IRELAND

EEF Response to the Department for Employment and Learning's Employment Law Public Consultation on Sharing Parental Rights, Extending Flexibility at Work.

The Engineering Employers' Federation, (EEF) Northern Ireland, is a not profit Organisation which has been in existence in Northern Ireland for over 100 years. The EEF represents and advises an extensive range of industries (including engineering, communications, technology, food) across a variety of sectors (private, public and charities) and geographical locations throughout Northern Ireland. We represent 160 Companies who employ in excess of 30,000 employees in Northern Ireland.

Our response

Our response is broken down into the following three sections:-

Section 1: Summary of the EEF's main issues;

Section 2: Detailed Reply to Consultation Questions.

SECTION 1: SUMMARY OF THE EEF'S MAIN ISSUES

We are grateful for the opportunity to have an input to the Public Consultation on Sharing Parental Rights, Extending Flexibility at Work and hope that our comments below are seen as constructive and attempt to make Northern Ireland as attractive a place as possible for business. We believe we have also taken into account the necessity to have measures that would be of benefit to all in the workplace.

Parental Leave

The EEF is not wholly against a concept of shared parental leave and appreciates that additional flexibility will allow workers to balance their parental responsibilities with their working lives. However, this right must be balanced against the needs of employers to continue to operate their businesses effectively so those periods of absences do not disproportionately and adversely affect businesses. Of utmost importance is that those taking shared parental leave should not be permitted to "chunk up" the periods of leave to smaller periods unless agreed with the Employer. In other words the default position must be that where agreement cannot be reached, the entire period of leave which the parent is entitled to is taken in a single continuous block to commence on a date of the employees choosing. We understand that the proposal outlined in the GB consultation does not provide for this and permits parents to submit an unlimited number of leave requests, breaking their leave into blocks of one week. Provided that each chunk of one week is contained within a separate request, each spaced eight weeks from the other, parents will be able to take their leave in separate periods. It is vital that this cannot occur as it would have immense financial and commercial cost on NI business who may not be able to recruit a person to fill the gaps or indeed to have a replacement who can be trained in that time to get up to the speed on the role.

Colleagues of parents taking leave may themselves already be parents, or have additional caring responsibilities. It is unwise to prioritise the interests of parents wishing to take shared parental leave above those of all other workers, who often will inevitably be affected by a parent making repeated changes to their plans for parental leave. Both employers and workers have an interest in continuity, certainty and transparency in planning for periods of leave.

Strong workplace communications are also essential to successful employment relationships, and in our response any changes must require parents to consult early with their employers, providing their requests for leave in good time and to seek agreement. Changes can always be agreed at a later time.

Shared parental leave is more likely to be a reality if higher levels of replacement income are available. Public finances are clearly very limited at present, but government could signal support for employers who are willing to provide contractual pay, for example by using the tax system to provide relief for employers who provide occupational pay.

A real concern for business is that they will be required to provide occupational parental pay at the same level as that which they currently provide occupational maternity pay. The consultation is silent upon this, and there is only a passing reference within the impact assessment. DEL must state publicly that employers are not required to provide contractual shared parental pay in any circumstances. Some employers will seriously consider closing their contractual maternity schemes if this position is not clarified.

It is also vital that employers have sufficient certainty as to when leave is to be taken, how much leave will be available to each parent, or even as to the existence at all of shared parental leave. In the proposed GB model, parents can change entitlements, submit and withdraw multiple requests, and request leave on a piecemeal basis. The impact of that will not only be felt by employers, but by the other workers they employ – some are likely to be parents themselves with their own caring responsibilities. We have proposed that parents, when notifying their employer that they will be taking shared parental leave, also set out when they intend to take the leave. This is not unreasonable, and parents will be deciding when they wish to take leave at the same time as they are considering how much each should take. Changes can always be requested, but this will allow employers, parents, and other workers affected children to plan for a period of absence. Indeed most parents do not plan the care of their new-born children on a week-by-week, piecemeal basis.

The time periods for leave requests proposed are too short. We believe that the current 15 week notice period to take maternity leave works well. Discussions between parents, employers, alternative workers, (and if necessary between employers) are unlikely to be concluded in the space of two weeks. We believe that four weeks is realistic, particularly where organisations are geographically spread and meetings take time to arrange. Any proposals must balance the needs of parents with entitlements for longer periods of leave.

Right to Request Flexible Working

The EEF believe that there should be no change or extension to the current requirements to the right to requests to work flexibly. We do not see a need or appetite for an extension of the right any further. Employers and Employees are familiar with the current statutory regime and the rules regarding the consideration of the request. Any change would be an additional burden on employers at this time. Trading conditions are already difficult and we believe that the current statutory regime works well and balances the needs of employees in the workplace against the need for the growth of small to medium sized businesses.

We understand that our counterparts in GB have responded to a draft Code of Practice for flexible working produced by ACAS. We are not advocates of a similar Code being introduced in Northern Ireland that would replace the statutory regime. We are particularly concerned that that proposed ACAS Code seems to depart from the strictly neutral approach (setting out what employers might consider, how they should consider a request) and appears to create a presumption that a request will be granted. We are strenuously against such a position being adopted in Northern Ireland. It is for employers to decide the outcome of a request, and not for the Code or law to steer them in any particular direction. To attempt to suggest that employers should agree to a request unless there exists a basis for refusal will create workplace disputes and undermine the collaborative way in which requests are currently dealt with.

Replies to the Consultation Questions

Part I: Shared Parental Proposals- General Questions

Q.1. What are the arguments supporting the introduction/extension of the Shared Parental Proposals in Northern Ireland?

The EEF is not wholly against a concept of shared parental leave and appreciates that additional flexibility will allow workers to balance their parental responsibilities with their working lives. However, this right must be balanced against the needs of employers to continue to operate their businesses effectively so those periods of absences do not disproportionately and adversely affect businesses. The devil of this right will be in the detail and it is essential that if such a right is adopted that it is done so in a way which causes the least disruption to work places. This will require mandatory early notifications, sufficient time frames of when the leave is to start and specifying how long the leave will be for, ensuring that only one single block of leave is permitted unless it can be agreed otherwise. We also believe that if such an extension is granted that employers must have a right to communicate with each other to ensure that such rights are not abused by employees.

Q.2 What are the arguments against this course of action?

Trading conditions are already difficult at present and it seems that there is little uptake on fathers taking paternity leave and is questionable on how far any additional rights will change that position. There is also the issue that instead of one longer period of leave employers will have to cover two or more separate periods of leave. Employers who use agency staff to cover these absences may find it difficult to recruit a suitable replacement for shorter periods. There

will be an increased administration burden which could leave many businesses struggling in already difficult climate. We question the appetite for such a change in Northern Ireland.

Q.3 What alternative approaches should be considered?

As an alternative to shared parental leave we believe, as set out below that consideration should be had to increasing the number of KIT days currently available to mothers. On the assumption that all KIT days continue to be used with the agreement of both the employer and employee, and that KIT days remain unpaid by the employer, there is unlikely to be any negative consequences from increasing the number of KIT days to 20 or 30. This will allow the mother to keep in touch with the workplace but has the benefits of placing no requirement on either the mother or the workplace to do this. Some mothers may wish to work more days but are conscious that doing so could break their maternity leave and associated maternity pay.

It is against these views above we have also responded in more detail below to the Administration of Shared Parental Rights below. However our response should not be taken as an indication that we fully support this extension.

Part II: Administration of Shared Parental Rights

Q.1. Please provide any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

EEF members have developed their own systems to cope with the growing complexities of administering the current systems for paternity (and maternity), leave and pay. Whilst we accept that there must be some eligibility criteria, these need to be straightforward and clear. They currently are not. They also need to reflect the likely decisions to be made by employers and parents. Both mothers and fathers are currently required to give the same period of notice in order to take leave – 15 weeks, although fathers will be taking two weeks' leave and mothers 52 weeks. For an employer, planning for 52 weeks of absence is clearly more difficult than two weeks. The working time regulations, for example, would require a four week notice period in order to take three weeks' leave. It is also not obvious why there is a 26 weeks qualifying period for paternity leave for fathers.

Similarly, maternity leave requires 15 weeks' notice, but maternity pay 28 days. A single notice period for leave and pay would clearly be preferable, and the above demonstrates the variations in the current applicable time limits. We therefore favour simplification.

We are aware of the considerable difficulties faced by EEF members in ensuring compliance with the various contradictory time limits, and common time limits will be welcomed. We are also aware that the current complexity is such that parents themselves are sometimes unaware of their entitlements, leaving employers to explain them.

Q.2. Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)? Please explain.

For the reasons given above, yes, however, notice of paternity leave in practice does not require 15 weeks, or nearly four months. If 15 weeks is an appropriate period, a similar notice

period should also apply to fathers wishing to take shared parental leave, with changes being notified at a later date if required.

We similarly believe that the process of notifying an intention to take maternity leave and pay should also be simplified. Currently, mothers are required to give 15 weeks' notice for leave and 28 days' notice for pay. This adds complexity without any advantage, and mothers could similarly give 15 weeks' notice for pay and leave, with changes being notified at a later date if required. The justification in the consultation, that the current system allows some flexibility is weak, as allowing changes by later notice would achieve the same aim

Q.3. Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth?

Providing that the employer agrees to the new arrangements that are proposed, we agree that a mother should have the ability to revoke her notice. Where this happens, a period of four weeks is sufficient. We would add that our proposal, outlined below, is that at the time that parents choose to opt in to shared parental leave, and appropriate Forms are completed, parents should specify the pattern of leave which they wish to take.

An employer who has received notice from a mother that she intends to end her maternity leave, and convert and take a period of shared parental leave, will understandably make certain arrangements. Larger businesses may be able to absorb the costs associated with mothers changing their plans, but there as the majority of businesses in Northern Ireland are small and medium sized they are likely to face real difficulties incurred by short notice changes.

Employers currently have some certainty as to when mothers will return to work, and can accordingly plan for this. On receiving notice from a mother the employer will commit themselves to incurring costs, hiring staff, changing contracts with workers, on the basis of the notification from their employee-mother. For most small businesses, these will be very considerable costs and it is naïve to think that the proposal will not lead to some businesses suffering significant hardship – which will in turn impact upon the rest of their workforce. There must be a balance between the needs of parents with the needs of other workers. Some of these workers may themselves be carers, or parents, or older workers, and will have rearranged their working lives to accommodate a fellow worker who is taking shared parental leave, only to find that the parent has then changed their mind. Balance can only be achieved by allowing employers to act fairly as between all their staff, and not constrained by overly complex regulations.

Lastly, a mother who has opted into shared parental leave has in fact lost nothing in terms of statutory rights, as she may then take all the leave herself, in the same way as she could have taken the same period as maternity leave.

Q.4. Do you agree that this level of information is sufficient from an employee? If not, please explain why and what information you would like to be required.

No.

We believe that the proposed form, ShPL1, must require parents to state the proposed pattern of leave which they wish to take at the time that the form is completed. Currently, employers will be know the leave plans of mothers, as they are required to provide 15 weeks' notice - fathers are similarly required to provide 15 weeks' notice at present. However, parents will in future not have to provide similar notice. We believe that the new arrangements should replicate the current system as far as possible, and that parents should be required to provide 15 weeks' notice for the taking of shared parental leave. Given that the proposal overall allows greater parental flexibility, and less employer certainty, there has been no explanation as to why the 15 week notice period for mothers has not been retained, or why at the time that parents are themselves considering which parent should take which proportion of leave, they should not provide to their employer an indicative indication of how they intend to take it. It seems very unlikely that parents would not consider when they wish to take leave at the point that they are also deciding how much leave each parent will take.

Giving 15 weeks' notice will be particularly important for fathers wishing to take shared parental leave. Currently, expectant mothers very often discuss early on with their employers the fact that they are pregnant and when they are likely to be taking leave. For fathers, the experience of EEF members is that this level of early discussion does not take place, and fathers communicate less well with their employers than mothers. Providing form ShPL1 earlier will encourage fathers to enter into an early dialogue, and will not disadvantage mothers who currently provide 15 weeks' notice. This period of notice will also be of particular assistance to employers who have both mothers and fathers working for them. This for some EEF members is a reality and not theoretical.

Employers will be unwilling participants in the new arrangements if parents can, on giving just eight weeks' notice, take several months of leave.

The proposed form, ShPL1, must contain a clear warning that in the event of parents seeking to claim either leave or pay in circumstances where they are aware they are not entitled, this will lead to prosecution, in the same way as any other form of social security fraud. Employers should be encouraged to devise their own forms, making it clear that such behaviour is likely to be regarded as gross misconduct and lead to summary dismissal.

We believe that DEL should produce guidance for employers on the use and processes which they may choose to introduce, for example requesting evidence of the birth, evidence of the qualifying relationship with the mother, and requiring fathers to provide the necessary information and authority to allow them to contact the mother's employer if they wish to. Such guidance should make it clear that employers have the flexibility to choose and impose procedures of their own to deal with shared parental leave. In discussions with our members, it is highly likely that some workers will attempt to use the new entitlements inappropriately, and employers must be able to identify where this might occur. The guidance must also make it clear that in the event of an incorrect payment, it will address this without any further administrative burden being placed upon employers.

Q.5. Do you agree with the proposal to allow parents to notify their employer of their intentions as they require them? Please explain.

No.

There will be little employer buy-in for a shared parental leave system that requires complete flexibility from employers and none from parents. The accumulation of proposals within the consultation are such that employers will not know what arrangements parents are seeking at the point that they receive form ShPL1, that pre-birth elections to convert maternity leave into shared parental leave cannot be relied upon, and that the allocation of leave on form ShPL1 can change as many times as parents wish on providing eight weeks' notice. Parents will be able to take leave in any pattern which they wish to on providing eight weeks' notice. The consultation is silent on what might happen where an employer has already agreed a leave pattern, incurred the cost of alternative workers, or agreed a contractual change with colleagues of the parent, only to find a parent then changes their mind. Employers currently recruit replacement workers on fixed-term contracts to cover periods of maternity leave. The use of agency workers, who are also used in these circumstances, is now very costly. Some of these workers, particularly within manufacturing will have specialist skills and will be difficult to replace even for short periods. This will be significantly more difficult, and more costly, if employers do not have any certainty over when shared parental leave is to start, and how long it is to last.

Whilst we understand that the principle is to provide parents with as much flexibility as possible, employers will have every incentive to refuse requests for flexible working and retain as much employer flexibility as possible to cope with the costs and burdens which shared parental leave will impose upon them. This, it seems, will be the only way to provide sufficient workforce flexibility to deal with the uncertainty which the proposed system of shared parental leave will create. A better balance of proposals is far more likely to enable employers to accommodate parental leave and flexible working, which it is also seeking to promote.

The concept of allowing a parent to request shared parental leave on an "as you need it basis", which is implicit from paragraphs 3.53 -3.55 of the consultation, is fundamentally the wrong message for parents and employers. Parents should be steered to consider when they wish to take their leave, as they do with other forms of leave. Mothers currently, and under the new system, are required to give 15 weeks' notice of their intention to take maternity leave. Employers need time to plan ahead, and are more likely to be able to accommodate requests which are made early. The requirement should therefore be that parents will notify their employers of their leave requirements at the time that they complete form ShPL1. If changes are needed, they can they apply for this subsequently. This will still allow parents the flexibility of changing patterns of leave, and parents will not be at risk of losing leave or be unable to change their patterns. They are more likely to risk losing leave if they do not apply in good time, and then find that they have left insufficient time to give notice, and then take the leave, before the entitlement expires. Notifying an employer of the pattern of leave sought at the outset will allow employers to plan for a period of absence. Employers would have a strong preference for this, and we do not believe that the certainty will in most cases prove to be false, as is suggested in the consultation.

Q.6. To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, we propose setting the negotiation period at 2 weeks. Do you agree?

The proposed system of applications for leave, and periods to reach agreement is defective for the following reasons.

New entitlements will be cumbersome. Parents will decide between themselves on what they will individually take as leave, and then seek the agreement of their employers on the pattern of leave, which they will be able to do on a piecemeal basis, always assuming that the individual entitlements are not at a later point changed. Two sets of employers, who in many cases will not know even of the existence of each other, will then enter into negotiations with the two employees, who at any point can change their minds as many times as they like upon how much leave they each will take. We believe that it is inevitable that under such a system arrangements will break down and working relationships suffer.

We advocate a system where parents provide notice of their leave request on form ShPL1, (which can be the same 15 week period required for maternity and paternity leave, and which can therefore assumed to be reasonable), and at the point where they decide how much leave each other will take and address when they each will take the leave. They will then have sufficient time to reach agreement with their respective employers, and time to change their minds over the division of leave and the pattern, well before the leave commences. This is likely to create a far greater opportunity for each parent to enter into discussions with their employers, which may have to occur several times, and for a collective agreement between four parties to be reached. Employers in some cases may wish to speak directly with each other to find an agreement which they can each accommodate. Two weeks is clearly insufficient for this to happen, and will result in parents being unable to reach agreement and as a result taking leave which they may not want at times they do not want it. We believe that 28 days is a more realistic period to reach agreement.

There is considerable confusion in the consultation on the system of leave requests which is being proposed. The position must be in practice that in the absence of agreement, the leave should be taken in a single block, commencing on a date of the employee's choosing.

The combination of paragraphs 3.53 – 3.55 means that a parent can request leave as many times as they wish to, subject to it being in a block of at least a single week. Allowing for an eight week period of notice, and assuming that agreement is not reached, the leave will then commence. A further application for leave during the eight week notice period can be made, and the employer can they require this to be taken consecutively after the leave first applied for. However, an employee may submit a further request, after the expiry of eight weeks, to which the employer will have to agree. This will then allow the employee to take leave in blocks or chunks without the agreement of the employer.

An employee may at the outset apply for leave to be taken, one week on, one week off. An employer may not be able to accommodate this – for example in the case of a financial officer, whose duties have to be covered by a qualified person, meaning that the employers need to hire in a person to cover for the absent parent. In Northern Ireland this will be felt more acutely

as most small and medium sized businesses, which have reduced resilience and only a single person performing a particular function, may experience great problems. In the event that the employee's request is refused, he need only then submit a series of requests, each eight weeks apart, and the employer can do nothing but accept these. For those who wish to ensure that they can force their employer to accept the pattern of leave they want, the employee may submit a series of requests during the mother's maternity leave, giving a commencement date several months in the future, and the employer will be able to do nothing but accept the situation. In discussions with our members, this is not merely a technical possibility, but will on occasions happen. Employers will quickly become disengaged and resentful at the costs which they will bear.

Similarly, change requests need a longer period of notice – we suggest twelve weeks. With this longer period, we see no need to limit the number of such requests. An unrestricted number of change requests, and an unrestricted number of initial requests, all on eight weeks' notice will create a false certainty for employees, who may believe that their employers have to, or might be able to, accommodate week-by-week leave requests as their circumstances change. Parents should be steered to consider their requirements in advance, and seek agreement. The best method of achieving this is the use of form ShPL1.

Finally, in the event that employers and parents wish between themselves to agree arrangements where leave is taken in a period of less than a single week, we see no reason for government to prevent this. Whilst we emphasize the need for agreement and sufficient notice, part-time working can be effective. For the employer, it may allow them to continue with their business for a period without the need to hire extra staff, or may minimise the disruption to the business.

**Q.7 Do you think that the cut-off point for parents taking shared parental leave should be:
(a) 52 weeks from the start of maternity leave, or
(b) 52 weeks from birth?**

Please explain.

We favour certainty and simplicity in the new arrangements and have commented above that the current mix of entitlements and notice periods are little understood outside professionals and those with a particular interest in excessive regulation.

We therefore favour mirroring the current system for maternity leave, and a system whereby shared parental leave is taken within 52 weeks of the start of the mother's maternity leave.

Q.8. Is 10 KIT days per parent for shared parental leave the right number? Please explain.

On the assumption that all KIT days continue to be used with the agreement of both the employer and employee, and that KIT days remain unpaid by the employer, there is unlikely to be any negative consequences from the proposed change. The proposal is for there to be an additional ten KIT days for mothers, which will be cumulative to the existing entitlement of ten days for maternity leave. Mothers taking shared parental leave will therefore have 20 days. Again, if these are to be taken with the agreement of the employer, there would seem to be few practical difficulties, but the consultation has failed to explain why a mother who takes a period of shared parental leave needs twice the number of KIT days to a mother who takes 52 weeks'

maternity leave. If anything, the mother taking shared parental leave is likely to be taking less time off than the mother on 52 weeks maternity leave, and yet has twice the entitlement.

We believe that the basis of the model for the taking of KIT days is the correct one, as it relies upon the consensual agreement of the parent and the employer. We believe that this model must be replicated, requiring agreement between employer and employee for the taking of shared parental leave in a particular pattern. In this way, both employers and parents will be required to discuss and negotiate.

Q.9. Which “right to return to the same job” option (1 or 2) would you prefer be applied to shared parental leave?

Option 1: right to return to the same job for employees continuous block of leave of 26 weeks

Option 2: right to return to the same job for employees returning from aggregated leave of up to 26 weeks even if the leave is not taken in a single block.

Please explain.

We favour option (1) for the following reasons:

We have said above that the new arrangements need to provide clarity and simplicity. The new arrangements for shared parental leave will of their nature be more complex than current entitlements, and it is likely that both employers and parents will struggle to understand any greater complexity than is absolutely necessary. Some EEF members have informed us that their employees simply do not understand the current rules for entitlement to maternity and paternity leave and pay, leading us to believe that greater complexity will result in parents shunning shared parental leave simply as they do not understand how the arrangements work.

Option (1) has the huge advantage of being similar to the current entitlement, and being much easier to calculate and understand. Both parents and employers will be familiar with the rules. For those who take leave greater than 26 weeks in a single block, the entitlement will be to return to the same or similar job – anything less and the entitlement is to return to the same job. This can be explained, and understood, quickly and easily, allowing both parents and employers to know where they stand.

Option (2) will require employers and parents to aggregate various forms of leave and calculate whether in total 26 weeks of leave have accumulated. Whilst there may be some marginal gain in flexibility, we believe that this is more than offset by the increase in administration and complexity which will be needed to maintain a running total of leave taken, and when a total of 26 weeks has been reached.

Q.10. In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay?

The impact of the cases under consideration is clearly very small. We recognise that these cases will be exceptional, and for larger employers with reasonable notification from their employees, they will be able to make contingency arrangements which can, if needed for a limited period of time, be used in most cases for most employees.

We would recommend that parents are required to inform their employer at the point where they are approved to become adoptive parents. This will ensure that employers are on notice that the worker may in the future be taking leave, but it will also require parents to hold a conversation with their employers about their intentions and the possible time periods.

For some employers, accommodating parents who on almost no notice at all gain an entitlement to a significant period of leave, will be impossible – small businesses for example or larger businesses where the worker undertakes a unique role, for example as they are bilingual or the only person having a particular qualification. In such cases employers should not be penalised if they require some notice from the employee before a significant and continuous period of leave is to commence.

Part III: right to request flexible working

Q 1. Should the right to request flexible working be extended to all employees with an appropriate length of service, extended more narrowly to selected groups or remain unchanged? Please explain.

The EEF believe that there should be no change or extension to the current requirements to the right to requests to work flexibly. We do not see a need or appetite for an extension of the right any further. Any change would be an additional burden on employers at this time. Trading conditions are already difficult and we believe that the current statutory regime works well and balances the needs of employees in the workplace against the need for the growth of small to medium sized businesses in the workplace.

The extension of any right may have significant adverse unintended consequences, where employees confuse a right to request flexible working with the right to work flexibly, creating discontent in businesses that refuse such requests. Unlike GB the vast majority of businesses here are classified as SME and if everyone has right to request flexible working the amount of requests that can be granted may reach saturation level. This may result in some employees, who are perceived as having a more meritorious right (e.g. because they have caring responsibilities), being refused flexibly working. This could cause discontent in the work force as others who requested flexible working as a life style choice being granted over those whose caring responsibilities etc. Tackling this with a system of prioritisation of requests is only likely to create more complication in an already burdensome business. Indeed such a system would only work if the possibility of two competing requests for flexible working being received by an employer at the same time, and in this event proposes that an employer may prioritise, but is not required to do so. They do not provide sufficient certainty for employers and fail to address the likely problems to be faced by employers in the future should the proposal be adopted. The right should not be extended.



Northern Ireland

Page 11

The proposal will undoubtedly add cost and burden to all employers.

The consultation does not consider the far more likely situation where an employer received competing requests at different times, possibly years apart. It is on this issue that the employers need guidance and support.

The current restriction provides employers with certainty that they will not face a number of similar, repeated requests in a 12 month period, which they are then required to consider. EEF provides its members with a toolkit recommending a full impact assessment before a request is accepted. Repeating this process at intervals of less than a year would prove particularly burdensome.

Q 2. Is it appropriate to move towards a model imposing a duty on employers to deal with requests reasonably supported by a Code of Practice and guidance rather than as present requiring a statutory series of steps to deal with requests?

We are not advocates of a Code replacing the current statutory regime. The statutory regime is known to business and any change will only increase the burden of businesses coming up to speed on perhaps the more detailed provisions of the Code. However we do support some departure from the strict compliance with the current procedure which can be overly bureaucratic. For example where the line manager may be located in a place far away from the individual making the request, and the number of people involved in the process unnecessary. In some instances, the current requirement to hold a face to face meeting is not required and the time limits too limited. Therefore any failure to comply with a step in the procedure should not automatically result in a complaint so long as an employer has, overall, given the consideration necessary to decide upon the request.

We are particularly concerned that that proposed ACAS Code seems to depart from the strictly neutral approach (setting out what employers might consider, how they should consider a request) and appears to create a presumption that a request will be granted. We are strenuously against such a position being adopted in Northern Ireland. It is for employers to decide the outcome of a request, and not for the Code or law to steer them in any particular direction. To attempt to suggest that employers should agree to a request unless there exists a basis for refusal will create workplace disputes and undermine the collaborative way in which requests are currently dealt with.

Part IV: General

Q.1 Having read the impact assessment please detail any potential impacts that you believe require further consideration.

Q.2 Are particular impacts likely to be experienced by small employers and if so, what steps can be taken to minimise them?

Q.3 Please provide any comments that might aid the consultation process as a whole.

In general we believe any "gold plating" of the Directive to be an unnecessary burden on industry. Taking all the cost and other pressures faced into account why place business in NI at any competitive disadvantage as opposed to a more welcoming place in which to do business. Employers large and small benefit in general from deregulation and less restrictive approach.

EEFNI

19 August 2013

Irish Congress of Trade Unions



Contact:

Clare Moore
Irish Congress of Trade Unions
4-6 Donegall St Place
Belfast BT1 2FN
Clare.moore@ictuni.org

1. Background

The Irish Congress of Trade Unions (ICTU) is the umbrella federation for trade unions in Ireland representing 250,000 members in Northern Ireland across public and private sectors.

The Northern Ireland Committee of the Irish Congress of Trade Unions (NIC ICTU) is pleased to respond to this Public Consultation.

Note: We have chosen not to use the question format to respond to this consultation to allow for a fuller explanation of our views.

2. Summary

2.1 The Irish Congress of Trade Unions broadly welcomes proposals which provide for shared parental leave and pay; better rights for parents who have children via surrogacy and adoption; time off for fathers and partners who have children via surrogacy or adoption and time off for partners to attend ante-natal or adoption appointments as well as the extension of the right to request flexible working.

However we do have a range of concerns with regards to the proposals.

2.2 The Government currently estimates that only two-eight per cent of partners will take shared parental leave. To increase take-up of shared parental leave legislation should provide for:

- a reserved period of leave for fathers/partners;
- eligibility for shared parental leave as a day one right, and
- improvements in the low flat rate of pay.

2.3 The eligibility criteria for shared parental leave are complex and will create confusion for employees and employers. Shared parental leave should be a day one right, with an allowance (equivalent to maternity allowance) for those who do not qualify for shared parental pay. This would alleviate the administrative burden required to navigate the proposed criteria. The requirement for the partner to be economically active should be removed.

2.4 Under these proposals shared parental leave can only be taken in weekly blocks. Parents should be able to take leave flexibly e.g. on a part time basis or daily basis, and employers should consider shared parental leave requests in a reasonable manner.

2.5 To encourage partners to take shared parental leave, ICTU supports a clear right of return to the same job for those taking parental leave irrespective of the length of that leave. This would help tackle the alarming levels of pregnancy discrimination.

2.6 The right to time off to attend ante-natal or adoption appointments is welcome, but should be paid and be for a "reasonable" time, rather than be limited to two blocks of not more than 6.5 hours. It should also apply to all workers as both prospective mothers, and partners, as a day one right.

2.7 The extension of the right to flexible working to all employees is welcome. However, the right to request should be available as a day one right and extended to all workers. ICTU is concerned that the replacement of the statutory procedure with a proposed Code of Practice will encourage employers to believe that accommodating flexible working requests is not important.

2.8 ICTU supports the introduction of breastfeeding rights at work as well as access to leave for other carers supporting a mother such as a grandparent.

3. Shared Parental Leave and Pay

3.1 Shared parental leave and pay will increase choice for some parents and can result in a fairer sharing of parenting responsibilities. This could enhance gender equality, better relationships and improved child well-being. We support the leave being taken on a more flexible basis and by allowing parents to take leave at the same time.

3.2 There are a number of weaknesses in the shared parental leave and pay scheme. It will not lead to a substantial change in the number of fathers/partners taking time off work to care for children because it lacks sufficient incentives. International evidence shows that fathers are most likely to take leave that is clearly available solely to them on the basis that if they do not use it they lose it. Shared entitlements are mostly used by mothers. The absence of reserved leave for fathers means they are less likely to apply. ICTU believes a reserved period of leave for fathers/partners, perhaps as an extension of the current paternity leave entitlement and in a way that does not reduce the entitlements of the

mother would enhance the credibility of the scheme. The Northern Ireland government should commit to an early review of take-up rates of leave by fathers/partners with a view to introducing a reserved period of leave if predictions of poor take-up prove to be correct.

3.3 Shared parental leave will not be a day one right. Only fathers/partners with 26 weeks' service (by the end of the 15th week before the expected week of childbirth (EWC)) and earning more than the lower earnings limit of £109 per week will qualify. This will exclude the very low paid, and those on short term contracts - a growing proportion of the workforce. Continued low flat-rate of pay for fathers/partners is a deterrent to participation. In countries such as Sweden, Norway, Iceland and Denmark where leave is paid at a rate of 80% of normal earnings or higher, the majority of fathers take some extended leave from the workplace to care for children. In countries with low rates of pay or benefits, less than 10% of fathers take any extended leave. In the UK, qualifying fathers will only be entitled to the low flat-rate of statutory pay (£136.78 a week for 2013/14). The main reason why fathers do not take paternity leave around the time of the birth is that they cannot afford to (cited by two-thirds of fathers) and only half of low income fathers took any paternity leave compared to four-fifths of higher paid fathers. To achieve significant change in parenting roles and more choice for low income families, the issue of very low pay for those taking time off work to care for children needs to be addressed.

3.4 The proposed eligibility rules for shared parental leave and pay are confusing. This will hinder take up and implementation. Examples from the TUC show - a woman who is employed for less than 26 weeks by the 15th week before the end of EWC will qualify for maternity leave and maternity allowance but will not be able to take shared parental leave and pay herself; but her partner/the father of the child will be able to take it if she ends her maternity leave early and the partner has met the service and income criteria; a woman with a self-employed partner may be able to end her maternity leave early and take shared parental leave and pay herself but her partner will not be eligible to take it; a single mother will not be able to take any shared parental leave and pay despite potentially having another family member who intends to care for the child. **The scheme could be simpler and fairer if shared parental leave and pay was a day one right, creating an allowance equivalent to maternity allowance for those who do not qualify for statutory parental pay and removing other criteria like the requirement to have another person who is economically active with whom they intend to care for a child.**

3.5 The leave can only be able to be taken in blocks of at least a week's duration and only if the employer consents. It should be available on a more flexible basis e.g. part time or in days, and that employers should consider requests to take shared parental leave in a reasonable manner (applying the same test as considering a flexible working request).

The right of return from leave

3.6 The right to return from a period of shared parental leave will be set out in regulations. The two options currently being considered by government for the right to return to work are too weak and/or too complicated. The first option provides parents with the right to return to the same job only after an initial period of 26 weeks or less. Any subsequent period of leave, regardless of duration, will attract a weaker right of return. **This is a disincentive for parents to take their leave in flexible blocks.** The second option provides the right to return to the same job after leave totalling 26 weeks on aggregate. While this option is preferable to the first option, it will be complicated to administer in practice.

3.7 ICTU supports a right to return to the same job regardless of the length or periods of leave taken to care for a child. This would be simple to administer, encourage partners to take shared parental leave, and promote equality in parental responsibilities. In the UK according to figures quoted by the TUC from the Equal Opportunities Commission, around 1 in 14 or 30,000 women lost their jobs as a result of pregnancy in 2005. It is believed that up to one in seven women do not have a job to return to after leave. Working Families also recently reported 'high levels of maternity discrimination' particularly related to losing jobs while on leave. The right to return to the same job should be paramount.

Improved adoption rights and rights for employees becoming parents via surrogacy

3.8 ICTU welcomes measures to provide: statutory rights to leave and pay for those who are prospective adopters through the 'fostering to adopt' and 'concurrent planning' placements; and to enable employees intending to become parents through surrogacy to access adoption leave and pay and ordinary paternity leave and pay for the first time. They will also be eligible for shared parental leave and pay.

3.9 ICTU welcomes amendments to legislation so that the first six weeks of Statutory Adoption Pay (SAP) are paid at 90% of a person's normal weekly earnings, which makes SAP equivalent to Statutory Maternity Pay. At present, the whole SAP period is paid at the low flat-rate.

Time off work for ante-natal and adoption appointments

3.10 ICTU welcomes a new right for an employee or a qualifying agency worker who is the partner of a pregnant woman, or someone intending to become a parent through surrogacy, to time off to accompany the pregnant woman to ante-natal appointments. However that time off is unpaid and limited in length. Complications in pregnancy often require more than one scan and it is important that partners or intended parents are able to attend all of them in such situations. Also for intended parents the pregnant woman may be some distance away requiring more than 6.5 hours for the appointment and travel to and from it.

The right to time off should be paid and for a 'reasonable' period of time. The right to time off should apply to all agency workers as a day one right. Agency workers who are

'workers' will only qualify for the right to time off if they have completed the 12 week qualifying period for equal treatment under the Agency Worker Regulations 2010.

3.11 These provisions mirror the limited rights of pregnant agency workers to paid time off to attend ante natal appointments, introduced in the Agency Worker Regulations 2010. While pregnant agency workers who qualify as 'employees' have a right to time off for ante natal appointments from day one of any assignment, those classified as 'workers' only qualify for the right after completing the 12 week qualifying period. Therefore the most vulnerable agency workers – i.e. those employed on zero hours contracts, who do not have any guaranteed hours and who can be fired at a moment's notice, will lose out on the new right to time off to attend ante natal appointments if they have not completed the 12 week qualifying period. Pregnant agency workers in a similar situation already lose out on the right to time off to attend ante-natal appointments. **This basic right to time off to attend ante natal appointments should apply to all pregnant agency workers and partners who are agency workers from day one.**

3.12 The proposed legislation will introduce a right to paid time off for an employee or a qualifying agency worker who is a single adopter or the primary adopter in a couple to attend up to five adoption appointments of no longer than 6.5 hours each. A partner would be entitled to unpaid time off to attend up to two adoption appointments of 6.5 hours each. The ICTU welcomes these new rights but again suggests that the limits imposed on them be addressed.

4. Extension of the Right to Request Flexible Working

4.1 The ICTU responded to the 2009 public consultation on flexible working and time off to train. We believed then and still believe that the right to request flexible working should be applied to all employees, particularly the most vulnerable and low paid employees.

4.2 However the ICTU opposes the proposal to repeal the statutory procedure for dealing with a flexible working request replacing it with a requirement that an employer must deal with a request in a 'reasonable manner' and within three months. This is to be subject to a Code of Practice which although it may include many of the procedural elements of the statutory procedure, provides a weaker standard to employees. **This will be seen by employers as a down-grading of the significance of flexible working.**

4.3 ICTU is also disappointed that the 26-week qualifying period remains for the right to request. This will exclude many parents and carers, particularly lone parents, in low paid jobs of limited duration or those on zero hours contracts.

4.4 The ICTU is concerned that Agency workers will continue to be excluded from the right to request flexible working. **This requirement is unequal and should be repealed.**

4.5 The Department through its consultation has sought views on whether an extension to the right to request flexible working for all employees would firstly lead to an influx of requests and secondly potentially impact on parents and carers because their requests are more likely to be denied. **The ICTU does not believe that this will be the case, particularly if the statutory procedure for dealing with requests is retained.** This would allow for a clear process which would be impact assessed to ensure no detrimental impact against individual groups of employees.

5. Related issues

5.1 The new shared parental leave scheme is intended to give women more choice but for many this choice will be constrained if they cannot continue breastfeeding after they return to work. The legislation should provide a right for women who are breastfeeding their babies to have reasonable time off to express milk at work and a suitable place in which to do so.

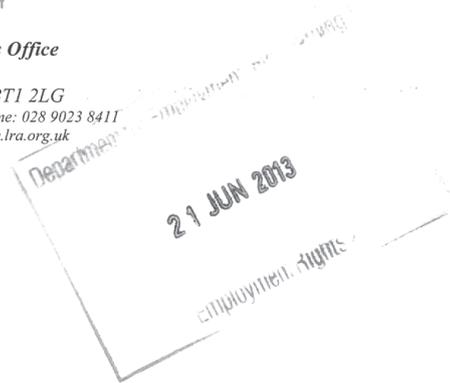
5.2 Parental leave derived from EU law was increased from 13 weeks to 18 weeks with effect from March 2013. This is as a result of the Parental Leave (EU Directive) Regulations 2013 which implement the revised Parental Leave Directive 2010. This parental leave is currently available to parents of children up to the age of 5 (or 18 if a disabled child). Unless a workforce agreement provides otherwise, a maximum of 4 weeks a year can be taken and the leave may only be taken in blocks of one week. There is currently low take up of this leave and parents will not be able to take the full 18-week entitlement with the current age limit and the limit on how much leave can be taken a year. The Coalition government has committed to increase the upper age limit to 18 at the same time as the new shared parental leave scheme takes effect in 2015. The increase in the upper age limit could have been introduced as part of the 2013 Regulations rather than being delayed to 2015. Also take up for this leave would be improved if the leave could be taken on a daily rather than weekly basis.

5.3 It is not always the case that a mother requiring support has a partner to provide that support. Provisions should be available under law for a mother to transfer some of her maternity leave to someone other than a partner. This could be the case where a single mother is struggling to cope with a new child and a grandparent or other carer could assist if they had access to some leave and pay.

Labour Relations Agency



2-16 Gordon Street, BELFAST BT1 2LG
Tel: 028 9033 7401 Fax: 028 9043 8737 Textphone: 028 9023 8411
e-mail: lra.ceo@lra.org.uk website: www.lra.org.uk



20th June 2013

Shared Parental Rights Consultation
Employment Relations Policy and Legislation Branch
Room 203, Adelaide House
39-49 Adelaide Street
BELFAST BT2 8FD

Dear Sirs,

RE: Sharing Parental Rights, Extending Flexibility at Work – Public Consultation

The Labour Relations Agency Board, at its meeting 20 June 2013, considered the DEL Sharing Parental Rights, Extending Flexibility at Work – Public Consultation document May 2013 and determined the following response.

The Agency notes the contents of the consultation paper and acknowledges that the proposed new arrangements are designed to provide working parents with greater flexibility in determining how best to share the statutory leave and pay entitlements associated with the birth or adoption of a child and, in addition, introduces a proposal to broaden, very significantly, the existing right to request flexible working.

The Agency makes no comment on the substantive issues in the consultation paper other than to make the general point that any amendment to existing employment legislation or new employment rights deriving from the proposals should be clear, concise and unambiguous if satellite legislation is to be avoided. In the micro firm economy of Northern Ireland the Agency is particularly mindful of the challenges faced by many employers in understanding and complying with contemporary employment law.

The Agency in promoting good employment practice and in furtherance of resolving disputes advocates clarity in and the simplification of employment law. To this end we will be prepared to offer advice and guidance on any new legislative provisions.

We stress that the clearer the legislative provisions the easier it will be to provide advice and guidance and, in the case of flexible working, as is the intention in GB, allow the Agency to draft an effective and user friendly Code of Practice.

Yours faithfully,

W PATTERSON
Chief Executive

Chairman
Mr Jim McCusker



Chief Executive
Mr Bill Patterson MBA FCIPD

Minister for Health, Social Services and Public Safety

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Edwin Poots MLA



Ms Maeve McLaughlin
Chair
Committee for Health, Social Services and Public Safety
Room 416
Parliament Buildings
Stormont
BELFAST
BT4 3XX

Castle Buildings
Stormont Estate
BELFAST BT4 3SQ
Tel: 028 90 520642
Fax: 028 90 520557
Email: private.office@dhsspsni.gov.uk

Our Ref: AGY/363/2014

Date: 2 June 2014

Dear Ms McLaughlin

Work and Families Bill

Thank you for your letter of 22 May in relation to the Work and Families Bill which has been introduced into the Legislative Assembly by the Minister for Employment and Learning.

In your letter you have asked whether my Department is content with the provisions within the Bill which impact on my Department's remit, which the Committee understands to be fostering and adoption, pay and leave.

My officials have engaged with DEL officials to agree the relevant draft clauses which have now been included in the Bill. We have specifically worked towards including provision for adopters and foster carers who are prospective adopters. My officials will continue to provide assistance to DEL in the preparation of secondary legislation and guidance.

I trust you find this information useful.

Edwin Poots MLA
Minister for Health Social Services and Public Safety

Working for a Healthier People





Northern Ireland
Assembly

Appendix 4

List of Witnesses

Appendix 4 – List of Witnesses

Department for Employment and Learning

Mr Tom Evans
Dr Alan Scott

Engineering Employers Federation Northern Ireland

Ms Kathryn McCormick
Ms Michelle McGinley



Northern Ireland
Assembly

Appendix 5

Correspondence

Department for Employment and Learning - Delegated Powers Memorandum

Delegated Powers Memorandum for the Work and Families Bill

This Delegated Powers Memorandum identifies provisions for delegated legislation in the Work and Families Bill. It explains the purpose of the delegated powers taken and the form of Assembly control selected for each power. This memorandum should be read in conjunction with the Explanatory and Financial Memorandum accompanying the Bill.

Unless otherwise stated, reference to the delegation of a power in this memorandum is reference to power being conferred upon the Department for Employment and Learning.

Rationale for delegation of powers

The decision to leave a substantial array of matters to delegated legislation requires general explanation.

The Bill has been structured in accordance with established methodology for legislating in respect of working parents' rights. Its provisions establish a framework governing the administration of the rights, with powers delegated to allow regulations to set out the detail of those arrangements.

Setting out the administrative detail in regulations provides scope to modify arrangements, subject to appropriate Assembly control, without the requirement for additional primary legislation. The ability to react with relative speed to future circumstances, but without effecting fundamental change to the framework of rights and responsibilities, is important given the complexity of the administrative arrangements and the importance of their correct operation to employers and working parents.

The structuring of the Bill in this way preserves the principle that fundamental policy changes cannot be effected in the absence of Assembly scrutiny and agreement.

In determining the Assembly procedure applicable to each of the delegated powers detailed in this memorandum, the general guiding principle has been to subject minor and technical issues to the negative procedure and to expose more substantial issues to the confirmatory procedure.

Clause 2

Clause 2(2) establishes the new right to shared parental leave by including new provisions within the Employment Rights (Northern Ireland) Order 1996 (the Employment Rights Order).

Entitlement to shared parental leave: birth

Article 107E(1) empowers the Department for Employment and Learning ("the Department") to make regulations dealing with a mother or prospective mother's entitlement to shared parental leave. The regulations may specify conditions of entitlement, including duration of employment, relationship to the child and the other person, giving notice of the intention to take the leave, and securing the other person's consent to the sharing of the leave.

Paragraph (2) specifies that these regulations may also deal with the certain conditions attaching to the person sharing the leave with the mother i.e. the child's father or the mother's partner. These conditions include employment status and earnings. Paragraph (3) further specifies that these regulations may make provision about the content of the notice of intention to take leave.

Article 107E(4) similarly empowers the Department to make regulations dealing with the entitlement of the person sharing the leave (the child's father or the mother's partner). Paragraphs (5) and (6) make further provision, comparable to that described in paragraphs (2) and (3), about what those regulations may specify.

Article 107F contains further provisions about what regulations under Article 107E must or may specify.

They must:

- determine the amount of leave to which an employee is entitled and when it may be taken (paragraph (1));
- account for the leave (or in some cases the pay) entitlement of the other person (paragraphs (2) and (4));
- provide that leave must be taken before the end of a specified period (paragraph (7));
- allow for leave to be taken as a single period or as multiple periods (paragraph (8));
- allow an employer to require leave to be taken as a single period and allow that period to start on a day specified by the employee (paragraph (9)).

They may:

- provide for leave periods or amounts to be varied, with provision for associated notices (paragraph (10));
- require the variation to be subject to the employer's consent (paragraph (11)) and that of the person with whom the leave is being shared (paragraph (12));
- provide as to the content of a notice varying leave, including the provision of information about the leave plans of both people sharing that leave (paragraph (13)).

Paragraph (14) further specifies that regulations under Article 107E may:

- define what constitutes caring for a child;
- exclude leave being taken in respect of more than one child;
- specify a minimum amount of leave which may be taken;
- specify how leave may be taken;
- specify circumstances when an employee can work during leave (so-called 'keeping in touch days');
- specify when an employee may be absent from work on leave other than for the purpose of caring for the child (to deal with situations, for example, where the child has died).

Finally, paragraph (16) contains a standalone power enabling the Department, by regulations, to modify the effect of certain provisions where the mother dies before entitlement to share leave would ordinarily become available to the other person. The provisions that can be modified are those concerning the other person's relationship to the mother, the caring requirement, the mother's consent, the requirement for the mother to satisfy certain conditions, and notice requirements.

Entitlement to shared parental leave: adoption

Article 107G(1) empowers the Department to make regulations dealing with the entitlement of a primary adopter or prospective primary adopter to shared parental leave. The regulations may specify conditions of entitlement, including conditions relating to the placement for adoption, duration of employment, relationship to another person (to be defined in regulations), giving notice of the intention to take the leave, and securing the other person's consent to the sharing of the leave.

Paragraph (2) specifies that these regulations may also deal with the certain conditions attaching to the person sharing the leave with the adopter, including employment status and earnings. Paragraph (3) further specifies that these regulations may make provision about the content of the notice of intention to take leave.

Article 107G(4) similarly empowers the Department to make regulations dealing with the entitlement of the person sharing the leave. Paragraphs (5) and (6) make further provision, comparable to that described in paragraphs (2) and (3), about what those regulations may specify.

Article 107H(1) specifies that regulations under Article 107G(1) and (4) must provide for leave in respect of a child who is placed or is expected to be placed by an authority (a Health and Social Care Trust) in a fostering arrangement with an approved prospective adopter, with a view to adoption taking place (fostering for adoption). Paragraph (2) references the circumstances which must be provided for, namely that the authority is considering adoption and is satisfied that it is in the child's best interests. Further conditions may be set out in regulations in accordance with Article 107H(2)(c). Paragraph (3) requires the regulations to provide for the referencing of placement for adoption under the law of any part of the United Kingdom.

Article 107I contains further provisions about what regulations under Article 107G must or may specify.

They must:

- determine the amount of leave to which an employee is entitled and when it may be taken (paragraph (1));
- account for the leave (or in some cases the pay) entitlement of the other person (paragraphs (2) and (4));
- provide that leave must be taken before the end of a specified period (paragraph (7));
- allow for leave to be taken as a single period or as multiple periods (paragraph (8));
- allow an employer to require leave to be taken as a single period and allow that period to start on a day specified by the employee (paragraph (9)).

They may:

- provide for leave periods or amounts to be varied, with provision for associated notices (paragraph (10));
- require the variation to be subject to the employer's consent (paragraph (11)) and that of the person with whom the leave is being shared (paragraph (12));
- make provision about the content of a notice varying leave, including the provision of information about the leave plans of both people sharing that leave (paragraph (13)).

Paragraph (14) further provides that regulations under Article 107G may:

- define what constitutes caring for a child;
- exclude leave being taken in respect of more than one child;
- specify a minimum amount of leave which may be taken;
- specify how leave may be taken;
- specify circumstances when an employee can work during leave (so-called 'keeping in touch days');
- specify when an employee may be absent other than to care for the child (to deal with situations, for example, where the child has died).

Paragraph (16) contains a standalone power enabling the Department, by regulations, to modify the effect of certain provisions where the primary adopter dies before entitlement to share leave would ordinarily become available to the other person. The provisions that can be modified are those concerning the other person's relationship to the primary adopter, the caring requirement, the primary adopter's consent, the requirement for the primary adopter to satisfy certain conditions, and notice requirements.

Article 107J(1) sets out a regulation making power permitting the Department to provide for the application of these provisions to be modified to cater for adoptions from overseas.

Article 107J(2) sets out a comparable regulation making power for intended parents in a surrogacy arrangement who intend to apply for a parental order. In surrogacy cases, paragraph (3) allows regulations under Article 107G to deal with additional evidential requirements concerning eligibility and intention to apply for a parental order.

Entitlement to shared parental leave: general

Article 107K(1) provides that regulations dealing with shared parental leave under Article 107E (birth) or 107G (adoption) must deal with the extent of entitlement of the employee who is absent on leave to the terms and conditions he or she would have

enjoyed had the absence not taken place. They must also specify the extent to which the employee continues to be bound by obligations of those terms and conditions while on leave. They must provide in respect of the employee's right to return and, per paragraph (5), they may deal with seniority, pension rights and similar rights, and terms and conditions of employment on return. Paragraph (4) further provides that such regulations may deal with the treatment of remuneration.

Article 107L(1) provides that the regulations under Article 107E or 107G may make provision about redundancy and dismissal which, in accordance with paragraph (2), may include provision about alternative employment and the consequences of failure to comply with the regulations.

Article 107M(1) specifies that regulations under Article 107E or 107G may make provision about:

- notices, evidence and procedures and the consequences of failing to adhere to associated requirements;
- the keeping of records;
- contractual rights to shared parental leave;
- calculating the amount of a week's pay;
- the application of statutory provisions to shared parental leave.

Assembly procedure

Article 251(1A) is amended by clause 2(3) to make regulations under Articles 107E, 107F(16), 107G, 107I(16) and 107J(1) and (2) subject to the confirmatory procedure, meaning that they must be approved within six months of their operational date by a resolution of the Assembly.

Clause 3

Clause 3 does not introduce any new delegated powers; however it does amend existing provisions delegated under the Employment Rights Order.

Shared parental leave: consequential amendments

Article 103 is amended (by clause 3(2)) so that regulations under Article 103(2), concerning the period of ordinary maternity leave, may provide that:

- the date of the end of such leave may be brought forward, subject to prescribed restrictions and conditions, including the taking of steps as regards shared parental leave (paragraphs (3)(ba) and (3A));
- the bringing forward of the date in this way may be revoked (or be treated as such) in prescribed circumstances (paragraph (3)(bb)).

Comparable changes are made as outlined below.

- Article 105, in respect of regulations under Article 105(3) concerning the period of additional maternity leave, is amended (by clause 3(3)) through a change to paragraph (3) (a) and the insertion of paragraphs (3)(aa) and (3A).
- The regulation making power in Article 107A(2), dealing with the calculation of the ordinary adoption leave period, is amended by way of changes (made by clause 3(4)) to paragraph (2A) and the insertion of new paragraph (2B).
- The regulation making power in Article 107B(3), dealing with the calculation of the additional adoption leave period, is reworded and paragraphs (3)(aa) and (3A) are inserted (by clause 3(5)).
- Articles 112A and 112B, respectively requiring the Department to make regulations dealing with paternity leave concerning birth and adoption, each now includes a new paragraph (4A) (inserted by clause 3(6) and (7)) requiring those regulations to prevent paternity leave from being taken after the start of shared parental leave.

Assembly procedure

In accordance with Article 251(1A), regulations under Articles 103, 105, 107A, 107B, 112A and 112B are subject to the confirmatory procedure.

Clause 5

Clause 5(2) establishes the new right to statutory shared parental pay (SSPP) by including new provisions within the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (the Contributions and Benefits Act).

Entitlement to statutory shared parental pay: birth

Section 167ZU(1) empowers the Department to make regulations entitling a mother meeting specified conditions to claim SSPP. The conditions, which are set out in paragraph (2), concern:

- the role and intentions of the claimant mother and the person with whom she proposes to share SSPP (the child's father or the claimant mother's partner) in caring for the child;
- that other person's employment status, earnings and relationship to the mother or child;
- the mother's employment over a specified period and entitlement to be in that employment (which may be supplemented by conditions about continuing in employment for a given time);
- the mother's minimum earnings over a period, her entitlement to statutory maternity pay (SMP) and the reduction in the period for which SMP is payable to her (which is required in order to allow SSPP to start);
- the mother's notice to her employer about entitlement to SSPP and how entitlement will be used by her and the other person sharing;
- the other person's consent to the SSPP claim;

- the mother's absence from work during each week when SSPP will be payable;
- the mother being absent on shared parental leave (where she is entitled to it).

Paragraph (3) contains a separate but comparable regulation making power, with paragraph (4) setting out the conditions that the person sharing SSPP with the mother, and the mother in relation to that person, are required to meet. These conditions closely correspond to those in paragraph (2).

Section 167ZV(1) allows the Department, by regulations, to make provision for determining a person's entitlement to SSPP and when it is payable. Such regulations must:

- ensure that the number of weeks for which SSPP is payable cannot exceed the number of weeks for which Maternity Allowance (MA) or SMP would otherwise have been payable (paragraph (2));
- ensure that the combined entitlement of two people sharing SSPP does not exceed the entitlement that would be available to one person (paragraph (6));
- prevent payment of SSPP being made after a given period of time has elapsed (paragraph (7));
- prevent SSPP from being payable before the end of the mother's maternity pay period (paragraph (8)).

A freestanding power in subsection (9) permits the Department to make regulations allowing claimants, having notified their employer as prescribed under paragraph (10), to vary the period or periods during which they intend to claim SSPP.

Such variance is subject to provision under subsection (11), which separately empowers the Department to make regulations allowing a claimant to vary the number of weeks' SSPP he or she intends to claim. Such variation, per paragraph (12), is subject to the claimant notifying his or her employer in a prescribed manner about SSPP already used by each person sharing, and the intention of each to share further entitlement. The consent of the person sharing SSPP is required.

Entitlement to statutory shared parental pay: adoption

Section 167ZW(1) empowers the Department to make regulations entitling a primary adopter meeting specified conditions to claim SSPP. The conditions, which are set out in paragraph (2), concern:

- the role and intentions of the claimant and the other person (to be defined in regulations) with whom he or she proposes to share SSPP in caring for the child;
- that other person's employment status, earnings and relationship to the primary adopter or child;
- the primary adopter's employment over a specified period and entitlement to be in that employment (which may be supplemented by conditions about continuing in employment for a given time);
- the primary adopter's minimum earnings over a period, his or her entitlement to Statutory Adoption Pay (SAP) and the reduction in the period for which SAP is payable to him or her (which is required in order to allow SSPP to start);
- the primary adopter's notice to his or her employer about entitlement to SSPP and how entitlement will be used by him or her and the other person sharing;
- the other person's consent to the claim;
- the primary adopter's absence from work during each week when SSPP will be payable;
- the primary adopter's being absent on shared parental leave (where he or she is entitled to it).

Paragraph (3) contains a separate but comparable regulation making power, with paragraph (4) setting out the conditions that the person sharing SSPP with the primary adopter, and the primary adopter in relation to that person, are required to meet. These conditions closely correspond to those in paragraph (2).

Section 167ZX(1) allows the Department to make regulations making provision for determining a person's entitlement to SSPP and when it is payable. Such regulations must:

- ensure that the number of weeks for which SSPP is payable cannot exceed the number of weeks for which SAP would otherwise have been payable (paragraph (2));
- ensure that the combined entitlement of two people sharing SSPP does not exceed the entitlement that would be available to one person (paragraph (5));
- prevent payment of SSPP being made after a given period of time has elapsed (paragraph (6));
- prevent SSPP from being payable before the end of the primary adopter's adoption pay period (paragraph (7)).

A freestanding power in subsection (8) permits the Department to make regulations allowing claimants, having notified their employer as prescribed under paragraph (9), to vary the period or periods during which they intend to claim SSPP. This is subject to provision under subsection (10), which separately empowers the Department to make regulations allowing a claimant to vary the number of weeks' SSPP he or she intends to claim. Per paragraph (11), this is subject to the claimant notifying his or her employer in a prescribed manner about SSPP already used by each person sharing, and the intention of each to share further entitlement. The consent of the person sharing SSPP is required.

Section 167ZY(1) requires the Department to make regulations providing for SSPP in fostering for adoption situations. Subsection (2) references the circumstances which must be provided for, namely that the relevant authority (a Health and Social Care Trust) is considering adoption and is satisfied that adoption is in the child's best interests. Further conditions may be set out in regulations in accordance with section 167ZY(2)(b).

Entitlement to statutory shared parental pay: general

Section 167ZZ(1) empowers the Department to make regulations modifying the application to prescribed situations of the regulations concerning entitlement to SSPP and the variation of plans to take SSPP. The Department may also prescribe evidential and procedural requirements; deal with the treatment of non-continuous periods of employment as continuous; deal with the aggregation of earnings under separate contracts; and provide generally for the calculation of earnings for the purposes of SSPP.

Section 167ZZ1(2) requires the Department, by regulations, to provide for a former employer's liability where that employer has ended a contract for the specific purpose of avoiding liability for SSPP. In accordance with subsection (3) the Department, with the concurrence of Her Majesty's Revenue and Customs (HMRC), may make provision for payments of SSPP to be the liability of HMRC.

Section 167ZZ2, which deals with the rate and period of SSPP, provides the Department with the following separate freestanding regulation making powers:

- power to prescribe the rate of SSPP, which may include provision for different rates in different cases (subsection (1));
- power to prescribe exceptions to the requirement to be caring for a child in order to claim SSPP (to cater, for example, for situations where the child has died) (subsection (3));
- power to prescribe exceptions to the requirement to be absent from work in order to be in receipt of SSPP (to allow for 'keeping in touch' days, during which the claimant may work during the SSPP period) (subsection (4));

- power to prescribe circumstances in which there is no liability to pay SSPP in respect of a given period (subsection (5)).

Section 167ZZ4(3) allows the Department, by regulations, to make provision as to payments being treated as contractual remuneration for the purposes of discharging an employer's liability to pay SSPP.

Section 167ZZ6(1) empowers the Department to make regulations, with the concurrence of the Treasury, to provide for the application of SSPP provisions to persons onboard seafaring vessels or aircraft; persons outside Northern Ireland; and persons in particular employment relating to continental shelf operations. In accordance with subsection (2), the regulations may modify the application of provisions, except individuals from certain requirements, and deal with the taking of evidence outside Northern Ireland.

Section 167ZZ7 confers the following freestanding regulation making powers:

- the Department may make provision for treating a person as being, or not being, an employee (subsection (3));
- it may make provision, subject to HMRC concurrence, for treating two or more employers as one, and two or more contracts of service as one (subsection (4));
- it may provide, subject to HMRC concurrence, for the definition of a week for the purposes of particular cases (subsection (5));
- it must provide, subject to HMRC concurrence, for the definition of "earnings" and "relevant period" (subsection (7));
- it may make provision, subject to HMRC concurrence, for the method of calculating a person's weekly earnings in prescribed cases (subsection (8));
- it may make provision, subject to HMRC concurrence, allowing a person to elect for multiple contracts with Health and Social Care Trusts to be treated as one (subsection (9)).

Regulations made under subsection (9) may deal with conditions of entitlement; how and when a person may make a relevant election, including the provision of appropriate notice and information; the period for which such an election is to have effect; and establishing which employer is to be regarded as the person's employer for the purposes of the contract.

Section 167ZZ8(1) empowers the Department to make regulations modifying SSPP provision in respect of cases involving adoptions from overseas.

Section 167ZZ8(2) contains a separate, comparable freestanding regulation making power in respect of surrogacy cases. Subsection (3) provides that the regulations may deal with evidential requirements in such cases concerning eligibility to apply for a parental order and intention to do so.

Assembly procedure

Section 172(2) is amended (by clause 5(3)) to make regulations under sections 167ZU to 167ZZ2 subject to the confirmatory procedure.

All remaining regulations detailed above (namely those under sections 167ZZ4, 167ZZ6, 167ZZ7 and 167ZZ8) are subject to the negative procedure, per section 172(4).

Clause 6

Statutory shared parental pay: consequential amendments

Section 35 of the Contributions and Benefits Act, through the inclusion of a new subsection (3A), is amended to incorporate a power to make regulations providing for the reduction of a woman's maternity allowance period (in order to allow for SSPP to commence). New sections

161(3A) and 167ZN(2A) make comparable provision, respectively, in relation to a woman's maternity pay period and a primary adopter's adoption pay period.

Per subsections 35(3B), 161(3B) and 167ZN(2B), the regulations under, respectively, sections 35(3A), 161(3A) and 167ZN(2A) must make specific provision about the ending of the maternity allowance period, maternity pay period or adoption pay period (as the case may be) that has been reduced in this way. The period must not end before a prescribed time has elapsed, and a prescribed amount of it must remain.

Sections 35(3C), 161(3C) and 167ZN(2C) specify that the respective regulations may also, in particular, prescribe conditions and restrictions concerning the end of entitlement to maternity leave or adoption leave (as the case may be); the mother or adopter carrying out work; prescribed steps being taken as regards shared parental leave; and prescribed steps concerning SSPP being taken regarding the sharing of SSPP entitlement.

Sections 35(3D), 161(3D) and 167ZN(2D) each provide a power to make regulations to provide for the revocation of a reduction in the maternity allowance period, the maternity pay period and the adoption pay period respectively.

The amendments to section 35 are made by clause 6(2); to section 161 by clause 6(4); and to section 167ZN by clause 6(6).

The regulation making powers set out in sections 35(3A) and (3D) and 161(3A) and (3D) are conferred on the Department for Social Development (DSD), as Maternity Allowance and Statutory Maternity Pay fall within the legislative remit of that Department. The powers in section 167ZN(2A) and (2D) are for the Department for Employment and Learning.

Assembly procedure

All regulations detailed above are subject to the negative procedure, per section 172(4).

Clause 8

Fostering for adoption: other rights to leave

Article 107A(1) of the Employment Rights Order already contains a power to make regulations concerning ordinary adoption leave. New paragraph (1A), inserted by clause 8(2), specifies that conditions prescribed in such regulations may include those in new Article 107AB (inserted by clause 8(3)) dealing with fostering for adoption. The specific conditions relate to a person being an approved foster parent and being an approved prospective adopter; they also relate to a Health and Social Care Trust being satisfied that adoption is appropriate for the child and providing notification to the individual that the child is (or is expected) to be placed with him or her. The regulations may also prescribe further conditions in relation to these fostering for adoption situations.

With regard to such fostering for adoption situations, new Article 107AB(4) sets out a power enabling the Department, by order, to revise the definition of "approved foster parent" or "approved prospective adopter" in response to a change to the relevant regulations (which are within the remit of the Department of Health, Social Services and Public Safety (DHSSPS)).

Existing Article 112B(1) requires the Department to make regulations about paternity leave in respect of an adoption. New Article 112BA (inserted by clause 8(5)), following a structure similar to that of Article 107AB, specifies that such regulations must include fostering for adoption provision (paragraphs (1) and (2)). The regulations may further specify how certain references are to be interpreted (paragraph (3)). There is no

requirement for a further order making power here, as the definitions used in Article 107AB are applied by paragraph (4).

New Article 112B(5)(aa) (inserted by clause 8(4)) specifies that regulations under existing Article 112B(1) may include provision preventing ‘double claiming’ of paternity leave: a claim must either relate to the initial placement with foster parents with a view to adoption or the later formal placement for adoption. Leave in respect of both situations cannot be taken.

Assembly procedure

Regulations under Articles 107A and 112B are already subject to the confirmatory procedure by virtue of Article 251(1A).

The same procedure is also applied to the order making power in Article 107AB(4), per Article 251(3)(a), as amended by Schedule 1, paragraph 4(19)(b)(ii) of the Bill.

Clause 9

Fostering for adoption: other rights to pay

Section 167ZBA(2)(b) of the Contributions and Benefits Act, as inserted by clause 9(2), entitles the Department to prescribe by regulations conditions relating to fostering for adoption arrangements as they relate to statutory paternity pay (SPP). The prescribed conditions are in addition to those already set out in the section, namely that a Health and Social Care Trust, having decided that adoption is in a child’s best interests, places the child with an approved foster parent who is also an approved prospective adopter. The power to prescribe additional conditions will allow the Department to set an appropriate ‘trigger point’ for entitlement to begin.

Comparable provision is made in section 167ZLA(2)(b) in respect of fostering for adoption arrangements in relation to SAP. Section 167ZLA is inserted by clause 9(4).

Section 167ZBA(3) specifies that certain provisions about entitlement to SPP are to be read in a manner prescribed by regulations

Section 167ZLA(3) makes similar provision about the reading of certain references concerning entitlement to SAP

Section 167ZBA(6) empowers the Department, by order, to amend the definitions of “approved foster parent” and “approved prospective adopter” so that account can be taken of any future changes to the relevant DHSSPS regulations. (No comparable power is required in section 167ZLA.)

Section 167ZE(12) (inserted by clause 9(3)) provides that the Department, in regulations, may adjust references to being placed for adoption so that SPP may be payable in fostering for adoption situations.

Section 167ZN(9) (inserted by clause 9(5)) similarly provides for regulations to prescribe the meaning of references to the week in which a person is notified of matching for adoption so that SAP may be payable in fostering for adoption situations.

Assembly procedure

All of the regulation making powers introduced by clause 9 are subject to the negative procedure, in accordance with section 172(4).

The order making power in section 167ZBA(6) is subject to draft affirmative procedure, per section 172(7A) (as inserted by Schedule 1 paragraph 2(19)(c)).

Clause 10

Leave entitlement in surrogacy arrangements

New Articles 107AC, 107BA and 112BAA, inserted into the Employment Rights Order by clause 10(2), (3) and (5), specify that the Department may by regulations provide for

the application in surrogacy cases of provision about ordinary adoption leave, additional adoption leave and paternity leave respectively. This will be achieved by modifying the effect of regulations under, respectively, Articles 107A, 107B and 112B.

New paragraph (1A) of existing Article 107D, inserted by clause 10(4), provides that regulations under existing Article 107A (ordinary adoption leave) or 107B (additional adoption leave) may include provision requiring evidence about the eligibility and intention of prospective surrogate parents to apply for a parental order.

Assembly procedure

New Articles 107AC, 107BA and 112BAA are each subject to the negative procedure as they simply empower the Department to provide for the application of already established provisions in specific cases.

Existing regulations under Articles 107A and 107B, to which Article 107D(1A) relates, are subject to the confirmatory procedure because they prescribe general requirements concerning adoption leave.

Clause 11

Pay entitlement in surrogacy arrangements

Section 167ZK(2) of the Contributions and Benefits Act, inserted by clause 11(2)(c), specifies that the Department may make regulations dealing with the application of SPP in surrogacy arrangements.

Section 167ZT(2) contains like regulation making power in respect of SAP. Regulations under section 167ZT(2) may, by virtue of section 167ZT(3), modify section 167ZL(8)(c) so as to impose requirements concerning eligibility and intention, in a surrogacy arrangement, to apply for a parental order. Both provisions are inserted into the Contributions and Benefits Act by clause 11(3)(c).

Assembly procedure

All regulation making powers referenced above are subject to negative procedure, per section 172(4), as they provide for the application of established provisions in specific cases.

Clause 12

Amendments concerning Statutory Paternity Pay

New subsection (1A) of section 167ZC of the Contributions and Benefits Act, inserted by clause 12(2)(b), empowers the Department to make regulations setting the time by which an individual must give notice of plans to claim SPP. The existing notice requirement, 28 days or as soon as reasonably practicable, is removed from primary legislation in light of this change.

Section 167ZE(2) is amended by clause 12(3)(a) such that SPP is to be payable for up to a prescribed week or number of weeks within the qualifying period. Newly inserted section 167ZE(2A) (clause 12(3)(b)) requires the maximum entitlement prescribed to be no less than two weeks. The current entitlement of up to two weeks' SPP is set by primary legislation. The purpose of this provision is to allow the entitlement to be set by regulations.

New subsection (2B) of section 167ZE, inserted by clause 12(3)(c), builds upon the current discretion of the Department to provide in such regulations for SPP to be available for non-consecutive periods. The amendment allows regulations to make SPP available for non-consecutive periods consisting of individual periods of a week or a number of weeks.

While the Department's policy at present is to preserve a maximum of two consecutive weeks' entitlement and leave current notice requirements in place, the taking of these powers affords the possibility of reviewing entitlements at a later date without the need for new primary legislative provisions.

Assembly procedure

Regulations under section 167ZC(1A) (notice) are to be subject to the negative procedure as they deal with administrative detail associated with SPP.

Regulations under section 167ZE(2)(a) (SPP payable up to a prescribed week) are also subject to the negative procedure.

However regulations under section 167ZE(2)(b) (SPP payable for a prescribed number of weeks) are subject to the confirmatory procedure in accordance with a relevant amendment to section 172(2)(a) made by clause 12(4). The latter provision is subject to confirmatory procedure, thus allowing any future proposal to make SPP available over a discontinuous period to be the subject of an Assembly debate.

Clause 13

Rate of statutory adoption pay

New section 167ZN(2E)(b) of the Contributions and Benefits Act provides that SAP shall be payable to a person, after the first six weeks, at whichever is the lower of an earnings related rate and a weekly rate that may be prescribed by the Department in regulations. Subsection (2G) provides that the prescribed weekly rate is not to be less than the highest weekly rate for statutory sick pay. These provisions are inserted by clause 13(2)(b). They replace the existing power at section 167ZN(1), which is repealed by clause 13(2)(a).

Assembly procedure

The power in section 167ZN(2E)(b) is subject to negative procedure as it deals solely with the setting of a the level of the weekly rate. This is consistent with the comparable power in respect of SMP, reflecting the policy intent to align more closely the two types of statutory payment.

Clause 15

Time off work to accompany a woman to an antenatal appointment

Clause 15 does not establish new regulation or order making powers; however, clause 15(4) amends the existing regulation making power in Article 70C(2) of the Employment Rights Order, such that an employee will have the right not to be subjected to a detriment in respect of a matter connected with time off to accompany a woman to an antenatal appointment.

Clause 13(5) similarly amends the existing regulation making power in Article 131(3) such that reasons forming the basis for a finding that an individual has been unfairly dismissed may include prescribed reasons in connection with the same right.

Assembly procedure

Regulations under Article 70C and Article 131 are already subject to confirmatory procedure, by virtue of Article 251(1A).

Clause 17**Time off work in respect of adoption appointments**

Article 85ZS of the Employment Rights Order, inserted by clause 17(2), contains a number of new delegated powers.

Paragraph (2)(b) of Article 85ZS provides that the Department may specify in regulations that conditions, in addition to those specified in paragraph (2)(a), must be satisfied where provisions governing time off in respect of adoption appointments are applied in fostering for adoption situations.

Paragraph (3) provides that certain references concerning adoption are to be interpreted in a manner that the Department may specify in regulations for the purposes of fostering for adoption.

Paragraph (6) enables the Department, by order, to adjust definitions of “approved foster parent” and “approved prospective adopter” in response to any changes to the relevant DHSSPS regulations.

Remaining provisions amend existing regulation making powers as follows.

Clause 17(4) amends the existing regulation making power in Article 70C(2) of the Employment Rights Order, such that an employee will have the right not to be subjected to a detriment in respect of a matter connected with time off in respect of an adoption appointment.

Clause 17(5), by inserting a new paragraph (5)(ba) in Article 112B, provides that regulations made under the existing power contained in Article 112B(1) (paternity leave: adoption) may make provision preventing an employee from exercising the right to such leave where that employee has exercised a right to paid time off under new Article 85ZJ to attend an adoption appointment. The restriction is imposed because a primary adopter may avail of adoption leave but not paternity leave.

Clause 17(6) similarly amends the existing regulation making power in Article 131(3) such that reasons forming the basis for a decision that a person has been unfairly dismissed may include prescribed reasons in connection with time off work in respect of an adoption appointment.

Assembly procedure

The new regulation making powers under Article 85ZS are each subject to negative procedure as they are concerned with the detail of applying relevant provisions to fostering for adoption situations.

The new order making power in Article 85ZS(6) is made subject to the confirmatory procedure under Article 251(3) (by Schedule 1, paragraph 4(19)(b)) given the direct linkage to any changes to DHSSPS regulations.

The existing powers in Articles 70C, 112B and 131 are each subject to confirmatory procedure, per Article 251(1A).

Clause 19

Right to request flexible working

Article 112F(1)(b) of the Employment Rights Order currently empowers the Department to prescribe in regulations conditions which an employee has to meet in order to be eligible to make a statutory request for flexible working. These conditions relate to having caring responsibilities for a child or adult. Given the extension of the right to request flexible working to all employees having 26 weeks' service with their employer, these powers are no longer required and are repealed by clause 19(2).

Clause 20

Assembly procedure applicable to working time provisions

Article 15 of the Work and Families (Northern Ireland) Order 2006 empowers the Department, by regulations, to make provision conferring the right, except in prescribed cases, to a prescribed amount of annual leave in each leave year. Clause 20 replaces the requirement for such regulations to be subject to confirmatory procedure with a requirement for them to be subject instead to the draft affirmative procedure i.e. regulations shall not be made unless a draft has been laid before, and approved by a resolution of, the Assembly. By harmonising this procedure with that applicable to other working time provisions, this amendment ensures that it will be possible to develop a single set of working time regulations and secure approval through a single Assembly process.

Clause 21

Supplementary, incidental, consequential, transitional, transitory or saving provision

Clause 21(1) confers on the Department a power, by order, to make any necessary supplementary, incidental, consequential, transitional, transitory or savings provisions for the purposes of bringing into operation the provisions of the Bill. Such power will also include the ability to modify any provision that is necessary for that purpose. Where such an order adds, amends or omits statutory provisions then it shall be subject to the draft affirmative procedure. Otherwise the order will be subject to negative procedure.

Clause 23

Commencement

Clause 23 provides the Department with a standard power to make commencement orders, which are not subject to any form of Assembly resolution.

Schedule 1

Schedule 1 does not introduce new delegated powers but does make a number of amendments to existing delegated powers.

Contributions and Benefits Act

Schedule 1, paragraph 2(4) makes provision relevant to the fact that that Treasury (with the concurrence of a relevant Northern Ireland Department, if any) may make retrospective provision about statutory payments, in consequence of changes to tax provision, and subject to the affirmative Parliamentary procedure (by virtue of section 172(11A) of the Contributions and Benefits Act). Section 4C(11) is amended to specify that such statutory payments include SSPP.

Schedule 1, paragraph 2(5) corrects a reference to the meaning of “continental shelf operations” for the purpose of regulations which, by virtue of section 166(1), the

Department (with Treasury concurrence) may make to modify Part 12 of the Act (dealing with SMP).

Social Security Administration (Northern Ireland) Act 1992

Paragraph 3(2) amends section 5(4A)(a) of the Social Security Administration (Northern Ireland) Act 1992 such that the DSD negative resolution regulations dealing with claims for and payments of benefit include provision concerning SSPP.

Employment Rights Order

Paragraph 4(5)(a) adds prescribed reasons connected with shared parental leave to the list of issues in connection with which, per Article 70C of the Employment Rights Order, an employee may not be subjected to detriment.

Paragraph 4(11)(d)(iv) amends Article 112C(4) to add shared parental leave to the list of types of leave which may be dealt with in regulations under Article 112A, 112BAA and 112B (paternity leave), insofar as those regulations provide for an individual’s return to a particular job after a continuous period of absence.

Paragraph 4(16)(a) adds shared parental leave to the list of reasons that may be prescribed by regulations under Article 131 so as to render a dismissal unfair.

All of the regulations to which these provisions relate are subject to the confirmatory procedure in consequence of Article 251(1A).

Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

Paragraph 5(4) amends Article 13 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 such that HMRC regulations (which are subject to Department for Employment and Learning concurrence, and the negative Parliamentary procedure) may include provision concerning entitlement to SSPP.

Employment (Northern Ireland) Order 2002

Article 8 of the Employment (Northern Ireland) Order 2002 already requires the Department, with HMRC concurrence, to make regulations providing for the payment by employers of statutory payments to working parents. Such regulations must include provision for employers to recover a proportion of the payment made (and an additional amount in the case of a small employer). Paragraph 6(2) includes SSPP within the scope of those regulations.

Article 9 empowers the Department, with HMRC concurrence, to make regulations concerning such payments by employers, which may deal with the keeping of records and the provision of information and evidence to HMRC. Clause 6(3) ensures that such regulations can include provision about SSPP.

Article 11 empowers the Department, with HMRC concurrence, to make regulations enabling an officer of HMRC to require the production of information and evidence by a range of persons including claimants for statutory payments. Such statutory payments, by virtue of clause 6(4), include payments of SSPP.

The regulations in question are in each case subject to negative procedure.

Welfare Reform Act (Northern Ireland) 2007

Regulations, respectively under section 20(6) and (7) of the Welfare Reform Act (Northern Ireland) 2007, deal with the interface between statutory payments to working parents and payments of contributory employment support allowance. Paragraph 7(a) and (b) provide for such regulations, which are made by DSD and are subject to the negative procedure, to include provision in respect of SSPP.

Committee for Employment and Learning - Request for comment from the Department on Bill responses



Northern Ireland
Assembly

Committee for Employment and Learning

Fiona Stanley
DALO
Department for Employment and Learning
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

11 August 2014

Dear Fiona,

Work and Families Bill

As part of the Committee for Employment and Learning scrutiny of the Work and Families Bill, the Committee has requested responses from interested parties on the clauses of the Bill. The consultation closed on 23 June and seven responses have been received.

Please find attached a spreadsheet containing the clauses of the Bill and the comments made by the respondents on each of the clauses and also on more general issues relating to the Bill and its outworking's. The Committee would be grateful for a written response to all the issues raised by respondents as outlined in the spreadsheet.

I should be grateful for a response by 26 August 2014.

Yours sincerely,

Cathie White
Clerk to the Committee

Committee for Employment and Learning
Room 373, Parliament Buildings, Stormont, Belfast BT4 3XX
Telephone: (028) 9052 1767 Fax: (028) 9052 1433
E-mail: cel@niassembly.gov.uk

Clause/Schedule	Description	CAB	CBI
	PART 1		
	Defined expressions in this Act		
1	Defined expressions in this Act		
	PART 2		
	SHARED RIGHTS TO LEAVE AND PAY		
	<i>Shared parental leave</i>		

2	Shared parental leave	<p>The proposed system of allowing a two week discussion period as the initial part of the eight weeks' notice period is sensible. However, there are practical concerns regarding instances when this two week negotiation period might be impossible for certain employers to implement. For example, in cases when an employee's line manager is on annual leave or for employees who work on shift patterns which do not coincide with their manager's, this negotiation period might need to be significantly longer. For smaller businesses in particular, there are likely to be occasions when staffing levels are low and dealing with requests within two weeks will be impossible. The two week negotiation period should therefore be a minimum guideline rather than a requirement. Article 107J: Power to apply Articles 107G and 107I to other cases</p> <p>The CBI agrees with the system of self-declaration from parents as it reduces the administrative burden on employers, and our members believe that being able to request a birth certificate/matching certificate is sufficient evidence.</p> <p>It is essential 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 so that the exact start date and other cut-off dates in the system can be known from the outset and communicated in advance without problem.</p> <p>107K.—(1) employees should retain the right to return to the same or a similar job when returning from periods of leave after the 26 week mark to the benefit of both parties. This will give employers the flexibility necessary to adapt to changes in the economic and structural landscape of their business and this is at no detriment to employees who will still return to a similar position at the company.</p> <p>In instances where there is the potential for an employee to take significant periods of parental leave spanning across 12 months, this can be impossible. A company might require the need for restructuring in order to remain competitive and successful during the considerable period in which an employee is on leave. This may be the case in particular for businesses which are expanding or businesses which are facing financial difficulties.</p> <p>107F (14) and 107I (14) - support the proposal in respect of the Keeping in Touch days. If mothers and fathers are sharing their parental leave, it is only appropriate that they share their 10 KIT days rather than being given ten each. This is proportionate to the scale of days required to effectively keep in touch. Any more than ten days in total is unnecessary, especially in the case of micro businesses where businesses would be absorbing the additional cost of paying for an employee to be present in the workplace during their leave, whilst also potentially financing the cost of a replacement.</p>
3	Exclusion or curtailment of other statutory rights to leave	
4	Abolition of additional paternity leave	
	<i>Statutory shared parental pay</i>	

5	Statutory shared parental pay			
6	Exclusion or curtailment of other statutory rights to pay			
7	Abolition of additional paternity pay			
	<i>Other statutory rights</i>			
8	Other statutory rights to leave of prospective adopters with whom looked after children are placed			
9	Other statutory rights to pay of prospective adopters with whom looked after children are placed			
10	Other statutory rights to leave of applicants for parental orders			
11	Other statutory rights to pay of applicants for parental orders			
12	Statutory paternity pay: notice requirement and period of payment			

	13 Rate of statutory adoption pay		
14	Further amendments		
	PART 3		
	TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS		
15	Time off work to accompany to ante-natal appointments		
16	Time off work for ante-natal care: increased amount of award		
17	Time off work to attend adoption appointments		

18	Right not to be subjected to detriment: agency workers			
	PART 4			
	OTHER EMPLOYMENT RIGHTS: MISCELLANEOUS			
19	Flexible working: removal of requirement to be a carer			The concept of flexible working is one that is strongly supported by the broad membership of the CBI and it points out that many of its members would take the view that they are already well ahead of legislation on this. The CBI points out that a flexible workforce can lead to better engagement, flexible staffing and more diverse talent pool and therefore it supports reform, "albeit with several areas for further clarity and review".
20	Procedure for regulations as to prescribed amount of annual leave			
	PART 5			ICTU welcome the Department's decision to retain the statutory process governing the right to request flexible working. However it remains concerned that the Bill does not propose to remove the 26 weeks continuous service eligibility rule for those who wish to request flexible working.
	GENERAL PROVISIONS			
21	Supplementary, incidental and consequential etc. provision			ICTU points out that it advocated that the right to request flexible working should be a day one right and that having the 26 week qualifying period will exclude many parents and carers, particularly lone parents, who find themselves in precarious employment of limited duration including zero hours contracts.
22	Repeals			
23	Commencement			ICTU is concerned about the equality impact of this proposal believing that it may have a disproportionate negative impact on women.

24	Short title			
	SCHEDULES:			
Schedule 1	Minor and consequential amendments			
Schedule 2	Repeals			
General Comments	Over all comment	No specific comment or any individual clause, but welcome the Bill and note that it takes into consideration the points raised in their original consultation response	<p>The CBI supports reform of the existing system.</p> <p>A flexible workforce can lead to better engagement, flexible staffing and more diverse talent pool. It is for these reasons that we, much like compatriots in Great Britain, support reform – albeit with several areas for further clarity and review.</p> <p>However, imperative that the system is simple so as to be truly effective.</p> <p>Too much process, little notice and inflexible demands on companies could undermine the proposals in the Bill.</p> <p>More disproportionate impact on smaller businesses and that steps must be taken to mitigate against unduly damaging these firms.</p> <p>the proposals detailed in the Bill do have the capability to add additional complexity to the system which would be damaging and highly disruptive for businesses to administer. Avoiding such complexities is vital to retaining business support and it is imperative that government across the UK seeks to create a system which is straightforward and easy to use.</p>	

Period of Notice			<p>government needs to provide a form which employees can present to employers indicating their intended patterns of shared parental leave with an eight weeks' notice period in advance of the start of the mother's maternity leave.</p> <p>Government should produce comprehensive guidance stipulating what is and is not appropriate for employers and employees in this situation, and strongly encourage employees to present employers with their plan at the earliest possible opportunity.</p> <p>The form needs to be more precise, with supporting information and guidance for both employers and employees.</p> <p>worries that the employee might complete the form inaccurately due to both lack of clarity in the current draft form and their own lack of understanding of their entitlements. sets out some key changes required in the form. appropriate to align paternity pay and notice period at the end of the 15th week before the expected week of child birth as there is no obvious reason to retain differential notice periods and the risk of confusion such a system brings. believe it imperative that detailed, practical and understandable guidance for both employers and employees is published well in advance of April 2015 so that all involved can familiarise themselves with the new processes. That will require the legislation to be kept as clear and practicable as is feasible so that effective, user friendly and timely guidance can be published.</p>
Follow GB			<p>We also strongly take the view that, while employment law is devolved to Northern Ireland, in this particular aspect it remains wise to follow whatever lead Great Britain takes on the issue – notably in respect of the amount of subsidiary companies that operate in Northern Ireland whose parent company is based in GB.</p>
Allowing parents to take leave in one week			<p>allowing parents to take leave in a minimum of one week blocks would be very difficult for employers – especially small businesses - to manage. They argue that it would make it practically impossible to hire someone on a temporary basis to cover a period of time which is made up of start/stop periods even if the notice given by the employee is sufficient.</p>

Other issues

Clause/Schedule	Description	EEF
	PART 1	
	Defined expressions in this Act	
1	Defined expressions in this Act	
	PART 2	
	SHARED RIGHTS TO LEAVE AND PAY	
	<i>Shared parental leave</i>	

2	Shared parental leave	
3	Exclusion or curtailment of other statutory rights to leave	
4	Abolition of additional paternity leave	
	<i>Statutory shared parental pay</i>	

5	Statutory shared parental pay	
6	Exclusion or curtailment of other statutory rights to pay	
7	Abolition of additional paternity pay	
	<i>Other statutory rights</i>	
8	Other statutory rights to leave of prospective adopters with whom looked after children are placed	
9	Other statutory rights to pay of prospective adopters with whom looked after children are placed	
10	Other statutory rights to leave of applicants for parental orders	
11	Other statutory rights to pay of applicants for parental orders	
12	Statutory paternity pay: notice requirement and period of payment	

13	Rate of statutory adoption pay	
14	Further amendments	
	PART 3	
	TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS	
15	Time off work to accompany to ante-natal appointments	
16	Time off work for ante-natal care: increased amount of award	
17	Time off work to attend adoption appointments	

18	Right not to be subjected to detriment: agency workers	
	PART 4	
	OTHER EMPLOYMENT RIGHTS: MISCELLANEOUS	
19	Flexible working: removal of requirement to be a carer	
20	Procedure for regulations as to prescribed amount of annual leave	
	PART 5	
	GENERAL PROVISIONS	
21	Supplementary, incidental and consequential etc. provision	
22	Repeals	
23	Commencement	

24	Short title	
	SCHEDULES:	
Schedule 1	Minor and consequential amendments	
Schedule 2	Repeals	
General Comments	Over all comment	<p>Throughout the Bill it refers to the fact the "The Department may make Regulations..." and "Regulations are to provide for.." Consequently, it is clear that the Regulations, and not the Bill, will provide the detail of how these rights will operate in practice. Our comments on the Bill are therefore extremely limited given that it simply sets the foundation for the main rights which the Department has agreed will be taken forward.</p> <p>NI Members, whilst broadly supportive of the main provisions are concerned about how these rights will operate in practice and how the Department will balance the rights against the needs of employers who need to be able to continue to operate their business effectively. We would advocate the use of "At a Glance Guides" setting out the main rights with supplemental Guidance providing further detail on particular aspects of the rights. ADD QUESTIONS</p>

Period of Notice		
Follow GB		
Allowing parents to take leave in one week		

Other issues

Clause/Schedule	Description	ICTU
	PART 1	
	Defined expressions in this Act	
1	Defined expressions in this Act	
	PART 2	
	SHARED RIGHTS TO LEAVE	
	<i>Shared parental leave</i>	

2	<p>Shared parental leave</p> <p>107E (4) We are further concerned that if the new legislation does not allow for a day one right to shared parental leave and pay that this will exclude the very low paid and those on short term contracts, a growing proportion of the workforce. We pointed out, alongside other respondents, in our submission to the consultation on Sharing Parental Rights that the proposed new rights should be available as day one rights.</p> <p>We believe that not only will this will ensure that no group of workers is disadvantaged but also that it will be much easier for employers to understand and administer. We are therefore extremely disappointed to learn that the Department does not propose to make paternity/parental leave a day one right.</p>
3	<p>Exclusion or curtailment of other statutory rights to leave</p>
4	<p>Abolition of additional paternity leave</p>
	<p><i>Statutory shared parental pay</i></p>

5	Statutory shared parental pay	Section 176ZZZ We have pointed out that the biggest deterrent for fathers/partners taking parental leave is because they cannot afford to do so. To achieve significant change in parenting roles and more choice for low income families, the issue of very low pay for those taking time off to care for children needs to be addressed. We disagree with the Department in their view that the proposed rates of pay for fathers and partners are appropriate and strongly believe that this will deter take up of shared parenting opportunities. (see original submission for expansion of views). We note that the Department has given a commitment to 'keep the uptake of shared parental leave
6	Exclusion or curtailment of other statutory rights to pay	
7	Abolition of additional paternity pay	
	<i>Other statutory rights</i>	
8	Other statutory rights to leave of prospective adopters with whom looked after children are placed	
9	Other statutory rights to pay of prospective adopters with whom looked after children are placed	
10	Other statutory rights to leave of applicants for parental orders	
11	Other statutory rights to pay of applicants for parental orders	
12	Statutory paternity pay: notice requirement and period of	

	13 Rate of statutory adoption pay
14	Further amendments
	PART 3
	TIME OFF WORK: ANTE-NATAL CARE, ADOPTION
15	Time off work to accompany to ante-natal appointments
16	Time off work for ante-natal care; increased amount of award
17	Time off work to attend adoption appointments

18	Right not to be subjected to detriment: agency workers	
	PART 4	
	OTHER EMPLOYMENT RIGHTS: MISCELLANEOUS	
19	Flexible working: removal of requirement to be a carer	We welcome the Department's decision to retain the statutory process governing the right to request flexible working. However we remain concerned that the Bill does not propose to remove the 26 weeks continuous service eligibility rule for those who wish to request flexible working. We advocated that the right to request flexible working should be a day one right. Having the 26 week qualifying period will exclude many parents and carers, particularly lone parents, who find themselves in precarious employment of limited duration including zero hours contracts. We are concerned about the equality impact of this proposal believing that it may have a disproportionate negative impact on women.
20	Procedure for regulations as to prescribed amount of annual leave	
	PART 5	
	GENERAL PROVISIONS	
21	Supplementary, incidental and consequential etc. provision	
22	Repeals	
23	Commencement	

24	Short title	
	SCHEDULES:	
Schedule 1	Minor and consequential	
Schedule 2	Repeals	
General	Over all comment	
Comments		<p>In summary, we broadly supported proposals which would provide for shared parental leave and pay; better rights for parents who have children via surrogacy and adoption; time off for fathers and partners who have children via surrogacy or adoption and time off for partners to attend ante-natal or adoption appointments as well as the extension of the right to request flexible working. Shared parental leave and pay will increase choice for some parents and can result in a fairer sharing of parenting responsibilities. This could enhance gender equality, better relationships and improved child well-being. We support the leave being taken on a more flexible basis and by allowing parents to take leave at the same time.</p> <p>However, there are a number weaknesses in the shared parental leave and pay scheme. It will not lead to a substantial change in the number of fathers/partners taking time off work to care for children because it lacks sufficient incentives.</p> <p>International evidence shows that fathers are most likely to take leave that is clearly available solely to them on the basis that if they do not use it they lose it.</p> <p>Shared entitlements are mostly used by mothers. The absence of reserved leave for fathers means they are less likely to apply. ICTU believes a reserved period of leave for fathers/partners, perhaps as an extension of the current paternity leave entitlement and in a way that does not reduce the entitlement of the mother, would increase the use of leave for fathers.</p>

Period of Notice		
Follow GB		<p>Alongside the NIPSA trade union, we argued that if the Executive was serious about addressing inequality in our society and creating a culture of shared parenting, that the proposals needed to go beyond what was contained in the UK proposals.</p> <p>Whilst we welcome the Department's commitment to retaining a statute based procedure to govern flexible working requests, we are disappointed that in the main the new Bill does not address many of our original concerns.</p>
Allowing parents to take leave in one week		<p>ICTU expresses its disappointment that the Department has chosen not to make parental leave more flexible. We have pointed out that only allowing parents to take leave in one week blocks is highly inflexible and will discourage shared parenting. We would advocate a system whereby parents could take unpaid leave as both single days or in blocks of less than one week. This would facilitate parents to attend special occasions such as sports days.</p>

Other issues	<p>Another individual as a person with whom parental leave could be shared</p> <p>i. ICTU understand that the Department is not proposing to allow parents to nominate another individual as a person with whom parental leave could be shared and it is disappointed that one of the reasons for not doing so has been given as 'such an approach would represent a substantial departure from the system proposed and would remove the benefits of consistency across the UK'.</p> <p>ii. ICTU disagree with this and point out that the Northern Ireland Executive has an opportunity with this piece of employment legislation to reduce inequalities. Facilitating this would particularly benefit lone parents who may wish to share their entitlement with the child's grandparent for example.</p> <p>Day one right to shared parental leave</p> <p>iii. ICTU voices its concern that if the new legislation does not allow for a day one right to shared parental leave and pay that this will exclude the very low paid and those on short term contracts, a growing proportion of the workforce.</p> <p>iv. ICTU feels that allowing day one rights will ensure that no group of workers is disadvantaged but also that it will be much easier for employers to understand and administer.</p> <p>Proposed rates of pay for fathers and partners</p> <p>v. ICTU point out that the biggest deterrent for fathers/partners taking parental leave is because they cannot afford to do so and that to achieve significant change in parenting roles and more choice for low income families, the issue of very low pay for those taking time off to care for children needs to be addressed. To that end, ICTU disagree with the Department's view that the proposed rates of pay for fathers and partners are appropriate and strongly believe that this will deter take up of shared parenting opportunities.</p> <p>vi. ICTU note that the Department has given a commitment to 'keep the uptake of shared parental leave and pay by fathers and partners under review' and requests to see a clear terms of reference for this review including a timetable and how the Department would propose to monitor uptake.</p> <p>Paid leave will not accompany rights for partners to attend antenatal</p> <p>vii. While ICTU welcomes the commitment to establish rights for partners to attend antenatal and pre adoption appointments, it is</p>
--------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Clause/Schedule	Description	LRA	Comm Soc. Dev	Minister for HSSPS
	PART 1			
	Defined expressions in this Act			
1	Defined expressions in this Act			
	PART 2			
	SHARED RIGHTS TO LEAVE			
	<i>Shared parental leave</i>			

2 Shared parental leave	3 Exclusion or curtailment of other statutory rights to leave	4 Abolition of additional paternity leave <i>Statutory shared parental pay</i>

5	Statutory shared parental pay				
6	Exclusion or curtailment of other statutory rights to pay				
7	Abolition of additional paternity pay				
	<i>Other statutory rights</i>				
8	Other statutory rights to leave of prospective adopters with whom looked after children are placed				
9	Other statutory rights to pay of prospective adopters with whom looked after children are placed				
10	Other statutory rights to leave of applicants for parental orders				
11	Other statutory rights to pay of applicants for parental orders				
12	Statutory paternity pay: notice requirement and period of				

13	Rate of statutory adoption pay			
14	Further amendments			
	PART 3			
	TIME OFF WORK: ANTE-NATAL CARE, ADOPTION			
15	Time off work to accompany to ante-natal appointments			
16	Time off work for ante-natal care: increased amount of award			
17	Time off work to attend adoption appointments			

18	Right not to be subjected to detriment: agency workers				
	PART 4				
	OTHER EMPLOYMENT RIGHTS: MISCELLANEOUS				
19	Flexible working: removal of requirement to be a carer				
20	Procedure for regulations as to prescribed amount of annual leave				
	PART 5				
	GENERAL PROVISIONS				
21	Supplementary, incidental and consequential etc. provision				
22	Repeals				
23	Commencement				

24	Short title				
	SCHEDULES:				
	Minor and consequential				
Schedule 1	Repeals				
Schedule 2	Over all comment				
General Comments		Any ammendment to existing employment legislation or new employment rights deriving from th eproposals should be clear, concise amd unambiguous if satelite legislation is to be avioded. Mindful of challenges in the NI micro firm economy in understanding and complying with contemporary employment law.	The Committee for Social Development had no comment to make on the clauses fo the Bill	Agreed Draft clauses. Offered advice to DEL and will continue to work with them on secondary legislation and guidance.	

Period of Notice				
Follow GB				
Allowing parents to take leave in one week				

Other issues

Departmental for Employment and Learning - Comments to the Committee on the responses from stakeholders on the Work and Families Bill

Mrs Cathie White
Clerk to the Committee
Committee for Employment and Learning
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Our Ref: COR/340/14

August 2014

Dear Cathie

The Department appreciates the openness of the Committee in sharing the responses from stakeholders to the call for evidence on the Work and Families Bill, as set out in your letter of 11 August.

The Department notes the positive responses received by the Committee, indicating that the Bill is welcomed and broadly supported. The following commentary is offered in response to the issues that have been raised.

As some of the responses have rightly highlighted, much of the Bill provides a legislative framework which will allow for the voluntary sharing of leave and pay entitlement between parents following the birth or adoption of a child, with the detail to be established in subordinate legislation. Consequently, as some respondents have acknowledged, the successful implementation of the new rights provided for within the Bill will be dependent on the preparation of effective regulations, supported by appropriate guidance and other materials designed to assist employers and employees in operating the new systems.

The Bill provides that regulations dealing with the key elements of the new rights will be subject to the confirmatory procedure. The intention is to ensure that the Assembly has an opportunity to debate their content. I can give an assurance that the Department is committed to developing regulations that minimise the administration associated with the implementation of the new rights, and that appropriate user-friendly guidance will also be put in place.

Understandably, given that the Bill is primarily about putting in place the necessary enabling provisions, with much of the detailed administrative arrangements to be set out in regulations, the responses to the Committee's consultation have been of a somewhat general nature, with only limited commentary on the content of specific clauses. That being so, the Department greatly appreciates the work that has been undertaken by the Committee to align the responses received to the specific measures in the Bill.

For ease of reference, the Department's response focuses on the specific points raised by individual respondents and, as far as possible, makes reference to how the Bill (or measures under it) will aim to address these.

Concern expressed that there is not a day one right to shared parental leave

Clause 2(2) of the Bill establishes the new right to shared parental leave by including new provisions within the Employment Rights (Northern Ireland) Order 1996 (the Employment

Rights Order). Prospective provisions in Articles 107E(1) and (4) and 107G(1) and (4) permit the Department to make regulations that may specify conditions of entitlement for birth and adoptive parents, respectively, who intend to share parental leave. One such condition concerns duration of employment and permits the Department, by way of regulations, to determine how long a person needs to be in employment to qualify for the entitlement.

In its consultation the Department indicated that, to qualify for shared parental leave, it is envisaged that the parent/carer must have at least 26 weeks' continuous service with the same employer at the 15th week before the baby's due date and still be working for the same employer when he or she intends to take the leave. A comparable length of service requirement is envisaged in respect of adoptions. One respondent expressed a concern that the legislation does not allow for entitlement to shared parental leave to be a 'day one right', and that this could disadvantage low earners and those on short term contracts.

As set out above, the Bill in fact does not restrict the Department's ability to specify conditions as to length of service, so in effect could, as presently drafted, allow for shared parental rights to operate from day one by specifying accordingly in regulations. However, in exercising its power to make regulations, the Department will wish to achieve a balance, within the package of new rights taken as a whole, between flexibility for working families and certainty for employers. The Department takes the view that the length of service qualifying condition of 26 weeks is appropriate in that it will give employers a greater degree of certainty that when they take on a new employee, that employee will not be immediately absent from the workplace on shared parental leave. A 26 week period is consistent with the period that applies to the existing additional paternity leave and pay arrangements that are being superseded by shared parental leave and pay. Moving away from this arrangement would be likely to incur significant additional costs.

Two week negotiation period may not be long enough

Articles 107E(1) and (4) and 107G(1) and (4), referred to above, also permit the Department to make regulations that may specify the notice parents intending to share parental leave must give to their respective employers.

The Department's proposal is to require employees to provide eight weeks' notice; a set period of two weeks at the outset of (and included within) that eight week period is intended to facilitate negotiation between the employer and employee to agree the leave arrangements. One respondent expressed concerns about the ability to adhere to this two week negotiation timeframe in real life scenarios.

The purpose of the Department's decision to set the negotiation period at two weeks is to allow employers to know their employees' definite leave plans at least six weeks before any leave starts. However it is appreciated that there will inevitably be some situations where agreement to proposed leave patterns cannot be reached.

For this reason, the Department intends to provide in regulations that when employers and employees cannot agree arrangements within the allocated two week timeframe, the employer may be able to require that the employee take the full amount of leave requested in one continuous block, starting on a date of the employee's choosing (providing that date does not fall before the end of the minimum notice period from when the notification was originally submitted). The objective is to provide certainty for both parties in advance of leave commencing.

Outside this two week period, flexibility and scope for further negotiation will be provided by the fact that the employee will need to give a non-binding indication of intention when requesting shared parental leave, and will have up to three opportunities to notify, at least eight weeks in advance, the actual period or pattern of leave. Any changes that are mutually agreed between the employer and employee will not count towards the cap of three notifications.

Retention of 26 week qualifying period for right to request flexible working

Clause 19 of the Bill amends Article 112F of the Employment Rights Order to remove the requirement that an employee must have parental or caring responsibility in order to make a request to an employer to change the employee's terms and conditions with respect to hours and location of work. The effect of this is to extend the right to request flexible working to all employees who have the necessary period of service (currently 26 weeks). One respondent was dissatisfied with the retention of the qualifying period and suggested that the right to request should become a 'day one' right.

As stated above, it is the Department's considered view that employers need to have certainty over terms and conditions when recruiting new employees; a 'day one' right to request would remove that certainty. Employees need to understand that, when taking up new employment, it is unlikely that they will be able to immediately amend terms and conditions, as vacancies are filled on the basis of employer needs at the point of recruitment. Without this qualifying period, employees could be encouraged to take up employment offers which do not suit their needs in the mistaken belief that, once employed, those unsuitable patterns could be easily altered.

Right to return to the same or a similar job when returning from periods of leave totalling up to 26 weeks

Under the Department's proposals, employees returning from any period of leave that includes maternity, paternity, adoption and shared parental leave totalling 26 weeks or fewer in aggregate will have the right to return to the same job, even if the leave is taken in discontinuous blocks. The right of return thereafter is a right to return to the same job, subject to that being reasonably practicable. One respondent expressed concern about the business impacts of the Department's 'aggregated leave' proposal.

The Department remains of the view that its proposal strikes the right balance between protection for individuals and flexibility for business. Failure to make provision of this kind risks discouraging the use of shared parental leave in the flexible manner intended, as individuals may be reluctant to apply for leave in separate blocks for fear that breaking continuity of leave will result in a lesser right of return.

The Department does not consider that the option envisaged will place an additional burden on business. Employers already track the number of weeks of family-related leave that each employee takes as part of normal payroll management, and so it should be relatively simple to add up the number of weeks of leave to determine the correct right of return.

The legal requirement, to be set out in regulations under new Article 107K(1)(c), will be that an employee has the right to return to the same job (if taking less than 26 weeks' aggregated leave); and to the same job unless that is not reasonably practicable (if returning from more than 26 weeks' aggregated leave). In most cases, employers will not even have to consider this issue as it will be only in limited circumstances, such as during major restructuring, that an employer would have to consider returning an employee to a job other than the one in which the employee worked before starting leave.

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

Article 107F of the Employment Rights Order, as prospectively inserted by Clause 2(2) of the Bill, permits the Department to make regulations to calculate the amount of shared parental leave available to an employee, to limit the amount of leave, to limit when it may be taken, to require the leave to be taken as a single period and to provide for the varying of the amount of shared parental leave that an employee may take and the times at which an employee takes this leave.

The Department had sought opinions as to whether the cut-off point for parents taking shared parental leave should be 52 weeks from start of maternity leave or 52 weeks from birth. While opinions were divided on this, the Department concluded that it is most appropriate for the cut-off point to be set at 52 weeks from the birth of the child. One respondent to the Committee's consultation continued to advocate that a period 52 weeks from the start of maternity leave was preferable.

The Department is content that opting for a cut-off 52 weeks from the birth of the child is the appropriate approach. This is in keeping with the arrangements in place for the existing right to additional paternity leave, so should be a familiar premise for employers and employees. It will maximise the amount of leave potentially available to the partner who is sharing entitlement. Ending entitlement 52 weeks from the start of maternity leave could, in effect, reduce the amount of leave a partner could share by up to 11 weeks (given that a woman can commence maternity leave as early as 11 weeks before the expected week of birth). This measure is consistent with the Department's objective of maximising choice and flexibility for parents during the first year.

If mothers and fathers are sharing their parental leave, it is only appropriate that they share their 10 KIT days rather than being given ten each.

Articles 107F(14) and 107I(14) provide for regulations which, along with a number of other matters, may set out the circumstances in which an employee may be absent on shared parental leave without bringing the leave entitlement to an end (i.e. provides for what are known as 'keeping in touch' or KIT days).

In the consultation, respondents were asked if they considered that up to 10 KIT days per parent during shared parental leave was the right number. The Department has outlined that it now considers that it is appropriate to provide for up to 20 KIT days per person on shared parental leave. This is the option that has been adopted in Great Britain and the Department wishes to ensure that working parents in Northern Ireland are not disadvantaged in this regard. There is no adverse impact on employers because KIT days can only be taken by mutual agreement between employee and employer.

One respondent to the Committee expressed a preference for the original consultation proposal of 10 days. The Department remains of the view that the 20 days proposed is reasonable in that it creates more potential flexibility to work during leave without bringing leave entitlement to an end. This could be very useful, for example, where an individual is able to return to work for a particular task, project, training course or event to the benefit of the employer. It could also be helpful in assisting an individual to reintegrate back into work as part of a phased return from leave.

As already noted, the Department does not consider that the increase in the number of KIT days potentially available will be detrimental to employers given the requirement for mutual agreement to their use.

Allowing parents to take leave in one week blocks

Articles 107F(1) and 107I(1) provide for regulations to determine the amount of shared parental leave and when it may be taken. In accordance with paragraph (8) of each respective Article, provision must be made in such regulations for the taking of shared parental leave in a single period or in non-consecutive periods. The effect of this is to allow the leave to be taken more flexibly than in a single consecutive block.

The Department has indicated that shared parental leave will need to be taken in blocks with a one week minimum. One respondent considered that this facility would be difficult for an employer to manage while another considered that it did not offer as much flexibility for parents as being able to take leave on single days.

The Department maintains that the one week minimum is appropriate. Unlike maternity or adoption leave, shared parental leave may be stopped and started. This means that parents can mix periods of work with periods of leave to better balance their professional and domestic responsibilities.

The Department also recognises that some employers may have difficulties accommodating more flexible leave patterns. This is why the Bill includes a provision for a default position enabling employers to require employees to take the leave they have requested in one continuous block.

A majority of employers and employees should be able to come to an agreement about how the leave may be taken. However, the default provision offers additional certainty for employers in cases where agreement is not possible.

Other issues

Other issues raised in response to the Committee's consultation related the suggestion that the Bill does not go far enough in establishing new employment rights for parents.

The first of these was that there is **no enhanced standalone leave or pay provision for fathers/partners**.

The Department has stated its intention to keep the system of shared parental leave as simple as possible for both employers and employees and believes that the system proposed is a balanced package. The Department has considered the overall financial implications of any policy proposals and the fact that any statutory financial support has to take account of affordability for both employers and taxpayers. In light of this the Department considers the proposed rates of pay for fathers and partners to be appropriate. However, as was noted by the same respondent who raised this issue, the Department has made a commitment to keep the uptake of shared parental leave and pay by fathers and partners under review.

Clause 12 of Bill contains enabling powers that could facilitate such a review in future without the need for primary legislation. These powers would enable future regulations to make statutory paternity pay (SPP) available for non-consecutive periods consisting of individual periods of a week or a number of weeks.

The second issue raised was that there is **no provision for lone parents to share leave with other individuals**

The Department did consider whether it might be feasible to allow a single parent to nominate another individual, for example a close family member, as a person with whom parental leave and pay could be shared. However, it was decided that, at this time, such an approach would complicate administration for employers and might be more open to abuse. It would also represent a substantial departure from the system proposed; would remove the benefits of consistency across the UK; and would incur additional costs. This remains the Department's position. This concludes the Department's response and I trust this information is of use.

I would like to remind the Committee that officials are available to brief the Committee on any aspect of the Bill, as and when required; and will be present on 10 September to respond to the Committee's questions following the planned stakeholder presentations.

Yours sincerely

Fiona Stanley

Departmental Assembly Liaison Officer

Engineering Employment Federation Northern Ireland - Correspondence to the Committee

10 September 2014

Committee's Priorities

Employment Law Review

- Our Members are disappointed that the Committee is considering this new right to shared parental leave in advance of its consideration of the more business focused proposals set in the Employment Law Review.
- The Committee is aware that there has been a very detailed consultation and pre-consultation process which has been discussed for almost 3 years and no decisions have been made on when the "big issues" such as reducing the consultation period for collective redundancy and increasing the qualifying period to bring a claim for unfair dismissal will be brought into force.
- We are extremely disappointed, that having heard from the Minister at this Committee that any changes stemming from the Employment Law Review are unlikely to take before Spring/Autumn 2015 and indeed no political decision has been made on what should be the qualifying period for unfair dismissal
- The changes proposed in the Employment Law Review would be more beneficial to businesses in the NI Economy to aid them on the road to recovery from the recession.

Background to and our input into the Work & Family Bill

- It is clear that today it is not a question of "Will we have Shared Parental Leave?" but "How those rights will be implemented?"

Specific Concerns about the Bill

Businesses Support the Ethos of the Bill

- Employers commend the ethos of the Bill as an attempt to retain more females in the labour market and increase equality of opportunity whilst at the same time ensuring that business can obtain the best person from the widest possible pool.
- It is also commendable to seek to ensure a better work life balance and attempt to share the child caring role between both partners in any relationship.
- We question, however, whether the implementation of this new right will achieve those aims. It is clear that the uptake for Additional Paternity Leave was approximately at 1% (GB figure) and it is projected that this new right may only increase it to a figure of 3-5% (GB figure).

Timing

- Whilst employment law is a devolved matter it appears that in NI we are working to the same implementation dates as GB i.e. for Expected Week of Childbirths of 5 April 2014?
- We have been liaising with our counterparts in GB and understand they are ahead with their progress to prepare for the implementation. They have 2 sets of final Regulations 3 sets of draft Regulations and currently working on draft guidance from ACAS.
- This causes a real difficulty for NI and our members. Businesses need some certainty and indeed time so that they have plan, prepare, draft policies and train managers on any new rights and how they will operate.

- It is also fact that the Bill provides for some pre-birth rights such as attendance at antenatal appointments. Indeed premature/early births may mean that these rights could apply well before the implementation date for example to children being born prematurely in January 2015.
- Indeed there is some consensus that the Regulations should be in force at least 7 months before the trigger date of EWC date.
- We would therefore urge the Committee to delay this new right until 5 October 2014 otherwise employers are at a severe disadvantage and will struggle to understand the rights and be able to comply with the law in time for April 2015.
- It is proposed that the Bill will only receive Royal Assent in January 2015. The Bill then paths the way for Regulations to be made. This will only provides employers with a very short lead in period which will make it difficult, particularly for SME businesses, to prepare for these new rights.

There are two main concerns in terms of the substance of the right to Shared Parental Leave

1. Administrative Burden created by the Regulations

- We note that the Department has said it intends to take steps to minimise the administrative burden of these rights but as yet we have no detail of what that is.
- Committee is aware that in NI the economy is made up of almost 90% of SME. Many of these companies have no dedicated HR function. If we adopt similar provisions as to GB these are very complicated rights with a complicated regime to work out if employees are eligible and how and when they should provide notification, both of their intention to take Shared Parental Leave and thereafter the precise pattern of Shared Parental Leave that they propose to take.
- Assistance should be provided to businesses to help them understand these rights and we would suggest;
- At-a-Glance Guides on one page with signposting to more detailed Guidance where required.
- Standard documents (not compulsory if we are to continue with a light touch approach which the EEF endorse) that company's can use to check eligibility and ensure compliance with the notification obligations.
- On-line tool kits (which will establish if employees are eligible and in which companies can check if a person is entitlement to how much leave and pay.)
- A Helpline particularly in the early days so that employers/employees can call to understand their rights, perhaps provided by the LRA.
- We do endorse as light touch approach as possible to the processes.
- Whilst the Minister in his second reading of the Bill states that employers will not have to pay more out in terms of statutory pay this seems to ignore the cost of the administration. Significant costs will be incurred by the time taken by managers etc considering these requests (particularly if an employee can withdraw a request within 15 days and it not to be counted as 1 of their 3 requests. In those circumstances the time and costs are simply wasted). There are also costs in hiring a replacement – e.g. agency fees, higher rates of pay to enable them to recruit within such a short time frame. Committee should be keen to seek ways to reduce the costs on businesses.
- We would also ask for closure to considering requests and certainty about understanding when an employee is out of the business so that the business can plan and prepare.

This leads me to the second main concern in terms of the substance of the right to Shared Parental Leave

2. Arranging for Cover/Replacement

- Again the Committee needs to be mindful of the NI economy and how business can work effectively and the huge problem that can be created by “chunking up the leave” i.e. where the person comes in/goes out or goes out at crucial periods.
- Under GB regime, provided the employee gives 8 weeks notice of one continuous block of leave the employer cannot refuse it even if it is a time, which could cause severe disruption to the business. If it is a request for discontinuous periods it can be refused but not put off.
- For example, take the Finance Director in a medium sized business that lodges his first request for one continuous block of 6 weeks shared parental leave that happens to fall over the end of the tax year. If we adopt the GB way this request must be accepted, as it is request for a continuous block the employer has absolutely no ability to refuse it. The likelihood of being able to find a replacement is virtually nil. The absence could cause a real problem for the business.
- The main way the Committee can assist businesses in NI is by giving certainty at a much earlier stage. This may mean deviating from the position adopted by GB but will go some way to balance the hardship created by absences particularly in SME.
- Certainty needs to be in 2 ways:
 - A. Binding notification for example by 6-8 weeks after the birth / adoption that they intend to take Shared Parental Leave.
 - B. Binding notification at an early stage of the pattern of Shared Parental Leave i.e. how it will be divided between themselves their partner and when they intend to be out of the workplace perhaps within 6-8 weeks after the birth /adoption.
- Other ways of creating certainty and easing the hardship on businesses could be by:
 - Having a notification period of 12 weeks before a Shared Parental Leave period can start to allow for workforce planning.
 - Provide the employers the right to refuse requests unless the request is for a short period of 2 weeks, which must be agreed. Operate in a similar way as parental leave/holidays that employers can't stop employees taking Shared Parental Leave but can choose/agree a more suitable time. At present there is no right to refuse a request for a continuous period of leave.
 - Provide a period of at least 28 days so that request can be considered/replacement looked into etc.

Getting it wrong

- These rights are premised on the employee knowing their correct entitlements and lodging a request that they are entitled to.
- We agree with the light touch but are conscious that these are dependent on 2 sets of employees and 2 sets of employers.
- Address the difficulties of tracking pay and leave where employees work for different employers.
- What happens if the employee has got it wrong and states they are entitled to more leave/ pay than they actually are and both employers have paid out?
- Suggest that where one employer requests details from the employee to contact the other employer that the employees cannot withhold their consent to such contact taking place. If they do, they are not entitled to leave.

Final thoughts on Discrimination

- There is a concern related to enhanced maternity pay and the potential for sex discrimination claims. Clear guidance should be issued that will address this issue. Or what may happen is that many employers who enhance maternity leave may phase out such schemes.

Department for Employment and Learning - Response to Engineering Employment Federation Northern Ireland Comments

Mrs Cathie White
Clerk to the Committee
Committee for Employment and Learning
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Our Ref: COR-384-14

September 2014

Dear Cathie

Work and Families Bill: 10 September Briefing

I am writing to provide the Committee with a written response from the Department in relation to each of the matters raised in the presentation made by the Engineering Employers Federation (EEF) and questions from the Committee during the briefing session on the Work and Families Bill on 10 September.

The individual issues raised and the Department's views are set out below.

The EEF suggested that uptake of the right to shared parental leave is likely to be low.

The Department acknowledges that the uptake of the existing additional paternity leave and pay arrangements is quite low, and that this pattern may continue in the early stages following the implementation of the provisions contained in the Work and Families Bill. What the Department is seeking to achieve with the new arrangements is a more fundamental and systemic change to the way working families share their parental responsibilities. While initial uptake is likely to be low, the Department believes that it should increase with time as the sharing of parental leave becomes more widely accepted and culturally embedded.

The new system of shared parental rights should also help to address some of the more negative impacts that women experience in terms of disengagement from the workplace. There is clear evidence that the pay differential between women and men is relatively low in respect of full-time employment. Where that differential becomes more pronounced is for those women who are in part-time employment. The introduction of more flexible parental rights is designed to create more long-term structural change in the way working families care for their children that allows women to remain in full-time employment and compete on a fair and equitable basis within the labour market.

The Department also considers that the introduction of the added choice and flexibility that the new rights offer will have positive societal impacts. Evidence shows that fathers/partners want to play a greater role in the upbringing of their children, and that this involvement can be beneficial in terms of children's social and educational outcomes.

The EEF representatives suggested that the application of the 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 went on to propose the development at-a-glance

guidance, model documents and online toolkits, and a dedicated helpline to provide information on the new rights.

The Department recognises that the timescales envisaged are short. However, it does not believe that the introduction of shared parental rights should be delayed, as this would disadvantage Northern Ireland's working parents. The Department will ensure that guidance and online tools are made available as quickly as possible following passage of the legislation to assist employers and employees to prepare for the new rights' introduction. While final versions of these materials cannot be provided until the shape of the provisions is agreed, the Department intends to engage with stakeholders by providing, as early as possible, draft copies of proposed guidance, and is already looking at the possibility of producing model documentation and online tools.

It should also be noted that the Labour Relations Agency already provides a free and confidential helpline service which will be able to offer employers and employees information about the new rights. The Department will be working with the Agency to ensure that it is able to provide effective information to both employers and employees on the practical operation of the new rights.

EEF is concerned that the proposals provide scope for an employee to make and then withdraw a request, resulting in wasted employer time.

It is appropriate that employees have the option to withdraw requests as circumstances can change very quickly around the birth or adoption of a child; and it is essential that working parents have flexibility to respond to these changes. It is equally important that employers have sufficient information and certainty to enable them to plan for employees' periods of absence.

The proposed approach requiring employees to give eight weeks' notice in advance of taking leave seeks to balance these potentially competing needs.

The Department does not intend to set specific requirements around how employers and employees engage in discussion. One or a number of meetings may be appropriate for some, while e-mails or phone calls may suit others. As with all leave requests, employers should allocate sufficient time to considering the request, proportionate to what is being asked for and its expected impact on the business. Where circumstances change, a request is withdrawn and a new one lodged, it will be in both parties' best interests to work together to agree a leave pattern. Subsequent requests are likely to require less detailed discussion as each party's general position will already be known. Where the employer cannot agree the proposed pattern, the default position remains that the employee will be entitled to take the leave as a single block.

The Department does not envisage that withdrawing requests will be the norm where employers and employees maintain good communication and are exploring options from the outset.

EEF believes that employers will find it difficult to arrange cover for employees absent on shared parental leave.

As already noted, there will be no requirement for an employer to agree to multiple periods of leave; where agreement cannot be reached, leave will default to a single block. Cover for these situations will need to be arranged in much the same way as currently to cover absence on additional paternity leave. Where leave is not being taken as a single block, but as multiple periods separated by time back at work, there may in fact be scope for employers to reduce reliance on cover from agency staff. Employees who remain closer to and more engaged with the workplace may be able to deal with issues during their periods back at work which would otherwise fall to be dealt with by someone providing temporary cover.

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.

It may be helpful to the Committee's deliberations if the Department recounts the arrangements that it is seeking to put in place.

Under them, employees will have to provide a non-binding indication of their expected pattern of leave as part of the notification of their eligibility and intention to take shared parental leave. Although this will not constitute a formal notice to take leave, it should provide the employer with an early understanding of the employee's thinking around proposed leave patterns and act as a trigger for informal discussions.

An employee must give a separate written notice at least eight weeks before the start of any period of shared parental leave. The notice must state when the leave will start and end, and can request more than one period of leave. The first two weeks following receipt of written notification from the employee afford time for formal discussion and consideration of the request. It will be in both parties' interests to engage in meaningful discussion; employees who want their request to succeed will benefit from engaging realistically and constructively with their employer from an early date.

If the employee has asked for a single continuous period of leave, that request may not be refused. This corresponds to the 'default continuous block' arrangement.

If the employee's request is for separate periods of leave, the employer has three options: to agree, refuse, or propose alternative dates. If agreement between employer and employee cannot be reached within two weeks, the employee can withdraw the request, or take the leave requested as a single continuous period.

A majority of employers and employees should be able to come to an agreement about how the leave may be taken. However, the Department recognises that some employers may have difficulties accommodating more flexible leave patterns. This is why there will be a default position enabling employers to require employees to take the leave they have requested in one continuous block.

An employee will have up to three opportunities to notify a period or pattern of leave with at least eight weeks' notice (in addition to the non-binding indication). The Department will provide that changes that are mutually agreed between the employer and employee will not count towards the cap.

There will be no limit on variations agreed between the employee and employer.

EEF inquired as to the arrangements that will be in place for recouping overpayments of statutory shared parental pay. The organisation also wishes to see provision allowing employers to communicate so as to be able to verify information that is included in leave requests.

Employers will be able to recover overpayments of statutory shared parental pay in the same way as overpayments of additional paternity pay are recovered at present.

Employers will not be liable in the event of an employee claiming too much leave.

While employers will be able to request the contact details of a claimant's partner if they wish – as they can under the current additional paternity arrangements – they will not be expected to perform detailed checks.

In the event of fraud being detected, employers will use their own policies to determine how the employee is dealt with by them in the same way that they would in the event of other misconduct coming to light.

HMRC will use a risk based regime to identify parents who have claimed beyond their entitlement to shared parental pay. Individual claimants can be linked via their national insurance numbers. Penalties comparable to those in place for abuse of other statutory rights to paid leave will be put in place.

Employers failing or refusing to operate the scheme correctly could incur civil penalties. Penalties could also be imposed on employees who fraudulently or negligently give incorrect information, or who make a false statement or declaration. In these circumstances, the employer would not be penalised for having paid a statutory payment in good faith.

EEF sought assurance that there is no sex discrimination risk where employers continue to offer enhanced occupational maternity pay once shared parental rights are in place.

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

If an occupational scheme is offered to a mother on shared parental leave, it could constitute sex discrimination if such a scheme were not offered to fathers/partners of the mother.

It will be entirely at the discretion of employers whether they wish to offer occupational parental schemes for men and women sharing parental leave once maternity leave has ended.

Pat Ramsey MLA expressed disappointment that the issue of kinship care is not dealt with by the Bill and indicated that he would wish to see a meeting between Departmental officials and Kinship Care Northern Ireland.

The Department's preliminary investigations into addressing this matter by way of the present Bill have indicated that incorporating such a provision is likely to be very challenging and would compromise the ability to secure passage of the Bill. The following issues are offered for the Committee's further consideration.

There is significant doubt that kinship care lies within the legislative scope of this Bill. Kinship care is a cross-cutting issue in which DEL is not the lead department. There are certainly implications for the lead policy department, DHSSPS, and, potentially, DSD, arising out of any proposed changes. Action to legislate on the matter would therefore require further public consultation, legal advice, engagement with affected departments and Executive agreement. All of these actions would not be possible to achieve within the life cycle of this Bill.

The Department's initial investigations further indicate that the following issues would require consideration before statutory leave could be provided for kinship carers.

- There does not appear to be an established and accepted legal definition of what precisely constitutes kinship care. There will be a need to identify a particular target group to which the arrangements ought to extend.
- Introducing such a provision at the same time as shared parental leave is likely to be perceived as an additional burden on employers.
- This measure has not been the subject of public consultation; nor has it been impact assessed.
- It is unclear how evidential requirements could be sufficiently tightly drawn to allow for coverage of 'informal' kinship care arrangements.
- Although formal kinship care arrangements should be easier to evidence as, typically, they concern fostering and the involvement of Social Services, it may be legally problematic to

establish differential treatment between formal arrangements for foster parents who are not kinship carers and those who are.

- As the length of informal kinship care arrangements can vary considerably, it will be necessary to consider questions such as what the qualifying length of placement should be for such an arrangement to fall within the legislative provisions for statutory leave.
- Kinship carers are provided with an allowance where formal kinship arrangements are in place. This is not available to working parents or adoptive parents. Provision of two types of payment to kinship carers and only statutory shared parental pay to birth or adoptive parents is likely to give rise to questions of fairness.
- Seeking to address this complex area as part of this Bill is likely to significantly delay implementation, resulting in regulations not becoming operative as envisaged by April 2015. As well as disadvantaging Northern Ireland's working parents vis à vis their counterparts in Great Britain, delay risks incurring additional costs for government and employers. Costs could arise if HMRC is required to continue to administer the current additional paternity leave and pay system in Northern Ireland alongside the new shared parental leave and pay system in Great Britain. Employers operating across the UK will also face costs if they are required to understand and operate two separate systems.

For all of these reasons, the Department believes that it is not possible to bring kinship care arrangements within the scope of the Work and Families Bill that is currently before the Committee.

I trust that this appropriately addresses the points raised in the 10 September briefing. However, officials are willing to follow up on these or any other issues either during subsequent oral briefing or in writing.

Yours sincerely,

Fiona Stanley

Departmental Assembly Liaison Officer



Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

£18.00

Printed in Northern Ireland by The Stationery Office Limited
© Copyright Northern Ireland Assembly Commission 2014

ISBN 978-0-339-60541-1



9 780339 605411