



Response to the Consultation: Sharing Parental Rights, Extending Flexibility at Work

Issued by the Department of Employment and Learning

August 2013

**Dr Jennifer McIlwaine
Women's Resource and Development Agency
6, Mount Charles
Belfast
BT7 1NZ
Tel: 028 9023 0212**

The Women's Resource and Development Agency (WRDA) is a regional organisation whose mission is to 'to advance women's equality and participation in society by working to transform political, economic, social and cultural conditions'. The organisation was established in 1983 and works with women's groups from all traditions in the most severely disadvantaged communities, and from urban and rural areas of Northern Ireland. We work from the grass roots to the highest levels of policy making and politics, providing advocacy and lobbying support. WRDA is a membership organisation with over 400 members comprised of Women's Groups, organisations, and individual members.

Context

Leave from work for pregnant or post-natal women was originally introduced to protect them from the hazards of an industrial environment. Existing legislation was established upon the assumption that women were the primary care-givers. WRDA acknowledge that the present leave system is no longer fit for purpose since there is an increasing blurring of boundaries between women's economic participation and men's domestic participation.

Women's economic and employment position is inextricably linked to their domestic caring responsibilities in such a way that is not the same for men. Women earn less per hour, annually and over the course of their life.¹ Unpaid caring responsibilities mean that women are concentrated in part time employment and have interrupted work patterns. Access to quality, affordable childcare is a major barrier to female economic participation.² Similarly, the unequal division of domestic labour is an additional contributory factor to the gender pay gap.³ The cumulative effect of these conditions means that women remain occupationally segregated and that their lifetime earnings and pension provision is less than that of men.⁴

One of the longstanding solutions to fostering gender equality, closing the gender pay gap and improving children's lives by promoting a closer father/child bond has been to extend the scope of Parental Leave legislation.

¹ NISRA (September 2012) *Women in Northern Ireland. Labour Market Statistics Bulletin.*

² Carvill, L. (2013) *Towards a Childcare Strategy: Consultation Response.* March 2013. WRDA.

³ Hochschild, A & Machung, A (2003) *The Second Shift.*

⁴ WRDA Report (2011) *The Northern Ireland Economy: Women on the Edge?* Bronagh Hinds Available at <http://www.wrda.net/Documents/The%20NI%20Economy%20-%20Women%20on%20the%20Edge%20Report.pdf>

WRDA's Position

WRDA welcome the good intentions that underpin these proposals. Specifically, we recognise that this is an endeavour to increase shared parenting. We acknowledge that the proposals are developing in a satisfactory direction and that they have the potential to generate a much needed social change. These proposals go some way in addressing the structural inequalities which generate the women/caregiver, men/breadwinner model and in doing so reduce gendered assumptions about and stereotyping of which parent will take leave. In particular we support the extension of unpaid leave, the right to request flexible working, the extension of adoption leave and pay and the possibility of men assuming the caregiving role while women return to work.

WRDA favourably note that the proposals do not seek to remove maternity rights from women and that the choice to transfer leave remains theirs. For those who have the economic and social resources to enable them to transfer leave to the father, these proposals offer families a wider range of choice than previously existed. However, given that the social infrastructure, in particular, access to affordable, quality childcare, is not geared towards supporting women in the workplace and promoting gender equality, there are still some areas of the proposals to be developed.

We are however disappointed that this consultation, published by DEL, is framed only in terms of employment and economic policy omitting to mention the fundamental objective of promoting gender equality.

Areas for Development

With the preceding approvals in mind, this section will highlight the five areas of the Consultation that still require development. WRDA contends that this is an equality-enabling as opposed to an equality-promoting course of action.⁵ As such, we are concerned that this is tantamount to a repackaging exercise. This is problematic since research demonstrates that repackaging existing Maternity Leave as Parental Leave has a minimal impact upon take-up by fathers.

Area 1: Low-income Families

These proposals latently and indirectly disadvantage low-income families whilst continuing to privilege middle classes since only those who can afford to transfer leave will do so. 'Working Families' suggested that lower income families would benefit from part-time leave, which would allow them to top up this rate of pay with their wages.⁶

⁵ Gheaus, A & Robeyns, I (2011) *Equality-promoting Parental Leave*. The Journal of Social Philosophy.

⁶ Working Families response to the Modern Workplaces Shared parental leave and pay – administration consultation. (July 2013)

Without this right available to them, families with lower incomes will be effectively barred from accessing shared parental leave. This would widen the economic gap between women and deepen the class divide among them. More worryingly, this generates an inequality among children.

Income (in combination with well-documented social attitudes towards women's role as care-givers) is indisputably one of the most significant factors which affect the degree of choice that parents have regarding parental leave.⁷ Since women are, for the majority, lower paid than men, it is unlikely that, during the costly postnatal period, that these women transfer leave to the father. Furthermore, the practical difficulties of transferring leave have also been highlighted by Working Families.⁸ Consequently, these proposals do not offer a realistic choice to many low-income parents.

Finally, it has been observed that working class women favour protective or 'special' measures for women workers, whilst professional women favour equal rights for men and women in the labour market with the fear that special protection has the potential to weaken their position.⁹ There is evidence to suggest that social attitudes and personal preferences towards maternal/parental leave vary along class lines.¹⁰ Therefore, the shift in focus from the gender-specific 'maternity' to the gender-neutral 'parental' means that this legislation may be perceived by some women as regressive.¹¹ Indeed, WRDA emphasise the importance of maintaining a 'gender-sensitive' approach as opposed to a 'gender-neutral' approach to policy.¹² In this instance a gender sensitive approach would consider the impact of these proposals for all women.

Area 2: Opt-in/Transfer

WRDA have concerns about the Opt-in/transfer aspect of the proposal. Particularly that 'women will be given the option 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'. This effectively continues to reinforce women in the role of the primary caregiver and gatekeeper to children. In doing so,

⁷ Ellison, G. Barker, A. & Kulasuriya, T. (2009) *Work and Care: A Study of Modern Parents (Research Report 15)*. Equality and Human Rights Commission/YouGov. Page 70.

⁸ Working Families response to the Modern Workplaces Shared parental leave and pay – administration consultation. (July 2013)

⁹ Brandth, B & Kvande, E (2009) 'Norway: The Making of the Father's Quota' in Kamerman Sheila, B & Moss, Peter *The Politics of Parental Leave Policies: Children, Parenting, Gender and the Labour Market*.

¹⁰ Bergqvist, C. Bjarnegård, E. & Zetterberg, P. (2013) *When Class Trumps Sex: The Failure to Reform Parental Leave Legislation in Sweden*. Paper to be presented at European Conference on Politics and Gender March 2013.

Baird, M. (2004) *Orientations to Paid Maternity Leave: Understanding the Australian Debate*. Journal of Industrial Relations Volume 46 (3).

Wade, L. (2013) *Class Privilege and Parental Leave*. The Huffington Post. Available at:

http://www.huffingtonpost.com/lisa-wade/parental-leave_b_2613050.html

¹¹ Mother's Union (July 2012) *Modern Workplaces Consultation*.

¹² <http://www.wrda.net/Gender-Focus>

this perpetuates the gendered division of domestic labour where the responsibility for all childrearing-related decisions continue to fall to women. Consequently, men are not offered any real autonomy regarding their children since their options are dependent on women's choices. Whilst we understand that the Department do not want to reduce women's choice, 'opting-in' has the adverse effect of sending the underlying message that fathering is optional whilst mothering is mandatory. This does not do enough to redress gender inequalities or improve children's lives.

Clarification and guidance is also required in situations where women transfer leave but men don't want to take it and in situations where men want leave but women won't transfer it.

Area 3: Allocation to a Family Unit

It is problematic to allocate parental leave to a family unit instead of to individuals. This follows the same rationale as the arguments against the payment of Universal Credit to one member of the household.¹³ Financially, it assumes a sharing of household finances and socially assumes a harmonious and cooperative relationship between the mother and father. Once this assumption is removed, and relationships are thought of as having the potential to be disharmonious or disintegrating, the proposals have the potential to have harmful effects on women and children, and a detrimental effect upon gender equality.¹⁴

Couching the proposals within the framework of a two-person 'family unit' has no impact upon single parents, who are predominantly female – some may argue this is discriminatory or marginalising. For example, Working Families point out that the restricted eligibility criteria mean that single mothers cannot take the shared parental leave in flexible blocks.¹⁵ As they stand, the proposals are in danger of treating single and partnered mothers unequally. Therefore, consideration of the impact of these proposals should be given to this already marginalised, disadvantaged group of women.

Furthermore, we concur with Gingerbread, that there are still questions in relation to the implications of the proposals for non-resident, separated or blended families.¹⁶

¹³ WRDA Report (2011) *The Northern Ireland Economy: Women on the Edge?* Bronagh Hinds Available at <http://www.wrda.net/Documents/The%20NI%20Economy%20-%20Women%20on%20the%20Edge%20Report.pdf>

¹⁴ Gheaus, A & Robeyns, I (2011) *Equality-promoting Parental Leave*. The Journal of Social Philosophy. Page 177.

¹⁵ <http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf64.htm>

¹⁶ Gingerbread (August 2011) *Consultation on Modern Workplaces – Flexible Parental Leave*.

Area 4: Guaranteeing Leave

It is worrying that in Section 3.53 and 3.54 it states that leave can be refused by the employer. If significant negotiation is required with both the mother and the father's employer, these changes do not offer a realistic and practical choice to transfer leave.

In Section 4.9, ultimately, the mother or primary adopter of a child retains the ability not to share leave entitlement with a partner. Therefore, for men, leave is not guaranteed. Estimates from 2006 indicate that take-up and transfer of leave was low.¹⁷ Furthermore, women report a significant loss of social esteem upon the transfer of leave.¹⁸ It is unlikely, therefore, that this 'equality-enabling' approach which relies on the transfer of entitlement, would measurably change the Parental Leave patterns of women and men.

Unguaranteed leave is not enough to level the playing field for parents.

Area 5: Protecting all individuals

WRDA are concerned that there are some individuals who do not meet the eligibility criteria and so will not benefit from these proposals. For example, Section 3.41 of the consultation states that, 'some women such as agency workers may meet this requirement, but may not be entitled to leave'. This is problematic since more women than men are traditionally concentrated in part-time/temporary contracts and increasingly are located in zero hour contracts, more so because it has been noted that zero hour contracts can be used to avoid maternity leave, paternity leave and the right to request flexible working.¹⁹ WRDA are concerned that, if it is the case that they are not entitled to maternity leave, then there is no choice to transfer it to the father. We also seek some clarity in instances where either parent is made redundant.

Worryingly, those who have not been in continuous employment have no protection and therefore these proposals offer them no choice whatsoever on the matter of sharing parental leave. Moreover, 'Working Families' highlight that because of restricted eligibility criteria, self employed fathers will not be able to access any rights to leave or pay, and couples with only one economically active parent will not be able to opt into the system.²⁰ Equally, is it the case that the extensive earnings and service requirements of Section 3.41 rule out a significant number of new parents?

¹⁷ DTI (November 2006) *Choice and Flexibility: Additional Paternity Leave and Pay*

¹⁸ Gíslason, I (2007) *Parental Leave in Iceland: Bringing the Fathers In. Developments in the Wake of New Legislation in 2000*. Ministry of Social Affairs – Centre for Gender Equality. Available online at <http://eng.velferdarraduneyti.is/Reports/nr/20403>. Page 26.

¹⁹ Pennycook, M. Cory, G & Alakeson, V (2013) *A Matter of Time: The Rise of Zero Hour Contracts*. Resolution Foundation.

²⁰ <http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf64.htm>

Currently, in relation to flexible working, men are not able to make a claim of indirect discrimination under UK law.²¹ For instance, women are currently guaranteed that they will be able to return to the same job-role after the child is born. In reality, however, we know that women report significant pre and postnatal discrimination, including redundancy and demotion. Therefore clarification is required regarding the ways in which the Department will ensure that men be protected by discrimination legislation in relation to parental leave in the same way that women are. This is important for women since men are unlikely to take leave if they do not have adequate job protection. Relatedly, we are curious to know how these proposals are compatible with the ethos of the Beecroft Report.²²

Alternative Approaches

There is little evidence of take-up of the transferable leave model.²³ The evidence is that the following 'equality-promoting' alternative approaches have the greatest impact upon take-up of parental leave by men.²⁴

The introduction of a mandated, individualised, default system of parental leave, would demonstrate this Department's genuine recognition of men as care-givers and women as workers. In other words, both men and women receive their own individual, unrelated entitlement to Parental Leave. WRDA foresee this as a mandated or quota of non-transferable care allocated to each individual from 'day one' of their employment.²⁵ The default system is rather like organ donorship/pension contributions where individuals must 'opt out'. Those who 'opt out' then risk loss of social esteem by displaying behavior that deviates from the norm/default model, and concurrently are forced to be directly reflective about their parenting choices. The default model has the effect of changing perceptions and establishing a new social norm.²⁶

For women maternity leave is compulsory for at least two weeks postnatally.²⁷ WRDA envisages a system where this becomes the default position for men. It has been evidenced that 'use it or lose it' systems positively promotes take up of parental leave

²¹ Hegewisch, A (2009) *Flexible Working Policies: A Comparative Review (Research Report 16)*. Equality and Human Rights Commission/Institute for Women's Policy Research. Page 42.

²² Beecroft, A. (2011) *Report on Employment Law*. Crown Copyright. Available at <https://www.gov.uk/government/news/beecroft-report-on-employment-law>

²³ Beresford, R. & Manfredi, S. (2013) *IER Briefing: The Children and Families Bill*. The Institute of Employment Rights.

²⁴ Gíslason, I (2007) *Parental Leave in Iceland: Bringing the Fathers In. Developments in the Wake of New Legislation in 2000*. Ministry of Social Affairs – Centre for Gender Equality. Available online at <http://eng.velferdarraduneyti.is/Reports/nr/20403>

²⁵ <http://www.norway.org.uk/aboutnorway/society/welfare/benefits/>

²⁶ Gheaus, A & Robeyns, I (2011) *Equality-promoting Parental Leave*. The Journal of Social Philosophy.

²⁷ <https://www.gov.uk/maternity-pay-leave/leave>

by fathers.²⁸ The evidence is that if men have had the opportunity to choose whether or not to take leave, they inevitably can and do give priority to their careers²⁹ whereas quota systems promote take-up. Additionally, part time leave or a time-credit/banking system should be considered.

Finally, public awareness of the present parental leave entitlement is low.³⁰ Therefore extensive marketing of these proposed changes is essential. For example, in the style of 'Tax Credits are Changing' Campaign - 'Did you know you're automatically entitled to 'X' amount of Parental Leave', 'Who's the Daddy?' and 'Real Men take Parental Leave'.³¹

For examples of good practice, WRDA point the Department in the direction of New Zealand or Iceland's Parental Leave models. In the former, economic protection is considered to be a universal right for both economically active and inactive women.³² In the latter, parents are currently afforded 9 months paid leave at 80% of salary where 3 months are allocated to mum, 3 months to dad, and 3 months to be shared between them.³³ This is in stark contrast to the UK's Paternity Leave provision where women receive an average compensation of around 40% of salary over the course of Leave.³⁴

These suggestions should be considered within the wider context of developing robust childcare provision.³⁵

Flexible Working

The contemporary world of work is organised around the typically masculine model of full time work and a culture of long hours, both of which systematically disadvantage those who have caring responsibilities. This is so deeply entrenched as to seem 'normal'. At the same time, compared to fathers in other countries, UK men have less formal support for changing their working patterns than women.³⁶ The lack of statutory

²⁸ Beresford, R. & Manfredi, S. (2013) *IER Briefing: The Children and Families Bill*. The Institute of Employment Rights.

²⁹ Chronholm, A (2009) 'Sweden: Individualisation or Free Choice in Parental Leave' in Kamerman Sheila, B & Moss, Peter *The Politics of Parental Leave Policies: Children, Parenting, Gender and the Labour Market*.

³⁰ Equality and Human Rights Commission (2009) *Working Better: Meeting the Changing Needs of Families, Workers and Employers in the 21st Century*. Page 19.

³¹ For example, see: <http://www.coloribus.com/adsarchive/tv-commercials/public-awareness-real-men-take-paternity-leave-17327455/>

³² <http://www.dol.govt.nz/er/holidaysandleave/parentalleave/paid-unpaid.asp>

³³ http://www.leavenetwork.org/news/show/?tx_ttnews%5Btt_news%5D=2523&cHash=58da4847a250e3a2ceb600f4bb238be4

³⁴ <http://www.bbc.co.uk/news/business-11587797>

³⁵ Carvill, L. (2013) *Towards a Childcare Strategy: Consultation Response*. March 2013. WRDA.

³⁶ Hegewisch, A (2009) *Flexible Working Policies: A Comparative Review (Research Report 16)*. Equality and Human Rights Commission/Institute for Women's Policy Research.

regulation for men has the associated effect of being harmful for women. At the same time, flexible working is already informally in operation in contemporary workplaces.³⁷ WRDA are pleased that the Department are to formalise these practices.

We agree that the process of extending formal flexible working to all employees plays an important role improving women's employment position.³⁸ Doing so removes the stigma surrounding flexible working, and the prejudice often directed at those who request it. If flexible working is available to everyone this removes this Us/Them divide and has the potential to establish new norms regarding the traditional gendered division of labour. Flexible working for all also removes the automatic assumption that it will always be women who take this option.

There is substantial amount of research that highlights the business benefits of flexible working.³⁹ These benefits include, increased profit, happier workers, increased productivity, increased quality of work, and reduced absenteeism. It is crucial that the Department take a radical approach to promoting public and business awareness of this fact whilst simultaneously emphasising that the fears conventionally felt by employers are unfounded. Therefore, WRDA propose an extensive multi-media publicising of the business case for flexible working. Finally in relation to flexible working, we also propose, that it is necessary to establish a statutory framework to discourage employers from advertising new jobs in the default mode of 'full time' and instead to make flexible working available from the beginning.⁴⁰

Conclusion

To conclude, we reiterate that, in light of the preceding arguments, whilst this new framework is important and a welcome start, these 'equality-enabling' proposals alone will not adequately address the gendered issues outlined here. Instead we advocate that the Department's end-goal should be the introduction of the above 'equality-promoting' alternative proposals. This would demonstrate this government's genuine commitment to making Shared Parental Leave a realistic and practical option for all parents.

We are happy to further discuss the issues raised in this response.

³⁷ Institute of Leadership and Management (March 2013) *Flexible Working: Goodbye Nine to Five*.

³⁸ Hegewisch, A (2009) *Flexible Working Policies: A Comparative Review (Research Report 16)*. Equality and Human Rights Commission/Institute for Women's Policy Research.

³⁹ Working Families (March 2010) *The Business Case for Flexible Working*.

⁴⁰ <http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf64.htm>