



Northern Ireland
Assembly

Committee for the Economy

OFFICIAL REPORT (Hansard)

Parental Bereavement (Leave and Pay) Bill:
Northern Ireland Human Rights Commission

22 September 2021

NORTHERN IRELAND ASSEMBLY

Committee for the Economy

Parental Bereavement (Leave and Pay) Bill:
Northern Ireland Human Rights Commission

22 September 2021

Members present for all or part of the proceedings:

Dr Caoimhe Archibald (Chairperson)
Ms Sinead McLaughlin (Deputy Chairperson)
Mr Keith Buchanan
Mr Stewart Dickson
Mr Mike Nesbitt
Mr John O'Dowd
Ms Claire Sugden
Mr Peter Weir

Witnesses:

Ms Alyson Kilpatrick	Northern Ireland Human Rights Commission
Ms Sarah Simms	Northern Ireland Human Rights Commission

The Chairperson (Dr Archibald): I welcome Alyson Kilpatrick, who is the chief commissioner of the Human Rights Commission, and Sarah Simms, who is the commission's policy officer. Members will likely be aware that Alyson took up her role as chief commissioner on 1 September, replacing Les Allamby. I am sure members would like to put on record our thanks to Les for his work and to wish him the best.

I will hand over to you to make an opening statement, after which members will ask questions.

Ms Alyson Kilpatrick (Northern Ireland Human Rights Commission): Good morning, Chair. Thank you for inviting us to give evidence. We thought it would be most helpful if we gave you a brief overview of the commission's powers and duties in this respect. Sarah, who is the real brains behind our written submission, will then give you an overview of it, and we can then move quickly to questions. Am I right in my understanding that you have the written submission?

The Chairperson (Dr Archibald): Yes, we have it.

Ms Kilpatrick: I will give a brief overview of what the commission is doing. You will all know that the commission was established under the Belfast/Good Friday Agreement. It is a national human rights institution with A-status accreditation from the Global Alliance of National Human Rights Institutions. The commission's core function is to review the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland under the powers in the Northern Ireland Act 1998. We do that by advising the Secretary of State for Northern Ireland and the Executive Committee of the NI Assembly of legislative and other measures that ought to be taken in order to

protect human rights. We advise the NI Assembly whether proposed legislation is compatible with human rights standards, and we use all the international standards.

You will see in our submission that we set out the difference between the hard and soft provisions. We promote understanding and awareness of the importance of human rights, and we bring support to or intervene in legal cases concerning the protection of human rights. We also conduct investigations. We have a new statutory responsibility to ensure that there is no diminution in the rights, standards and equality of opportunity provided by the Belfast/Good Friday Agreement as a result of withdrawal from the EU. In order to fulfil that obligation, we work closely with our partners, the Equality Commission for Northern Ireland and our counterpart in Ireland, the Irish Human Rights and Equality Commission. The chief of the Equality Commission, Geraldine McGahey, and I recently met the vice president who is dealing with issues on the protocol. You will see in the submission that we have touched on article 2 of the protocol and how it may be engaged, although we say that, at the moment, we have not identified any breach.

I will hand over to Sarah to give you an overview of our submission.

Ms Sarah Simms (Northern Ireland Human Rights Commission): Good morning, everyone, and thanks again for asking us to provide evidence to the Committee. I will give a brief overview of some of the points that we raised in our submission.

We welcome the Bill's provision of a statutory requirement for bereavement leave. As a general comment on the Bill, we recognise that it mirrors the GB legislation. We acknowledge that, as this a devolved matter, Northern Ireland has an opportunity to go beyond and to provide a more progressive form of legislation that could give better protections for people in Northern Ireland.

We welcome the fact that the definition of a bereaved parent will include various types of parenting arrangements and that it is open to interpretation in order to include a wide variety of parenting relationships. On the notice period, we wanted to flag that there is consideration of situations of sudden death. We also recognise that, although the Bill was drafted to provide for a leave period of 56 days after the incident, the Minister made a commitment to change that to 56 weeks.

We have some concerns about the entitlement to parental bereavement pay. We are concerned that it will apply only to employees who have been in consecutive employment for 26 weeks and would exclude people on zero-hours contracts and agency staff. We want to flag up some international human rights concerns about that. The Committee on Economic, Social and Cultural Rights (CESCR) found concerns about the use of zero-hours contracts generally and informal contracts. Women are usually over-represented in that type of employment, so there might be a disproportionate impact on them. The committee has generally recommended that those types of employment should be reduced and that it be ensured that the social security rights of those workers are upheld. Furthermore, the UN Committee on the Elimination of Discrimination against Women (CEDAW) also raised concerns about women being affected by the social security rights in those types of employment. In the past, the CEDAW committee has expressed disappointment with flexible working arrangements in particular being applicable only after 26 weeks of employment. We wanted to raise those points and say that they have crossover with some provisions in the Bill.

We also found that the Department should conduct a human rights impact assessment, particularly in relation to articles 8 and 14 of the European Convention on Human Rights (ECHR). Article 8 should be considered in respect of a private and family life and article 14 in respect of protection from discrimination. The Department will need to set out how the Bill interacts with those rights and its decisions on those and whether they are proportionate and justified.

My final point is about omissions. Miscarriage has been omitted from the Bill. New Zealand recently included it in its legislation, and we wanted to flag that up as an example of taking a more progressive approach. Thank you.

The Chairperson (Dr Archibald): Thank you both very much for the presentations. I will pick up on the specific points on the Bill. In their contributions, individual members of the Committee raised a number of the issues that Sarah has covered in her contribution, and the Committee is keen to explore those with stakeholders more broadly. I agree with your opening statement that, as it is devolved law, we have an opportunity to go beyond what is in place in Britain and to be that bit more progressive if there is an opportunity for that.

The Committee has raised concerns about the need to be in continuous employment for 26 weeks. We will explore that in more detail with the Department. On the two specific points about zero-hours contracts and the approach to flexible working, New Decade, New Approach (NDNA) has a commitment to banning zero-hours contracts, and a private Member's Bill is being progressed on that as well as, I understand, on flexible working. We can raise with the Department the specific human rights issues you pointed out. As a Committee, we could certainly support asking the Department about the human rights impact assessment, but that is a matter for members to reflect on. We can discuss that later.

I do not have any specific questions, so I will hand over to other members.

Mr Nesbitt: Thank you for the briefing, Alyson and Sarah. I have a couple of questions to clarify your recommendations. Does the fact that miscarriage is not in the Bill have any implication on the Bill's compatibility and compliance with Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?

Ms Kilpatrick: We have not identified a breach, as it were, of the CEDAW principles. However, it is clearly — *[Inaudible owing to poor sound quality.]* I am sorry, I am losing —.

Mr Nesbitt: You are on your own, Sarah. *[Laughter.]*

Mr Weir: Over to you.

Ms Simms: I am sorry. I do not know what happened there.

Mr Nesbitt: There has been a coup. *[Laughter.]*

Ms Simms: We did not find anything that CEDAW has specifically said on the issue. That is not to say that it might not be raised in the future, especially with New Zealand taking those steps. CEDAW has specifically recognised more general comments about the social security rights of women in work. Miscarriage has not been specifically raised by CEDAW, but that is not to say that it will not be in the future, if that is any help.

Mr Nesbitt: Might we conclude that it is in the spirit of CEDAW, if not in the letter of the convention?

Ms Simms: Yes, of course. It should also take into consideration articles 8 and 14 of the ECHR. In the human rights impact assessment by the Department, there should be consideration of CEDAW and the convention rights.

Mr Nesbitt: My other question, Sarah, was about articles 8 and 14, which concern "respect for private life" and "prohibition of discrimination". Does that open the door to the Coalition of Bereaved Workers, which wants similar provisions for those who lose close relatives and partners?

Ms Simms: I am aware that comments have been made by the organisations that work directly with those who have been bereaved. We recommend that the Committee engage with them, as they are stakeholders in the issues on the ground. We specifically focused on the Bill as drafted in regard to articles 8 and 14. With human rights law generally, there is flexibility, and the human rights impact assessment should look at the Department's decisions on those rights and whether they are justified and proportionate with articles 8 and 14.

Basically, a human rights impact assessment should draw out those issues, but we need also to recognise that those comments are being made by stakeholders working specifically on those issues. We recommend that the Committee listen to them.

Mr Nesbitt: Thanks, Sarah. We heard from the Coalition of Bereaved Workers last week. I think I am right in summarising their position this way: while they want similar legislation for close relatives and partners, they do not want to do anything to delay the Bill. That is useful. Thank you, Chair.

The Chairperson (Dr Archibald): Thank you Mike.

Ms Kilpatrick: My apologies for disappearing, Chair. You were in good hands with Sarah.

Mr Weir: Thank you, Alyson and Sarah, for your presentation. There are two points from your submission that I want to pick up on. You mentioned the definition of a parent and talk about it as being inclusive and widely interpreted. I do not think anybody would disagree with you on that. Part of the issue with interpretation is that, the more precisely the term is defined, the more danger it runs of not dealing with particular sets of family circumstances. At the moment, the legislation leaves that reasonably widely defined; it does not tie it down overly. Are you looking at having it more tied down, or are you, broadly speaking, content with the wording that is there at present but just want to ensure that it is not interpreted in a narrow fashion?

Ms Kilpatrick: We would encourage as broad an interpretation as possible. If you look at the GB provisions, you see that they encompass all sorts of parental and guardianship relationships. They include biological and adoptive relationships and someone who has lived with a child for at least four weeks in a caring capacity. We say that it should be defined even more broadly, if necessary, to reflect modern circumstances and modern situations in families.

Mr Weir: I wonder whether, from the point of view of the Committee, that may not be a question of amending the Bill. We will do certain things besides Committee amendments. We will make a report on the Bill, which may reflect such points. Sometimes, it comes back to the point Mike made. Obviously, we have yet to determine where we are, but we can look towards future legislation as well. I want to check up on another point. I have a fair amount of sympathy for the logic behind the time frame and whether these should be day-one rights or rights for a later stage. On the narrow grounds of the impact on the family, the situation seems to be fairly clear-cut: the impact will be severe, irrespective of how long the person has worked for a firm. If there was acceptance of the measure appearing at day one rather than after the 26-week period, which is in the Bill, for instance, from a human rights point of view, would any knock-on effect on other areas of legislation or implications for other employment rights arise out of that?

Ms Kilpatrick: We do not think so. We have not identified any at this stage. The right to leave is a day-one right, but the right to pay is dependent on 26 weeks of continuous working. Sarah has covered very well our concerns about that and its disproportionate impact on women and some other workers. Because of the article 2 commitment to no diminution in rights under the protocol and the provision on keeping pace with a lot of the EU directives, we would have to keep that under review. There is a team here working on the designated mechanism that is looking at that. That team will look at impacts on social security and other provisions, and, if the EU amends or updates any of its provisions, ours will have to keep pace. The answer to your question is no, we have not identified any human rights considerations or impacts, but there may be some, and we will keep an eye on that.

Mr Weir: Without getting views on the protocol and the appropriateness of EU law on the issue, has research been done at an EU level or across the EU countries on whether parental bereavement pay kicks in at a set point or on day one?

Ms Kilpatrick: No, not yet. Unhelpfully, not a great deal has been said about parental leave and parental bereavement pay, so we are putting together the principles so that we can look at the legislation. There is not an established right to it as such, but, if there is going to be a right, it cannot operate in such a way as to discriminate. No comparative research has been done. Sarah, have you had to look at other EU countries?

Ms Simms: They take their own approach. Off the top of my head, I am not sure of the specifics in certain countries. Basically, we are highlighting that there is specific EU law regarding employment more generally, such as the equal treatment directive and the social security directive. We have not necessarily identified a breach of article 2 in the Bill. There needs to be ongoing monitoring of changes in relevant EU law that might have an impact on the time period to ensure that Northern Ireland keeps up with those changes in rights.

Mr Weir: I understand that. Would it be a fair summary to say that there is maybe a sporadic approach, rather than a central approach at EU level, to bereavement pay and leave in the EU countries and that it differs from country to country? You say that you need to monitor the situation so that, if that changes, you will see the potential implications.

Ms Kilpatrick: That is exactly right. We cannot point to anything that will tell you whether the period should be 26 weeks. There is no standard across the EU on that. All the member states have taken their own approach. If you are deciding, you can take the progressive approach and find that there

should not be any distinction between the number of continuous weeks worked or you can take the approach of having the 26 weeks but make sure that it does not discriminate against others. That is where our concern comes in: it will have a disproportionate impact on certain workers.

Mr Weir: Thank you. The point is well made.

Mr O'Dowd: Thank you, Sarah, for your presentation and answers thus far. My question is about your recommendations to the Committee. Recommendation 6 states:

"The Commission recommends the Committee advises the Department to conduct a human rights impact assessment".

What are the practical outworkings of that? What is best practice in carrying out a human rights assessment?

Ms Kilpatrick: Once you have decided what the Bill and the regulations will say and you have considered how they will apply in practice, you screen them to make sure there is no disproportionate impact and that they do not directly or indirectly discriminate against any group on the grounds of race, sex or age etc. At that stage, you would also look at the provisions relating to the 26 weeks. You could scope out whether that has a disproportionate impact.

Mr O'Dowd: What is the difference between a human rights impact assessment and an equality impact assessment (EQIA)?

Ms Kilpatrick: The human rights assessment is broader. The equality impact assessment will assess the equality provisions, whereas the human rights impact assessment will include all sorts of other considerations that will look in particular at the article 8 implications, for example, on the right to private life, family and home, and at article 14, which is the non-discrimination provision. The equality impact assessment will relate only to equality between the protected groups, whereas a human rights impact assessment is much broader.

Mr O'Dowd: I know the Equality Commission provides best practice information to Departments on how and when they should carry out an equality impact assessment. Does the commission provide that information to Departments on how best to carry out a human rights impact assessment?

Ms Kilpatrick: Yes, and we can provide that.

Mr O'Dowd: Could the Committee have a copy of it?

Ms Kilpatrick: Yes.

Mr O'Dowd: Thank you. That is all.

The Chairperson (Dr Archibald): No other member is coming in for more questions. Thanks very much for the briefing. We will — we may already have done it, Peter — pass the recommendations to the Department.

The Committee Clerk: Chair, the Department has everything we have been given in the way of recommendations, queries and so on. For example, the scrutiny points in the Research and Information Service (RaISe) paper have gone to the Department, as have the issues raised by the coalition and our surveying. Everything encapsulated in the oral evidence is already in our survey, and the written submissions have been passed to the Department for comment. Our briefing from the Department is on 6 October, and we anticipate that we will have answers to those questions in time to put them in the pack for that meeting.

The Chairperson (Dr Archibald): Thanks, Peter.

Thank you very much for taking the time to be with us this morning. It was very helpful.

Ms Kilpatrick: If there is anything else we can do to assist, please just ask.

The Chairperson (Dr Archibald): Thank you.

Ms Simms: Thank you.