Department for the Economy
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An Roinn Geilleagair

THE 'GOOD JOBS' EMPLOYMENT RIGHTS BILL

PUBLIC CONSULTATION

JULY 2024

CONTENTS

MINISTERIAL FOREWORD

Everyone benefits from Good Jobs. Workers and their families benefit from a decent, more secure income. More people are encouraged to stay in or return to work and so employers benefit from a larger skills base. And communities benefit from a reduction in poverty and its associated societal problems.

My Good Jobs agenda involves supporting businesses to grow and become more productive (so that they are in a position to offer Good Jobs) and building our skills base (so that people are equipped to take up those jobs). It also involves strengthening employment legislation. The feedback from this consultation will inform an Employment Bill and a supporting programme of secondary legislation. It seeks views on four aspects of a Good Job as defined by the Carnegie Trust:

- **Terms of Employment.**
- **Pay and Benefits.**
- **Voice and Representation.**
- **Work-life Balance.**

This is a large and detailed consultation which covers a wide range of possible interventions. Such ambition is important. However, I am mindful that our economy has many small and micro businesses which operate on tight margins and I want to ensure that they thrive. It is therefore important that the practicalities of potential changes are well thought through. I will therefore carefully consider the feedback provided to me before bringing forward a Bill. It is only through such dialogue that the Bill can deliver for workers, employers and for society as a whole.

I look forward to hearing your views.

Conor Murphy MLA
Minister for the Economy

SUMMARY OF CONSULTATION

Purpose of this consultation

This consultation seeks to gather opinion from the public, stakeholders and interested parties on a range of employment rights with a view to enhancing the Employment Law framework in the north of Ireland and ensuring it is fit for purpose. Specific objectives are in place around replacing zero hours contracts with contracts that offer flexibility & protect workers[1]' rights and the removal of unfair barriers for trade unions, particularly in low paying sectors. The consultation also seeks views on a wider range of employment law changes that will help to improve terms of employment, pay and benefits, voice and representation and promote a healthy work-life balance.

Summary of consultation topics

The following table provides a brief outline of the topics under consideration in this public consultation.

THEME A	TERMS OF EMPLOYMENT
Replacing Zero Hours Contracts with contracts that provide flexibility and protect workers rights	Explores how best to limit or restrict the use of zero hours contracts and associated practices.
Understanding Employment Status and addressing Bogus Self Employment	Explores changes relating to employment status and bogus self-employment.
Employment Rights: Dismissal and Re-Engagement (Fire and Re-Hire)	Views are sought on a range of options to identify if Department action on this matter is required, and, if so, the extent of that action.

1 When we refer to 'protecting workers' rights' we are using the term 'worker' as a collective term covering employee and worker, although these descriptors means different things when referring to someone's employment status and specific employment rights. Employment status is someone's legal status at work. It affects what employment rights they are entitled to and their employer's responsibilities. There are 3 main types of employment status: employee, worker and self-employed. People with 'employee' employment status have more employment rights than workers or self-employed people and have more obligations towards their employer. People with 'worker' employment status have some employment rights, but not as many as employees. Self-employed status is not defined in employment law but is usually a person who is their own boss. It's a category used by HM Revenue and Customs (HMRC) for tax purposes. Further information is available in the glossary attached to this consultation and where, relevant this consultation, will highlight those rights which are specific to employees only.

THEME A	TERMS OF EMPLOYMENT
Employment Rights: Redundancy – Offence of Failure to Notify	Views are sought on the desirability of introducing an offence of personal liability for corporate office holders as it relates to the redundancy notification process.
Employment Rights: Written Statement of Particulars	Views are sought on whether legislation should be made to require that a written statement be provided to all workers, that it should be a day one right, and stipulate minimum content requirements.
Agency Workers and Recruitment Agencies - Pay Between Assignment Contracts – Swedish Derogation	Proposal to abolish an arrangement that may adversely affect pay parity between Agency workers and other workers.
Key Information Document for Agency Workers	Proposal to require the production of a Key Information Document providing pay transparency for assignments.
Employment Agency Inspectorate (EAI) Information Sharing	Views are sought on information sharing between the EAI and other regulatory bodies in prescribed circumstances.
EAI Enforcement Powers: Labour Market Enforcement Undertakings & Labour Market Enforcement Orders	Proposal to provide the EAI with new enforcement powers short of prohibition.

THEME B	PAY AND BENEFITS
Fair and Transparent Allocation of Tips, Gratuities and Service Charges	Proposal to legislate so as to require employers to pass on payments for service in full (aside from any deductions required by law) and requiring that the distribution is fair and transparent.
Employment Rights: Payslips	Proposal to extend the right to a pay statement to workers, and that an itemised pay statement should contain information regarding the number of paid hours worked by the employee/ worker in situations where the employee/worker's pay varies as a consequence of the time worked.

THEME B	PAY AND BENEFITS
Working Time Regulations: Holiday Pay Reference Period	Proposal to extend the holiday pay calculation reference period for workers on variable hours from 12 weeks to 52 weeks.
Working Time Regulations: Record Keeping Requirements	Information is sought on the experience of workplace record keeping activities, where a lack of record keeping has led to a dispute over hours worked or pay, and views on whether Departmental guidance is required.
Working Time Regulations: Right to Disconnect	Views are sought on whether existing legislation, as it relates to working time, is still effective in terms of promoting healthy work/life balances.

THEME C	VOICE AND REPRESENTATION
Workplace Access	Views are sought to help understand barriers to trade union officials accessing workplaces, if and how access should be improved.
Collective Bargaining: Recognition	Views are sought in relation to a reduction in the threshold number of employees required for a trade union to seek formal recognition.
Collective Bargaining: Introduction of Collective Sectoral Bargaining	Opinions are sought in relation to the benefits of sectoral bargaining to the local economy.
Balloting & Notice	Views are sought on whether the current system of providing notice of industrial action is fit for purpose.
Electronic Balloting	Proposal to provide that balloting may be done by electronic means.
Protections for Representatives	Views are sought on whether the current legislative protections for trade union officials are fit for purpose.
Protections for Workers taking part in Industrial Action	Views are sought on the adequacy of current legislation regarding unfair dismissal of workers taking part in official industrial action.
Facilitating Productive Workplace Relationships	Proposal for a Code of Practice on an agreed set of principles and behaviours for employers and trade unions.

THEME C	VOICE AND REPRESENTATION
Information and Consultation - Definitions	Proposal to amend the law to ensure that the Information and Consultation of Employees Regulations (Northern Ireland) 2005 apply to smaller establishments/satellite offices within larger organisations.
Information and Consultation - Thresholds	Proposal that the threshold for initiating the rights conferred by the Information and Consultation of Employees Regulations (Northern Ireland) 2005 should be reduced from 10% to 2%.
Transfer of Undertakings (Protection of Employment) Regulations - Consultation	Views are sought on the changes made to TUPE by the British Government in 2014 and 2024, and other aspects on which it is currently consulting, to ascertain if similar changes are required here.
Public Interest Disclosure (Whistleblowing): Annual Duty to Report	Proposal to require prescribed persons to produce an annual report, setting out minimum stipulated information.

THEME D	WORK-LIFE BALANCE
Flexible Working	Proposal to enhance current rights by making the right to request flexible working available to both new and existing employees, allowing an employee to make two statutory requests in any 12-month period, and removing the requirement for the employee to explain what effect the change would have on the employer and how that might be dealt with.
Carer's Leave	Proposal to introduce unpaid Carer's Leave to create a new right to up to one week of unpaid leave per year for eligible employees who have caring responsibilities.
Neonatal Care Leave and Pay	Proposal to introduce a new right to statutory leave and pay for eligible employees whose newborn enters neonatal care within 28 days of birth for a period of 7 or more days up to a period of 12 weeks.

THEME D	WORK-LIFE BALANCE
Protection from Redundancy – Pregnancy and Family Leave	Proposal to create an additional protection period during pregnancy which would begin as soon as a person informs their employer of their pregnancy – in cases of pregnancy loss, this would include a further two weeks of protection after the pregnancy ends. Proposal to extend the period of protection from redundancy* to 18 months from when the child is born, stillborn, expected to be born, or is placed for adoption – this period of 18 months would include any period of relevant leave taken (Maternity, Adoption and qualifying Shared Parental Leave). * *The current protections from redundancy are only in place during the period in which the relevant leave is being taken.*
Paternity Leave	Proposal to make the right to paternity leave more flexible by enabling the leave to be taken as a single block of two weeks or two blocks of one week within 52 weeks of birth or adoption; reducing the notice period required before the leave can be taken; and making the leave entitlement available from the first day of employment.

NEXT STEPS	
Next Steps	Views are sought on priorities for legislation and assisting businesses to implement changes.

Enquiries to:

Employment Relations Policy & Legislation Teams
Department for the Economy
5th Floor, Adelaide House
39-49 Adelaide Street
Belfast, BT2 8FD

Email: goodjobsconsultation@economy-ni.gov.uk
Web: Department for the Economy website

We would welcome queries by e-mail where possible.

This consultation is relevant to workers; employees; employers; groups representing employers and employees; and legal, HR and payroll professionals.

How to Respond

The consultation will be open for responses from 1st July 2024. Responses should be received by 5pm on 30th September 2024. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form.

Your response will be most useful if it is framed in direct response to the questions asked, though further comments and evidence are also welcome.

We would encourage you to complete your response online, at our dedicated consultation page. However, a consultation response form is also available for download from the Department for the Economy website. Please note that by choosing to submit a response by email or hard copy, you do so at your own risk. The department cannot be liable for the loss of any data before it is received by the department.

The downloaded form may be submitted by email or by letter to:

Email: goodjobsconsultation@economy-ni.gov.uk

Postal Address:
To be opened by the addressee only
Employment Relations Policy & Legislation Teams
Department for the Economy
5th Floor, Adelaide House
39-49 Adelaide Street
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Confidentiality and data protection

We will summarise all responses received and place this summary on the Department for the Economy website. This will include a list of the organisations that responded but will not include people's personal names, addresses or other contact details.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure under access to information legislation (primarily the Data Protection Act 2018/the General Data Protection Regulation 2018; Freedom of Information Act 2000; and the Environmental Information Regulations 2004).

For this reason, you should identify in your response any information which you do not wish to be disclosed and explain why this is the case. Please note that an automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

If we receive a request for disclosure of this information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

For further information about how we process your personal data, please see our Privacy Notice.

Consultation Process

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to: goodjobsconsultation@economy-ni.gov.uk or to the Departmental Complaints Officer at DfEmail@economy-ni.gov.uk. Details of the Department's Complaint Process can be found at Customer Service Complaints Procedure.

Impact Assessments

Equality, Regulatory and Rural impact assessments have been conducted for these policy proposals. Currently we do not anticipate the policies to result in any adverse impacts on any of the Section 75 groups or for those who live rurally. A Small and Micro Business Impact Assessment (SAMBIT) has been completed which examines the likely impact on small and micro business.

Your views are sought on the data and relevant conclusions contained within those assessments. Where necessary, the assessments will be reviewed in the light of responses made.

In cases where a formal regulatory impact assessment on a matter has not been carried out, this is because it is a call for information only. Further assessments will be carried out, as and when required on specific policy initiatives.

The Equality, Regulatory Impact Assessment and SAMBIT documents can be viewed on the Department for the Economy website.

THEME A

TERMS OF EMPLOYMENT

SUMMARY

Why do we need to examine terms of employment?

The world of work has changed significantly over recent years. The lines between various types of employment status have become increasingly blurred and contractual arrangements have become more complex and are often opaque. These factors have driven an increasing precariousness in many working arrangements. Job insecurity is considered to be particularly prevalent in zero hours contract roles and in various types of agency work and also where there are doubts over the genuine nature of employment relationships (particularly in the gig economy).

There are instances, such as students seeking summer employment, where, for example, the flexibility of a zero hours contract suits both parties and is therefore a situation that is broadly accepted. For others, however, their contractual arrangements offer them little security, certainty, or clarity in respect of secure employment, income or working conditions. Quite often any flexibility in arrangements is unfairly weighted to the benefit of employers.

Insecure work can lead to several adverse societal and individual impacts: such as poverty, homelessness, a lack of entitlement to various employment rights and access to credit and other services.

It is the Minister's aim to explore ways to improve the situation for those that have little control or agency over their working arrangements. This may include measures that will curb the use of contractual arrangements that may be considered exploitative. It may also include revising enforcement procedures in order to improve the operation of the employment agency sector. In this way, and in concert with other aspects of this public consultation, the proportion of the working population in good jobs will be increased, and businesses that treat their staff well can be confident they will not be undercut by competitors that treat their staff poorly.

The purpose of this chapter of the public consultation is to seek your views on a range of policies to tackle insecure work, ensure people understand their terms and conditions of employment, ensure that employers are aware of and live up to their responsibilities for their workforce and to provide evidence that may help inform future courses of action.

Replacing Zero Hours Contracts with contracts that provide flexibility and protect workers rights

Background

'Zero hours contracts' is generally a non-legal term used to describe many different types of casual agreements between an employer and a worker and can mean different things to different people. For the purpose of this consultation, zero hours contracts are considered those where the employer is not obliged to offer work and therefore the worker is not certain of having an opportunity to work.

These types of contracts have attracted attention as they may leave some individuals who rely on them in a precarious position, where working does not bring the standard of living that it should. There may be circumstances where the flexibility offered by such contracts can be mutually beneficial to the worker and the employer. But for many, the lack of guaranteed work and irregularity of subsequent earnings can result in financial uncertainty and instability, an inability to plan both work and personal life commitments and a perceived requirement to always be available even when work might not be offered may have a detrimental impact on those whose only employment is on a zero hours contract.

In recognition of the impacts of such contracts, when setting out his Economic Vision, the Minister made a commitment to replace zero hours contracts with contracts that provide flexibility and protect workers' rights. In this section we will explore how this can be best achieved.

Current Position

There is limited research into the use of zero hours contracts in the north of Ireland. Available statistics are often based on ONS statistics from the Labour Force Survey which is UK wide. These statistics indicate that from January to March 2024, 16,000 people in employment in the North were working on a zero hours contract[2]. This equates to 1.8% of our workforce in employment on a zero hours contract. A disproportionate number of women, 545,000 compared to 487,000 men are on zero hours contracts. Across the UK, there were 1,033,000 people or 3.1% of the workforce in employment on a zero hours contract. It is not possible to draw comparable statistics on the use of zero hours contracts in the south of Ireland, given the differences in legislation.

There is no existing legislation here which specifically prohibits or addresses unfair practices associated with the use of zero hours contracts. Section 18 of the Employment Act (Northern Ireland) 2016[3] inserted a new Article 59A into the Employment Rights (Northern Ireland) Order 1996[4] in relation to zero hours workers.

2 EMP17: People in employment on zero hours contracts - Office for National Statistics (ons.gov.uk)
3 Employment Act (Northern Ireland) 2016
4 Employment Rights (Northern Ireland) Order 1996

This is an enabling power which permits the Department to make regulations for the purposes of preventing abuses of zero hours contracts. These powers have not yet been used.

Issues with current position

To make our economy and society thrive we need people to be properly rewarded and protected when they are in work. Where employment practices do not attract or support working people, we should consider what changes could be made to the employment law framework. In achieving good jobs for all, we must support, encourage and grow the number of good employers who already provide these good jobs. Good employers recognise and value the contribution of their workers. Less conscientious employers must not have a competitive advantage because they do not treat workers fairly. We need to ensure that we create a level playing field for those employers that already do the right thing by their workers. Inappropriate or potentially exploitative use of zero hours contracts, in circumstances where there is no clear business need for their use, can leave workers in a financially precarious position.

The Low Pay Commission[5] has identified three problematic aspects of zero hours contracts for some workers:

- **Income insecurity**: The variability and insecurity of work makes it difficult for people to manage their financial obligations or access credit.
- **Unpredictability**: In some settings the use of flexible working practices can enable poor workforce planning, which makes it difficult for workers to manage their lives around frequently changing and/or unpredictable work schedules.
- **Inability to assert rights**: Workers feel unable to express concerns or assert their statutory rights for fear of having work denied to them later (sometimes referred to as being 'zeroed down')[6].

It is useful to consider what these contracts might look like for those working on them. Such contracts can cause unpredictability for workers. A contract where the employer is under no obligation to offer work, but a worker feels they are obliged to accept work when the employer offers it, means the worker is often reluctant to take up supplementary employment with another employer and is unable to plan non work-related events. This has a detrimental impact on private and family life.

Income insecurity can arise where, for a significant period of time, a worker has received a satisfactory number of hours and then an employer can unilaterally cut hours or offer no hours, without notice and without consulting the worker.

5 The Low Pay Commission (LPC), is an independent body that advises the British Government on the levels of the National Minimum Wage, including the National Living Wage.

6 Low Pay Commission Report (publishing.service.gov.uk)

This could mean that a worker who has become used to a certain level of income could, without warning, find that their earnings are dramatically reduced or can even disappear. This leaves them at a disadvantage to workers with guaranteed hours contracts. This can result in financial hardship and impact on financial planning. Being on such contracts has the potential also to restrict access to mortgages and other financial arrangements.

Another potentially difficult situation is where an employer can cancel shifts for a zero hours contract worker at short notice without any requirement to pay the worker for the time or costs the worker has incurred in attending work. This could mean that the worker has incurred costs such as the cost of childcare, transport and making financial commitments based on the assumption that work had been offered. The worker may also have turned down alternative work. The worker may feel unable to express concerns for fear of having work denied to them later.

The imbalance of such a working relationship is problematic. The employer has the benefit of a readily available workforce without the commitment to pay for workers' availability, while workers may feel pressured to be available with no guarantee of any payment. It may also be the case that employers who exploit and overuse such arrangements can gain a competitive advantage over those employers who invest in effective workforce planning. The financial benefits might incentivise an employer to continuously take a short-term approach rather than invest in proper workforce planning strategies which can bring longer-term benefits to both employers and workers alike.

However, while inappropriate practices relating to zero hours contracts rightly attract criticisms, many businesses legitimately use employment contracts of this nature to meet a real need for operational flexibility. Some zero hours contracts can enable businesses to manage genuine fluctuations in demand for their products or services. This is particularly important for businesses that have seasonal variations in demand. From a worker perspective, these contracts may be beneficial as they can provide flexibility. For example, those who need to balance employment with other activities such as study or caring responsibilities. It may also be that such contracts can provide opportunities for people to access the labour market when they might otherwise have difficulty doing so. Where a worker needs the flexibility provided by a zero hours contract and this contributes to them having a reasonable standard of living, it may be important to preserve the ability to access this type of employment.

It is also worth acknowledging that there are other forms of atypical working which can result in precarious working situations for individuals. The Chartered Institute of Personnel and Development (CIPD) defines atypical workers as "those in employment relationships that do not conform to the standard, or typical, model of fulltime, regular, open-ended employment with a single employer over a long-time span".

While this group includes those on zero hours contracts it also extends to:

- fixed term workers;
- self-employed, who may work for several organisations, or for a single organisation for a limited period; and
- 'agency' workers, assigned to an employer on a temporary basis by an employment agency, but not employed by that employer.

It may be that when seeking to address some issues associated with precarious working contracts, we need to look wider than zero hours contracts, where that is considered appropriate to do so.

As already stated, there is no existing legislation which specifically prohibits or addresses the unfair practices associated with the use of zero hours contracts. This means practices such as having exclusivity clauses (which means a worker cannot work anywhere else) could be used here.

Proposals

We are considering the introduction of specific legislation to limit or restrict the use of zero hours contracts and restrict other associated practices which are detrimental to workers who do not have guaranteed hours.

This legislation would aim to create contracts which offer flexibility but also protect workers' rights. There are many ways in which this could be achieved and some of the potential policy options are explored further in this section. As each potential policy option is designed to address a particular aspect of concern, it may be appropriate to combine different elements in order to fully address the challenges posed by zero hours contracts and insecure work. While the focus of this section is primarily about the use of zero hours contracts, it may be appropriate to consider some of the options in the context of other forms of insecure working arrangements (such as non-guaranteed hours contracts or short term contracts). This is not an indicative list of what will happen, nor does it indicate that there is any preferred approach. The purpose is simply to assist with consideration of the proposals.

Option 1:

Should there be an outright ban on zero hours contracts or are there circumstances when such contracts should be permitted?

There have been calls for an outright ban on the use of zero hours contracts, due to the potentially exploitative way in which they are used by some employers. However, it is also suggested that the flexibility that these contracts can offer can be mutually beneficial for the employer and the worker. Workers may value the opportunity to work only at a time that suits them, and there are circumstances when a business may need to access casual labour in order to meet fluctuations in demand for their services.

It is noted that in the south of Ireland, legislation restricts the use of zero hours contracts. Such contracts can only be used when:

- The work is of a casual nature;
- The work is done in emergency circumstances; or
- Short-term relief work is needed to cover routine absences for the employer.

This consultation wishes to take views on whether there should be an outright ban on zero hours contracts. If an outright ban is not considered appropriate, the Department wants to seek views on the circumstances in which such contracts should be permitted and whether these should be set out in law.

Option 2:

Where a worker regularly works more hours than their contract states, should they have a right to move to a banded hours contract which more accurately reflects the hours they work?

Workers on a zero hours contract or a variable hours contract can find that they consistently and regularly work more hours than their contract states that they must work. However, because their employer only has to offer them the minimum number of hours set out in their contract (which could be zero), they do not have the certainty of future hours or income.

In the south of Ireland, legislation was introduced which would entitle workers whose contracts do not reflect the reality of the hours worked, to ask their employer to change the contract terms. Workers there can make a request in writing to be placed in a band of hours that better reflects the number of hours they have worked over a twelve-month period. There are eight different bands ranging from a minimum of three-six hours to a top band being 36 hours and above. This effectively guarantees the worker a minimum number of weekly hours.

An employer has four weeks to consider a request. The employer can only refuse to put a worker on a banded hours contract in certain circumstances. For example:

- If there was no evidence to support the request;
- If there were significant adverse changes to the business during the twelve month reference period;
- If there was a temporary situation that no longer exists; or
- If the employee hours are set out in a collective agreement.

This consultation wishes to seek views on whether it could be appropriate to introduce a right here for workers that meet set eligibility criteria to move to a banded hours contract that better reflects the hours they actually work. The consultation would also welcome views on any particular aspects of such a policy that should be adjusted to take account of our economy and employment law framework.

Option 3:

Where a worker regularly works more hours than their contract states, or is in another form of insecure work (such as agency work, short term or fixed term work) should they have a right to make a request to their employer to switch them to a more stable contract?

Zero hours contracts are just one form of insecure working contract. Examples of other insecure working arrangements include temporary contracts, fixed term contracts, and agency work. While the flexibility these arrangements provide can be beneficial for the employer and the worker, there are occasions when a more stable working pattern develops over time, but the contract does not match that reality. In those circumstances, should workers have the right to make a statutory request to their employer for a more predictable or stable contract?

In Britain, legislation was passed in 2023 which will, when enacted, give workers and agency workers the right to request more predictable terms and conditions of work. A request can be made if a worker's existing work pattern lacks certainty:

- in the hours they work;
- the times they work; or
- if it is a fixed term contract for less than twelve months.

An agency worker who meets certain qualifying criteria will also be able to apply to a temporary work agency or the hirer in a work placement, to be taken on directly by that hirer.

Once the new legislation in Britain comes into force, it is anticipated that a worker will have to be in post for at least six months before they could make a statutory request. They will be able to make two requests within a twelve-month period. The process would be similar to that already in place for making a statutory request for a right to request flexible working. An employer in Britain will be able to reject the request on the grounds below:

- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- detrimental impact on the recruitment of staff;
- detrimental impact on other aspects of the employer's business;
- insufficiency of work during the periods the worker proposes to work;
- planned structural changes;
- the worker or employer terminates the contract during the decision period (for unrelated, fair reasons).

This consultation seeks views on whether a right to make a statutory request for a more predictable contract could be an effective way of providing a pathway for workers in atypical contracts to seek more predictable working arrangements.

Option 4:

What should the Qualifying Period be?

Options two and three would require the worker to have worked for the employer for a certain period before they could make their statutory request to move to a banded hours contract or for their employer to consider a more predictable contract. This is because both the worker and the employer will need to have evidence of the reality of the working arrangement and that the changes are proportionate, reasonable and sustainable.

There is a need to strike a balance between what is reasonable for a worker in terms of the length of time they would be on an unstable contract, and the need to build up evidence of an employment pattern that is not distorted by seasonal variations in demand for a business's services.

We wish to seek views on what the appropriate qualifying period should be. Options include a twelve-week period, a twenty-six week period or a twelve month period.

Option 5:

Should measures be taken to ensure employers give reasonable notice as to when work might be available?

One of the problems identified with flexible working arrangements, such as zero hours contracts, is that the worker does not always get sufficient notice that they will be called into work. This can lead to a feeling of always being "on call" and can make it difficult to plan ahead. This consultation seeks views on whether there should be a requirement for employers to provide a "reasonable" period of notice to a worker on a zero hours contract in advance of a shift starting. If so, this consultation also invites views on what period could be considered "reasonable".

It is accepted that businesses may sometimes need to allocate shifts at short notice in a reaction to sudden and unexpected fluctuations in demand for services or to cover temporary absences. There will also be other reasons why a business may need to legitimately call in staff at short notice.

This consultation also invites views on whether legislative change is needed or whether guidance or a code of practice might be effective in encouraging good practice.

Option 6:

Should there be measures introduced to reduce situations where workers are called into work and sent home without work, or shifts being cancelled or curtailed at very short notice?

The Low Pay Commission[7] also explored the extent to which workers being called into work and being sent home without work may be an issue. This can be a particular challenge for workers who have incurred expenditure in terms of getting to work, arranging childcare or turning down other work. This can be potentially most problematic for those on a zero hours contract as they do not have a guarantee of other work in that week to make up for the income they had anticipated.

In the south of Ireland, there is a statutory right for workers who are on a zero hours contract to receive compensation in certain circumstances. These circumstances are when they are called into work and do not receive the expected hours of work or are expected to be available for work during a particular period but are not called into work. The rate of compensation is set out in legislation[8] and is calculated at three times the national minimum hourly rate of pay for circumstances where an individual is called into work and does not receive the expected hours of work. In circumstances where a worker is expected to be available for work and is subsequently not required by the employer to work, the rate of compensation is the lesser of either 15 hours or 25% of the contracted hours.

Such a change here would require employers to keep additional records and make payments as appropriate. Most workers have some stability in terms of when they are expected to work and do not routinely get sent home without work. The Department is mindful of the need to ensure any actions are proportionate and do not unnecessarily add to the administrative burden on small employers. It is therefore appropriate to consider whether there are any other categories of worker beyond those on a zero hours contract who may be particularly vulnerable to shifts being cancelled at short notice.

This consultation invites views on whether the introduction of an obligation for employers to pay compensation for workers on a zero hours contract in circumstances where they are expected to work, but do not receive work, would be an appropriate intervention. It also wishes to seek views on whether any such right should be limited to those on a zero hours contract or whether other categories of worker or whether all workers should be included in any potential legislation.

Option 7:

Should there be a ban on Exclusivity Clauses in certain employment contracts?

Exclusivity clauses in employment contracts restrict workers from taking on additional work with other employers. While there can be good reasons why an employer may use exclusivity clauses to protect the interests of the business, there is a balance to be struck in respect of the right of a worker to earn a living.

7 Low Pay Commission Report (publishing.service.gov.uk)
8 Organisation of Working Time Act 1997

It is not currently unlawful here for a zero hours contract to also contain an exclusivity clause. While we do not have evidence that exclusivity clauses are commonly used in zero hours contracts here, we believe the principle of a worker being on a contract which does not guarantee them any work, but prevents them from seeking work from another employer is inherently unfair. This consultation therefore invites views on whether exclusivity clauses should be made unenforceable in zero hours contracts.

It should be noted that in Britian, the use of exclusivity clauses is also banned in circumstances where the worker's guaranteed weekly income is below or equivalent to the Lower Earnings Limit. This aims to help boost the ability of lower earners to increase their income by ensuring they are not subject to exclusivity clauses and can seek additional work from another employer if they desire.

This consultation invites views on whether exclusivity clauses should be banned in a zero hours contract and / or for those whose contract does not guarantee an income above the Lower Earnings Limit.

Impact Assessment

An initial regulatory impact assessment has been drafted and published alongside this consultation. However, as there are a wide variety of possible interventions, it has not been possible to assess fully the impact of every element outlined in this section. A further assessment will be carried out after analysing the evidence provided as part of this consultation. Your views are sought on the data and relevant conclusions contained within that assessment.

QUESTIONS

A1: Do you agree with the overarching objective to replace zero hours contracts with contracts that provide flexibility while protecting workers' rights?

A2: Should there be an outright ban on zero hours contracts?

A3: Are there circumstances where a zero hours contract may be appropriate? If so, what are they?

A4: Would the right to move to a banded hours contract, unless there is a good reason an employer cannot accommodate the move, be an appropriate way to replace a zero hours contract?

A5: Should the right to move to a banded hours contract apply to other types of contract where the hours worked don't match the reality of the work pattern?

A6: If a banded hours contract system is introduced, on what grounds should an employer be able to refuse a request?

A7: Would the right to request a more predictable contract be an appropriate way to replace a zero hours contract?

A8: Should any right to request a more predictable contract apply to other contracts which do not provide certainty in terms of hours worked, length of contract or days and times worked?

A9: If a statutory right to request a more predictable contract is introduced, under what grounds should an employer be able to refuse a request?

A10: For either a right to make a request to a more predictable contract or a right to move to a banded hours contract, there will be a need for the worker to have been in post for a period of time in order to provide evidence of the reality of the working relationship. Should this qualifying period be 12 weeks, 26 weeks or 52 weeks?

A11: Should there be a requirement for employers to provide a "reasonable" period of notice to a worker on a zero hours contract in advance of a shift?

A12: If so, what is considered a reasonable period of notice?

A13: Would guidance or legislation be the most appropriate way of encouraging an employer to provide a reasonable period of notice for work shifts?

A14: Should compensation be considered where an employer cancels or curtails a shift at short notice for workers on a zero hours contract?

A15: What rate of compensation would be appropriate in these circumstances?

A16: Should this compensation, where an employer cancels or curtails a shift at short notice, be considered for other types of contracts besides those on a zero hours contract?

A17: Should exclusivity clauses in low or zero hours contracts be banned?

A18: Have you any other comments on zero hours contracts?

Understanding Employment Status and addressing Bogus Self Employment

Background

Employment status affects everyone who works. It is the classification of a working relationship between an individual or business providing work and the individual carrying out the work. Being on the correct employment status is important because it determines an individual's entitlement to statutory employment rights and provides the employer with a set of legal responsibilities.

There are three main types of employment status for determining employment rights and protections:

- **Employees** are entitled to all statutory employment rights, subject to the length of time they have worked for their employer. Some rights require the employee to have been working continuously in the same job for a certain amount of time to qualify. Employees have responsibilities towards their employer, such as making sure they turn up for work.
- **Workers** (sometimes known as "limb b" workers) are entitled to some statutory employment rights and protections, such as the National Minimum Wage/National Living Wage, holiday pay and protection against unlawful discrimination. They are entitled to fewer rights than employees, but in return, have increased flexibility over when, how much, and where they work.
- **Self-employed** individuals or independent contractors generally have no employment rights. They have significant flexibility in deciding whether to work since they are in business for themselves.

The terms employee and worker are defined in employment law[9]. These definitions have been further refined by case law that has evolved over many years. There is no legal definition of self-employed – either in employment law or tax law. If an individual feels that they have been put into the wrong employment status, they can bring a claim to an industrial tribunal for resolution. The tribunal will make a decision based on the circumstances of that case (regardless of what may be written in a contract). The tribunal will likely be informed by certain factors which include:

- Control: the extent to which the employer decides what tasks the individual does and how they do them;
- Integration: the extent to which the individual is part of the organisation;
- Mutuality of obligations: the extent to which an employer is required to offer the individual work and whether they are expected to do it;

9 Article 3 of the Employment Rights Order (Northern Ireland) 1996

- Substitution: whether someone else can be sent by the worker to do the job;
- Economic Reality: the extent to which the individual bears the financial risk.

The absence of detailed tests as set out in law has provided the Courts and Tribunals with flexibility to adapt to ever changing and modern working practices. However, the lack of clear definitions of an employee, a worker, and the boundary between employment and self-employment, can mean that it can sometimes be difficult for workers and businesses to clearly understand their rights and responsibilities. There is a risk that unscrupulous employers can take advantage of the lack of clarity and can deliberately misclassify workers into the wrong employment status in order to gain a competitive advantage by avoiding their statutory obligations. However, employment status classification is not optional. It is determined by the reality of the working relationship, regardless of what is written in a contract.

As outlined throughout this consultation, the way in which we work is continuously evolving. There has been a significant rise in new forms of working, such as "gig" work or work arranged through digital platforms. Some of these forms of working can provide workers with greater flexibility, such as determining when and how many hours they wish to work. However, when this flexibility is not mutually beneficial, or becomes too one sided in favour of the employer, that can leave workers in a precarious or insecure working arrangement.

Employment status is also important for the tax system and there is a separate system for determining tax rights and responsibilities. In tax, there are only two categories of employment status: employed and self-employed. This means that, although the systems are inter-related, they are not interchangeable. A determination of employment status for employment rights will not necessarily apply for tax. Employment law is a devolved matter, but taxation is not. If it is determined that new legislation is required in this area, it will be necessary to ensure that it does not infringe on reserved matters such as tax law or national minimum wage legislation. It would also be necessary to consider carefully any proposals to ensure that there are no unintended consequences for the wider tax and employment law frameworks.

Issues with current arrangements

A good job is one in which people have at least a minimum level of rights of protections. Our economy can only grow and deliver these good jobs if all businesses are able to compete on a level playing field. Good and responsible employers should not face a competitive disadvantage because others try to subvert the rules and try to avoid fulfilling their responsibilities.

Bogus self-employment

One issue that has attracted increasing attention in recent years is the issue of so called "bogus" self-employment. This denotes a situation in which a person is contracted to perform work on the basis of self-employment but is, to all intents and purposes, a worker. Sometimes this misclassification can be accidental, but on other occasions it can be a deliberate decision. Where an individual considers their employment status to be incorrect, a case may be brought to an industrial tribunal to challenge that status.

Genuinely self-employed individuals can exercise a large degree of flexibility and control over how, if, and when they work. They are generally able to send someone else to do the work without significant restrictions. It is a category that includes those who run and manage their own business or work. As the individuals are in business for themselves, they generally do not have access to statutory employment rights as they have the freedom to set their own terms and conditions.

Where a worker has been misclassified as self-employed and the reality of their relationship is that of a worker or an employee, the worker is at risk of missing out on important employment protections. Workers can be left without basic protections such as holiday pay, national minimum wage, access to family related leave and entitlements (such as maternity or paternity pay), the ability to make statutory requests for flexible working or rights associated with notice and redundancy. This can leave individuals with great uncertainty as to their income and can make it much more difficult for them to make financial decisions in their non working lives (such as applying for a mortgage).

Digital platform working

The rise of digital platform work, where a platform company manages the distribution of work, has also had a significant impact on our labour market. Platform work is the matching of demand and supply of paid work through an online platform using an algorithm. Three parties are involved in the matching process: the client requiring the work, the platform which manages the algorithm and the person who provides the work through the platform. The rise of digital platform work has had a significant impact on our labour market. It has been an area that has increasingly seen a number of high profile Supreme Court judgments about the rights and responsibilities of those who provide and avail of this type of work.

Employment status has been the focus of many of these deliberations. In recent years the Supreme Court has ruled in some high profile cases in this sphere. In the case of Uber[10], the Courts ruled that the individuals working for the platform were workers. Other cases, such as Deliveroo[11], held that the individuals working for the platform were self-employed.

10 Uber BV and others (Appellants) v Aslam and others (Respondents) - The Supreme Court
11 Independent Workers Union of Great Britain (Appellant) v Central Arbitration Committee and another (Respondents) - The Supreme Court

However, other aspects of platform working have gathered attention here in recent years, and in Britain, the south of Ireland and the EU. Concern has been raised about the ability of workers on these apps to access the data held about them and the ability to challenge decisions made by algorithms. The EU recently agreed the Platform Workers Directive. This will require Member States to implement new rules to introduce a presumption of an employment relationship (as opposed to self-employment) that is triggered when facts indicating control and direction are triggered according to law, to prohibit workers from being fired as a result of a decision taken by an algorithm and prohibit platforms from processing certain types of personal data.

Worker and Employee Status

Historically, our laws about employment status have mirrored those in Britain. This is partly due to the close interaction between tax law and employment law. In employment law here, as in Britian, there is a three-tier employment status system – employee, worker and self-employed. Most other countries have only two categories of employment status (employee and self-employed).

Those in favour of maintaining a three-tier system argue that the intermediate status of "worker" allows flexibility and dynamism in the labour market and helps to underpin an agile economy. It is also argued that those in the more flexible "worker" category are still protected by a basic level of employment rights – such as holiday pay and the right to minimum wage. Opponents of the three-tier system argue that removing the intermediate category of worker (and merging it with the employee category) would simplify employment status classification. It would also mean that all workers are provided with the same level of employment protections, and ensure equitable access to family related leave and pay rights, redundancy protections and protection from unfair dismissal. Other opponents of the current system have called for greater alignment between the tax and employment law status frameworks. However, as tax law is reserved, the NI Assembly cannot legislate to provide that alignment.

Proposals

This is an extremely complex area of employment law. It is also noted that some aspects of this issue may overlap with matters which are reserved (such as tax law or General Data Protection Regulations).

Some of the other proposals in the consultation document would, if enacted, provide greater certainty and clarity for workers about the nature of the terms and conditions of their employment and help them understand their employment status. However, the Department wishes to take the opportunity to better understand the nature and the extent of the challenges around employment status. This information should help inform decisions about what the most appropriate course of action might be. Therefore, there are no specific proposals for Departmental action at this stage. Instead, the Department wishes to seek views and evidence to better inform policy in this area. An impact assessment has not therefore been conducted on this issue, at this stage.

QUESTIONS

A19: Do you think that the current employment status system for employment rights works effectively? If not, what changes do you think are necessary?

A20: Do you consider that bogus self-employment is an issue of concern? If so, please provide details.

A21: Are there sectors where bogus self-employment might be particularly prevalent?

A22: Do you have any comments about the employment relationships of those working on digital platforms?

A23: Do you have any comments about the three-tier regime of employment status classification? (i.e. employee, worker and self-employed).

A24: Do you think legislative intervention is required to address any aspects of employment status misclassification? If so, what would this look like?

A25: Do you think there might be any adverse consequences to legislating on employment rights status, without any further alignment with the tax system?

A26: Would greater guidance on the different employment status classifications assist employers in determining the correct employment status classification and help workers enforce their rights?

Employment Rights: Dismissal and Re-Engagement (Fire and Re-Hire)

Background

Dismissal and re-engagement (fire and re-hire) refers to a practice where an employer seeks to alter an individual's terms and conditions of employment by first dismissing or 'firing' them, then rehiring them, on altered, less favourable terms.

There have been a number of high-profile examples of the use of this practice in recent years which have given rise to calls for action to be taken in terms of regulation.

Current Position

There is no definitive legal ban on the use of the practice here, but it is important to note that there are legal requirements that employers must fulfil in terms of timeframes relating to redundancy notification.

Different approaches have been adopted and debated in Britain. Officials have identified three policy approaches that the Department is seeking to explore. They are:

- Do nothing;
- a statutory code of practice; or
- a statutory ban.

Issues with current arrangements

Recent high-profile examples have led to concerns that the practice can be used as a way to circumvent established legislative protections.

It is not currently known how many people have been affected by the use of dismissal and re-engagement practices in the north of Ireland.

A Trade Union Congress (TUC) report from January 2021[12] stated that one in 10 workers in the UK had been affected. A CIPD survey in the same period found that, of 2000 employers surveyed, 19%, "...changed terms and conditions through consultation, negotiation and voluntary agreement", with 3% of employers changing the above through dismissing staff and rehiring them on new terms[13].

12 Fire and rehire tactics are levelling down pay | TUC
13 One in five employers have changed employee contracts since pandemic onset | CIPD

Based on the number of people economically active here as of February 2024, this would equate to between 27,000 and up to 90,000 people in the north of Ireland having been affected by dismissal and re-engagement practices in recent years.

Proposals

The Department wishes to seek views on a range of options to discourage unscrupulous behaviour and unfair practices.

Option 1: Do Nothing

The first option is to maintain the current situation in the north of Ireland, with the intention of seeking views on whether it is necessary to legislate in this area.

Option 2: Code of Practice

Introduction of a statutory Code of Practice to set out guidelines relating to the use of dismissal and re-engagement practices.

A breach of these guidelines would not necessarily be an offence but could be linked to another direct offence, such as failure to give notice of redundancies to the Department. The use of a Code of Practice, however, could be argued to provide flexibility of approach, as updating a Code to reflect changes in employment practice may be more straightforward than making changes to legislation.

Option 3: Statutory

Legislation would allow the Department to introduce binding provisions that may include new legal remedies for industrial tribunals to utilise should they find an individual has been the victim of dismissal and re-engagement practices. It could also include direct prohibitions on employers taking steps that may be construed to be dismissal and re-engagement, such as hiring an individual on terms which could be considered as less favourable.

Whatever option is pursued, the Department does not want to place unnecessary burdens onto potentially struggling businesses. Striking the right balance will be key to ensuring that our legal framework provides effective protections for employees from a potential misuse of this practice, alongside adequate support to businesses at risk of closure.

QUESTIONS

A27: Do you agree that there is a need for greater regulation on dismissal and re-engagement (fire and re-hire) practices?

A28: Do you think that a Code of Practice would be sufficient to protect workers' rights, and balance the needs of employers who find businesses in genuine economic distress?

A29: If no to question A28, do you think that the use of statutory provisions would be sufficient to protect workers' rights, and balance the needs of employers who find businesses in genuine economic distress?

A30: If no to question A29, please provide details of other actions you suggest should be taken?

A31: If yes to question A29, please indicate what statutory provisions should be introduced to protect workers from 'fire and rehire' practices?

A32: How can government ensure that the interventions it adopts in this area do not result in business closure or mass redundancies with no option for rehire and survival of the business(es)?

Employment Rights: Redundancy – Offence of Failure to Notify

Background

Employers are legally required to notify the Department of proposed redundancies exceeding 20 or more employees.

The timeframe of the notification period can vary depending upon the number of proposed redundancies.

An employer that fails to give proper notice is committing an offence which is liable to a fine not exceeding level 5 on the standard scale. This is a maximum of £5000 in the north of Ireland.

Current Position

Currently, liability for the above offence rests with an employer corporately. There is no personal liability.

In Britain, however, there is an additional offence for a "....director, manager, secretary or other similar officer of the body corporate", who consents to an action, supports it or, due to their negligence, results in a company failing to fulfil its obligations to give notice of redundancies. In those circumstances the corporate officer may be found personally liable for the breach.

Further, in Britain, the potential fine for which they could be liable is unlimited. As indicated above, here, the maximum fine is £5000.

Issues with the current arrangements

In the interests of affected employees, it is vital that an employer follows the redundancy notification framework.

This provides employees with a notice period, allowing them time to process the redundancy and assess their employment options, and gives the relevant government departments time to arrange supporting actions for those affected.

The Department wishes to seek views on whether the introduction of personal liability in the offence of failure to notify would be an incentive for the office holders to comply with the Departmental notification process and engender a greater awareness of responsibility in this area.

Proposals

The Department wishes to seek views on whether it is desirable to introduce the offence of personal liability as it relates to the redundancy notification process.

Impact Assessment

A formal regulatory impact assessment on the introduction of personal liability in the offence of failure to notify has not been carried out, as the impact of the introduction is considered to be de minimis or minimal.

QUESTIONS

A33: Should this offence of personal liability, as it relates to the redundancy notification process be introduced?

A34: If yes to question A33, should the maximum fine remain at £5000?

A35: If no to question A33, should the maximum fine become unlimited as in Britain?

Employment Rights: Written Statement of Particulars

Background

Providing decent working conditions requires employers to offer terms and conditions which meet all statutory requirements and make job offers which attract workers and retain them. It is equally important that both employers and workers fully understand the terms and conditions of that employment. At the start of any employment relationship, workers need to be informed as to what they are entitled to when they perform their duties. To be able to assert an employment right linked to decent working conditions, a worker needs to be aware of their employment rights and the extent to which these rights are being met/fulfilled. Considering modern business practices, and the increase in atypical working arrangements, there is a growing imperative to ensure that workers are clearly informed of their entitlements and provided with clarity on the terms and conditions of employment. In this section, we will consider how key employment information is currently provided and what amendments could be made to improve clarity of information for workers.

Current position

The right to receive a written statement is limited to employees and is **not** available to workers, i.e. those that do not have employee status.

That is, written statements currently **do not** need to be provided to:

- Non employees (for example, contractors, freelancers or 'workers')
- Short term employees (those employed for less than one month)[14].

Currently there is no legal requirement for a contract of employment to be in writing. However, under legislation[15], employees are entitled to receive a written statement of employment rights from their employer (called a 'statement of initial employment particulars'). The statement must cover all the basic terms of employment listed in legislation, such as rates of pay, working hours and holiday entitlements.

The written statement must be given to the employee within two months of their first day of employment. Currently employers can set out an employee's written statement in one or more documents. However, either that document or one of those documents - known as the principal statement - must contain all the information listed below.

14 There are some further limited exclusions in respect of seamen which are not within the scope of any of these proposed amendments.

15 Part 3, Article 33 of the Employment Rights (Northern Ireland) Order 1996

Principal Statement for employees only (provided in a single document within 2 months of starting employment) must include:

- The legal name of the employer/company.
- The legal name of the employee.
- The date the current employment began.
- Any earlier date upon which employment with a previous employer began which is treated as 'continuous' with the current employment.
- The employee's pay, or how it is calculated, and the intervals at which it will be paid – e.g. weekly or monthly.
- The employee's hours of work.
- Entitlement to holidays - including public holidays - and holiday pay. The information must be accurate enough to allow precise calculation of accrued entitlement.
- The job title or a brief description of the work.
- The address of the employee's place of work. If they will be working in more than one place then this should be indicated along with the employer's address.

In addition to the information that employers must put in the principal statement, employers must also give the employee information set out in the further list below:

Additional employee information (some of which can be provided in readily accessible documents such as staff handbooks) includes:

- Sickness, injury and sick pay
- Period of employment
- Notice periods
- Collective agreements
- Pensions
- Dismissal, disciplinary and grievance procedures

Issues with current position

- The two-month timeframe for the principal statement means employees and workers begin employment without proper clarity and information on key terms and conditions.
- The exclusion of workers from the entitlement to receive a written statement means they may not be fully informed of their workplace entitlements.
- The current requirements of a written statement do not cover all key terms and conditions of employment and as such there may be a lack of clarity about these key entitlements, particularly for those on atypical types of contracts.

Proposals

The Department wishes to seek views on whether the Department should introduce legislation to ensure that:

- Written statements would be provided to all workers.
- The right to a written statement would become a "day one" right. This would mean that all workers would be entitled to receive a written statement before or on their start date (only limited information can be provided after this point).
- Written statements would include more information. While these changes would not apply retrospectively, current workers would be entitled to request a written statement including the additional information. Employers would need to comply with these requests within one month.

If this proposal is introduced, the extra information that would be provided on or before the employee or worker's start date (which would be provided in a single document on or before day one of starting employment) would include:

- the days of the week they are required to work;
- whether the working hours may be variable and how any variation will be determined;
- any paid leave (other than paid holiday which already has to be provided) to which they are entitled (e.g. maternity or family leave);
- details of all remuneration and benefits (above base pay);
- any probationary period and the conditions relating to it; and
- any training entitlement provided by the employer, including whether any training is mandatory and/or must be paid for by the individual.

It would remain the case that some additional employee information could be provided in readily accessible documents such as staff handbooks, including details of the following:

- Sick leave and pay;
- Any other paid leave;
- Pensions and pension schemes (this could be provided within 2 months);
- Details of any collective agreements directly affecting terms (this could be provided within 2 months);
- Any other training entitlement (this could be provided within 2 months); and
- Disciplinary and grievance procedures (this could be provided within 2 months).

QUESTIONS

A36: Do you agree that the right to a written statement of particulars should be extended to workers?

A37: Do you agree that a written statement should be a day one right?

A38: Do you agree that a written statement should include the following additional information:

- How long a job is expected to last, or the end date of a fixed-term contract;
- How much notice an employer and worker are required to give to terminate the agreement;
- Details of eligibility for sick leave and pay;
- Details of other types of paid leave, e.g. maternity leave and paternity leave. The duration and conditions of any probationary period;
- All remuneration (not just pay) - contributions in cash or kind, e.g. vouchers and lunch;
- Which specific days and times workers are required to work;
- Any training which the employer pays for and requires the worker to complete; and
- Any other training which the employer requires the worker to complete but does not pay for.

Agency Workers and Recruitment Agencies – Pay Between Assignment Contracts

Swedish Derogation

Background

There is currently a loophole in the Agency Workers Regulations (Northern Ireland) 2011. This loophole risks agency workers' rights to pay parity with other workers at the same place of work after a qualifying period of twelve weeks.

In 2019, "Good Work, A Review of Modern Working Practices" (The Matthew Taylor Report) recommended that the loophole in the Agency Workers Regulations in Britain which deals with "Pay Between Assignments Contracts" (sometimes known as the "Swedish Derogation") should be closed. The same legal loophole continues to apply in the North.

Issues with Current Arrangements

The current arrangements create a scenario where some agency workers may not receive the same pay as workers that have been directly employed by a business, after completing the twelve week qualifying period. By exploiting this loophole some operators in the sector:

- pay agency workers at an inferior rate to those doing the same job at the same company, indefinitely (i.e. beyond the twelve week qualifying period after which the regulations would otherwise guarantee them pay parity); or
- structure the scheduling of workers' assignments, so that they never qualify to receive any pay between assignments.

This was the opposite of the intended effect of these contracts and is contrary to the intended purpose of the 2011 Regulations. The British Government removed the legal loophole, referred to as the 'Swedish Derogation', in England, Scotland and Wales in 2020.

Proposals

It is recommended that we remove this legal loophole and abolish "pay between assignment contracts" or "the Swedish Derogation". To do so, it is proposed to revoke regulations 10 and 11 of the Agency Workers Regulations (Northern Ireland) 2011[16].

16 Agency Workers Regulations (Northern Ireland) 2011

QUESTIONS

A39: Do you agree there is a need for government action in this area?

A40: If yes, based on what you have read, do you agree with the abolition of the Swedish Derogation?

A41: Are you aware of this legal loophole being used? If so, please provide examples.

Key Information Document for Agency Workers

Background

The Employment Agency Inspectorate (EAI) of the Department for the Economy is responsible for the regulation of the private recruitment sector. Employment agencies and employment businesses must comply with the legislation that sets out how the private recruitment sector must conduct their businesses. The legislation exists to protect work seekers and employers using such agencies and businesses.

EAI inspectors can enter and inspect the premises and records of all employment agencies and businesses to ensure compliance with the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Business Regulations (Northern Ireland) 2005 ("the Conduct Regulations").

In Britain recruitment agencies are required to provide a work seeker with key points of pay related information in a straightforward, easy to understand format before terms can be agreed[17]. Each of these terms provides a contractual obligation, which can lead to litigation if breached. In other words, a Key Information Document (KID) is required. The requirement for a KID does not currently apply here.

Issues with Current Arrangements

The majority of breaches identified by the Employment Agency Inspectorate concern discrepancies in how workers and agencies interpret their terms, particularly in the area of pay[18]. Whilst the Conduct Regulations make specific requirements of agencies regarding the content of terms, they are not prescriptive in how these may be presented to workers. In real terms this often results in a lack of consistency between recruitment agencies in how a worker's terms are presented to them. This can lead to a lack of clarity and understanding of the terms of the work offered.

Proposals

The Department is seeking views on whether the law should be changed to require the production of a KID. A KID is a concise document detailing all pertinent pay details of an assignment in one place. The purpose of it is to make it easier for a job seeker to know the conditions of the job they are being offered. It can also be used to compare offers from different companies. The contact details of the Employment Agency Inspectorate would also be included. This would help to ensure that every agency worker has the contact details of the organisation best placed to support them should they have a query or concern about their work seeking experience.

17 In this context, terms are understood as any provision that form the basis of the contract
18 Employment Agency Inspectorate | Department for the Economy (economy-ni.gov.uk)

The detail in a KID would include:

- the name of the contractor;
- the type of contract that is being set up;
- the name of the company who is employing the worker;
- the rate of pay that the worker will receive;
- payment dates and intervals;
- all statutory deductions such as taxes and national insurance;
- all non-statutory deductions such as private health care, pension or student loans;
- all additional benefits that the worker shall be receiving;
- holiday entitlement; and
- a representative example of the KID and its contents using real figures.

QUESTIONS

A42: Do you think there is there a need for government action in this area?

A43: Is pay transparency an issue for workseekers? If so, please provide examples.

A44: Do you think that recruitment agencies should have to provide a Key Information Document?

A45: Do you believe that a KID would help to make pay related information clearer and easier to understand?

A46: What challenges do you think this could create for businesses?

Employment Agency Inspectorate Information Sharing

Call for Information

Background

The Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981[19] prescribes how the EAI can gather and share information with other regulators and enforcement bodies through inspections. The EAI may currently share information with HMRC officers involved in the enforcement of the National Minimum Wage Act 1998[20]. It can also share information with the Gangmasters and Labour Abuse Authority, who protect the rights of workers in the agricultural and food sectors.

Issues with Current Arrangements

Businesses frequently use agency workers to meet their recruitment needs. Many regulated sectors (such as health and social care) commonly use agency workers to deliver their services. Under the present system, where an EAI inspector identifies a potential infringement which may be considered a risk in the context of another regulated sector, the inspector cannot share that information with the regulatory body concerned. This means that where an issue of concern has been identified, the EAI inspector cannot notify the proper regulatory authority. This is considered a particular risk if there could be a potential safeguarding concern or if agency workers are working with vulnerable persons.

While the EAI might not have the regulatory powers to investigate the potential safeguarding issue, it is considered proper that a regulatory body should be able to signpost any concerns to the appropriate authority for further investigation. For example, should an EAI inspector discover that proper checks on an agency worker's qualifications were not being carried out by a recruitment agency placing workers in a care setting, it may be appropriate to share that with the relevant regulatory body, so that they can investigate from a safeguarding perspective.

In Britain, the Employment Agency Standards Inspectorate (EASI) can share information with the EAI, relevant Secretaries of State, regulatory bodies responsible for immigration and national minimum wage, the Pensions Regulator and the Care Quality Commission. We are seeking views on whether similar provisions should apply here.

Proposals

DfE is seeking views on whether the law should be changed to open information sharing gateways to the EAI with relevant and appropriate regulators, in prescribed circumstances. This would support the EAI in designing more proportionate and transparent enforcement actions which can be more readily understood, and therefore more readily addressed by the recruitment agencies who are subject to them.

19 Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981
20 National Minimum Wage Act 1998

QUESTIONS

A47: Do you think there is a need for government intervention in this area?

A48: If yes to question A47, do you think that the information sharing powers of the EAI need to be enhanced?

A49: If no to question A47, why not? If no to question A47 ignore questions A50, A51, A52, A53 & A54.

A50: Do you think that creating information sharing gateways between relevant and appropriate regulators would help to streamline enforcement activity as experienced by recruitment agencies?

A51: Do you think that opening information sharing gateways between regulators will create efficiencies in enforcement activity?

A52: Do you think that the information sharing capabilities of the EAI should be broadly similar to the information sharing capabilities of its British counterpart, the EASI?

A53: If yes to question A52, is it your view that the EAI should be able to share information with the EASI, Pensions Regulator and the Regulation and Quality Improvement Authority (RQIA)?

A54: There are also circumstances where the EAI many need to provide information to the PSNI particularly in cases where the use of modern slavery may be suspected. Do you agree that the EAI should have clear powers to share information with the PSNI when appropriate to do so?

EAI Enforcement Powers: Labour Market Enforcement Undertakings & Labour Market Enforcement Orders

Background

Currently, the EAI has the power to access the premises and inspect the records of recruitment agencies. Where they find infringements, the EAI may then prescribe actions for the agency to complete to bring them back within the requirements of the law.

In most cases this collaborative, administrative approach works. However, where an agency persistently fails to resolve infringements, the enforcement options for EAI are limited.

Current Position

The EAI can either work with the recruitment agency to encourage them to comply with the regulations or they can apply to an industrial tribunal to impose a Prohibition Order.

In a situation where infringements continue to exist, the EAI can make an application to an industrial tribunal regarding the infringements of a recruitment agency. A tribunal may ban an individual from operating a recruitment agency for a period of up to 10 years, and/or until the conditions of the prohibition order are fulfilled.

Issues with current arrangements

Since these measures were introduced, the recruitment sector in the north of Ireland has developed considerably. There is no register of recruitment agents, and in theory anyone may set up and operate a recruitment agency. Recruitment agencies provide workers to a wide variety of industries and at all skill levels. They also provide workers to deliver vital public services, including working with the vulnerable. The risks in bringing prohibition orders have therefore increased in proportion to the potential detriment faced by some of the stakeholders. We are seeking views about potential changes to the law that would allow for additional enforcement steps to be taken by the EAI before a prohibition order is required.

Proposals

The Department is seeking views on the potential introduction of Labour Market Enforcement Undertakings (LMEUs) and Labour Market Enforcement Orders (LMEOs).

LMEUs and LMEOs are authoritative in nature but would allow recruitment agencies to continue to operate, while they fulfil the conditions agreed or imposed by the EAI on them. Conditions imposed would be dependent on the nature of an infringement.

These enforcement options are in force in Britain and, whilst not required often, are still a useful tool to be able to deploy when working with a recruitment agency in breach of the regulations.

Labour Market Enforcement Undertakings

A labour market enforcement undertaking (LMEU) is an undertaking by the person entering into it (recruitment agency) to comply with any prohibitions, restrictions and requirements set out in the undertaking.

In practice, EAI (as the enforcement body) would issue notice to a recruitment agency that they were seeking an LMEU. The agency would then have 14 days to agree to the undertaking. LMEUs would only contain undertakings that prevent or reduce the risk of infringements or make other interested parties aware of the existence of the LMEU. An LMEU would be in effect for a period of up to two years.

Labour Market Enforcement Orders

A labour market enforcement order (LMEO) is an order which prohibits or restricts the person against whom it is made from doing anything set out in the order, or, requires the person subject to the LMEO to do what is set out in the order.

An enforcing authority may apply to the court for an LMEO where an LMEU has not been given within the negotiation period or where an LMEU has been breached. The standard of proof relating to the breach is the balance of probabilities. The higher criminal standard of proof will be applied if the respondent is prosecuted for breaching an LMEO imposed by the court.

This provides the business with a further opportunity to address non-compliance before facing a potential criminal sanction.

The relevant court for EAI purposes is the court of summary jurisdiction in the north of Ireland.

The scope of measures in an LMEO mirrors that of the related LMEU, in that the measures must be just and reasonable. The enforcing authority will suggest measures when it applies to the court for an order, although a court is not obliged to include the measures suggested, or the measures contained in the LMEU.

An LMEO takes effect on the date specified by the court and has the same maximum duration as an undertaking (2 years).

Britain introduced LMEUs and LMEOs into its enforcement regime in 2016 and these are available to the Employment Agency Standards Inspectorate and the Gangmasters and Labour Abuse Authority.

Impact Assessment

A formal regulatory impact assessment on the introduction of LMEUs and LMEOs has not been carried out, as the impact of the introduction is considered to be de minimis or minimal.

QUESTIONS

A55: Do you think there is a need for government action in this area?

A56: If no to question A55, what alternative approach should be considered to improve the enforcement powers of the EAI, if any?

A57: If yes to question A55 do you agree that aligning the EAI enforcement provisions with the EASI provisions in Britain would be appropriate? i.e. the introduction of Labour Market Enforcement Undertakings and Labour Market Enforcement Orders.

THEME B

PAY AND BENEFITS

SUMMARY

This chapter of the consultation examines areas of the 'good jobs' agenda relating to improving an individual's overall pay and benefits.

In the context of treating workers fairly and making sure they receive the pay they are due, the Department is examining what steps can be taken to ensure that tips and gratuities are managed and distributed to workers in a fair and transparent manner.

The Department also wishes to seek views about how to ensure that workers have all the information they need to ensure they understand how their pay and their annual leave is calculated.

In light of recent developments in working practices, particularly advances in technology and the upsurge of working from home, the Department is seeking views on the need to provide clarity on the 'right to disconnect' and what impact this may have on employers and the working environment.

Fair and Transparent Allocation of Tips, Gratuities and Service Charges

Background

This part of the consultation is in respect of issues around the fair allocation and distribution of tips, gratuities, and service charges (whether mandatory or discretionary) which an employer receives or controls. For the purposes of the consultation, these amounts will simply be referred to as "tips".

There are an estimated 5,655[21] businesses in the north of Ireland where payment of tips is prevalent. These businesses exist primarily in the hospitality and service sectors and include hotels, bars, restaurants, hairdressers and beauty salons.

There are several ways in which tips can be received and distributed. Customers may pay tips in cash, or via electronic or various digital means. Tips that are under the control of the employer may (to the extent they are not kept by the employer) be distributed to workers in cash, via payroll, or distributed via a Tronc. With the increasing use of electronic payments, the use of Troncs[22] has become more popular, especially as they can decrease the National Insurance burden on employers and workers. Any tips paid via payroll are liable to income tax and National Insurance deductions.

In 2009 the British Government amended the National Minimum Wage Regulations 1999 to provide that tips paid to a worker through the employer's payroll must not count towards payment of the national minimum wage. That legislative change was supplemented by a voluntary Code of Best Practice containing a number of measures aimed at encouraging transparency by businesses. This included a recommendation that workers are fully informed on the distribution and breakdown of tips and the level and purpose of any deductions; and that businesses should seek to reach agreement with workers on any change of policy.

Since 2015 there have been numerous media reports of some employers engaging in unfair tipping practices, with the British Government reporting that around two thirds of employers in the hospitality sector were making deductions from tips, in some cases of around 10%[23].

The extent to which such practices exist here is presently unknown.

Current Position

Both the British[24] and Irish[25] Governments have recently legislated to require employers to ensure that tips they receive go to workers.

21 Source: Inter-Departmental Business Register (March 2023), NISRA.
22 HMRC Guidance on tips, gratuities, service charges and troncs.
23 Explanatory Notes to the Employment (Allocation of Tips) Act 2023. See paragraph 8.
24 Millions to take home more cash as new guidance on Tipping is published - GOV.UK (www.gov.uk)
25 Tips, gratuities and service charges (citizensinformation.ie)

In the north of Ireland there is no requirement that tips received or under the control of the employer are disbursed to the workers. Anecdotal evidence suggests that most employers in the hospitality sector are likely to be treating their workers fairly, and that business representatives in that sector clearly advocate for that. However, there is no firm evidence to support that assertion across all relevant sectors; nor is there regional data to quantify the number of businesses that do not pass on tips to workers in full.

Issues with current arrangements

In the absence of legislative intervention, there is little that workers here can do to prevent the employer from retaining all or a proportion of tips received by the business.

A good job is one in which a worker is properly rewarded for the work that they do. Where this includes tips left by customers for good work or service, it is only fair that those are passed to workers. Unfair tipping practices are unfair to the workers concerned and to customers who expect their tips to go those who provide good service. Employers that keep tips may also derive an unfair competitive advantage over rival businesses that treat their workers fairly.

Proposals

Subject to the views of stakeholders, the proposed course of action is to introduce legislative provisions that would require employers to pass on tips to their workers in full, and in a fair and transparent manner. This would create a level playing field for businesses and reassure consumers that tips are distributed in a way they would expect. If such a proposal is adopted, consideration will be given to a Code of Practice to advise employers on how to meet their obligations.

The above proposals will not extend to situations where tips are paid in cash and are not under the control or influence of the employer.

Option 1: Do nothing

This would maintain the current voluntary arrangements whereby there is no guarantee that tips that are in the control of the employer will be disbursed to workers in full, with the risk that some or all of the tips will be subsumed within the income of the business.

Option 2: Legislate to make it obligatory for employers to pass on tips in full (aside from any deductions required by law) and requiring that the distribution is fair and transparent

This would also necessitate measures requiring employers to have tipping policies, to keep records and make them accessible. It will also require the introduction of means for workers to seek redress.

QUESTIONS

B1: Do you work for, own or manage a business where the payment of tips, gratuities or service charges is commonplace, or represent the workers or owners of such a business?

B2: In your experience, do employers that receive tips pass them on to their workers in full?

B3: Where tips are received or controlled by the employer, should workers receive tips without deduction by the employer?

B4: Where tips are received or controlled by the employer, should the employer have a written policy on dealing with tips and make it available to workers?

B5: Should an employer be prohibited from using tips to make up contractual rates of pay of workers?

B6: Where tips are received or controlled by the employer, and the employer hires agency workers, should those agency workers also receive a fair allocation of tips?

B7: Where a Tronc system is used for the distribution of tips, should that be considered to provide for a fair distribution of tips where the management of the Tronc is independent of the employer?

B8: Is legislation needed so as to require employers to pass on tips in full, while ensuring the distribution is fair and transparent?

B9: Should a Code of Practice be published to advise on and promote fairness and transparency in the distribution of tips?

Employment Rights: Payslips

Background

One of the most fundamental employment conditions is the right to be paid, and to be paid correctly, for work done. Given that there can be significant variations in gross pay compared to net pay because of deductions such as tax, national insurance and/or pension contributions, whether someone has been paid correctly is not always immediately apparent. To enable a worker to know that they have been paid correctly, it is important that they know the reasons for, and amount of, any deduction made.

Current position

Employers are only legally obliged to provide an itemised pay statement (usually called a payslip or wage slip) to employees. Employers are not obliged to provide payslips to workers.

That is, payslips do not need to be provided to:

- *Non employees, for example (contractors, freelancers or 'workers')*
- *members of the police service*[26].

For those who are entitled to a pay statement, every pay statement must contain the following information:

- amount of wages before any deductions (gross wages)
- individual amount of any fixed deductions (such as trade union subscriptions) or the total amount of these deductions if the employee is given a 'standing statement of fixed deductions'[27]
- individual amount of any variable deductions (for example, tax)
- net amount of wages (this is the total after deductions)
- amount and method for any part-payment of wages (such as separate figures of a cash payment and the balance credited to a bank account).

An employer might include additional information which they are not required to provide, such as:

- National Insurance number
- tax codes
- pay rate (either annual or hourly)
- additional payments like overtime, tips or bonuses, which might be shown separately.

26 There are some further limited exclusions in respect of merchant seamen and share fishing arrangements which are not within the scope of any of these proposed amendments.

27 If an employer does not set out any fixed deductions in employees pay slips, they must provide a standing statement of fixed deductions every 12 months. This must be in writing and include: the amount and intervals at which the deduction is made; and contain the purpose or description of the deduction. It must be given to employees before their first payslip with the fixed deductions.

Issues with current position:

- Workers (who are not employees) do not have the statutory right to an itemised pay statement and associated enforcement provisions. A lack of a pay statement is likely to make it difficult for a worker to know if they have been paid correctly, as they may not be given any information about deductions and the reason for them.
- Employees or workers whose pay varies because of time worked do not have the statutory right to receive information regarding the number of paid hours worked in an itemised pay statement. Not being provided with a breakdown of how pay has been calculated for variable hours worked makes it difficult for workers to determine whether they have been paid correctly for the actual hours worked.

Proposals

- Extend the right to a pay statement to workers.
- Require an itemised pay statement to contain information regarding the number of paid hours worked by the employee/ worker in situations where the employee/worker's pay varies as a consequence of the time worked.

QUESTIONS

B10: Do you agree that the right to a pay statement should be extended to workers?

B11: Do you agree that an itemised pay statement should contain information regarding the number of paid hours worked by the employee or worker in situations where the employee's pay varies as a consequence of the time worked?

Working Time Regulations: Holiday Pay Reference Period

Background

The minimum statutory requirement for paid holidays each year is 5.6 weeks. These 5.6 weeks are formed from two pots of leave; four weeks based on EU law and 1.6 additional weeks under domestic law.

The amount of pay that a worker receives for the holiday they take depends on the number of hours they work and how they are paid for those hours.

In principle, pay received by a worker while on leave should reflect what they would have earned if they had been working.

For individuals who generally receive fixed pay, they will expect to receive the same amount at the end of a pay period whether they were on a holiday or not.

The situation becomes more complicated when a worker does not work fixed or regular hours and so does not receive the same amount in each pay period.

Current Position

For workers who do not receive fixed pay, an employer should normally look back at a worker's previous 12 paid weeks (known as the holiday pay reference period) to calculate what a worker should be paid for a week's leave.

Issues with current arrangements

Calculating holiday pay entitlements can be complex. Particularly in the case of individuals whose roles are subject to seasonality and irregular working hours. Due to this complexity, there is a risk that individuals may not receive their correct entitlement.

The calculation of holiday pay has been the subject of several high-profile court cases over recent years. As a result, it is now widely recognised that using a 52 week reference period, instead of a 12 week one, is a more robust and fair approach.

Proposals

The Department is seeking views on whether to extend the holiday pay calculation reference period for workers on variable hours from 12 weeks to 52 weeks.

QUESTIONS

B12: Do you agree that there should be a change in the holiday pay calculation reference period from 12 weeks to 52 weeks?

B13: If no to question B12, why not?

Working Time Regulations: Record Keeping Requirements

Call for Information

Background

Employers must keep records of the hours their staff work to demonstrate compliance with certain aspects of the Working Time Regulations, e.g. to prove that employees are not working more than the 48-hour weekly maximum (unless they have an opt-out) and to ensure they are not breaking limits for night working and restricted hours for young workers. However, there is no requirement to record daily or weekly rest breaks, or the number of actual hours worked each day.

The 2019 European Court of Justice judgment in the CCOO v Deutsche Bank ruled that member states must require employers to have a system in place to measure the daily working time of all workers. This case has brought uncertainty as to the level of detail about hours worked that employers must keep in order to comply with the Working Time Regulations.

Current Position

No decision has been taken on the Department's approach to this issue.

The British Government has legislated to confirm that businesses do not have to keep detailed records of workers' daily working hours if an employer is able to demonstrate adequate compliance with the Working Time Regulations in other ways.

Issues with current arrangements

The primary issue with the current arrangements is a lack of clarity on the detail that employers should be required to maintain records. It is also unclear what impact a more rigorous record keeping regime would have on businesses here, particularly as the majority of businesses in the north of Ireland are small or micro businesses.

Proposals

No decision has been taken on the Department's approach to this issue.

The Department would welcome information from employers and workers on:

- their experience of record keeping activities in the workplace;
- experience of where a lack of record keeping has led to dispute over hours worked or pay; and
- views on whether or not any government action is required.

QUESTIONS

B14: Do you believe there is a need for government action in this area?

B15: Do you agree with the approach adopted in Britain?

B16: Do you think the British approach would work here?

B17: Is greater regulation around record keeping required?

B18: If yes to question B17, please provide details as to how you think this can achieved. i.e. do you think the EU approach should be adopted?

B19: Please detail any issues that have arisen in your workplace due to a lack of adequate record keeping.

Working Time Regulations: Right to Disconnect

Call for Information

Background

Proposals for a right to disconnect have developed as advances in communication technologies have impacted on people's daily lives. The impact of the Covid-19 pandemic has seen the shift, for many, to working from home, and this has brought the discussion to the fore.

The widespread use of smartphones and other digital devices means that always being 'on call' has become a reality in some workplaces, as continuous remote access can create pressure for individuals to be constantly accessible.

Current Position

The Working Time Regulations (Northern Ireland) 2016[28] set out rules relating to areas such as; weekly working time, rest entitlements and annual leave.

A Code of Practice on a right to disconnect has been introduced by the Irish Government, which contains three elements:

- the right of an employee to not have to routinely perform work outside their normal working hours;
- the right to not be penalised for disconnecting; and
- the duty to respect another person's right to disconnect.

Issues with current arrangements

The need for work/life balance is vital in the context of the development of modern working practices. Modern working practices (such as the use of technology to facilitate remote working) can help facilitate flexible working practices which are mutually beneficial for both businesses and workers. There is also a need, however, to ensure that this balance is correct. While workers need to be able to switch off from work, there may be a need for businesses to have flexibility to, for example, deliver services to international clients on different time zones.

In research conducted by Ipsos in March 2022[29], two-thirds of UK workers surveyed said they participated in work-related communications outside of their working hours.

28 Working Time Regulations (Northern Ireland) 2016
29 6 in 10 across the UK would support a law giving employees the right to ignore work-related communications outside of working hours | Ipsos

Additionally, the 2021 census showed that 153,500 people here were working from home (approximately 19% of the workforce at that time)[30], therefore, there is a sizeable portion of the workforce potentially affected by this issue.

The Department is seeking views on whether the existing legislation, as it relates to working time, is still effective in terms of promoting a healthy work/life balance.

30 Census 2021 Main statistics for Northern Ireland - Statistical bulletin - Place of work or study (nisra.gov.uk)

QUESTIONS

B20: Is there a need for government action in this area?

B21: Do you have any examples/evidence of workers feeling unable to switch off outside normal working hours? If so, please provide further information.

B22: Would a statutory Code of Practice on the 'Right to Disconnect' achieve the right balance between the need to protect employees and support economic development?

B23: If not, what other actions would you like the Department to consider? For example, would advisory guidance from bodies such as the LRA or HSENI be more effective?

THEME 3

VOICE AND REPRESENTATION

SUMMARY

The focus of this chapter is to examine the issues which affect good workplace relationships, trade union operations and the democratic structures in workplaces more generally.

The need for mechanisms and processes which foster, and nurture, positive workplace relationships are important to the productivity and long-term viability of businesses. For example, the Labour Relations Agency (LRA)[31] calculated that, in a worst-case scenario, the cost of handling a workplace conflict can be as much as £47,500. A large part of the north's economy is made up of micro and small businesses and as such the costs of negative workplace relationships can be proportionally more significant. The benefits of collective bargaining have been recognised by the EU. Its Directive on Adequate Minimum Wages obliges member states with less than 80 per cent bargaining coverage to establish an action plan to promote collective bargaining.

In its National Tripartite Social Dialogue guide, the International Labour Organisation (ILO)[32], cites social dialogue as a vehicle for achieving positive workplace relationships, and its associated benefits. For example, in terms of days lost to strike action per 1000 employees, the north lost 58 days of work in 2019. When comparing this figure with an economy such as Denmark, which has an established and effective social dialogue mechanism, the days of work lost in the same period to strike action were much lower at 3 days per 1000 employees.

The ILO emphasises the importance of effective and meaningful dialogue between workers, employers and governments in a tripartite model. This tripartite model is supported and promoted by the Economy Minister. This emphasis on social dialogue has helped to shape the policy areas being considered in this chapter.

Additionally, the north of Ireland has a proportionally more unionised workforce than in both Britain and the south of Ireland, with 33.8% of the workforce here being trade union members[33], compared with 23% across the UK on average and 31% in the south. It should also be noted that, in the most recent years for which data is available, the number of days lost to strike action per 1000 employees in the north of Ireland has been below the average in Britain.

It is important, therefore, that the operation of trade unions continues to develop and modernise, as well as the framework within which they operate. To this end, the Department is seeking views on matters such as electronic balloting, as well as views on a code of expected behaviours for all parties when negotiating workplace agreements or operating in the workplace more generally.

Finally, the relationship between employers and workers is also considered in this chapter, with the Department requesting information on the scale and scope of protections for workers, particularly those participating in industrial action.

31 Cost of Conflict Report published version (September 2023).pdf (lra.org.uk)
32 National Tripartite Social Dialogue: An ILO guide for improved governance | International Labour Organization
33 Trade union statistics 2023 - GOV.UK (www.gov.uk)

Workplace Access

Call for Information

Background

In the north of Ireland, trade union officials only have a statutory right to access workplaces in limited circumstances, such as during a collective redundancy process. There are currently no specific rights to permit access for purposes such as the operation of a trade union in a workplace, or to discuss trade union recruitment and membership with non-union members.

Current Position

There is a Labour Relations Agency Code of Practice which provides information on trade union access to workplaces during periods when trade unions are seeking to be recognised by an employer. That Code recommends that a 'common-sense approach' is adopted.

For example, an employer may have reasonable, operational reasons as to why they would wish to give prior permission before allowing a full-time union official to enter a workplace and talk to workers. This prior permission would enable the employer to ensure that certain operational functions are covered when those workers are meeting with the trade union official.

In other jurisdictions, there is a varying scale of rights for trade union officials. In Britain, the position is similar to here, whereas in the south of Ireland employee representatives can request reasonable access to workplaces where they represent trade union members.

Further afield in New Zealand, trade union (TU) officials have an automatic right to access a workplace when supporting a member with an employment-related matter, and during working hours, to promote membership and ensure compliance with employment legislation in that workplace.

In addition, TU officials in New Zealand can request employer consent for access to workplaces where they currently have no members. This permission cannot be unreasonably withheld and an employer failing to respond to such a request within two days would be deemed to have consented.

Issues with current arrangements

Access to workplaces for TU officials is limited under the current arrangements. This impacts on matters such as worker representation and TU membership generally in the private sector economy.

The Minister for the Economy has been clear that increasing the role of trade unions, particularly in low paying sectors, is a priority area for this consultation and a cornerstone of the Good Jobs agenda. As such, we intend to seek views as to how we can best achieve this.

Proposals

The Department invites views on what increasing the workplace access rights of TUs here should look like. The consultation seeks your views on the appropriateness of the provisions currently in place elsewhere. The consultation also seeks views on whether there should be exemptions put in place for micro[34] and/or small businesses[35].

34 Micro Business - Business with 9 or fewer employees
35 Small Business - Business with between 10 and 49 employees

QUESTIONS

C1: What do you think are the main barriers faced by trade unions when trying to access a workplace?

C2: In your view, what are the main reasons why employers would not want to grant access to a trade union?

C3: Please outline any experiences (good or bad) you have of trade union officials accessing workplaces.

C4: Do you think trade union presence in a workplace is necessary to ensure employees have a voice and are listened to by their employer?

C5: Based on the information provided, do you think a change in the law to replicate the provisions in place in New Zealand would be suitable in the context of the north of Ireland?

C6: Are there other examples of effective trade union access policies which the Department should examine?

C7: Given the prevalence of small and micro businesses in the north of Ireland, do you think that exemptions should apply regarding the potential enhancement of trade union access in the workplace?

C8: For example: should all micro businesses be exempt from granting access?

C9: What considerations should be given to small businesses? Should any exemptions apply?

Collective Bargaining: Recognition

Call for Information

Background

In workplaces in the north of Ireland, trade unions can request to be 'recognised' by an employer. This means that a trade union can then negotiate agreements with the employer on pay and other terms and conditions of employment on behalf of a group of workers.

Current Position

Currently, where an employer does not voluntarily recognise a trade union for collective bargaining purposes, the trade union can apply to the Industrial Court (IC) for statutory recognition.

In order for the IC to accept an application for recognition, the employer must employ at least 21 workers or an average of at least 21 workers in the previous 13 weeks ending the day a trade union makes the request for recognition.

If this threshold is not reached, then an application for statutory recognition cannot proceed.

Issues with current arrangements

In March 2023, 60% of registered businesses in the north of Ireland were micro businesses, which have between 1 and 9 members of staff. A further 5% are made up of businesses with between 10 and 19 members of staff[36].

This means that 65% of registered businesses in the north of Ireland fall outside the threshold which would allow a trade union to avail of the statutory recognition process.

In the last 10 years, up to 31 March 2024, the IC received 36 applications[37], with seven of these progressing to recognition.

Proposals

The Department wants to seek views on the potential impact of lowering the threshold required for a trade union to seek formal recognition.

It wants to assess whether there is a number of employees to which this threshold could be appropriately reduced in our specific context. For example, an employer with 11 or more employees working 16 hours or more per week is required to register with the Equality Commission under fair employment legislation.

36 IDBR-Publication-2024.xlsx (live.com) - tab 3.4
37 Decisions | Industrial Court

QUESTIONS

C10: Do you think there is a need to reduce the current threshold of 21 employees for a trade union to seek formal recognition?

C11: If yes to question C10, what number of employees do you think a business should have for a trade union to be able to seek recognition?

C12: What impact would reducing the threshold have on small and micro businesses?

C13: Do you think that micro businesses should be exempt from the trade union recognition process?

C14: Is a reduced threshold limit of 10 employees a reasonable number?

Collective Bargaining: Introduction of Collective Sectoral Bargaining

Call for Information

Background

Sectoral collective bargaining is a term which is understood to describe a collective agreement that covers all workers in a sector of an economy. There are limited mechanisms to facilitate sectoral collective bargaining in the north of Ireland currently.

Current Position

Structures relating to sectoral collective bargaining are generally in place in the public sectors in Britain and the north of Ireland. The only significant sectoral collective bargaining machinery in the private sector, however, is in agriculture, where there is an Agricultural Wages Board (AWB) in the north of Ireland and Scotland, and an Agricultural Advisory Panel in Wales.

Sectoral collective bargaining mechanisms do exist more widely elsewhere. In Belgium, for example, it is understood that collective bargaining agreements can be entered into on national or industry levels between the trade unions and employers' organisations, or, on a company level between the trade unions and an individual employer. Statistics from the Organisation for Economic Co-Operation and Development (OECD) show that around 96% of employees in Belgium are covered by a collective agreement[38].

There was also an attempt to introduce this mechanism in New Zealand, through the Fair Pay Agreements Bill 2022[39]. This had intended to bring unions and employer associations together to bargain on matters such as employment terms and conditions, for all covered employees in an industry or occupation. This was, however, repealed in December 2023 following a change of government.

Issues with current arrangements

Currently, no meaningful collective sectoral bargaining exists in the private sector here. Sectoral collective bargaining, and resulting sectoral collective agreements, have the potential to set minimum standards on matters such as pay and working hours in each affected sector, and also to reduce movement of staff between employers.

Proposals

No specific proposals have been set out on the Department's approach to this issue. However, we welcome views on how sectoral collective bargaining could be improved.

38 OECD Data-Explorer: OECD Collective Bargaining Coverage
39 Fair Pay Agreements Bill 2022

QUESTIONS

C15: With the information provided in this document, do you feel that the introduction of sectoral collective bargaining would be beneficial to the local economy?

C16: Please explain the reasons for your answer to question C15.

C17: What could collective sectoral bargaining look like?

C18: Are there specific sectors in which you think it would operate more effectively than others?

C19: If introduced, are there any sectors that you think should be exempt from sectoral collective bargaining?

C20: What impact would the introduction of sectoral collective bargaining have on employer and worker relations?

Balloting & Notice

Call for Information

Background

Prior to taking industrial action, a ballot must be conducted by a trade union to allow all member workers to vote on the matter.

The Trade Union and Labour Relations (Northern Ireland) Order 1995[40] states that notice must be provided to an employer that a ballot on industrial action will take place no later than the seventh day before the opening day of the ballot.

This paragraph also cites that the sample voting paper should be provided to the employer no later than the third day before the opening day of the ballot.

Current Position

This position is reflected in Britain, as its legislation is broadly similar to our own. The position varies across Europe with employers generally required to be given either five days' notice, as in Poland and Spain, or seven days' notice, as in the south of Ireland, Denmark and Sweden.

The Department would like to determine if there is a need to simplify or change the information provided to employers by trade unions prior to taking industrial action. This could include, for example, the removal of the requirement for a sample voting paper to be provided and the potential reduction of the notice period required to be given for industrial action.

Issues with the current arrangements

Trade unions have proposed that the seven days notice be reduced to five.

Proposals

The Department is open to views on whether the current seven-day notice period should be reduced to five days.

40 Trade Union and Labour Relations (Northern Ireland) Order 1995

QUESTIONS

C21: Is the current system of providing notice of industrial action to employers fit for purpose?

C22: If no, what changes do you think are required?

C23: How would amending the legislation affect employer and worker relations?

C24: Should the period of notice provided to an employer of industrial action be reduced from seven days to five?

Electronic Balloting

Call for Information

Background

As indicated previously, before industrial action takes place, a ballot must be conducted by a trade union to allow all members to vote on the matter. Ballots must be conducted in a manner which lets people vote in secret, with votes being cast without interference by the union, or any of the union's members, officials or employees.

Current Position

Currently, the law states that every person who is entitled to vote must have their ballot paper posted to a home (or nominated) address and be given a convenient opportunity to vote by post.

These laws were prepared prior to the advent and development of information technology as we know it today. As such, there is no provision in legislation which would allow for electronic voting in a ballot. In fact, the wording of the legislation prevents it.

Issues with current arrangements

The cost of the use of postal systems for voting has increased steadily over recent years. Given the time required for postal ballots to issue and be returned, it also means that voting processes can be lengthy.

There is also evidence that turnout in postal ballots tends to be low, especially on routine issues such as elections of General Secretaries and to other union positions. For example, the election for the Northern Ireland Public Service Alliance (NIPSA) General Council averaged 9.6% turnout, and the Rail, Maritime and Transport Workers Union (RMT) General Secretary averaged 18.1%[41].

Making provision to allow unions the option to use e-balloting, in a similar way to building societies or other member organisations, would offer a long-term financial saving for trade unions, speed up balloting processes and may see an increase in participation in voting, if individuals can do so from their personal electronic devices.

41 NIPSA Annual Delegate Conference - Conference Paper No.1 Analysis of Voting in General Council Elections 2022-24 Microsoft Word - Conference Paper No.1 - Analysis of Voting Data in NIPSA General Council Elections 2022-24.docx

Proposals

An important aspect of trade union balloting legislation is the appointment of an independent scrutineer. This individual or company will scrutinise ballot elections and the TU must satisfy the scrutineer that its arrangements comply with the law.

While it is the Department's proposal that e-balloting should be accommodated within legislative provisions, it is seeking the views of key stakeholders on the operational and practical considerations which must be considered in relation to this matter.

QUESTIONS

C25: Do you agree that current legislation should be updated to allow e-balloting?

C26: What concerns, if any, do you have about the introduction of e-balloting, and what can be done to mitigate them?

C27: If e-balloting was introduced, do you think there is still a requirement for an independent scrutineer?

C28: If yes to question C27, why?

C29: What evidence would the independent scrutineer need from an e-balloting system for their report?

C30: If no to question C27, why not?

Protections for Representatives

Call for Information

Background

There are protections in law for Trade Union members from being treated negatively or even dismissed in relation to a number of areas, such as:

- using trade union services;
- penalising them from using those services; or
- taking part in trade union activities.

Current Position

The types of union activities that qualify for protection, however, can depend on whether the worker is a trade union official or a member. Trade Union officials have specific rights to paid time off when:

- negotiating pay, terms and conditions;
- helping union members in disciplinary or grievance cases; and
- discussing issues that affect union members, such as, redundancies or requests for flexible working arrangements.

This position is similar in both Britain and the south of Ireland.

Issues with current arrangements

The Department is seeking views on whether the current legislative protections for trade union officials are fit for purpose and reflect the operational realities of the issues they are facing in the modern workplace.

Proposals

No decision has been taken on the Department's approach to this issue.

The Department would welcome information on the experience of employers, workers and trade unions on this matter.

QUESTIONS

C31: Are the current legislative protections for trade union officials against detriment and dismissal in relation to trade union activities sufficient?

C32: If no to question C31, what additional legislative protections are required?

C33: Are you aware of any challenges faced by trade union officials in the workplace in relation to the conduct of their trade union duties?

C34: If yes to question C33, please provide examples.

C35: What impact would a change in protections for trade union officials against detriment and dismissal have on businesses?

Protections for Employees taking part in Industrial Action

Call for Information

Background

A person or trade union who calls for, threatens to call for, or otherwise organises industrial action, has immunity from civil action for inducing a breach of contract, or interfering with a contract's performance, only if acting in contemplation or furtherance of a trade dispute.

Current Position

It is automatically unfair to dismiss employees or workers for taking part in official industrial action:

- in the 12-week period from the day the industrial action starts.
- after the 12-week period but only if an industrial tribunal/arbitrator has decreed that the employer has not taken reasonable steps to resolve the workplace related dispute.

Normally, an employee dismissed while taking part in unofficial industrial action cannot claim unfair dismissal.

This aligns with the position in Britain.

Issues with current arrangements

The Department would like to seek views on the current legislation regarding unfair dismissal of workers taking part in official industrial action.

Proposals

No decision has been taken on the Department's approach to this issue.

The Department would welcome information on the experience of employers and workers on this matter.

QUESTIONS

C36: Is the 12-week protected period for employees taking part in Industrial Action against dismissal sufficient/fair?

C37: If not, how long should the protection last?

C38: What potential impact would an extension to the protected period have on employers?

C39: What potential impact would an extension to the protected period have on workplace relationships?

Facilitating Productive Workplace Relationships

Call for Information

Background

The Department has identified workplace relations as an area of potential development, particularly with regard to relationships between trade unions and businesses.

Current Position

In the north of Ireland today, there is no guide or set of principles which establishes a common set of expected behaviours, between employers and trade union officials, that can help secure respectful and effective workplace relationships, with a focus on positive outcomes.

In New Zealand, a statutory Code of Practice called the 'Code of good faith in collective bargaining[42]' is in place. A core part of that code is the need for employers and employee representatives to, at all times, work with each other and communicate in a manner which recognises the common interest in increasing productivity and business profitability. That includes not acting in a way which would undermine a bargaining process or mislead or deceive one another.

Issues with current arrangements

Without a common set of agreed behaviours, the way trade union and business representatives conduct themselves can lead to negative relationships in some workplaces. This is not conducive to the development of good jobs or wider economic development.

Proposals

The Department intends to explore the introduction of a code of practice in the north of Ireland, similar to that in New Zealand, with a view of establishing an agreed set of principles and expected behaviours on which employer representatives and trade union officials can establish and build a productive working relationship.

42 Good faith in collective bargaining | Employment New Zealand

QUESTIONS

C40: Do you agree that an agreed set of principles and expected behaviours for employers and trade unions to sign up to and adopt would help to improve workplace relationships?

C41: If yes to question C40, do you believe that a New Zealand style code of practice would be beneficial?

C42: If yes to question C41, what areas or subjects would you like to see included in such a code?

C43: What should the consequence be if a party is found to have acted in breach of that agreed code?

Information and Consultation: Definitions

Call for Information

Background

The Information and Consultation of Employees Regulations (Northern Ireland) 2005[43] (ICE Regs) give employees in larger businesses rights to be informed, on a regular basis, about the:

- business's economic situation;
- employment prospects; and
- decisions likely to lead to changes in work organisation or contractual relations (e.g. redundancies, business transfers, etc).

Current Position

Regulation 2 of the ICE Regs defines an 'undertaking' as a public or private undertaking carrying out an economic activity, whether or not operating for gain.

In the case of Moyer Lee v Cofely Workplace Ltd UKEAT/0058/15/RN, Cofely had 210 employees working on a contract for the University of London. The appellants made a request to Cofely Workplace to negotiate an information and consultation agreement.

For a request to be valid, at least 10% of employees in an undertaking must make such a request.

In this case, the appellants comprised 28 employees, or 13% of the 210 employees working on the University of London contract. Cofely Workplace, however, had a total of 9,200 employees, of which the appellants in this case (the 28 requestors) comprised just 0.3%.

Cofely Workplace took the view that the reference to an 'undertaking' in the legislation was a reference to the legal employing entity. The request for an information and consultation agreement did not meet the 10% threshold.

The appellants argued that an undertaking did not have to be the employer in total but could constitute a group of employees within a wider organisation. They argued that any other interpretation of the law, would mean that employees in large multi-site corporations, would be deprived of any meaningful protection.

43 Information and Consultation of Employees Regulations (Northern Ireland) 2005

The Employment Appeal Tribunal did not agree with the appellants interpretation of the law and their appeal was unsuccessful.

Issues with current arrangements

As stated above, the current arrangements mean that individuals in large multi-site businesses may struggle to reach the threshold to request an ICE agreement.

This may be particularly challenging in the modern-day workplace. The acceleration in the capability and use of technology has meant that many individuals, that are part of larger businesses, work in smaller satellite offices. This working environment could make it more difficult for organisers to secure an information and consultation agreement. This is because, while they may reach the threshold of numbers required at a specific site, they may not reach the threshold when the total number of employees across the entirety of a business are considered.

This is the same position as in Britain.

The Department wants to ensure that its employment law framework is fit for purpose and equipped to deal with the realities of modern working practices.

Proposals

The Department is seeking views on proposals to amend the law to ensure that the ICE Regulations apply to smaller establishments/satellite offices within larger organisations.

QUESTIONS

C44: Do you think there is a need for government action in this area?

C45: Should the definition of 'undertaking' be changed to include 'establishment' or similar wording to more accurately reflect modern day working practices?

C46: Are there other aspects of this matter which you feel also need to be considered?

Information and Consultation: Thresholds

Call for Information

Background

As indicated previously, the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (ICE Regs) give employees in larger undertakings rights to be informed on a regular basis about the:

- business's economic situation;
- employment prospects; and
- about decisions likely to lead to changes in work organisation or contractual relations (e.g. redundancies, business transfers, etc).

Current Position

The requirement for making this request is as follows:

- employees in a workplace with 50 or more staff can make the request; but
- a valid request must be made by 10% of the employees (subject to a minimum of 15 employees).

If a business has fewer than 50 employees or not enough employees to make a request, the employer can elect to set up an agreement voluntarily. The Department encourages all employers to inform and consult with their employees on a regular basis to facilitate effective workplace relations.

In Britain the 10% of employees' requirement to initiate their rights, under the ICE regs, (i.e. to make a valid request) was reduced to 2%, but the minimum number of 15 employees still applies.

For example, in Britain a business of 100 staff, 15 employees are needed to make a valid request (i.e. the minimum number in law as 2% of 100 staff is only 2 staff).

Whereas in a business of 1,000 staff, at least 20 employees (2%) are needed. In the north of Ireland, under current arrangements, 100 employees (10%) would be required to make the same request for an ICE agreement.

Issues with current arrangements

The current arrangements could be argued to make it more difficult to establish an information and consultation agreement between employees and employers. The Department wants to promote effective and productive workplace relations across the north of Ireland.

Proposals

The Department is seeking views on whether the threshold for initiating the rights conferred by the ICE regs should be reduced from 10% to 2%.

At this stage we are not proposing to change the 15 employee minimum but will also seek views on this.

QUESTIONS

C47: Do you think that government action is required in this area?

C48: Do you think that reducing the percentage threshold required for employees to make a valid request, for an ICE agreement, from 10% to 2% is appropriate?

C49: If no to question C48, what should the percentage threshold be?

C50: In the north of Ireland, 60% of businesses have fewer than 10 staff. Do you agree that the current minimum number of employees (15) should be retained?

C51: If no to question C50, what level should the minimum figure be?

C52: Do you think reducing this minimum number of employees would better reflect the make-up of the local economy?

Transfer of Undertakings (Protection of Employment) Regulations

Call for Information

Background

There is a requirement under the Transfer of Undertakings (Protection of Employment) Regulations 2006[44] and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006[45], (collectively known as TUPE), for an employer to inform and consult appropriate workplace representatives of employees affected by a transfer to a new company. In practice, some small employers invite the employees to agree that they will all be representatives, and all are consulted together.

Current Position

In 2014, Britain introduced a micro-business exemption to the consultation and information aspect of TUPE so that employers can now inform and consult directly with their employees if they have fewer than 10 employees. The north of Ireland did not make this change.

More recently, Britain further reformed the TUPE regulations for transfers completing on or after 1 July 2024. In this case, employers will be able to inform and consult directly with their employees if they have fewer than 50 employees or are transferring fewer than 10 employees.

This extends the exemption to small businesses (<50 employees) and businesses of any size undertaking small staff transfers of less than 10 employees.

These changes do not apply in the north of Ireland.

Finally, a consultation[46] is underway in Britain on proposals to clarify the law in response to recent court cases.

Currently, there is some ambiguity as to whether the TUPE Regulations apply to both 'employees' and 'workers'. The consultation proposes to amend the definition of 'employee' in the Regulations to confirm that TUPE applies to employees only.

44 Transfer of Undertakings (Protection of Employment) Regulations 2006
45 Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006
46 Consultation on clarifications to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and abolishing the legal framework for European Works Councils - GOV.UK (www.gov.uk)

The consultation also proposes removing the obligation to split employment contracts between multiple employers where a business is transferred to more than one new business. The view in Britain is that splitting contracts is impractical for employees and employers alike. It thinks that the employers taking over the business or service should agree between themselves who should be responsible for each employee's contract meaning that no employee can have their employment contract split between more than one employer.

Issues with current arrangements

The Department wishes to seek views on the changes made by the British Government and ascertain if similar changes are required here.

The British Government reasoned that employers can find some elements of the TUPE regulations burdensome, including the consultation requirements, and that the new exemptions would make transfers easier and quicker for eligible businesses.

Proposals

No decision has been taken on the Department's approach to this issue.

QUESTIONS

C53: Is there a need for change in the TUPE regulations relating to the consultation of affected staff?

C54: Would you like to see the 2014 changes outlined from Britain apply here? I.e. an exemption to the requirement to follow the consultation and information requirements of TUPE for micro businesses?

C55: If yes to question C54, do you think that this exemption for micro businesses should be extended to small businesses? (businesses with between 10-49 employees)

C56: Would this be effective in the context of the local economy?

C57: What difficulties are faced by employers required to follow the current TUPE regulations, if any? Please provide examples.

C58: Have you been a part of a TUPE process as either an employee or business?

C59: If yes to question C58, what was your TUPE experience like?

C60: Did the legislation provide you with the protections you required?

C61: If no to question C60, what additional protections are required?

C62: Do you think there is a need to provide more clarity in law about the types of workers that the TUPE regulations apply to? i.e. it is for employees only.

C63: Do you think there is a need to remove the obligation to split employment contracts between multiple employers, where a business is transferred to more than one new business?

C64: Do you think there are other changes regarding the TUPE legislation that should be considered?

Public Interest Disclosure (Whistleblowing): Annual Duty to Report

Background

Under the Public Interest Disclosure ("Whistleblowing") legislation here, there is a list of people and bodies[47] which are collectively called 'prescribed persons'.

A prescribed person is an individual or organisation that has an oversight role over other organisations, industries and sectors, or over individuals in certain jobs. These include regulatory and professional bodies.

Their role is to provide workers, who are aware of or suspect wrongdoing in their workplace, with a means to make a disclosure (or whistle blow) to an independent and external body where they feel they are not able to make such a disclosure to their employer.

A body being prescribed is important as a worker who makes a disclosure to such a body gains protections under the law which make it easier for them to, for example, bring claims against their employer if they are negatively treated because they made the disclosure.

Current Position

The Employment Act (Northern Ireland) 2016[48], introduced powers which would allow DfE to require prescribed persons in the north of Ireland to produce an annual report on the disclosures of information made to them.

These powers have not yet been used. An annual duty to report has been in place in Britain since 2016.

Issues with current arrangements

There are currently 45 categories of people and bodies listed as prescribed persons in the north of Ireland. Under the current arrangements, the Department has no information as to the specific processes used by each of those bodies when handling disclosures made to them, nor on the matters being raised.

As such, the Department is not aware if bodies are fulfilling their responsibilities, nor if there are trends in the areas of concern being raised, which may be developing in specific sectors or work areas.

47 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2022
48 Employment Act (Northern Ireland) 2016

Proposals

The Department wishes to seek views on whether to require prescribed persons to produce an annual report, which should contain, as a minimum, the following information:

i. the number of disclosures received;
ii. the number of those disclosures which the relevant prescribed person decided to take further action; and
iii. a summary of:
    a. the action that the relevant prescribed person has taken;
    b. how workers' disclosures have impacted on the relevant prescribed person's ability to perform their functions and meet their objectives; and
    c. an explanation of the functions and objectives of the relevant prescribed person.

The reports would be required to be made publicly available by being placed, for example, on the relevant organisation's website, six months after the end of the reporting period. The Department would collate the reports and lay them at the Assembly.

A reporting mechanism would allow for greater scrutiny and transparency of prescribed persons and the processes for handling whistleblowing disclosures.

It is anticipated that this transparency will assist in the development of best practice standards of complaint handling across all prescribed persons and deliver consistency in approach and organisational accountability.

It would also raise awareness of the vital work undertaken by those bodies.

Option 1: Do Nothing

This would maintain the current situation, with no requirement for prescribed persons to produce an annual report.

Option 2: Statutory intervention

This would allow the Department to utilise its powers to require prescribed persons to produce an annual report via secondary legislation.

Impact Assessment

A formal regulatory impact assessment on the introduction of a requirement to report annually on disclosures made has not been carried out, as the impact of the introduction is considered to be de minimis or minimal.

QUESTIONS

C65: Do you think there is a need for government action in this area?

C66: If yes to question C65, do you agree that it would help to improve transparency, consistency and awareness if Prescribed Persons were required to produce an annual report to the Department?

C67: Some Prescribed Persons have no regulatory or investigatory powers, such as MPs. As they can only refer complaints to regulatory or investigatory bodies, should they be exempt from producing an annual report?

C68: Do you agree that the reports should be collated by the Department and laid at the Assembly?

THEME D

WORK-LIFE BALANCE

SUMMARY

A key component of a good job is one which allows an individual to balance their work with their family and private life. Flexibility in the workplace, underpinned by policies which support working families, is key to achieving this aim. With the right support, more people will also be able to access employment.

It is strategically important therefore to address barriers to employment. For example, for those with disabilities, parents and those with caring responsibilities, especially women, from entering, remaining within, or returning to the workforce. These are complex, cross-cutting issues which will require a combined approach by several Executive Departments.

The Minister believes a commitment to facilitating workforce participation through supportive policies like the provision of enhanced flexible working entitlements; a right for carers to take leave; and the right to neonatal care leave and pay align with the broader economic priorities of good jobs, regional equality, and sustainable growth.

The introduction of a Day 1 right to request flexible working in particular has potential to make a significant difference to enable greater numbers to participate in work as fully as possible, and thereby reduce economic inactivity and improve productivity across our economy.

Providing additional protections for pregnant employees and those returning to work after a period of maternity leave, adoption leave or shared parental leave is important for ensuring that employees are protected throughout their employment. Similarly, strengthening flexibility as to when and how paternity leave can be taken will assist working parents to find a balance between work and personal responsibilities that best meets their individual circumstances.

Addressing economic inactivity and enhancing workforce participation through inclusive policies not only improves individual livelihoods but also contributes significantly to the overall health of the economy and are positive steps towards achieving the Minister's economic vision.

Flexible Working

Purpose of this consultation

This part of the consultation seeks to inform the public about the Department's intention to introduce new primary and subordinate legislation which will amend the Employment Rights (Northern Ireland) Order 1996[49] and the Flexible Working Regulations (Northern Ireland) 2015[50].

The objective of the new legislation will be to enhance current rights and entitlements to flexible working for employees by:

- removing the current 26-week qualifying period before a flexible working request can be made, thereby making this a right available to both new and existing employees;
- allowing an employee to make two statutory requests in any 12-month period (the current entitlement being one such request); and
- removing the requirement that the employee must explain as part of the statutory request what effect the change would have on the employer and how that might be dealt with.

Please note the right to request flexible working only applies to those who have employee status, however, many workers may still have flexible working arrangements.

Background

Current right to request flexible working

Flexible working is an agreed way of meeting the needs of an employer and an employee through alternative approaches to working. These can include flexibilities such as flexible start and finish patterns; compressed hours; job sharing; part-time working; home, remote or hybrid working arrangements; or any combination thereof. It can also include a reversion to original working arrangements in circumstances where the need for flexible working arrangements were temporary, personal circumstances have changed or where this is agreed between the employer and employee as part of the application and approval process.

The statutory right to make a flexible working request was first introduced here in 2003 and was extended to all employees in 2015. Flexible working arrangements are an important means of ensuring the work and personal commitments of employees can be balanced. These may include those employees with childcare or unpaid caring responsibilities. It may also include employees with disabilities who have individual needs that may be met through a combination of reasonable adjustments and other agreed flexibilities.

49 Employment Rights (Northern Ireland) Order 1996
50 Flexible Working Regulations (Northern Ireland) 2015

The law currently entitles an employee who has been continuously employed for a period of at least 26 weeks to make a flexible working request in a prescribed format. Statutory frameworks can prove to be rigid in their application as they are designed to accommodate the widest range of circumstances. It is worth noting that an employer and their employees and workers are free to agree to any form of flexible working outside of the statutory framework. This can include varying or ending agreed flexibilities earlier where it meets the needs of the employer and employee.

Currently, a statutory flexible working request can only be made once in a 12-month period. In support of their application, the employee is required to explain the effect, if any, they believe the making of the flexible working change would have upon their employer and how this might be addressed.

An employee is entitled to be accompanied during a meeting with their employer to discuss a flexible working request should it be required. Of course, an employer may be able to accept a request for flexible working without the need for a meeting to take place. It is open to an employer and their employee to agree to a flexible working trial period or informal temporary flexible working arrangements, although it is recommended that any such agreement should be in writing.

Timescales for consideration of a flexible working request

Under the current statutory procedure, an employer should acknowledge receipt of a valid flexible working request and hold a meeting with the employee to discuss the request within 28 days.

The employer should inform the employee of the outcome of the request and any ground(s) for rejection within 14 days of that meeting.

If an application is rejected by the employer, the ground(s) for refusal should be set out in writing, together with the appeal procedure under which the employee is entitled to apply.

An employee is entitled to appeal against the employer's decision within 14 days after the date on which notice of the decision is given. An employer must then hold a meeting with the employee to discuss the appeal within 14 days of receipt and notify the employee of the outcome of the appeal within 14 days thereafter.

An employee is subsequently unable to make a further statutory flexible working request for 12 months. This applies even when the rationale or nature of the flexible working request differs from that of the original.

The uptake of flexible working

The Northern Ireland Statistics and Research Agency (NISRA) releases work quality statistical indicators sourced from the Labour Force Survey and from the Annual Survey of Hours and Earnings (ASHE)[51].

The July 2022 to June 2023 indicators showed an uptake of flexible working by 54.3%[52] of those who responded, showing a 6% increase since 2020. Across all indicators, flexible work has shown the largest difference between males and females since 2020. However, the gap has decreased from 20% in 2020 to under 15% in 2023. 61.5% of female employees who responded indicated they worked flexibly, with 46.9% of male respondees indicating the same.

There are modest variances in employees with flexible work by age group, with 51.7% of those aged 18 to 39 with flexible work, compared with 56.8% of those aged 40 and over. The difference is more pronounced when looking at those living in the most and least deprived areas. 50.1% of those living in more deprived areas work flexibly compared with 60.8% of those living in the least deprived areas.

The proportion of those responding to the survey employed in low skilled jobs who worked flexibly was broadly similar to those working in high skilled jobs at 55.8% and 53.1% respectively.

Remote working takes place outside of the traditional workplace environment - usually at home, or another place, and can be undertaken on a full or part time 'hybrid' basis. Whilst remote working is only one aspect of flexible working, it has become increasingly popular as a result of the Covid-19 pandemic. However, our uptake of remote and/or home working is the lowest across the UK[53].

In its July 2023 research 'Is remote working, working?'[54], the Ulster University reviewed remote working trends in various countries, including Britain, the south of Ireland, the United States and selected EU countries.

From 2001 until 2019, the UK saw a gradual increase in the percentage of employees declaring they mainly worked at home, from 2.2% to 4.8%, although the overall percentage remained low.

All UK regions saw an increase in working from home levels from 14.5% in Q4 2019 to 31.3% in Q1 2023; however, we have the lowest rates of working from home of any UK region as of 2023 and have witnessed the smallest percentage increase between 2019

51 Work quality in Northern Ireland statistics | Department for the Economy (economy-ni.gov.uk)
52 Work Quality in Northern Ireland – July 2022 to June 2023 | Northern Ireland Statistics and Research Agency (nisra.gov.uk)
53 Source- ONS, Labour Force Survey and UUEPC analysis
54 Remote working in Northern Ireland 2023 (ulster.ac.uk)

and 2023 at 7%, which was less than half of the UK average increase.

Productivity reported by employers has remained largely unchanged from 2019, although some adaptation was required to staff management and development. There were some adverse impacts upon mentoring and staff training.

80% of employees indicated they were satisfied with their current working arrangements, with most typically working remotely 2-3 days per week. Employees highlighted benefits to their productivity and improved wellbeing through reduced commuting time and better work-life balance, although some reported an 'always on' culture and home life distractions.

Benefits of flexible working

Flexible working can offer benefits to both the employer and their employees.

The benefits of greater flexible working are multifaceted: societal benefits through enabling working parents and carers to balance family commitments and responsibilities with work life; realising the potential for positive financial and environmental impacts[55] of fewer journeys; fostering a more diverse workforce[56]; and regionally balanced economic benefits by removing and addressing barriers to entering or remaining in the workforce, reducing the turnover of staff and associated costs. These cumulative benefits facilitate a more productive, innovative, inclusive and sustainable economy, aligned with the Department's Economic Vision.

There is evidence that employees whose flexible working needs are met by their employer are better equipped to balance their work-life commitments, making them happier, more engaged and more likely to remain in the workforce and with their current employer[57]. A recent ONS publication revealed that older workers working flexibly were more likely to be planning to retire later.[58]

Flexible working can enable those with caring responsibilities, disabilities, long-term or gender specific health needs, to access and remain within the workforce without having to utilise annual leave, unpaid or sick leave or consider leaving their employment altogether.

Flexible working may also help to close the gender pay gap by enabling those with primary

55 Tao et al (2023), Climate mitigation potentials of teleworking are sensitive to changes in lifestyle and workplace rather than ICT usage (pnas.org)

56 ONS Living longer: Impact of working from home on older workers and ILO- Working Time and Work-Life Balance around the World. CIPD Flexible working, teleworking and Diversity: An evidence review

57 In its publication 'How Hybrid Working From Home Works Out (ssrn.com)' the National Bureau of Economic Research found that hybrid working was highly valued by employees on average, reducing attrition by 33% and improving job-satisfaction measures. Carers NI and Women's Regional Consortium: Career or care- women, unpaid caring and employment in Northern Ireland- 72% of respondents indicted flexible working currently helps women balance unpaid caring roles with their employment.

58 Living longer: impact of working from home on older workers - Office for National Statistics (ons.gov.uk)

caring responsibilities, who are predominantly women[59], to remain or return to the workforce when work and life commitments can be better balanced.

Employers who are willing to accommodate flexible working requests are in turn better equipped to attract and retain staff, reducing the need, time and expense involved with recruiting and training new staff members[60]. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies[61]. A greater number of people are able to enter and remain in employment if their personal responsibilities and commitments can be accommodated in a flexible manner. This creates a more diverse workforce, to the benefit of the wider economy. Existing employees can make better informed decisions about new job opportunities when they are able to access the flexibilities they may need.

There can be direct benefits which impact an organisations bottom line, such as saving on workspace through hot desking or remote working.

The most progressive employers are those who introduce policies which provide enhanced benefits, including flexible working entitlements, which go beyond the minimum statutory obligations.

Employers who are open to considering flexible working requests by new or prospective employees are more likely to attract a broader range of candidates, including those already in employment who may otherwise be reluctant to leave a role which offers the flexibilities they require to balance their work and private lives. The Department believes more can be done to ensure a better minimum standard of consistent good practice for all employees.

Position in south of Ireland and Britain

Our statutory flexible working rights and entitlements have maintained a broad parity with similar rights and entitlements in Britain since 2003; however, as noted above, the uptake of these rights has been different across the various UK regions and indeed across different sectors of the local economy.

The Employment Relations (Flexible Working) Act[62] received Royal Assent in 2023. This Act, which applies only to England, Scotland and Wales, entitles employees to make 2 flexible working requests within a 12-month period; removed the requirement for an

59 72% of respondents to said flexible working arrangements help balance work and care commitments- Career or Care- Women, unpaid caring and employment in Northern Ireland, 2024

60 World Economic Forum- How Flexible working can unlock growth and positivity. 59% of workers surveyed agreed more with the statement 'I would only consider a new position or job that allow me to work from a location of my choice' than with a statement saying location would not matter. 64% were more likely to consider a role that allow for flexible hours than one that did not.

61 Behavioural Insights Team Research BIT's biggest trial so far encourages more flexible jobs and applications | The Behavioural Insights Team

62 Employment Relations (Flexible Working) Act 2023

employee to explain the impact of the request upon their employer and suggest how this could be mitigated; reduced the period within which a request must be considered from 3 months to 2; and introduced a requirement for an employer to consult an employee making a flexible working request before rejecting it. These rights are now available to all employees from the first day of their employment.

The Irish Government has implemented the EU's Work Life Balance Directive (EU) 2019/1158[63] via the Work Life Balance and Miscellaneous Provisions Act[64], which was signed into law on 4 April 2023. Under the Work Life Balance and Miscellaneous Provisions Act 2023 (Workplace Relations Commission Code of Practice on the Right to Request Flexible Working and the Right to Request Remote Working) Order 2024[65], all employees have a right to request remote work. An employer is required to consider such requests in accordance with its needs, the needs of employees and a new Code of Practice. Employees with children, and those with caring responsibilities, also have the right to request flexible working arrangements. An employer must consider the request in accordance with its needs and the employee's needs and must provide reasons if the request is refused.

Proposed changes to current flexible working rights

This section of the consultation sets out the proposed changes to our statutory flexible working rights, the rationale in support of those changes and poses the questions upon which we wish to hear your views. Your responses will be used to inform the final policy position and the making of future legislation.

The coronavirus pandemic had a profound and long-lasting impact on the work and personal lives of almost everyone. Many businesses and their employees were required to radically change their approach to work in order to meet the challenges posed by the pandemic. Home working, and the accelerated diversification in working practices brought about by the pandemic, meant that for many people for whom flexible working had not been a feature previously, it has now become the norm.

As restrictions slowly eased, the positive aspects of remote and other forms of flexible working became increasingly normalised for many, as employers now had a clear evidence base of the benefits these flexibilities can bring.

This change has encouraged wider debate about the approach to working practices and has highlighted the need for constructive and transparent engagement between employers and employees to ensure a suitable balance is struck between all parties when taking into consideration the individual's needs and circumstances. It is therefore timely for a review of, and to build upon, current flexible working legislation to better reflect today's blended working practices.

63 Work Life Balance Directive (EU) 2019/1158
64 Work Life Balance and Miscellaneous Provisions Act 2023
65 Work Life Balance and Miscellaneous Provisions Act 2023 (Workplace Relations Commission Code of Practice on the Right to Request Flexible Working and the Right to Request Remote Working) Order 2024

We therefore propose to modernise current legislative requirements to better align them with today's economy. These proposals are set out in more detail below and a series of questions asked to gauge your opinion on each policy proposal.

We believe that a day 1 right to request flexible working arrangements will encourage uptake of those rights whilst recognising that not all roles will be suitable for a particular or any form of flexible working.

We also believe that flexible working arrangements agreed through consultation between an employer and their employee strike the correct balance and best reflect the needs of the individual and their role whilst providing the ability for businesses to effectively plan the delivery of their organisational objectives. We believe this approach is supported by the low number of early conciliation notifications received by the Labour Relations Agency involving a flexible working request over the past 4 years.

Timescale for considering flexible working requests

At 6 weeks, our current timescales for consideration of a statutory flexible working request are already shorter than the reduced 2-month period in Britain – we intend to keep the maximum period of 6 weeks in our statutory process. This approach is intended to minimise the need to adjust current working practices and policies by businesses.

The duty of an employer to meet with an employee and discuss a flexible working request already exists. It is a procedural duty which can result in a complaint to an industrial tribunal if not fulfilled. It is also not proposed to amend this requirement.

Number of flexible working requests within a 12-month period

The need for flexible working requests to be considered, and the nature of flexible working required to meet that need, can evolve in line with personal circumstances. In particular, the nature of some types of caring responsibilities can evolve rapidly. To reflect the fact that personal circumstances can and do change over time, the Department believes it is right that employees should be able to make more than one flexible working request in a 12-month period. It is therefore proposed that an employee should be able to make two statutory requests within a 12-month period.

The Department intends to keep the operation of the enhanced rights and entitlements under review to determine whether increasing the number of statutory requests in a 12-month period is appropriate in the future. To facilitate this the Department is proposing to amend the existing legislation in such a way so as to be able to make any such future amendments through regulations.

Question D1

Do you agree that an employee should be entitled to make up to two statutory flexible working requests within a 12-month period?

Concurrent flexible working requests

To ensure an employer can properly consider a flexible working request, and to reflect the 6 week timeframe within which such a request must be considered by an employer, the Department proposes that an employee should only be able to make a second flexible working request when the previous request has been fully determined.

Question D2

Do you agree that an employee should only make a second flexible working request when an employer has considered a previous request, including when an appeal against the outcome of that request has been made?

Day 1 right

The Department believes that a right to request flexible working from the first day of employment would be mutually beneficial to the employer and employee. Knowledge that such a right exists would serve to encourage a more diverse range of candidates to apply for a vacancy; empower those who may otherwise feel unable to enter the workforce due to personal circumstances such as caring responsibilities, disabilities and long-term health conditions, to apply for roles; and enable those already in employment to consider moving to a new role or employer if they are able to avail of the same flexibilities as they benefit from in their current role. A day 1 right to request flexible working will also encourage employers to include the flexible working options as part of a job advertisement to attract the best and widest range of candidates.

Question D3

Do you believe an employee should be entitled to make a flexible working request from the first day of their employment?

Stating the potential impacts of a flexible working request

The Department believes that an employee should no longer be required to highlight the potential effect a request for flexible working may have on their employer and how this could be addressed.

Such a requirement may discourage some employees from making a flexible working request and will often frame such a request in the negative. An employer will still be able to discuss such matters during a meeting with their employee and will remain entitled to refuse a flexible working request if one or more of the statutory grounds apply.

Question D4

Do you agree that an employee should no longer be required to explain the effect a flexible working request would have on their employer when making such a request?

Additional Information

You may provide additional information or clarification to any response made at question D5 of the consultation question section.

Carer's Leave

Purpose of this consultation

This part of the consultation seeks to inform the public about the Department's intention to introduce new primary and subordinate legislation which will create a new right to up to one week of leave for eligible employees who have caring responsibilities. The legislation will support those employees to balance their caring responsibilities with their work commitments.

The objective of the new legislation will be to:

- Create a right for eligible employees to take up to one week of leave per year to provide care for a family member or other dependant who has a longer term or otherwise significant care need;
- Define the relationship between the employee and the person cared for, for eligibility purposes;
- Define what types of care are appropriate to create an entitlement to carer's leave;
- Define why and how carer's leave can be taken; and
- Establish legal protections for employees exercising a right to carer's leave.

Definitions

For the purposes of this consultation, the term 'carer' refers to an employee providing unpaid care to:

i. a spouse, civil partner, child or parent; or
ii. someone who lives in the same household (other than as a boarder, employee, lodger or tenant); or
iii. someone who relies upon their carer to provide or arrange care; and either
iv. someone who has an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than 3 months; or
v. someone who has a disability under the Disability Discrimination Act 1995[66]; or
vi. someone who requires care for a reason connected with old age.

The current position

The 2021 Census identified that there were in excess of 220,000[67] unpaid carers in the north of Ireland, 180,000 (83%[68]) of whom are of working age. Approximately 51% of those who provide unpaid care were working either full time (34%) or part time (17%)[69] and are not eligible for Carers Allowance. This number is likely to increase significantly in the coming decades with the greater demand for care driven by an ageing society[70].

66 Disability Discrimination Act 1995
67 Get data for your table | NISRA Flexible Table Builder
68 Results | Northern Ireland Statistics and Research Agency (nisra.gov.uk)
69 Department for Communities - Family Resources Survey 2021/22 - Family Resources Survey 2021-22 (communities-ni.gov.uk)
70 Phase2sansTOC.book (oecd.org)

There is extensive research showing that informal care is associated with leaving employment, a reduction in hours worked and other employment effects such as taking on fewer senior roles, disruptions to working patterns and absenteeism. Studies[71] over time have found women who became unpaid carers were more likely to leave their employment than women who did not become unpaid carers.

Unpaid carers currently have no specific right to leave for the purpose of providing care. However, there are several alternative existing employment rights and practices which can help people to balance work and other responsibilities, although these are not exclusive to those with caring responsibilities.

These include:

- The statutory right to request flexible working, where employees can request flexibilities including a change to their hours, working patterns or remote working.
- Statutory leave (annual leave), which allows most workers 5.6 weeks' (pro rata) paid holiday per year.
- The right to time off for dependants, which allows employees a reasonable amount of time off for emergencies involving a dependant.
- Unpaid parental leave, which allows parents up to four weeks of unpaid leave per child each year to spend time with their child (within an allowance of 18 weeks per child over the first 18 years of his or her life)[72].

Alongside these measures, eligible carers who meet the low earnings threshold may be able to access additional financial support, including Carer's Allowance and Universal Credit, to help meet their needs and support those who are able to remain in employment.

Legislation sets the minimum standards of rights all eligible employees can expect to receive. Many employers voluntarily go beyond their statutory duties by offering informal and statutory flexible working arrangements for their employees, to meet individual circumstances. Examples can include agreed variations on an ad hoc basis to start or finish time or the granting of leave for caring purposes as a part of special leave policies.

POSITION ELSEWHERE

South of Ireland

In the south of Ireland, eligible unpaid carers who are employees may avail of a minimum of 13 weeks and a maximum of 104 weeks of unpaid carer's leave. Carers and parents of younger children (up to 12 years or 17 if the child has a disability) can also avail of 5 days of unpaid leave in a 12-month period.

71 cni-soc22web.pdf (carersuk.org)
72 Parental leave entitlement | nibusinessinfo.co.uk

Britain

The Carer's Leave Regulations 2024[73] came into force in England, Scotland and Wales on 6th April 2024. They entitle qualifying employees in Britain to avail of one week's (based on the employee's contracted working pattern) unpaid leave in any 12-month period to provide care for a family member or other dependant who has a long-term care need.

European Union

In the EU Work-Life Balance Directive 2019/1158, Article 6 (Carers' Leave) sets the minimum standard regarding Carers' Leave:

Member States shall take the necessary measures to ensure that each worker has the right to carers' leave of five working days per year. Member States may determine additional details regarding the scope and conditions of carers' leave in accordance with national law or practice. The use of that right may be subject to appropriate substantiation, in accordance with national law or practice.[74]

Proposed new entitlement to Carer's Leave

The Department recognises the vitally important role that unpaid carers provide not only to the people they care for, but to our economy and society as a whole and the often-significant personal sacrifices this can entail.

These personal sacrifices can include an individual with caring responsibilities having to reduce their working hours or leave the workforce altogether. It can also preclude some carers from being able to enter or re-enter the workforce. This impact is particularly significant upon women who, similar to the provision of childcare, bear the greatest responsibility when it comes to providing unpaid care[75].

The support required by unpaid carers to be able to better balance their work and personal commitments in order to remain within or enter the workforce are often complex and cut across the responsibilities of numerous Executive Ministers. There can be no single solution to this issue and it is important that a joined-up approach is taken to consider all options, including the benefits and costs of each. These must be agreed at Executive level.

There have been calls for the right to carer's leave to be a paid right. Any paid right which goes beyond the equivalent provision in Britain must be fully funded by the Executive.

73 Carer's Leave Regulations 2024
74 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU
75 Career or Care (carersuk.org)

In their publication 'Delivering carer's leave in Northern Ireland: Policy options and cost modelling, Carer's NI estimated the cost of paid carer's leave to be between £10.3-£15.2m per year[76]. These calculations contain a number of assumptions as to the percentage of persons taking up the leave (between 23% and 34%), the rate of pay and the average number of days taken at 3.4 out of 5. However, initial estimates undertaken by Departmental economists suggest that the cost of introducing a right along the lines proposed could be as high as £60 million per annum, which is a significant cost given the very difficult financial situation facing the Executive. There would also be an initial set-up cost of several million pounds and an annual administrative cost. Given the wide range of estimates, and the significant values involved, careful modelling of the uptake of paid carer's leave and an informed assessment of the benefits would be needed before any decision to introduce such an entitlement could be properly considered.

In addition to the potential cost of paid carer's leave to the block grant, there are several other potential implications which may arise from paid leave which would need to be fully explored. These include the requirement for HMRC to make system changes to facilitate the payment of the leave should it be a statutory payment rather than a payment made by the employer. Such changes are likely to delay the implementation of the right to facilitate the implementation of the system changes and delivery of supporting guidance for employers and employees.

Consideration would also need to be given to who should make the payment, i.e. whether it should be a statutory payment or a payment made by the employer; what rate the payment should be made at, e.g. at the rate of statutory sick pay, at the statutory rate of pay for other statutory entitlements such as maternity, paternity and parental bereavement leave or at full pay; the length of the entitlement; the relationship between the person providing the care and the person or persons being cared for; the nature of the care being provided; and whether an evidential basis to satisfy eligibility for the leave and pay is required. These are complex considerations which could have an impact upon how and when the leave entitlement could be introduced. The regulatory impact of paid carer's leave would also have to be assessed.

Question D6

We would welcome your views on whether carer's leave should be a paid right; and, if so, who should be responsible for making the payment and what the rate of pay should be. In answering these questions, we would be grateful if you would provide reasoning for your responses and identify any issues or benefits with your suggested approach.

The Department of Health is leading cross-Departmental work on unpaid carers through an officials' group on which the Department for the Economy is represented. We believe that it is important that the possibility of paid carer's leave is fully considered alongside other potential interventions to support carers, informed by a robust evidence base for future policy decisions, and the Minister intends specifically to commission this group to consider the issue.

76 delivering-carers-leave-in-northern-ireland-policy-options-and-cost-modelling.pdf (carersuk.org)

In the meantime, it is clear that a right to leave in itself, as recently introduced in a range of jurisdictions, can play a significant part in enabling carers to fulfil their caring responsibilities while remaining in work.

The Department is therefore currently proposing to give eligible carers the right to take up to one week of unpaid leave per year (based on an employee's contracted working pattern), to provide care for a family member or other dependant who has a long-term care need. This section considers how to best design that entitlement.

The aim of this legislation will be to give individuals the flexibility to provide care during regular working hours. It would be additional to existing entitlements such as flexible working, annual leave and unpaid parental leave and allow further opportunity to take time out of work in situations when the need for care is particularly intense or to manage day-to-day needs. As such, the Department's priority is to ensure that the leave is widely available to those who require it, while ensuring any impact on employers will be proportionate.

The legislation for Carer's Leave would form the minimum leave entitlements for eligible employees. All employers are encouraged to introduce a carer's leave entitlement for their employees before they are legally obliged to do so and to consider enhancing the entitlement in length or offering pay during the leave period.

The ability to take Carer's Leave should help employees with caring responsibilities to enter the workforce, increase their hours or support them to stay in work for longer while providing them with the flexibility to take time out to manage caring responsibilities. This would have longer-term positive impacts on their financial situation, their work life balance and, accordingly, their own health and wellbeing. For employers, this would support productivity by preventing burnout among carers and by supporting retention of valued expertise and reducing recruitment and induction costs[77].

Who would be eligible to take Carer's Leave?

Eligibility to take Carer's Leave should be based on criteria which are easy for the employee and their employer to understand.

We believe the determining factors should be the employee's relationship to the person cared for, who has an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than 3 months or has a disability under the Disability Discrimination Act 1995[78] or requires care for a reason connected with their old age.

77 Anonymous large business responses to Britain's Carer's Leave consultation
Carer's Leave Consultation (GB) Government Response

78 Disability Discrimination Act 1995

Relationship between the employee and the person cared for

The majority of unpaid care takes place within families, who may or may not live within the same household. In the north of Ireland, living in rural areas has been reported as a specific barrier to women providing unpaid care and remaining in employment due to the poor infrastructure[79].

Caring can also be provided by neighbours, friends or other people who are not related to each other. Therefore, we believe the definition of 'relationship' between the person providing the caring, and the person or persons being cared for should be flexible so as to accommodate individual family circumstances.

We propose that the definition for Carer's Leave should broadly mirror dependant relationships under the right to time off for dependants to ensure this new right is consistent with other rights and entitlements. This should make it easier for businesses to understand their responsibilities with respect to the new rights and maintain consistency with similar rights and entitlement in Britain. This would mean that a person could take Carer's Leave to care for:

- A spouse or civil partner; or
- A child; or
- A parent; or
- A person who lives in the same household as the employee (other than as an employee, tenant, lodger or boarder); or
- A person who reasonably relies on the employee for care.

Question D7

Do you agree that the definition of caring relationships for the purpose of Carer's Leave should mirror that used for dependant relationships?

Nature of the care being provided

We propose that Carer's Leave entitlements should be available to those caring for individuals with physical or mental health problems that requires or is likely to require care for more than three months, a disability or issues related to old age. As such, it could help those people who struggle to stay in work because of their caring commitments.

This is intended to ensure that the leave is available to those who have significant caring responsibilities which means they are at risk of struggling to remain in work in the longer-term.

79 Career or Care (carersuk.org)

There may also be some specific care needs which should automatically qualify as care needs for the purposes of Carer's Leave, regardless of their duration. The Department believes that these should mirror those conditions which are treated as a disability under the Disability Discrimination Act 1995 and also automatically apply in situations of terminal illness.

Question D8

Do you agree a carer providing care for an individual with physical or mental health problems likely to last for more than three months, or a disability, or who requires care for a reason connected with their old age should be entitled to take Carer's Leave?

Why leave can be taken

Caring can include a wide range of activities including providing and arranging care. Caring may also involve accompanying someone to medical or other recurring appointments (such as with a bank) which usually occur during normal working hours. If such appointments are recurring and predictable, this need for flexibility might in many cases be met through flexible working. However, we are aware that many carers still rely on annual leave for appointments.

The varied nature of caring could make it challenging for employees and employers to identify what the proper use of the leave should be. On the other hand, a narrow definition of the specific activities that the leave can be used for could create a cumbersome burden of proof and mean that the leave might not be available to those with genuine needs. We therefore propose to define 'caring' broadly.

Question D9

Do you agree the reasons for taking Carer's Leave should be broadly defined?

What the leave cannot be taken for

The purpose of Carer's Leave is to help people who struggle to remain in work due to caring commitments by offering them further flexibility to provide care. There are some situations which we do not currently view as being in scope of the leave. These include the provision of short-term care which are already catered for under different rights and entitlements, and the provision of childcare other than where the child has a condition which lasts for more than three months, a disability or a terminal illness.

Question D10

Do you agree that caring for a person with short-term care needs and childcare (other than where the child has a disability or other long-term caring needs) should be out of scope for Carer's Leave?

How carer's leave can be taken

We are proposing to introduce an entitlement of up to one week of unpaid Carer's Leave per rolling 12-month period. The number of days available to take would apply to the individual employee, rather than the number of people they are caring for. Under this approach, those caring for more than one person would not get extra leave days, but two individuals could each take one week of leave to care for the same person. The actual number of days available could be linked to the equivalent of a full working week for a person, meaning that it would be pro-rated for part-time work.

We believe that the leave right should have flexibilities in place to allow it to be taken as individual days or half-days, up to one whole week (pro-rated for part-time employees) so as to offer the greatest flexibility for carers while balancing the impact on employers from staff being away and administering the leave.

Question D11

Do you agree that the leave should be available to be taken as individual days or half days up to one whole week (both options to be pro-rated for part-time employees)?

Notice period when requesting the leave

The Department wants to ensure that employers can grant Carer's Leave requests, by providing them with the opportunity to plan ahead for staff absences, thereby making the administration of the requests proportionate, balanced with the need for flexibility to allow carers to respond to changing circumstances, which are not necessarily emergencies but could be difficult to plan for far in advance – such as if a dependant's condition deteriorates.

Notice periods for statutory leave entitlements vary considerably depending on the type of leave being requested. We propose that, as with other types of leave, a period of notice should be required before taking Carer's Leave. We propose that the period of notice should be the earlier of twice as many days as the amount of leave to be taken or three days in advance of the leave. In cases of emergency where such a notice period is not practicable, such notice should be as soon as reasonably practicable.

Question D12

Do you agree that an individual should be required to give their employer notice ahead of taking Carer's Leave?

Employment protections

We propose that an employee who takes time off for Carer's Leave should have similar employment protections as those which apply to other kinds of statutory leave. These include the right for an employee to not be subjected to any detriment because they have taken the leave. If an employee is dismissed for the reason or principal reason that they took or sought to take time off in accordance with the right, they will be able to claim automatic unfair dismissal. We also propose that employees would be able to present a complaint to an industrial tribunal that their employer has unreasonably refused to permit them to take time off.

Question D13

Do you agree an employee exercising their right to request or take unpaid Carer's Leave should have the same protections as those taking other forms of statutory leave?

Additional Information

You may provide additional information or clarification to any response made at question D14 of the consultation question section.

Neonatal Care Leave and Pay

Purpose of this consultation

This part of the consultation seeks to inform the public about the Department's intention to introduce new legislation which will create a new statutory entitlement to leave and pay for eligible working parents.[80]

The objective of the new legislation will be to create new rights and entitlements which will:

- allow eligible working parents of newborn babies who enter neonatal care in the first 28 days following birth and who receive at least 7 days' continuous neonatal care to receive one week of leave and/or pay for each week the child remains in neonatal care up to a maximum of 12 weeks;
- determine when and how, including the notice period, the leave and/or pay can be taken;
- determine what evidence an employer is entitled to request from an employed parent who is requesting neonatal care leave and/or pay; and
- create legal protections from detriment for a person intending to take, taking or returning from a period of neonatal care leave and/or pay.

Background

Research[81] [82] [83] demonstrates that family-friendly work-place policies can bring benefits for both employees and their employers.

Our employment law framework currently implements a suite of policies which aim to support working families in balancing their work and personal lives. The system of support is broad, covering entitlements to maternity, paternity and adoption leave and pay; parental leave; shared parental leave; flexible working; and time off for dependants (compassionate leave). More recently, parental bereavement leave and pay legislation created a statutory right for eligible employed parents who experience the tragic circumstances of the death of a child under 18 or from a still birth, to paid time off from work.

80 The neonatal care leave element would be available to eligible employees that meet the conditions for entitlement. For the purpose of the leave element, an employee is defined in Article 3 of the Employment Rights (Northern Ireland) Order 1996. For the purpose of the proposal for the statutory pay element of neonatal care, the term "employee" extends to eligible employees and workers. Both, workers and employees would have to satisfy the earnings and continuous employment requirements that are long established in the framework for Statutory Payments (Maternity, Adoption, Paternity, Shared Parental and Parental Bereavement).

81 Family friendly working policies and practices: Motivations, influences and impacts for employers UK Government Equalities Office / University of Warwick October 2019

82 Irish Congress of Trade Unions – Toolkit for Developing Family Friendly and Work Life Balance Initiatives December 2002

83 Costs and Benefits to Business of Adopting Work Life Balance Working Practices: A Literature Review June 2014

Notwithstanding the existing suite of family-related leave entitlements, the Department recognises that leave and pay entitlements could be strengthened to support working parents better in circumstances where their child is born sick or prematurely and requires neonatal care. Such support would assist in resolving some of the potential challenges that parents face in these distressing circumstances and aims to address barriers parents may encounter to returning to and staying in the labour market following the birth of their child.

Current rights and entitlements

Currently, there is no distinct right to leave and/or statutory pay for working parents whose newborn requires neonatal care. This means that, for some *mothers and adopters*[84], much of their maternity/adoption leave entitlement will be used during the period their baby is receiving neonatal care. For fathers and partners, their whole two weeks' paternity leave could be used supporting their partner and baby in hospital.

Where a baby is in neonatal care for a prolonged period, many fathers and partners will be required to use holiday pay, sick leave, unpaid leave or rely upon the good will of their employers to accommodate their immediate need to be with their sick baby/babies, after their paternity leave has ended. In extreme circumstances, some will be left with little option but to leave their employment or be forced to return to work for financial reasons, or to safeguard their jobs, rather than spending quality time and bonding with the newborn once current leave entitlements have been exhausted.[85] This is clearly an unsatisfactory additional burden for any working parent who finds themselves in these distressing circumstances.

POSITION IN THE SOUTH OF IRELAND AND BRITAIN

South of Ireland

Maternity Protection Act 1994 (as amended by the Social Welfare Act 2017)[86]

In addition to 26 weeks of maternity leave, a mother is entitled to an extra period of maternity leave in the circumstances where the baby is born preterm.[87] [88] To qualify for the leave, a mother must be an employee; if an employee has enough Pay Related Social Insurance contributions, they are entitled to Maternity Benefit for both the 26 weeks and the extended period of leave in the case of a baby born prematurely.

84 It is important to highlight that the term "mother" will apply to all people who have given birth, and the term "adopter" means any parent that has declared themselves to be entitled to Statutory Adoption Leave and/or Pay - this may include the mother or a father to the child, depending on the various experiences and make up of the modern family.

85 It's not a game: the very real costs of having a premature or sick baby in Northern Ireland: Bliss / TinyLife report 2014

86 Maternity Protection Act 1994 (as amended by the Social Welfare Act 2017)

87 Government Policy Changes - INHA - Irish Neonatal Health Alliance

88 Maternity leave (citizensinformation.ie)

The extra period will commence at the end of the standard 26-week period of paid maternity leave. The additional period to be added will be the number of weeks from the baby's actual date of birth up to two weeks before the expected date of confinement which would have been the 37th week of the pregnancy, at which point the entitlement to 26 weeks' leave and benefit would normally begin. So, for example, where a baby is born in the 30th week of gestation the mother would have an additional entitlement of approximately 7 weeks of maternity leave and benefit, i.e. from the date of birth in the 30th week to two weeks before the expected date of confinement.

This additional period of leave and Maternity Benefit for premature births has been in place since 2017.

Britain

Neonatal Care (Leave and Pay) Act 2023

The Neonatal Care (Leave and Pay) Act[89] gained Royal Assent on 24 May 2023. Regulations to operationalise this entitlement are anticipated to come into force in April 2025 in England, Scotland and Wales. As employment law is a devolved matter, this legislation and supporting regulations will not apply here.

This Act provides a right for eligible parents, whose child enters into neonatal care in the first 28 days following birth and spends at least 7 continuous days in care, to receive one week of leave and/or pay for each week the child remains in neonatal care. This is anticipated to be up to a maximum of 12 weeks. Leave will be a day-one right and pay will be available to those employees who meet continuity of service and minimum earnings tests.

Further detail will be set in regulations including:

- definition of a neonatal parent and neonatal care;
- conditions to be satisfied for leave and pay;
- maximum duration of leave and pay;
- how and when leave and pay can be taken;
- notice and evidence requirements; and
- employment protections.

Proposed Changes

During the consultation in 2020 on parental bereavement leave and pay, some respondents called for the introduction of neonatal care leave and pay for new parents whose children are in hospital for a long period following birth. In its response to the consultation, the Department stated that it considered this to be outside of the scope of the proposed policy on parental bereavement leave and pay but advised that it would keep the entire suite of employment rights under review to ensure that they meet the needs of both employees and employers.

89 Neonatal Care (Leave and Pay) Act 2023 (legislation.gov.uk)

Family-related leave and pay entitlements provide support to working parents during different life events. We believe more support should be available for working parents whose baby or babies have a prolonged stay in neonatal care following birth.

We understand there are many challenges these individuals can face which may impact on their ability to return to and stay in work.

In their 2014 joint report "It's not a game: the very real costs of having a premature or sick baby in Northern Ireland" the premature baby charities, TinyLife and Bliss, outlined various challenges faced by parents of babies in neonatal care.

Parents who contributed to the report felt that maternity and paternity leave entitlements were not long enough and could well be exhausted while the baby is still in neonatal care.

In addition, parents of babies who received neonatal care reported that work commitments affected how much time they could spend at the hospital with their babies. In 2019 Bliss conducted a survey[90] of over 700 parents and found that 66% of 'dads' and partners reported that they had no choice but to return to work while their baby was still receiving specialist neonatal care and 24% of 'dads' said they were concerned for their job if they asked for more time off. 36% of 'dads' resorted to being signed off sick in order to spend time with their baby on the neonatal unit. 77% of these parents felt like their parental leave was not long enough, with this figure rising to 90% of parents whose baby spent 10 or more weeks in neonatal care, and 95% of 'dads'.

11% of parents left their jobs altogether due to having insufficient leave after their baby was admitted to neonatal care. Half of all parents would have liked to take more parental leave but couldn't afford to take any longer off work. The 2014 report also highlighted the worry and anxiety caused by the financial strain of incurring additional financial costs associated with having a baby in neonatal care. There could also be a significant or total drop in salaries if parents resort to unpaid or sick leave or leave work altogether to be with their child in neonatal care, which would also add to the financial strain.

The Minister has committed to ensuring that parents of babies who experience prolonged stays in neonatal care will be able to take time away from work to deal with the immediate challenges this presents, including to provide support to the other parent and to provide time to care for and bond with the child.

We therefore propose to give eligible working parents of babies admitted to neonatal care following birth an additional week of statutory leave and/or pay for each week that their child is in hospital up to a maximum number of 12 weeks. Where a parent has multiple births, the maximum entitlement to neonatal care leave and/or pay will not increase, i.e. having more than one baby in care at any one time will still give rise to only one entitlement to leave and/or pay.

90 Bliss' 2019 Survey Findings

The provision of statutory neonatal care leave and/or pay will go some way to help alleviate some of the challenges faced by parents of babies in neonatal care and provide minimum standards to which all employers will be required to adhere. It is acknowledged that the provision of these new rights and entitlements will provide a minimum level of entitlement for eligible working parents who require additional support and safeguards but will not necessarily fully satisfy the needs of every person who avails of them.

The safeguards will only represent the baseline of statutory rights and entitlements all working parents can reasonably expect to receive. The most compassionate and understanding employers will seek to go above and beyond these minimum standards and all employers are strongly encouraged to do so.

This consultation focuses upon what we believe to be the essential pillars of neonatal care leave and pay legislation:

- eligibility & qualifying conditions for leave and pay;
- length of entitlement;
- notice and evidence requirements;
- when and how the entitlement can be taken;
- employment protections; and
- statutory provision for payment.

The following pages set out the proposed policy position and the rationale which sits behind them. We would value your views on these matters and your responses will help finalise the policy position which will inform the drafting of the legal framework.

Proposal for a new entitlement to Neonatal Care Leave and/or Pay

In recognition of the challenges faced by working parents and to provide better support to them whilst their baby is receiving neonatal care for a prolonged period, we propose to legislate for neonatal care leave and pay entitlements. This would create an entitlement to be absent from work to care for the baby, so that, as far as possible, parents have additional time either while the baby is receiving care or, when discharged, at home with their child to compensate for the time their child was in hospital after the birth.

We propose that eligible working parents of babies who spend a minimum of seven continuous days in neonatal care, or who receive inpatient care in a post-natal ward or specialist ward, which starts in the first 28 days following birth, accrue one week of neonatal care leave and/or pay for every week (comprised of 7 continuous days) that their baby is in neonatal care, up to a maximum of 12 weeks. As maternity leave cannot be interrupted, it is proposed that this entitlement would be added on to the end of the period of maternity leave.

For working fathers and partners who would otherwise, if eligible, have a maximum of two weeks' paternity leave, which must currently be taken as a single block of 2 weeks within 56 days of birth or placement for adoption[91] (plus any additional leave entitlements), neonatal care leave and/or pay will facilitate this employee to be absent from work in order to be with their baby or babies whilst they are in neonatal care.

Neonatal care leave and/or pay would enable an additional period of time to be spent caring for the baby at home, anticipated to be taken at the end of a period of maternity or adoption leave, which will replace the time that would have been spent doing this following the birth, had the baby not been admitted to neonatal care.

Existing provisions for other family-related leave and pay rights would be unaffected by this statutory right. This would be a new, additional entitlement.

Supporting working parents in this way will not only help alleviate the stress and pressure on parents, but, as various studies have highlighted, there are positive outcomes from implementing family-friendly working policies including helping parents maintain their attachment to the labour market, better productivity, and reduced absenteeism. All of this will contribute to both short-term and long-term benefits for the child, their parents and their family, the economy and wider society.

Question D15

Do you agree that parents of babies who enter neonatal care in the first 28 days following birth and who spend at least 7 continuous days in neonatal care should have an additional week of statutory leave and/or pay from work for each week that their child is in hospital, up to a maximum number of 12 weeks?

Eligible Persons

We believe employees who would have had the main responsibility for caring for the baby or babies, had they not been admitted to neonatal care should be eligible to receive neonatal care leave and/or pay.

These employees are more likely to need to take time off work to spend time with their new baby or babies in neonatal care, or to care for them at home once discharged, thereby compensating for the time spent in neonatal care.

This means that the following groups of parents would potentially be eligible for neonatal care leave and pay:

- The mother of the baby or babies;
- The father of the baby or babies;

91 Please see the Paternity Leave section of this consultation chapter to respond to proposed changes to how and when paternity leave can be taken.

- The mother's spouse, civil partner or a partner who will be living with the mother and baby that is in neonatal care in an enduring family relationship;
- The intended parents in a surrogacy arrangement (where they are eligible for and intend to apply for a Parental Order); and
- The intended parents in cases of adoption, where the intention was that the baby or babies would be placed with the individuals that they have been matched with at birth or shortly after birth.

Question D16

Do you agree that employees who would have had the main responsibility for caring for the child, had their baby not been admitted to neonatal care, should be eligible to receive neonatal care leave and/or pay?

Duration of stay in neonatal care for eligibility to access Neonatal Care Leave and/or Pay

We propose that access to neonatal care leave and/or pay should be available to working parents whose baby or babies have been in neonatal care for at least 7 continuous days or more.

We believe that 7 continuous days is the right threshold for accessing this entitlement. For those fathers/partners who would not be eligible for paternity leave and pay and therefore would have no statutory entitlement to paid time off from work, being eligible for neonatal care leave after their child spends a minimum of 7 continuous days in neonatal care should go some way to alleviating some of the challenges faced.

This will ensure that the policy focuses on those most in need of additional support, as it targets parents of babies who experience prolonged stays in hospital (weeks of admission) as opposed to those who face short stays (days of admissions). Parents of children who spend a matter of days in hospital are less likely to face the same challenges in taking time off from and returning to work as those whose babies spend a prolonged time in hospital.

Question D17

Do you agree that access to neonatal care leave and/or pay should be open to parents whose babies have spent a minimum of 7 continuous days in neonatal care, i.e. are seriously ill or likely to be in hospital for an extended period of time?

Other circumstances

There may be other circumstances where a baby is receiving life-supporting hospital-level neonatal care other than at hospital, for example, oxygen therapy, which the parents will administer at home. We would like to hear your views on this or other examples/ circumstances that we may wish to consider for inclusion within the scope of the provision.

Question D18

Are there other circumstances that you think should be considered for inclusion within the scope of neonatal care leave and/or pay? What are they?

Proposed Qualifying Conditions

Duration of Employment

Neonatal Care Leave

We propose that eligible employees whose baby or babies enters neonatal care in the first 28 days following birth and spends at least 7 continuous days in neonatal care will have a day-one right to neonatal care leave. This means that eligible employed parents would be eligible for the leave irrespective of the length of service with their employer, so could qualify for neonatal care leave even if they don't qualify for other parental leave entitlements such as paternity leave which requires an employee to have 26 weeks' continuous employment with their employer.

Making neonatal care leave a day-one right mirrors the approach taken to other parental leave entitlements such as maternity leave, adoption leave and parental bereavement leave.

Question D19

Do you agree that neonatal care leave should be a 'day one right' in line with maternity leave, adoption leave and parental bereavement leave?

Neonatal Care Pay

As previously mentioned, proposals to make neonatal care leave a day one right mirrors the approach taken to other family-related leave.

We propose that, as far as practicable, qualifying conditions for neonatal care pay should mirror those conditions for existing family-related statutory payments, such as statutory paternity pay and shared parental pay.

This would mean that in order to qualify for neonatal care pay parents must have:

- average earnings over a prescribed reference period above the Lower Earnings Limit[92] and be continuously employed by the employer who is liable to pay them neonatal care pay up until the baby's birth; and
- have at least 26 weeks' continuous service with their employer at the 'relevant week'. This week will be the same as for claiming maternity, paternity (birth and adoption), and adoption pay; in any other case the relevant week will be the week immediately before the one in which neonatal care starts.

92 The Lower Earnings Limit (LEL) is the amount of earnings required to allow an employee to qualify for certain state benefits. This is £123 a week if the end of your qualifying week is in the 2024-2025 tax year.

This will provide both consistency and ease to employers who will administer the entitlement.

Statutory neonatal care pay would be paid by the parent's employer. The employer will then be able to reclaim a proportion of it from HM Revenue & Customs. Neonatal pay would be paid at the statutory flat rate (currently £184.03 for the year 2024/25) or 90% of average weekly earnings where that is lower.

Question D20

Do you agree that the qualifying conditions for statutory neonatal care pay should mirror the qualifying conditions for other family-related statutory pay?

Duration of the Entitlement

We have set out our proposal that eligible parents of babies admitted to neonatal care in the first 28 days following birth and who spend at least 7 continuous days in neonatal care accrue a week of neonatal care leave and/or pay for every week (comprised of 7 continuous days) that their baby receives neonatal care.

In addition, we propose that the potential length of neonatal care leave and pay should be capped at a maximum number of 12 weeks. This will ensure that the support provided by this entitlement is proportionate to the length of time that the baby spends in hospital, so that parents of the most severely ill babies can take time out of work to be with their babies for longer.

We understand that the length of time that babies spend in neonatal care varies according to their gestational age and the complexity of their health needs. According to statistics from the Hospital Inpatient System obtained from the Department of Health for 2022, 45% of babies admitted to a neonatal care unit spend less than one week in hospital before being discharged home; of those babies admitted to a ward setting, 94% are discharged in less than 7 days. A smaller proportion of babies, 22% and 4%, spend one week in a neonatal care unit or ward setting, respectively. This proportion decreases as the length of stay increases, with 17% and 1% of babies spending four weeks or more in a neonatal care unit or ward respectively. Of those babies receiving neonatal care, fewer than 1% will remain in care for more than 12 weeks.

Where babies spend more than 12 weeks in a neonatal care unit or ward setting (0.8% and 0.1% respectively) their parents will, in most cases, be eligible for other family-related leave entitlements, for example paternity leave (fathers/partners); maternity/adoption leave, shared parental leave (both parents) parental leave (both parents), and these, together with neonatal care leave and/or pay of up to 12 weeks, should provide enough cover for the majority of those parents.

We therefore believe that capping the leave and pay at 12 weeks provides a fair balance between the need for businesses to plan for employee absences and the needs of parents to be with their baby. In addition, having a cap will help ensure affordability and for this entitlement to be paid.

Question D21

Do you agree that the entitlement to neonatal care leave and/or pay should be available for up to 12 weeks (each week to be comprised of 7 continuous days) that a baby is in neonatal care?

NOTICE AND EVIDENCE REQUIREMENTS

Notice

Employees are required to provide notice to their employer in order to take statutory leave and/or to claim statutory pay for family-related entitlements.

For maternity and paternity leave, parents are required to notify their employer that they wish to take these entitlements by the 15th week before the expected week of childbirth. In most cases, an employer will already be aware that the parent is intending to take a period of leave from work with regard to the birth of the baby or babies, perhaps other than the most premature.

In many circumstances, parents will not know before their baby is born if their new baby or babies will require admission to neonatal care, or for how long that care might be required.

Notwithstanding this, employers will need to have as much notice as is practicable in these circumstances to enable them to plan for the employee's absence and to balance the needs of their business with the parents' needs for compassion and flexibility at this difficult time.

As the exact length of stay in neonatal care may not be known in advance, we propose that parents and employers reach agreement on how best to be kept informed of how many weeks of neonatal care leave parents are likely to need.

We understand that mothers, adopters, fathers and partners will likely take neonatal care leave and/or pay at different times. It is anticipated that fathers and partners will take neonatal care leave when it is likely that the baby will still be in hospital, and when the number of weeks of neonatal care leave needed will only become known on a week-by-week basis. In contrast, we anticipate that mothers/adopters will take neonatal care leave and pay at the end of maternity leave/adoption leave (up to 52 weeks), when the baby is likely to have been discharged from hospital.

We propose to adopt a tiered approach to when leave is taken and the required notice period. A similar concept applies with regard to parental bereavement leave and pay, where how much notice is required depends on when an employee is taking the leave; i.e. a minimal notice period applies for leave to be taken between 0 to 8 weeks after the child's death or stillbirth. For leave to be taken between 9 to 56 weeks after, the employee must give at least seven days' notice.

We propose that a parent's entitlement to neonatal care leave and pay will arise after a baby enters neonatal care in the first 28 days following birth and spends at least 7 continuous days in care. If this is to be the case, and in recognition of the fact that the baby's admission to neonatal care may be a sudden and unexpected event which cannot be planned, for any leave taken very soon after a baby has been admitted to neonatal care, we would propose that a very short informal notice would be acceptable.

For mothers/adopters who take neonatal care leave and/or pay after their maternity/adoption leave ends, and most likely when the baby has not been recently admitted into or has been discharged from neonatal care, we would propose a longer period of notice: something akin to that which is required for taking annual leave.

Question D22

Do you agree that a father/partner should be required to give notice as soon as is reasonably practicable after their child is admitted to neonatal care, and has a stay of at least 7 continuous days, in order to take neonatal care leave and/or pay?

Question D23

Do you agree that a person taking neonatal care leave and/or pay after maternity/adoption leave should be required to give notice, akin to that which is required for taking annual leave, in order to take neonatal care leave and/or pay?

Evidence of Entitlement to Neonatal Care Leave and Pay

For some family-related leave and pay entitlements, an employee must provide a written declaration of entitlement and in others, an employee is only required to provide evidence of entitlement if their employer asks for it.

Neonatal care leave and pay would be a new entitlement to, potentially, a significant number of weeks of paid leave.

Whilst we recognise the sensitivity of the situation, we also acknowledge the need to ensure that only those who are entitled to the paid leave should receive it; as such, we believe that employers should be able to ask for evidence of entitlement.

We propose that evidence requirements for neonatal care leave and pay should mirror those for some existing family-related leave entitlements, i.e. a self-declaration of entitlement.

In requesting evidence, employers would be expected to set out how they are going to handle the information being requested and how this will comply with data protection requirements.

Question D24

Do you agree that employers should be allowed to ask for a declaration of entitlement to neonatal care leave and/or pay?

When and how Neonatal Care Leave and/or Pay can be taken

For those needing to take neonatal care leave while their baby is actively receiving care we propose that this is taken in multiple blocks of one week. We also propose that the ability to take leave while the baby remains in care should be sufficiently flexible to ensure that fathers/partners may take this leave around other periods of pre-booked family-related leave during this time. This will ensure they are not burdened with having to rearrange periods of pre-booked leave whilst having to deal with the stresses and strains of having a baby in neonatal care.

If leave accrued while the baby was in care is to be taken when the baby has been discharged, and as this leave can be planned for, we propose that it is taken in a single continuous block at the end of existing entitlements to family-related leave and pay, e.g. maternity/adoption leave.

Question D25

Do you agree that when and how neonatal care leave and/or pay is to be taken should be sufficiently flexible to accommodate other periods of pre-booked family-related leave and in a way that balances the needs of parents and employers?

Employment Protections and the Right to Return

We propose that a parent who is on neonatal care leave should have equivalent employment protections as they would have for other family-related leave entitlements. These would include the right to not be treated unfavourably, or to be dismissed because they are taking, or are seeking to take, neonatal care leave. It would also mean the right to return to the same job or similar.

Question D26

Do you agree that parents on neonatal care leave should have the same protections as employees on other family-related leave?

Statutory provision for payment

As with existing family-related statutory pay entitlements, the statutory payment would be made by the parent's employer. The employer will then be able to reclaim a proportion of it from HM Revenue & Customs. Neonatal pay would be paid at the statutory flat rate (currently £184.03 for the year 2024/25) or 90% of average weekly earnings where that is lower.

We propose that the statutory payment for neonatal care pay is paid at the same rate, outlined above, as for existing family-related statutory payments. This entitlement is a floor, not a ceiling; many employers will provide additional support by having more generous terms and conditions or employee assistance programmes in place.

Question D27

Do you agree that neonatal care pay should be paid at the same rate as existing family-related statutory payments?

Additional Information

You may provide additional information or clarification to any response made at question D28 of the consultation question section.

Protection from Redundancy

Pregnancy and Family Leave

Purpose of this Consultation

The purpose of this consultation is to inform the public about the Department's intention to introduce further legal protections for pregnant employees and for those employees who have recently returned to work after a period of maternity, adoption, or six or more weeks of shared parental leave.

The objective of the new legislation will be to enhance redundancy protections for employees by:

- Ensuring the additional protection period during pregnancy begins from when a person informs their employer of their pregnancy until two weeks after the pregnancy ends; and
- Extending the principle of the period of protection from redundancy to 18 months from when the child is born, stillborn, expected to be born, or is placed for adoption – this period of 18 months would include any period of relevant leave taken (Maternity, Adoption and qualifying Shared Parental Leave).

Current rights and entitlements

During pregnancy:
Currently legal protections for employees while they are pregnant are to be found in gender and maternity discrimination legislation[93].

In the employment context, legislation prohibits certain conduct including direct discrimination because of, and indirect discrimination in relation to, sex. Sex is a protected characteristic and refers to a male or female of any age.

The legislation states that you must not be discriminated against because:

- you are (or are not) a particular sex
- someone thinks you are the opposite sex (this is known as discrimination by perception)
- you are connected to someone of a particular sex (this is known as discrimination by association).

93 Sex Discrimination (Northern Ireland) Order 1976

The Sex Discrimination (Northern Ireland) *Order* 1976 sets out a 'protected period' during which employees who are pregnant or who have recently given birth are explicitly protected from discrimination. The 'protected period' runs from the start of a person's pregnancy until:

- they return to work from ordinary or additional maternity leave (if they are entitled to either form of leave); or
- two weeks after the end of their pregnancy, if they are not entitled to maternity leave.

During the 'protected period', an employee is protected against discrimination that arises as a result of:

- their pregnancy;
- any illness related to their pregnancy, or absence because of that illness;
- being on compulsory maternity leave; or
- seeking to take, taking or having taken ordinary or additional maternity leave.

Once the protected period ends, it is still unlawful to treat an employee less favourably because of their pregnancy, maternity or breastfeeding. This might be because the less favourable treatment stems from a decision taken during the protected period, or because it may amount to sex discrimination.

During Maternity, Adoption or Shared Parental Leave

Rights and entitlements are provided for those on maternity, adoption or shared parental leave (relevant family leave) by the Employment Rights (Northern Ireland) Order 1996 and regulations made under it[94]. However, these protections do not provide for the same level of protections from redundancy after the period of relevant family leave has been taken.

Before making an employee on maternity leave redundant, employers have an obligation to offer them (not just invite them to apply for) a suitable alternative vacancy, where one is available with the employer or an associated employer. This gives employees on maternity leave priority over other employees who are also at risk of redundancy.

An alternative vacancy must be both suitable and appropriate for the employee to fill in the circumstances, and the terms and conditions must not be "substantially less favourable" than their previous role.

This protection applies while the employee is on ordinary or additional maternity leave.

94 Statutory Rules (As amended and modified) - The Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999, the Paternity and Adoption Leave Regulations (Northern Ireland) 2002, the Additional Paternity Leave (Adoptions from Overseas) Regulations (Northern Ireland) 2010 and The Shared Parental Leave Regulations (Northern Ireland) 2015.

In a similar way to maternity leave protections, the respective regulations for Adoption Leave and Shared Parental Leave provide that, before making an employee on either form of leave redundant, employers have an obligation to offer them (not just invite them to apply for) a suitable alternative vacancy, where one is available with the employer (or an associated employer). This similarly gives them priority over other employees who are also at risk of redundancy.

An alternative vacancy must be both suitable and appropriate for the employee to fill in the circumstances, and the terms and conditions must not be "substantially less favourable" than their previous role.

This protection also applies while an eligible working parent is on ordinary or additional adoption leave.

Position elsewhere

Protection from Redundancy (Pregnancy and Family Leave) Act 2023[95]

Enhanced rights exist in Britain in relation to protection from redundancy for those who are pregnant and also for those who have returned to work after taking relevant family leave, which includes Maternity, Adoption and qualifying Shared Parental Leave.

Legislation[96] has been enacted in Britain that gives pregnant employees a specified right for protection against redundancy during their pregnancy - this protection is akin to the rights for those on Maternity Leave, Adoption Leave and Shared Parental Leave.

An enhancement has also been introduced to the existing protections against redundancy which are in place during Maternity Leave, Adoption Leave and Shared Parental Leave. A person who has taken the qualifying relevant leave is now given further protections against redundancy as standard for a period of time after they have taken the leave. This period is 18 months from the birth, still birth after the 24th week of pregnancy, expected date of birth or placing for adoption of the child – the enhanced protected period is inclusive of the period taken for maternity, adoption or qualifying shared parental leave. The qualifying period of leave for shared parental leave is at least six weeks.

The position in the south of Ireland is analogous to the position here currently; any enhancements to the protections for pregnant employees and eligible employed parents who have returned from the relevant leave will give them an advantageous position in comparison to their peers in Ireland.

95 Protection from Redundancy (Pregnancy and Family Leave) Act 2023
96 The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024

Proposed Changes

The Equality Commission for Northern Ireland (ECNI) carried out an investigation from 2015-2016 to examine the employment experiences of pregnant employees and mothers in the north of Ireland. The investigation was carried out through surveys and focus groups which were composed of employees and employers[97]. In one element of the survey, the ECNI found that 50% of women thought their career opportunities were worse than before their pregnancy, and 36% of those surveyed as part of the investigation believed that they were treated unfairly or disadvantaged at work as a result of their pregnancy or having taken maternity leave. Another element of the investigation found that 20% of those surveyed felt that they had lost their job as a result of their pregnancy or taking maternity leave. This included dismissal, non-renewal of contract and redundancy. The investigation also found that 16% of employers who took part in a focus group believed it was reasonable to give careful consideration to hiring younger women.

Evidence[98] gathered during joint research by the Department for Business, Innovation and Skills and the Equality and Human Rights Commission in 2015 showed that a quarter of employers in Britain felt it was reasonable during recruitment to ask employees about their future plans to have children.

In 2017 an Equality and Human Rights Commission survey[99] of over 1,000 decision makers in business found that around a third of private sector employers agreed that it was reasonable to ask employees about their plans to have children in the future during recruitment. This showed that business attitudes have been slow to change and the potential for discrimination has persisted at all stages of a parent's employment journey. There is also a level of anecdotal evidence that points to some employees who have returned from maternity leave being forced out of work.

We believe additional redundancy protection for those employees who are pregnant, those who have given birth and eligible working parents returning from a period of relevant family leave, similar to that available to those who are on a period of maternity, adoption or a period of qualifying shared parental leave, is required for an additional period of time after the relevant family leave has been taken, which would also encompass that period of leave. For example, an employee returning to work following a period of 12 months maternity leave commencing on the child's birth date would be entitled to up to a further 6 months of enhanced protection from redundancy.

97 ECNI Investigation report - Expecting_Equality-PregnancyInvestigation-SummaryReport.pdf (equalityni.org)
98 Pregnancy and maternity-related discrimination and disadvantage - GOV.UK (www.gov.uk)
99 Pregnancy and maternity discrimination research findings | EHRC (equalityhumanrights.com)

We believe these additional protections would help to alleviate some of the anxiety about job security that a pregnant person or a new parent may face. The protections would also provide a clear set of obligations and responsibilities for employers to follow during an employee's pregnancy or their return from relevant leave. Employers will already be aware of these responsibilities in relation to the protections already in place during the period of relevant leave - this approach provides for consistency.

A key purpose of the existing protections against redundancy for those on maternity leave, as well as other eligible working parents on relevant family leave, is to help tackle discrimination and to change the culture which can exist around pregnant employees and new parents in the workplace.

A pregnant employee will be protected against redundancy during their pregnancy from the moment they inform their employer. These protections will be on a par with the protections currently in place for those on Maternity Leave, Adoption Leave or Shared Parental Leave.

There will also be an additional period of redundancy protection which will continue for 18 months after the birth of a child, the expected date of birth, stillbirth, or the placing for adoption. This 18-month period will encompass any period of relevant leave that has been taken.

In the circumstance of Shared Parental Leave, the 18-month period from the child's birth, expected week of birth, stillbirth or placing for adoption would only be available to those who have taken 6 weeks or more of shared parental leave.

Protections during pregnancy and notice of pregnancy

We propose that the additional protection period during pregnancy should begin from when a person informs their employer of their pregnancy, either orally or in writing, until two weeks after the pregnancy ends, for whatever reason.

Question D29

Do you agree that the redundancy protections period during pregnancy should apply from the point that the employee informs their employer that they are pregnant, whether orally or in writing?

Relevant Family Leave

We believe that there should be an extension of the existing protections from redundancy in place during maternity, adoption and shared parental leave (relevant family leave), to include a period after that leave. This extension would include qualifying circumstances for shared parental leave in relation to a minimum period of six weeks to be taken.

Question D30

Do you agree that protections from redundancy during relevant family leave should be extended to include a period after the employee returns from leave?

Period of protection – Overarching principles

It is our proposal that an extension of the existing requirements that apply to employers when redundancy situations arise where an employee is on relevant family leave, will also apply for a period of time after that leave has ended. We believe the appropriate period is 18 months from the defined period, i.e. after birth, stillbirth, placing for adoption or the expected date of birth.

Question D31

Do you agree with the principle that the period of protection should be 18 months from when the child is born, stillborn, expected to be born, or is placed for adoption?

Period of protection – Shared parental leave appropriate considerations

Shared Parental Leave works differently to Maternity and Adoption Leave.

It is:

- designed to give parents the maximum flexibility so that they can combine work and leave in ways which best suit their particular needs and circumstances;
- can be combined with maternity leave or adoption leave;
- can be taken for very short periods;
- can be taken on a number of occasions throughout the first year of a child's life.

We believe eligible working parents returning from Shared Parental Leave should also receive a protection from redundancy that is proportionate. We do not believe giving a new parent 18 months redundancy protection following one week of Shared Parental Leave would be proportionate to the threat of discrimination on the same basis as a parent that has been on maternity leave for 12 months.

We therefore propose that, to have enhanced protections from redundancy for a period of 18 months from when the child is born, is expected to be born, still born or is placed for adoption extended to a person returning from a period of shared parental leave, the duration of that leave must be a minimum of 6 weeks.

In considering the extension of those protections from redundancy required for those returning from Shared Parental Leave, we have taken account of the following:

- One of the key objectives of this policy is to help protect pregnant employees and new parents from discrimination;

- that there are practical and legal differences between shared parental leave, maternity and adoption leave which mean that it requires a different approach;
- the period of extended protection should be proportionate to the amount of leave and the threat of discrimination;
- an employee should be no worse off if they curtail their maternity or adoption leave and then take a period of Shared Parental Leave; and
- the solution should not create any disincentives to take Shared Parental Leave.

Question D32

Do you agree that, for those taking shared parental leave, there should be a minimum six-week threshold of continuous leave before enhanced protections from redundancy can apply?

Additional Information

You may provide additional information or clarification to any response made at question D33 of the consultation question section.

Further Information:

Awareness of rights and obligations

The Executive is committed to helping employees fulfil their potential in the workplace and helping businesses get the full economic benefit of the skills that employees and new parents can continue to provide in employment.

The Department continues to work to ensure that employers not only know what the position of the law says, but that they are also aware of what best practice looks like and the benefits it brings.

The Department for the Economy ensures that advice and guidance is available to employees and employers alike - NI Direct provides advice and guidance aimed at employees, whilst NI Business Info is aimed at employers.

Labour Relations Agency (LRA)

The LRA provides advice and guidance on the law and good practice for Pregnancy and Maternity Rights.

The guidance includes reminders of the following points:

- Employees on maternity leave should be made aware of opportunities for promotion and training;
- Pregnancy related absences must not be included in an employee's absence record;

- Employees must not be dismissed or made redundant for any issue related to pregnancy, maternity leave or maternity pay;
- An employer should develop a policy so that all employees understand their rights and responsibilities in relation to pregnancy and maternity discrimination;
- An employer should provide a suitable place for pregnant employees to rest, in line with the law; and
- An employer should identify and deal with risks to health and safety of a pregnant employee and their unborn child.

Health and Safety Executive

The Health and Safety Executive (HSENI) provides advice and guidance on its website for the legal requirements on protecting new and expectant parents, which provides a wide range of guidance on pregnancy related issues in the workplace.

They also provide the relevant information and forms for carrying out risk assessments in relation to providing adequate protections and plans for pregnant employees and those who have given birth who have recently returned to work.

There is also clear guidance for employees to report concerns if they believe health and safety law is being broken.

Paternity Leave

Purpose of this consultation

This part of the consultation seeks to inform the public about the Department's intention to introduce new subordinate legislation which will amend the Paternity and Adoption Leave Regulations (Northern Ireland) 2002[100], the Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003[101] and the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015[102].

The objective of the new legislation will be to enhance current rights and entitlements to paternity leave[103] for employees in the circumstances of birth, including by surrogacy, or adoption by:

- allowing paternity leave to be taken as two blocks of a single week or as a single block of two weeks;
- allowing the leave to be taken at any time within the first 52 weeks following birth or adoption;
- reducing the notice requirements for paternity leave related to birth and surrogacy to 28 days for each period of leave; and
- Introducing paternity leave as a day 1 right.

Background

Current right to paternity leave

The birth of a child, and their early years, are crucial periods in a child's development. They are a special period and something important for parents to be fully involved in. Paternity leave is an essential entitlement to facilitate the role of a father/partner in the lives of the newborn and their partner, particularly in the very early stages following birth or adoption.

Paternity leave is available to an employee who is the parent of the child or the partner, of any gender, of either a person who has given birth, someone who is adopting a child, or having a baby through a surrogacy arrangement.

The meaning of the term 'employee' for statutory paternity pay (SPP) purposes is different from the meaning of paternity leave and other employment rights. This means that some workers who are not employees, e.g. agency workers, may qualify for SPP, even though they don't qualify for paternity leave.

100 Paternity and Adoption Leave Regulations (Northern Ireland) 2002
101 Paternity and Adoption Leave (Adoption from Overseas) Regulations (Northern Ireland) 2003
102 Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations (Northern Ireland) 2015
103 For the purpose of this consultation 'paternity leave' refers to paternity leave that may be taken with or without statutory pay depending on eligibility. In respect of this eligibility; both, workers and employees would have to satisfy the earnings and continuous employment requirements that are long established in the framework for Statutory Payments (Maternity, Adoption, Paternity, Shared Parental and Parental Bereavement).

Under the current law, eligible employees can take either one or two consecutive weeks of paid paternity leave within the first eight weeks of their child's life or adoption placement. The paternity leave must be taken in a single block and cannot be split; therefore, if the employee decides to take only one week of paternity leave, the second week is automatically forfeit. An employee may not take annual leave during paternity leave but may take it immediately before or after paternity leave. There are some subtle differences with respect to surrogacy births and UK and overseas adoptions regarding notice periods and eligibility. The main differences are explained over the course of this consultation.

For families who would prefer a parent or partner to take a longer period of leave, shared parental leave may be available. This entitlement allows eligible parents to share up to 50 weeks' leave and up to 37 weeks of pay between them. Parents can choose whether to take time off together or to stagger their leave and pay.

Eligible employees receive paternity pay at the lower rate of £184.03 per week or 90% of their average weekly earnings. Employers can voluntarily provide enhanced paternity pay to their employees and provide additional benefits such as making the right available to all employees regardless of their length of service. Employers can recover some or all SPP payments from HM Revenue & Customs (HMRC) in circumstances where the statutory eligibility requirements are met. The proportion recoverable depends on the size of the employer's annual National Insurance Contributions liability.

In exceptional cases, statutory paternity pay may be payable where an adoption agency places a child with approved foster parents who are also approved prospective adopters. The agency will supply the foster parents with correspondence which can be shown to the employer explaining that they have met the relevant criteria for being matched with the child for the purposes of paternity leave and pay, and other entitlements open to adopters. The usual notification and service criteria will apply.

Further information on paternity leave can be found here.

- Paternity leave | nidirect[104]
- Paternity leave and pay | nibusinessinfo.co.uk[105]

The right to paternity leave - births

An employee qualifies for paternity leave and pay provided they meet the following eligibility requirements:

- They are the parent of the child or are the mother's spouse, civil partner, or partner but not the child's parent. A partner is someone who lives with the mother in an enduring family relationship but is not an immediate relative; and
- They have, or expect to have, the main responsibility for the child's upbringing.

104 Link to NI Direct Paternity leave – Paternity guidance for employees.
105 Link to NI Business info – Paternity guidance for employers.

In addition, they must:

- Have at least 26 weeks' continuous employment with their employer, ending with the 15th week before the expected week of childbirth (EWC) - the qualifying week;
- Be working for their employer from the qualifying week up to the date of birth;
- Have notified their employer of their intention to take paternity leave;
- Be taking the time off to support the mother and/or care for the baby.

However, an employee will not qualify for paternity leave if they have previously taken shared parental leave in respect of the child or, in the case of adoption from the UK, they have availed of the right to take paid time off to attend pre-adoption appointments. Similarly, a person claiming paternity leave is not entitled to claim adoption leave.

An employer should treat the employee as having the necessary length of service if the baby is born earlier than the 14th week before the EWC but had this not occurred the employee would have been employed continuously for at least 26 weeks. The EWC is the week in which the expected date of the baby's birth falls - starting with the preceding Sunday and ending the following Saturday. If the birth date falls on a Sunday, that date is the first day in the EWC.

Paternity leave remains at two weeks regardless of the number of children resulting from a single pregnancy. If an employee's partner gives birth to a stillborn baby after the 24th week of pregnancy or the child later dies, they are still entitled to paternity leave. Bereaved parents are also entitled to up to 2 weeks of absence within the 56 weeks following the death of a child through parental bereavement leave.

Where a pregnancy ends before 24 weeks and the child does not survive, the father or mother's spouse, civil partner, or partner will not be eligible for paternity leave, although other forms of leave entitlement may be open to them including annual leave, compassionate leave or unpaid leave.

The right to paternity leave - UK adoptions

An employee qualifies for paternity leave when adopting a child from the UK if they are the spouse, civil partner, or partner who are adopting a child jointly, or are the spouse, civil partner, or partner of someone adopting a child individually. This may, exceptionally, include cases where an adoption agency places a child with approved foster parents who are also approved prospective adopters. The agency will supply the foster parents with the correspondence which can be shown to the employer explaining that they have met the relevant criteria for being matched with the child for the purposes of leave and pay and other entitlements open to adopters. The usual notification and service criteria will apply. In the circumstances where the partner is not adopting the child, they are defined as someone who lives with the person adopting a child individually in an enduring family relationship but is not an immediate relative.

In addition, the employee must have, or expect to have, the main responsibility for the child's upbringing with the other joint adoptive parent or the individual adopter; not take statutory adoption leave and pay; have been in continuous employment for at least 26 weeks ending with the week in which they are notified of having been matched with the child (the qualifying week which starts on a Sunday and ends on a Saturday); remain in employment from the qualifying week to the date of the child's placement; have notified their employer of when they want to take paternity leave no more than seven days after the adopter is notified that they have been matched with a child; and will be taking time off to support the adopter and/or to care for the child.

The right to paternity leave - overseas adoptions

An employee qualifies for paternity leave when adopting a child from overseas if they are either one of two parents jointly adopting a child, or the spouse, civil partner, or partner of someone adopting a child individually; they have or expect to have the main responsibility for the child's upbringing with the other or main adopter; they are not taking statutory adoption leave and pay; they have worked for their employer continuously for at least 26 weeks by the end of the week that the adopter receives an official notification or by the time they want their paternity leave to begin, whichever is later; they have provided the correct notification and continue to work for their employer up until the point the child enters the north of Ireland.

The right to paternity leave - surrogacy arrangements

The intended parents in a surrogacy arrangement may be eligible for adoption leave and paternity leave where they are eligible for and intend to apply for a parental order (or have already obtained one). An employee will not qualify for paternity leave if they are taking adoption leave and pay or have already taken shared parental leave or pay in respect of the child.

To qualify for paternity leave, the intended parent must be the spouse, civil partner, or partner (including same-sex partner) of the intended parent that has elected to take adoption leave. A partner is someone who lives with the other intended parent in an enduring family relationship but is not an immediate relative; has 26 weeks' continuous employment by the end of the 15th week before the expected week of birth (known as the qualifying week) and remains within that employment from the qualifying week up to the date of birth; be one of a couple who is eligible for and have applied for, or intend to apply for, a Parental Order in respect of the child within six months of the birth; expect to have the main responsibility for the upbringing of the child (with the other intended parent); and give the correct notice.

Notification of paternity leave - births

To qualify for paternity leave, an employee should notify their employer no later than the end of the 15th week before the EWC, or as soon as is reasonably practicable, of the expected week of the baby's birth, whether they wish to take one week, or two consecutive weeks' leave and when they want their paternity leave to start. Employees wishing to claim statutory paternity pay should also declare this. No medical evidence of pregnancy or birth is required; however, the employee should notify their employer of the actual date of birth.

The EWC is the week in which the expected date of the baby's birth falls - starting with the preceding Sunday and ending the following Saturday. If the birth date falls on a Sunday, that date is the first day in the EWC.

The notification requirements for paternity leave differ for surrogacy births and UK and overseas adoptions. These are set out in the following paragraphs.

Notification of paternity leave - UK adoptions

To qualify for paternity leave when adopting a child from within the UK, an employee should notify their employer no more than seven days after the adopter is notified they have been matched with a child that they intend to take paternity leave; when they want it to start; how much leave they expect to take; the date the adopter was matched with the child; and the date on which the child is expected to be placed for adoption. If it is not reasonably practicable for the employee to meet this deadline, they should notify their employer as soon as possible.

Paternity leave notification: overseas adoptions

Employees intending to take paternity leave when adopting a child from overseas must give their employer notice in three stages that they intend to take paternity leave. Paternity leave cannot start before the child has entered the north of Ireland. If the employee is also entitled to statutory paternity pay (SPP), they must provide their employer with the evidence required at the same time.

First stage

In the first stage, the employee must inform their employer of the date on which the other or main adopter received official notification and the date the child is expected to enter the north of Ireland.

Where the employee already has the necessary 26 weeks' qualifying service when the adopter receives official notification, they must give their employer this information within 28 days of the adopter receiving official notification.

Where the employee receives official notification before they have the necessary qualifying service, they must give their employer notice within 28 days of completing the 26 weeks' qualifying service.

Second stage

In the second stage, the employee must give at least 28 days' notice of the actual date they want their paternity leave (and statutory paternity pay if they qualify) to start. This can be given at the first notification stage if known at that time.

Employees can change the date on which they want their paternity leave to start, providing they give their employer at least 28 days' notice in advance of the new date, or as soon as is reasonably practicable.

Third stage

For the third stage, which is after the child has entered the north of Ireland, the employee must inform their employer of the date the child entered the north of Ireland within 28 days of the child's date of entry. If they are also claiming statutory paternity pay, they will need to give evidence of the date of entry.

Paternity leave notification: surrogacy arrangements

The intended parent that will take paternity leave must notify their employer of their entitlement by the 15th week before the expected week of birth. They must confirm the expected week of the child's birth, when they want their paternity leave to start and whether one or two consecutive weeks' leave will be taken. Employees wishing to claim statutory paternity pay should also declare this. The employee must also notify their employer of the date of birth as soon as practicable after the child is born.

If requested to do so by their employer, the employee must supply a declaration within 14 days confirming that they are taking paternity leave to care for the child and/or support the other intended parent, satisfy the entitlement conditions for paternity leave, that they are eligible for and intend to apply for a Parental Order in respect of the child (or have obtained such an order) and that they have not claimed adoption leave and/or statutory paternity pay.

The start of paternity leave - births and surrogacy births

An employee cannot start their paternity leave until the birth of the baby, whether or not this is earlier or later than expected. The leave can commence on a date after the birth of the child but must be used within 56 days of the birth or, if the child is born earlier than expected, between the birth and 56 days from the first day of the EWC. If the baby is born later than the notified date, the employee must delay their leave until the date of the actual birth.

If the employee wants to change the start date of their paternity leave, they must give their employer at least 28 days' notice from the first day of the EWC or the date on which the leave is intended to start, whichever is applicable, or as soon as is reasonably practicable.

Where an employee has changed the start date of their leave, they should fill in a new self-certificate.

The start of paternity leave - UK adoptions

Paternity leave (and pay) can begin any time from the date of the child's placement with the adopter but must be completed within 56 days of this date.

The employee can choose to begin paternity leave on the date on which the child is placed with the adopter, even if this is earlier or later than the expected date of placement; a predetermined date after the expected date of placement; or a date falling a specified number of days after the expected date of placement.

If the employee wants to change the start date of their paternity leave, they must give their employer at least 28 days' notice before the expected date of placement or the date on which the leave is intended to start, whichever is applicable, or as soon as is reasonably practicable.

Where an employee has changed the start date of their leave, they should fill in a new self-certificate.

The start of paternity leave - overseas adoptions

An employee adopting a child from overseas may choose to start their paternity leave any time from the date that the child enters the north of Ireland but must complete their leave within 56 days of that date.

Paternity leave is not meant to be used to cover the period employees spend travelling overseas to arrange the adoption or visit the child. However, an employee can take annual leave or unpaid leave for these purposes.

If the employee wants to change the start date of their paternity leave, they must give their employer 28 days' notice of the change and should complete a new self-certificate.

Terms and conditions during paternity leave

During paternity leave an employee has a statutory right to continue to benefit from all the terms and conditions of employment which would have applied to them had they been at work, except for the terms relating to wages or salary (unless their contract provides otherwise).

Paternity leave doesn't break the continuity of employment and counts towards an employee's period of continuous employment for the purposes of entitlement to other statutory employment rights. An employee continues to accrue statutory - and any contractual - annual leave entitlement throughout paternity leave.

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, paternity leave. An employee is entitled to return to the same job on the same terms and conditions of employment as if they had not been absent on paternity leave. They are also entitled to benefit from any general improvements to the rate of pay or other terms and conditions introduced while they were away.

If an employee believes they have been treated detrimentally, they may raise a grievance which may result in an industrial tribunal claim for detrimental treatment if it is not addressed.

If there is a redundancy situation at the same time as an employee's paternity leave, an employer must treat them the same as any other employee under the circumstances. This might be consulting them about the redundancy or considering them for any other suitable job vacancies.

Justification for change

The current paternity leave system is too rigid: leave must be taken in one block of no more than two consecutive weeks within a period of 56 days after the child's birth. The notification period for when paternity leave is due to start in the circumstances of birth or surrogacy is too long, particularly if the leave is to be capable of being taken in non-consecutive weekly blocks.

This system can be a barrier to fathers/partners who want to take that leave due to their unique personal circumstances, including work commitments. In turn this can place an increased caring burden on their partners. We therefore wish to provide valuable additional flexibility in when and how paternity leave can be taken, making it easier and more useful for parents while minimising additional burden on businesses.

The expense associated with caring for a new child is at its greatest during the early stages after birth or adoption. The current requirement for a period of paternity leave to be taken as a single block, in circumstances where the person taking the leave and pay elements only receives the statutory pay entitlements not topped up by their employer, can make the leave a financial burden that is too much for some. Due to this, some fathers/partners avail of 1 week's leave rather than two, with some taking no paternity leave at all, favouring other leave entitlements such as annual leave. Department for Business and Trade (DBT) analysis of the Paternal Rights Survey 2019 (Britain) show that 74% of fathers/ partners eligible for SPP used 1 week's leave, with the figure dropping to 66% taking the full 2 weeks' leave, with 62% of fathers/partners in the study citing affordability as the reason why they did not take 2 week's SPP leave.

We believe providing the opportunity to take paternity leave in 2 single blocks across a 52-week period will give fathers/partners the opportunity to spread the financial burden to make it a more viable option financially, therefore increasing the uptake of the second week of paternity leave.

By providing flexibility for paternity leave to be taken over a 52-week period rather than the current 56 days following birth/placement, there is also the opportunity for fathers/partners to avail of the leave once a mother has returned to employment, should this best meet the needs of the individuals.

The proposed regulatory changes aim to create a more family-centric approach to paternity leave by recognising the importance of parents and partners spending valuable time with their children in the first year following birth or adoption. By providing increased flexibility and recognising the diverse circumstances of families, these changes are a positive step towards fostering a supportive and inclusive work environment and aim to make it easier for parents to take their full paternity entitlement.

How to take paternity leave

Currently, only one block of leave can be taken, which can be either one or two weeks. For some parents, taking two weeks of leave in one go is difficult due to work or other commitments. Currently, if only one week is taken, the second week is not available to be taken at a later stage and is therefore automatically forfeit.

We propose to allow parents and partners to take their paternity leave in non-consecutive weeks of leave or a single block of two weeks, whichever best serves the needs of the individuals.

We hope that providing parents and partners with the flexibility to take their two weeks of leave non-consecutively at a time that works best for them means that they will find it easier to use their full entitlement, leading to an increase in the numbers taking the full entitlement of 2 weeks. This adjustment recognises the diverse needs of families and allows parents to choose a leave structure that aligns with their circumstances.

Question D34

Do you agree that paternity leave should be available to be taken as a single block of two weeks or two non-consecutive blocks of one week?

When paternity leave can be taken

Currently paternity leave must be taken within 56 days after the child has been born, placed for adoption or in respect of adoption from overseas, has entered the North.

We propose that leave and pay should be available to be taken at any point in the first 52 weeks after the birth or placement for adoption. We believe this change will provide greater flexibility to take paternity leave at a time that works best for individual families and contribute to an increase in the uptake of the full entitlement.

This change could enable a parent or partner to take time off work to be the primary care giver when the mother returns to work. This is important, as evidence shows that fathers/partners who spend time solo parenting are more likely to play a greater role in caring for their children in later years.[106]

Question D35

Do you agree that paternity leave should be available to be taken at any time within the first 52 weeks following birth or adoption?

Notice period

Currently an employee should notify their employer no later than the end of the 15th week before the EWC, or as soon as is reasonably practicable, of the expected week of the baby's birth before a period of paternity leave can be taken in the circumstance of birth and surrogacy. We believe this lengthy notice period could have a detrimental impact upon the uptake of a second weekly block of paternity leave towards the later stages of the proposed 52-week window. We propose that an employee should be required to provide at least 28 days' notice prior to each period of leave. This means that a parent can decide when to take their leave at shorter notice to accommodate the changing needs of their families.

We propose that the notification period of entitlement an employee must give their employer to take their paternity leave should remain unchanged at or before the 15th weeks before the EWC or, if that is not reasonably practicable, then as soon as is reasonably practicable in the circumstance of birth and surrogacy. This notice period is reflective of the same notice periods relating to maternity leave and enables an employer to make any necessary preparations in advance of the leave being taken.

The 28-day notice period will apply to parents in birth and surrogacy scenarios. In adoption cases, where the process is inherently less predictable, the notice period will remain unchanged. A period of paternity leave is capable of being changed or cancelled with 28 days' notice or, if it is not reasonably practicable to do so, as soon as is reasonably practicable.

Question D36

Do you agree that the notice requirements for paternity leave related to birth and surrogacy should be 28 days for each period of leave?

106 O'Brien, M., Wall, K. (2015). 'Fathers on Leave Alone' in O'Brien, M., Wall, K. Comparative Perspectives on Work-Life Balance and Gender Equality, Springer Open. P.6

Length of Paternity Leave

The two weeks of paternity leave available to eligible fathers/ partners in the north of Ireland is the same as the leave entitlement offered in the south of Ireland and Britain. However, countries such as Sweden, Germany and Denmark provide varying lengths of paternity leave, all greater than 2 weeks. Paternity leave is key to building relationships at home not only with the newborn child but the rest of the family. Some fathers or partners may feel that 2 weeks does not provide enough time to bond with the new child and/or to support the mother.

The Department is keen to understand your views on the current length of paternity leave and whether consideration should be given to extending the length of leave available.

If the length of available paternity leave was to be extended, it would represent a moving away from alignment with Britain. Should an additional entitlement be introduced only in the north of Ireland, this would involve an additional direct cost to the Executive. HMRC would be required to amend their systems to ensure the financial costs of the element exclusive to the north of Ireland could be identified. These system changes can take up to 18 months and are likely to incur considerable hard charges for the Department. These costs would need to be directly funded from the block grant. If the same number of people taking paternity leave of up to 2 weeks were to take a further two weeks at the current statutory rate of £184.03, the additional annual recurring costs to the Executive budget would be in excess of £3.5m.

In addition to the increase in costs, it would also take longer to implement these changes than if the current right to two weeks leave were maintained. It is also recognised that many employers provide employees with enhanced benefits when taking paternity leave, mainly in the form of full pay. By providing the opportunity to avail of 4 weeks paternity leave, it is possible that some employers might be put in a position where it was not viable to make up the employee's shortfall in wages for this increased length of time. The regulatory impact of an entitlement of up to 4 weeks of paternity leave would also have to be assessed.

While paternity leave is currently 2 weeks, shared parental leave[107] provides another option for parents to increase the amount of leave the father or partner can benefit from. Where a mother does not take her full maternity leave entitlement the father or partner can utilise the remaining weeks and where eligibility requirements are met this is at a statutory rate of pay (£184.03). The availability of shared parental leave currently offers fathers or partners the opportunity to take additional leave should they wish to do so, with the agreement of mothers.

107 Shared parental leave and pay | nidirect

Question D37

We would welcome your views whether paternity leave should be available for up to four weeks in the north of Ireland. In answering this question, we would be grateful if you would provide reasoning for your responses and identify any issues or benefits with such an approach.

Paternity leave eligibility

In addition to meeting the relevant criteria in regard to the father's/partner's relationship to the child, they also must be working for their employer for at least 26 weeks by:

- The end of the 15th week before the start of the week when the baby is due
- The end of the week they are notified they are matched with a child.

This scenario can place employees who do not have the length of service required in a position where they are entitled to no paternity leave despite being in employment. This provides a barrier for those re/entering employment as well as those considering a career change.

We propose the introduction of paternity leave as a day 1 right, meaning they are entitled to paternity leave on the first day of employment. This would allow those fathers/partners to avail of unpaid leave to support the mother and/or care for the baby at a crucial time in their lives. Whilst leave would be unpaid employers can pay staff on paternity leave with less than six months of continuous employment at their own discretion.

Question D38

Do you agree that paternity leave should be a day 1 right?

Additional Information

You may provide additional information or clarification to any response made at question D39 of the consultation question section.

NEXT STEPS

By now you will appreciate the scale and scope of the matters under consideration in this public consultation. You will note a range of approaches have been taken. For example, some of the policies are more fully formed, with views sought on if and how they should be implemented. Other policies entail a range of options, where your views are sought on those that best address issues. Some questions constitute calls for evidence that may inform policy options further downstream. Your responses will inform the Minister's final policy decisions that will form the basis for legislative development.

While the outworking of the public consultation and the legislation that will flow from it are yet to be determined, there is already an acknowledgment that there must be consideration given to how employers take on board and implement any new employment laws passed by the Assembly, especially given the likely volume involved.

In order to inform our approach, we would welcome your input in respect of the following matters.

QUESTIONS

1: This consultation seeks views on a range of potential policy avenues which will inform decisions about which should proceed to legislation stage. What issues do you think should be a priority for consideration by the Department?

2: What assistance should the Department offer to businesses in understanding and implementing any future employment legislation?

3: What specific considerations should be given to small and micro businesses in assisting them in dealing with legislative changes?

Department for the Economy
An Roinn Geilleagair
www.economy-ni.gov.uk

GDPR

PRIVACY NOTICE

Data Controller Name:	Department for the Economy
Business Area:	Employment Relations Policy & Legislation
Address:	Adelaide House, Adelaide Street, Belfast, BT2 8FD
Telephone:	02890416728
Email:	goodjobsconsultation@economy-ni.gov.uk

Why are you processing my personal information?

The Department for the Economy (DfE) is initiating a consultation to inform and further develop a range of policies relating to employment law in the north of Ireland. The results and feedback gained through this consultation will inform potential future amendments to the legislative framework.

The information we collect from you will inform and further develop this policy.

The lawful basis for processing your personal data is that of public task in accordance with:

- Section 8 and Paragraph 6 of Part 2 of Schedule 1 to the Data Protection Act 2018;
- Article 6(1)(e) **of the UK GDPR** (the processing is necessary to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law; and
- Article 9(2)(g) of the UK GDPR (processing is necessary for reasons of substantial public interest). (This refers to special category data.)

What categories of personal data are you processing?

Your name, email address, and employment status. As part of the consultation response, you will be asked if you are responding as an individual or on behalf of an organisation. This includes trade unions, but we will not ask you if you are a member of a trade union.

The consultation will also enable you to provide additional information in support or clarification of your response, this may include special category data e.g. personal health information, religious or philosophical beliefs, or political opinions etc., however, please note this information is not a requirement.

Where do you get my personal data from?

You will provide us with your personal data when responding to the public consultation.

Do you share my personal data with anyone else?

No. DfE is however using the following data processor to help it deliver this consultation: Digital Transformation Services (DTS) within the Department of Finance. There is a contract in place to ensure that DTS do not do anything with your personal information unless we have instructed them to do it.

We may choose to take excerpts and examples from comments that are made in the additional comments text box which will be provided in the consultation. You are not required to provide further information in this box or any personal information. If you choose to make additional comments, including personal information, where it is possible to anonymise this information for publication in the Departmental Response, we will do so. Where this is not possible, this information will not be included in the Departmental response.

In some circumstances, DfE is legally obliged to share information, for example with the Police Service of Northern Ireland. We might also share information with regulatory bodies, for example, NI Audit Office, in order to further their, or our, objectives. In any scenario, DfE will satisfy itself that it has a lawful basis on which to share the information and document its decision-making.

If you are responding on behalf of an organisation, unless you request otherwise, we will include the name of the organisation in an annex to the Departmental response to the consultation – we will not share your name.

In any event if we need to share outside of the above it will only be after a thorough data protection assessment to ensure that this is fully compliant with data protection law.

Do you transfer my personal data to other countries?

No. Your personal data will not be transferred to other countries.

How long do you keep my personal data?

We will retain your data for a period of 5 years in line with the Department for the Economy Retention and Disposal Schedule after which time it will be destroyed securely.

What rights do I have?

- You have the right to obtain confirmation that your data is being processed, and access to your personal data
- You are entitled to have personal data rectified if it is inaccurate or incomplete
- You have the right to 'block' or suppress processing of personal data, in specific circumstances
- You have the right to data portability, in specific circumstances
- **You have the right to** object to the processing, in specific circumstances
- **You have rights in relation to** automated decision making and profiling

If these rights are applicable and you wish to exercise these please email DPO@economy-ni.gov.uk

How do I complain if I am not happy?

If you are unhappy with how any aspect of this privacy notice, or how your personal information is being processed, please contact the Department's Data Protection Officer at DPO@economy-ni.gov.uk

If you are still not happy, you have the right to lodge a complaint with the Information Commissioner's Office (ICO).

Contact details of the ICO are available at https://ico.org.uk/global/contact-us/

GLOSSARY OF TERMS

A glossary of terms and acronyms used in this public consultation.

Acronym/Term	Definition/Description
Agricultural Wages Board for Northern Ireland	This is a statutory body which meets three times a year, to determine the minimum gross wages payable to agricultural workers and to set some conditions for holiday and sick pay entitlement.
Agency Worker	Person employed by an Employment Business to be sent out on assignment where they will work under a manager or supervisor or the control of the hirer.
CIPD	Chartered Institute of Personnel and Development
Code of Practice	A code of practice sets out guidelines for people to follow in a specific area of law.
Collective Bargaining	Collective bargaining is the process by which representatives of trade unions negotiate with employers on behalf of their members in respect of employees' terms and conditions of employment.
DfE / The Department	Department for the Economy
EAI	Employment Agency Inspectorate
EASI	Employment Agency Standards Inspectorate
Employee	The main people in work are employees. A person is classed as an employee if they work under a contract of employment. Employees are entitled to all statutory employment rights, subject to the length of time they have worked for their employer. Some rights require the employee to have been working continuously in the same job for a certain amount of time to qualify. Employees have responsibilities towards their employer, such as making sure they turn up for work. The legal definition of an employee, a contract of employment and a worker can be found in article 3 of the Employment Rights (Northern Ireland) Order 1996[108].

108 The Employment Rights (Northern Ireland) Order 1996 (legislation.gov.uk)

Acronym/Term	Definition/Description
GDPR	General Data Protection Regulations
GLAA	Gangmasters and Labour Abuse Authority protects workers from exploitation by operating a licensing scheme in agriculture, horticulture, shellfish gathering and associated processing and packaging sectors.
Hirers	Hire private recruitment agencies to find workers for them.
HMRC	His Majesty's Revenue and Customs
Industrial Action	Industrial action is when employees take action against their employer because of a work dispute.
Industrial Court	The Industrial Court's main function is to adjudicate on applications relating to statutory recognition and derecognition of trade unions for collective bargaining purposes, where such recognition or derecognition cannot be agreed voluntarily.
Industrial Tribunal	Industrial tribunals are independent judicial bodies in Northern Ireland that hear and determine claims concerning employment matters. These include a range of claims relating to unfair dismissal, breach of contract, wages and other payments as well as discrimination on the grounds of sex, race, disability, sexual orientation, age, part time working and equal pay.
International Labour Organisation (ILO)	The ILO brings together governments, employers and workers of 187 Member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men.
KID	Key Information Document
Labour Relations Agency (LRA)	The Labour Relations Agency was established in 1976 with responsibility for promoting the improvement of employment relations in Northern Ireland. It is independent and publicly funded.
Large Business	Business with 250 or more employees
LMEO	A labour market enforcement order (LMEO) is an order which prohibits or restricts the person against whom it is made from doing anything set out in the order, or requires the person subject to the LMEO to do what is set out in the order.

Acronym/Term	Definition/Description
LMEU	A labour market enforcement undertaking (LMEU) is an undertaking by the person entering into it to comply with any prohibitions, restrictions and requirements set out in the undertaking.
LPC	Low Pay Commission - independent body that advises the UK Government on the levels of the National Minimum Wage, including the National Living Wage.
Medium Business	Business with between 50 and 249 employees
Micro Business	Business with 9 or fewer employees
NISRA	Northern Ireland Statistics and Research Agency
ONS	Office for National Statistics
Organisation for Economic Co-Operation and Development (OECD)	This is an international organisation that works with governments, policy makers and citizens, to establish evidence-based international standards, as well as finding solutions to a range of social, economic and environmental challenges.
Prohibition Order	On application by the Department, an industrial tribunal may by order prohibit a person from carrying on, or being concerned with the carrying on, of any recruitment agency (employment agency) or employment business. This order is referred to as a Prohibition Order.
Recruitment Agency	Largely come in two forms. **Employment Agencies** are hired to introduce workseekers to the hirer. **Employment Businesses** are hired to supply workers to the hirer.
Scrutineer	For a ballot for industrial action, where more than 50 members have the right to vote, a union must appoint a qualified independent person as the 'scrutineer' of the ballot. They must be, to the best belief of the union, independent of the union and able to carry out their duties competently, such as producing a report on the conduct of the ballot.
Sectoral collective bargaining	This is the process by which representatives of trade unions negotiate with employers on behalf of their members in respect of employees' terms and conditions of employment on a sector-wide basis.

Acronym/Term	Definition/Description
Service Charge	An amount added to the customer's bill before it is presented to the customer. It may be discretionary or mandatory.
Small and Medium Sized Business (SME)	Collective term to reference businesses with between 1 and 249 employees.
Small Business	Business with between 10 and 49 employees
Social Dialogue	Refers to discussions, consultations, negotiations and joint actions involving organisations representing the social partners – employers and workers.
Statutory Recognition	Under the statutory recognition process, if an employer does not voluntarily recognise a trade union, it may apply to the Industrial Court for the legal right to be recognised by an employer for collective bargaining over pay, hours and holidays, in respect of a group of workers in a particular "bargaining unit".
Swedish Derogation	This is a reference to "pay between assignment" contracts as it relates to Regulation 10 of the Agency Workers Regulations (Northern Ireland) 2011.
Tip or gratuity	A spontaneous payment offered by a customer. This can be in cash, as part of a cheque payment, as a specific gratuity on a credit or debit card payment or paid using a digital payment service or application.
Trade union	A trade union is an organisation with members who are usually workers or employees. The principal purpose of a trade union is the regulation of relations between workers and employers.
Trade Union Official	Trade union officials represent, train and advise union members; carry out research and develop policy.
Tronc	A common term for an arrangement used to distribute tips, gratuities and service charges. Many different specific arrangements exist, but in simple terms it refers to a common fund where tips left by customers are pooled before being distributed between workers.
Workplace Relations	Workplace relations references the relationships between employers and employees in a workplace.

Acronym/Term	Definition/Description
Worker	A worker is any individual who works for an employer, whether under a contract of employment (in which case they are an employee), or any other contract where an individual undertakes to do personally any work or services (in which case they are a "limb b" worker). Limb b workers are entitled to some statutory employment rights and protections, such as the National Minimum Wage/National Living Wage, holiday pay and protection against unlawful discrimination. They are entitled to fewer rights than employees, but in return, have increased flexibility over when, how much, and where they work. The legal definition of an employee, a contract of employment and a worker can be found in article 3 of the Employment Rights (Northern Ireland) Order 1996.
Workseekers	Persons registered with Recruitment Agencies to be introduced to prospective hirers, in the hope of finding employment with them either as employees, or as workers.
Zero hours contract	'Zero hours contract' is generally a non-legal term used to describe many different types of casual agreements between an employer and a worker and may mean different things to different people. Generally, however, it is suggested that such contracts consist of those where the employer is not obliged to offer work and therefore the worker is not certain of having an opportunity to work.

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