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Department for
**Employment
and Learning**
www.delni.gov.uk

Sharing Parental Rights, Extending Flexibility at Work -

Public Consultation

1. Foreword

- 1.1. **In February 2013, the UK Government introduced into Parliament the Children and Families Bill which includes provisions that will make fundamental changes to the statutory leave entitlements, both paid and unpaid, that are available to working parents in Great Britain. I have secured the Executive's agreement to seek the views of local stakeholders on the merits of these proposals; the extent (if any) to which they should be implemented here in Northern Ireland; and whether alternative options may be appropriate.**



Dr Stephen Farry MLA

- 1.2. These proposed new arrangements are designed to provide working parents with greater flexibility in determining how best to share the statutory leave and pay entitlements associated with the birth or adoption of a child. The key purpose of this review is to create a system of shared parental leave that will enable mothers to retain a closer connection to the workplace and also allow partners to take a more active role in caring for and bonding with a new baby or adopted child during the crucial first year following birth or adoption. The proposals also allow for partners of either the mother or the primary adopter to become more involved with antenatal care or in the stages leading up to an adoption, where that is what both people want.
- 1.3. The second aspect of this consultation is a proposal to broaden very significantly the existing right to request flexible working. Currently the right is available to a wide range of working parents and carers; however this consultation explores the option of extending this entitlement to all employees who meet certain eligibility criteria (such as length of service with their employer). Associated with this proposal is a lighter touch process for making and responding to requests intended to improve administration for businesses.
- 1.4. The proposals set out in this consultation document will have very obvious benefits for working families. However, the proposed changes will also help employers in creating more flexible employment practices that are better suited to the needs of our local economy.
- 1.5. In Northern Ireland, employment law is a devolved matter. As the responsible Minister, I am committed to developing and maintaining an employment rights system that is consistent with best practice and enhances Northern Ireland's reputation and competitiveness in a global economy. During the recent transposition of the Parental Leave Directive, it became abundantly clear to me that there is an appetite for a frank and open debate here on the wider framework of working parents' rights, which would take account of developments in the rest of the UK. This consultation provides an opportunity to engage in that debate

and help shape the decision-making process on whether it is appropriate to adopt the UK Government's proposals or instead to travel a different path.

- 1.6. Please take the time to read and respond to this document and the material referenced within. I very much look forward to hearing your views.

Dr Stephen Farry MLA
Minister for Employment and Learning
May 2013

2. Introduction

PURPOSE

- 2.1. **This consultation document seeks views on whether it is appropriate to implement in Northern Ireland a programme corresponding to one that is already being taken forward in Great Britain by the Department for Business, Innovation and Skills (BIS) setting out a framework of new rights for working parents.**
- 2.2. The central BIS proposals concerning shared parental leave and an expanded right to request flexible working are mapped out in the consultation documents titled:
- Modern workplaces – government response on flexible parental leave (November 2012)¹; *and*
 - Modern workplaces – government response on flexible working (November 2012).²
- 2.3. Supplementary information on these topics is contained within the two most recent BIS impact assessments dealing with these issues:
- Modern workplaces: shared parental leave and pay administration consultation – impact assessment (*February 2013*);³ *and*
 - Modern workplaces consultation: government response on flexible working – impact assessment (*November 2012*).⁴
- 2.4. These documents together explore the key policy decisions that BIS has taken following its own public consultation process in Great Britain.
- 2.5. However it is important to note that BIS has subsequently sought to clarify important questions concerning the administration of new systems arising from the proposals, issuing a further consultation document entitled *Modern workplaces: shared parental leave and pay – administration consultation* (February 2013).⁵

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34689/12-1267-modern-workplaces-response-flexible-parental-leave.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82793/12-1269-modern-workplaces-response-flexible-working.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/110692/13-651-modern-workplaces-shared-parental-leave-and-pay-impact-assessment2.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34692/12-1270-modern-workplaces-response-flexible-working-impact.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/88476/13-619-modern-workplaces-shared-parental-leave-and-pay-administration-consultation.pdf

- 2.6. This consultation takes into account and seeks views on the full range of the GB proposals, both those described in the November 2012 policy documentation and those subsequently under discussion in the February 2013 consultation on administration.

PROVIDING A RESPONSE

Closing date

- 2.7. If you wish to respond to this consultation, **you are asked to respond to the questions set out at Annex A to this document**, not the questions detailed in the GB documents. You should ensure that your response is received by the Department no later than **23 August 2013**.

Contact details

- 2.8. Responses may be submitted to the Department by post, email or fax. Contact details are as follows.

Post: Employment Relations Policy and Legislation Branch Room 203 Adelaide House 39-49 Adelaide Street BELFAST BT2 8FD
Email: employment.rights@delni.gov.uk
Telephone: 028 902 57580
Fax: 028 902 57555

- 2.9. If you have any specific questions about the detail surrounding any of the issues raised in the consultation, please use the above contact details.

Information you should provide

- 2.10. Please indicate in your response whether the views you are expressing are your own individual views or those of an organisation you represent.
- 2.11. If you think there are any organisations or individuals who are likely to have a particular interest in this consultation, please let us know their contact details.

Alternative formats

- 2.12. This consultation document and other Departmental publications may be made available in alternative formats upon request.

Confidentiality

- 2.13. The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed upon request. The Department can only refuse to disclose information in exceptional circumstances. Any automatic confidentiality disclaimer generated by your IT system will be taken to apply only to information in your response for which confidentiality has been specifically requested. Before you submit your response, please read the paragraphs below on the confidentiality of consultations to give you guidance on the legal position about any information given by you in response to this consultation. The Department will handle any personal data you provide appropriately in accordance with the Data Protection Act 1998.
- 2.14. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority – the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including any information about your identity, should be made public or treated as confidential.
- 2.15. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. For further information about confidentiality of responses please contact the Information Commissioner's Office or see the website at www.informationcommissioner.gov.uk

How responses will be used

- 2.16. Responses to this consultation will be analysed and taken into consideration in preparing a Departmental policy response, incorporating a summary of responses, which will be published later this year.

IMPACT ASSESSMENT

- 2.17. The Department would welcome comment on the impact assessment in **Chapter 4** to assist it in ensuring that adverse impacts are minimised or avoided where feasible.

3. Proposals

OVERVIEW

- 3.1. **Statutory paid and unpaid leave for working parents, as well as the right to request flexible working, currently operate in Northern Ireland in the same way as in Great Britain. Administration of certain aspects of paid leave is also carried out across both Great Britain and Northern Ireland by HM Revenue and Customs.**
- 3.2. From May to August 2011 the UK Government undertook a wide ranging public consultation which included proposals for Great Britain on a new system of shared parental leave and pay (earlier referred to as flexible parental leave and pay), as well as on changes to coverage of the right to request flexible working.
- 3.3. The rationale for shared parental leave and pay is:
- *to allow working families greater flexibility and control over care arrangements for children during the early stages of their lives; and*
 - *to increase paternal involvement during these formative periods and address gender equality issues that arise from women being away from work for long periods due to parental commitments.*
- 3.4. It is envisaged that shared parental leave may be taken by the mother or primary adopter and a person with whom care of the child is shared who is the father of the child or the mother's/primary adopter's partner (husband, civil partner or partner, including same sex).⁶ It is also envisaged that the intended parents of a child born through a surrogacy arrangement who meet the criteria to apply for a Parental Order will be able to benefit. It will be possible for shared parental leave to be taken at the same time that the mother is still on maternity leave; alternatively, both the mother and her partner could be on shared parental leave together, so long as the total amount of leave does not exceed the couple's joint entitlement.
- 3.5. It should be stressed that the sharing of parental leave will be optional, with mothers retaining the right to take the full term of maternity leave and pay if they wish. There is no intention to place pressure on mothers to return to work before they wish to do so.
- 3.6. The proposals are also intended to be beneficial for business in that women will be able to retain a strong connection to the workplace, thus increasing their continued participation in the labour market.

⁶ (in this document, 'partner' and similar references are used as a shorthand).

- 3.7. BIS considers that the proposed extension of the right to request flexible working to all employees in Great Britain (rather than, as at present, parents of children under 17, of disabled children under 18 and most carers of adult dependants) will widen choice, promote change in cultural perceptions surrounding flexible working and have positive benefits for both employees and businesses. Businesses may gain greater employee commitment and loyalty, retain a valuable skills base, see improved productivity and contribute to a more effectively functioning labour market. Older workers who wish to reduce their working hours are more likely to see this facilitated whilst younger workers who are under-employed may see opportunities for their skills to be fully utilised.
- 3.8. A detailed commentary on the new systems for sharing parental leave and questions to stakeholders about their operation in practice is set out in the BIS consultation on administration, issued in February this year (see **footnote 5** on **page 3**). To assist Northern Ireland stakeholders in gaining an understanding of the issues, a synopsis of the proposals is provided below. Also set out is the way forward envisaged in Great Britain in respect of the right to request flexible working. Interested parties are also advised to read the GB documentation to understand the full context of the various policy proposals.
- 3.9. **Annex A: Question and answer booklet** sets out a template which you may use, if you wish, to address key issues arising from this consultation.
- 3.10. Part I sets out general questions as to whether the shared parental proposals should be adapted for Northern Ireland and possible alternatives.
- 3.11. Part II raises detailed questions about how the systems ought to operate if their introduction here is supported. These are referenced throughout the text below.
- 3.12. Part III deals with the proposed extension of the right to request flexible working.
- 3.13. Part IV asks for stakeholder input on potential impacts of the proposals and concludes by asking for general comments.

ANTENATAL AND PRE-ADOPTION APPOINTMENTS

- 3.14. Currently there is no right for fathers or partners of pregnant women to take time off to attend antenatal appointments. Under the new proposals **unpaid time off work will be given as a 'day one' right to employees and qualifying agency workers to attend 2 such appointments**. The decision as to whether an individual husband, civil partner or partner of the pregnant woman, or the father or parent of the expected child can attend an antenatal appointment will always rest with the mother, but such individuals will be able to use this entitlement to take leave from their employer for this purpose. The right to unpaid time off to attend 2 such appointments will also be available to intended parents in surrogacy cases who meet specified conditions relating to parental orders under the Human Fertilisation and Embryology Act 2008.

- 3.15. There is currently no right for adopters⁷ to attend meetings in connection with the adoption of a child. The UK Government intends to change this by introducing in Great Britain a right allowing primary adopters **paid time off work to attend up to 5 appointments** and **secondary adopters unpaid time off to attend up to 2 appointments**. Such appointments would be those arranged for the purposes of getting to know and bonding with the looked-after child and related meetings.
- 3.16. The amount of leave to be permitted is to be capped at **6.5 hours per antenatal or pre-adoption appointment**. Applicants will not have to provide an employer with any evidence of the pregnancy in order to exercise this right as there is not considered to be a proportionate way of securing this.
- 3.17. Employers will not be able to refuse such a request, but beyond that it is not proposed to create a statutory process for dealing with one; instead, employers may establish a process if they wish.

ADOPTION LEAVE AND PAY

- 3.18. Primary adopters will continue to have the right to statutory adoption leave and pay, consisting of a leave entitlement of up to 52 weeks and an entitlement to statutory adoption pay of up to 39 weeks. However:
- ***statutory adoption leave will become a ‘day one’ right: i.e. there will be no qualifying conditions for eligible adopters who are matched with a child for adoption;***
 - ***additionally, statutory adoption pay will be enhanced to 90% of the primary adopter’s salary for the first 6 weeks, reflecting entitlements available to mothers availing of statutory maternity pay.***
- 3.19. A further proposition is the extension of statutory adoption leave and pay to prospective parents in the ‘fostering-to-adopt’⁸ or ‘concurrent planning’⁹ arrangements, and to the intended parents of a child born through a surrogacy arrangement.
- 3.20. The UK Government foresees rare situations where, in a fostering to adopt arrangement, a child may be matched and placed with the prospective adoptive parents on the same day. Entitlement to introductory appointments will cease when the child is placed, and so in practice in these rare cases there will be no

⁷ In this document, the term ‘adopter’ or ‘primary adopter’ is used as shorthand for the person who avails of statutory adoption leave and pay. The other adoptive parent, who may avail of statutory paternity pay in respect of the adoption, is the ‘secondary’ adopter for these purposes.

⁸ The equivalent within Northern Ireland, which has operated for some time as good practice, allows a person to become ‘dually approved’ to foster and adopt.

⁹ Concurrent planning is an approach to permanence planning in fostering and adoption focussed on very vulnerable children aged 0-24 months. It places babies who are subject to care proceedings with carers who are dually approved as foster carers and adopters so that whatever the outcome of the proceedings (adoption or rehabilitation) they do not suffer unnecessary moves and broken attachments.

time for meaningful introductory appointments to be arranged, as there will not be a period during which the child and the carers will have the opportunity to meet and get to know each other before the placement is made. **This consultation, like its GB counterpart, seeks views on how realistic notification of the need to take adoption leave and pay can be provided to employers where this situation arises (Annex A, Part II, Q10).**

MATERNITY LEAVE AND PAY

- 3.21. Women will continue to be eligible for maternity leave and statutory maternity pay or maternity allowance in line with the current arrangements. That means:
- *a maximum statutory **52 weeks of maternity leave** will remain in place as the default position for all employed women;*
 - *women who are currently eligible to receive statutory maternity pay or maternity allowance will continue to be able to do so for up to **39 weeks**.*
- 3.22. There will be no requirement for mothers to end this leave and begin shared parental leave (discussed below); shared parental leave is intended to afford new choices rather than to take away existing options.
- 3.23. Currently to be eligible to claim maternity leave a pregnant woman is required to give notice to her employer at least 15 weeks before the expected week her baby is due, or as early as practicable thereafter. She can change the start date by giving at least 28 days' notice.
- 3.24. Maternity leave begins automatically if the mother is absent from work for a pregnancy related reason within four weeks before the week the baby is due, or from the day after giving birth.
- 3.25. The woman's employer must write to her within 28 days of receiving notice confirming her entitlement to take the leave and giving the date it will end. A woman is expected to return to work at the end of her 52 weeks' maternity leave but may return before then providing she gives her employer a minimum of 8 weeks' notice of that intention.
- 3.26. A woman entitled to statutory maternity pay from her employer must give her employer at least 28 days' notice (or as much notice as possible) of when she wants payments to begin.
- 3.27. There are no proposals to alter these arrangements.

PATERNITY LEAVE AND PAY

- 3.28. The right to paternity leave and pay will remain as it is now, with a choice of a 1 or 2 week period paid at a statutory rate, taken as a single block within 56 days

following a child's birth or adoption. However the UK Government intends to establish powers covering Great Britain that would allow for an extension to paid paternity leave at a later date when economic circumstances are more favourable.

- 3.29. As a consequence of the introduction of shared parental leave and pay (discussed below), the system of additional paternity leave and additional statutory paternity pay which it is effectively replacing will be abolished.
- 3.30. Eligibility for paternity leave derives from being continuously employed by the same employer for at least 26 weeks by the end of the 15th week before the week the baby is due. The person must continue to be employed by the employer until the date the baby is born.
- 3.31. Currently, eligibility for leave depends on the father or partner giving the employer notice by the 15th week before the week the baby is due (or within 7 days of being matched with a child for adoption) of the amount of leave to be taken and when it will be taken.
- 3.32. Notice of intention to take statutory paternity pay must be given at least 28 days before the individual intends to take it.
- 3.33. The UK Government is contemplating harmonising the separate leave and pay notice periods at the earlier date i.e. 15 weeks before the expected week of childbirth, or within 7 days of being matched with a child for adoption. Under the proposal, applicants would continue to be able to change their notification details by giving at least 28 days' notice before the week of the birth. **The Department is seeking submissions concerning this proposal, asking for evidence of any administrative difficulties created by the differing notice periods at present (see Annex A, Part II, Q1) and is also seeking views on the proposal to align them (Q2).**

UNPAID PARENTAL LEAVE

- 3.34. The age limit of a child in respect of whom unpaid parental leave can be claimed will be increased under the package from 5 to 18 years. Each parent will therefore have the right to take up to 18 weeks' unpaid parental leave for each child under the age of 18.
- 3.35. Provision of unpaid parental leave in Northern Ireland and in Great Britain was recently increased from 13 to 18 weeks for children under 5. At the time of the Northern Ireland consultation, there was not a sufficiently strong consensus for changing the age limit. However, it is reasonable to now ask stakeholders for their opinions on whether such a change might be appropriate in the context of the wider review.

SHARED PARENTAL LEAVE AND STATUTORY SHARED PARENTAL PAY

- 3.36. A new system of **shared parental leave** and **statutory shared parental pay** will become available where a child's mother, or primary adopter, and that person's partner meet qualifying conditions. Eligible mothers or primary adopters will have the option to **nominate a date to bring their maternity or adoption leave and pay entitlement to an early end and share what leave and pay remains with the other parent**. Importantly, shared parental leave can be taken **at the same time** that the mother or primary adopter is still on maternity or adoption leave, or both the mother/adopter and her partner can be on shared parental leave together, so long as the total amount of leave does not exceed the couple's joint entitlement.
- 3.37. To make use of the new shared parental system an individual's partner will need to meet certain economic activity tests. Each parent will need to meet the qualifying criteria for leave and/or pay on an individual basis in order to be entitled to it. These qualifying criteria will mirror criteria for existing entitlements such as maternity pay and allowance and paternity pay and leave so that families will be able to easily work out their entitlement.
- 3.38. It is envisaged that it will be possible to take shared parental leave in a minimum of 1 week blocks. The amount available to each parent will be decided by the parents, who will each subsequently need to agree the timing and individual periods of leave with their employer. In the event that individual periods of leave cannot be agreed, the leave will default to a single block to commence on a date specified by the employee.
- 3.39. It is also proposed that the intended parents of a child born through a surrogacy arrangement and who meet the criteria to apply for a Parental Order will be eligible for adoption leave and paternity leave and pay for the first time and will be able to access shared parental leave and statutory shared parental pay if they meet the qualifying criteria.

Economic activity test

- 3.40. Eligibility for shared parental leave for one parent/carer is dependent on the other parent/carer being economically active as defined by an economic activity test. To qualify for shared parental leave, a person's partner will need to have worked for any 26 out of the 66 weeks preceding the baby's due date, or the adoption matching date (or date of the child's entry into the UK for overseas adopters) and have earned at least £30 gross salary per week for any 13 of those 66 weeks. The intention is to ensure that where both working parents are economically active, they will be able to access the system to share leave and pay even though they might not both qualify for the leave and the pay.

3.41. The economic activity test consists of two stages.

1. **Stage 1 (the joint test):** *a parent/carer would need his or her partner to meet the economic activity test. Passing this test would give the parent/carer access to the shared parental leave system. The person would then need to consider his or her personal employment and earnings history to work out his or her own leave and pay entitlement. This will enable consideration to be given to whether there would be benefits to the family in the woman ending her maternity leave/pay/allowance early in order to opt into the shared parental leave and pay system.*
2. **Stage 2 (the individual test):** *in order to be eligible for shared parental leave and pay, the parent must be employed. An agency worker may also qualify for pay. To qualify for leave, it is envisaged that the parent/carer must have at least 26 weeks' continuous service with the same employer at the 15th week before the baby's due date and still be working for the same employer when he or she intends to take the leave. To qualify for statutory pay, it is envisaged that the parent/carer must have earned an average salary of the specified amount, or more (the Lower Earnings Limit – currently £109 per week) for 8 weeks prior to the 15th week before the baby's due date. Some women such as agency workers may meet this requirement, but may not be entitled to leave.*

Notice to end maternity/adoption leave/pay and access shared parental leave

3.42. BIS intends that a woman or primary adopter in Great Britain will be able to give her (or his) employer notice, at least 8 weeks in advance, of the intention to end maternity/adoption leave on a specific future date in order for that person and the person's partner (if they are eligible) to opt into the shared parental system. Both individuals will also have to give 8 weeks' notice of intention to start shared parental leave or pay. A new form will facilitate this option, but a decision to take this route will be binding except where one of two situations arises, namely:

- *where, during the 8 week notice period, the mother/adopter and partner do not meet the economic activity test and so become ineligible for shared parental leave; or*
- *where the notice has been given before birth and the mother, within a specified 'grace period' after the birth, changes her mind.*

3.43. **In the latter circumstance, this consultation (like its GB counterpart) seeks to establish whether this 'grace period' should be 4 or 6 weeks (Q3).**

3.44. Adopters will be able to give notice from the day of the placement of the looked after child, to enable them to share the whole of the 52 weeks of leave and 39 weeks of pay. This would be done using a similar form. It is not intended that a similar 'grace period' will be available to adopters or intended parents in surrogacy arrangements.

Information to be notified to the employer concerning shared parental leave

- 3.45. The current additional paternity leave and pay notification form contains the names and National Insurance numbers of both the applicant (i.e. the partner of the mother or primary adopter) and the mother or primary adopter. It also contains information about how much leave and pay or allowance the mother or primary adopter has taken in order to determine the remaining entitlement for the other individual to take as additional paternity leave and pay.
- 3.46. BIS envisages that the notification process for shared parental leave and pay will include similar information, as well as information relating to the maximum number of weeks of leave and pay available to the employees and how this will be divided between them. Each parent entitled to leave or pay will need to complete the form and both parents/carers will then need to sign these notifications.
- 3.47. The notification will not contain information about each parent/carer's employer, and employers will not be required to contact the other parent's employer to make checks. However, as with additional paternity leave and pay, employers will be able to request this information from their employee if they choose to do so, and the employee must provide this information in order to be able to take the leave.
- 3.48. As with additional paternity leave and pay, it is envisaged that parents will self certify their eligibility for the new system, with employers able to request the birth certificate as evidence if they wish to do so. No statutory process will be mandated for this, but employees should be given sufficient time to produce the information. **A draft of the form setting out the proposed information requirements is provided in the GB consultation on administration. Northern Ireland stakeholders are asked to review that form and provide this Department with their views on its appropriateness (Q4).**

Transferring shared parental leave/pay between two individuals

- 3.49. If at a later date the parents/carers want to change how the total shared parental leave and pay entitlement is divided between them, then they can both agree to transfer their share to the other parent/carer. To achieve this:
- *the parent/carer transferring the leave would notify his or her employer of the reduction in the total amount available to him or her; and*
 - *the parent/carer receiving the leave would notify his or her employer of the increase in the leave (and pay) available to him or her.*
- 3.50. A form similar to the initial notification form is envisaged for these purposes, incorporating a section where each parent sets out the amount of shared parental leave and pay he or she has already taken.

Agreeing and making changes to leave plans

- 3.51. It is not proposed that parents/carers be required to set out their plans for sharing between them the whole period of pay/leave from the outset because such an arrangement is thought to be unduly constraining and inflexible. Rather, under the system proposed in the GB consultation, employees will be required to give their employer 8 weeks' notice when requesting new blocks of leave or varying an existing request. **Views are sought on this proposal (Q5).**
- 3.52. The UK Government would wish to see early discussions between the requesting individual and his or her employer and is proposing, for Great Britain, a two week time period for this purpose followed by a 'sign off' period where the employee can accept the agreed period or withdraw the request. **This consultation, like the consultation in Great Britain, asks for views on this proposal (Q6).**
- 3.53. Where it is not possible to agree a pattern of leave, BIS proposes that the default position will be for the employee to take the total amount of leave requested as one block, to begin on a date of the employee's choosing, but no earlier than 8 weeks from the date of submission of the notice proposing the original pattern of leave. The intention is to ensure that both employers have over 6 weeks' notice of the exact pattern of leave that employees are taking.
- 3.54. If an employee cannot agree to the pattern of leave originally requested because their partner's employer has refused the proposal, the employee would need to withdraw his or her request and put in a new request for a single period of leave or request a new pattern of leave that accommodates his or her partner's agreed leave request. The employee would need to give 8 weeks' notice of this new request.
- 3.55. The process outlined in the preceding paragraphs is envisaged as applying to requests to change existing leave arrangements. Again, if the employer is unable to accommodate the proposed pattern of leave, then the leave will have to be taken in a single block starting on a date of the employee's choosing. This would apply to all shared parental leave that the employee has notified to date, except leave that has been agreed and occurs before the end of the 8 week notice period for the request.

Time limits

- 3.56. Currently, a woman's maternity leave runs for 52 continuous weeks. Although she may start maternity leave up to 11 weeks before her expected due date, she will not be absent from the workplace for more than one calendar year; hence her leave may end before her child's first birthday. Her partner, or any other person who is taking additional paternity leave and pay, is however entitled to take up to 26 weeks of continuous leave up until the child's first birthday.
- 3.57. It is important to determine where this 'cut-off point', after which parents will no longer be able to use any outstanding shared parental leave or pay entitlement, will occur under the new arrangements. Two options are proposed:

- *52 weeks from the start of the woman's maternity leave; or*
- *up until the child's first birthday. (This would potentially extend the maximum period for taking leave by around 13 weeks).*

3.58. **This consultation (and that in Great Britain) seeks views on these options (Q7)**, noting that the same principle will be applied to adopters, who are currently able to take adoption leave and pay up to 2 weeks before the placement of the child.

Keeping in Touch (KIT) days

3.59. Currently, mothers/adopters may take up to 10 'Keeping in Touch' (KIT) days during their maternity/adoption leave. These days, which must be mutually agreed with the employer, are designed to enable a mother/adopter to stay in touch with the workplace during the leave. There is no statutory requirement for employers to pay more than the statutory limit (if the employee is eligible for statutory pay) for each day the employee is in work, although many employers choose to fully remunerate staff.

3.60. It is proposed to allow up to 10 KIT days per parent for use whilst on shared parental leave; this is in addition to the existing entitlements available during maternity and adoption leave.

3.61. **The GB consultation (and this one) seeks views on this proposal (Q8).**

Right to return to the same job

3.62. Under the current system, a person returning from ordinary maternity leave/ordinary adoption leave (within the first 26 weeks of leave) has the right to return to **the same job** as before the absence. Partners of these individuals taking ordinary or additional paternity leave also have this right.

3.63. When a person returns from a period of additional maternity leave/additional adoption leave (weeks 27 to 52 of the leave period), that individual has the right to return to **the same or a similar job**. This does not allow an employer to place a returning parent in any job; the returning parent continues to have the right to return to the same job, unless this is not reasonably practical, in which case the employer must offer the employee a job of equal standing and remuneration.

3.64. **There are two proposed options (Q9)** as to how this right will operate under the new system.

1. *The right to return to the same job will be available to **employees returning from the first continuous block of leave of 26 weeks or less** (whether a combination of maternity/shared parental, paternity/shared parental or adoption/shared parental leave, or a single continuous period of maternity or adoption leave). After that 26 week period, the right to return to the same or a similar job will apply. (Under this proposal, where*

there is a gap between paternity leave and shared parental leave, an employee will be entitled to take a period of shared parental leave of up to 26 weeks and still maintain the right to return to the same job.)

OR

2. *The right to return to the same job will be available to **employees returning from aggregated leave of up to 26 weeks** even if the leave is not taken as a single block.*
- 3.65. Note that an employee will continue to have the right to return to the same job when taking a period of **unpaid parental leave** of less than 4 weeks, and would have the right to return to the same or a similar job following a period of unpaid parental leave of more than 4 weeks.

PART II: ADMINISTRATION OF SHARED PARENTAL RIGHTS

- Q1.** *Please provide any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers.*
- Q2.** *Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)? Please explain.*
- Q3.** *Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth? Please explain.*
- Q4.** *Do you agree on the level of information to be provided by an employee as part of the notification process? If not, please explain why and what information you would like to be required.*
- Q5.** *Do you agree with the proposal to allow parents to notify their employer of their intentions as they require them? Please explain.*
- Q6.** *To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, it is proposed to set the negotiation period at 2 weeks. Do you agree? Please explain.*
- Q7.** *Do you think that the cut-off point for parents taking shared parental leave should be 52 weeks from the start of maternity leave or 52 weeks from birth? Please explain.*
- Q8.** *Is 10 KIT days per parent for shared parental leave the right number? Please explain.*
- Q9.** *Which "right to return to the same job" option (1 or 2) would you prefer be applied to shared parental leave? Please explain.*

Q10. *In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can realistic notification be given to employers of the need to take adoption leave and pay?*

RIGHT TO REQUEST FLEXIBLE WORKING

- 3.66. Under current arrangements most parents of children up to 17 years of age (18 if the child is disabled) and carers of adults may avail of the legal right to make a request to their employer to vary their contract of employment to facilitate flexible working. Flexible working is an agreement between an employer and employee for the employee to work in a way that best fits his or her responsibilities outside work whilst also ensuring that the job gets done.
- 3.67. Flexible working arrangements include, for example, part-time hours, flexi-time, compressed hours, term-time working, etc. – in short, arrangements that help the employee to balance family and work commitments in a way that suits both the individual and the employer. As well as benefiting employees, employers stand to gain by holding on to experienced and skilled staff, thereby promoting productivity and profitability.
- 3.68. In order to make a request for flexible working, a qualifying employee is currently required to follow a statutory process setting out certain deadlines for notification, response and appeal. Individuals must be employed with the same employer for more than 26 weeks before a request can be made and must have or expect to have caring responsibilities for a qualifying child or adult. One formal request to work flexibly can be made in any 12 month period.
- 3.69. The UK Government intends to extend the right to request in Great Britain so that it covers all employees and, at the same time, replaces the current statutory process for requesting and agreeing flexible working with a less prescriptive model incorporating a duty on employers to deal with requests in a reasonable manner and in a reasonable period of time. The qualifying period of continuous employment for the right will remain the same, at 26 weeks, and it will continue to be the case that only one formal request under the process may be made in any 12 month period. The new framework will be supported by an ACAS Code of Practice and guidance suggesting processes and dealing with questions of what might be considered ‘reasonable’.
- 3.70. The intention is to help dismantle some of the barriers to work for people with caring responsibilities, e.g.
- *enabling flexible retirement so that older workers can gradually decrease their working hours;*
 - *enabling those working below their potential due to lack of quality part-time or flexible work to fully utilise their skills;*

- *challenging cultural perceptions that women predominantly stand to benefit from flexible work.*

Earlier Northern Ireland consultation

3.71. Consultees may be aware that the Department for Employment and Learning consulted on an extension of the right to request flexible working in 2009.¹⁰ That consultation included the option of extending the right to request to all employees, although it did not discuss removing the legal process around application and response.

3.72. As noted in the policy response¹¹ to that consultation, the Department considered that there was not a sufficiently strong consensus to warrant an extension of the right to request to all employees, particularly in light of two factors:

- *firstly, potential equality concerns were identified in that such a wide ranging extension had the potential to dilute the benefits of the right to request for those working parents and carers at whom it was then aimed;*
- *secondly, arguments were advanced by some stakeholders that if any change was to be made then it should be change that reflected the then arrangements that applied in Great Britain in order to make the process simpler for UK wide employers to operate.*

3.73. The Department's policy decision, ultimately, was to match Northern Ireland provisions with those in Great Britain, there being insufficient consensus to justify a more far reaching extension of the right.

3.74. In considering your response to this aspect of the consultation, the Department would find it helpful if you could comment on whether the arguments in favour of or against extension have changed since the earlier review.

3.75. Ultimately, the Department is seeking your views on whether the proposed GB model is an appropriate one for Northern Ireland and, if it is not, what alternative arrangements the Department should set in place. The questions set out in Part III of the question and answer booklet are there to assist you in framing your arguments.

PART III: RIGHT TO REQUEST FLEXIBLE WORKING

Q1. *Should the right to request flexible working be extended to all employees with an appropriate length of service, extended more narrowly to selected groups, or remain unchanged? Please explain.*

Q2. *Is it appropriate to move towards a model imposing a duty on employers to deal with requests reasonably, supported by a Code of Practice and*

¹⁰ http://www.delni.gov.uk/flexible_working_time_to_train.pdf

¹¹ http://www.delni.gov.uk/flexible_working_and_time_to_train_-_policy_response.pdf

guidance rather than, as at present, requiring a statutory series of steps to deal with requests? How might this work?

4. Impact assessment

INTRODUCTION

- 4.1. From the outset it should be noted that the impact assessment set out in this Chapter is drawn from the assessments carried out by BIS and reflects the situation envisaged if the UK Government's proposals for Great Britain were to be adopted in Northern Ireland. A final assessment will be made in response to this consultation and will take account of the views expressed, in the context of the way forward that is ultimately selected. Stakeholders are therefore encouraged to comment on this initial assessment with a view to informing the final assessment.

EQUALITY IMPACT

- 4.2. The Department has conducted an equality screening exercise and this section reflects the outcome of that work.
- 4.3. Of the nine equality categories set out under Section 75 of the Northern Ireland Act 1998, the primary beneficiaries of the proposals are anticipated to be older workers, male and female employees, dependants and persons with disabilities. The impact of each policy measure is considered in turn below.

Shared parental leave and statutory shared parental pay

- 4.4. The current system of maternity rights was first developed at a time when mothers were seen as primary carers. However, in more recent times, the need for policies promoting shared parenting and the benefits of these for today's changing societal roles and expectations have been recognised.
- 4.5. The BIS impact assessment (at paragraph 190) cites research showing that the current model of maternity, paternity and parental leave policies in the UK and other European countries can act to undermine gender equality. Policies that allow families to allocate paid and unpaid leave heavily or even exclusively for mothers can reinforce traditional gender roles and women's disadvantage in the labour market.
- 4.6. The proposal to facilitate greater sharing of leave between working parents will allow eligible women (subject to the minimum statutory period of 2 weeks, or 4 weeks in the case of factory/manual workers) and primary adoptive parents to determine how statutory leave and pay entitlement can be shared. This is envisaged as being of benefit to mothers in particular as it will help them retain their connection to the workplace and support, over time, a culture change with the potential to impact positively on the gender pay equality.

- 4.7. The sharing of parental leave and pay should also be of benefit, in particular, to fathers/partners and infants as it will allow the person taking on that role to establish closer bonding with the child from an early stage. Greater involvement by fathers is associated with positive outcomes for children in later life (see paragraph 189 of the BIS assessment).
- 4.8. The flexible qualities associated with this right may be of particular benefit to parents with disabilities – or indeed where the infant has a disability – as it allows parents to design a pattern of leave that better suits their needs e.g. to attend consultations with specialists.
- 4.9. It should be noted that the mother or primary adopter of a child retains the ability not to share leave entitlement with a partner. The full entitlement to statutory maternity or adoption leave and pay may continue to be taken by the individual without any need for sharing. The proposed new right is intended to facilitate and not constrain choice. It is therefore not anticipated that the option to share will have a differential negative impact on mothers or primary adopters.

Unpaid parental leave

- 4.10. It is possible to argue that the extension of unpaid parental leave to parents of all children under the age of 18 has the potential to generate a negative impact on parents of children with disabilities (as these are the only parents who can currently avail of unpaid parental leave for children between the ages of 5 and 17).
- 4.11. However, the reality is that the current system is only open to parents whose child receives Disability Living Allowance (DLA). By opening up entitlement to parents of all children under 18, the proposal would have a positive differential impact in that parents of children with more moderate disabilities, or none, would stand to benefit equally.

Adoption leave and pay

- 4.12. The proposals, which would make statutory adoption leave and pay a day one right, enhance statutory adoption pay to 90% for the first 6 weeks and extend such rights to fostering-to-adopt, surrogacy and concurrent planning arrangements, will have positive benefits for adoptive and surrogate parents but will be of particular benefit to older couples as they are more likely to avail of such avenues to parenthood.
- 4.13. The enhanced provisions give additional parental flexibility, allowing for more effective bonding between parents and children. This may be especially welcomed by couples considering the adoption of children with disabilities as there may be greater demand on their time in designing patterns of leave that suit their needs and to attend consultations with specialists.

Other leave and pay proposals for fathers/partners and adopters

- 4.14. Providing husbands, civil partners or partners of a pregnant woman, the father or parent of the expected child, and intended surrogate parents, with the right to time off to attend antenatal appointments along with the prospective mother is expected to contribute to an atmosphere that supports greater gender equality. It may also be beneficial to mothers in some situations as early support from the father/partner increases the likelihood of continued involvement throughout the child's life.
- 4.15. Parents of babies with a disability sometimes learn about this for the first time during antenatal scans. The right to time off to facilitate secondary attendance at such scans may impact positively as the second individual can offer support to the mother in such situations as well as when there are complications during pregnancy. Moreover, increasing the involvement of biological fathers may, on occasion, offer health professionals an opportunity to gather more information on that person's medical history.
- 4.16. It should be stressed that the right to time off to attend the appointment does not give the father/partner the right to attend it. This remains at the mother's discretion.
- 4.17. In respect of the applicability of this right to gay couples, the ability to access time off will depend on the circumstances of the birth. In the situation where one partner is genetically linked to the child and the couple are not intending to apply for a parental order, the genetically linked partner will have the statutory right to time off to attend up to two antenatal appointments. The remaining partner, who is not genetically linked to the baby, will not have a statutory right to time off to attend the two antenatal appointments. Where a gay couple are commissioning a child through surrogacy and are intending to apply for a parental order, both parents will have the statutory right to time off to attend up to two antenatal appointments.
- 4.18. The proposed new right to provide time off to attend pre-adoption appointments is likely to be of benefit to both adopters and the looked after child as it will help them to get to know each other and to bond, and will facilitate meetings with statutory agencies that have an interest in ensuring the success of the adoption.

Right to request flexible working

- 4.19. The extension of the right to request flexible working is likely to be beneficial to all groups, but particularly those referred to below.
- 4.20. The change has the potential to help older workers remain in work. The removal of the default retirement age enables people to work for longer, but employees and employers will continue to have discussions about retirement. Flexible working allows people to stagger their retirement instead of creating a 'cliff edge' retirement. It also provides them with the flexibility to undertake other activities

which may be of interest to them, such as caring for grandchildren or engaging in voluntary work.

- 4.21. Employees with caring responsibilities can, in many circumstances, already avail of the right to request flexible working. Employees with disabilities have a separate right to reasonable adjustments in order to accommodate their needs and this may extend to flexible working patterns. Some employees may not identify themselves as disabled, or have medical conditions that they do not view as a disability. Others may not identify themselves as carers, or qualify under the existing right. The extension of the right will enable employees to seek contract variations without having to give justification for the request.
- 4.22. There may be a concern that the extension to the right to request will prompt an influx of requests leading to a situation where employers would be unable to accept all of them. Employees who are parents and carers, who feel they have a greater need for flexibility, may fear that their requests will be declined, and employers may fear that discrimination claims might follow.
- 4.23. It is worth recalling that the Department for Employment and Learning published an initial impact assessment¹² in 2009 when, at that time, it was considering extending the right to all employees in Northern Ireland. That document noted, at paragraph 6.12:

there is the potential for such a significant extension to have negative repercussions for the groups to which the right already applies, namely parents and carers. Significant numbers of additional requests from the wider employee population could place pressure on employers' ability to accommodate employees' desired working arrangements, thereby potentially diluting the effectiveness of the right. The Department does not wish to see erosion of the benefits currently experienced by parents and carers facing particular work-life balance challenges and would therefore welcome views on how negative consequences of this nature could be avoided under an extension of the right to cover all employees.

- 4.24. The more recent BIS assessment does not accept the premise that existing beneficiaries of the right will experience negative impacts. It argues that this assumption is predicated on the theory that there is a fixed amount of flexibility available in the workplace which, it states, is not supported by the examples given by employers in response to the GB consultation who already offer flexible working to their entire workforce. Moreover, the intention in GB is to include guidance within the associated Code of Practice setting out the impact of discrimination legislation on flexible working requests so that employers will be able to consider requests in a way that avoids discriminating against individual groups of employees.

¹² 'Flexible working and time to train: proposed extension of flexible working law. Introduction of a new right to request time to train' (Department for Employment and Learning, July 2009); http://www.delni.gov.uk/flexible_working_time_to_train.pdf

- 4.25. The Department is particularly interested in your views on whether the danger identified in the 2009 Northern Ireland assessment is significant and, if it is, on whether and how it can be mitigated if it is decided to opt for a wider extension of the right to request flexible working.

HEALTH IMPACT

- 4.26. The additional rights, if implemented, are intended to support increased cultural acceptance of work-life balance, which could be expected to lead to a modest reduction in some of the stresses faced by many working parents in dealing with the difficulties of balancing responsibilities at home with those in the workplace.
- 4.27. As the BIS impact assessment on shared parental leave points out (paragraph 184), there is some evidence showing that the perceived conflict between the traditional fathers' work and caring roles causes them substantial stress. A system that more clearly supports families who wish the father to take on greater caring responsibilities may help to address this.
- 4.28. Further, a system that facilitates both parents being off work at the same time, enabling them to provide mutual support, can be expected to reduce strains particularly on first time parents adjusting to the demands of a new member of the family.
- 4.29. As already noted, some research shows that positive outcomes for the child's wellbeing can also be associated with early parental involvement in that child's life.
- 4.30. Turning to the proposal for an expanded right to request flexible working, some benefits may be felt in terms of increased mental wellbeing where employees make successful requests for adjustment to their work pattern. These benefits are foreseeable not only for the individual making the request; where the request facilitates being away from work to benefit others, for example in spending time with a child or older person, the potential exists to generate positive impacts on the wellbeing of all concerned.
- 4.31. However, as noted in the equality impact assessment above, in considering an expansion of the right's coverage, there is a need to guard against diluting its effectiveness for those parents and carers currently entitled to avail of it. The Department would welcome representations on this issue.

REGULATORY IMPACT

- 4.32. In the absence of reliable data for Northern Ireland, this part of the assessment relies on *pro rata* figures that are based on data within the GB impact assessments; specifically:

- *Modern workplaces: shared parental leave and pay administration consultation – impact assessment (February 2013);¹³ and*
- *Modern workplaces consultation: government response on flexible working – impact assessment (November 2012).¹⁴*

4.33. **Table 1** summarises the BIS calculations for one-off and recurring costs and benefits associated with the new rights referred to within the former document; which includes antenatal appointments, shared parental leave and pay, adoption leave (including pre-adoption appointments) and extension of unpaid parental leave.

4.34. The table includes assumptions based on high, medium and low uptake of the rights. The medium figures represent the most likely outcomes. Pro rated figures (at 3%) for Northern Ireland are provided alongside those for GB.¹⁵ Details of how the GB figures were determined (including references to source data and assumptions made) are set out within the BIS impact assessment.

4.35. **Table 1** shows that the best estimate of additional costs to employers in Northern Ireland will be made up as follows:

- *one-off transitional costs totalling £1,467,000 which relate to the cost of management time in changes to payroll/HR systems in implementing the new rights; and*
- *annually recurring costs of £747,000 associated with parents exercising the new rights in respect of adoption leave and pay, antenatal appointments, unpaid parental leave and shared parental leave and pay.*

4.36. The best estimate of additional costs to the Exchequer in respect of introducing the new rights to Northern Ireland is:

- *one-off transitional costs of £207,000 associated with preparing for the implementation of the new rights; and*
- *annually recurring costs totalling £288,000 associated with parents exercising the new rights in respect of adoption leave and pay, shared parental leave and pay and additional administrative costs.*

4.37. It should be noted that the pro rating of Exchequer costs is likely to produce figures that are more notional than actual. The Exchequer costs in the GB impact assessment are modelled on a UK wide basis, and economies of scale

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/110692/13-651-modern-workplaces-shared-parental-leave-and-pay-impact-assessment2.pdf

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34690/12-1268-modern-workplaces-response-flexible-parental-leave-impact.pdf

¹⁵ In most cases the figures in the GB impact assessments are derived from estimates calculated on the basis of the measures being applied on a UK wide basis. Of course, no decision has been reached in Northern Ireland that the measures will be deployed in this way, although that is one possible outcome that could result from the consultation process.

would mean that one-off Exchequer costs in particular would be largely incurred irrespective of whether NI adopts the new rights.

4.38. The best estimate of annually recurring benefits accruing to working parents by way of additional statutory payments is £252,000. All other benefits, either to employers or working parents, are unquantifiable. These relate:

- *for employers, to a greater ability to retain the skills of female employees and enhanced female participation in the labour market;*
- *for employees, to greater paternal involvement in the upbringing and development of children; and greater flexibility afforded to working parents in respect of childcare.*

Table 1: Summary of Costs and Benefits for Shared Parental Leave Package

	Estimated Costs and Benefits (£ millions)					
	High		Best estimate (medium)		Low	
	GB	NI	GB	NI	GB	NI
Annually recurring costs						
Exchequer adoption costs ¹⁶	8.1	0.243	8.1	0.243	8.1	0.243
Exchequer SPL policy costs ¹⁷	1.2	0.036	0.3	0.009	0.0	0.0
Exchequer SPL admin recurring ¹⁸ costs	1.5	0.045	1.2	0.036	0.0	0.0
Employer recurring costs	GB	NI	GB	NI	GB	NI
adoption ¹⁹	2.2	0.066	2.0	0.06	1.7	0.051
antenatal ²⁰	1.2	0.036	0.9	0.027	0.6	0.018
SPL ²¹	3.3	0.099	1.2	0.036	0.3	0.009
Unpaid Parental Leave ²²	27.9	0.837	20.8	0.624	13.7	0.411
Employer recurring costs	34.6	1.038	24.8	0.747	16.3	0.489
TOTAL RECURRING COSTS	45.5	1.365	34.4	1.035	24.4	0.732
Transition costs (one-off)	GB	NI	GB	NI	GB	NI
Exchequer admin one-off costs ²³	6.9	0.207	6.9	0.207	6.9	0.207
Employer familiarisation costs ²⁴	41.2	1.236	41.2	1.236	41.2	1.236
Employer set-up costs ²⁵	7.9	0.237	7.7	0.231	7.6	0.228
TOTAL TRANSITION COSTS	56	1.68	55.8	1.674	55.7	1.671
Benefits	GB	NI	GB	NI	GB	NI
Annually recurring benefits for parents from additional Exchequer payments ²⁶	9.3	0.279	8.4	0.252	8.1	0.243
Unquantified benefits	Greater flexibility in relation to childcare arrangements, opportunity for fathers/partners to spend more time with their children; greater connection of women to the workplace; reduced gender gap in employment.					

¹⁶ Estimates associated with changing the qualifying period to a “day 1” right and the cost of paying 90% of earnings or statutory rate (whichever is lower) for the first 6 weeks.

¹⁷ Additional Exchequer costs of additional statutory payments – shared statutory parental pay.

¹⁸ Exchequer administrative costs of operating shared statutory parental pay.

¹⁹ Estimates associated with changing the qualifying period to a “day 1” right, leave to attend adoption appointments and associated administration costs.

²⁰ Costs of absence of fathers to attend antenatal appointments and associated administration.

²¹ Consists of unrecoverable shared statutory parental pay, cost of absence and HR dept costs.

²² Cost of arranging cover for persons on unpaid parental leave and related administration.

²³ Setting up IT solution, manpower requirements and other one-off costs.

²⁴ Generally consists of management time in becoming familiarised with the new rights.

²⁵ Changes to payroll and HR systems.

²⁶ Corresponds to additional statutory payments funded by Exchequer for shared statutory parental pay and statutory adoption pay.

4.39. **Table 2** provides the BIS calculations for costs and benefits associated with the extension of the right to request flexible working. Pro rated figures for Northern Ireland are provided alongside those for GB. Details of how the GB figures were determined (including references to source data and assumptions made) are set out within the BIS impact assessment. The annual £45,000 cost to the Exchequer is negligible if pro rated for Northern Ireland.

Table 2: Extension of right to request flexible working - summary of quantifiable costs and benefits for year one

	Costs (£ millions)		Benefits (£ millions)	
	GB	NI	GB	NI
Non-parent/non-carer employees and parents of 17 years olds ²⁷	39.7 ²⁸	1.191	24.3 ²⁹	0.729
One-off costs ³⁰	15.3	0.459		
Net annual procedural savings ³¹			9.1	0.273

Impact on small employers

4.40. Figures show that Northern Ireland continues to be a small business economy with firms employing fewer than 50 employees accounting for 98.2% of all Northern Ireland based VAT and/or PAYE registered enterprises. Medium sized businesses employing 50-249 account for 1.5% and large businesses (250+) for 0.3%. Micro businesses (those businesses with fewer than 10 employees) accounted for 89.1% of the Northern Ireland total, which is similar to the UK rate of 88.7%.³²

4.41. During the Department's exploration of the issues prior to publication of this document, questions were asked by members of the Northern Ireland Assembly's Employment and Learning Committee about the potential for disproportionate impacts to be faced by small employers and the Department pledged to explore this issue further through the consultation and impact assessment process.

4.42. Dealing specifically first with the proposals concerning leave and pay, the UK Government has indicated, and this Department concurs, that small businesses may experience a disproportionate impact on the running of their business when

²⁷ Represents groups to whom the right to request flexible working may be extended (i.e. costs and benefits which are over and above those associated with the current coverage of the right.)

²⁸ This is made up of annual recurring costs including procedural costs (£24m) and costs of making adjustments to working patterns (£15.8m)

²⁹ Consists of reduced labour turnover (£8.4m), increased productivity (£15.3m) and reduced absenteeism (£0.6m).

³⁰ Relates mainly to management time in addressing the implementation of the extended right.

³¹ Represents net procedural savings that may be achieved by substituting the current legislative process with the statutory Code of Practice.

³² Characteristics of VAT and/or PAYE registered businesses in NI: facts and figures from the IDBR – Edition Fifteen (Department of Finance and Personnel, January 2013), p. 1. The figures do not cover very small businesses which fall below the VAT and PAYE registration thresholds.

an individual takes leave when compared to the impact faced by larger businesses. This may particularly be the case where the small business lacks a dedicated human resources function.

- 4.43. In mitigation it should be said that although, as a group, small businesses are just as likely to encounter requests for leave as their larger counterparts, each one is, on average, less likely to be affected at any given time because of the smaller numbers of people they employ.
- 4.44. It is also the case that smaller employers are entitled to recoup 100% of any statutory payments they make, plus 3% compensation for the extra National Insurance Contributions payable. This compares favourably to a 92% recovery entitlement for larger firms. To some extent, this will offset the disproportionate impact on small firms, although other costs such as those associated with covering for absence will remain.
- 4.45. All of these factors noted, BIS considers that there is no justification for creating a separate system of maternity and parental leave by exempting small businesses from the policies now being taken forward. The Department for Employment and Learning concurs with this analysis in that a two tier system could:
- *reduce small employers' flexibility to negotiate with their employees on when leave is taken;*
 - *deny them the opportunity to split the burden of absence where the mother works for a small employer;*
 - *make the system of parental leave unworkable, as where one parent works for a small employer, an exemption would deny access to the new parental leave system for the other parent, creating additional complexity for the employer of the second parent, who would also have to be familiar with the parental leave system as it applied to small businesses;*
 - *have the potential to harm recruitment and retention in the small business sector if employees feel that they would enjoy more advantageous rights in working for a larger employer;*
 - *act as a perverse disincentive to the growing of small businesses, where owners and managers would know that recruiting new staff could end their exemption.*
- 4.46. In order to smooth the transition from the current arrangements, the new system is being designed with ease of administration in mind. Where possible, the new arrangements will resemble those that now exist as closely as is reasonable.
- 4.47. On the right to request flexible working, it has been assumed that small businesses will be disproportionately affected in terms of the transition costs because some small firms have no experience of flexible working. This has been factored into the calculations such that additional costs associated with

companies familiarising themselves with flexible working for the first time have been applied. This creates higher proportional costs for small firms than for large firms i.e. in terms of cost per employee.

- 4.48. In addition, the reasons for declining a request may be more pertinent to small firms, meaning that they may be more likely to decline requests, which they will continue to be entitled to do within the framework of business grounds already set out in law.³³
- 4.49. It could be argued that small businesses may experience a disproportionate impact on the running of their business when an individual requests to work flexibly, compared to larger businesses, particularly where small businesses do not have a dedicated HR function. However, in moving from a mandated statutory process to a good practice model based on reasonableness, it is envisaged that administrative burdens associated with dealing with each individual request will be reduced.
- 4.50. Against the background of this discussion, **the Department would welcome your views on the potential impacts of the proposals on small businesses and on what might be done to mitigate them (see Annex A, Part IV, Q2).**

OTHER IMPACTS

- 4.51. The Department has also carried out preliminary screening for impacts across a range of areas. **Table 3** identifies the areas in which impacts on a modest scale may be expected if the proposals are implemented.

Table 3: Other impacts

Category	Result of Screening Exercise
Human Rights	The proposals impact on family life; their intent is to increase choice and flexibility, improving options with regard to childcare. Negative impacts on the right to family life are not foreseen.
Social Inclusion	Lone parents, who may face greater difficulty in balancing home and work life than parents who are part of a couple sharing caring responsibilities, could see modest benefits from the growth in a culture that supports flexible working.
Environment	A reduction in traffic on the roads at peak times if flexible working practices become more embedded may modestly ease strains on the transport infrastructure.

³³ Article 112G(1)(b) of the Employment Rights (Northern Ireland) Order 1996 provides that an employer may refuse an application for flexible working where one or more of the following grounds applies: burden of additional costs; detrimental effect on ability to meet customer demand; inability to organise work among existing staff; inability to recruit additional staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during the periods the employee proposes to work; and planned structural changes.

Annex A: Question and answer booklet

Your details

Your name:

If you are responding on behalf of an organisation

Name of the organisation:

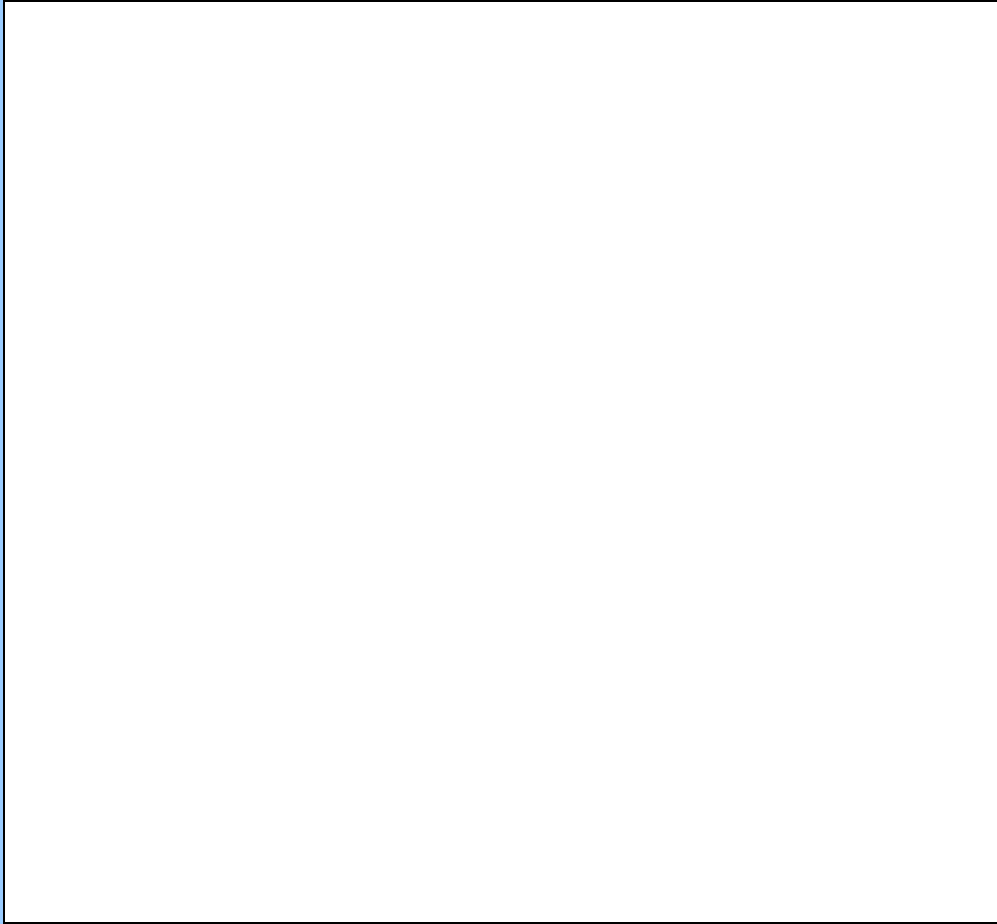
Your position within the organisation:

Part I: Shared parental proposals – general

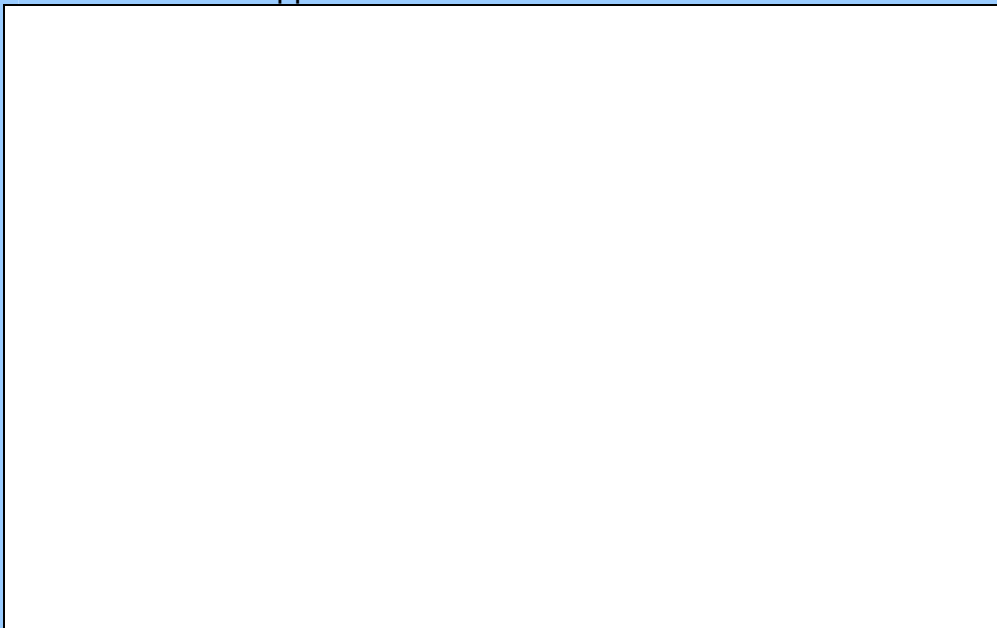
Having read the information contained within this paper and the associated documentation, please provide us with your opinions on the following questions.

Q1. What are the arguments supporting the introduction/extension of the shared parental proposals to Northern Ireland?

Q2. What are the arguments against this course of action?



Q3. What alternative approaches should be considered?



Part II: Administration of shared parental rights

Q1. Please provide any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers.

Q2. Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)? YES NO

Please explain.

- Q3.** Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth? 4 weeks
6 weeks

Please explain.

- Q4.** Do you agree on the level of information to be provided by an employee as part of the notification process? YES NO

If not, please explain why and what information you would like to be required.

Q5. Do you agree with the proposal to allow parents to notify their employer of their intentions as they require them? YES NO

Please explain.

Q6. To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, it is proposed to set the negotiation period at 2 weeks. Do you agree? YES NO

Please explain.

Q7. Do you think that the cut-off point for parents taking shared parental leave should be:

52 weeks from start of maternity leave

or

52 weeks from birth?

Please explain.

Q8. Is 10 KIT days per parent for shared parental leave the right number? YES NO

Please explain.

Q9. Which “right to return to the same job” option (1 or 2) would you prefer be applied to shared parental leave?

Option 1 Right to return to the same job for employees continuous block of leave of 26 weeks or less

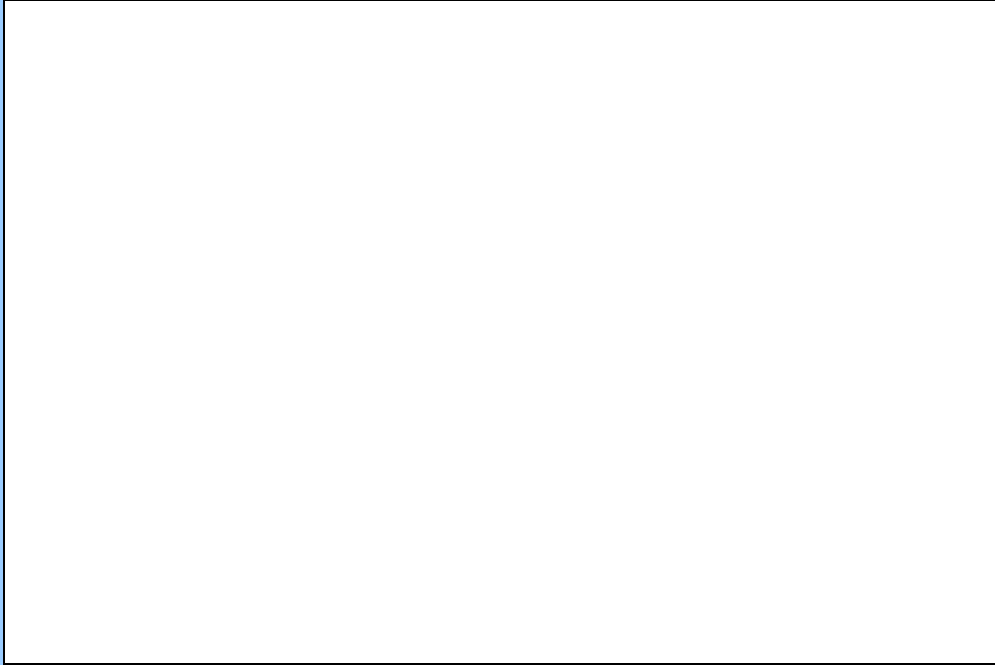
or
Option 2 Right to return to the same for employees returning from aggregated leave of up to 26 weeks even if the leave is not taken as a single block.

Please explain.

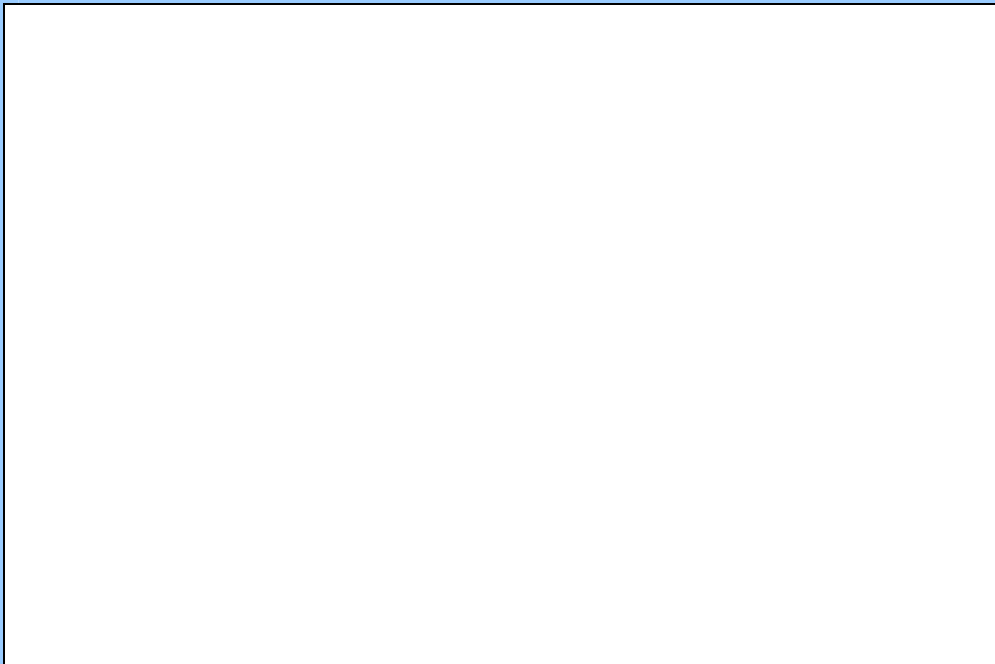
Q10. In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can realistic notification be given to employers of the need to take adoption leave and pay?

Part III: Right to request flexible working

Q1. Should the right to request flexible working be extended to all employees with an appropriate length of service, extended more narrowly to selected groups, or remain unchanged? Please explain.

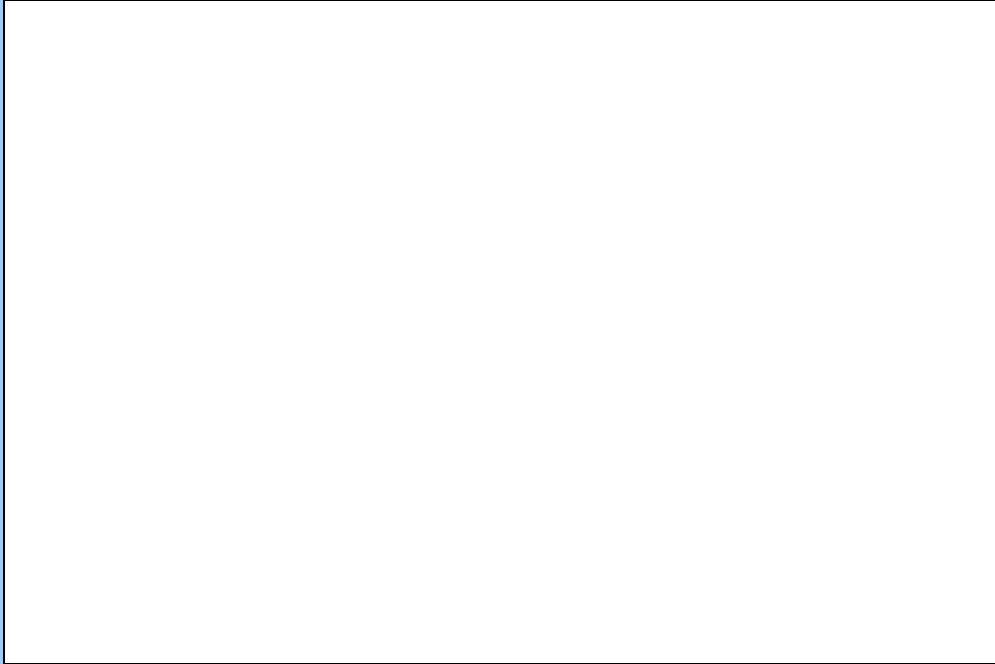


Q2. Is it appropriate to move towards a model imposing a duty on employers to deal with requests reasonably, supported by a Code of Practice and guidance rather than, as at present, requiring a statutory series of steps to deal with requests? How might this work?

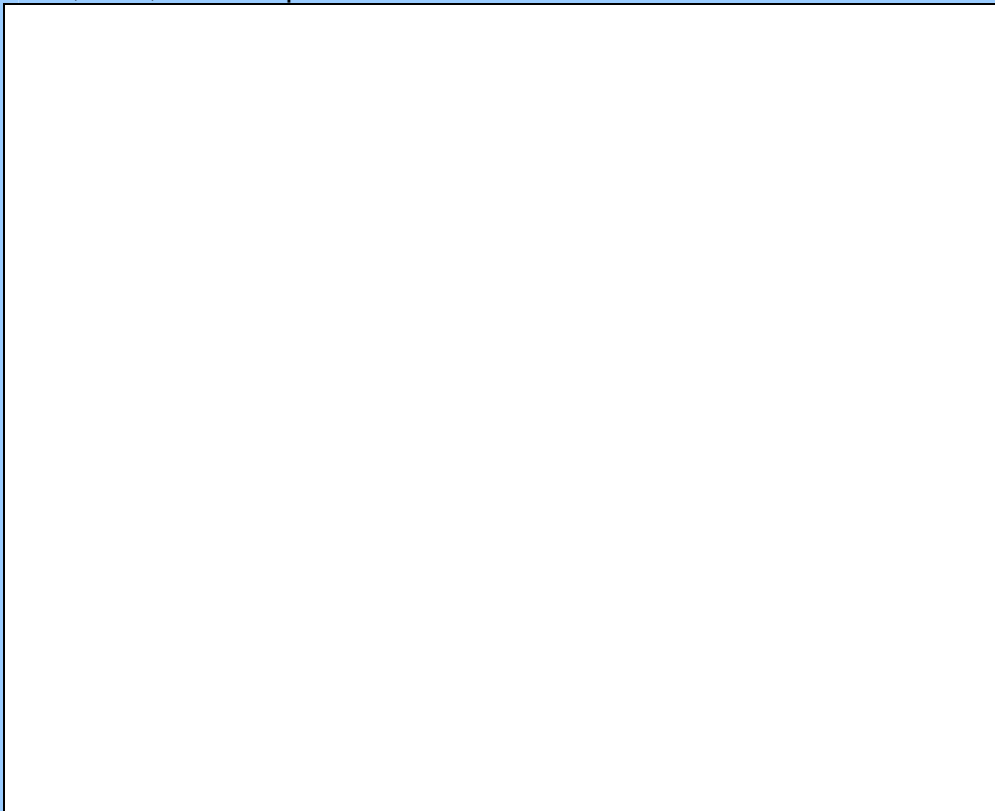


Part IV: General

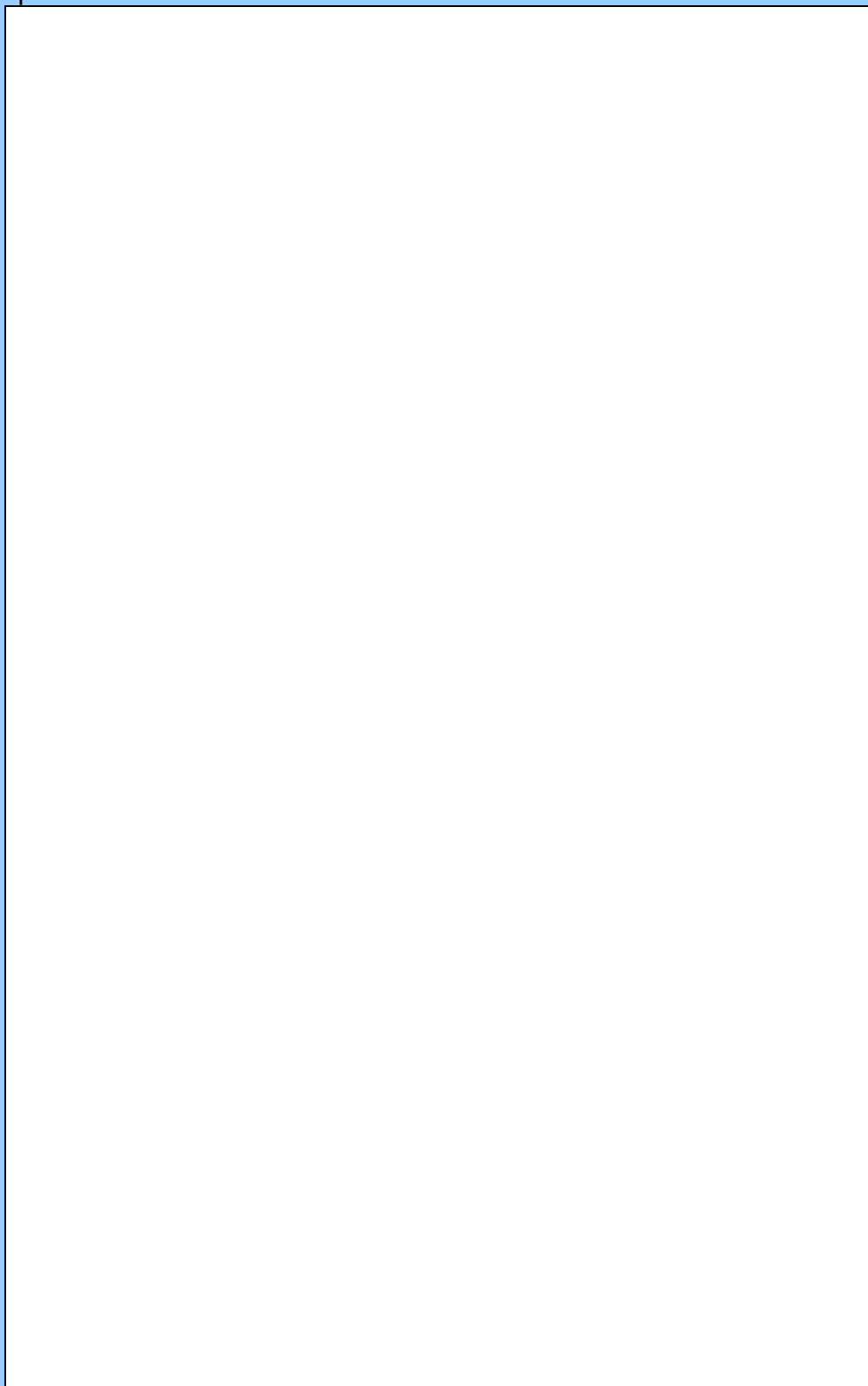
Q1. Having read the impact assessment, please detail any potential impacts that you believe require further consideration.



Q2. Are particular impacts likely to be experienced by small employers and, if so, what steps can be taken to minimise them?



Q3. Please provide any other comments that might aid the consultation process as a whole.

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people:skills:jobs:



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