



## **Response to the Department for Employment and Learning's Consultation on Implementation of EU Directive: Extension to Parental Leave Entitlement**

**December 2012**

### **Executive Summary**

The Equality Commission welcomes the steps being taken by the Department for Employment and Learning to transpose the EU Directive 2010/18/EU on Parental Leave.

The Commission recommends:

- that eligibility for parental leave extends as a minimum to include parents of children aged 16 or under;
- that the Department clarifies the steps it is taking to ensure that agency workers, subject to qualifying criteria, will be eligible for unpaid parental leave;
- that the Department brings forward, as a matter of urgency, a consultation on the length of service requirement that an agency worker must meet in order to qualify for the right to request flexible working on return from parental leave;
- that the Department takes steps to collect and collate further qualitative and quantitative data in order to more adequately assess the impact of the proposed changes;
- that the Department carries out an assessment in order to consider the need for additional measures to support adoptive parents and parents of disabled children, in line with its obligations under the Directive;

- that the Department at an early opportunity considers what further steps can be taken to work towards better work life balance for employees and agency workers.

## Comments

1. The Equality Commission ('the Commission') welcomes the opportunity to respond to the Department for Employment and Learning's ('the Department') consultation on the implementation on EU Directive 2010/18/EU on Parental Leave. The Equality Commission's remit is set out at Annex 1 on page 8.
2. In general, the Commission welcomes the steps being taken by the Department to transpose the EU Directive 2010/18/EU on Parental Leave. We have set out below our response to the specific questions raised by the Department.

## Question 1

*Should eligibility for parental leave extend to include parents of children aged eight, eighteen or another age? Why?*

3. We note that the Directive only requires Member States to ensure employees have the right to parental leave in order to take care of a child up to the age of eight. We welcome the Department's consideration of a range of ages that go beyond the requirements of the Directive.
4. The Commission has previously recommended<sup>1</sup> that the right to request flexible working arrangements be extended to parents of children aged 16 or under. We believed that the extension of the right to request flexible working to parents with children aged 16 or

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<sup>1</sup> <http://www.equalityni.org/archive/word/ECNIRespDELSConsultationflexiworking1009.doc>

under will help those parents balance their work and family lives. We were also of the view that it will enable parents to provide better supervision and support for their children and assist them in helping their children to achieve better educational outcomes.

5. We **recommend** that eligibility for parental leave extends **as a minimum** to include parents of children **aged 16 or under**. This is consistent with the current age requirements linked to the right to request flexible working. It is important to note that we do not oppose an extension to the right to include parents with children aged 18 or under, as this is in line with the age requirement relating to those parents who care for disabled children and the approach proposed in Great Britain.

## **Question 2**

*Do you have any views on how best to implement required changes to the right to request flexible working?*

6. The Commission is of the view that the Directive requires Member States to ensure that agency workers have the right to unpaid parental leave, subject to the qualifying conditions set by the Member State. Member States must also ensure that agency workers are protected from less favourable treatment or dismissal on the grounds that they have exercised their right to take parental leave.
7. We recommend the Department **clarifies** the steps it is taking to ensure that agency workers, subject to qualifying criteria, will be eligible for unpaid parental leave. There is no clear indication in the document how this will be met, as the consultation document only refers to the right of agency workers to request flexible working on return from parental leave.
8. It is clear that the Directive confers on agency workers the right to request flexible working on return from parental leave.

9. The Department has sought views on how best to implement the required changes to the request for flexible working. The Commission notes that the UK Government has recently indicated its intention to permit employed agency workers with more than 12 months service with their employer to make a request on return from parental leave as a result of the Directive. It is proposing changes to the Employment Rights Act 1996 in order to give effect to that additional right for agency workers.
  
10. Clearly, a similar amendment will be required to the Employment Rights (NI) Order 1996. However we note that Department is not consulting at this time on the length of service requirement that an employee or agency worker must meet in order to qualify for the right to unpaid paternal leave. In addition, the Department has not outlined its proposals or sought views on the length of service requirement for agency workers in respect of their right to request flexible working on return for parental leave. In order to enable agency workers to avail of their right to request flexible working on return from parental leave, it must be clear what length of service requirements apply. We **recommend** that the Department brings forward a consultation on this matter as soon as possible. This consultation should include a consideration of the number of agency workers likely to benefit from the various options proposed.

### **Question 3**

*Do you have any comments on the findings of the impact assessment?*

11. The Commission is concerned about the 'absence of reliable data' in the impact assessment and the fact that the Department has had to rely on 'pro rata figures based on GB assumptions'.
  
12. Without data it is difficult to assess the impact of the proposed changes either on employees or agency workers, including the

impact of the extension of the age requirement beyond the current age of five. For instance, there is no data on:

- the number of women and men currently entitled and / or taking unpaid parental leave and those likely to benefit from the proposed changes;
- the number of same sex couples who are entitled to and / or are taking unpaid parental leave and those likely to benefit from the changes;
- the number of agency workers in Northern Ireland likely to benefit from the proposed changes.

We **recommend** that the Department takes steps to collect and collate further qualitative and quantitative data in order to more adequately assess the impact of the proposed changes.

#### **Question 4**

*Do you have any other comments?*

13. We note the Directive places an obligation on Member States to ‘assess the need for additional means to address the specific needs of adoptive parents’. The Directive also requires Member States to ‘assess the need to adjust the conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or long term illness”.
14. Whilst we recognise the current rights in place as regards parental leave for adoptive parents and those who care for disabled children, there is no indication in the consultation paper that the Department has undertaken a further assessment in these areas. Further, we note that a series of measures<sup>2</sup> has been proposed in GB to increase the pay and leave entitlements of adoptive parents.

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<sup>2</sup> <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/m/12-1267-modern-workplaces-response-flexible-parental-leave.pdf>

15. We **recommend** that the Department carries out an assessment in order to consider the need for additional measures to support adoptive parents and parents of disabled children, in line with its obligations under the Directive.
16. Although not required under in the Directive, we **recommend** that additional measures to support intended parents and parents of children born through surrogacy arrangements should also be considered.<sup>3</sup> We note that a series of measures has been proposed in GB to support intended parents of a child born through a surrogacy arrangement who meet the criteria to apply for a Parental Order. In particular, it is proposed that they will be eligible for statutory adoption leave and pay if they meet the qualifying criteria and for flexible parental leave and pay if they meet the qualifying criteria, as well as unpaid time off to attend two antenatal appointments.

### **Future steps**

17. The Commission notes the Department's commitment, as expressed by the Minister, *'to strive for a society where work and home life complement each other'<sup>4</sup>*.
18. The Commission **recommends** that the Department at an early opportunity considers what further steps can be taken to work towards better work / life *balance* for employees and agency workers. We note that the UK Government recently announced comprehensive and far reaching changes, which go beyond the requirements of the Directive including:
  - a more flexible approach to maternity leave and the sharing of parental leave;

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<sup>3</sup> <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/m/12-1267-modern-workplaces-response-flexible-parental-leave.pdf>

<sup>4</sup> <http://www.delni.gov.uk/parental-leave-consultation.pdf>

- the right to unpaid time off for fathers to attend two antenatal appointments;
  - the extension of the right to request flexible working to all employees.
19. Any future consultation should place flexible working in context, recognising both the challenging economic situation and the benefits to be gained in introducing more flexibility and choice for men and women in their working lives.

**Equality Commission  
December 2012**

## **Annex 1**

1. The Equality Commission for Northern Ireland ('the Commission') is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).
3. The Commission, along with the Northern Ireland Human Rights Commission, has also been designated as the 'independent mechanism' in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).