

## **EXPLANATORY MEMORANDUM TO**

### **The Parental Leave (EU Directive)(Flexible Working) Regulations (Northern Ireland) 2013**

**2013 No. 26**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 8th March 2013.

#### **2. Purpose**

- 2.1. The Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013 amend provisions relating to parental leave in the Employment Rights (Northern Ireland) Order 1996 ("the 1996 Order"). The amendment extends the right to request a contract variation to employed agency workers who are returning to work from a period of parental leave.

#### **3. Background**

- 3.1. The Parental Leave Directive 2010/18/EU ("the Directive") repeals an earlier Framework Agreement on Parental Leave (96/34/EC) and implements a cross-sectoral agreement between EU social partners (representing both employers and employees).
- 3.2. In order to meet its obligations under EU law, the Department for Employment and Learning is required to transpose the Directive into domestic legislation.
- 3.3. The Directive sets out minimum requirements for parental leave to support the reconciliation of parental and professional responsibilities for working parents. One of the requirements is that employed agency workers are entitled to avail of the right to request flexible working on return from parental leave. This requires an amendment to the 1996 Order which at present states that agency workers in general are not entitled to request flexible working.
- 3.4. This Statutory Rule will make the necessary changes to ensure that employed agency workers can avail of this right.
- 3.5. A second requirement of the Directive, an increase in the minimum period of parental leave entitlement from 13 to 18 weeks, will be provided for in a separate Statutory Rule, the Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013.

#### **4. Matters of Special Interest to the Employment and Learning Committee**

4.1. None.

#### **5. Consultation**

- 5.1. A public consultation was held between October and December 2012 to seek the views of interested parties on the proposal to extend, in line with the requirements of the Directive, the entitlement of parents to claim unpaid parental leave.
- 5.2. As Northern Ireland employment legislation is already compliant with the Directive in most respects, there was a need to consider only a narrow range of issues, namely increasing the amount of leave available to each parent and making a slight amendment to the right to request flexible working.
- 5.3. The consultation also considered whether it was appropriate to move beyond the strict requirements of the Directive by extending entitlement to parental leave to parents of older children.
- 5.4. The varied responses from stakeholders indicated that further consultation would be necessary before any changes beyond the minimum requirements of the Directive are made.
- 5.5. In its response the Department therefore proposed making the necessary changes to ensure the implementation of the Directive with a view to revisiting the wider issues raised by consultees as part of a broader review of working parents' rights in Northern Ireland.

#### **6. Position in Great Britain**

- 6.1. The changes being made in Great Britain are almost identical, ensuring that the minimum requirements of the Directive are met, although the changes being made in Great Britain are included in a single Statutory Instrument, while two Statutory Rules are required in Northern Ireland due to Assembly procedural requirements.
- 6.2. An additional regulation is included in the Statutory Instrument which introduces a provision requiring the Secretary of State to review the operation and effect of these provisions every five years. This provision reflects specific policy in Great Britain and is not required in Northern Ireland.

#### **7. Equality Impact**

- 7.1. Of the nine equality categories set out under Section 75 of the Northern Ireland Act 1998, the primary beneficiaries of this amendment will be those within the 'dependants' grouping.
- 7.2. There may be some negative impact on anyone outside of this grouping as they will not benefit from the right and may be expected to cover for the absences of those who do, but in practice this impact is likely to be negligible.
- 7.3. There are no significant differential impacts on any of the other Section 75 categories.

## **8. Regulatory Impact**

- 8.1. A Regulatory Impact Assessment estimates costs to business in the range £55,000 to £180,000 per annum if the minimum changes required by the Directive are implemented. The overwhelming majority of these estimated costs relate to changes being made to the length of parental leave entitlement by the Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013. The potential impact of the amendment being made by this Statutory Rule will be negligible.

## **9. Financial Implications**

- 9.1. No additional government expenditure is anticipated.

## **10. Section 24 of the Northern Ireland Act 1998**

- 10.1. The Department is satisfied that this legislation is compliant with section 24 of the Northern Ireland Act 1998.

## **11. EU Implications**

- 11.1. The Statutory Rule has an operational date of 8th March 2013, the deadline for transposition. This ensures UK-wide transposition of Council Directive 2010/18/EU. Failure to transpose the Directive before the deadline could leave the Department open to infraction proceedings by the European Court.

## **12. Additional Information**

- 12.1. Not applicable.

## **TRANSPOSITION NOTE**

### **Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013**

### **Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013**

These Regulations will amend the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 and the flexible working provisions contained within the Employment Rights (Northern Ireland) Order 1996 in order to implement EU Directive 2010/18 on Parental Leave.

This Directive replaces a previous Directive on parental leave which was implemented through the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 and requires only limited changes to the existing system in Northern Ireland. Firstly, it extends the amount of unpaid parental leave available to each parent from 13 to 18 weeks per child. Secondly, it extends the right to request flexible working to employed agency workers who are returning to work from parental leave.

The deadline for Member States to transpose the Directive was March 2012. However, the United Kingdom formally notified the Commission that it would exercise the right to take the additional year to implement the directive as provided for under Article 3(2) of the Directive. The implementation deadline is therefore the 8th March 2013.

The Department for Employment and Learning has responsibility for implementation of the Directive in Northern Ireland. The current law in Northern Ireland, as in the rest of the UK, is already compliant with the majority of provisions contained within the Directive. As the Department intends to carry out a broader review of working parents' rights in the near future, it is proposing to make the minimum changes necessary to ensure compliance with the Parental Leave Directive at the present time.

The Directive itself puts into effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by the European cross-industry social partner organisations. The Transposition table below therefore refers to the clauses in the Framework Agreement. The table also considers copy-out for each clause and the reasons for elaboration where this is not appropriate, in keeping with the GB Guiding Principles for EU legislation.

In this table:

- “the ERO” means the Employment Rights (Northern Ireland) Order 1996;
- “the 1999 Regulations” means the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999;
- “the amending Maternity and Parental Leave Regulations” means the Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013;
- “the amending Flexible Working Regulations” means the Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013.

Clause	Copy out (yes/no)	If no – Reason for Elaboration	Implementation
<p>Clause 1</p> <p>Sets out the purpose and scope of the directive which applies to all workers who have an employment contract or employment relationship as defined by the law of the Member State.</p>	No.	No – directive requires elaboration by the Member State.	Existing regulation 13 of the 1999 Regulations.
<p>Clause 2</p> <p>Gives workers an individual right to parental leave to take care of a child until a given age up to 8 years to be defined by Member States which should in principle be on a non-transferrable basis. The leave should be at least 4 months.</p>	No.	No – directive requires elaboration by the Member State.	Existing regulations 13, 14 and 15 and Schedule 2 of the 1999 Regulations. In addition, regulation 2 of the amending Maternity and Parental Leave Regulations increases a qualifying employee's entitlement to parental leave in respect of an individual child from 13 weeks to 18 weeks.
<p>Clause 3</p> <p>Leaves the conditions of access and detailed rules for applying parental leave to Member States.</p>	No.	No – directive requires elaboration by the Member State.	Existing regulations 13, 14, 15 and Schedule 2 of the 1999 Regulations.

<p>Clause 4</p> <p>Member States shall assess the need for additional measures to address the specific needs of adoptive parents.</p>	<p>No.</p>	<p>Northern Ireland, in line with the rest of the UK, provides adoption leave and pay in order to support adoptive parents. The same rationale underpinned the decision to extend parental leave to this group.</p>	<p>Existing regulations 13, 14, 15 and Schedule 2 of the 1999 Regulations.</p>
<p>Clause 5</p> <p>Protects rights acquired or in the process of being acquired by the worker on the date on which parental leave starts and protects against less favourable treatment or dismissal as a result of taking parental leave. Also gives the worker the right to return to the same or similar job on return from parental leave.</p>	<p>No.</p>	<p>No – directive requires elaboration by the Member State.</p>	<p>Existing regulations 17, 18, 19 and 20 of the 1999 Regulations.</p>
<p>Clause 6</p> <p>Member States shall take the necessary measures to ensure that workers returning from parental leave may request changes to their working hours.</p>	<p>No.</p>	<p>No – directive requires elaboration by the Member State.</p>	<p>Existing sections 112F to 112I ERO. In addition, regulation 2 of the amending Flexible Working Regulations extends the right to request flexible working (set out in section 112F ERO) to employed agency workers who are returning to work from parental leave.</p>

<p>Clause 7</p> <p>Workers shall be entitled to time off from work on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.</p>	<p>No.</p>	<p>No – directive requires elaboration by the Member State.</p>	<p>Existing section 85A of the ERO.</p>
<p>Clause 8</p> <p>Non-regression clause - Implementation of the provisions of the Directive shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement.</p>	<p>N/A.</p>	<p>No specific provision required.</p>	



## **Council Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC**

### **Clause 1: Purpose and scope**

1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.
2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State.
3. Member States and/or social partners shall not exclude from the scope and application of this agreement workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

### **Clause 2: Parental leave**

1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.
2. The leave shall be granted for at least a period of four months and, to promote equal opportunities and equal treatment between men and women, should, in principle, be provided on a non-transferable basis. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis. The modalities of application of the non-transferable period shall be set down at national level through legislation and/or collective agreements taking into account existing leave arrangements in the Member States.

### **Clause 3: Modalities of application**

1. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:
  - (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system, taking into account the needs of both employers and workers;
  - (b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year; Member States and/or social partners shall ensure, when making use of this provision, that in case of successive fixed term contracts, as defined in Council Directive 1999/70/EC on fixed-term work, with the same employer the sum of these contracts shall be taken into account for the purpose of calculating the qualifying period;
  - (c) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation. Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and/or practice;
  - (d) in addition to (c), authorise special arrangements to meet the operational and organisational requirements of small undertakings.
2. Member States and/or social partners shall establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning

and the end of the period of leave. Member States and/or social partners shall have regard to the interests of workers and of employers in specifying the length of such notice periods.

3. Member States and/or social partners should assess the need to adjust the conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. EN L 68/18 Official Journal of the European Union 18.3.2010

#### Clause 4: Adoption

1. Member States and/or social partners shall assess the need for additional measures to address the specific needs of adoptive parents.

#### Clause 5: Employment rights and non-discrimination

1. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

2. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.

3. Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave. 4. In order to ensure that workers can exercise their right to parental leave, Member States and/or social partners shall take the necessary measures to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements and/or practice. 5. All matters regarding social security in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law and/or collective agreements, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care. All matters regarding income in relation to this agreement are for consideration and determination by Member States and/or social partners according to national law, collective agreements and/or practice, taking into account the role of income – among other factors – in the take-up of parental leave.

#### Clause 6: Return to work

1. In order to promote better reconciliation, Member States and/or social partners shall take the necessary measures to ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time. Employers shall consider and respond to such requests, taking into account both employers' and workers' needs. The modalities of this paragraph shall be determined in accordance with national law, collective agreements and/or practice.

2. In order to facilitate the return to work following parental leave, workers and employers are encouraged to maintain contact during the period of leave and may make arrangements for any appropriate reintegration measures, to be decided between the parties concerned, taking into account national law, collective agreements and/or practice.

#### Clause 7: Time off from work on grounds of force majeure

1. Member States and/or social partners shall take the necessary measures to entitle workers to time off from work, in accordance with national legislation, collective agreements and/or practice, on grounds of force majeure for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable.

2. Member States and/or social partners may specify the conditions of access and detailed rules for applying clause 7.1 and limit this entitlement to a certain amount of time per year and/or per case.

#### Clause 8: Final provisions

1. Member States may apply or introduce more favourable provisions than those set out in this agreement.

2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement. This shall not prejudice the right of Member States and/or social partners to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with. EN 18.3.2010 Official Journal of the European Union L 68/19.

3. This agreement shall not prejudice the right of social partners to conclude, at the appropriate level including European level, agreements adapting and/or complementing the provisions of this agreement in order to take into account particular circumstances.

4. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of two years from its adoption or shall ensure that social partners introduce the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreements, have up to a maximum of one additional year to comply with this decision.

5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and/or practice.

6. Without prejudice to the respective role of the Commission, national courts and the European Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.

7. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

