



## Programme for Prosperity and Fairness

# Report of the Working Group on the Review of the Parental Leave Act 1998

April 2002

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# Foreword by John O'Donoghue T.D., Minister for Justice, Equality and Law Reform

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I am very pleased to be associated with this Report, which is required under section 28 of the Parental Leave Act 1998. The Programme for Prosperity and Fairness also contains a commitment to review the legislation in consultation with the social partners. I announced the commencement of the review on 28 February 2001 and a Working Group, chaired by my Department, was subsequently established comprising the social partners, relevant Government Departments and the Equality Authority. The Working Group met on twelve occasions between March and November and concluded the review on 29 November 2001.

This Report is the latest in a series of family friendly initiatives which I have undertaken since coming into office in 1997. My Department has substantial funding under the National Development Plan 2000 – 2006 to support the supply of childcare and for the promotion of family friendly policies in the workplace.

Following a review of the maternity protection legislation in 2000, the period of maternity leave attracting a payment was increased by four weeks to eighteen weeks and the period of unpaid maternity leave was increased by four weeks to eight weeks with effect from 8 March 2001. Similar increases were made to adoptive leave at the same time. The Government is committed to implementing the other recommendations of the Maternity Working Group and the necessary proposals for amendment of the legislation are currently being prepared in my Department. It is also intended to amend the Adoptive Leave Act 1995 to reflect the proposed changes to the Maternity Protection Act 1994, where appropriate.

The Parental Leave Act 1998, which gives effect to the EU Parental Leave Directive (96/34/EC), introduced for the first time in Ireland a statutory right to parental and *force majeure* leave. For that reason, I made statutory provision for the review of the legislation within 3 years of it coming into force on 3 December 1998. Consultations with the social partners were a key factor in the development of the existing legislation. The Working Group has agreed ten recommendations. A further six recommendations for changes to the existing parental and *force majeure* leave arrangements were agreed by a majority of the members of the Working Group.

I would like to thank all the members who achieved their goal within a short timeframe in reviewing this complex piece of legislation.



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# Membership of the Working Group

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## Chairperson

Mr. John Kenny            Department of Justice, Equality and Law Reform<sup>1</sup>

## Members

Ms. Eilis Barry            Equality Authority

Ms. Carol Baxter           National Women’s Council of Ireland – representing the Community and Voluntary Pillar

Mr. Tony Carberry        Department of Finance

Ms. Joan Carmichael     Irish Congress of Trade Unions

Ms. Evelyn Daly           Department of Enterprise, Trade and Employment

Mr. Peter Flood            Irish Business and Employers’ Confederation

Mr. Enda Flynn            Department of Social, Community and Family Affairs

Ms. Bríd Gannon          Irish Business and Employers’ Confederation

Ms. Esther Lynch          Irish Congress of Trade Unions

Ms. Deirdre MacRory     Department of Finance

Mr. Malachy McGlynn    Irish Co-operative Organisation Society Ltd. – representing the Farming Pillar

Ms. Noreen Walsh        Department of Justice, Equality and Law Reform

## Secretary

Mr. Liam Smyth           Department of Justice, Equality and Law Reform

## Assistant Secretary

Ms. Lisa Keyes            Department of Justice, Equality and Law Reform<sup>2</sup>

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<sup>1</sup> Mr. John Kenny succeeded Ms. Vera Kelly as the Chairperson of the Group in September 2001.

<sup>2</sup> Ms. Lisa Keyes succeeded Ms. Carol Leonard as Assistant Secretary to the Group in September 2001.



# Executive Summary

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The Programme for Prosperity and Fairness provides for a review of the Parental Leave Act 1998 in consultation with the social partners. This commitment is in accordance with section 28 of the Act, which provides for a review of the operation of the Act not earlier than 2 years and not later than 3 years of its commencement on 3 December 1998. The Minister announced the commencement of the review on 28 February 2001. The Department of Justice, Equality and Law Reform subsequently established a Working Group, comprising the social partners, relevant Government Departments and the Equality Authority, to assess and review the provisions of the Act in the light of its operation. The Working Group met on twelve occasions and completed the review on 29 November 2001.

*Chapter One* of the Report describes the current situation in relation to parental leave and *force majeure* leave including an outline of the Parental Leave Act 1998, the role of the various bodies involved in the enforcement and implementation of the legislation and an overview of other relevant legislation. *Chapter Two* compares the situation in relation to parental leave in Ireland with that in other EU Member States. *Chapter Three* reflects the deliberations of the Working Group in arriving at its recommendations. Each recommendation is fully discussed in this chapter. The recommendations are divided into three categories as follows, Part A – Payment issues; Part B – Recommendations in relation to other specific issues;<sup>1</sup> and Part C – Issues discussed where no recommendations are made by the Group. The *Appendices* contain the text of the Parental Leave Directive, the texts of presentations that were given to the Working Group during the course of the review, summaries of the research carried out as part of the review and other background information.

The Group's recommendations are discussed in detail in Chapter 3 and are quoted below:

## Part A

### **1. *The principle of paid parental leave***

Some members of the Working Group provided statements outlining their respective positions on this issue. The statements are included in Chapter 3.

#### *Recommendation:*

The Group could not reach consensus on the principle of paid parental leave and accordingly, did not address all the possible options this raises. Some members of the Group outlined their respective positions above. In that context, the following members of the Group (Irish Congress of Trade Unions; National Women's Council of Ireland; Equality Authority; Department of Justice, Equality and Law Reform; Department of Enterprise, Trade and Employment; and Department of

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<sup>1</sup> A consensus agreement could not be reached on a number of the recommendations contained in Part B.

Social, Community and Family Affairs) recommend that parental leave should attract payment. The other members of the Group (Irish Business and Employers' Confederation; Department of Finance; and Irish Co-operative Organisation Society) cannot support the payment of parental leave.

## **2. *Paternity leave***

The Group could not reach consensus on this issue. Seven members of the Group (Irish Congress of Trade Unions; National Women's Council of Ireland; Equality Authority; Department of Justice, Equality and Law Reform; Department of Finance;\* Department of Enterprise, Trade and Employment;\* and Department of Social, Community and Family Affairs\*) support a recommendation to introduce a statutory entitlement to 3 days paid paternity leave per child, payable by employers. The other two members of the Group (Irish Business and Employers' Confederation, and Irish Co-operative Organisation Society) cannot agree to the introduction of paid paternity leave by employers.

\* These Group Members support the recommendation, in principle.

## **Part B**

### **3. *Duration of parental leave***

The majority of the Group recommends that the duration of parental leave should be increased by 4 weeks, bringing the total entitlement to 18 weeks. In the event of parental leave attracting a payment in the future, the additional 4 weeks parental leave would not attract such a payment. The Department of Finance and the Irish Business and Employers' Confederation do not support the recommendation.

### **4. *Manner in which parental leave may be taken***

The Group considers that in order to balance the needs of employers and employees, there should be a statutory right to take parental leave in some format other than a continuous block. The legislation should, however, set parameters on the statutory entitlements in relation to the break up of parental leave, while maintaining the existing flexibility where the employer and employee agree to other formats.

The Group therefore recommends that –

unless the employer and employee agree to more favourable terms, an employee should have the right to take parental leave in the following forms:

- (a) a continuous period of 14 weeks;<sup>2</sup>
- (b) in separate blocks each block consisting of a minimum of 6 continuous weeks, subject to a maximum of 14 weeks' leave. Unless the employer agrees to more favourable conditions, an employee who has availed of part of the parental leave entitlement in respect of a particular child should not be entitled to commence a further period of parental leave in respect of the same child, until a period of 10 weeks has elapsed since the termination of the first period of parental leave. In the event of an employee deciding to take parental leave in separate blocks on the basis of two separate applications, each block should be treated separately, in particular in terms of notification requirements,

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<sup>2</sup> See recommendation No. 3 in relation to the duration of parental leave.

the employer's right to postpone (i.e. the employer should be entitled to postpone each period a maximum of once, or twice in the case of seasonal variation in the volume of work), and the maximum amount of leave which can be taken in a 12 month period (i.e. 14 weeks except in the case of children of a multiple birth). In the event of the two blocks of leave being proposed in one application, the proposal will be treated as a single application for all purposes including postponement.

#### **5. *Maximum age of a child***

The majority of the Group recommends that the maximum age of the child in respect of whom employees may avail of parental leave should be increased to 8 years of age. The Irish Business and Employers' Confederation and the Department of Finance do not recommend extending the maximum age beyond 6 years of age.

#### **6. *Special provision for children with disabilities***

The Group recommends that in the case of a child with a disability, the maximum age of the child in respect of whom employees may take parental leave should be increased to 16. The administration difficulties arising as a result of the increase should be considered. For the purposes of this recommendation, a child with a disability should be defined as a child in respect of whom a Domiciliary Care Allowance is (or would be if the child had satisfied the means test to qualify for DCA) payable. A maximum age of 16 should also apply in the case of adoptive children with disabilities.

#### **7. *Broadening the entitlement***

Having considered the matter, the Group recommends that a workable legal formula be developed to extend parental leave entitlement to persons acting in *loco parentis* in respect of an eligible child.

#### **8. *Notification requirements***

The majority of the Group recommends that the requirement to give 6 weeks' notice of the proposal to take parental leave should not apply in cases where parental leave is urgently required in respect of a relevant child on medical grounds. Leave taken for this purpose shall not exceed 2 weeks in any calendar year, subject to a maximum of 2 absences per year, and shall not exceed 3 weeks in total. In such circumstances, the employee in accordance with Regulations, will be required to give the employer notice (and possible medical evidence, if feasible) of the proposal to take such leave and the reason the leave is required as soon as is reasonably practicable and in any event not later than the date of commencement of the leave.

The Department of Finance, the Irish Business and Employers' Confederation<sup>3</sup> and the Irish Co-operative Organisation Society do not support the recommendation.

#### **9. *Sickness while on parental leave***

The Group recommends that the Act be amended in accordance with the legal advice from the Attorney General.

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<sup>3</sup> Irish Business and Employers' Confederation strenuously opposed this proposal during Group discussions.

#### **10. Force majeure leave**

The Group considered this issue and recommends that:

- the Act should be amended to provide a statutory basis for the development of Codes of Practice in relation to *force majeure* and parental leave; and
- the issue of *force majeure* leave in respect of same sex partners be addressed.

The majority of the Group recommend that provision be made for a half day's *force majeure* leave. The Department of Finance and the Irish Business and Employers' Confederation do not support the recommendation.

#### **11. Employment rights**

The Group considered this issue and recommends that, for the avoidance of doubt in relation to this issue, section 16(2) of the Parental Leave Act should be amended to include a provision similar to section 15(2)(c) of the Carer's Leave Act 2001.

#### **12. Protection of employees from penalisation**

The Group considered this issue and recommends that for the avoidance of doubt in relation to the protection of an employee from penalisation, the Parental Leave Act should be amended to protect an employee from penalisation for proposing to properly exercise or having properly exercised his or her entitlement to parental leave or *force majeure* leave.

#### **13. Awareness raising in relation to the Parental Leave Act 1998**

The Group recommends that the Equality Authority should, following the enactment of any amendments to the Act on foot of this review, ensure that these amendments secure a profile within the information strategy on the Parental Leave Act. The Group recommends that the social partners should participate in the dissemination of information in relation to the Parental Leave Act 1998. Other channels should be used for the dissemination of information, where appropriate.

#### **14. Period of appeal of Rights Commissioner decisions**

As other legislation which provides a right to similar types of leave (e.g. maternity, adoptive and carer's leave) has a 4 week period of appeal, the Group recommends that the period of appeal should remain at 4 weeks to keep it consistent with these other pieces of legislation.

## **Part C**

#### **15. Service requirement**

The Group could not reach consensus on this issue.

#### **16. Parental leave in respect of more than one child in a 12 month period**

The Group could not reach consensus on this issue.

#### **17. Postponement of parental leave**

The Group makes no recommendation on this issue.

#### **18. Termination of parental leave**

The Group makes no recommendation on this issue. However, the Group suggest that this issue could be dealt with in any Code of Practice developed in relation to parental leave.

# 1 Background Information and Introduction

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## Parental Leave Directive (96/34/EC)

The Framework Agreement on Parental Leave, which was incorporated into Directive 96/34/EC, represents an undertaking by the Union of Industrial and Employers' Confederation (UNICE), the European Centre of Public Enterprises (CEEP) and the European Trade Union Confederation (ETUC) to set out minimum requirements on parental leave and time off from work on grounds of *force majeure*, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women. A summary of the Framework Agreement is at the beginning of Chapter 2 – Comparative Situation in EU Member States.

The Parental Leave Act 1998 transposed Directive 96/34/EC into Irish law and came into operation on 3 December 1998. The Act was subsequently amended with effect from 19 July 2000.

## Review of Act

Section 28 of the Parental Leave Act 1998 states as follows:

*“The Minister<sup>1</sup> shall, not earlier than 2 years and not later than 3 years after the commencement of this Act, after consultation with persons whom he or she considers to be representative of employers generally and persons whom he or she considers to be representative of employees generally, conduct a review of the operation of this Act and shall prepare a report in writing of the findings of the review and shall cause copies of the report to be laid before each House of the Oireachtas.”*

Paragraph 4.3.15 of the Programme for Prosperity and Fairness states that:

*“The Department of Justice, Equality and Law Reform will, in 2001, conduct a review of the operation of the Parental Leave Act 1998 in consultation with the social partners.”*

## Parental Leave Act 1998

### **Parental Leave**

The Parental Leave Act provides an individual a non-transferable entitlement to parents to 14 weeks (per child) unpaid leave from work to take care of young children. The leave must be taken before the child reaches five years of age, except in certain circumstances in the case of an adopted child. The entitlement under the Act originally applied to parents of children born or adopted on or after 3 June 1996. The Act was amended with effect from 19 July 2000 to give effect to a Reasoned Opinion of 3 April 2000, from the EU Commission that Ireland had not

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<sup>1</sup> Minister for Justice, Equality and Law Reform.

properly implemented the Parental Leave Directive. The effect of this amendment is to provide an entitlement to 14 weeks unpaid parental leave to parents of children born between 3 December 1993 and 2 June 1996 or children born on or after 3 December 1993 and in whose case an adoption order was made between 3 December 1993 and 2 June 1996; this leave to be taken not later than 31 December 2001.

Generally, the employee must have at least one year's continuous service with the employer before he/she is entitled to take parental leave. However, where the child is approaching the age threshold and the employee has more than three months' but less than one year's service with the employer, he/she shall be entitled to *pro rata* parental leave. In such a case, the employee is entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.

The leave may be taken as a continuous block of 14 weeks or, with the employer's agreement, broken up over a period of time. An employee must give written notice to the employer of his/her intention to take parental leave not later than six weeks before the employee proposes to commence the leave. Once the employee has given notice of his/her intention to take parental leave, the employee and the employer must prepare and sign a confirmation document no later than four weeks before the leave is due to begin. Once a confirmation document has been signed by both the employer and the employee, it cannot be altered unless both parties agree. However, the Act provides that an employer may, at his/her discretion, waive all or part of the notification period.

The employer may postpone the parental leave if he/she is satisfied that granting the leave would have a substantial adverse effect on the operation of his/her business. The postponement may be for a period not exceeding six months, to a date agreed on by both the employer and the employee. Generally, the employer may postpone the leave only once in respect of any particular child. If however, the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed twice in respect of the same child. The employer may terminate the leave if he/she has reasonable grounds to believe that it is being used for a purpose other than taking care of the child concerned.

### ***Force majeure leave***

The Act also provides an entitlement to limited paid *force majeure* leave for urgent family reasons owing to the injury or illness of an immediate family member,<sup>2</sup> in circumstances where the presence of the employee, at the place where the family member is ill or injured, is indispensable. The employee may not be absent on *force majeure* leave for more than 3 days in any period of 12 consecutive months or 5 days in any period of 36 consecutive months.

### ***Protection of employment rights***

During an absence on parental leave an employee is regarded as being in the employment of the employer and retains all of his/her employment rights (except the right to remuneration and superannuation benefits or any obligation to pay contributions in or in respect of the

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<sup>2</sup> Parent or adoptive parent, spouse or person with whom the employee is living as husband or wife, a person to whom the employee is *in loco parentis*, a brother or sister of the employee, a parent or grandparent of the employee and persons of such other (if any) class or classes as may be prescribed.

employment). The absence, therefore, counts as reckonable service for the purposes of annual leave, public holidays, increments, seniority, etc. However, an employer may require that a period of probation, training or apprenticeship be suspended while the employee is on parental leave.

### ***Right to return to work***

Following an absence on parental leave, an employee has the right to return to work in the same employment and under the same terms and conditions of employment. The legislation also deals with arrangements for return where there has been a change of ownership of the enterprise concerned. Where it is not reasonably practicable for the employee to return to the same job, suitable alternative work may be offered.

### ***Protection from dismissal***

The Act amends the Unfair Dismissals Acts 1977-2001 to the effect that the dismissal of an employee, as a result of the exercise or proposed exercise, of the right to parental leave or *force majeure* leave, is regarded as an unfair dismissal for the purposes of the Unfair Dismissals Acts 1977-2001 unless having regard to all the circumstances there are substantial grounds justifying the dismissal. The requirement to have one year's continuous service with the employer for protection under the Unfair Dismissals Acts does not apply to such a dismissal. In addition, the dismissal of an employee who is entitled to return to work following a period of parental leave and who is not permitted to do so by his/her employer, is deemed to be unfair, unless there are substantial grounds justifying the dismissal.

### ***Disputes and appeals about entitlements***

A dispute under the Act, which does not relate to a dismissal, may be referred to a Rights Commissioner and may be appealed to the Employment Appeals Tribunal. A Rights Commissioner or the Employment Appeals Tribunal may as appropriate, order either party to the dispute to take action in resolution of the dispute. Where the Rights Commissioner or the Tribunal finds in favour of the employee, they may order the granting of leave for a specified period and/or the payment of compensation, not exceeding 20 weeks' remuneration, to the employee. Disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts 1977-2001.

### ***Social Welfare (Consolidated Contributions and Insurability – Amendment No. 4 – Credited Contributions) Regulations 1998 (S.I. No. 569 of 1998)***

The Social Welfare (Consolidated Contributions and Insurability – Amendment No. 4 – Credited Contributions) Regulations 1998 provide for the crediting of contributions to people who are insured for PRSI purposes for each week during which they avail of parental leave under the terms of the Parental Leave Act 1998. These credited contributions maintain a person's existing entitlement to social insurance benefits during the period of parental leave.

# Enforcement and implementation of parental leave legislation

## Department of Justice, Equality and Law Reform

### ***General functions of the Department***

The functions of the Department of Justice, Equality and Law Reform include the following objectives in relation to equality:

- To bring about a more equal society by outlawing discrimination and by facilitating equality of opportunity, especially for certain groups that have experienced disadvantage.
- To put in place a statutory foundation for equality, especially rights based anti-discrimination legislation.
- To provide a sound infrastructure to work towards the elimination of discrimination, to promote equal opportunities and provide redress for persons who have suffered discrimination contrary to employment equality or equal status legislation.
- To develop and pursue equal opportunities policies in the areas of equal pay for like work; equal treatment and positive action measures in employment; and the equal provision of goods, services and facilities.
- To promote the reconciliation of work and family responsibilities.<sup>3</sup>

### ***Function of the Department in relation to parental leave***

The Equality Division is responsible for the administration of the Parental Leave Act 1998. The implementation and periodic review of the Parental Leave Act 1998 is part of this remit.

The Department of Justice, Equality and Law Reform is assisted in its responsibilities in relation to the Parental Leave Act 1998 by the Equality Authority which provides an information service to the public on the provisions of the Act.

## Department of Enterprise, Trade and Employment

The Department of Enterprise, Trade and Employment has responsibility for policy formulation and drafting of legislation in the area of employment rights – with the exception of maternity protection, adoptive leave, parental leave and the employment equality legislation which are the responsibility of the Department of Justice, Equality and Law Reform.

The Labour Relations Commission and the Employment Appeals Tribunal (which are all agencies under the auspices of the Department of Enterprise, Trade and Employment) provide a disputes resolution mechanism in respect of non-compliance with provisions of the Parental Leave Act 1998.

In view of the above, the Department of Enterprise, Trade and Employment is continually consulted on any legislative or policy initiatives relating to employment rights in the area of, *inter alia*, parental leave proposed by the Department of Justice, Equality and Law Reform.

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<sup>3</sup> Department of Justice, Equality and Law Reform Strategy Statement, 1998-2000.

## Rights Commissioner Service of the Labour Relations Commission

The mission of the Labour Relations Commission is “to promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees.” The Commission carries this out by providing the following services:

- An industrial relations conciliation service
- An industrial relations advisory service
- A Rights Commissioner service
- Assistance to Joint Labour Committees and Joint Industrial Councils in the exercise of their functions.

Rights Commissioners are independent adjudicators appointed by the Minister for Enterprise, Trade and Employment. They investigate disputes, grievances and claims referred to the Labour Relations Commission by individuals or small groups of workers under specific industrial relations and employment rights legislation. Rights Commissioners can only deal with cases referred to them under the appropriate legislation. They investigate disputes under the:

- Industrial Relations Acts 1969 – 1990
- Unfair Dismissals Acts 1977 – 2001
- Payment of Wages Act 1991
- Maternity Protection Act 1994
- Terms of Employment (Information) Acts 1994 and 2001
- Adoptive Leave Act 1995
- Protection of Young Persons (Employment) Act 1996
- Organisation of Working Time Act 1997
- Parental Leave Act 1998
- Protection for Persons Reporting Child Abuse Act 1998
- National Minimum Wage Act 2000
- Carer’s Leave Act 2001
- Protection of Employees (Part-Time Work) Act 2001
- S.I. No. 487 of 2000 – European Communities (Safeguarding of Employees’ Rights on Transfer of Undertakings) (Amendment) Regulations 2000
- S.I. No. 488 of 2000 – European Communities (Protection of Employment) Regulations 2000

Under the Parental Leave Act 1998 either the employee or relevant employer may refer a dispute to a Rights Commissioner. 42 cases were referred to the Rights Commissioner Service under the Parental Leave Act 1998 in the year 2000 and there were 23 hearings by the Rights Commissioner Service under this Act in 2000.

Mr. Colin Walker,<sup>4</sup> Rights Commissioner made a presentation to the Working Group setting out his experience in relation to disputes under the Act. At the time of the presentation, (May 2001), all the cases dealt with by Mr Walker under the Act related to *force majeure* leave. A summary of Mr Walker's presentation is set out at Appendix II.

## Employment Appeals Tribunal

The Employment Appeals Tribunal is a statutory body consisting of a chairman, 22 vice chairmen and a panel of 60 other members, 30 nominated by the Irish Congress of Trade Unions and 30 by organisations representative of employers. It deals with and adjudicates on employment disputes under the following statutes:

- Redundancy Payments Acts 1967 to 2001
- Minimum Notice and Terms of Employment Acts 1973 to 2001
- Unfair Dismissals Acts 1977 to 2001
- Protection of Employees (Employers' Insolvency) Acts 1984 to 2001
- Payment of Wages Act 1991
- Maternity Protection Act 1994
- Terms of Employment (Information) Acts 1994 and 2001
- Adoptive Leave Act 1995
- Protection of Young Persons (Employment) Act 1996
- Organisation of Working Time Act 1997
- Parental Leave Act 1998
- Protection for Persons Reporting Child Abuse Act 1998
- Carer's Leave Act 2001
- S.I. No. 487 of 2000 – European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) (Amendment) Regulations 2000
- S.I. No. 488 of 2000 – European Communities (Protection of Employment) Regulations 2000

The Tribunal is an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

A Rights Commissioner's decision on a dispute under the Parental Leave Act 1998 may be appealed by a party concerned to the Employment Appeals Tribunal. Six cases were referred to the Employment Appeals Tribunal under the Parental Leave Act 1998 in the year 2000.

Ms. Mary Faherty, Chairman, Employment Appeals Tribunal made a presentation to the Working Group setting out the experience of the Employment Appeals Tribunal in relation to appeals of Rights Commissioner decisions under the Act. At the time of the presentation (May 2001) the

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<sup>4</sup> Mr. Walker has since retired.

Employment Appeals Tribunal had issued 12 determinations under the Act – 11 of the determinations related to *force majeure* leave and one related to the manner in which parental leave may be taken. A summary of Ms. Faherty’s presentation is set out at Appendix III.

## Equality Authority

The Equality Authority was established on 18 October 1999 under the Employment Equality Act 1998. It replaced the former Employment Equality Agency.

The Equality Authority has the statutory remit to work towards the elimination of discrimination and the promotion of equal opportunities in employment under the Employment Equality Act 1998 and in relation to the provision of goods and services under the Equal Status Act 2000. Under the Employment Equality Act 1998 and the Equal Status Act 2000 discrimination is outlawed on nine distinct grounds: gender; marital status; family status; sexual orientation; religion; age; disability; race and; membership of the Traveller community.

The Equality Authority provides an information service to the public on the equality legislation and the Parental Leave Act 1998, the Adoptive Leave Act 1995 and the Maternity Protection Act 1994. It is also charged with keeping equality legislation and the Adoptive Leave Act 1995 and the Maternity Protection Act 1994 under review.

Ms. Eilis Barry, Legal Adviser with the Equality Authority, made a presentation to the Working Group on the Authority’s experience in relation to the operation of the Act. In the period since the Act came into operation up to March 2001, the Authority has received over 4,000 queries in relation to parental leave. A summary of Ms Barry’s presentation is set out at Appendix IV.

## Other relevant legislation

### Unfair Dismissals Acts 1977-2001<sup>5</sup>

The Unfair Dismissals Acts 1977-2001 protect employees from being unfairly dismissed from their jobs by laying down criteria by which dismissals are to be judged unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unfair. In general, the Acts apply to any person who is working under a contract of employment or apprenticeship, or employed through an employment agency. In general, the Acts do not apply to an employee who has been in the continuous service of the employer for less than one year. The requirement to have one year’s service with the employer does not apply in the case of a dismissal of an employee as a result of, *inter alia*, the exercise, or proposed exercise of his/her rights under the Parental Leave Act 1998.

The redress provisions under the Unfair Dismissals Acts also apply to dismissal cases which relate to parental leave. The following types of redress may be awarded:

- re-instatement in the employee’s old job, entitling the employee to any improvement in terms and conditions which may have occurred in the interim;

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<sup>5</sup> *Unfair Dismissals Acts 1977 – 1993 Explanatory Booklet*, Department of Enterprise, Trade & Employment, 1999.

- re-engagement in the employee's old job, or a suitable alternative job, on conditions considered reasonable by the adjudicating bodies;
- or where financial loss has been incurred by the employee, financial compensation subject to a maximum of two years' remuneration;
- or where no financial loss has been sustained by the employee, financial compensation subject to a maximum award of four weeks' remuneration.

Disputes under the Parental Leave Act 1998, which do not relate to dismissal, are covered by sections 17 – 22 of that Act.

## Organisation of Working Time Act 1997<sup>6</sup>

The Organisation of Working Time Act 1997 (OWT) sets out statutory rights for employees in respect of rest, maximum working time and holidays. Those rights apply either by law as set out in the Act, in Regulations made under the Act, or through legally binding collective agreements.

Certain provisions in the Organisation of Working Time Act are affected by provisions under the Parental Leave Act 1998 as follows:

- (i) Employers must establish a reference period when calculating average weekly working hours. Any absence from work under the Parental Leave Act 1998 is not counted in the reference period.
- (ii) The OWT Act provides for minimum statutory annual leave for all employees. As the Parental Leave Act 1998 preserves all employment rights (except remuneration and superannuation) during the period of parental leave, time spent on such leave is counted towards annual leave entitlement.
- (iii) The OWT Act sets out employees entitlement to public holidays. All whole-time employees are entitled to public holidays, regardless of length of service, and, in the case of part-time employees, entitlement is contingent on the employee having worked for at least 40 hours for the employer during the period of 5 weeks ending on the day before that public holiday. There are certain exceptions to the above entitlement, in relation to extended absences in respect of injury, absence authorised by the employer or strike, which are set out in the Third Schedule to the OWT Act. Again, the Parental Leave Act preserves the employee's rights, to public holidays during the period of parental leave.

## Maternity Protection Act 1994

The Maternity Protection Act 1994 provides that all female employees who have notified their employer of their condition are entitled to 18 consecutive weeks' maternity leave plus 8 weeks' additional maternity leave. The Act does not require an employer to pay an employee during maternity leave. However, a woman who is entitled to maternity leave and who has paid sufficient PRSI contributions can qualify for Maternity Benefit from the Department of Social, Community and Family Affairs. The optional additional maternity leave is at the employee's own expense. During the pregnancy, and for the 14 week period immediately following the birth, employees are entitled to time off without loss of pay for ante-natal and post-natal medical visits. The Act

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<sup>6</sup> *Guide to Labour Law*, Department of Enterprise, Trade & Employment, 1997; IBEC, *Guideline 10, Annual Leave and Public Holidays*.

also provides for health and safety leave in certain circumstances. An employer is liable to pay the employee for the first three weeks of health and safety leave and thereafter, eligible employees receive a Health and Safety Benefit from the Department of Social, Community and Family Affairs.

The Act also entitles the father of a child to leave in the event of the death of the mother within 22 weeks of the birth of a living child.

In general, after a period of maternity leave, the employee has the right to return to work in the same employment and under the same conditions.

During maternity leave, health and safety leave, natal care absences and maternity leave to which the father is entitled on the death of the mother, employment rights (e.g. annual leave, increments, seniority) are preserved and continue to build up as if the employee was not absent from work. During additional maternity leave, additional leave to which a father is entitled or further leave to which the father is entitled, an employee's employment relationship with the employer continues to exist. These absences, however, do not count as reckonable service.

There is provision for recourse to a Rights Commissioner, and on appeal to the Employment Appeals Tribunal, in the event of a dispute between an employer and an employee as regards entitlements under the legislation. In general, a dismissal which results from the exercise or contemplated exercise of a right under the Act will be regarded as an automatically unfair dismissal. Redress in this case will be under the Unfair Dismissals Acts 1977-2001.

## **Adoptive Leave Act 1995**

The Adoptive Leave Act 1995 provides an adopting mother, or a sole male adopter, who is in employment with an entitlement to a minimum of 14 consecutive weeks leave. Absence from work on adoptive leave does not affect any right of an employee related to the employment, except the right to remuneration. An employee who is entitled to adoptive leave and who has paid sufficient PRSI contributions can qualify for a social welfare payment from the Department of Social, Community and Family Affairs. The Act also entitles an employee to a maximum of 8 weeks additional adoptive leave. In the case of an Irish adoption, an employee, who has taken adoptive leave, is entitled to avail of the additional unpaid adoptive leave immediately following the period of adoptive leave. In the case of a foreign adoption some or all of the 8 weeks additional adoptive leave may be taken immediately before the adoptive leave.

Entitlement to both adoptive and additional adoptive leave is subject to mandatory notification procedures and evidence of placement requirements. An employed adopting father is also entitled to certain leave in circumstances where the adopting mother has died before or during the period of adoptive leave or additional adoptive leave. In general, there is a right to return to work after a period of adoptive leave or additional adoptive leave, once the employee has notified the employer, in writing, at least 4 weeks beforehand.

There is provision for recourse to a Rights Commissioner, and on appeal to the Employment Appeals Tribunal, in the event of a dispute between an employer and an employee as regards entitlements under the legislation. In general, a dismissal which results from the exercise or contemplated exercise of the right to adoptive leave or additional adoptive leave will be regarded

as an automatically unfair dismissal. Redress in this case will be under the Unfair Dismissals Acts 1977-2001.

## Carer's Leave Act 2001

The Carer's Leave Act 2001 entitles employees to a maximum of 65 weeks unpaid carer's leave from their employment to enable them to personally provide full-time care to any person (relevant person) who is objectively assessed by the Department of Social, Community and Family Affairs (by Deciding Officers under the Carer's Benefit scheme) as being in need of full-time care and attention. However, under Regulations made by the Minister for Social, Community and Family Affairs an employee may work for up to 10 hours per week while on carer's leave (subject to certain income limits). The 65 week entitlement may be taken as a continuous period, or in separate unit periods, the aggregate duration of which does not exceed 65 weeks. (The minimum statutory entitlement that may be taken in one period at the discretion of the employee is 13 weeks.) Carer's leave absence is unpaid by the employer but is reckonable for the purposes of employment rights other than superannuation, and any obligation to pay superannuation contributions in or in respect of the employment. The right to annual leave and public holiday entitlement is limited to the period of carer's leave comprising the first 13 weeks only of the carer's leave entitlement in respect of any one relevant person. An employee must have completed 12 months continuous employment before commencing carer's leave. An employee who is on carer's leave may be entitled to Carer's Benefit. However, entitlement to Carer's Benefit is not a condition for entitlement to carer's leave.

## Employment Equality Act 1998<sup>7</sup>

The Employment Equality Act 1998 came into operation on 18 October 1999. The Act outlaws discrimination in relation to employment on nine grounds, namely gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. The scope of the Act is comprehensive and covers discrimination in relation to access to employment, conditions of employment, equal pay for work of equal value, promotion, training and work experience. These kinds of discrimination are outlawed whether by an employer, an employment agency, a trade union, a professional body, a vocational training body or a newspaper advertising jobs in its careers and appointments pages.

Persons who consider that they have been discriminated against contrary to the provisions of the Act may seek advice from the Equality Authority. The Authority may decide to provide assistance in taking proceedings in respect of which redress is provided for under the Act. Persons may seek redress by referring a case to the Director of Equality Investigations or, in a dismissal case, the Labour Court. Alternatively, a person who considers that he/she has been discriminated against on the gender ground may apply to the Circuit Court for redress. Where discrimination has been found to have taken place the Director of Equality Investigations and the Labour Court may order appropriate redress (subject to limits set out in the Act). Similarly, the Circuit Court may also award redress (subject only to a limit in relation to backdating).

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<sup>7</sup> The Employment Equality Act 1998 repeals and replaces the Employment Equality Act 1977 and the Anti-Discrimination (Pay) Act 1974.

## **Protection of Employees (Part-Time Work) Act 2001**

The Protection of Employees (Part-Time Work) Act 2001, which commenced on 21 December 2001, provides for the removal of discrimination against part-time workers where such exists. The Act also guarantees that part-time workers may not be treated less favourably than full-time workers.

This Act repealed the Worker Protection (Regular Part-Time Employees) Act 1991. As a result, the thresholds in that Act (8 hours work per week & 13 weeks continuous service) for access to a range of employee protection legislation, no longer apply.



## 2 Comparative Situation in EU Member States

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### Parental Leave Directive

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave, concluded by UNICE, CEEP and the ETUC was adopted under the Agreement on Social Policy. Member States had until 3 June 1998 to transpose the provisions of the Directive into their national legal systems.<sup>1</sup> However, the Directive did allow Member States an additional period of up to one year, if necessary, to take account of special difficulties arising during the transposition of the Directive or implementation by collective agreement. Both Austria and Ireland took advantage of this provision, availing of additional periods of twelve and six months respectively.

The Directive aims to help working parents reconcile work and family life and to promote equal opportunities and treatment between men and women. It also aims to encourage fathers to play a more active role in the care and upbringing of their children. The Framework Agreement annexed to the Directive sets out minimum requirements on parental leave and *force majeure* leave and allows Member States the option of providing more favourable provisions than those set out in the Framework Agreement. The Directive provides an entitlement to at least three months' parental leave on the grounds of the birth or adoption of a child until a given age of up to eight years. The Directive applies to all workers, men and women, who have an employment contract or employment relationship as defined by Member States. The Directive also provides that, in order to promote equal opportunities and equal treatment between men and women, the right to parental leave should, in principle, be granted on a non-transferable basis.

The Directive protects workers against dismissal on the grounds of an application for, or the taking of, parental leave. It also provides that at the end of parental leave, a worker must have the right to return to the same or an equivalent job consistent with his/her employment contract or relationship. The Directive provides for the preservation of rights acquired or in the process of being acquired at the date on which parental leave commences and states that such rights shall apply at the end of parental leave. It is, however, for Member States to define the status of the employment contract or relationship for the period of parental leave and to determine all matters relating to social security.

The Directive also requires that a worker be allowed to take time off for reasons of *force majeure* for urgent family reasons in cases of sickness or accident requiring the immediate presence of the worker. It is however, left to Member States to specify the amount of time off and conditions of access.

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<sup>1</sup> Directive 97/75/EC of 15 December 1997 extended the scope of Directive 96/34/EC to the UK. The UK had until 15 December 1999 to transpose its provisions.

Before the coming into force of the Directive, general provisions on parental leave existed in Austria, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal, Spain, and Sweden. In Belgium, parental leave only previously existed in certain parts of the federal public sector; implementation of the Directive has led to the introduction of parental leave in the rest of the public sector and in the private sector. Similarly, in Luxembourg, parental leave existed in the public sector and through collective agreements in parts of the private sector. In the UK and Ireland, implementation of the Directive has led to the introduction of parental leave, and in Finland and Sweden, leave for family emergencies has been introduced.

This chapter details the implementation of the various elements of the Directive in the EU Member States: age of child, length of leave and how it is taken, payment of parental leave, transferability between parents, notification and service requirements, postponement of parental leave by the employer and special provisions for small firms, protection from dismissal and right to return to work, employment rights and status of time spent on parental leave and *force majeure* leave. It also details paternity leave arrangements in EU Member States.

The Working Group had difficulty in compiling definitive information on the operation of the parental leave, *force majeure* leave and paternity leave arrangements across the various EU Member States. In some cases, conflicting information has been received from different sources. In the circumstances, unless otherwise stated, the information in this chapter has been sourced from the European Commission.

Some Member States have provided for a system of parental leave which goes well beyond the minimum requirements laid down in the Framework Agreement. This, combined with the discretion left to Member States to determine matters such as conditions of access, payment during parental leave, whether leave should be taken full-time or part-time, notice periods etc., has led to considerable variation between the parental leave systems in Member States.

## Age of child

Clause 2(1) of the Framework Agreement on Parental Leave provides that workers shall have the right to at least three months parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child and that leave shall be available until a given age up to 8 years, to be defined by Member States and/or management and labour.

All Member States provide parental leave in respect of both natural and adopted children. Details of the maximum age of the child in respect of which parents can take parental leave in the different EU Member States are set out in Table 1. Details of any variations in the age limits in respect of adopted children and children with disabilities are also set out in Table 1.

The maximum age varies from 18 months in Sweden for full-time parental leave (although parents are entitled to work reduced hours until the child reaches 8 years), to 8 years in Denmark, Italy and the Netherlands. A maximum age of 2 years applies in Austria (or 4 years if leave is taken part-time), 3 years in Finland, France, Germany (12 of the 36 months parental leave entitlement may be postponed until the child is 8 years old, with the employer's agreement) and Spain (or 6 years in the case of part-time leave), 3½ years in Greece (6 years for civil servants) and 4 years in Belgium (10 years in the public sector). A maximum age of 5 applies in Ireland, Luxembourg and the UK and a maximum of 6 years applies in Portugal.

Special provisions apply in relation to adopted children in Belgium, France, Germany, Ireland, Italy, Sweden and the UK. Special provisions also apply in respect of children with disabilities in two Member States, namely Belgium (up to age 8) and the UK (up to 18 years).

## **Length of leave and how it is taken (full-time or part-time, block or broken format)**

Clause 2.1 of the Framework Agreement on Parental Leave provides that workers shall have a right to at least three months parental leave on the grounds of the birth or adoption of a child. Clause 2(3)(a) provides that Member States and/or management and labour may decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system.

Details of the length of parental leave and the options available to parents to take leave, in EU Member States, are set out in Table 1. This table may not include information in relation to all types of leave available in Member States which can be used for childcare purposes. Therefore, it is difficult to make comparisons between the parental leave entitlements in Member States.

It should also be noted that in some countries there is a very fine line between maternity and parental leave, and that part of the leave classified as parental leave may, in fact, be maternity leave. For example, in Sweden, part of the full-time parental leave period (until the child is 18 months old), would be classified as maternity leave in other Member States. Similarly, in Austria, there is an entitlement to 2 years parental leave to be taken by either the father or the mother or shared between them. Leave may not be taken by both parents at the same time, and can only be taken up to the child's second year unless it is taken on a part-time basis in which case it may be taken up to age 4 (unless both parents work part-time simultaneously).

In addition, in some Member States parental leave entitlement is the combined entitlement of the mother and the father rather than an individual entitlement. For example, in Italy parents (or single parents) are entitled to a total of 10 months leave, with one of the parents (mother/father) allowed a maximum of 6 months leave, the remainder of the entitlement is available to the other. If the father takes more than three months leave, the total entitlement is increased to 11 months and one parent can take up to 7 months leave. In France, there is a family entitlement to 36 months leave. In Finland, there is a family entitlement to 158 consecutive days (excluding Sundays) parental leave, a right to care leave until the child is 3 years old and the right to reduced working hours until the child begins school. Furthermore, collective agreements in some Member States provide for entitlements beyond the statutory minima.

**Table 1**  
**Parental leave entitlements**

Member State	Length of Leave	Maximum Age of Child
<b>Austria</b>	2 years to be taken by either the father or mother, or shared. Leave may not be taken by both parents at same time (except for one month which can be taken simultaneously). <sup>2</sup> The leave may be shared between the parents twice and each period must be at least three months in duration. <sup>3</sup> Alternatively, the employee may agree with the employer to work part-time until the child reaches 4 years (two years if both parents work part-time simultaneously). <sup>4</sup>	2 years (or 4 years if taken part-time, with the employer's agreement).  3 months may be taken up to the child's 7th birthday, subject to agreement with the employer.
<b>Belgium</b>	<b>Private Sector:</b> 3 months for each parent to be taken full-time. May be split with the employer's agreement or used in the form of a reduction in working time. <b>Public Sector:</b> 3 months. May be split but must be taken in complete work days.	4 years in private sector. (8 years if the child has a serious disability). In the case of adoption, within 4 years of the adoption up to age 8.  10 years in public sector.
<b>Denmark</b>	13 weeks for each parent, taken full-time for an uninterrupted period (26 weeks if the employee applies for the leave before the child's first birthday). <sup>5</sup>	8 years.
<b>Finland</b>	<i>Family leave</i> – either the mother or the father, or both in turn, may take a total of 158 consecutive calendar days (excluding Sundays) after maternity leave. <sup>6</sup>  <i>Childcare leave</i> – At least 2 months leave in respect of a child under 3 years. Childcare leave is in addition to family leave.  <i>Partial childcare leave</i> – either the mother or the father (but only one at a time) may avail of a reduction in working hours but not below 30 hours per week, provided that both parents (or the single parent) <sup>7</sup> are participating in the labour market, until the child completes his/her first school-term (usually 7 years). <sup>8</sup> This leave is an alternative to childcare leave.	3 years (7 in the case of adoption). <sup>9</sup>

<sup>2</sup> *Good Practice Guide for Reconciling Family and Working Life*, Ministerio De Trabajo Y Asuntos Sociales, Madrid, 2001.

<sup>3</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, European Trade Union Institute (ETUI), October 2000 ([www.etuc.org/etui/publications](http://www.etuc.org/etui/publications) [Report 66]).

<sup>4</sup> *The EU parental leave agreement and Directive: implications for national law and practice*, European Foundation for the Improvement of Living and Working Conditions, Eironline ([eiro.eurofound.ie/1998/01/study](http://eiro.eurofound.ie/1998/01/study)).

<sup>5</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>6</sup> *Care in Europe, Joint Report of the 'Gender and Employment' and 'Gender and Law' Groups of Experts*, Luxembourg, 1998.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998.

<sup>9</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

Member State	Length of Leave	Maximum Age of Child
<b>France</b>	Three year family entitlement. <sup>10</sup> Initially taken for one year, renewable twice (ending on the child's third birthday). Can be taken full-time or by reducing working hours by at least a fifth or a combination of both. Leave cannot be taken in broken format. <sup>11</sup>	3 years.  <u>Adopted Children:</u> – Under 3 years old – 3 years from time of the child joining the family. – Over 3 years and under school age – 1 year from joining the family.
<b>Germany</b>	Up to 3 years (family entitlement) <sup>12</sup> to be taken full-time or part-time as a single block. Subject to agreement with the employer, the third year may be taken up to the child's eight birthday. <sup>13</sup>	3 years. However, subject to the employer's agreement, 12 of the 36 months entitlement may be postponed to be taken before the child is 8 years old.  Adopted children – 3 years to be taken before the child is 7 years old.
<b>Greece</b>	3½ months for each parent. May be taken full-time or part-time (by agreement with the employer). May be granted in continuous block or in broken format. In the civil service, 2 years full-time, whole or piecemeal.	3½ years.  6 years for civil servants.
<b>Ireland</b>	14 working weeks for each parent, to be taken as a continuous block or in a broken format (by agreement between the employer and the employee). In the case of twins or multiple births each parent is entitled to 14 weeks leave for each child.	5 years.  In case of adoption, if child is age 3 or more but less than 8 years at time of adoption – within 2 years of adoption.
<b>Italy</b>	Parents (or single parents) are entitled to a total of 10 months leave, with one of the parents (mother/father) allowed a maximum of 6 months leave, the remainder of the entitlement is available to the other. <sup>14</sup> The leave may be taken in a continuous block or in broken format, however the mother is required to commence at least part of her parental leave immediately after her maternity leave.	8 years.  If child is adopted between ages of 6 and 12, parental leave may be taken within 3 years of adoption.

<sup>10</sup> *Time Out – the costs and benefits of paid parental leave*, Helen Wilkinson et al., Demos, 1997.

<sup>11</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>12</sup> *Time Out – the costs and benefits of paid parental leave*, Helen Wilkinson et al., Demos, 1997.

<sup>13</sup> *The EU parental leave agreement and Directive: implications for national law and practice*, European Foundation for the Improvement of Living and Working Conditions, Eironline (eiro.eurofound.ie/1998/01/study).

<sup>14</sup> If the father avails of more than three months parental leave, the parents are entitled to a bonus month's leave bringing the total entitlement to 11 months, with one parent allowed a maximum of 7 months of this entitlement.

Member State	Length of Leave	Maximum Age of Child
<b>Luxembourg</b>	6 months per parent if taken full-time. Must be taken in a single block. 12 months part-time if the employer agrees. One parent must take his/her entitlement immediately after maternity or adoptive leave. Both parents cannot take full-time leave at the same time.	5 years (only available in respect of children born after 31/12/1998).
<b>Netherlands</b>	13 weeks per parent taken part-time (50% of contractual working hours) over a period of 6 months. <sup>15</sup> Full-time parental leave of 13 weeks is available on request. However, the employer can refuse this option, if he/she has an important reason for doing so.	8 years.
<b>Portugal</b>	Both parents are entitled to 3 months full-time or 6 months part-time leave. In addition, parents are entitled to 6 months special leave renewable until child is 2 years old (or 3 years old where there are three children or more).	6 years.
<b>Spain</b>	Up to 3 years (family entitlement) from birth to be taken full-time. Cannot be taken by mother and father at the same time. Public servants also have a part-time option, involving a reduction in working hours of between half and a third, in respect of a child under 6 years.	3 years.  6 years (for public servants who avail of the leave on a part-time basis).
<b>Sweden</b>	Three types of leave: <u>Full parental leave</u> – until child is 18 months or 18 months from date of adoption (for each parent) <sup>16</sup> Leave in the form of a <u>reduction of normal working hours</u> by a quarter, <sup>17</sup> until the child reaches 8 years or until the end of the child's first school year. Leave for an employee's <u>temporary care of a child</u> for a maximum of 60 days per year until the child is 12 years old. <sup>18</sup>	18 months for full-time and 8 years for part-time leave.  In the case of adoption, for a period of 18 months from adoption up to age 8 or to end of first school year.

<sup>15</sup> Parental leave as NAP is implemented, European Foundation for the Improvement of Living and Working Conditions, EIRO, January 1998.

<sup>16</sup> Parental Leave in the UK, Equal Opportunities Review, No. 92 July/August, 2000.

<sup>17</sup> Ibid.

<sup>18</sup> MISSOC – Social protection in the EU Member States and the European Economic Union – Situation on 1 January 2001, Employment and Social Affairs, European Commission, 2001.

Member State	Length of Leave	Maximum Age of Child
<b>United Kingdom</b>	Each parent is entitled to 13 weeks leave. In the case of twins or multiple births, each parent is entitled to 13 weeks leave for each child. Unless there is a collective or workforce agreement on parental leave, or the employer agrees, leave cannot be taken in periods of less than 1 week (unless in the case of children with disabilities, in which case it can be taken in multiples of days). An employee cannot take more than 4 weeks leave in respect of one child in a 12 month period. Pro-rata entitlement for part-time workers.	5 years.  In the case of adoption, 5 years, from the time of joining the family, or until age 18.  18 years in the case of children with disabilities (i.e. those entitled to Disability Living Allowance).

### **Extra Leave Entitlements**

As already indicated, in many Member States employees may be entitled to other forms of leave, in addition to parental leave, which may be used for childcare purposes. For example, in Belgium under a career break system, workers can take leave (which can be used for childcare purposes) of between six months and five years and receive an allowance corresponding to Unemployment Benefit, provided they are replaced by someone who is registered unemployed.<sup>19</sup> These breaks can be taken in the form of part-time work, a complete break or a combination of the two.<sup>20</sup>

In Denmark, while the statutory minimum period of parental leave is 13 weeks, if the application for leave is made before the child's first birthday, parents have a right to 26 weeks leave. Furthermore, if the employer agrees, an employee may avail of up to 52 weeks parental leave (including the statutory entitlement). This leave attracts a State payment.<sup>21</sup> In addition, the last 10 weeks of the 24 week maternity leave entitlement can be transferred to the father.<sup>22</sup> The father is also entitled to leave in weeks 25 and 26 after the child's birth. This leave is exclusively for the father and cannot be transferred.<sup>23</sup>

In Finland, in the case of multiple births, 60 days leave for each additional child are added to the 158 calendar days (excluding Sundays) family leave described in Table 1.<sup>24</sup> In France, parental leave can be extended by a year in the case of sickness, accident, or in respect of a child with a disability.<sup>25</sup> In Ireland, carer's leave (up to 65 weeks leave in respect of persons requiring full-time care and attention) can be availed of to take care of children with disabilities who require full-time care and attention.

<sup>19</sup> *The EU parental leave agreement and Directive: implications for national law and practice*, European Foundation for the Improvement of Living and Working Conditions, Eironline (eiro.eurofound.ie/1998/01/study).

<sup>20</sup> *Time Out – the costs and benefits of paid parental leave*, Helen Wilkinson et al., Demos, 1997.

<sup>21</sup> *Ibid & Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>22</sup> *MISSOC – Social protection in the EU Member States and the European Economic Union – Situation on 1 January 2001*, Employment and Social Affairs, European Commission, 2001.

<sup>23</sup> *Good Practice Guide for Reconciling Family and Working Life*, Ministerio De Trabajo Y Asuntos Sociales, Madrid 2001.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

In Italy, parents (or single parents) are entitled to a total of 10 months parental leave, with one of the parents (mother/father) allowed a maximum of 6 months leave, the remainder of the entitlement is available to the other. However, if the father avails of more than three months parental leave, the parents are entitled to a bonus month's leave bringing the total entitlement to 11 months with one parent allowed a maximum of 7 months of this entitlement.<sup>26</sup> In addition to parental leave, parents have a right to reduce their working day by two hours each day until the child is one year old.<sup>27</sup>

In Luxembourg, the parental leave entitlement is extended by two months in the case of multiple births (four months if taken part-time with the employer's agreement).<sup>28</sup> In the private sector, female employees may leave work for up to a year after maternity leave and receive priority consideration for vacancies but are not guaranteed re-engagement.<sup>29</sup> In the public sector, female employees have the right to up to 2 years unpaid parental leave following maternity leave and may request a period of unpaid childcare leave or part-time employment to look after children up to the age of 15, with the time of re-engagement dependent upon a suitable vacancy arising.<sup>30</sup>

In Portugal, parents are entitled to 3 months parental leave if taken full-time, or 6 months if taken part-time. In addition, parents are entitled to a maximum of two years unpaid special leave until the child is 6 years old (or 12 years if the child has a disability). The leave extends to three years if there are three or more children, or four years if the child has a disability. Parents of children under 12 years old or children with disabilities are entitled to part-time work or flexibility in working patterns for up to three years.

In Spain, there is a right to reduced working hours by a half (with reduced pay) until the child is six years old or longer in the case of a child with a disability.<sup>31</sup>

## Cash benefit for parental leave

The Framework Agreement on Parental Leave does not provide that parental leave must be paid. Table 2 sets out information on cash benefits for parental leave in EU Member States. It is difficult to provide accurate comparisons because methods of payment in various Member States differ. Comprehensive information is also unavailable on rates of payment, and on eligibility criteria for payment (as opposed to entitlement to leave).

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<sup>26</sup> Ibid.

<sup>27</sup> *Time Out – the costs and benefits of paid parental leave*, Helen Wilkinson et al., Demos, 1997.

<sup>28</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>29</sup> *Parental Leave as NAP is implemented*, European Foundation for the Improvement of Living and Working Conditions, EIRO, January 1998.

<sup>30</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>31</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998 & *Care in Europe, Joint Report of the 'Gender and Employment' and 'Gender and Law' Groups of Experts*, Luxembourg, 1998.

**Table 2**  
**Cash benefits for parental leave**

<b>Member State</b>	<b>Qualification Criteria</b>	<b>Cash Benefit</b>
<b>Austria</b>	Unemployment Insurance Cover; be caring for the child in their own home; and as a rule, reside in Austria.	Parental Leave Benefit is available up to the child's second birthday. <sup>32</sup>
<b>Belgium</b>		If certain conditions are fulfilled and leave is taken under the career break scheme, an allowance is paid by the unemployment insurance scheme. Collective agreements may contain more favourable provisions.
<b>Denmark</b>		Parental Leave Benefit is paid by the State (60% of the ordinary rate of unemployment benefit) <sup>33</sup> for childcare leave [13 weeks]. <sup>34</sup> Flat-rate State payment for leave (10 weeks + 2 for the father). <sup>35</sup>
<b>Finland</b>		158 days (excluding Sundays) family leave allowance amounting to around 70% of average salary payable by the State. Flat-rate benefit payable during childcare leave until child is 3. <sup>36</sup> Collective agreements may provide for payment by the employer.
<b>France</b>	Allowance is paid for second and subsequent children only.	Flat-rate Parental Leave Allowance is paid by the State.
<b>Germany</b>	Monthly allowance is means-tested. <sup>37</sup>	The parent may be entitled to a monthly means-tested allowance from the State until the end of the child's second year.
<b>Greece</b>		Unpaid
<b>Ireland</b>		Unpaid

<sup>32</sup> *The EU Parental Leave Agreement and Directive: implications for national law and practice*, European Foundation for the Improvement of Living and Working Conditions, Eironline (eiro.eurofound.ie/1998/01/study).

<sup>33</sup> Ibid.

<sup>34</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>35</sup> The 10 weeks leave (+2 for the father) is directly linked to maternity leave. *The Commission Report on the Pregnant Workers' Directive (92/85/EEC)* classifies this as maternity leave. *MISSOC* refers to this payment as maternity benefit which is transferable to the father. *Care in Europe* refers to it as 'de facto parental leave'. See Table 6.

<sup>36</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>37</sup> *The EU parental leave agreement and Directive: implications for national law and practice*, European Foundation for the Improvement of Living and Working Conditions, Eironline (eiro.eurofound.ie/1998/01/study).

Member State	Qualification Criteria	Cash Benefit
<b>Italy</b>		State benefit (administered by employers) equivalent to 30% of salary, is paid for a maximum of 6 months between the two parents in respect of a child under 3 years of age. Thereafter, State benefit equivalent to 30% of salary is only paid to employees whose earnings fall below a given threshold. More generous provisions are available in the public sector. Collective agreements may also contain more favourable provisions.
<b>Luxembourg</b>	Contributions to the Luxembourg National Insurance System is one of the eligibility criteria for parental leave. <sup>38</sup>	State-financed, flat-rate benefit payable during full and part-time parental leave. <sup>39</sup>
<b>Netherlands</b>		Unpaid. In some collective agreements, the leave is partly paid: civil servants receive 75% of their salary over hours not worked. <sup>40</sup>
<b>Portugal</b>		Unpaid.
<b>Spain</b>		Unpaid.
<b>Sweden</b>		Parental cash benefit paid for a total of 450 days shared between both parents. First twelve months is at 80% of salary and the remainder at a flat-rate. <sup>41</sup> Temporary parents' allowance is payable for 60 days a year up to the child's 12th birthday. Many collective agreements provide for supplementary payments.
<b>United Kingdom</b>		Unpaid.

As Table 2 shows, some Member States provide for paid parental leave out of State funds. Some of these arrangements had been in place far in advance of the EU Framework Agreement on Parental Leave – for example, Sweden's parental leave provision with payment dates back to 1974 (initially for six months) and Finland brought in parental leave in 1978.<sup>42</sup> In addition, Austria, Denmark, France, Germany, Italy and Luxembourg provide for some form of State-financed payment for parental leave. Even these provisions are difficult to compare accurately. In Denmark, childcare leave is paid by the State, at 60% of the ordinary rate of Unemployment Benefit, while

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> *Care in Europe – Joint Report of the 'Gender and Employment' and 'Gender and Law' Groups of Experts*, Luxembourg, 1998.

<sup>41</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>42</sup> *Time Out – the costs and benefits of paid parental leave*, Helen Wilkinson et al., Demos, 1997.

in Germany the State benefit is means tested. In Italy, the payment rate of 30% of salary is paid by the employer for a maximum of six months, between the two parents, but is refundable by the social insurance system.<sup>43</sup> Thereafter, State benefit is only paid to those whose earnings fall below a given threshold. In France, parental leave allowance is only paid in respect of the second and subsequent children. Therefore, while payment of some form exists in these countries, some of the conditions which surround payment means that it can be quite modest.

In the Netherlands and Belgium, parental leave is unpaid, but certain collective agreements allow for payment of parental leave. In Belgium, if the leave is taken as a career break, and the person is replaced by an unemployed person, the leave is paid out of the unemployment insurance scheme. In the Netherlands, some collective agreements in the private sector provide for partially paid leave. There are also some possibilities for receiving a very low income whenever the employer hires an unemployed person as a replacement.<sup>44</sup> Furthermore, in the Netherlands parental leave is usually taken part-time, which allows parents maintain a partial income.

Parental leave is unpaid in Greece, Ireland, Portugal, Spain and the UK. In Portugal, as an exception, State benefit equivalent to 100% average earnings is paid to the father for 15 days if he takes parental leave immediately after maternity or paternity leave.

### **Transferability between the parents**

Clause 2(1) of the Framework Agreement on Parental Leave provides that men and women workers shall be granted an individual right to parental leave. Clause 2(2) provides that, to promote equal opportunities and equal treatment between men and women, and to encourage fathers to assume an equal share of family responsibilities, the right to parental leave should, in principle, be granted on a non-transferable basis.

In Austria, Luxembourg, Portugal, Finland and Spain parental leave may not be taken by both parents at the same time. In the UK, parental leave is non-transferable. However, the legislation provides for a transfer of parental leave in circumstances that may be, but as yet are not, specified in legislation.

In Italy, both parents are entitled to avail of parental leave simultaneously. The mother must take at least part of her entitlement immediately after maternity leave. In Sweden, the right to parental leave is individual. However, in respect of paid leave, it is possible for one parent to transfer to the other the right to payment, with the exception of 30 days (per child) reserved to each parent.

### **Notification and service requirements**

Clause 2(3) of the Framework Agreement on Parental Leave provides that the conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of the Agreement are respected. Member States and/or management and labour may make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year, adjust conditions of access and detailed rules for applying parental leave to the special circumstances of adoption and establish notice periods.

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<sup>43</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>44</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

Table 3 details the various notification and service requirements in place in Member States in order to qualify for parental leave. In general, an employee is required to give notice to his/her employer of the intention to take parental leave. The amount of notice varies from 15 days in Italy and 21 days in the UK to four months in Luxembourg. In Austria, notice of who (father/mother or both) intends taking the leave must be given within 4 weeks of the birth or promptly on adoption.<sup>45</sup> In some countries, notice requirements are governed by collective agreements or contracts of employment. In particular, in Spain the notice requirement is governed by collective agreement and in Portugal it depends on the contract with the employer.<sup>46</sup>

All Member States, except Italy and Spain have service or employment requirements.

**Table 3**  
**Notification and service requirements in order to qualify for parental leave**

Member State	Notification Requirements	Service Requirements
<b>Austria</b>	Within four weeks of the birth or promptly on adoption.	52 weeks' formal employment in the previous 2 years. 26 weeks (if the mother is under 25 years at the time of the birth). Father's entitlement depends on mother's eligibility. <sup>47</sup>
<b>Belgium</b>	Three months' written notice (subject to reduction by agreement with the employer). The employee is required to propose how the leave should be taken when giving the notice. During the month following the notice the employee and employer agree on how the leave is to be taken.	Must have been employed for 12 of the 15 months preceding the written notification.
<b>Denmark</b>	Four weeks.	Three years of employment or unemployment. <sup>48</sup> Three months' service with the same employer.
<b>Finland</b>	Two months.  On grounds of <i>force majeure</i> it is possible to change the date provided one month's notice is given. In the case of adoption the dates can, if justified, be changed by informing the employer as soon as possible.	<u>Family leave</u> – Resident in Finland for 180 days before birth. <sup>49</sup> <u>Childcare leave</u> – No service requirement. <u>Partial childcare leave</u> – 12 months service with the same employer during the 24 months prior to the commencement of the leave. <sup>50</sup>
<b>France</b>	One month's notice, if parental leave follows maternity leave, otherwise two months' notice must be given.	One year's service with the same employer.

<sup>45</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>48</sup> *Parental Leave in EU Countries*, European Network 'Families and Work' and New Ways to Work, 1998.

<sup>49</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>50</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998.

Member State	Notification Requirements	Service Requirements
<b>Germany</b>	Four weeks.	Four weeks' service with the employer. <sup>51</sup>
<b>Greece</b>	Information not available.	An employee must have one year's service with the same employer. If parental leave is claimed for more than one child, at least one year's employment must have been completed since the end of the previous period of parental leave. No service requirement for civil servants.
<b>Ireland</b>	An employee must notify the employer six weeks before he/she proposes to commence the leave. The employer may, however, waive all or part of this notice requirement. No later than four weeks before the leave is due to begin, the employer and the employee must prepare a 'confirmation document' which must include the commencement date of the leave, its duration and the manner in which it is to be taken.	Generally, the employee must have at least one year's continuous service with the employer before he/she is entitled to take parental leave. However, where the child is approaching the age threshold <sup>52</sup> and the employee has more than three months' but less than one year's service with the employer, he/she is entitled to pro rata parental leave (one week for every month of continuous employment completed when the leave begins). <sup>53</sup>
<b>Italy</b>	Employee must give 15 days' notice unless this is not objectively possible. Detailed rules may be set by collective agreements.	None. <sup>54</sup>
<b>Luxembourg</b>	Four months.	The employee must have worked for the same Luxembourg employer for at least one year preceding the leave. Where an employee had to change employment for economic reasons, for which he/she was not responsible, he/she must have been legally employed with the same employer for 12 out of the 15 months prior to the birth or adoption. Employees must also work for a specified minimum number of hours per month.
<b>Netherlands</b>	Two months notice in writing.	One year's service with the same employer.
<b>Portugal</b>	10 days for parental leave. 30 days for special leave.	Depends on contract with the employer. <sup>55</sup>

<sup>51</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>52</sup> 5 years, except in certain circumstances in the case of adoption and in the case of children born between 3 December 1993 and 2 June 1996.

<sup>53</sup> *About the Parental Leave Act 1998*, The Equality Authority, May 2000.

<sup>54</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>55</sup> *Ibid.*

Member State	Notification Requirements	Service Requirements
<b>Spain</b>	No formal notice period. Subject to collective agreement. <sup>56</sup>	None.
<b>Sweden</b>	Two months, but where this is not practicable, notice must be given as early as possible.	Six months' service with same employer prior to commencement of the leave or 12 months over the previous two years.
<b>United Kingdom</b>	21 days (more favourable conditions can apply if included in collective or workforce agreements or by agreements with the employer). <sup>57</sup>	One year's continuous service with the employer.

## Postponement of parental leave by the employer and special provisions for small firms

Clause 2(3)(e) and (f) of the Framework Agreement on Parental Leave allows employers to postpone parental leave for justifiable reasons in relation to the operation of the undertaking and allows special arrangements to meet the operational and organisational requirements of small firms.

In Austria, Germany, Finland, France, Sweden, Italy and Spain parental leave cannot be postponed for any reason.<sup>58</sup> A number of Member States require agreement between the employer and the employee as to the practical arrangements for taking leave, such as timing, reduced hours, etc. (e.g. Sweden and Denmark).

In Belgium, employers can postpone the granting of parental leave, for a maximum of six months, for the reasons set out in the Directive. Small firms (less than 50 employees), can make special arrangements for parental leave and requests to take the leave part-time must be agreed with the employer.

In Denmark, the employer can postpone leave for up to 26 weeks if the Employment Agency cannot provide a replacement for the employee on parental leave, or if the employer does not want to employ the replacement employee provided.

In Greece, employers can refuse a parental leave application if it has been claimed by more than 8% of the workforce during the year.<sup>59</sup>

In Ireland, parental leave can be postponed for six months (to a date agreed on by both the employer and the employee) if the granting of the leave would have a substantial adverse effect on the operation of the business. Generally, the employer may postpone the leave only once in respect of any particular child. If, however, the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed twice in respect of the same child.

<sup>56</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998.

<sup>57</sup> *Parental Leave in the UK, Equal Opportunities Review*, No. 92 July/August, 2000.

<sup>58</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998 & *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>59</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

In Luxembourg, the parental leave that must be taken immediately following maternity leave<sup>60</sup> may not be postponed, but the second period of leave may be postponed for up to two months for the reasons set out in the Directive. For firms with less than 15 employees, and in relation to seasonal work, the employer can delay granting parental leave for up to six months.

In the Netherlands, employers can postpone the granting of parental leave for serious reasons.<sup>61</sup>

In Portugal, the employer can oppose the granting of part-time parental leave only, for reasons relating to the operation of the undertaking and if it is not feasible to replace the employee.

In the UK, the employer may delay the granting of parental leave if taking it at the time requested would unduly disrupt the operation of the business. The employer must specify a future date when the requested parental leave can be taken.

## Protection from dismissal and right to return

Clause 2(4) of the Framework Agreement on Parental Leave provides that, in order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices. Clause 2(5) provides that at the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or relationship.

All Member States provide protection against dismissal due to the exercise by an employee of his/her right to parental leave. This protection extends to four weeks following the end of parental leave or the period of part-time work in Austria; and to two or three months following the leave, depending on the provisions under which leave is taken in Belgium. With the exception of Denmark and the Netherlands, all Member States provide that the employee is entitled to return to the same or a similar/equivalent job. In Denmark, there is no express provision in legislation in relation to return to work following parental leave and in the Netherlands, there is no specific right to return to the same job unless this is provided for in individual employment contracts. In France, where techniques and working methods have changed during the parental leave period, the employee is entitled to receive professional training after the end of the parental leave. In Spain, an employee has the right to return to the same job within the first year of parental leave; after the first year, an employee is entitled to return to a job in the same occupational group or equivalent category, the employee is also entitled to vocational training on return to work. Furthermore, in Spain, in the case of a reduction in the working day for care of children, there is no guarantee that the employee may return to the working day enjoyed prior to the reduction.

## Employment rights and status of time on parental leave

Clause 2(6) of the Framework Agreement on Parental Leave states that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements or practice, shall apply.

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<sup>60</sup> One parent must take his/her parental leave immediately following maternity leave.

<sup>61</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

Clause 2(7) states that Member States and/or management and labour shall define the status of the employment contract or employment relationship for the period of parental leave. Clause 2(8) provides that all matters relating to social security are for consideration and determination by Member States according to national law, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

**Table 4**  
**Employment rights and status of time on parental leave**

Member State	Comments
<b>Austria</b>	In certain Länder time spent on parental leave counts towards seniority of employment and for retirement benefits, as long as relevant contributions are paid. <sup>62</sup>
<b>Belgium</b>	In the private sector, the employment contract remains in existence during leave although its execution is suspended. Acquired rights are maintained. Acquisition of new rights, especially concerning pay, are largely covered by collective agreements. Parental leave gives no right to any social security allowance and entails a break in social security coverage.  In the public sector, parental leave is assimilated to a period of service, but for contractual workers, there is no social security coverage.
<b>Denmark</b>	Parental leave counts as a period of service when calculating seniority, but not for pension purposes.
<b>Finland</b>	The employment contract continues, although salary is not paid. Parental leave counts for annual leave purposes and as a period of insurance for the calculation of retirement benefits.
<b>France</b>	Parental leave counts (as half time) for rights linked to seniority. The leave is counted as a period of insurance for the calculation of retirement rights. All rights acquired prior to the start of the leave are maintained. At the end of parental leave, workers are entitled to full rights to sickness, maternity, invalidity and death benefits.
<b>Germany</b>	The employment contract continues to exist during parental leave, although duties of work and pay are not in force. Parental leave is accredited for sickness and pension insurance purposes, without contributions being paid, but does not count for the purpose of calculating Unemployment Benefit periods. Parental leave does not count for the calculation of annual leave.
<b>Greece</b>	Generally, parental leave counts as a period of employment for all purposes (except pay), including calculation of annual leave and compensation in the case of redundancy. Employees must pay full social security contributions (both employee's and employer's) if he/she wishes to maintain social security cover during parental leave. The extent to which parental leave counts as a period of service for civil servants is unclear.

<sup>62</sup> No information is available on status of federal workers on parental leave.

Member State	Comments
<b>Ireland</b>	<p>An employee on parental leave is deemed to be in the employment of the employer and all employment rights are regarded as continuing, apart from the right to remuneration, superannuation benefits or any obligation to pay contributions in or in respect of the employment.</p> <p>When an employee is on leave, Social Welfare Regulations provide for the crediting of contributions to people who are insured for PRSI purposes for each week during which they avail of parental leave under the terms of the Parental Leave Act 1998. These credited contributions maintain a person's existing entitlement to social insurance benefits during the period of parental leave.</p>
<b>Italy</b>	<p>The employment contract remains in existence during leave although its execution is suspended.</p> <p>Parental leave is taken into account in the calculation of rights linked to seniority (but not for the payment of the 'thirteenth month's pay').</p> <p>Leave is fully credited for the purposes of social security contributions until the child is 3 years old and for a maximum of 6 months.</p>
<b>Luxembourg</b>	<p>All advantages acquired before the start of leave are retained.</p> <p>Parental leave is taken into account in the calculation of rights linked to seniority. It is regarded as a stage period for the purposes of social insurance and entitles the worker to full unemployment indemnity rights.</p> <p>However, parental leave does not count for annual leave purposes. During parental leave, the employment contract is suspended.</p>
<b>Netherlands</b>	<p>Employment relationship continues, but there is no specific provision protecting acquired rights.</p>
<b>Portugal</b>	<p>Leave counts for the purposes of rights relating to, for example, seniority, length of service and promotion.</p> <p>Leave is taken into account when calculating invalidity and old age pensions and has no adverse impact on entitlement to medical care.</p>
<b>Spain</b>	<p>Parental leave counts for length of service, and, in public sector only, for promotion. Acquired rights, or rights in the process of being acquired, are recognised.</p> <p>The employment contract is suspended during parental leave and the obligations of the employee to work and of the employer to pay remuneration are annulled. Provisions exist to enable the employee to maintain social security cover during periods of leave.</p>
<b>Sweden</b>	<p>An employee is not required to accept reduced employment benefits or less favourable working conditions than those necessitated by the leave or any other transfer than that which may occur in the context of the employment agreement and which is necessitated by the leave.</p> <p>The employment contract continues during parental leave.</p> <p>The leave counts for length of service.</p>
<b>United Kingdom</b>	<p>The employment contract continues during the period of parental leave, although only certain terms and conditions relating to termination, redundancy and discipline and grievance procedures apply.</p> <p>Rights relating to seniority and pensions acquired prior to the start of leave are preserved.</p> <p>On returning to work, parents will benefit from any improvement in other terms and conditions (including those relating to pay).</p>

## Force majeure leave

Table 5 gives details of *force majeure* leave in Member States and whether or not the leave attracts payment. Clause 3(1) of the Framework Agreement of Parental Leave states that Member States and/or management and labour shall take the necessary measures to entitle workers to time off work, in accordance with national legislation, collective agreements and/or practice, on grounds of *force majeure* for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable. Member States and/or management and labour may specify the conditions of access and detailed rules and limit the entitlement to a certain amount of time per year and/or per case.

**Table 5**  
**Force majeure leave<sup>63</sup>**

Member State	Number of days per year	Paid/Unpaid	Eligibility Criteria
<b>Austria</b>	<u>Normal care leave</u> – one week.  <u>Further entitlement</u> – one additional week if no other leave available.	Paid (both weeks).	<u>Normal care leave</u> – to care for a sick child or close relative living in the household or in cases where the normal carer is ill.  <u>Additional week's leave</u> – to care for a child (under 12 years old) where the initial entitlement has been exhausted and the employee has no other rights to time off.
<b>Belgium</b>	10 days (pro rata for part-time workers)  <b>Permanent public sector staff</b> <u>Exceptional leave</u> – 4 days  <u>Imperious grounds</u> – 15 days (rising to 30 days in exceptional circumstances).	Unpaid. <sup>64</sup>  Paid.  Unpaid.	<u>Imperious grounds</u> related to family reasons involving children and parents, e.g. illness, accident or hospitalisation (wider definition than family reasons, for example, also applicable in the event of natural disasters). <sup>65</sup>  <u>Exceptional leave</u> – in the event of disease or accident of a family member.  <u>Imperious grounds</u> – related to family reasons.
<b>Denmark</b>	“Short period”. Duration is subject to local agreement.	Unpaid.	Pressing reasons such as circumstances where an illness or accident in the family makes the presence of the employee at home urgently necessary.

<sup>63</sup> Analysis of the Implementation of the Parental Leave Directive in EU Member States, ETUI, October 2000.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

Member State	Number of days per year	Paid/Unpaid	Eligibility Criteria
<b>Finland</b>	<p>“Temporary time off”.</p> <p>4 days (Civil servants and employees covered by some collective agreements. Seamen are also covered on condition that they leave their vessel in port and return to it.)</p>	<p>Unpaid</p> <p>3 days paid.</p>	<p>On grounds of <i>force majeure</i> for urgent family reasons in the case of sickness or an accident making the immediate presence of the employee indispensable.</p> <p>To care for a sick child under 10 years old (the 4 days leave can be repeated if the child is sick with a different illness, or if a different child is ill). If the other parent is at home and able to care for the sick child, the civil servant is not entitled to time off.</p>
<b>France</b>	<p>3 days.</p> <p>5 days.</p>	<p>Unpaid.</p> <p>Unpaid.</p>	<p>In the event of an illness or accident involving a child under 16 years.<sup>66</sup></p> <p>Where the child is under 1 year or the employee has 3 or more children under 16 years old.</p>
<b>Germany</b>	<p>“Relatively short time”.<sup>67</sup></p> <p><b><i>Single parent</i></b><sup>68</sup> 20 days (1 child). 25 days (if several children).</p> <p><b><i>Parents with partners</i></b> 10 days (1 child) 25 days (if several children).<sup>69</sup></p>	<p>Unpaid (paid in certain instances).<sup>70</sup></p> <p>Unpaid</p>	<p>Where it is impossible for the employee to attend work in the case of, for example, the serious illness or death of a close relative, or for fathers on the birth of their children.</p>

<sup>66</sup> Medical certificate required to support occurrence of illness/accident.

<sup>67</sup> Collective agreements may set out more detailed arrangements concerning the duration of leave.

<sup>68</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>69</sup> The right to avail of *force majeure* leave is non-transferable.

<sup>70</sup> State provides sick pay (70% of the normal wage).

Member State	Number of days per year	Paid/Unpaid	Eligibility Criteria
<b>Greece</b>	6 days. 8 days. 10 days.	Unpaid. Unpaid. Unpaid.	Leave available to each parent to care for a sick dependent member of the family. For single child or other dependent family member 2 children More than 2 children Four days leave in total allowed for both parents during school holidays (up to 16 years old). <sup>71</sup>
<b>Ireland</b>	3 days in any 12 consecutive months, subject to a limit of 5 days in any 36 consecutive months.	Paid.	Urgent family reasons owing to the injury/illness of an employee's child, adoptive child, person to whom the employee is in loco parentis, spouse/partner, brother/sister or parent/grandparent, in circumstances where the employee's presence at the place where the ill/injured person is situated is indispensable.
<b>Italy</b>	3 days. 5 days.  Alternatively, in the case of illness, an employee may agree different working arrangements with his/her employer or ask for a period of up to 2 years unpaid leave to deal with a serious family matter.	Paid.  Paid (30% of salary).	Death or serious illness of a partner or other family members.  Child under 8 years. <sup>72</sup>
<b>Luxembourg</b>	2 days per child (extended if child is seriously ill).	Sick pay.	Family reasons where a child under 15 requires the parent's care due to a serious illness/accident or other imperious health reasons. Medical certificate required.
<b>Netherlands</b>	"Short and reasonable time". Generally 3-5 days. Collective agreements give further rules as to how many days paid leave may be awarded and for what reasons.	Paid.	Urgent family reasons, for example, childbirth or death of a partner or a close relative. Collective/individual agreements vary.

<sup>71</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998.

<sup>72</sup> The leave fully counts for social security contributions (for a maximum of 6 months) prior to the child's 3rd birthday.

Member State	Number of days per year	Paid/Unpaid	Eligibility Criteria
<b>Portugal</b>	30 days – (if the child is hospitalised, the period may be extended to cover the period of hospitalisation).  15 days	If unpaid by employer – 65% of normal wage is payable through a social security benefit.	To provide urgent, essential care in respect of a child under 10 years (and children with disabilities) in the event of an illness/accident.  To provide urgent, essential care in respect of child over 10, spouse or partner or other specified relatives in the event of sickness.
<b>Spain</b>	2 days (or 4 days if travel is necessary)	Paid.	Worker must give advance notice and justification for time off in the event of, for example, the birth of a child, care required for a sick child or death, accident, serious illness or hospitalisation of relations to the second degree kinship.
<b>Sweden</b>	60 days. <sup>73</sup> A collective agreement for public sector workers extends the entitlement by 10 days.  Can be extended to 120 days.	Paid.  [Temporary parental cash benefit (80% of wage is granted)].	Urgent family reasons connected with an illness or accident which makes the immediate presence of the employee indispensable.
<b>United Kingdom</b>	“Reasonable” amount of time.	Unpaid.	Leave available to deal with a domestic incident such as the sudden illness or accident of a dependant <sup>74</sup> or to make arrangements for looking after children due to the sudden illness or incapacity of the normal carer.  Leave is also available where a child is involved in an unexpected incident in school or a dependant gives birth, is assaulted or dies.

## Paternity leave

Table 6 gives details of paternity leave arrangements in Member States and whether or not the leave attracts a cash benefit.

There is a distinction between short periods of leave guaranteed at childbirth to fathers, and options in certain Member States for certain portions of maternity leave to be transferable to fathers. This transferred leave often attracts a cash benefit.

<sup>73</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>74</sup> Dependant is widely defined to include persons other than members of the employee’s family.

Most Member States provide for the transfer of the remainder of maternity leave to the father, in the event of the death of the mother during childbirth or during maternity leave. This has not been considered as paternity leave for the purposes of the table.

In Ireland, there is no statutory entitlement to paternity leave. However, some employers in both the public and private sectors operate paternity leave schemes.

**Table 6**  
**Paternity leave in EU Member States**

Member State	Paternity Leave <sup>75</sup>	Cash Benefit <sup>76</sup>
<b>Austria</b>	Not applicable.	
<b>Belgium</b>	3 days (within 12 days of the birth).	Employers are required to pay full salary during the period of paternity leave. <sup>77</sup>
<b>Denmark</b>	14 days (+14 days after the 24 week maternity period expires). <sup>78</sup> Last 10 weeks of maternity leave may be transferred to father. <sup>79</sup>	Weekly payments during both 2-week periods of paternity leave.
<b>Finland</b>	18 days.	Paternity allowance paid up to a maximum of 18 days.
<b>France</b>	3 days.	Employers are required to pay full salary during the period of paternity leave. <sup>80</sup>
<b>Germany</b>	<i>Care in Europe</i> refers to short periods of leave for specific reasons – this could include paternity leave at time of childbirth.	
<b>Greece</b>	No statutory right, however article 10 of the national general agreement (EGSSE) for 2000/2001 allows for fathers to receive 2 days of paid leave in connection with the birth of their child. <sup>81</sup>	
<b>Ireland</b>	Not applicable.	

<sup>75</sup> *Care in Europe – Joint Report of the ‘Gender and Employment’ and ‘Gender and Law’ Groups of Experts*, Luxembourg, 1998.

<sup>76</sup> *MISSOC – Social protection in the EU Member States and the European Economic Union – Situation on 1 January 2001*, Employment and Social Affairs, European Commission, 2001.

<sup>77</sup> *European Industrial Relations Report 329*, June 2001 and *Equal Opportunities Review No. 99*, Sept./Oct. 2001.

<sup>78</sup> *MISSOC – Social protection in the EU Member States and the European Economic Union – Situation on 1 January 2001*, Employment and Social Affairs, European Commission, 2001.

<sup>79</sup> *The Report from the Commission on the implementation of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or who are breast feeding* (Brussels: 15/3/1999) classifies all of this as maternity leave; *MISSOC*, Table IV reveals that 10 weeks maternity benefit may be transferred to father, *Care in Europe* refers to the 10 weeks transferable leave as parental leave.

<sup>80</sup> *European Industrial Relations Report 329*, June 2001.

<sup>81</sup> *European Industrial Relations Report 330*, July 2001 and *Equal Opportunities Review No. 99*, Sept./Oct. 2001.

Member State	Paternity Leave	Cash Benefit
<b>Italy</b>	Father may claim optional supplementary maternity leave of 6 months, if the mother does not claim it or if he has sole charge of the child. <sup>82</sup>	Weekly allowance of 30% of salary during supplementary period.
<b>Netherlands</b>	No statutory right to paternity leave, however, it is included in approximately 90% of collective agreements. <sup>83</sup>	
<b>Luxembourg</b>	No information.	
<b>Portugal</b>	5 days. <sup>84</sup>  Also, possible to transfer maternity leave.	Apart from the 5 days paternity leave at the time of the birth, Paternity Benefit may become payable in the case of: <ul style="list-style-type: none"> <li>• The physical or mental incapacity of the mother</li> <li>• Based on a joint decision made by both parents.<sup>85</sup></li> </ul>
<b>Spain</b>	2 days (4 days if father has to travel to another town). <sup>86</sup>	Apart from the 2 days paternity leave at the time of the birth, 10 weeks of the maternity leave and allowance may be transferable to the father, if both parents work.
<b>Sweden</b>	10 days.	Temporary parental benefit in connection with childbirth is payable.
<b>United Kingdom</b>	Not applicable. <sup>87</sup>	

<sup>82</sup> *European Industrial Relations Report 330*, July 2001.

<sup>83</sup> *ibid.*

<sup>84</sup> *Good Practice Guide for Reconciling Family and Working Life*, Ministerio De Trabajo Y Asuntos Sociales, Madrid 2001.

<sup>85</sup> *MISSOC – Social protection in the EU Member States and the European Economic Union – Situation on 1 January 2001*, Employment and Social Affairs, European Commission, 2001.

<sup>86</sup> *Good Practice Guide for Reconciling Family and Working Life*, Ministerio De Trabajo Y Asuntos Sociales, Madrid 2001.

<sup>87</sup> The UK Government have committed to introduce 10 days paid paternity leave from 2003. Currently an employee may avail of unpaid *force majeure* leave for the purpose of assisting a dependant who is having a baby.



# 3 Recommendations

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## Introduction

Section 28 of the Parental Leave Act provides for a review of its operation not earlier than 2 years and not later than 3 years after the commencement of the Act (i.e. between 3 December, 2000 & 3 December 2001). This requirement is incorporated in the Programme for Prosperity and Fairness which contains a commitment to carry out this review in 2001 in consultation with the social partners. The Minister for Justice, Equality & Law Reform announced the commencement of the review of the Parental Leave Act 1998 on 28 February 2001. A Working Group comprising the social partners, relevant Government Departments and the Equality Authority was established to carry out the review to assess the provisions of the Act in the light of its operation.

The Government is committed to promoting family friendly policies at national level through the Programme for Prosperity and Fairness. At EU level, the Framework Agreement on Parental Leave (96/34/EC) and the Pregnant Workers' Directive (92/85/EEC) underpin the EU's commitment to legislative measures which promote the reconciliation of work and family life. In addition, a *Resolution on the balanced participation of women and men in work and family life* (2000/c218/02) was adopted at the June 2000 meeting of the Labour and Social Affairs Council of Ministers. The EU Employment Guidelines 2001, state that better reconciliation between work and family life is of key importance in supporting women's and men's entry and continued participation in the labour market and in the achievement of equality between women and men.

The Fourth Pillar in the 2001 Employment Guidelines contains a commitment by Member States and the social partners to design, implement and promote family-friendly policies. The extension of the duration of the periods of maternity and adoptive leave on foot of the *Recommendations of the Working Group on the Review and Improvement of the Maternity Protection Legislation* is further evidence of the Government's commitment to making significant interventions in promoting better work/life balance.

The promotion throughout the Community of the harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection are among the fundamental objectives of the European Union and are explicitly included in the tasks listed in Article 2 of the Treaty on European Union. The Government made commitments on equal opportunities and social inclusion at the Lisbon Summit in March 2000. The Government has also signed up to the EU Commission's Employment Strategy which established a target of 60% employment rate for women by the year 2010 and requires Member States to design, implement and promote family-friendly policies, including affordable, accessible and high quality care services for children and other dependants, as well as parental and other leave schemes. The Government and the social partners are committed to promoting family friendly policies at national level through the Programme for Prosperity and Fairness. These policies focus on the role of both men and women within the context of the family.

In an employment context, the loss of skilled workers from the workforce generates costs for employers in terms of loss of expertise and of expenditure on training and skills acquisition. It also involves a more general loss for society of the capital which has been invested in educating such workers.

## Research on the uptake of parental and *force majeure* leave

As part of the review of the operation of the Act and in light of the fact that there are no statistics available centrally in relation to the uptake of parental or *force majeure* leave, research was commissioned in order to ascertain reliable information on the uptake levels of parental and *force majeure* leave. MORI MRC<sup>1</sup> carried out a postal survey of a representative sample of public and private sector employers to ascertain the uptake of parental leave and *force majeure* leave, since the introduction of the Act on 3 December 1998.

The researchers examined the uptake of both parental and *force majeure* leave by gender, occupation, size of organisation and employment sector and extrapolated the data collected to estimate the uptake for the overall labour force. The representative sample consisted of some 655 employers, employing 67,182 employees. Among the key findings of the research are that 20% of eligible employees<sup>2</sup> in the labour force are estimated to have taken parental leave, with women accounting for the largest share of parental leave (84%). 69% of organisations made continuous blocks of 14 weeks parental leave available to their employees; 60% offered staff blocks of full weeks; and 43% offered some other arrangement for taking parental leave. The research found, however, that when it came to employees taking parental leave, they favoured forms other than a continuous block of 14 weeks, or blocks of full weeks, with (9%) of employees availing of other patterns. The level of uptake for continuous 14-week periods and blocks of full weeks was 5% and 8% respectively<sup>3</sup>. Overall, 2% of employees in the labour force took *force majeure* leave.

## Research on attitudes in relation to parental and *force majeure* leave

The Working Group also identified the need to conduct research to ascertain the attitudes among employers and their employees, in both the public and private sectors, in relation to parental leave and *force majeure* leave provisions of the Parental Leave Act 1998. Newmarket Consulting<sup>4</sup> carried out 25 case studies which included a representative sample of organisations within the public and private sectors throughout the country. The results of the case studies, which also include the views of in-house trade union representatives in unionised employments, provide an insight into the way in which the Parental Leave Act operates and in particular how employees, employers and union representatives view the provisions of the Act. The report includes details of awareness levels and understanding of the entitlements provided for in the Act, along with details of attitudes in relation to the provisions and issues surrounding the uptake of the leave. The key findings of the case studies are detailed below. Overall, awareness levels of the provisions of the Parental Leave Act 1998 are quite high among both employers and employees. 20% of

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<sup>1</sup> The executive summary of MORI MRC's report is at Appendix V, the full report is on the Department of Justice, Equality and Law Reform's website, [www.justice.ie](http://www.justice.ie).

<sup>2</sup> MORI MRC estimate that 6.74% of the labour force is eligible for parental leave.

<sup>3</sup> An employee may have taken parental leave in different formats for an individual child. Such a scenario may have led to a degree of double-counting in employer responses to the survey. Hence, the overall 20% uptake level is less than the total of the uptake levels for particular formats of parental leave (22% = 5% continuous block + 8% blocks of full weeks + 9% other).

<sup>4</sup> The executive summary of Newmarket Consulting's report is at Appendix VI, the full report is on the Department of Justice, Equality and Law Reform's website, [www.justice.ie](http://www.justice.ie).

the 71 employees interviewed for the purposes of the case studies had availed of their parental leave entitlements. Of those who had taken parental leave, 93% were female.

When employees were asked to prioritise the factors which influence their decision whether or not to take parental leave, the benefit to their children was by far the most important factor, followed by the affordability of unpaid leave. The largest barrier for employees taking parental leave is concern for their finances (42%). 17% of employees said that there were no barriers to taking parental leave. The research also shows that 63% of employees cited the absence of payment in respect of parental leave as being the biggest disadvantage when availing of such leave. The biggest advantage for employees in taking parental leave is to spend more time with their children/tend to their children's needs (50%).

The most common advantages cited by employers for parental leave was that they would have happier/more contented employees (23%) and that it allows them to hold on to trained staff/allows for continuity of staff (16%). However, 29% of employers could see no commercial/business advantages to parental leave. From the public sector, 33% could see no advantage and from the private sector 37% could see no advantage.

Just under half of all employees (49%) would prefer to take their parental leave in 1 or 2 days per week, while 18% would prefer to take it in a continuous block. In contrast, 42% of employers said that they would prefer their employees to take their leave in a continuous block of 14 weeks and only 10% of employers said that they would prefer if employees took 1 or 2 days per week.

## Part A

### *Payment Issues*

#### 1. Payment of parental leave

##### ***Current position***

The Framework Agreement on Parental Leave (96/34/EC) does not provide that parental leave provision in Member States is paid. The Framework Agreement annexed to the Directive sets out minimum requirements on parental leave and *force majeure* leave and allows Member States the option of providing more favourable provisions than those set out in the Framework Agreement. Parental leave in Ireland is unpaid.

Section 14(1) of the Parental Leave Act 1998 states:

*“An employee shall, while on parental leave, be regarded for all purposes relating to his or her employment (other than his or her right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment) as still working in the employment and none of his or her other rights relating to the employment shall be affected by the leave.”*

##### ***Proposals considered by the Working Group***

- Parental leave remains unpaid – there is no Social Welfare Benefit payable and neither are employers paying their employees while on parental leave. In the circumstances,

workers cannot afford to avail of their right to parental leave to care for their children. Parental leave should attract a payment on a similar basis to the current Maternity Benefit scheme (ICTU).<sup>5</sup>

- Parental leave should become a paid entitlement. The question of whether or not payment should be made by employers or by the State is a matter for the Government. If it were to be decided that the provision of a social insurance payment were the preferred option, the National Women's Council of Ireland would wish the payment to follow the model of the current Maternity Benefit payment (NWCI).<sup>6</sup>
- There should be a payment made to those taking parental leave. A State benefit system akin to maternity leave payment should be established (Equality Authority).

It was argued by IBEC<sup>7</sup> that the question of payment in respect of parental leave was outside the remit of the Working Group on the basis that the remit of the Group is to review the provisions of the Act in terms of its operation since December 1998. IBEC therefore argued that as the Act does not provide for the payment of parental leave this issue does not come within the scope of the review. Notwithstanding IBEC's view, the Group discussed the issue of providing *payment for parental leave* in terms of the following factors:

- (i) Lack of payment affecting the uptake of parental leave;
- (ii) Extent to which leave is being taken in broken format;
- (iii) Cost to employers;
- (iv) Cost to employees and their children;
- (v) Cost to the Social Insurance Fund / Exchequer;
- (vi) Cost to public sector employers;
- (vii) Who should pay? – Employers or the Social Insurance Fund / Exchequer;
- (viii) Appropriate payment – Earnings related or Flat-Rate;
- (ix) Comparative situation in EU Member States.

#### ***(i) Lack of payment affecting the uptake of parental leave***

The research in relation to the uptake of parental and *force majeure* leave estimated that 20% of eligible employees have taken parental leave in the three years since the Act came into force. Therefore, a significant majority (80%) of eligible employees have not yet availed of their entitlement. MORI MRC (researchers) estimate that 6.74% of the labour force are eligible for parental leave. The research shows that 84% of parental leave taken to date, was availed of by women. Accordingly, the financial disadvantages involved in taking parental leave currently have a greater affect on women than on men. The research found that the most common type (69%) of parental leave made available to employees is a block of 14 weeks. The research ascertaining the attitudes of employers, employees and trade union representatives (organisational level) in relation to parental and *force majeure* leave identified the largest barrier (42%) to employees taking their parental leave entitlement was concern for their finances. The research also shows

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<sup>5</sup> Irish Congress of Trade Unions.

<sup>6</sup> National Women's Council of Ireland.

<sup>7</sup> Irish Business and Employers' Confederation.

that 63% of employees cited the absence of payment in respect of parental leave as the biggest disadvantage of availing of such leave.

During Group discussions, it was argued that in its current form, as an unpaid entitlement with restrictive provisions<sup>8</sup> concerning the manner in which it can be taken, it is very difficult to avail of parental leave and it is not capable of preventing the withdrawal of female workers from the workforce, particularly within the context of the continuing shortage of childcare. The introduction of payment in respect of parental leave would represent a positive contribution towards the achievement of EU commitments to promote equality and the family friendly policies necessary to enable women to remain in, or return to, employment. The introduction of a payment in respect of parental leave may encourage fathers to participate further in child caring roles, although it was acknowledged that with the exception of Sweden, the take-up rate by men is extremely low, even where the leave is paid.<sup>9</sup>

Counter arguments were made that the availability of parental leave is not of any significance in the decision to engage in or withdraw from the workforce. In addition, affordability issues would still arise in the event of parental leave attracting a payment from the Social Insurance Fund, as such a payment would not provide a full replacement for net earnings. For those employees who have the option of availing of unpaid parental leave in a broken format, e.g. days off or reduced hours, it may prove to be a more affordable pattern of leave than taking blocks of weeks which attract a payment from the Social Insurance Fund.<sup>10</sup>

The Group also noted two other reports: (i) the National Economic and Social Council (NESC) have expressed concern that parental leave is unpaid, and remains an option open only to those on higher incomes. NESC recommend that further analysis is required to investigate ways to make the take-up of parental leave more equitable;<sup>11</sup> (ii) the Commission on the Family recommend that the PRSI<sup>12</sup> Maternity Benefit scheme be extended to provide a weekly payment on the lines of Maternity Benefit to workers availing of parental leave under the directive.<sup>13</sup>

#### ***(ii) Extent to which leave is being taken in a broken format***

In the absence of parental leave attracting a payment, the overall uptake of parental leave is inextricably linked to the manner in which such leave is taken. Section 7 of the Parental Leave Act 1998 sets out the manner in which parental leave may be taken. Section 7(1) provides that parental leave may be taken in a broken format subject to agreement between the employer and employee. It is clear that a facility to take parental leave in a broken format, rather than a 14-week block, could help soften the financial loss for employees. For employees the loss of, for

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<sup>8</sup> The option of taking parental leave in days off or in the form of reduced hours, including on a half-time basis, is not a legal entitlement for employees unless the employer agrees to the arrangement. The Employment Appeals Tribunal in Case No. PL12/99, Patricia O'Neill -v- Dunnes Stores, upheld a Rights Commissioner's decision that if the employer does not agree to grant the 14 weeks leave in a broken manner, then the employee has no entitlement to take it in that way.

<sup>9</sup> Second Stage Speech on the Parental Leave Bill 1998 – Mr. John O'Donoghue, T.D., Minister for Justice, Equality and Law Reform, Seanad Éireann, 12 June 1998.

<sup>10</sup> For example, in the Netherlands, employees have the right to avail of 13 weeks' parental leave on a part-time basis (50% of contractual working hours) over a period of 6 months. Full-time parental leave is also available with the employer's agreement – see Table 1, Chapter 2.

<sup>11</sup> *Opportunities, Challenges and Capacities for Choice – Overview, Conclusions and Recommendations*, National Economic and Social Council (NESC), No. 104, November 1999.

<sup>12</sup> Pay Related Social Insurance.

<sup>13</sup> *Strengthening Families for Life, Executive Summary – Final Report to the Minister for Social, Community and Family Affairs*, Commission on the Family, May 1998.

example, a day's pay on a weekly basis or the loss of pay for a shorter period than a block of 14 weeks unpaid leave, would have less of an immediate financial impact.

The research relating to the uptake of parental and *force majeure* leave, indicates that 60% (58% private; 70% public) of employers allow their employees to avail of parental leave in blocks of full weeks, while 43% (37% private; 64% public) of organisations allow parental leave in a broken format. Overall, 20% of eligible employees in the labour force are estimated to have taken parental leave. The uptake of parental leave in a continuous block of 14 weeks was 5% of eligible employees (5% private; 7% public), the uptake in blocks of full weeks was 8% (7% private; 13% public) and the uptake in some other broken format was 9% (4% private; 24% public). Although the right to avail of parental leave in a broken format is subject to the employer's agreement, the uptake of parental leave in such a format is the most prevalent manner in which parental leave is being availed of. The uptake of parental leave in a broken format is far greater in the public sector, reflecting the greater availability of parental leave in such a format in the public sector.

### ***(iii) Cost to employers***

The introduction of paid parental leave would give rise to costs, both direct and indirect, for employers. Parental leave, paid by the employer, would obviously be a substantial direct cost. Paid parental leave would increase the uptake of such leave, leading to additional recruitment and training costs for employers. If parental leave were to be paid from the Social Insurance Fund, there could still be costs to employers through increased employer PRSI contributions. In addition, it was argued during Group discussions, that the recent extensions of maternity and adoptive leave, the introduction of the Carer's Leave Act 2001 and the Protection of Employees (Part-Time Work) Act 2001 along with the pending transposition of the Fixed-Term Work Directive (99/70/EC) place an extra burden on employers in terms of implementing statutory entitlements. The removal of the PRSI ceiling and the re-negotiation of the pay element of the Programme for Prosperity and Fairness have also increased costs for employers, although it was noted that the levels of employer PRSI contributions have been reduced in recent years. Any enhancement of parental leave provisions would increase this burden. Concern was also expressed in relation to the imposition of increased burdens on employers in the context of the current uncertain economic climate and the need to maintain international competitiveness. Alternatively, it could be argued that developing services and building up the social protection system to support workers with parenting responsibilities would be a positive factor contributing to higher competitiveness and leading to a more flexible, efficient and less divided economy.

### ***(iv) Cost to employees and their children***

During Group discussions, it was argued that the provision of payment in respect of parental leave entitlement would assist parents in meeting their childcare needs while enabling them to avail of their statutory right to parental leave. The lack of payment means that many employees cannot afford to avail of their entitlement to parental leave. The lack of payment may also have implications for certain types of occupational pensions, for example, defined contribution schemes.

If parental leave were to be paid from the Social Insurance Fund, and financed by an increased employee PRSI contribution, all employees would incur a direct cost.

In the context of parental leave remaining unpaid, the opportunity costs to the child were raised. A combination of paid maternity leave and paid parental leave would allow parents to avail of

leave during the first year of their baby's life. Such a development would be extremely valuable to parents and the baby. If there was a real choice for parents and they could afford to take parental leave, a secondary outcome would be a reduction in the pressure on childcare places. Given the current childcare situation in Ireland, it was noted that parents face serious difficulties in sourcing childcare for their children, especially for children under 12 months,<sup>14</sup> and that the cost of childcare requires a much higher proportion of average income in Ireland than in other EU countries – parents in Ireland spend 20% of their average income on childcare as against an EU average of 8%.<sup>15</sup>

**(v) Cost to the Social Insurance Fund<sup>16</sup> / Exchequer**

If a State payment were to be introduced this would involve costs to the Social Insurance Fund, in the case of a social insurance payment, and costs to the Exchequer, in the case of a social assistance payment and in respect of public service workers who are not covered for social insurance benefits.

The potential annual cost of a social insurance payment for parental leave, based on the current qualifying criteria for the Maternity Benefit scheme, has been estimated by the Department of Social, Community and Family Affairs and is set out in Table 1. Three different costing options are outlined based on three different payment levels, i.e. a payment set at the rate of Maternity Benefit, Disability Benefit and Carer's Benefit levels.<sup>17</sup>

More detailed information on these costings and the underlying assumptions is set out in Appendix VII. However, the following information on the operation of the Maternity Benefit scheme is also included for clarity.

The Maternity Benefit scheme is available to women paying PRSI Class A, E, and H contributions. The main categories of female workers not covered for Maternity Benefit purposes are permanent and pensionable public servants employed before April 1995, who are liable for modified rates of PRSI contribution (Classes B, C and D)<sup>18</sup> and women earning less than €38 (IR£30) per week. Therefore, these groups of workers have not been included in the costings set out in Table 1. Similarly, the costings outlined in Table 1 relate to male workers paying PRSI Class A, E, and H contributions only.

Although self-employed women paying PRSI Class S contributions are covered for Maternity Benefit purposes, they have been excluded from the costings for a Parental Leave Benefit scheme as they are not covered for parental leave.

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<sup>14</sup> The Childcare Regulations require that for every three babies under 12 months, there must be at least one childminder.

<sup>15</sup> *Study on the Economics of Childcare in Ireland*, Goodbody Economics Consultants, December 1998 – commissioned by the Department of Justice Equality and Law Reform on behalf of the Partnership 2000 Expert Working Group on Childcare.

<sup>16</sup> Social Insurance Fund – All Pay Related Social Insurance (PRSI) contributions paid by employers, their employees and the self-employed are paid into the Social Insurance Fund and all social insurance benefits and pensions are paid out of this fund on a pay-as-you-go basis, i.e. current PRSI contributions go towards funding current payments. Any shortfall in the Fund, i.e. where the PRSI contribution income is insufficient to meet current expenditure, is made good by way of a subvention to the Fund from the Exchequer.

<sup>17</sup> The administration costs involved in the operation of such a scheme have not been included in these costings (see paragraph (viii) *Appropriate payment – Earnings Related or Flat-Rate?*).

<sup>18</sup> As the calculations outlined in Table 1 are based on a social insurance payment with qualifying criteria similar to Maternity Benefit, public servants paying modified PRSI rates (Classes B, C and D) are not included. However, it was noted that such employees are eligible for Carer's Benefit. Therefore, if these public servants were covered by a parental leave benefit scheme, then the potential costs outlined in Table 1 would increase, while the cost to public sector employers would be significantly reduced.

**Table 1**

**Potential cost per annum of a social insurance payment in respect of parental leave**

	Uptake levels %		Cost	
	Women	Men	€m	IR€m
<b>Earnings related – Maternity Benefit rate</b>	90%	15%	78.74	62.01
<b>Flat-rate – Disability Benefit rate</b>	75%	10%	34.17	26.91
<b>Flat-rate – Carer’s Benefit rate</b>	80%	10%	46.37	36.52

It is clear from the above costings that the introduction of any social insurance payment for parental leave would have significant cost implications for the Social Insurance Fund. The increased expenditure levels involved in such a payment, together with the expenditure on other social welfare commitments contained in the Government’s Action Programme and the Programme for Prosperity and Fairness would have substantial implications for the future financing of the Fund. In the event of the uptake levels being less than those presented in the table above, the costings would be reduced accordingly. For example, if the uptake levels were 60% for women and 10% for men, based on the maternity benefit rate and the disability benefit rate, the costings would fall to €52.49m (IR€41.34m) and €28.49 (IR€22.44) respectively.

While the Social Insurance Fund is in a healthy financial situation at the moment, this surplus will not continue indefinitely, as ageing of the population will greatly increase demands on the Fund over the medium to long-term. It is important that any decisions regarding the Fund’s surplus should have regard to all of the demands being placed on it, both in the short and long-term.

Table 2 illustrates the options for increases in PRSI contribution rates which would be required to fund the levels of expenditure outlined in Table 1, on the following basis:

- Option (1) – additional expenditure funded by an increase in the employer PRSI rate only;
- Option (2) – additional expenditure funded by an increase in the employee PRSI rate only;
- Option (3) – additional expenditure funded by a combination of increases in both employer and employee PRSI rates.

**Table 2**

**Options for increases in PRSI contribution rates required to fund the levels of income outlined in Table 1**

Option	% Increases required in PRSI rates	Parental leave benefit paid at the level of:		
		Maternity Benefit	Disability Benefit	Carer’s Benefit
<b>1</b>	<b>Employer (ER)</b>	0.28%	0.12%	0.17%
<b>2</b>	<b>Employee (EE)</b>	0.40%	0.17%	0.23%
<b>3</b>	<b>Combination of increases in PRSI rates for ER and EE</b>	0.14% ER + 0.20% EE	0.06% ER + 0.09% EE	0.09% ER + 0.12% EE

It should be noted, in this regard, that when the Maternity Allowance scheme for Women in Employment was introduced in 1981 (i.e. the forerunner to the current Maternity Benefit scheme) following enactment of legislation giving women entitlement to 14 weeks maternity leave, the rate of Employers' PRSI contribution was increased by 0.15% to fund the additional costs involved.

As the question of introducing a means-tested payment, as opposed to a social insurance payment, was not addressed by the Working Group, this option was not costed by the Group.

**(vi) Cost to public sector employers**

In this section, the Department of Finance illustrate the full range of potential costs for public sector employers if paid parental leave were to be introduced. More detailed information on these costings and the underlying assumptions is set out in Appendix VIII.

**Paid parental leave costing I:** refers to the scenario whereby, the rate of payment for parental leave for public service employees is full pay (similar to maternity leave and adoptive leave). All full PRSI contributors would be entitled to a DSCFA<sup>19</sup> payment (payment rate similar to either Maternity Benefit/Disability Benefit/Carer's Benefit) in respect of parental leave. The public sector employer would then be reimbursed by DSCFA in respect of its Class A (full PRSI) employees.

**Table 3**

**Estimated annual cost of paid parental leave to public sector employers – Estimated Cost – I**

DSCFA payment type	Public Sector full pay costs (net of DSCFA payment)	
	€m	IR€m
Earnings related – <i>Maternity Benefit rate</i>	50.5	39.8
Flat-rate – <i>Disability Benefit rate</i>	53.6	42.2
Flat-rate – <i>Carer's Benefit rate</i>	52.7	41.5

**Paid parental leave costing II:** refers to the scenario whereby, full PRSI contributors would be entitled to a flat-rate social welfare payment (similar payment rate to Carer's Benefit) in respect of parental leave. The public sector employer would have to meet the cost for modified PRSI public servants, who may be eligible for parental leave. This payment in respect of parental leave would issue to "modified" public servants (PRSI Classes B, C and D) who would not be entitled to the DSCFA payment in view of their "modified" contributory status, and would be met by the public sector employer.

**Table 4**

**Estimated annual cost of paid parental leave to public sector employers – Estimated Costs – II  
(costs relate to modified PRSI public servants only)**

Flat-rate – <i>Carer's Benefit Rate</i>	Public Sector pay costs	
	€m	IR€m
Similar rate to CB payable to modified PRSI State employees	5.95	4.7

<sup>19</sup> Department of Social, Community and Family Affairs.

**(vii) Who pays? – The Employer or the Social Insurance Fund / Exchequer**

The Framework Agreement on Parental Leave, negotiated by European social partners, could not recommend a State payment in respect of parental leave, as it was not within their remit. Furthermore, employers are not required, in any Member State to pay employees in respect of parental leave. However, in Italy employers are required to pay employees in respect of parental leave on the basis that the State reimburses employers for payments made. In the other EU countries, where parental leave is paid, the allowance is paid by the State.

It was noted that social insurance contribution rates in other Member States generally tend to be significantly higher than in Ireland. There are, however, a range of factors which influence the level of social insurance contribution rates in the different Member States, including the range of contingencies covered by the different systems, the rates and duration of payments, etc. The demands placed on social insurance systems in different countries also vary in terms of their demographic structure, unemployment rates, disparities of income distribution, etc. In addition, a relatively large proportion of social welfare spending in Ireland is funded directly by the Exchequer from general taxation, rather than by social insurance. Employees, employers and self-employed alike, are liable to pay both tax and social insurance contributions, albeit at different rates. In addition, the Exchequer subvents any shortfall in the Social Insurance Fund.<sup>20</sup> For these reasons, it is difficult to make meaningful direct comparisons between the various social insurance systems.

In Ireland, there is no statutory obligation for an employer to provide remuneration during periods of maternity leave, adoptive leave or carer's leave, although some employers pay the balance between the social insurance payments and net wages in the case of maternity and adoptive leave. However, employers are obliged to pay the first 3 weeks of health and safety leave and for *force majeure* leave. The portions of maternity and adoptive leave which attract payment are funded by the Maternity Benefit and Adoptive Benefit schemes run by the Department of Social, Community and Family Affairs. Carer's Benefit is also paid by the Department of Social, Community and Family Affairs.<sup>21</sup>

The attitudinal research carried out in relation to parental and *force majeure* leave shows that 22 of 25 employers would not provide payment in respect of parental leave. The remaining 3 employers expressed the following views: (i) that the issue of payment would depend on the employee, the circumstances and timing of leave; (ii) that they would consider paying "in exceptional circumstances", for example, very long and loyal service with, perhaps, a very particular need for leave; (iii) that they had not had the situation yet but that they might pay a lump sum of some kind.

During Group discussions, it was argued that the manner in which leave may be availed of would arise as a significant operational factor in the event of parental leave attracting a payment from the Social Insurance Fund. For instance, in a scenario where parental leave is taken in the format of reduced daily hours or in days off, it would be extremely difficult and costly to administer a State payment. In addition, the purpose of a social welfare payment in such circumstances would be highly questionable. In general, social welfare payments are not paid for reduced working hours or for days off work. It was also noted that the minimum period for which Carer's Benefit

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<sup>20</sup> Arising from demographic and economic factors, the Exchequer has not had to make a direct subvention to the Social Insurance Fund since 1996. However, the Exchequer still continues to make a significant contribution of 1% of GNP to the National Pensions Reserve Fund. The proceeds of this Fund, which currently stand at over €7.62bn (IR£6bn), will be used to meet future State expenditure on pensions, including expenditure on social insurance pensions.

<sup>21</sup> Payment of all of these benefits is subject to meeting the necessary contribution requirements.

can be claimed is six weeks.<sup>22</sup> For these reasons, it was argued that some form of payment by employers should be considered in respect of parental leave.

**(viii) Appropriate payment – Earnings Related or Flat-Rate?**

The relative merits and demerits of an earnings related or a flat-rate payment should also be considered. In this context it is interesting to note that Sweden, the most generous of EU Member States in relation to parental leave provisions provides an earnings related payment for the first 12 months of the parental leave entitlement, switching to a flat-rate payment for the remaining 6 months. This suggests that the cost of extending an earnings related payment over a full 18 months is large, although it was noted that what was under consideration within this Group was the possibility of introducing an earnings related payment for 14 weeks only. Other Member States, e.g. Austria, pay a flat-rate.

In a State payment scheme, it is clear that payment of a flat-rate rather than an earnings related payment is a more cost effective option. In general, the costs involved in administering the various social welfare payment schemes come to approximately 5% of the total cost of the payments. The exact costs involved in the operation of a Parental Leave Benefit scheme could only be determined in the light of the nature of the payment to be introduced and the nature of the leave in respect of which the payment is being introduced.

The Maternity Benefit and Adoptive Benefit schemes are paid on a partial earnings related basis. A minimum duration of maternity leave is compulsory, whereas adoptive leave is not. It is argued that an earnings related payment is especially justified for maternity leave as it is important to protect income levels during the compulsory break from work as the leave is an essential requirement for new mothers, particularly in regard to the health of the mother and new child. However, the Carer's Benefit scheme, as well as the standard social insurance payment for temporary absences from the workforce, i.e. Disability Benefit / Unemployment Benefit are paid on a flat-rate basis.

**(ix) Comparative situation in EU Member States**

In some Member States, there are arrangements in place for some form of payment in respect of parental leave, although provisions vary widely. Information on payment of parental leave in all EU Member States is set out in Table 2, Chapter 2. It is difficult to provide an accurate comparison of data, as payment arrangements in Member States differ.

Parental leave in Greece, Ireland, the Netherlands, Portugal, Spain and the United Kingdom is unpaid. In France, parental leave allowance is only available in respect of the second and subsequent children. In Belgium, if leave is taken under the career break scheme, and the employee is replaced, the leave taker is entitled to an allowance from the Unemployment Benefit scheme.

Parental leave is paid in Austria, Denmark, Finland, Germany, Italy, Luxembourg and Sweden. However, in Germany the parental leave allowance is subject to a means test. The payment is made by the State in all cases.<sup>23</sup> Data is not available on rates of payment in all Member States

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<sup>22</sup> Carers are entitled to engage in employment outside the home for up to 10 hours per week (subject to certain income limits) – Carer's Benefit SW49, Department of Social Community and Family Affairs.

<sup>23</sup> Except Italy where the payment is made by the employer but is then reimbursed by the State: – *Equal Opportunities Review*, No. 92 July/August 2000.

and whether payment is earnings related or at a flat-rate, but it is clear that there is a wide variation.

## Statements provided by some members of the Working Group outlining their respective positions on the issue of paid parental leave<sup>24</sup>

- The **Department of Enterprise, Trade and Employment** is in favour of paid parental leave, in principle. The Department considers that the role of the Parental Leave Review Group should be to produce options for Government to consider. These options should include targeted payments as well as various universal (other) options, and how they are to be funded. All the options need to be properly costed, with reasoned assumptions and impact assessments on employment and competitiveness.
- **Department of Finance** – When the Department of Social, Community and Family Affairs' payment costs and the public sector employer costs are combined, the Department of Finance have estimated that the total potential cost of paid parental leave for a period of 14 weeks would cost between approximately €52.3m<sup>25</sup> (IR£41.2m) and over €129.2m<sup>26</sup> (IR£101.8m). Given the many competing demands currently being made on scarce resources, the Department of Finance cannot support the payment of paid parental leave.
- The **Department of Social, Community and Family Affairs** notes the uptake issues which have been identified in the research carried out for the review and that the lack of a payment for parental leave can be a factor in this regard. In principle, the Department sees some merit in paid parental leave. However, before the Department of Social, Community and Family Affairs could subscribe to the introduction of paid parental leave, a number of important issues need to be addressed:
  - the relative merits of a payment, in part or in whole, by employers and/or the State;
  - even if a State payment were to be introduced, affordability questions for those taking the leave would still arise;
  - the very difficult operational issues involved in introducing paid parental leave; and
  - the implications of such a payment for any extension of the duration of leave.

It is clear that the introduction of paid parental leave would have significant cost implications for employers, if such a payment were to be made by employers, and for the Exchequer and the Social Insurance Fund, if a State payment were to be introduced. Any decision on the question of introducing a social welfare payment would also have to have regard to the other social welfare commitments contained in the Government's Action Programme and the Programme for Prosperity and Fairness and to their effects on the sustainability of the Social Insurance Fund.

- **Equality Authority** – If the provision of parental leave is to be based on the principle of a child centred approach, which wishes to encourage the taking of parental leave and family friendly policies in the workplace, then the failure to produce a payment during

<sup>24</sup> The Review of the Parental Leave Act 1998 was concluded on 29 November 2001 (i.e. prior to Budget 2002).

<sup>25</sup> €46.37m (see Table 1 – DSCFA – based on Carer's Benefit flat-rate) + €5.95m (see Table 4 – DOF – public sector employer costs relates to modified PRSI public servants only – similar rate to Carer's Benefit payable to modified PRSI State employees) = €52.32m.

<sup>26</sup> €78.74m (see Table 1 – DSCFA – based on Maternity Benefit rate) + €50.5m (see Table 3 – DOF – based on public sector employer costs – Maternity Benefit rate) = €129.24m.

parental leave is counter-productive. It is clear from the research that the low take up of parental leave is due to the fact that parental leave is not paid. The low take up of parental leave hinders the development of family friendly workplace initiatives and all parties to the Programme for Prosperity and Fairness afforded significance to the development of such a workplace. As such, priority should be given to addressing this issue, otherwise any other changes will not realise the improvements desired. Clearly the issue of payment is foundational. This is an issue which has been recognised across the European Union where nine other countries make payment in this area.

- **Irish Business and Employers' Confederation (IBEC)** – Without prejudice to its position that the issue of payment for parental leave did not form part of the terms of reference of the Working Group, IBEC cannot support the introduction of paid parental leave due to the negative impact such a measure would have on the competitiveness of the economy.
- The **Irish Congress of Trade Unions** state the case for paid parental leave as follows:  
The key objectives of the EU Parental Leave Directive adopted on 3 June 1996 are:
  - to allow men and women to reconcile their professional and family responsibilities by providing leave to care for children up to age 8;
  - to promote equality of opportunity between men and women;
  - to encourage men to assume a more equal share of family responsibilities.

If parental leave remains unpaid it will not achieve these objectives. Only 20% of eligible workers have taken parental leave since its introduction in 1998. Income replacement is necessary to ensure that working parents can afford to avail of their right to take parental leave to care for their children. Parental leave is an individual right for both women and men and recognises the father's right to leave to care for his child on an equal basis with the mother.

The majority of those taking parental leave are women, i.e. 84%. All the evidence within the European Union shows that unless parental leave is paid, women will continue to bear the main burden, especially in financial terms, of taking parental leave from work to care for their children. Income replacement is necessary to ensure parental equality.

The requirement to take parental leave in "a continuous period of 14 weeks" combined with the lack of payment are barriers that working parents cannot overcome. The MORI MRC study for the Review Group confirms that continuous blocks of 14 weeks is the most common type of leave made available to employees by employers in the private sector.

Parental leave to care for children (under the age 5, currently) is now the only form of "caring leave" that does not qualify for a PRSI related benefit in Ireland. Maternity Leave, Adoptive Leave and Carer's Leave all qualify for a PRSI related benefit. The absence of a parental leave payment discriminates not only against working parents but also against their children.

The growth in women's participation in the workforce has contributed to the economic growth enjoyed by Ireland to date. The growth in women's employment also benefits the State in two ways, i.e. (i) increased revenues from PAYE and PRSI contributions from women workers and (ii) reduced dependency ratio.

Women still carry the main responsibility for childcare and 84% of those taking parental leave are women. Unpaid parental leave reinforces the gap in incomes between men and women.

The majority of EU Member States provide payment for parents taking parental leave to care for their children.

Not surprisingly, research carried out for the parental leave review shows that 63% of employees stated that the absence of payment in respect of parental leave was the biggest disadvantage to them of availing of such leave. The research also shows that employees favoured taking the leave in a form other than a continuous block of 14 weeks and 49% of employees wish to take the leave in the form of 1 or 2 days per week. Parents who take 3 months leave to care for their child cannot fund that loss of earnings themselves and they should not be expected to do so.

To date, there is no PRSI related parental leave payment and almost 100% of employers make no payment to their employees in respect of parental leave.

In the Programme for Prosperity and Fairness, all of the social partners recognised the importance of developing our social protection system and committed to “the development of a fully inclusive social insurance model which would facilitate combining work with family responsibilities” (Framework III) and “to seek to encourage the growth of family friendly policies in employment including parental leave, care arrangements, work sharing and more flexible working arrangements” (Framework IV).

The Minister for Finance, Mr. McCreevy, T.D., announced in his Budget speech in December 2000 that it was “proposed to advance the promised review of the parental leave legislation with a view to the improvement of the arrangements in this area.”

Since the introduction of parental leave in December 1998, Congress has been seeking the introduction of a PRSI related Parental Leave Benefit. Congress is of the view that the introduction of such a scheme would spread the cost fairly as it would be funded from the Social Insurance Fund, into which both employers and employees contribute through their PRSI contributions. While recognising that the State contributes to the Social Insurance Fund, it has not had to contribute to that Fund since 1996. The Social Insurance Fund is currently in surplus and is expected to reach a surplus of €1.418 billion (IR£1.117 bn)<sup>27</sup> at the end of 2001 and accordingly, could fund a Parental Leave Benefit payment. Employers are currently seeking a 3% reduction in their PRSI contribution rates, which would cost the Social Insurance Fund €832 million (IR£655m) per annum. A Parental Leave (PRSI related) Benefit would cost only a tiny fraction of that amount even when calculated at the highest level Social Welfare payment and at the highest level of take up calculated by the Department of Social, Community & Family Affairs. A parental leave payment would cost only a tiny fraction of a 1% reduction in employer’s PRSI contribution rate.

Government must acknowledge the contribution of working parents to Ireland’s economic growth and must not continue to expect these parents to accept a 25%

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<sup>27</sup> Appendix IX.

reduction in their yearly income when they avail of their legal right to 14 weeks parental leave to care for their child. In the case of parents with more than one child, the cost of parental leave is of course even greater.

The right to parental leave should be viewed as a right for children and the absence of payment to parents who wish to avail of this leave should not remain as the barrier it currently is to parents trying to balance work and family life. In all of the circumstances, Congress believes that a PRSI related Parental Leave Benefit should be introduced in 2002.

- The **National Women's Council of Ireland (NWCI)** views payment of parental leave as an equality issue. The Government policy of maintaining parental leave as an unpaid entitlement discriminates against low-paid workers, the majority of whom are women, who are unable to take time off work without some payment. The NWCI considers the issue of payment for parental leave as a crucial component in offering women real choices in terms of reconciling paid employment with family life. Paid parental leave should be a central element in the development of family friendly policies. The absence of a payment for parental leave highlights a lack of commitment by the Government or employers to the promotion of female participation in the workforce. It also reveals a lack of commitment by Government to the protection of people's rights to family life and to employment. The NWCI has not taken a position on whether or not payment should be made by the Government or by employers. However, it considers that if a social insurance payment were to be introduced, it should be offered at a rate equivalent to Maternity Benefit.

### ***Recommendation on the principle of paid parental leave***

The Group could not reach consensus on the principle of paid parental leave and accordingly, did not address all the possible options this raises. Some members of the Group outlined their respective positions above. In that context, the following members of the Group (Irish Congress of Trade Unions; National Women's Council of Ireland; Equality Authority; Department of Justice, Equality and Law Reform; Department of Enterprise, Trade and Employment; and Department of Social, Community and Family Affairs) recommend that parental leave should attract payment. The other members of the Group (Irish Business and Employers' Confederation; Department of Finance; and Irish Co-operative Organisation Society) cannot support the payment of parental leave.

## **2. Paternity leave**

### ***Current position***

There is currently no statutory entitlement to paternity leave in Ireland.

### ***Proposals considered by the Working Group***

- The Working Group agreed to consider paternity leave within the context of the review.
- Fathers should be entitled to 5 days paid paternity leave at the time of their children's births (ICTU and NWCI).
- Paternity leave should be addressed in the review and should be established at 10 days. It should be paid on the same basis as maternity leave (Equality Authority).

Paternity leave was discussed and the following issues were taken into account:

- (i) Reconciliation of work and family life and balanced participation of men and women in work and family life;
- (ii) Cost to employers;
- (iii) Comparative situation in EU Member States.

**(i) Reconciliation of work and family life and balanced participation of men and women in work and family life**

The issue of paternity leave was considered by the Working Group on the Review and Improvement of the Maternity Protection Legislation; they reported that, *“the Group recognises the importance of the role of fathers at the time of and immediately after childbirth. The Group, without commitment from any party, agreed that the issue of paternity leave would be considered in the context of the forthcoming review of the Parental Leave Act 1998 or such other review as may be appropriate.”*

A statutory arrangement to allow for a father’s entitlement to leave at the time of and/or immediately after childbirth would enhance arrangements for the reconciliation of work and family life. Paternity leave offers a crucial recognition of the caring role of fathers. It facilitates the possibility of bonding between father and child and provides the opportunity for fathers to offer essential support to mothers at a time in which babies are in greatest need of care.

The question of equal participation by women in the workplace and by men in family life has been the subject of EU debate in recent times. The EU Council of Labour and Social Affairs Ministers passed a *Resolution on the balanced participation of women and men in work and family life* at the June 2000 Council. The Portuguese Presidency saw this resolution as complementing Council Resolution 95/C168/02 on the balanced participation of women and men in decision-making. The Preamble makes a number of statements, notably that the imbalance of participation of women in the labour market and of men in the domestic sphere has individual and social costs, and constitutes an obstacle to gender equality. It also states that both maternity and paternity are important social values to be protected by the State, and that both sexes have a fundamental right to work and a fundamental right to family life. The Resolution makes a number of proposals in this regard, including encouraging Member States to become involved in:

*“Examining the scope for the respective legal systems to grant working men rights likely to provide support for family life with a view to cementing equality”<sup>28</sup>*

and

*“Examining the scope for the respective legal systems to grant working men an individual and untransferable right to paternity leave, subsequent upon the birth or adoption of a child, maintaining their rights relating to employment to be taken at the same time as the mother takes maternity leave irrespective of the lengths of the periods of maternity and paternity leave.”<sup>29</sup>*

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<sup>28</sup> Article 2(b)(ii)

<sup>29</sup> Article 2(b)(i)

## **(ii) Cost to employers**

Public sector employers provide 3 days paid paternity leave for civil servants, teachers, health service workers, Gardaí, prison officers and the Defence Forces, while some private sector employers and semi-state bodies provide a short period of paid paternity leave. Any increase in leave would have a cost implication for employers, both in terms of the absence of the father from the workplace, and a monetary cost if the leave were to be paid by the employer. Concern was expressed in relation to the adoption of any new measures which would result in increased costs for employers in view of the current uncertain economic climate and the need to maintain international competitiveness.

The Working Group considered the proposal to pay the leave on the same basis as maternity leave, i.e. a payment from the Department of Social, Community and Family Affairs, based on the father's social insurance contributions. This arrangement would alleviate some of the cost implications of paternity leave for employers. However, it would result in the transfer of the cost, including a cost being borne by some employers at present, directly to the State. The State would also face further extensive cost implications, in terms of the cost efficiency of putting a complex administrative system in place for a small amount of leave.

The Department of Finance would support, in principle, employers paying a number of days paternity leave, however, the Department clearly recognises that many small firms, given recent economic setbacks, may not be in a position to meet the costs of such a payment. In such cases, the issue of a payment should be the subject of agreement at local level. The Irish Congress of Trade Unions and the National Women's Council of Ireland are strongly of the view that fathers should have a legal right to paternity leave and that this should be paid. The right to paternity leave should be universal and not dependent upon the size of the company or the agreement of the employer.

### ***Estimated costings for 3 days paternity leave paid by the employer***

No. of children born in 2000	<u>54,239</u>
No. of relevant fathers in 2000	54,239
% of males in employment in 2000 (aged between 15 and 64 years old)	<u>75.56%</u>
Potential number of eligible fathers in 2000	40,983
Average <b>industrial weekly wage</b> for 2000 <sup>30</sup> (€492.48 – IR£387.86)	
Average industrial wage for 3 days (€492.48*60%)	<u>295.49</u>
<b>Average cost for employers of 3 days paternity leave</b>	€12,110,000 IR£9,537,400

### ***(iii) Comparative situation in EU Member States***

The comparative situation in other EU Member States in terms of paternity leave provisions (including the provision of payment in respect of such leave) is set out in Table 6, Chapter 2. Available information indicates that Belgium, Denmark, Finland, France, Germany, Greece, Italy,

<sup>30</sup> CSO Statistical Release, *Industrial Earnings and Hours Worked*, 28 September 2001.

Portugal, Spain and Sweden have some statutory entitlement to leave for fathers at the time of childbirth. The length of paternity leave varies from 18 days (up to 12 can be taken at the time of the birth) in Finland to 2 days in Greece. In the Netherlands, there is no statutory right to paternity leave, however, it is included in approximately 90% of collective agreements. The UK Government have committed to introduce 10 days paid paternity leave from 2003.

Paternity leave is an individual right for fathers at the time of and immediately after the birth of the child. Nevertheless, it is notable that there is some collapsing of the principles of *force majeure* leave and paternity leave in some Member States. According to *Care in Europe*, employees in Germany may take leave for emergencies which may include the birth of a child by a partner. In the case of the UK,<sup>31</sup> there is no provision for paternity leave, other than in the context of *force majeure* leave. The UK Employment Relations Act 1999 provides that employees may take a reasonable amount of time off work to deal with certain unexpected or sudden emergencies in relation to a dependant of the employee and to make any necessary longer term arrangements. One of the circumstances in relation to which an employee can take time off is to assist a dependant who is having a baby.

In Ireland, entitlement to *force majeure* leave is confined to emergencies relating to illness or injury and does not encompass paternity leave. Section 13 of the Parental Leave Act 1998 provides for *force majeure* leave with pay where, for urgent family reasons, owing to an injury to or illness of a family member, the presence of the employee, at the place where the person is, is indispensable. A spouse or partner is included in the list of qualifying family members. However, pregnancy or childbirth is not an illness or injury, even though the presence of the father/partner at the birth may be considered indispensable.

### **Recommendation**

The Group could not reach consensus on this issue. Seven members of the Group (Irish Congress of Trade Unions; National Women's Council of Ireland; Equality Authority; Department of Justice, Equality and Law Reform; Department of Finance;\* Department of Enterprise, Trade and Employment;\* and Department of Social, Community and Family Affairs\*) support a recommendation to introduce a statutory entitlement to 3 days paid paternity leave per child, payable by employers. The other two members of the Group (Irish Business and Employers' Confederation, and Irish Co-operative Organisation Society) cannot agree to the introduction of paid paternity leave by employers.

\*These Group Members support the recommendation, in principle.

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<sup>31</sup> *Time off for Dependants – A Guide for Employers and Employees – Department of Trade and Industry leaflet – URN 99/1186.*

## Part B

### *Recommendations in relation to other specific issues*

#### 3. Duration of parental leave

##### **Current position**

The Parental Leave Directive (96/34/EC) [Clause 2 of the Framework Agreement] provides for an entitlement for men and women workers to at least 3 months parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child.

Section 6(1) of the Parental Leave Act 1998 entitles an employee, who is the natural or adoptive parent of a child, to parental leave for a period of 14 working weeks to enable him/her to take care of the child.

##### **Proposals considered by the Working Group**

- The Working Group agreed to consider the period of parental leave entitlement (i.e. number of weeks/working days involved) within the context of the review.
- The period of parental leave is too short and should be significantly improved (ICTU).
- The length of parental leave that is allowed should be extended from 14 weeks to 26 weeks (Equality Authority).

Extension to the *duration of parental leave* was considered in relation to the following factors:

- (i) Recent extension of maternity and adoptive leave;
- (ii) Carer's Leave Act 2001;
- (iii) Comparative situation in EU Member States;
- (iv) Implications for possible future paid parental leave.

##### **(i) Recent extension to maternity and adoptive leave**

The Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2001<sup>32</sup> and the Adoptive Leave Act 1995 (Extension of Periods of Leave) Order 2001<sup>33</sup> were signed into law on 8 February 2001. Any person who commences maternity leave on or after 8 March 2001 is entitled to 18 weeks leave which attracts payment from the Maternity Benefit scheme (an increase of 4 weeks from the previous entitlement to 14 weeks) and to 8 weeks unpaid leave (an increase of 4 weeks from the previous entitlement to 4 weeks). Similarly, adoptive leave (attracting payment) increased by 4 weeks from 10 to 14 weeks and unpaid adoptive leave from 4 weeks to 8 weeks.

This is the first increase to the duration of maternity leave since the introduction of maternity leave in the State in 1981, and the first increase in the duration of adoptive leave since its introduction in 1995. These significant improvements are a measure of the strength of the commitments under the Programme for Prosperity and Fairness to improve maternity leave and to promote family

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<sup>32</sup> S.I. No. 29 of 2001.

<sup>33</sup> S.I. No. 30 of 2001.

friendly policies generally. They represent a considerable improvement to working conditions for employees. In the event of a mother availing of parental leave directly after her full maternity leave entitlement,<sup>34</sup> she could be absent from the workplace caring for her child for 42 weeks (including 2 weeks annual leave).<sup>35</sup> An adopting mother or sole male adopter could be absent for approximately 38 weeks [adoptive leave (attracting payment) is 4 weeks shorter than the corresponding maternity leave]. In addition, the *Report of the Working Group on the Review and Improvement of the Maternity Protection Legislation* recommends that the unpaid portion of maternity leave will count for accrual of entitlement to annual leave. This Recommendation will, once implemented, extend the possible absence from work of female employees for child-rearing purposes and will represent a further burden on employers. As a general rule, fathers do not benefit from these improved statutory entitlements as maternity and adoptive leave entitlements only transfer to fathers in the event of the death of the mother.

### ***(ii) Carer's Leave Act 2001***

The introduction of the Carer's Leave Act 2001 on 2 July 2001, (and the Carer's Benefit scheme which has been in operation since 26 October 2000) is another significant improvement in Irish legislation for employees who need time out from the workplace to deal with family and other caring responsibilities in certain circumstances. As with the recent extensions of maternity and adoptive leave, carer's leave puts an additional statutory responsibility on employers as regards absences from the workplace for employees to fulfil domestic responsibilities.

### ***(iii) Comparative situation in EU Member States***

Details of the length of parental leave and the options available to parents to take leave, in different EU Member States are set out in Table 1, Chapter 2. Comparison between parental leave provisions in Member States is difficult, because some Member States have a range of different schemes which serve the purpose of providing leave from work for child-minding purposes. It can be difficult to ascertain what may be classified as parental leave in terms of the Framework Agreement on Parental Leave and what may not.

An examination of the parental leave regimes in EU Member States shows, however, that parental leave provisions differ widely.

### ***(iv) Implications for possible future paid parental leave***

In considering the issue of duration, the view of the Working Group is that any additional parental leave should not attract a payment in the context of recommendation No. 1 as this would add to the cost of paid parental leave.

## ***Recommendation***

The majority of the Group recommends that the duration of parental leave should be increased by 4 weeks, bringing the total entitlement to 18 weeks. In the event of parental leave attracting a payment in the future, the additional 4 weeks parental leave would not attract such a payment. The Department of Finance and the Irish Business and Employers' Confederation do not support the recommendation.

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<sup>34</sup> Maternity leave (attracting payment) and parental leave count for accrual of annual leave entitlement.

<sup>35</sup> Maternity leave (attracting payment – 18 weeks); additional maternity leave (8 unpaid weeks); parental leave (14 weeks); and annual leave accruing (at least 12 days) = approx. 42 weeks leave of absence.

## 4. Manner in which parental leave may be taken

### ***Current position***

The Parental Leave Directive [Clause 2(3) of the Framework Agreement] provides that the conditions of access and detailed rules for applying parental leave are to be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of the agreement are respected. In particular, Member States and/or management and labour may decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system.

Section 7 of the Parental Leave Act 1998 sets out the manner in which parental leave may be taken – either as a continuous block of 14 weeks or, by agreement between the employer and the employee, broken up over a period of time. It also sets out the method of calculating the entitlement in the event of parental leave being taken in a broken format.

### ***Proposals considered by the Working Group***

- Employers in the private sector are refusing to allow workers to take parental leave on any basis other than a single block of 14 weeks continuous leave. Employees are being denied the flexibility to take leave on a one or more days basis; one or more hours basis or any combination of periods, for example, half-time; quarterly or on a weekly or monthly basis (ICTU).
- There should be a clear right to take parental leave on a full-time, a part-time or a piecemeal basis (Equality Authority).

The manner in which parental leave may be taken, including the right to avail of parental leave on a half-time basis, was considered by the Working Group in relation to:

- (i) Comparative situation in EU Member States;
- (ii) Implications for employers;
- (iii) Facilitating employees to avail of their entitlement to parental leave.

### ***(i) Comparative situation in EU Member States***

The position in relation to options available to employees in other EU Member States is set out in Table 1, Chapter 2. In many Member States parental leave must be taken in a single block unless the employer agrees to a broken format or part-time leave. In Denmark, it must be taken full-time in a single block. In Spain, (except in the public sector) it must be taken full-time. In Belgium (may be split in the public sector), Ireland and Greece, it must be taken in a single block or by agreement with the employer it can be taken in a broken format or part-time. In Luxembourg, it must be taken full-time in a single block unless the employer agrees to part-time leave. In Austria, the 2 years parental leave entitlement must be taken in the form of full-time leave but can be shared between the father and the mother twice and each period must be at least three months. Alternatively, provided the employer agrees, it can be taken on a part-time basis until the child reaches 4 years of age. In Germany, the three years parental leave can be taken full-time as a single block or part-time. However, if the employer agrees, the third year may be taken up to the child's eighth birthday. In France, leave can be taken full-time or by reducing working hours by at least a fifth or a combination of both. In Italy, the leave may be taken in a continuous block or in broken format. In the Netherlands, the leave must be taken part-time (50% of contracted hours)

unless the employer agrees to full-time leave. In the UK, unless there is a collective or workplace agreement or the employer agrees to more favourable conditions, the leave must be taken full-time but can be taken in multiples of a week (subject to a maximum of 4 weeks per child in one year) or in multiples of days in the case of children with disabilities. In Finland, the leave can be divided between the parents. In Portugal, the leave can be taken full-time or part-time. In Sweden, employees are entitled to a number of types of leave for childcare purposes.

### ***(ii) Implications for employers***

Any statutory right to take parental leave in a broken format must take into account business needs/ needs of the public sector to provide a service to the public. Factors which must be taken into account include the ability of the employer to replace the employee. For example, sometimes it is easier to replace an employee who is on parental leave for a longer period of time (e.g. 14 weeks). Alternatively, in the case of key individuals in a company, the possibility of taking parental leave on the basis of, for example, one day per week may suit both the employer and the employee. Therefore from an employer's perspective, the current provisions work well because it is possible to take the relevant factors into account in each individual case. There are also other practical difficulties associated with the breaking up of parental leave entitlements in particular the difficulty of determining an employee's entitlements – for example, defining a half day's parental leave where the employee does not work a standard day and difficulties in relation to calculating payment in respect of time worked.

The research ascertaining attitudes of employers, employees and trade union representatives (organisational level) in relation to parental and *force majeure* leave found that 42% of employers said that they would prefer their employees to take their leave in a continuous block of 14 weeks and only 10% of employers said that they would prefer if employees took 1 or 2 days per week.

### ***(iii) Facilitating employees to avail of their entitlement to parental leave***

It was noted that at present employees cannot take parental leave in a broken format unless the employer agrees. In the absence of a payment for parental leave, many employees and in particular low paid employees may not be able to afford to take the full 14 weeks parental leave in a block. If employees could take parental leave in a broken format, they might be able to take the leave. In addition, the option of taking parental leave in a broken format would enable employees to use the leave in a way which best meets their childcare needs. During Group deliberations, a number of options for the break up of leave were considered including the option of availing of parental leave on a half-time basis.

Bearing in mind that individual employers may allow parental leave entitlement to be availed of in a number of varying manners reflecting the requirements of both their organisation and its employees, the findings of the research into the uptake of parental leave, indicate that 60% (58% private; 70% public) of employers allow their employees to avail of parental leave in blocks of full weeks, while 43% (37% private; 64% public) of employers allow parental leave in some other broken format. Overall, 5% of eligible employees availed of parental leave in a continuous block of 14 weeks (5% private; 7% public), 8% (7% private; 13% public) took it in blocks of full weeks and 9% (4% private; 24% public) took it in some other broken format.

The research ascertaining the attitudes of employers, employees and trade union representatives (organisational level) in relation to parental and *force majeure* leave found that 49% of employees would prefer to take their parental leave in 1 or 2 days per week over a number of weeks; 18%

would prefer to take it in a continuous block of 14 weeks; 15% would prefer to take their leave in separate blocks of full weeks; 8% would like to take it in a combination of days and hours; and the remainder would prefer other formats.

### **Recommendation**

The Group considers that in order to balance the needs of employers and employees, there should be a statutory right to take parental leave in some format other than a continuous block. The legislation should, however, set parameters on the statutory entitlements in relation to the break up of parental leave, while maintaining the existing flexibility where the employer and employee agree to other formats.

The Group therefore recommends that –

unless the employer and employee agree to more favourable terms, an employee should have the right to take parental leave in the following forms:

- (a) a continuous period of 14 weeks;<sup>36</sup>
- (b) in separate blocks each block consisting of a minimum of 6 continuous weeks, subject to a maximum of 14 weeks' leave. Unless the employer agrees to more favourable conditions, an employee who has availed of part of the parental leave entitlement in respect of a particular child should not be entitled to commence a further period of parental leave in respect of the same child, until a period of 10 weeks has elapsed since the termination of the first period of parental leave. In the event of an employee deciding to take parental leave in separate blocks on the basis of two separate applications, each block should be treated separately in particular in terms of notification requirements, the employer's right to postpone (i.e. the employer should be entitled to postpone each period a maximum of once, or twice in the case of seasonal variation in the volume of work), and the maximum amount of leave which can be taken in a 12 month period (i.e. 14 weeks except in the case of children of a multiple birth). In the event of the two blocks of leave being proposed in one application, the proposal will be treated as a single application for all purposes including postponement.

## **5. Maximum age of a child**

### **Current position**

The Parental Leave Directive [Clause 2(1) of the Framework Agreement] provides that parental leave should be available to men and women workers until a child reaches a given age up to 8 years to be defined by Member States and /or management and labour.

Section 6(3) of the Parental Leave Act 1998 provides that parental leave must be taken before the child reaches 5 years of age, except in certain circumstances in the case of an adopted child. In the case of a child who is under 3 years at the time of the adoption, the leave must be taken before the child reaches 5 years of age. However, if the child is aged between 3 years and 8 years at the time of the adoption, the leave must be taken within 2 years of the adoption order.<sup>37</sup>

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<sup>36</sup> See recommendation No. 3 in relation to the duration of parental leave.

<sup>37</sup> As a result of an amendment of the Parental Leave Act on 19 July 2000, parental leave in respect of (a) children born between 3 December 1993 and 2 June 1996 and (b) children born on or after 3 December 1993 and in whose case and adoption order was made between 3 December 1993 and 2 June 1996, can be taken up to 31 December 2001.

## **Proposal considered by the Working Group**

- Parental leave should apply up to the age of 8 years (ICTU, NWCI, Equality Authority).

The Group discussed the *maximum age of the child* in terms of:

- (i) Implications of the introduction of a higher maximum age;
- (ii) Comparative situation in EU Member States.

### **(i) Implications of the introduction of a higher maximum age**

The Parental Leave Directive (96/34/EC) entitles workers to parental leave in respect of children up to a maximum age of 8 years old. The maximum age of 5 was introduced in the Parental Leave Act as it is the age at which most children start school. In addition, as it was not known how many parents would avail of the entitlement when the Act came into force, the provision of a maximum age of 5 was chosen partly to avoid a front-loading of the entitlement to an unmanageable number of employees. However, it was argued at the time that setting the limit at 8 years would not create a significant extra demand for parental leave and that psychologists consider the period from 4 to 8 years old to be the child's most formative years. It was also argued that using the school-going age as the maximum age for parental leave entitlement does not consider the child's right to the option of parental care up to the age of 8 years.

In the course of consideration of this issue by the Working Group, it was argued that parents often find that the point of crisis in terms of reconciling work and caring responsibilities occurs when their children are of school-going age. School holidays can present particular difficulties for parents of primary school children who continue to have significant care needs. The extension now of the maximum age to 8 would not have the effect of increasing the number of parents who are entitled to parental leave, as the Act already applies to children born on or after 3 December 1993. However, it would increase the time span over which the leave may be taken. In the event of parental leave attracting a payment, it is likely that the uptake of parental leave would rise as, parents of children between 5 and 8 years old, who had not availed of unpaid leave, might be enticed to avail of their entitlement.

### **(ii) Comparative situation in EU Member States**

Details of the maximum age of the child in respect of whom parents can take parental leave in the different EU Member States are set out in Table 1, Chapter 2. The maximum age varies from 18 months in Sweden<sup>38</sup> for full-time parental leave, to 8 years in Denmark, Italy and the Netherlands.

The duration of parental leave entitlement<sup>39</sup> in EU Member States, where a low maximum age is in force, tends to be longer. For example, in Sweden the duration is 18 months<sup>40</sup> and in Austria the duration is 2 years (matching their respective maximum age provisions); in countries where the maximum age is 8, the leave periods tend to be shorter, for example, Denmark and the Netherlands provide a parental leave entitlement of 3 months. The age children enter formal

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<sup>38</sup> In Sweden, parents are entitled to work reduced hours until the child's 8th birthday or until the end of the child's first school year; and to a maximum of 60 days per year temporary leave for the care of a child until the child is 12 years old.

<sup>39</sup> Table 1, Chapter 2.

<sup>40</sup> See footnote 38.

education varies throughout EU Member States and might have influenced the maximum age chosen in each Member State.

### **Recommendation**

The majority of the Group recommends that the maximum age of the child in respect of whom employees may avail of parental leave should be increased to 8 years of age. The Irish Business and Employers' Confederation and the Department of Finance do not recommend extending the maximum age beyond 6 years of age.

## **6. Special provision for children with disabilities**

### **Current position**

There is no special provision for children with disabilities in the Parental Leave Directive or the Parental Leave Act 1998. The Carer's Leave Act 2001 provides an entitlement for employees to a maximum of 65 weeks carer's leave to enable them to care personally for persons who require full-time care and attention.

### **Proposals considered by the Working Group**

- There should be a provision for parental leave in respect of older children with special needs (ICTU).
- For children with disabilities the parental leave should apply up to 18 years and should be extended to 52 weeks (Equality Authority).

The Group discussed the parental leave *provision for parents of children with disabilities* in terms of:

- (i) Views of the National Disability Authority;
- (ii) Carer's Leave Act 2001;
- (iii) Domiciliary Care Allowance;
- (iv) Possible definition of disability;
- (v) Administrative difficulties;
- (vi) Comparative situation in EU Member States.

### **(i) Views of the National Disability Authority (NDA)<sup>41</sup>**

The National Disability Authority (NDA) identified the maximum age, duration of leave and format for taking parental leave as issues of concern for parents of children with disabilities. The inclusion of special provisions would recognise that parents of children with disabilities are faced with extra parental duties arising from the disability, for example, extra caring duties and attendance at medical appointments and specialised clinics. The extension of the age criteria in the case of a child with a disability would allow for the situation where a child may be very well for many years but require complicated surgery in their teenage years.

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<sup>41</sup> The Carer's Leave Act 2001 has come into operation since the NDA made its presentation to the Group. A summary of the NDA presentation is at Appendix X.

The NDA cited the example of the UK as a model for consideration. In the UK, a child with a disability is defined as a child in receipt of the Disability Living Allowance. The Domiciliary Care Allowance<sup>42</sup> is the nearest equivalent payment in Ireland and could be used for the purposes of the Irish legislation. Parents of children with disabilities are entitled to parental leave until the child's 18th birthday; this leave may be taken one day at a time. The UK Government has indicated that it intends to increase the overall length of parental leave in respect of children with disabilities from 13 weeks to 18 weeks.

### **(ii) Carer's Leave Act 2001**

The Carer's Leave Act 2001 which came into force on 2 July 2001 provides a new entitlement for employees to unpaid carer's leave to enable them to care personally for persons who require full-time care and attention. Subject to fulfilling the specific requirements laid down in the Act, an employee is entitled to a maximum of 65 weeks unpaid leave in respect of the care of any one *relevant person*.<sup>43</sup> The leave is for the purpose of personally providing full-time care to a person who is objectively assessed by the Department of Social, Community and Family Affairs (by Deciding Officers under the Carer's Benefit scheme) as being in need of full-time care and attention (a "relevant person"). An employee will not be entitled to carer's leave in respect of a *relevant person* when another employee is on carer's leave for the purpose of providing full-time care and attention to the same *relevant person*.<sup>44</sup> However, a *relevant person* may benefit from the care of more than one employee over the course of their life.

The Social Welfare Act 2000 introduced a new Carer's Benefit scheme which provides for the payment of Carer's Benefit to persons who comply with the specific requirements laid down in the Act. An employee may qualify for carer's leave even if he/she does not qualify for Carer's Benefit. Similarly, an employee may qualify for Carer's Benefit but not carer's leave.<sup>45</sup>

A child in respect of whom a Domiciliary Care Allowance is payable is considered to be a child in need of full-time care and attention and, therefore, no other qualifying medical certification is required for the purpose of carer's leave and/or Carer's Benefit.

During Group discussions, the view was expressed that carer's leave is linked to medical grounds more so than parental issues. It was argued that an increase in the maximum age of the child in respect of entitlement to parental leave in the case of children with disabilities would reflect the fact that special considerations arise in the case of children with disabilities, for example, school arrangements may be different for children with disabilities.

### **(iii) Domiciliary Care Allowance<sup>46</sup>**

Domiciliary Care Allowance (DCA) is a monthly allowance paid and administered by Health Boards in respect of children who are so severely physically or intellectually disabled that they require constant care or supervision which is substantially in excess of that normally required by a child of the same age. The fact that a severe disability is present does not automatically justify

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<sup>42</sup> Applies to eligible children until the age of 16 years old.

<sup>43</sup> On one occasion only, an employee may commence carer's leave in respect of a *relevant person*, while already on leave in respect of another *relevant person*, where the two relevant persons reside together – total amount of leave: 130 weeks (65 weeks per *relevant person*).

<sup>44</sup> *Carer's Leave Act 2001- Explanatory Booklet for Employers and Employees*, [www.entemp.ie](http://www.entemp.ie).

<sup>45</sup> Where an employee is not entitled to Carer's Benefit, they may be entitled to Carer's Allowance subject to a means test – *Carer's Benefit* – Department of Social, Community and Family Affairs Leaflet, SW49.

<sup>46</sup> A summary of the Department of Health and Children's presentation to the Group is at Appendix XI.

the payment of an allowance – the presence of the disability must necessitate constant care as already defined. It is not practice to debar particular conditions from consideration – each case is considered on its merits. The allowance is available from the date of application<sup>47</sup> to 16 years of age. The child’s disability must be present at the time of the application and be likely to continue for at least one year. The allowance may be discontinued where the child no longer requires this high level of care and attention. The means of the parent(s) / guardian(s) are not taken into account in determining eligibility for the DCA, however the means of the child are taken into consideration and where the means are in excess of the amount of the allowance, DCA is not awarded. “Means” in this context would include payments of compensation in respect of injuries or disabilities sustained, for example, court settlements. However, the need for a high level of care and attention remains.

Payment of the DCA is continued while the child is absent from the home while on holidays or undergoing short courses of treatment in hospital. However, where the child’s absence from the home exceeds 2 months the payment is discontinued. The allowance is not paid in respect of children maintained on a full-time basis in special residential schools/institutions. However, DCA will be paid on a pro-rata basis for periods spent at home (e.g. weekends or holidays) by eligible children who attend special residential schools or institutions.

The total number of children in receipt of Domiciliary Care Allowance as at the end of December 2000 was 10,570.

#### ***(iv) Possible definition of disability***

It was agreed by the Group that before considering the issue of increasing the age limit in respect of entitlement to parental leave in the case of children with disabilities, an appropriate definition of disability would need to be identified. In this context, the Group examined the following definitions of disability –

- the definitions in the Employment Equality Act 1998 and the Equal Status Act 2000;
- the definition in the National Disability Authority Act 1999; and
- a definition of disability based on entitlement to Domiciliary Care Allowance.

The definition of disability used for the purposes of Domiciliary Care Allowance is children whose physical or intellectual disability is so severe that they require from another person constant care or supervision i.e. continual or continuous care or supervision substantially greater than that which would normally be required by children of the same age. It was agreed by the Group that this is the most appropriate definition for the purposes of the Parental Leave Act.

#### ***(v) Administrative difficulties***

A view was expressed that the proposal to increase the maximum age requirement to 16 years old in respect of children with disabilities would create serious administrative difficulties, for example, the need to keep records for 16 years. It was agreed by the Group that the provision for the extension of the entitlement to parental leave in respect of children with disabilities should not as far as practicable create any additional administrative burden for employers.

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<sup>47</sup> The requirement that the disability be present for at least 6 months prior to the date of application was abolished from 1 April 2001.

## **(vi) Comparative situation in EU Member States**

Details of special provisions in force in some EU Member States in respect of children with disabilities are set out in Table 1, Chapter 2. In the UK, the maximum age applicable to children with disabilities is 18 years old (ordinarily the maximum age is 5 years old). On 25 April 2001, the Secretary of State for Trade and Industry in the UK announced the UK Government's intention to extend parental leave entitlement in respect of children with disabilities to 18 weeks (13 weeks ordinarily).<sup>48</sup> In Belgium, the age applicable to children with disabilities is 8 years old (ordinarily the maximum age is 4 years old). In Portugal, special leave may be taken for a maximum of 4 years to care for children with disabilities or children who are chronically ill; parents with children under 12 years old or children with disabilities are entitled to part-time work or flexibility in working patterns for up to 3 years.<sup>49</sup> Portugal also provides generous *force majeure* leave entitlements; parents/guardians of children with disabilities are entitled to 30 days leave in the event of his/her child, aged under 10 years old, suffering from an illness or accident. This period may be extended where the child is hospitalised. The entitlement, in the case of children over 10 years of age, is to 10 days leave. If this period is unpaid by the employer, 65% of the employee's normal wage is payable through a social security benefit.<sup>50</sup> In Spain there is a right to reduced working hours (by 50%) with reduced pay until the child is 6 years old or longer in the case of a child with a disability.<sup>51</sup>

The introduction of the Carer's Leave Act 2001 in Ireland provides a significant entitlement (a maximum of 65 weeks unpaid leave per *relevant person*) for employees to carer's leave to enable them to care personally for persons (including children) who require full-time care and attention. Ireland is the only EU Member State which provides for this type of leave.

### **Recommendation**

The Group recommends that in the case of a child with a disability, the maximum age of the child in respect of whom employees may take parental leave should be increased to 16. The administration difficulties arising as a result of the increase should be considered. For the purposes of this recommendation a child with a disability should be defined as a child in respect of whom a Domiciliary Care Allowance is (or would be if the child had satisfied the means test to qualify for DCA) payable. A maximum age of 16 should also apply in the case of adoptive children with disabilities.

## **7. Broadening the entitlement**

### **Current position**

The Parental Leave Directive (96/34/EC) [Clause 2(1) of the Framework Agreement] provides for an individual right for men and women workers to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child. The Framework Agreement annexed to the Directive sets out minimum requirements in relation to parental leave and *force majeure* leave and allows Member States the option of providing more favourable provisions than those set out in the Framework Agreement.

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<sup>48</sup> Reply by the Secretary of State for Trade and Industry to a parliamentary question (25 April 2001) in the House of Commons, [www.dti.gov.uk/er/parental.htm](http://www.dti.gov.uk/er/parental.htm) (parental leave rights to be extended)

<sup>49</sup> *Analysis of the Implementation of the Parental Leave Directive in EU Member States*, ETUI, October 2000.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Parental Leave in European Union Countries*, European Network 'Family and Work' and New Ways to Work, 1998 & *Care in Europe, Joint Report of the 'Gender and Employment' and 'Gender and Law' Groups of Experts*, Luxembourg, 1998.

Section 6 of the Parental Leave Act entitles a natural or adoptive parent of a child to a period of 14 weeks parental leave to enable him/her to take care of the child.

### ***Proposals considered by the Working Group***

- The entitlement to parental leave should not be restricted to natural or adoptive parents only (ICTU).
- The right to parental leave should be extended beyond natural/adoptive parents to those acting in *loco parentis* to a child including same sex partners (Equality Authority/NWCI).

The Group discussed *broadening the entitlement* in terms of:

- (i) Categories of persons excluded from parental leave entitlement;
- (ii) Child centred approach to parental leave entitlement;
- (iii) Practical difficulties of extending the entitlement to persons other than parents;
- (iv) Comparative situation in EU Member States.

#### ***(i) Categories of persons excluded from parental leave entitlement***

A number of categories of persons who actively parent but are not entitled to parental leave were identified: foster parents; persons in unions where one partner is neither the natural nor adoptive parent (e.g. persons who, following a divorce, create a new union [remarriage or otherwise] and choose not to [or cannot] adopt the children of their new partner); and persons who are in *loco parentis*.

The Department of Health and Children<sup>52</sup> was consulted in relation to the issue of providing parental leave to foster parents. That Department indicated that fostering is very different from adoption, as the child may be placed with carers for a short, medium or long period of time, depending on the nature of the placement. It is not always clear from the beginning of the placement whether the placement will be short, medium or long-term. Many of the children entering foster care are of an age where, unlike infants, 24 hour care is not necessary as the child is of school-going age. Foster care placements may break down for a variety of reasons and children may therefore be the subject of a number of foster care placements of varying durations.

A comprehensive review of foster care was recently completed by a Working Group set up by the Department of Health and Children.<sup>53</sup> The main concern of the Working Group was to review the current service and make recommendations that would enhance the delivery of a high quality service to improve the life chances of children in foster care and promote the best possible outcomes for them. As part of its deliberations, the Working Group engaged in an extensive consultation process with people and organisations involved in fostering. The issue of parental leave did not arise in the context of the review.

#### ***(ii) Child centred approach to parental leave entitlement***

During Group discussions, it was argued that the purpose of an entitlement to parental leave is to facilitate people who have responsibility for young children and work commitments outside the home, to combine their dual roles to the mutual benefit of their children and their work lives.

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<sup>52</sup> A summary of the Department of Health and Children's presentation to the Group is at Appendix XII.

<sup>53</sup> *Report of the Working Group on Foster Care, Foster Care – A Child Centred Partnership*, Department of Health and Children, May 2001.

It was acknowledged that the extension of the entitlement to parental leave beyond natural/adoptive parents would cater for the categories of people, outlined in paragraph (i), who actively parent and that such an extension to the entitlement would more accurately reflect the current social realities. It was argued that the needs of the eligible children are central and that parental leave entitlement should focus on the actual caring relationships in place. It was noted that the Government has made commitments to promoting family friendly policies both at national and EU level.

### **(iii) Practical difficulties of extending the entitlement**

The Parental Leave Act provides that the purpose of parental leave is to enable men and women workers to take time off work to enable them to care for a child. The Act does not provide that the parent has to live with the child on a permanent basis. Even if a parent is not caring for a child at a particular time, it would not be appropriate or possible for an employer to determine that the natural mother or father would not be entitled to parental leave at some time before the child reaches 5 years. In the event of the extension of the entitlement to parental leave to persons other than parents, for example the partner of a parent, a situation could arise where more than two employees could seek parental leave in respect of a child. During Group discussions it was argued that any proposal to extend parental leave to persons other than natural or adoptive parents could create uncertainty and disputes in relation to whom is entitled to the leave. It was acknowledged that any proposal would need to be carefully worded in order to minimise the potential for such uncertainty and disputes.

Equally, it was argued that no major practical difficulties would arise in establishing that a person is in *loco parentis* to a child. Although, not legally defined in Irish legislation, the phrase is used in the definition of family status in the Employment Equality Act 1998 and the Equal Status Act 2000 and is used in relation to the payment of Child Benefit by the Department of Social, Community and Family Affairs. The concept is also used in relation to entitlement to *force majeure* leave in the Parental Leave Act 1998. It was argued that the phrase, in *loco parentis*, has a distinct legal meaning.<sup>54</sup>

Under section 8(6) of the Act an employee can be required to produce evidence in relation to his/her entitlement to parental leave, for example, the child's date of birth, the date of the adoption order or evidence of parentage. In the absence of a legal relationship between the employee and the child, difficulties would arise in determining who is entitled to parental leave in respect of a particular child. Furthermore, the framing of a provision for a transfer of parental leave from a natural/adoptive parent to a third party without reference to the natural/adoptive parent would be constitutionally difficult in view of the role of parents in the Constitution.

### **(iv) Comparative situation in EU Member States**

In the UK, an employee is entitled to parental leave if he/she has responsibility for a child. An employee has responsibility for a child if he/she has 'parental responsibility' under the relevant UK legislation<sup>55</sup> or if the father has been registered as the child's father.

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<sup>54</sup> Murdoch's Dictionary of Irish Law defines in *loco parentis* – "[In the place of a parent]. A person who is not the parent of a particular child but takes on himself parental offices and duties in relation to the child."

"Any situation where one person assumes moral responsibility, not binding in law, to provide for the material needs of another": O'Hanlon J. in *Hollywood -v- Cork Harbour Commissioners* [1992] 2 IR 457 at 465.

"The court does not require the assumption of a clear and definite obligation to provide financially for the person in question": *Waters -v- Cruickshank* [1967] IR 378.

<sup>55</sup> Section 3 of the Children Act 1989 and section 1(3) of the Children (Scotland) Act 1995.

The concept of parental responsibility is not incorporated in Irish legislation.

### **Recommendation**

Having considered the matter, the Group recommends that a workable legal formula be developed to extend parental leave entitlement to persons acting in *loco parentis* in respect of an eligible child.

## **8. Notification requirements**

### **Current position**

The Parental Leave Directive [Clause 2(3)(d) of the Framework Agreement] provides that Member States and/or management and labour may establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave.

Section 8(1) of the Parental Leave Act 1998 provides that an employee must give written notice to the employer of his/her intention to take parental leave, not later than 6 weeks before the employee proposes to commence the leave. The notification must specify: the date the employee intends to commence parental leave; the duration of the leave; and the manner in which he/she proposes to take the leave. The employer may, at his/her discretion, waive all or part of the notification period. Once the employee has given notice of the intention to take parental leave, the employer and the employee must prepare a 'confirmation notice', no later than four weeks before the parental leave is due to begin.

### **Proposals considered by the Working Group**

- The period of notice to the employer should be reduced (ICTU).
- In situations of critical family emergencies, the employee should not be obliged to provide 6 weeks' notice to the employer. Leave taken for this purpose should not exceed 2 weeks in any calendar year and should not exceed 3 weeks in total. Where possible, the employee should endeavour to provide advance notice, preferably at least 1 week in advance, of his or her need to take leave for a critical family emergency (NWCI).
- Where exceptional circumstances apply, the notice period should allow for the employers being informed "as soon as practicable" (Equality Authority).

The Group discussed the *notification requirements* in terms of:

- (i) Parental leave required in an emergency;
- (ii) Employers' time requirements to arrange for replacement of an employee on parental leave;
- (iii) Comparative situation in EU Member States.

### **(i) Parental leave required in an emergency**

Currently, a 6 week notice period is required in all applications for parental leave. This requirement is justifiable where an employee takes planned parental leave, for example, immediately following maternity or adoptive leave. During Group discussions, it was argued that many employees need to take parental leave because of crises upsetting their childcare arrangements or because of the medical circumstances of their child or indeed the hospitalisation of their child. In the event of such

crises, an employee will not be in a position to wait 6 weeks to avail of the parental leave. In such circumstances, if the employee is not able to avail of parental leave he/she may be forced to leave the employment. However, a reduction in the notification period would not solve the emergency childcare situation as in such a situation the employee is likely to need to take leave immediately. During Group discussions, it was argued that the orderly and continued operation of a business requires that there is a clear distinction between planned parental leave and leave for emergency situations and that any proposals for a statutory entitlement to 2 weeks parental leave without prior notice where the leave is urgently required is an issue which is more appropriate to the section of the Act that deals with *force majeure* leave. During Group discussions, the Irish Business Employers' Confederation voiced strenuous opposition to the application of parental leave in the proposed fashion and expressed the view that the proposal represents the introduction of a third type of leave under the Act, aside from parental and *force majeure* leave.

***(ii) Employers' time requirements to make arrangements for replacement of an employee on parental leave***

An employer requires notice of an employee's intention to take parental leave in order to consider how the employee's job will be performed during his/her absence on parental leave. For example, the employer may need to engage a replacement employee or to re-arrange the duties of other employees. The legislation needs to address the realities of the timescale which an employer might require to recruit a replacement employee or to arrange any necessary re-organisation or re-scheduling of the work of the organisation. The results of the attitudinal research show that 4% of employers find that the existing 6 weeks notice period is too short in order to fully train a replacement. During Group discussions, it was argued that any proposal to reduce the notification requirement in the event of an emergency/crisis would create difficulties. A reduction in the notification period would be unrealistic and would be likely to result in an increase in the incidence of postponements of parental leave. The definition of an emergency/crisis would be subjective and difficulties would arise in the application of a provision to cater for such scenarios with cases, inevitably, being referred to the redress system for determination. An employer may waive his/her right to the notification period required by the Act, however the statutory 6 week notification period enables the employer to require the employee to give 6 weeks notice where this is necessary for business reasons.

***(iii) Comparative situation in EU Member States***

Details of the notice requirements in EU Member States are set out in Table 3, Chapter 2. The period of notice which employees are required to give the employer varies from 10 days in Portugal and 15 days in Italy to 4 months in Luxembourg and within 4 weeks of the birth or promptly on adoption in Austria.

The *force majeure* leave provisions in some EU Member States may help alleviate parents' predicaments when emergencies arise where, due to the illness of a child, the child requires parental care. For example, Portugal provides 30 days *force majeure* leave which may be extended if the child is hospitalised. Sweden provides an entitlement of 60 days, which may be extended to 120 days in special circumstances. Details of the *force majeure* leave provisions in other EU Member States are set out in Table 5, Chapter 2.

***Recommendation***

The majority of the Group recommends that the requirement to give 6 six weeks' notice of the proposal to take parental leave should not apply in cases where parental leave is urgently required

in respect of a relevant child on medical grounds. Leave taken for this purpose shall not exceed 2 weeks in any calendar year, subject to a maximum of 2 absences per year, and shall not exceed 3 weeks in total. In such circumstances, the employee in accordance with Regulations, will be required to give the employer notice (and possible medical evidence, if feasible) of the proposal to take such leave and the reason the leave is required as soon as is reasonably practicable and in any event not later than the date of commencement of the leave.

The Department of Finance, the Irish Business and Employers' Confederation and the Irish Co-operative Organisation Society do not support the recommendation.

## 9. Sickness while on parental leave

### ***Current position***

Section 14(1) of the Parental Leave Act provides that during an absence on parental leave an employee is regarded as being in the employment of the employer and retains all of his/her employment rights (except the right to remuneration and superannuation benefits or any obligation to pay contributions in or in respect of the employment). Section 14(2) of the Act states: "*Absence from employment while on parental leave shall not be treated as part of any other leave from employment (including sick leave, annual leave, adoptive leave, maternity leave and force majeure leave) to which the employee is entitled.*"

### ***Proposal considered by the Working Group***

- The Group agreed to consider whether the Act should clarify how, in the event of illness, an employee's parental leave should be treated.

The Group discussed *sickness while on parental leave* in terms of implications of current provisions.

### ***Implications of current provisions***

Both the Parental Leave Directive and the Parental Leave Act provide that the purpose of parental leave is to enable men and women workers to take time off work to enable them to care for a child. If a parent on parental leave becomes unable to care for the child on account of illness it may reasonably be concluded that that parent is unable to avail of the parental leave entitlement and ought to be able to benefit from sick leave for the duration of the illness. As matters stand, no express provision is made in either the Directive or the Act for such a situation so that agreement may need to be reached in accordance with section 10(2) of the Act. Section 10(2) prescribes that it is only with the agreement of the employer that any alteration to the parental leave arrangement can be made following the signing of a confirmation document by both parties.

The Attorney General's office has advised that the Parental Leave Act (section 14) and the Parental Leave Directive both have the purpose that parental leave is without prejudice to employee employment rights generally including the right to sick leave. They also advised that if a parent becomes ill while on parental leave and as a result is unable to care for the child then that parent is unable to avail of the parental leave entitlement and is entitled to benefit from sick leave for the duration of the illness, and therefore a legislative amendment is required.

### ***Recommendation***

The Group recommends that the Act be amended in accordance with the legal advice from the Attorney General.

## 10. Force majeure leave

### **Current position**

The Parental Leave Directive (96/34/EC) [Clause 3(1) of the Framework Agreement] provides that Member States and/or management and labour shall take the necessary measures to entitle workers to time off from work, in accordance with national legislation, collective agreements and/or practice on grounds of *force majeure* for urgent family reasons in cases of sickness or accident making the immediate presence of the worker indispensable. Clause 3(2) provides that Member States and/or management and labour may specify the conditions of access and detailed rules in relation to *force majeure* leave. Member States may also limit this entitlement to a certain amount of time per year and/or per case.

Section 13 of the Parental Leave Act 1998 provides that an employee is entitled to paid *force majeure* leave for urgent family reasons owing to the injury or illness of an immediate family member, in circumstances where the presence of the employee, at the place where the family member is ill or injured, is indispensable. The entitlement is to 3 days *force majeure* leave in a 12 month period or 5 days *force majeure* leave in a 36 month period. An immediate family member is defined in section 13(2) as a child or adoptive child, a spouse or a person with whom the employee is living as husband or wife, a person to whom the employee is in *loco parentis*, a brother or sister or a parent or grandparent. Section 14 of the Act provides that during an absence on *force majeure* leave an employee is regarded as being in the employment of the employer, and retains all of his/her employment rights.

Section 13(3) provides that as soon as reasonably practicable after his/her return to work after an absence on *force majeure* leave, an employee must confirm to his/her employer that he/she has taken the leave. The notice must specify the dates on which the leave was taken and contain a statement of the facts entitling the employee to *force majeure* leave.

Section 13(5) provides that where an employee is absent from work on *force majeure* leave for only part of the period during which he/she is required to work on the given day, the employee is deemed to have availed of one (full) day of *force majeure* leave.

### **Proposals considered by the Working Group**

- Employers are applying a very restrictive approach to *force majeure* leave, effectively making the legislation unavailable to many workers and in many cases a source of conflict rather than a means to facilitate workers to have a short period of leave for urgent family reasons.

Section 13(1) should be expanded to include the following reasons for taking *force majeure* leave:

- to make longer term arrangements for a person specified in subsection (2), who is ill or injured;
- assault of a person specified in subsection (2), including hurt or distress;
- breakdown in care arrangements, e.g. where a child minder or nurse fails to turn up;
- to deal with an incident during school hours e.g. fight or suspension (ICTU).

- The Review Group should clarify that all the grounds covered by the Employment Equality Act are covered in the Parental Leave Act 1998, for example:
  - sexual orientation, i.e. same sex couples;
  - family status;
  - marital status;
  - any person who depends on the employee for assistance (ICTU).
- The calculation of an employee’s absence from work as one full day even when the employee is absent for part only of the day is unfair to employees and should be removed. Where only a part of a day is taken, it shall be deemed to be part of that day, e.g. 4 hours of an 8 hour working day shall be deemed to be half of one day. Absences should be calculated on a pro rata basis (ICTU).
- Entitlement to payment in respect of *force majeure* leave should be removed (IBEC).
- Section 13 of the legislation in respect of *force majeure* leave needs to be expanded considerably to give employers more guidance on the granting of this leave. (Department of Finance).
- The Act’s provisions in relation to *force majeure* leave should be amended to:
  - allow for the actual hours taken to decide the time off work counted;
  - establish the circumstances in which *force majeure* leave can be taken in terms of “urgent family reasons” and “exceptional family circumstances” and in terms of the presence of the employee being “reasonably required” ;
  - include partners in a same sex relationship (Equality Authority).

The Group discussed *force majeure* leave in terms of:

- (i) The operation of current *force majeure* provisions;
- (ii) Consistency between the Parental Leave Act and the Employment Equality Act 1998;
- (iii) Comparative situation in EU Member States.

**(i) The operation of current force majeure provisions**

Research carried out as part of the review has shown that 2% of the labour force have availed of *force majeure* leave since the Act came into force on 3 December 1998. However, the *force majeure* leave provision has given rise to the vast majority of cases referred to the Rights Commissioners.<sup>56</sup> In addition, the Employment Appeals Tribunal has issued some 12 determinations under the Parental Leave Act 1998 in the period up to 21 May 2001; 11 of the determinations related to the *force majeure* leave provision. By and large, the issues relating to *force majeure* leave which have given rise to dispute between the parties, have centred on the interpretation given to the following words – *urgent family reasons, immediate presence and indispensable* as set out in section 13(1) of the Act. To date, appeals of two EAT decisions under the Parental Leave Act 1998 have been brought before the High Court by a party to proceedings on a point of law – both cases related to *force majeure* leave.

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<sup>56</sup> 34 cases out of 57 referred to the Rights Commissioners in 1999 under the Parental Leave Act 1998 related to the *force majeure* leave provision; and 35 out of 42 cases referred in 2000 related to *force majeure* leave.

The employee in question in the first case appealed to the High Court from a majority decision of the EAT, which had rejected her claim to an entitlement to *force majeure* leave. The High Court decision in this case, *Carey -v- Penn Racquet Sports Limited*,<sup>57</sup> has given guidance to the Employment Appeals Tribunal and the Rights Commissioners regarding the application of the *force majeure* leave provisions. In upholding the employee's appeal Carroll J. determined that:

- *Force majeure* leave should be looked at from the employee's point of view at the time the decision was made not to go to work;
- The urgency of the family reasons and the question of whether the employee's presence with a family member was indispensable should not be judged with hindsight;
- The employee cannot be assumed to have medical knowledge not possessed.

In the second case<sup>58</sup> before the High Court, McCracken J. noted that the only appeal to the High Court is on a point of law, and determined that it is a question of fact as to whether an employee's immediate presence was or was not indispensable. He added that the Tribunal must determine that fact only by looking at the circumstances that were known at the time the employee decided to stay at home. He said that it is not open to the High Court to look at those circumstances and decide that the court would have reached a different decision, provided the Tribunal did not err in law.

The Parental Leave Directive (96/34/EC) does not provide for paid *force majeure* leave, employers therefore feel payment should be removed. Employers consider that entitlement to paid *force majeure* leave requires a high level of control to avoid abuse, they consider that the onus is on employees to prove their entitlement to such leave. However, any amendments which would reduce an employee's entitlements, for example, if the leave were no longer to attract payment, would not be acceptable to employees. During Group discussions, it was argued that entitlement to *force majeure* leave is particularly significant to employees who have set annual leave periods. It was noted by the Group that the current provisions do not provide for bereavement leave, however most employers allow some leave in the event of a bereavement.

The Group discussed the possibility of providing clarification on the interpretation of the *force majeure* provisions under the Parental Leave Act 1998. Employers consider that every scenario could never be provided for and that case law is actively developing guidelines on the application of the provisions. It was noted that the National Framework for the Development of Family Friendly Policies at the level of the Enterprise,<sup>59</sup> which was agreed between IBEC, Public Sector Employers and ICTU, includes an agreement to develop a Code of Practice, within the context of the existing legislative framework, on the manner in which statutory parental and *force majeure* leave can be taken.

## ***(ii) Consistency between Parental Leave Act and Employment Equality Act 1998***

Section 13 of the Parental Leave Act provides for *force majeure* leave for "*urgent family reasons*" and may be availed of when a family member is ill or injured. The section specifies the categories of person in respect of whom the leave may be taken and includes "*the spouse of the employee or a person with whom the employee is living as husband and wife*". The Employment Equality

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<sup>57</sup> Employment Appeals Tribunal PL11/1999 (Mullingar 3 April 2000); High Court No. 2000/295Sp (Carroll J.), 24 January 2001.

<sup>58</sup> Kevin McGaley-v- Liebherr Container Cranes Limited, Employment Appeals Tribunal PL18/1999 (Killarney 15 February 2000); High Court No. 2001/234Sp (McCracken J.), 19 October 2001.

<sup>59</sup> Programme for Prosperity and Fairness, Framework I Annex IV.

Act 1998 prohibits discrimination in relation to employment on nine grounds including sexual orientation. Furthermore, EU Directive 2000/78/EC provides for the prohibition of discrimination in relation to employment and occupation on a number of grounds<sup>60</sup> including sexual orientation. Member States are required to implement this Directive by 2 December 2003.<sup>61</sup>

The law in relation to the rights of same sex partners remains unclear and EU countries are still on policy grounds declining to treat same sex partners in the same way as opposite sex partners. However, Member States will have to consider this issue in the context of the implementation of Directive 2000/78/EC. The courts in this country have been reluctant to find violations of the equality edict in Article 40.1 of the Constitution, and the State's entitlement, provided for in that Article, to "have due regard to differences in capacity, physical and moral, and of social function" may continue to justify differential treatment between same sex partners and opposite sex partners.

### ***(iii) Comparative situation in EU Member States***

Details of *force majeure* provisions in EU Member States are set out in Table 5, Chapter 2. *Force majeure* leave provisions vary between EU Member States in terms of payment, the length of time afforded to employees in crisis situations and eligibility criteria applied.

### ***Recommendation***

The Group considered this issue and recommends that:

- the Act should be amended to provide a statutory basis for the development of Codes of Practice in relation to *force majeure* and parental leave; and
- the issue of *force majeure* leave in respect of same sex partners be addressed.

The majority of the Group recommend that provision be made for a half day's *force majeure* leave. The Department of Finance and the Irish Business and Employers' Confederation do not support the recommendation.

## **11. Employment rights**

### ***Current position***

The Parental Leave Directive [Clause 2 of the Framework Agreement] requires Member States and/or management and labour to provide for the protection of workers against dismissal on the grounds of an application for, or the taking of, parental leave and the protection of workers' rights to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship. It also provides that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. It is a matter for Member States and/or management and labour to define the status of the employment contract or employment relationship for the period of parental leave.

Sections 14 to 16 of the Parental Leave Act 1998 transpose the relevant provisions of the Directive into Irish law. The dismissal of an employee, as a result of the exercise or proposed exercise of

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<sup>60</sup> The grounds covered by Directive 2000/78/EC are religion or belief, disability, age or sexual orientation.

<sup>61</sup> In order to take account of particular conditions, Member States may, if necessary, have an additional period of 3 years from 2/12/2003 (i.e. a total of 6 years) to implement the provisions of the Directive on age and disability.

the right to parental leave or *force majeure* leave or refusal to allow an employee to return to work following parental leave is regarded as an unfair dismissal for the purposes of the Unfair Dismissals Acts 1977 – 2001 unless there are substantial grounds justifying the dismissal. An employee is entitled to return to his/her job following parental leave. If it is not reasonably practicable for an employer to allow an employee to return to the job, the employee must be offered suitable alternative employment under a new contract of employment. Work under a new contract of employment constitutes suitable alternative work for the purposes of the Act if –

“(a) it is of a kind that is suitable in relation to the employee concerned and appropriate for the employee to do in the circumstances, and

(b) the terms or conditions of the contract relating to the place where the work under it is required to be done, the capacity in which the employee concerned is to be employed and any other terms or conditions of employment are not substantially less favourable to the employee than those of his or her contract of employment immediately before the commencement of the period of absence from work while on parental leave.” (section 16(2)).

### **Proposal considered by the Working Group**

- Section 16(2) of the Act should be expanded to include a third criterion, namely, “(c) the continuity of service is preserved” (ICTU).

This issue was considered in comparison with the corresponding provisions in the Carer’s Leave Act 2001.

### **Comparison between the Parental Leave Act 1998 and the Carer’s Leave Act 2001**

The protection of employment rights under the Parental Leave Act 1998 was compared with provisions of the Carer’s Leave Act 2001.

Section 16 of the Parental Leave Act provides that if it is not reasonably practicable for an employer, or his/her successor, to allow an employee to return to the job held immediately prior to the leave, the employee must be offered suitable alternative employment under a new contract of employment. A similar provision is contained in section 15 of the Carer’s Leave Act. Section 15(2) of the Carer’s Leave Act specifies the conditions which must be satisfied in order for work to be considered “*suitable alternative employment*” for the purposes of section 15(1) of that Act. In addition to provisions analogous to section 16(2) of the Parental Leave Act, the Carer’s Leave Act (section 15(2)(c)) provides that “*the continuity of service is preserved*”. While no such provision is included in the Parental Leave Act 1998 it would appear to be implied by the Act as the Act specifically provides that during an absence on parental leave, an employee retains his/her employment rights (other than the right to remuneration or superannuation benefits or any obligation to pay superannuation contributions in or in respect of the employment).

### **Recommendation**

The Group considered this issue and recommends that, for the avoidance of doubt in relation to this issue, section 16(2) of the Parental Leave Act should be amended to include a provision similar to section 15(2)(c) of the Carer’s Leave Act 2001.

## 12. Protection of employees from penalisation

### **Current position**

The Parental Leave Act is silent in relation to the protection of an employee from penalisation for proposing to exercise or having exercised his/her entitlements to parental leave or *force majeure* leave.

### **Proposal considered by the Working Group**

- The Working Group should clarify whether or not the provisions of the Employment Equality Act 1998 cover all of the situations that may arise in relation to parental leave, in so far as that Act provides for the protection of employees from penalisation. If the Employment Equality Act 1998 does not provide total protection in regard to all of the situations that may arise in relation to parental leave then a new subsection should be added to Part III of the Parental Leave Act 1998 to ensure that employees are adequately protected from penalisation by their employer (ICTU).

The Group considered this issue in terms of:

- (i) The protection offered by the Employment Equality Act 1998;
- (ii) The Carer's Leave Act 2001.

### **(i) Employment Equality Act 1998**

The Employment Equality Act 1998 prohibits discrimination in relation to employment on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community. An employee who considers that he/she has been penalised because of proposing to exercise or having exercised his/her entitlements to parental leave or *force majeure* leave under the Parental Leave Act might be able to claim that the treatment amounted to direct or indirect discrimination on the grounds of family status or on grounds of gender or marital status.

### **(ii) Carer's Leave Act 2001**

The Carer's Leave Act (section 16) provides for the protection of an employee from penalisation for proposing to exercise or having exercised his/her right to carer's leave. Penalisation is defined to include dismissal of the employee; unfair treatment of the employee, including selection for redundancy; and an unfavourable change in the conditions of employment of the employee.

### **Recommendation**

The Group considered this issue and recommends that for the avoidance of doubt in relation to the protection of an employee from penalisation, the Parental Leave Act should be amended to protect an employee from penalisation for proposing to properly exercise or having properly exercised his or her entitlement to parental leave or *force majeure* leave.

## 13. Awareness raising in relation to the Parental Leave Act 1998

### **Current position**

Section 39 of the Employment Equality Act 1998 (as amended by the Parental Leave Act 1998) provides that the statutory functions of the Equality Authority include "to provide information to the public on the working of the Parental Leave Act 1998".

The research into the attitudes of employers and employees in relation to parental and *force majeure* leave found that:

**Employees:**

- 87% of employees had heard of parental leave, however 45% cited the lack of available information as the main source of their dissatisfaction with their understanding of the provisions of the Parental Leave Act 1998;
- 79% of employees had heard of *force majeure* leave, however 27% cited a lack of available information as the main source of their dissatisfaction with their understanding of the provisions of the Parental Leave Act 1998.

**Employers:**

- 84% of employers had heard of parental leave, however 15% cited a lack of available information as the main source of their dissatisfaction with their understanding of the provisions of the Act and another 15% cited that the legislation was not publicised enough;
- 60% of employers had heard of *force majeure* leave, however 40% felt that the provisions of the Act were 'difficult' or 'very difficult' to interpret.

In its annual report for 2000 the Equality Authority stated that 2316 or 25% of its total enquiries that year were in relation to the Parental Leave Act 1998. This compares with a similar figure of 25% for maternity and/or adoptive leave. The Equality Authority has prepared an explanatory booklet on the Act, which is attractively produced and accessible and available free of charge on request. The text of the booklet is also available on the Equality Authority's own web site ([www.equality.ie](http://www.equality.ie)). In August 2001, the Equality Authority reorganised its information giving role, including information on the Parental Leave Act. It established a Public Information Centre which is equipped with up-to-date telephone and computer systems to provide an enhanced service to the public. Standard public presentations on the Equality Authority include a feature on parental leave. Parental Leave Act information is normally available on information stands staffed by the Equality Authority and is contained in the standard Equality Authority information pack.

The National Framework for the Development of Family Friendly Policies at the level of the Enterprise developed a family friendly policies website ([www.familyfriendly.ie](http://www.familyfriendly.ie)), which is administered by the Equality Authority. This website includes frequently asked questions and responses in relation to entitlements under the Parental Leave Act.

**Recommendation**

The Group recommends that the Equality Authority should, following the enactment of any amendments to the Act on foot of this review, ensure that these amendments secure a profile within the information strategy on the Parental Leave Act. The Group recommends that the Social Partners should participate in the dissemination of information in relation to the Parental Leave Act 1998. Other channels should be used for the dissemination of information, where appropriate.

## 14. Period of appeal of Rights Commissioner decisions

### **Current position**

The Parental Leave Directive [Clause 4(5) of the Framework Agreement] provides that the prevention and settlement of disputes and grievances in relation to parental and *force majeure* leave is a matter for national law, collective agreements and practices.

Section 19 of the Parental Leave Act provides for an appeal from a decision or direction of a Rights Commissioner to the Employment Appeals Tribunal within 4 weeks of the decision of the Rights Commissioner.

### **Proposal considered by the Working Group**

- In line with other employment legislation, other than maternity protection and adoptive leave legislation, the period of appeal of a Rights Commissioner's decision to the Employment Appeals Tribunal should be extended from 4 weeks to 6 weeks (Rights Commissioner).

### **Recommendation**

As other legislation which provides a right to similar types of leave (e.g. maternity, adoptive and carer's leave) has a 4 week period of appeal, the Group recommends that the period of appeal should remain at 4 weeks to keep it consistent with these other pieces of legislation.

## Part C

### ***Issues discussed where no recommendations are made by the Group***

## 15. Service requirement

### **Current position**

The Parental Leave Directive (96/34/EC) [Clause 2(3)(b) of the Framework Agreement] stipulates that Member States and/or management and labour may make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification not exceeding 1 year.

Section 6(4) of the Parental Leave Act 1998 provides that an employee must have at least one year's continuous service with the employer before he/she is entitled to avail of parental leave<sup>62</sup>. However, section 6(8) provides that where the child is approaching the age threshold (5 years except in certain cases of adoption) and the employee has more than 3 months' but less than one year's service with the employer, he/she is entitled to *pro rata* parental leave. In such a case the employee is entitled to one week's leave for every month of continuous employment completed with the employer when the leave begins.

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<sup>62</sup> Special arrangements apply to children born between 3 December 1993 and 2 June 1996.

### ***Proposals considered by the Working Group***

- It was agreed by the Group to look at the requirement to have one year's continuous service in the employment before having an entitlement to the full 14 weeks parental leave entitlement.
- The requirement to have 12 months continuous service in the employment before having an entitlement to the full 14 weeks parental leave is a barrier to many employees who may work in the same sector but move from employer to employer. This provision does not reflect the realities of the employment patterns of many workers (ICTU).
- There should be no service requirement for the taking of parental leave (Equality Authority).

The Group discussed the *service requirement* in terms of:

- (i) Implications of current provisions for employers and employees;
- (ii) Comparative situation in EU Member States.

#### ***(i) Implications of current provisions for employers and employees***

As a general rule,<sup>63</sup> an employee must avail of parental leave entitlement before the child reaches 5 years of age. As employees must avail of their parental leave entitlements within a specific timeframe, the current requirement for 12 months continuous employment, with an employer from whose employment the parental leave is taken, may act as an obstacle for employees to avail of their entitlement. The Maternity Protection Act 1994 and the Adoptive Leave Act 1995 do not contain service requirements. Employees may wish to use parental leave to supplement their maternity or adoptive leave entitlements. The 12 month service requirement will prohibit some employees from availing of this option. It may also suit employers, in some instances, to allow parental leave immediately following maternity or adoptive leave as it may be easier and administratively and financially more efficient to replace an employee for a relatively long period.

During Group discussions, it was argued that in certain industries, for example in the construction industry, it is not unusual for employees to change employers while remaining in the industry. However, if this move involves employees spending less than one year with an employer they may never qualify for parental leave. Overall, employees tend to change employment more often than in the past and consequently, they may lose out on their right to take parental leave to care for their children. The fact that the entitlement is restricted to the age of the child also contributes to the difficulties experienced by employees who change employment as their child may reach the age limit before the parent has had the opportunity to take the leave.

A reduction in the service requirement would create difficulties for employers in the context of staff shortages which are being experienced at present and which are particularly acute in some sectors. It was also argued that any policy which promotes the reconciliation of work and family life should facilitate the retention of employees in the labour force generally and in particular employments. It was noted that employees on parental leave maintain all their employment rights (other than his/her right to remuneration and superannuation benefits or any obligation to pay contributions in or in respect of the employment). In that context, it was argued that it is not unreasonable to set a minimum service requirement for entitlement to parental leave. A 12 month

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<sup>63</sup> Exceptions apply to certain cases of adoption and to children born between 3 December 1993 and 2 June 1996.

service requirement is not unusual in employment legislation, for example, the Carer's Leave Act 2001 requires the employee to have one year's service with the employer before the commencement of the leave; the Unfair Dismissals Acts 1977 – 2001 (subject to certain exceptions) apply to employees with at least one year's service; the Redundancy Payments Acts 1969 – 2001 apply to employees with 104 weeks' continuous service; and the Minimum Notice and Terms of Employment Acts 1973 – 2001 apply to employees with 13 weeks service.

In view of the fact that the Unfair Dismissals Acts 1977 – 2001 protect employees who generally have 12 months service with an employer, any reduction in the 12 month service requirement for parental leave entitlement would create difficulties for employers as it would reduce an employee's trial period in an employment. In the event of a mother availing of parental leave directly after her full maternity leave entitlement,<sup>64</sup> she could be absent from the workplace caring for her child for 42 weeks (including 2 weeks annual leave).<sup>65</sup> Once the Maternity Protection Act 1994 is amended, annual leave entitlement will accrue during additional maternity leave which means that a female employee could be absent from work for 10 months, leaving only 2 months service in which the employer could assess the employee's suitability for the particular job. A 2 month trial period would not be adequate for this purpose. This scenario would be highly unusual in the case of male employees, as maternity leave entitlement only transfers to fathers in the event of the death of the mother.

### ***(ii) Comparative situation in EU Member States***

Details of the service requirements in other Member States are set out in Table 3, Chapter 2. Entitlement to parental leave in many Member States is dependent on compliance with employment or service requirements.

### ***Recommendation***

The Group could not reach consensus on this issue.

## **16. Parental leave in respect of more than one child in a 12 month period.**

### ***Current position***

Section 7(3) of the Parental Leave Act provides that where an employee qualifies for parental leave in respect of more than one child, the employee may not take more than 14 weeks' parental leave in any 12 month period unless the employer agrees otherwise. However, this restriction does not apply in the case of children of a multiple birth.<sup>66</sup>

### ***Proposal considered by the Working Group***

- The employer's right to restrict an employee to one period of parental leave in a 12 month period where an employee wishes to take parental leave in respect of more than one eligible child (not being a multiple birth) should be removed (ICTU/Equality Authority).

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<sup>64</sup> Maternity leave (attracting payment) and parental leave count for accrual of annual leave entitlement.

<sup>65</sup> Maternity leave (attracting payment – 18 weeks); additional maternity leave (8 unpaid weeks); parental leave (14 weeks); and annual leave accruing (at least 12 days) = approx. 42 weeks leave of absence.

<sup>66</sup> There are also exceptional provisions in respect of parental leave taken in accordance with S.I. No. 231 of 2000 – European Communities (Parental Leave) Regulations 2000.

This issue was considered by the Group under the headings:

- (i) Reconciliation of work and family life;
- (ii) Implications for employers.

***(i) Reconciliation of work and family life***

The presence of a child of up to 4 years old reduces the probability of participation by women in the labour market by 20 percent.<sup>67</sup> The marginal effect of the number of pre-school children is large, each pre-school child reducing the probability of participation by 24 percentage points.<sup>68</sup> By combining two periods of parental leave, an employee could avail of a relatively long period of parental leave which should facilitate the reconciliation of work and family life and should have a positive effect on women's participation in the labour force.

***(ii) Implications for employers***

Any changes in the parental leave arrangements which would result in employees being out of employment for a longer period would have implications for employers. If employees are allowed take more than one period of parental leave (apart from cases of multiple births) in any 12 month period, employees could be absent from work for very long periods. However, any policy which facilitates the retention of staff long-term will result in a benefit to employers.

The need for the exception in relation to multiple births was explained by the Minister of State at the Department of Justice, Equality and Law Reform, in the course of the Committee Stage debate on the Bill in the Seanad, who stated that without this provision, a parent of twins, triplets, etc. "might be unable to take all his or her parental leave entitlement before the children concerned reached the age of five." This rationale does not apply in other cases.

At present, the legislation allows the employer to waive the right to prevent an employee taking more than one period of parental leave in a 12 month period. This option ensures that the employer can take business needs into account when making a decision in relation to this issue, for example, it may be financially and administratively more efficient to replace an employee for a relatively long period rather than for a number of short periods.

During Group discussions, this issue was related to the proposal to reduce the 12 month service requirement for parental leave entitlement. In the absence of a 12 month service requirement, the introduction of a provision which allows parental leave to be taken in respect of more than one child in a 12 month period would reduce trial periods for newly appointed employees, both male and female. However, such a provision might greatly facilitate many employees who have at least 12 months' service in their employment.

***Recommendation***

The Group could not reach consensus on this issue.

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<sup>67</sup> *Women's Participation in the Irish Labour Market*, NESC Report No. 91, Callan T. & Farrell B., 1991.

<sup>68</sup> *How Unequal? Men and Women in the Irish Labour Market*, ESRI Paper No. 176, Barrett, Callan et al., 2000.

## 17. Postponement of parental leave

### **Current position**

The Parental Leave Directive [Clause 2(3) of the Framework Agreement] allows Member States to provide for the postponement of parental leave by the employer “for justifiable reasons related to the operation of the undertaking (e.g. where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic importance).”

Section 11 of the Parental Leave Act allows for the postponement of parental leave by the employer where he/she is satisfied that granting the leave would have a substantial adverse effect on the operation of his/her business. The employer must consult the employee before postponing the leave. The postponement may be for a period not exceeding 6 months, to a date agreed by both the employer and the employee. The employer must notify the employee, in writing, of his/her intention to postpone the leave, no later than 4 weeks before the proposed date of commencement of the leave. Generally, the employer may postpone the leave only once in respect of any particular child. If, however, the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed twice in respect of the same child.

### **Proposals considered by the Working Group**

- Employers right to postpone parental leave should be removed (ICTU).
- The section dealing with postponement of parental leave should be amended to reflect the wording in the directive and to identify that the circumstances under which a postponement may be allowed should be exceptional and need to be specified clearly and should identify exceptional circumstances where a postponement should not be allowed. The provision allowing for a second postponement where postponement is based on seasonal variation should be deleted (Equality Authority).

The Group discussed the issue of the *postponement of parental leave* in terms of:

- (i) Difficulties caused by postponement of parental leave;
- (ii) Reasons to leave section 11 of Act unchanged;
- (iii) Comparative situation in EU Member States.

### **(i) Difficulties caused by postponement of parental leave**

An employee may require parental leave immediately due to a crisis (e.g. loss of child-minder) or at a particular time in order to meet child care needs. The employee may not be able to wait up to 6 months to avail of parental leave or may not need to take the leave 6 months later. The postponement of parental leave may therefore force an employee to resign. Alternatively, an employee might move to another employment during the postponement period and as a result he/she could lose all or part of his/her entitlement to parental leave because of the one year service requirement for entitlement to leave. The reconciliation of work and family life is a key policy objective at both national and EU level. The Parental Leave Directive is an important instrument aimed at promoting this policy objective. The employer’s right to postpone parental leave may reduce the effectiveness of the legislation in facilitating the achievement of this key objective.

The research in relation to the uptake of parental and *force majeure* leave found that parental leave was postponed in only 1% of organisations and that 66% of the postponements were at the request of employers and 34% at the employee's request.

### ***(ii) Reasons to leave section 11 of the Act unchanged***

Parental leave can only be postponed by an employer for operational/objective reasons, or in the event of a crisis in the workplace. The legislation would be completely unworkable if the employee could decide when he/she was taking parental leave and the employer had no say in the matter. If an employer wishes to postpone parental leave, he/she must consult with the employee. The employee must be given notice of the postponement of the leave 4 weeks before it is due to commence and the notice must specify the grounds for the postponement. Generally, parental leave may not be postponed more than once in respect of a particular child. If, however, the reason for the postponement is seasonal variations in the volume of work, the leave may be postponed twice in respect of the same child. Employers argue that more flexibility should be provided to facilitate the postponement of parental leave on more than one occasion for operational reasons, other than in relation to seasonal factors. For example, applications for parental leave in a broken format might arise on a continual basis at an unsuitable time for an employer. It was also argued that employees' right to avail of parental leave must be protected. In the event of a dispute arising in relation to the postponement of parental leave, the matter can be referred to a Rights Commissioner and appealed to the Employment Appeals Tribunal. It was also argued that these provisions represent a reasonable balance between the need of the employee to take parental leave and that of the employer to run a business.

The Group discussed the possibility of referring disputes to the redress system prior to the postponement of the leave. However, it was considered that any proposal to that effect would not be feasible owing to the time involved in the processing of a case through the redress mechanisms under the Act.

### ***(iii) Comparative situation in EU Member States***

Details of arrangements in relation to the postponement of parental leave in EU Member States are set out in Chapter 2. There are no provisions for the postponement of parental leave in 7 Member States. In the other 8 Member States, some arrangement in relation to the postponement of parental leave exists, for example, arrangements must be agreed between the employer and employee, leave can be postponed by the employer or a particular form of parental leave (e.g. part-time leave) can be refused.

### ***Recommendation***

The Group makes no recommendation on this issue.

## **18. Termination of parental leave**

### ***Current position***

Section 12 of the Parental Leave Act provides for the termination of parental leave by the employer where he/she has reasonable grounds to believe that it is being used for a purpose other than taking care of the child concerned. Before terminating the leave the employer must notify the employee of his/her intention to do so and invite the employee to make representations on the matter. The employer is obliged to consider the employee's submission before deciding to terminate the leave. Section 12(4) – (6) provides that the employer may refuse to grant parental

leave if he/she has reasonable grounds to believe that the employee is not entitled to such leave. However, before refusing to grant the leave the employer must notify the employee, in writing of his/her intention to do so and invite the employee to make representations on the matter within 7 days.

### ***Proposal considered by the Working Group***

- The employers right to terminate parental leave under section 12 of the Act should be removed (ICTU).

The Group discussed the issue of *termination of parental leave* in terms of:

- (i) Difficulties caused by the termination of parental leave by an employer;
- (ii) The procedure under the Carer's Leave Act 2001.

#### ***(i) Difficulties caused by the termination of parental leave by an employer***

It was agreed that employees should not be able to use parental leave for purposes other than the care of the child. Employers cannot terminate parental leave unilaterally. However, notwithstanding the requirement for an employer to give prior notice of the intention to terminate the leave and the facility for an employee to make representations to the employer in relation to the proposal, an employer could be wrong in his/her belief that the leave is being used for purposes other than the care of the child. The termination of parental leave in such circumstances could cause problems for an employee who has to care for a child.

#### ***(ii) The procedure under the Carer's Leave Act 2001***

The Group examined the Carer's Leave Act 2001 as a possible model for the termination of parental leave in that an independent third party,<sup>69</sup> rather than the employer, decides whether or not carer's leave should be terminated in certain circumstances.

Having examined the relevant provisions of the Carer's Leave Act the Group decided that, owing to the differences between parental and carer's leave, the Carer's Leave Act does not provide an appropriate model for procedures for the termination of parental leave. The Carer's Leave Act sets out the circumstances in which carer's leave is terminated, for example, on the date specified in the confirmation document. It also provides for the reference by employers of cases to the Minister for Social, Community and Family Affairs for a decision by Deciding Officers and Appeals Officers of the Department of Social, Community and Family Affairs as to whether or not carer's leave should be terminated. In the case of parental leave, the question of referrals to Deciding or Appeals Officers does not arise as the issue of medical grounds is irrelevant to parental leave entitlement. Disputes, under the Parental Leave Act, would proceed directly to a Rights Commissioner. The Group discussed the possibility of employers making a submission to a Rights Commissioner prior to terminating parental leave. Concerns were raised that the time involved in the consideration of such an issue by a Rights Commissioner and on appeal by the Employment Appeals Tribunal would render referrals through the redress system an unworkable solution.

### ***Recommendation***

The Group makes no recommendation on this issue. However, the Group suggests that this issue could be dealt with in any Code of Practice developed in relation to parental leave.

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<sup>69</sup> Deciding and Appeals Officers of the Department of Social, Community and Family Affairs.



# Appendices



# Appendix I

## COUNCIL DIRECTIVE 96/34/EC

of 3 June 1996

### on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC

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*Official Journal of the European Communities No L 145/4 to 145/9 EN19.6.96*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement on social policy, annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community, and in particular Article 4 (2) thereof,

Having regard to the proposal from the Commission,

- (1) Whereas on the basis of the Protocol on social policy, the Member States, with the exception of the United Kingdom of Great Britain and Northern Ireland, (hereinafter referred to as the 'Member States'), wishing to pursue the course mapped out by the 1989 Social Charter have concluded an Agreement on social policy amongst themselves;
- (2) Whereas management and labour may, in accordance with Article 4 (2) of the Agreement on social policy, request jointly that agreements at Community level be implemented by a Council decision on a proposal from the Commission;
- (3) Whereas paragraph 16 of the Community Charter of the Fundamental Social Rights of Workers on equal treatment for men and women provides, *inter alia*, that 'measures should also be developed enabling men and women to reconcile their occupational and family obligations';
- (4) Whereas the Council, despite the existence of a broad consensus, has not been able to act on the proposal for a Directive on parental leave for family reasons<sup>(1)</sup> as amended<sup>(2)</sup> on 15 November 1984;
- (5) Whereas the Commission, in accordance with Article 3 (2) of the Agreement on social policy, consulted management and labour on the possible direction of Community action with regard to reconciling working and family life;

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<sup>1</sup> OJ No C 333, 9.12.1983, p.6.

<sup>2</sup> OJ No C 316, 27.11.1984, p.7.

- (6) Whereas the Commission, considering after such consultation that Community action was desirable, once again consulted management and labour on the substance of the envisaged proposal in accordance with Article 3 (3) of the said Agreement;
- (7) Whereas the general cross-industry organizations (Unice, CEEP and the ETUC) informed the Commission in their joint letter of 5 July 1995 of their desire to initiate the procedure provided for by Article 4 of the said Agreement;
- (8) Whereas the said cross-industry organizations concluded, on 14 December 1995, a framework agreement on parental leave; whereas they have forwarded to the Commission their joint request to implement this framework agreement by a Council Decision on a proposal from the Commission in accordance with Article 4(2) of the said Agreement;
- (9) Whereas the Council, in its Resolution of 6 December 1994 on certain aspects for a European Union social policy; a contribution to economic and social convergence in the Union,<sup>3</sup>) asked the two sides of industry to make use of the possibilities for concluding agreements, since they are as a rule closer to social reality and to social problems; whereas in Madrid, the members of the European Council from those States which have signed the Agreement on social policy welcomed the conclusion of this framework agreement;
- (10) Whereas the signatory parties wanted to conclude a framework agreement setting out minimum requirements on parental leave and time off from work on grounds of *force majeure* and referring back to the Member States and/or management and labour for the definition of the conditions under which parental leave would be implemented in order to take account of the situation, including the situation with regard to family policy, existing in each Member State, particularly as regards the conditions for granting parental leave and exercise of the right to parental leave;
- (11) Whereas the proper instrument for implementing this framework agreement is a Directive within the meaning of Article 189 of the Treaty; whereas it is therefore binding on the Member States as to the result to be achieved, but leaves them the choice of form and methods;
- (12) Whereas, in keeping with the principle of subsidiarity and the principle of proportionality as set out in Article 3b of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive is confined to the minimum required to achieve these objectives and does not go beyond what is necessary to achieve that purpose;
- (13) Whereas the Commission has drafted its proposal for a Directive, taking into account the representative status of the signatory parties, their mandate and the legality of the clauses of the framework agreement and compliance with the relevant provisions concerning small and medium-sized undertakings;
- (14) Whereas the Commission, in accordance with its Communication of 14 December 1993 concerning the implementation of the Protocol on social policy, informed the European Parliament by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;

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<sup>3</sup> OJ No C 368; 23.12.1994, p.6.

- (15) Whereas the Commission also informed the Economic and Social Committee by sending it the text of the framework agreement, accompanied by its proposal for a Directive and the explanatory memorandum;
- (16) Whereas clause 4 point 2 of the framework agreement states that the implementation of the provisions of this agreement does not constitute valid grounds for reducing the general level of protection afforded to workers in the field of this agreement. This does not prejudice the right of Member States and/or management and labour to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with;
- (17) Whereas the Community Charter of the Fundamental Social Rights of Workers recognizes the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinions and creeds;
- (18) Whereas Article F (2) of the Treaty on European Union provides that 'the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law';
- (19) Whereas the Member States can entrust management and labour, at their joint request, with the implementation of this Directive, as long as they take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive;
- (20) Whereas the implementation of the framework agreement contributes to achieving the objectives under Article 1 of the Agreement on social policy,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

**Implementation of the framework agreement**

The purpose of this Directive is to put into effect the annexed framework agreement on parental leave concluded on 14 December 1995 between the general cross-industry organisations (Unice, CEEP and the ETUC).

*Article 2*

**Final provisions**

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 June 1998 at the latest or shall ensure by that date at the latest that management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measure enabling them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

2. The Member States may have a maximum additional period of one year, if this is necessary to take account of special difficulties or implementation by a collective agreement.

They must forthwith inform the Commission of such circumstances.

3. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 3*

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 1996.

*For the Council*

*The President*

*T. TREU*

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**FRAMEWORK AGREEMENT ON PARENTAL LEAVE****PREAMBLE**

The enclosed framework agreement represents an undertaking by Unice, CEEP and the ETUC to set out minimum requirements on parental leave and time off from work on grounds of *force majeure*, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women. ETUC, Unice and CEEP request the Commission to submit this framework agreement to the Council for a Council Decision making these minimum requirements binding in the Member States of the European Community, with the exception of the United Kingdom of Great Britain and Northern Ireland.

**I. GENERAL CONSIDERATIONS**

1. Having regard to the Agreement on social policy annexed to the Protocol on social policy, annexed to the Treaty establishing the European Community, and in particular Articles 3 (4) and 4 (2) thereof;
2. Whereas Article 4 (2) of the Agreement on social policy provides that agreements concluded at Community level shall be implemented, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission;
3. Whereas the Commission has announced its intention to propose a Community measure on the reconciliation of work and family life;
4. Whereas the Community Charter of Fundamental Social Rights stipulates at point 16 dealing with equal treatment that measures should be developed to enable men and women to reconcile their occupational and family obligations;
5. Whereas the Council Resolution of 6 December 1994 recognises that an effective policy of equal opportunities presupposes an integrated overall strategy allowing for better organisation of working hours and greater flexibility, and for an easier return to working life, and notes the important role of the two sides of industry in this area and in offering both men and women an opportunity to reconcile their work responsibilities with family obligations;
6. Whereas measures to reconcile work and family life should encourage the introduction of new flexible ways of organising work and time which are better suited to the changing needs of society and which should take the needs of both undertakings and workers into account;
7. Whereas family policy should be looked at in the context of demographic changes, the effects of the ageing population, closing the generation gap and promoting women's participation in the labour force;
8. Whereas men should be encouraged to assume an equal share of family responsibilities, for example they should be encouraged to take parental leave by means such as awareness programmes;
9. Whereas the present agreement is a framework agreement setting out minimum requirements and provisions for parental leave, distinct from maternity leave, and for time off from work on grounds of *force majeure*, and refers back to Member States and social partners for the

establishment of the conditions of access and detailed rules of application in order to take account of the situation in each Member State;

10. Whereas Member States should provide for the maintenance of entitlements to benefits in kind under sickness insurance during the minimum period of parental leave;

11. Whereas Member States should also, where appropriate under national conditions and taking into account the budgetary situation, consider the maintenance of entitlements to relevant social security benefits as they stand during the minimum period of parental leave;

12. Whereas this agreement takes into consideration the need to improve social policy requirements, to enhance the competitiveness of the Community economy and to avoid imposing administrative, financial and legal constraints in a way which would impede the creation and development of small and medium-sized undertakings;

13. Whereas management and labour are best placed to find solutions that correspond to the needs of both employers and workers and must therefore have conferred on them a special role in the implementation and application of the present agreement,

THE SIGNATORY PARTIES HAVE AGREED THE FOLLOWING:

## II. CONTENT

### *Clause 1: Purpose and scope*

1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

### *Clause 2: Parental leave*

1. This agreement grants, subject to clause 2.2, men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months, until a given age up to 8 years to be defined by Member States and/or management and labour.

2. To promote equal opportunities and equal treatment between men and women, the parties to this agreement consider that the right to parental leave provided for under clause 2.1 should, in principle, be granted on a non-transferable basis.

3. The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or management and labour may, in particular:

- (a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system;
- (b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year;

- (c) adjust conditions of access and detailed rules for applying parental leave to the special circumstances of adoption;
- (d) establish notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave;
- (e) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and practices, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the undertaking (e.g. where work is of a seasonal nature, where a replacement cannot be found within the notice period, where a significant proportion of the workforce applies for parental leave at the same time, where a specific function is of strategic importance). Any problem arising from the application of this provision should be dealt with in accordance with national law, collective agreements and practices;
- (f) in addition to (e), authorise special arrangements to meet the operational and organisational requirements of small undertakings.

4. In order to ensure that workers can exercise their right to parental leave, Member States and/or management and labour shall take the necessary measures to protect workers against dismissal on the grounds of an application for, or the taking of, parental leave in accordance with national law, collective agreements or practices.

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

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

7. Member States and/or management and labour shall define the status of the employment contract or employment relationship for the period of parental leave.

8. All matters relating to social security in relation to this agreement are for consideration and determination by Member States according to national law, taking into account the importance of the continuity of the entitlements to social security cover under the different schemes, in particular health care.

### **Clause 3: Time off from work on grounds of *force majeure***

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

2. Member States and/or management and labour may specify the conditions of access and detailed rules for applying clause 3.1 and limit this entitlement to a certain amount of time per year and/or per case.

#### Clause 4: Final provisions

1. Member States may apply or introduce more favourable provisions than those set out in this agreement.
2. Implementation of the provisions of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this agreement. This shall not prejudice the right of Member States and/or management and labour to develop different legislative, regulatory or contractual provisions, in the light of changing circumstances (including the introduction of non-transferability), as long as the minimum requirements provided for in the present agreement are complied with.
3. The present agreement shall not prejudice the right of management and labour to conclude, at the appropriate level including European level, agreements adapting and/or complementing the provisions of this agreement in order to take into account particular circumstances.
4. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with the Council decision within a period of two years from its adoption or shall ensure that management and labour<sup>(1)</sup> introduce the necessary measures by way of agreement by the end of this period. Member States may, if necessary to take account of particular difficulties or implementation by collective agreement, have up to a maximum of one additional year to comply with this decision.
5. The prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practices.
6. Without prejudice to the respective role of the Commission, national courts and the Court of Justice, any matter relating to the interpretation of this agreement at European level should, in the first instance, be referred by the Commission to the signatory parties who will give an opinion.
7. The signatory parties shall review the application of this agreement five years after the date of the Council decision if requested by one of the parties to this agreement.

Done at Brussels, 14 December 1995.

Fritz VERZETNITSCH,  
*President of the ETUC*

Antonio Castellano AUYANET,  
*President of the CEEP*

François PERIGOT,  
*President of the Unice*

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<sup>1</sup> Within the meaning of Article 2 (4) of the Agreement of social policy.

# Appendix II

## Presentation to the Working Group – Mr. Colin Walker, Rights Commissioner

### Referrals under the Parental Leave Act 1998

All Rights Commissioners operate independently in the exercise of their function. Mr. Walker based the presentation on his own experience, which (at the date of the presentation – 3rd May 2001) related only to cases referred under section 13 of the Act – the force majeure leave provisions.

#### References to Rights Commissioners under the Parental Leave Act in 1999

Number of references to Rights Commissioners	Number relating to force majeure leave	Number of hearings	Leave granted		Settled	Withdrawn	Out of time
			Yes	No			
57	34	37	16	18	3	20	—

#### References to Rights Commissioners under the Parental Leave Act in 2000

Number of references to Rights Commissioners	Number relating to force majeure leave	Number of hearings	Leave granted		Settled	Withdrawn	Out of time
			Yes	No			
42	35	23	13	10	1	10	1

Of the cases referred to the Rights Commissioners, the Employment Appeals Tribunal (EAT) has considered 15 appeals. 13 EAT determinations have been issued, 12 of which concern force majeure leave (5 have been majority decisions).

#### EAT Force Majeure Leave Determinations

	Upheld	Overtured
Rights Commissioners denying decisions	8	1
Rights Commissioners granting decisions	2	1

#### *Hearings under the Parental Leave Act 1998 by Mr. Colin Walker, 1999 and 2000*

During 1999 and 2000, I heard 16 disputes under the Parental Leave Act 1998 (the Act). All cases related to section 13 of the Act (force majeure leave provisions). In 9 of the disputes, I granted the leave and in 7 cases I denied it.

Section 13 of the Act has given myself and my colleagues cause for more thought than almost any other section of any other Act under the jurisdiction of the Rights Commissioners. By and large, the issues relating to *force majeure* leave which have given rise to dispute between the parties, have centered on the interpretation given to the following words – *urgent family reason*, *immediate* and *indispensable* as set out in section 13(1) of the Act.

# Appendix III

## Presentation to the Working Group – Ms. Mary Faherty, Chairman, Employment Appeals Tribunal

### Observations to date<sup>4</sup> on the Parental Leave Act 1998

The Parental Leave Act 1998 came into operation on 3 December 1998. The Act provides for an entitlement for men and women to avail of unpaid leave (parental leave) from employment to enable them to take care of their young children, and for limited paid leave (*force majeure* leave) to enable employees to deal with family emergencies resulting from injury or illness of certain family members.

Employees and employers are entitled to refer a dispute in relation to an entitlement under the Act to a Rights Commissioner (section 18). Under section 19 of the Act either party may appeal to the Employment Appeals Tribunal from a decision or direction of a Rights Commissioner within a period of four weeks from the date on which the decision (by the Rights Commissioner) was given to the party.

In the period up to 21 May, 2001, some twelve determinations of the Tribunal have been issued under the Parental Leave Act. To date, all of the appeals to the Tribunal, with the exception of one case, related to the issue of the *force majeure* leave.

The appeals heard and determined by the Tribunals are as follows:

- David Quinn -v- J. Higgins Engineering Limited – **Case No. PL 3/99**, 6 December 1999;
- Angela McKnight -v- Mallinckrodt Medical – **Case No. PL 7/99**, 9 March 2000;
- Seamus Kearns -v- Eve Holdings Limited – **Case No. PL 9/99**, 8 March 2000;
- Ann Carey -v- Penn Racquet Sports – **Case No. PL 11/99**, 3 April 2000;
- Patricia O’Neill -v- Dunnes Stores – **Case No. PL 12/99**, 1 March 2000;
- Geraldine O’Halloran -v- Tillotson Limited – **Case No. PL 13/99**, 27 March 2000;
- Boxmore Plastic Limited -v- Diane Crowe, Teresa Fitzpatrick and Gerry McKiernan, – **Case No’s PL 14/99, PL 15/99 and PL 16/99**, 24 July 2000;
- Kevin McGaley -v- Liebherr Container Cranes Limited – **Case No. PL 18/99**, 27 March 2000;
- David Munnely -v- Warners(Éire) Teo – **Case No. PL 19/99**, 15 March 2000;
- Chris Herbert -v- Kostal Ireland Limited – **Case No. PL 22/99**, 31 July 2000;
- Fruit of the Loom International -v- Mary Gill – **Case No. PL 1/00**, 17 July 2000 and;

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<sup>4</sup> 21 May 2001.

- Patrick Maughan -v- Gencorp Vehicle Sealing (Henniges Elastomers) Limited – **Case No. 3/00**, 11 January 2001.

Of the above appeals determined by the Tribunal only the case of Patricia O' Neill -v- Dunnes Stores concerned an issue other than *force majeure* leave.

The case of Patricia O'Neill -v- Dunnes Stores concerned the interpretation of section 7 of the Act, which regulates the manner in which parental leave may be taken by an employee. The facts of the case were that the employee sought three weeks leave under the Act. The respondent/employer had contended that whilst the continuous period of fourteen weeks was an absolute entitlement for an employee, in order for the employee to be entitled to take non-continuous leave it must be pursuant to an agreement between the employer and the employee. The respondent further contended that, as no such agreement existed between the parties, there was no entitlement on the part of the employee for a period of leave other than that described in section 7(1)(a) of the 1998 Act. The employer's arguments were accepted by the Tribunal who held that the wording of the Act was clear and unambiguous and that in interpreting the Act the Tribunal could not go behind the express provisions of the Act. Consequently, the Tribunal upheld the decision of the Rights Commissioner who had refused the employee's claim under the Act.

As already stated, all of the other cases dealt with by the Tribunal to date have concerned the issue of *force majeure* leave as provided by section 13 of the Parental Leave Act 1998. It would appear that this is the section of the Act which will be most litigated before the Employment Appeals Tribunal.

By and large, the issues relating to *force majeure* leave which have given rise to dispute between the parties, have centered on the interpretation to be given to the words "urgent family reasons", "immediate presence" and "indispensable" as set out in section 13(1) of the Act. One appeal heard by the Tribunal relating to section 13 (*force majeure* leave) related not to whether the particular circumstances gave rise to an entitlement to *force majeure* leave but rather to the category of persons in respect of whom an employee could make an application for *force majeure* leave. In the case of Chris Herbert -v- Kostal Ireland Limited Case No. PL 22/99, 3 July 2000, the representative on behalf of the appellant/employee argued that the employee, Mr. Herbert ought to be entitled to claim *force majeure* leave in respect of his mother-in-law. The arguments put forward by the appellant/employee in this case are set out in the Tribunal's determination. The Tribunal rejected the argument put forward by the employee/appellant and did not allow his appeal.

Section 20 of the Parental Leave Act 1998 provides that the Tribunal may refer a question of law arising in proceedings before it to the High Court for determination and also provides that a party to proceedings before the Tribunal may appeal to the High Court from a determination of the Tribunal on a point of law. To date, there has been one appeal to the High Court by a party to the proceedings on a point of law. In the case of Ann Carey -v- Penn Racquet Sports Limited, the employee appealed to the High Court from a majority decision of the Employment Appeals Tribunal, which had rejected her claim to an entitlement to *force majeure* leave under section 13 of the Act. In the High Court, Ms. Justice Carroll overturned the Tribunal's determination and found the employee to be entitled to one day of paid *force majeure* leave. The Tribunal had ruled that the employee was not entitled to such leave. In upholding the employee's appeal Carroll J held that:

1. in deciding whether an employee is entitled to paid *force majeure* leave where, for urgent family reasons, owing to an illness of that employee's child, the presence of the employee at the place where the child is, is indispensable, the matter should be looked at from the employee's point of view at the time the decision was made not to go to work.
2. that in deciding whether an injury or illness is sufficiently urgent that the immediate presence of the employee at the place, where the family member specified in section 13(2) of the Act is, is indispensable, the employee cannot be assumed to have medical knowledge, which they do not possess.
3. there is no requirement under the Parental Leave Regulations 1998 that the employee seeking *force majeure* produce a medical certificate to the employer for that purpose.
4. that the Tribunal judged with hindsight the urgency of the family reasons and the question of whether the employee's presence with the child was indispensable and, as such, the Tribunal erred in law in deciding the issue on the basis of the ultimate outcome of the illness in this case.

As far as section 13 of the 1998 Act is concerned therefore, the Tribunal has now been given guidance by the High Court as to how *force majeure* leave claims are to be addressed.

***Summary outcome of appeals under the Parental Leave Act 1998 against decisions of Rights Commissioners referred to the Employment Appeals Tribunal in 1999 and the outcome of the appeals disposed of in 1999***

	Number referred	Rec.* Upheld	Rec. Upset	Rec. Varied	Rec. Withdrawn	Total No. of appeals disposed of
Appeals by employees	12	1	0	1	1	3
Appeals by employers	7	0	0	0	1	1
Outcome of Appeals	19	1	0	1	2	4

\* Recommendation.

***Summary outcome of appeals under the Parental Leave Act 1998 against decisions of Rights Commissioners referred to the Employment Appeals Tribunal in 2000 and the outcome of the appeals disposed of in 2000***

	Number referred	Rec. Upheld	Rec. Upset	Rec. Varied	Rec. Withdrawn	Total No. of appeals disposed of**
Appeals by employees	3	6	1	0	4	11
Appeals by employers	3	1	2	1	2	6
Outcome of Appeals	6	7	3	1	6	17

\*\* Some appeals disposed of in 2000 were referred in 1999.



# Appendix IV

## Presentation to the Working Group – Ms. Eilis Barry, Equality Authority

### The Equality Authority's information function in relation to the Parental Leave Act 1998

One of the functions of the Equality Authority as provided by Section 39(b)(bb) of the Employment Equality Act 1998 as inserted by Section 25(5) of the Parental Leave Act 1998 is to “provide information to the public on the working of the Parental Leave Act 1998”.

Under the Employment Equality Act 1998, the Equality Authority has the function of keeping under review the working of the Employment Equality Act 1998, the Maternity Protection Act 1994, the Adoptive Leave Act 1995 and the equality provisions of the Pensions Act 1990 and whenever it thinks necessary to make proposals to the Minister, or in the case of the Pensions Act, the Minister for Social, Community and Family Affairs, for amending any of those Acts. There is no equivalent provision for review of the Parental Leave Act 1998. Therefore the Equality Authority's function in relation to the Parental Leave Act 1998 is purely an information one. The Equality Authority cannot provide legal advice or representation for people who wish to bring claims under that Act unless the claim could be constructed as a claim for discrimination on grounds of family status. However, the Equality Authority has received very few enquires on this ground.

The Parental Leave Act 1998 came into effect on the 3rd of December, 1998.

The figures<sup>5</sup> for the number of enquiries relating to the Maternity Protection Act 1994, the Parental Leave Act 1998 and the Adoptive Leave Act 1995 are as follows<sup>6</sup>:

Year	Maternity Protection Act 1994	Parental Leave Act 1998	Adoptive Leave Act 1995
1998	2,312	439	50
1999	1,923	575	20
2000	2,152	2,515	32
2001 (January – March)	923	657	25

<sup>5</sup> Approximately, 1,000 queries relating to the Parental Leave Act 1998 were received by the Department of Justice, Equality and Law Reform during the period from 3 December 1998 to mid 1999.

<sup>6</sup> The figures in the tables represent the enquiries physically recorded by staff of the Equality Authority. A recent spot-check was carried out and it is estimated that the figures recorded do not represent the full amount of enquiries actually received. It is estimated on the basis of the check carried out that the recorded figures could be increased by approximately  $\frac{1}{3}$ .

The breakdown of the enquiries in relation to the Parental Leave Act for the year 2000 is as follows:

General Enquiries/Leaflets	869
Leave Entitlement	540
<i>Force Majeure</i> Leave	200
Notification	9
Annual Leave/Public Holidays	44
Pay	13
Other	196
Not Categorised	610
<i>Enquiries Outside Scope of the Act</i>	
Social Welfare Benefit	5
Other	29
<b>Total</b>	<b>2,515</b>

### ***Parental Leave Booklet/General Enquiries***

The Equality Authority has provided a booklet on the operation of the Parental Leave Act, 869 enquiries (approximately 46%) are requests for literature or general enquiries.

### ***Leave Entitlement***

Section 7 of the Parental Leave Act 1998 provides

(1) Subject to this Act, Parental Leave may consist of –

- (a) a continuous period of 14 weeks, or
- (b) with the agreement of the employer or representatives of the employer and other employers and the employee or representatives of the employee and other employees, a number of periods each of which comprises—
  - (i) one or more days on which, but for the leave, the employee would be working in the employment concerned.
  - (ii) one or more hours during which, but for the leave, the employee would be working in the employment concerned, or
  - (iii) any combination of periods referred to in subparagraphs (i) and (ii).

Approximately 28% of enquiries related to leave entitlement. The following issues arise

- Employees entitlement to have leave broken down
- Refusal of employer to allow leave to be broken down
- Postponement of leave by employee
- Leave entitlement where there are twins
- Refusal of parental leave by employer

- Entitlement of job-sharers
- One year continuous service
- Pro rata entitlement in respect of child approaching 5 years

### **Force Majeure Leave**

For the year 2000, 200 (11%) of enquiries concerned entitlement to *force majeure leave*.

Section 13 provides—

- (1) An employee shall be entitled to leave with pay from his or her employment, to be known and referred to in this Act as “*force majeure leave*”, where, for urgent family reasons, owing to an injury to or the illness of a person specified in subsection (2), the immediate presence of the employee at the place where the person is, whether at his or her home or elsewhere, is indispensable.
- (2) The persons referred to in subsection (1) are
  - (a) a person of whom the employee is the parent or adoptive parent,
  - (b) the spouse of the employee or a person with whom the employee is living as husband or wife,
  - (c) a person to whom the employee is in *loco parentis*,
  - (d) a brother or sister of the employee,
  - (e) a parent or grandparent of the employee, and
  - (f) persons of such other (if any) class or classes as may be prescribed.
- (3) When an employee takes *force majeure leave*, he or she shall, as soon as reasonably practicable thereafter, by notice in the prescribed form given to his or her employer, confirm that he or she has taken such leave and the notice shall specify the dates on which it was taken and contain a statement of the facts entitling the employee to *force majeure leave*.
- (4) *Force majeure leave* shall consist of one or more days on which, but for the leave, the employee would be working in the employment concerned but shall not exceed 3 days in any period of 12 consecutive months of 5 days in any period of 36 consecutive months.
- (5) A day on which an employee is absent from work on *force majeure leave* in an employment for part only of the period during which he or she is required to work in the employment on that day shall be deemed, for the purposes of subsection (4), to be one day of *force majeure leave*.

This is an area that is highly problematic in giving accurate advice in particular as to what constitutes “urgent”, “immediate” and “indispensable”. The Equality Authority is at a disadvantage in this regard in that it doesn’t receive copies of recommendations of the Rights Commissioner or the Employment Appeals Tribunal. The High Court in *Carey -v- Penn Racquet Sports Limited* (2000) ELR 27 is of particular relevance and assistance in this regard.

The facts of the case were — the claimant was employed by the respondent in its factory in Mullingar. The claimant is a single mother who was looking after her eight year old daughter who was sick and had a rash. On 11th June, 1999 she took the view that she would bring her daughter to a doctor and thereafter stay at home and observe her. For this reason she was unable to come

to work that day. The claimant subsequently applied for *force majeure* leave under the Parental Leave Act which was initially refused by the respondent. After asking again for her paid leave, the management requested a medical certificate from the claimant to prove the illness, which she did not produce. As a compromise, the management suggested they would be prepared to grant the claimant a half day's paid leave. The claimant brought a claim to the Rights Commissioner for a full day's *force majeure* leave which was dismissed. From that decision she appealed to the Employment Appeals Tribunal.

The Employment Appeals Tribunal (Mr. Paul Clarke dissenting) in dismissing the claim held—

- (1) That the particulars of the case did not fall within the meaning of the Act as urgent, immediate and indispensable.
- (2) The claimant was not entitled to *force majeure* leave and the decision of the Rights Commissioner was upheld.

The claimant appealed to the High Court. Carroll J in upholding the appellant's appeal held —

- (1) In deciding whether an employee is entitled to *force majeure* leave where, for urgent family reasons, owing to an illness of that employee's child, the presence of the employee at the place where the child is, is indispensable, the matter should be looked at from the employee's point of view at the time the decision was made not to go to work.
- (2) That in deciding whether an injury or illness is sufficiently urgent that the immediate presence of the employee at the place where the family member specified in section 13(2) of the Act is, is indispensable, the employee cannot be assumed to have medical knowledge which they do not possess.
- (3) There is no requirement under the Parental Leave (Notice of *Force Majeure* Leave) Regulations 1998 that the employee seeking *force majeure* leave produce a medical certificate to the employer for that purpose.
- (4) That the Tribunal judged with hindsight the urgency of the family reasons and the question of whether the employee's presence with her child was indispensable and, as such, the Tribunal erred in law in deciding the issue on the basis of the ultimate outcome of the illness in this case.

### **Notification**

The following query arises:

- What notification has to be given?

### **Annual Leave/Public Holiday Entitlement**

Section 14 of the Act provides—

- (1) An employee shall, while on parental leave, be regarded for all purposes relating to his or her employment (other than his or her right to remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment) as still working in the employment and none of his or her other rights relating to the employment shall be affected by the leave.
- (2) Absence from employment while on parental leave shall not be treated as part of any other leave from employment (including sick leave, annual leave, adoptive leave, maternity leave and *force majeure* leave) to which the employee concerned is entitled.

(3) Where—

- (a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes parental leave, and
- (b) his or her employer considers that the employee's absence from employment while on parental leave would not be consistent with the continuance of the probation, training or apprenticeship, the employer may require that the probation, training or apprenticeship be suspended during the period of the parental leave and be completed by the employee at the end of that period.

(4) An employee shall, while on *force majeure* leave, be regarded for all purposes relating to his or her employment as still working in the employment concerned and none of his or her rights relating to the employment shall be affected by the leave.

(5) Absence from employment while on *force majeure* leave shall not be treated as part of any other leave from the employment (including sick leave, annual leave, adoptive leave, maternity leave and parental leave) to which the employee concerned is entitled.

2% of enquiries received by the Equality Authority related to entitlement to annual leave and public holiday entitlement in respect of a period of parental leave. Issues that arise include:

- Whether an employee is entitled to their annual leave and public holidays during parental leave.
- Entitlement of part-time employees and job-sharers.

### **Pay**

Other enquiries relate to pay. The major issue in this regard is:

- Is parental leave paid?

The Authority receive complaints that it is unpaid with the employees stating that they cannot afford to take unpaid leave.

One query related to whether an acting-up allowance could be deducted while on parental leave.

### **Other Enquiries**

11% of enquiries come within this category. Half of these enquiries related to the amendment to the Parental Leave Act 1998 which was implemented in July 2000 to give effect to the Reasoned Opinion of 3rd April, 2000 from the EU Commission in relation to the transposition by Ireland of the Parental Leave Directive (96/34/EC). The effect of the amendment was to extend the entitlement to Parental Leave to children born between 3rd December, 1993 and 2nd June, 1996. Employees must avail of the new entitlement not later than 31st December, 2001.

The queries raised were:

- When did the amendment come into force?
- What were the changes?
- Has leave to be taken by 31st December, 2001?

### **Sick Leave**

The Equality Authority receives enquiries such as the effect of taking sick leave on parental leave — this is an issue that requires clarification.

### **Pensions**

The Equality Authority receives enquiries about the entitlement to VHI contributions and pension contributions while on parental leave.

### **Redundancy**

The Equality Authority receives enquiries such as an employer wants to withdraw parental leave and make the employee redundant, will the parental leave effect service for the purposes of redundancy.

### **Right to Return to Work**

Issues that arise are:

- What are the entitlements concerning the return to work if the employer has changed the hours?

### **Promotion**

The Equality Authority has received enquiries as to:

- Does parental leave affect your service for promotion?

### **Case Precedent**

The Equality Authority has been asked for copies of recommendations made by Rights Commissioners and the Employment Appeals Tribunal both by the public and by lawyers.

### **Enquiries Outside Scope of the Act**

These queries relate to:

- Can an employee claim social welfare benefit while on parental leave?
- Does parental leave include time off for a death in the family? Does *force majeure* leave cover compassionate leave?
- Will the illness of an aunt or uncle be included for *force majeure* leave?
- Can an employee work on another job while on parental leave?
- Can an employee do overtime on Saturday while taking a block of 14 weeks parental leave?
- Can the Department of Social, Community and Family Affairs, penalise an employee for taking parental leave – for example, an employee working 3 days a week and signing on for 2 days, when she returned to work for 3 days the DSCFA<sup>7</sup> wouldn't pay her for the 2 days?

### **Bonus**

- Does parental leave affect your entitlement to a bonus?

### **Social Welfare Enquiries**

The Equality Authority receives a small amount of queries concerning social welfare entitlements such as:

- Is there a break in the Social Welfare record?
- What is the procedure for obtaining credit for PRSI<sup>8</sup> record?

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<sup>7</sup> Department of Social, Community and Family Affairs.

<sup>8</sup> Pay Related Social Insurance.

# Appendix V

## Executive Summary of report on Uptake of Parental Leave and *Force Majeure* Leave, prepared by MORI MRC

- The survey consisted of 655 questionnaires, which were completed by employers during July and August 2001. Of these, 517 were private sector employers and 138 were public sector employers.
- According to MORI MRC's estimates, almost 7% of employees were eligible for parental leave in 2001.
- 69% of all organisations made a continuous block of 14 weeks parental leave available to their employees. 60% of employers made blocks of full weeks parental leave available, while 43% gave staff the option of taking some other arrangement for parental leave.
- Continuous blocks of 14 weeks was the most popular type of leave made available in most private business sectors but especially in the Manufacturing, Hospitality and Wholesale/Retail/Repairs sectors.
- In the public sector, continuous blocks of 14 weeks was also the most popular option. Employees in the Health sector were most likely to work in organisations that had formal parental leave arrangements in place. Only 1% of Health organisations claimed not to have a formal policy in place or to have been unaware of such a policy.
- In all, 20% of eligible employees in the labour force<sup>9</sup> are estimated to have taken parental leave.
- The Financial Services industry had the highest level of uptake in the private sector, with 39% of all eligible employees having taken some type of parental leave. In the public sector, meanwhile, the Civil Service recorded the highest level of uptake of parental leave (43%).
- Parental leave arrangements other than continuous 14 weeks leave or blocks of full weeks had the highest rate of uptake (9%). The level of uptake for continuous 14-week periods and blocks of full weeks was 5% and 8% respectively.
- The level of uptake of parental leave tended to be higher in the public sector. Arrangements other than a continuous 14-week block or individual week-long blocks were the most popular option, with 24% of eligible employees in the sector opting for this format.
- Within the public sector, the uptake of parental leave was highest in the Civil Service, where 13% of eligible employees took parental leave in a continuous block of 14 weeks; 12% took leave in blocks of full weeks; while 31% of eligible employees took parental leave in some other format.
- In the private sector, the uptake of leave was highest in the Financial Services sector,

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<sup>9</sup> CSO, Quarterly National Household Survey, 'The labour force comprises persons employed plus unemployed'. As parental leave entitlement only applies to persons in employment, MORI MRC's references to the labour force relate only to persons in employment – 1,716,500 for March/May 2001.

where 24% of eligible employees took parental leave in a continuous 14-week block; 4% took leave in blocks of full weeks; while 18% of eligible employees took parental leave in some other format.

- The majority of those taking parental leave were women, accounting for 84% of parental leave taken overall.
- 75% of all employees who took parental leave were in the 30-50 year old age group, with most of the remainder accounted for by 16-29 year olds. Uptake by those older than 50 was negligible. This situation was replicated in all sectors.
- In terms of parental leave, Clerical/Support staff were the largest occupational group, as they accounted for 45% of the employees who had taken leave. Craft/Manual workers, on the other hand, were the smallest group in this regard, as they accounted for 23% of those who had taken parental leave. This can be attributed to that group's small share of employees who had taken leave in the public sector.
- Overall, 85% of the employees who had taken parental leave worked full-time, with part-time workers accounting for the remainder. It is worth noting that the proportion of part-time employees taking leave is lower in the private sector (9%) compared to the public sector (20%).
- An employee's parental leave was only postponed in 1% of respondent organisations. In 66% of these instances, this was as a result of an employer's request.
- 29% of organisations had granted an employee *force majeure* leave. This rose to 33% among public sector employers.
- In the private sector, 55% of Manufacturing employers had granted *force majeure* leave to an employee. In contrast, only 7% of employers in the Agriculture/Forestry/Fishing/Mining sector had granted *force majeure* leave.
- 49% of Semi-State bodies and 47% of Educational organisations had granted an employee *force majeure* leave. In comparison, the Civil Service (18%) had the lowest proportion of organisations granting *force majeure* leave in the public sector.
- The proportion of organisations granting *force majeure* leave was higher for larger organisations, with 60% of organisations employing 100+ staff having granted leave.
- On average, employees who availed of *force majeure* leave took slightly over 2 days (2.2 days) leave.
- Overall 2% of employees took *force majeure* leave, amounting to an uptake of 34,330 employees for the entire labour force.
- As with parental leave, the uptake of *force majeure* leave was higher amongst women (4% uptake compared to 2% for men) and those employed full-time (3%).
- In the private sector, the uptake of *force majeure* leave was highest amongst employees in the Manufacturing (5%) and Financial Services (3%) sectors.
- Civil Service employees (6%) had the highest uptake of *force majeure* leave of any public sector group. In comparison, the uptake of *force majeure* leave was lowest amongst employees of Education organisations (1%). This is a reversal of the situation in terms of the number of organisations who have granted *force majeure* leave in these sectors.
- Craft/Manual staff accounted for 53% of those who had taken *force majeure* leave, the highest proportion of any occupational group.

# Appendix VI

## Executive Summary of Report of Attitudinal Survey of Employees, Employers and Trade Union Representatives Regarding the Provisions of the Parental Leave Act 1998, prepared by Newmarket Consulting.

Section 28 of the Parental Leave Act 1998 provides for a review of its operation between 3<sup>rd</sup> December 2000 and 3<sup>rd</sup> December 2001. As part of this review, research was commissioned into the attitudes of employees, employers and trade union representatives in relation to the parental leave and *force majeure* leave provisions in the Act. Newmarket Consulting carried out 25 case studies in Irish organisations to gauge attitudes to parental and *force majeure* leave provisions.

The findings of the case studies can be summarised as follows:

### Employees

#### Awareness – Parental Leave

- Of the 71 employees interviewed, 62 had heard of their parental leave entitlements.
- The primary sources from which employees heard about their parental leave entitlements were their HR/Personnel Manager (20%) and their employers (18%).
- Public sector employees are more likely to have heard about their parental leave entitlements from a source within their organisation (76%) than their private sector counterparts (43%).
- The highest occurring source of clarification for employees was their HR/Personnel Manager (46%).

#### Awareness – Force Majeure Leave

- Of the 71 employees interviewed, 56 had heard of their *force majeure* leave entitlements.
- The HR/Personnel Manager was again the top source of clarification for employees for *force majeure* leave, accounting for 44% of their responses.

#### Understanding – Parental Leave

- 65% of employees were either “satisfied” or “very satisfied” with their understanding of their parental leave entitlements.
- Of the 20% who were “dissatisfied”, the main cause of dissatisfaction was the lack of freely available information on their entitlements (45%).

#### Understanding – Force Majeure Leave

- 59% of employees were either “satisfied” or “very satisfied” with their understanding of their *force majeure* leave entitlements, the main causes of their dissatisfaction were the lack of freely available information on their entitlements and the fact that they had never heard of *force majeure* leave prior to this research.

## Attitudes

### *Advantages*

- When asked about the advantages of taking parental leave, 50% of employees replied saying that spending more quality time with their child/tending to their child's needs was an advantage of being able to take the leave.

### *Barriers*

- The largest barrier for employees taking parental leave is concern for their finances, accounting for 42% of their responses. 17% of employees said that there were no barriers to taking parental leave.

### *Disadvantages*

- The biggest disadvantage of taking parental leave which employees mentioned was being unpaid (63%).

### *Influencing Factors*

- The benefit to their children was by far the most important factor in employees' decision to take parental leave, followed by the affordability of unpaid leave.

### *Perception of Employer*

- 46% of employees believed that their employers would be facilitating and happy to allow them to take parental leave, compared to 11% of employees who said that their employers would find it difficult to allow.

## Uptake – Parental Leave

- Just under half of all employees said that they would prefer to take their parental leave in 1 or 2 days per week over a number of weeks.
- 20% of the employees interviewed had actually availed of their parental leave entitlements. Of those who had taken parental leave, 93% were female and only 1 of them was paid by their employer in respect of parental leave taken.

## Uptake – Force Majeure Leave

- Only 17% of the employees had taken *force majeure* leave and most of them did so because of an illness to their child. None of them had been refused payment in respect of this *force majeure* leave.

## **Employers**

### Awareness – Parental Leave

- Of the 25 employers interviewed, 21 were aware of the existence of parental leave entitlements.
- 56% of employers mentioned more than one source from which they had heard about parental leave and while the sources of information are very varied, they were most likely (84%) to have heard of parental leave from sources outside the organisation.

- 85% of employers stated that they would seek clarification from external sources and 40% would seek clarification from more than one source.

#### Awareness – Force Majeure Leave

- Of the 25 employers interviewed, 15 were aware of the existence of *force majeure* leave before this interview process.
- 40% of employers heard of *force majeure* leave entitlements from more than one source and 83% of employers had heard of *force majeure* leave entitlements through external sources.
- 88% of employers would seek clarification on *force majeure* leave entitlements from sources outside their organisations and 40% of employers mentioned more than one source that they would use for clarification.

#### Understanding – Parental Leave

- Employers' understanding of the parental leave entitlements is generally good, with 68% of them claiming that they were either "very satisfied" or "satisfied" with their understanding of the entitlements and only 1 stating that they were "very dissatisfied". Their reason was lack of publicity on the Act/entitlements.
- Of the 20% of employers who were dissatisfied with their understanding, the main reasons causing dissatisfaction were:
  1. not enough readily available information on parental leave (15%);
  2. parental leave provisions are not publicised widely enough (15%);
  3. not having read up on the Act (15%).

#### Understanding – Force Majeure Leave

- Employers' stated that they were generally happy with their understanding of the *force majeure* leave entitlements in the Parental Leave Act 1998, with 68% of the respondents claiming that they were either "satisfied" or "very satisfied" with their understanding of the entitlements.
- 40% of the employers stated that they believed the *force majeure* leave provisions were either "difficult" or "very difficult" to interpret.
- The most common reasons mentioned for this difficulty in interpretation was:
  1. the provisions need better structure/clarification (19%);
  2. there is no clear guidance on administration procedures to handle *force majeure* cases (13%);
  3. it is difficult to establish urgency of leave and duration of leave (13%).

#### Attitudes – Parental Leave

- The most common advantage cited by employers for parental leave was that they would have happier/more contented employees (23%). However, 29% of employers could see no commercial/business advantages.

- The most common disadvantage referred to by employers was that they cannot replace key employees (24%).
- Employers most common perception of employees opinion of parental leave was that employees are not fully aware of their entitlements (13%).

#### Uptake – Parental Leave

- With regard to patterns of parental leave, 42% of employers stated that they would prefer employees to take their leave in a continuous block of 14 weeks.

#### Uptake – Force Majeure Leave

- Of the 25 employers interviewed, 44% of them had received *force majeure* applications from employees. In total these 11 employers have received 69 *force majeure* applications and payment has been refused 4 times but not appealed.

### **Trade Union Representatives**

#### Understanding – Parental Leave

- Trade union representatives understanding of parental leave entitlements was identified as an area for improvement. None of the representatives were “very satisfied” with their understanding while only 2 were “satisfied” and 1 “neither satisfied nor dissatisfied”. 50% were “dissatisfied” with their understanding.

#### Understanding – Force Majeure Leave

- Trade union representatives understanding of *force majeure* leave entitlements was better than their understanding of parental leave. 60% were either “very satisfied” or “satisfied” with their understanding. 40% were either “dissatisfied” or “very dissatisfied” with their understanding.

#### Conclusion

1. Overall, it would seem that awareness of the provisions of the Parental Leave Act 1998 has been generated successfully and that awareness levels are quite high. However, some work remains to be done to close the gap so that all employers and employees know of the entitlements, to maintain awareness, and also as while the existence of the Act is known the detail is not necessarily fully understood.
2. In relation to parental leave, while employees welcome their entitlements, the fact that it is unpaid is a major disadvantage (63% of responses).
3. The duration of *force majeure* leave was considered by both employees and employers as being more restrictive than the previous informal system of compassionate leave.

# Appendix VII

## Estimated cost of a Parental Leave Benefit scheme, supplied by the Department of Social, Community and Family Affairs

### Payment equivalent to Maternity Benefit

#### Proposal – pay to employees only

#### Maternity Benefit statistics for 2001

Current rates of benefit:	Minimum Rate:	Maximum Rate:	Average Payment:
	€125.32	€232.36	€210.78

Estimated number of women qualifying for Maternity Benefit:	26,000
Estimated number of self-employed women qualifying for Maternity Benefit:	<u>1,800</u>
Estimated number of women covered for parental leave:	24,200

#### **Cost of possible Parental Leave Benefit for women**

Assumes 90% take-up rate for women.

The average rate of payment would be the same as that for Maternity Benefit, i.e. €210.78 per week.

$$\text{Cost} = (24,200 \times 90\%) \times \text{€}210.78 \times 14 \text{ weeks} = \text{€}64.27\text{m. per annum}$$

**£50.62m. per annum**

#### **Cost of possible Parental Leave Benefit for men**

Potential number of men who would qualify—

The average participation rate of women in the labour force in the 20 to 44 age group is 68.9%. The labour force participation rate for men in this age group is 88.2%.

Due to the higher participation rate of men in the labour force, a greater number of men would potentially qualify for any Parental Leave Benefit i.e.

$$24,200 \div 68.9 \times 88.2 = 30,978 \text{ (say 31,000)}$$

Estimated average payment for men—

The average industrial wage for men is €492.48 per week. This would give an average weekly payment for Parental Leave Benefit purposes of €344.73 (i.e. 70%<sup>10</sup> of €492.48). However, the maximum weekly payment for a Parental Leave Benefit would be the same as for Maternity

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<sup>10</sup> See assumptions in the next section.

Benefit, i.e. €232.36. Therefore a figure of €222.20 has been assumed as the average Parental Leave Benefit payment for men.

### Cost

Assumes 15% take-up rate for men.

Cost = (31,000 × 15%) × €222.20 × 14 weeks = **€14.46m. per annum**  
**£11.39m. per annum**

**Overall cost of possible Parental Leave Benefit for both men and women for 14 weeks** = **€78.74m. per annum**  
**£62.01m. per annum**

### **Assumptions used to cost possible Parental Leave Benefit scheme on similar lines to Maternity Benefit**

#### **Outline of possible Parental Leave Benefit scheme**

The various features of the proposed scheme are based on the parental leave provisions contained in the Parental Leave Act 1998;

The scheme would be broadly similar to the current Maternity Benefit scheme, with the same qualifying conditions applying;

Applicants would have to be certified by their employers as being entitled to parental leave under the Parental Leave Act and would also have to satisfy the same contribution conditions as apply in the case of Maternity Benefit, i.e. the scheme would be available to those insured at PRSI<sup>11</sup> Classes A, E and H. It would not, in general, be available to permanent and pensionable public servants;

Payment would be made for a maximum of 3 months (14 weeks) in respect of children up to 5 years of age;

Payment would be made in either one single block of 14 weeks or in separate periods. But payment would be made only in respect of full weeks of leave taken;

The same payment levels would apply as in the case of the Maternity Benefit scheme – 70% of reckonable weekly earnings, subject to a minimum weekly payment of €125.32 and a maximum payment of €232.36.

### ***International Experience***

Based on the limited information available –

Of the 15 EU Member States, only 8 have a State benefit scheme. In one of these States – France – payment is only made in respect of the 2nd and subsequent children, while in Germany the payment is made on a means-tested basis. 7 Member States have no State benefit scheme.

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<sup>11</sup> Pay Related Social Insurance.

Take up rates for women are generally high in countries which have paid leave – between 90 and 99%. In the Netherlands, where leave is generally unpaid, there is a take-up rate of 40% for women;

Take up rates for men are generally very low. With the exception of Sweden (78%) and Norway (33%), take up rates for men are between 1% and 3%. However, in the Netherlands where the leave is generally unpaid, the take-up rate by men is comparatively high at 9%;

The highest take up rates for men are in the Scandinavian countries. This appears to be due to a number of factors, including high levels of benefits available (85% to 100% of wages), flexible leave arrangements, the existence of non-transferable leave for each parent and the social attitudes prevailing in the those countries. Flexibility of the leave arrangements and non-transferability of leave between parents also appear to be factors influencing the comparatively high take-up of unpaid leave by men and women in the Netherlands;

In contrast, countries such as Germany and Austria, which have paid leave, have low take-up rates by men – 1%. There appears to be a number of reasons for this – Parental Leave Benefit is means-tested in Germany and low flat-rate benefits are provided in both countries;

In addition to high levels of benefit, the flexibility of the leave arrangements appears to be a significant factor in influencing take up. Sweden has by far the most flexible system whereby employees are able to take short or longer periods of full or part-time leave and can frequently change the type of leave they are taking. Sweden has also the highest overall take-up level;

Another significant factor leading to increased take-up by men is the provision of leave on a non-transferable basis. For instance, the introduction of non-transferable leave in Norway has led to higher levels of take-up by men.

**Sources:**

*“Time Out: The Costs and Benefits of Paid Parental Leave” – Helen Wilkinson et al – 1997;*  
*EIRO Observer: “Comparative Supplement on EU Parental Leave Agreement and Directive for Law and Practice” – 1997; Equal Opportunities Review: “Parental and Family Leave in Europe” – March/April 1996.*

**Estimated take up rates in Ireland**

**Assumptions**

The majority of women would take up the leave – 90%.

This assumes that a large proportion of women would take their full 14 weeks leave entitlement, with almost all taking some of their entitlement. In addition to the estimated numbers qualifying in any one year, the above take up level also reflects the fact that parents of children born within 5 years of the introduction of a Parental Leave Benefit scheme would also be eligible for the benefit.

There would be a lower take up rate for men – 15%.

This assumes that some men would take their full leave entitlement, with higher numbers taking some of their entitlement, for example, 2 weeks after the birth of the child. These take-up rates are somewhat higher than in other countries which currently have paid leave. This is based on the fact that many of the features giving rise to higher take-up rates by men would be incorporated into the Irish system, e.g. flexible leave arrangements and non-transferable leave. In addition, the leave could be taken over a longer period (i.e. 5 years) as opposed to between two and three years in other countries. In addition to the estimated numbers qualifying in any one year, the above take up level also reflects the fact that parents of children born within 5 years of the introduction of a Parental Leave Benefit scheme would also be eligible for the benefit.

### **Payment equivalent to Disability Benefit**

#### **Proposal – pay to employees only**

##### ***Cost of possible Parental Leave Benefit for women***

Assumes 75% take-up rate for women.

The average rate of payment would be the same as the average Disability Benefit payment for women, i.e. €111.60 per week.

$$\text{Cost} = (24,200 \times 75\%) \times \text{€}111.60 \times 14 \text{ weeks} \qquad = \text{€}28.36\text{m. per annum}$$

$$\qquad \qquad = \text{£}22.34\text{m. per annum}$$

##### ***Cost of possible Parental Leave Benefit for men***

Estimated number of men who would qualify: 31,000

Assumes a 10% take-up rate for men

The average rate of payment would be the same as the average Disability Benefit payment for men, i.e. €133.70 per week.

$$\text{Cost} = (31,000 \times 10\%) \times \text{€}133.70 \times 14 \text{ weeks} \qquad = \text{€}5.80\text{m. per annum}$$

$$\qquad \qquad = \text{£}4.57\text{m. per annum}$$

$$\text{Overall cost of possible Parental Leave Benefit} \qquad = \text{€}34.16\text{m. per annum}$$

$$\text{for both men and women for 14 weeks} \qquad \qquad \qquad = \text{£}26.91\text{m. per annum}$$

### **Estimated take up rates in Ireland**

#### **Assumptions**

Assumes lower take-up rate by women than for payment equivalent to Maternity Benefit – 75% take-up rate.

Again this assumes that a large proportion of women would take their full 14 weeks leave entitlement, with almost all taking some of their entitlement.

There would be a lower take up rate for men – 10%.

This assumes that some men would take their full leave entitlement, with higher numbers taking some of their entitlement, for example, 2 weeks after the birth of the child.

In the case of both men and women, in addition to the estimated numbers qualifying in any one year, the above take up level also reflects the fact the parents of children born within 5 years of the introduction of a Parental Leave Benefit scheme would also be eligible for the benefit.

### **Payment equivalent to Carer's Benefit**

#### **Proposal – Pay to employees only**

##### ***Cost of possible Parental Leave Benefit for women***

Assumes 80% take-up rate for women.

The average rate of payment would be the same as the average Carer's Benefit payment for women, i.e. €147.67 per week.

$$\text{Cost} = (24,200 \times 80\%) \times \text{€}147.67 \times 14 \text{ weeks} \qquad = \text{€}40.02\text{m. per annum}$$

**£31.52m. per annum**

##### ***Cost of possible Parental Leave Benefit for men***

Estimated number of men who would qualify: 31,000

Assumes a 10% take-up rate for men.

The average rate of payment would be the same as the average Carer's Benefit payment for men, i.e. €146.27 per week.

$$\text{Cost} = (31,000 \times 10\%) \times \text{€}146.27 \times 14 \text{ weeks} \qquad = \text{€}6.34\text{m. per annum}$$

**£5.00m. per annum**

**Overall cost of possible Parental Leave Benefit for both men and women for 14 weeks** **= €46.37m. per annum**  
**£36.52m. per annum**

### **Estimated take up rates in Ireland**

#### ***Assumptions***

Assumes a take-up rate by women of 80%.

Again this assumes that a large proportion of women would take their full 14 weeks leave entitlement, with almost all taking some of their entitlement.

There would be a lower take up rate for men – 10%.

This assumes that some men would take their full leave entitlement, with higher numbers taking some of their entitlement, for example, 2 weeks after the birth of the child.

In the case of both men and women, in addition to the estimated numbers qualifying in any one year, the above take up level also reflects the fact the parents of children born within 5 years of the introduction of a Parental Leave Benefit scheme would also be eligible for the benefit.



# Appendix VIII

## Estimated annual cost of paid parental leave to public sector employers, supplied by the Department of Finance

### Estimated Costs – I

*Assumption: (all men and women entitled to do so will take 14 weeks paid parental leave on full pay (i.e. rate of payment similar to maternity leave and adoptive leave). This costing reflects a deduction in respect of DSCFA<sup>12</sup> payment on rate similar to Maternity Benefit).*

1. Population aged 15 and over, February 2001				3,013,200
2. Less those retired				258,454
3. Population aged 15 and over – not retired				2,754,746
4. Total births 1999				53,354
5. Derived births per 1000 of population aged 15-65				19 (53,354/2,754,746)
		<b>Modified PRSI<sup>13</sup></b>	<b>Full PRSI</b>	<b>Total</b>
6. Number employed in public service		135,130	80,136	215,266
7. Estimated births to that group		2,567	1,523	
8. Assuming each absence 14 weeks		691 years	410 years	
9. Average annual salary approx. (€10,200,543,710/215,266)				€47,385
		<b>Modified PRSI</b>	<b>Full PRSI</b>	<b>Total Cost</b>
10. Estimated cost for public servants (excluding Local Authorities)		€32,743,280	€19,427,995	
11. Less maximum Maternity Benefit from DSCFA (€232.36 p.w.)			- €4,953,959	
12. Totals for public servants		<u>€32,743,280</u>	<u>€14,474,036</u>	<b>€47,217,316</b> £37,186,658
13. Estimated cost 14 weeks (excluding Local Authorities)		€47,217,316		
14. Estimated cost 14 weeks for Local Authorities		<u>€3,436,452</u>		
15. Estimated total cost for 14 weeks		<b>€50,653,768</b> £39,893,084		
16. Estimated total cost for one week's paid leave		€3,618,126 £2,849,506		

<sup>12</sup> Department of Social, Community and Family Affairs.

<sup>13</sup> Pay Related Social Insurance.

17. Background data	
Births 1999 – by age of mother: source CSO	
Under 20	3,301
Aged 20-24	7,503
Aged 25-29	13,576
Aged 30-34	17,614
Aged 35-39	9,377
Aged 40-44	1,638
Aged 45-49	72
Aged 50+	1
Age not stated	<u>272</u>
	<u>53,354</u>

#### **Public service paybill used**

(excludes Local Authorities)

AEV for public service for 2002	€11,209,388,690
Less pensions	<u>€1,008,844,982</u>
	<b>€10,200,543,708</b>
	£8,033,581,010

#### **Local Authority paybill used**

Supplied by Dept. of the Environment & Local Government	€804,772,691
uprated by 11% over 2001 paybill (excludes pensions & PRSI)	£633,810,000

#### **Public servants**

No. of Exchequer funded public servants as of 1/2/2001 (excludes Local Authorities):	215,266
Local Authorities:	<u>27,500</u>
Total number:	242,766

#### ***Estimated total cost for 14 weeks paid parental leave (assuming MB payment rate)***

Uptake of 90%:	€45,588,392
Uptake of 80%:	€40,523,015
Uptake of 70%:	€35,457,639
Uptake of 60%:	€30,392,261

#### ***Estimated total cost for 1 week paid parental leave (assuming MB payment rate)***

Uptake of 90%:	€3,256,313
Uptake of 80%:	€2,894,501
Uptake of 70%:	€2,532,688
Uptake of 60%:	€2,170,875

### Costings assuming Disability Benefit rate

*Assumption: (all men and women entitled to do so will take 14 weeks paid parental leave on full pay (i.e. rate of payment similar to maternity and adoptive leave). This costing reflects an appropriate deduction of DSCFA payments on rate similar to Disability Benefit).*

*Estimated total costs of paid parental leave  
(payment rate similar to Disability Benefit – €111.61 p.w.)*

	<i>Modified rate</i>	<i>Full PRSI</i>	<i>Total Cost</i>
Estimated cost for public servants (excluding Local Authorities)	€32,743,280	€19,427,995	
Less maximum Disability Benefit – €111.61 p.w.		<u>€2,379,525</u>	
Totals for public servants	<u>€32,743,280</u>	<u>€17,048,470</u>	<b>€49,791,750</b> £39,214,191
Estimated costs for Local Authorities	€2,469,959	€1,646,152	
Less maximum Disability Benefit – €111.61 p.w.		<u>€326,459</u>	
Totals for Local Authorities	<u>€2,469,959</u>	<u>€1,319,693</u>	<b>€3,789,652</b> £2,984,594
<b>Total costs for 14 weeks</b>			<b>€53,581,402</b> £42,198,785
<b>Total costs for 1 week</b>			<b>€3,827,243</b> £3,014,199

*Estimated total cost for 14 weeks paid parental leave  
(assuming DB payment rate)*

Uptake of 90%:	€48,223,263
Uptake of 80%:	€42,865,123
Uptake of 70%:	€37,506,984
Uptake of 60%:	€32,148,842

*Estimated total cost for 1 week paid parental leave  
(assuming DB payment rate)*

Uptake of 90%:	€3,444,519
Uptake of 80%:	€3,061,794
Uptake of 70%:	€2,679,070
Uptake of 60%:	€2,296,347

### Costings assuming Carer's Benefit rate

*Assumption: (all men and women entitled to do so will take 14 weeks paid parental leave on full pay (i.e. rate of payment similar to maternity leave and adoptive leave). This costing reflects an appropriate deduction of DSCFA payments on rate similar to Carer's Benefit).*

*Estimated total costs of paid parental leave  
(payment rate similar to Carer's Benefit – €147.67 p.w.)*

	<i>Modified rate</i>	<i>Full PRSI</i>	<i>Total Cost</i>
Estimated cost for public servants (excluding Local Authorities)	€32,743,280	€19,427,995	
Less maximum Carer's Benefit – €147.67 p.w.		<u>€3,148,335</u>	
Totals for public servants	<u>€32,743,280</u>	<u>€16,279,660</u>	<b>€49,022,940</b>
			£38,608,703
Estimated costs for Local Authorities	€2,469,959	€1,646,152	
Less maximum Carer's Benefit – €147.67 p.w.		<u>€431,936</u>	
Totals for Local Authorities	<u>€2,469,959</u>	<u>€1,214,216</u>	<b>€3,684,175</b>
			£2,901,524
<b>Total costs for 14 weeks</b>			<b>€52,707,115</b>
			£41,510,227
<b>Total costs for 1 week</b>			<b>€3,764,794</b>
			£2,965,016

*Estimated total cost for 14 weeks paid parental leave  
(assuming CB payment rate)*

Uptake of 90%:	€47,436,404
Uptake of 80%:	€42,165,692
Uptake of 70%:	€36,894,981
Uptake of 60%:	€31,624,269

*Estimated total cost for 1 week paid parental leave  
(assuming CB payment rate)*

Uptake of 90%:	€3,388,314
Uptake of 80%:	€3,011,835
Uptake of 70%:	€2,635,355
Uptake of 60%:	€2,258,875

## Estimated Costs – II

*Assumption: all men and women entitled to do so will take 14 weeks paid parental leave on a flat rate social welfare payment similar to Carer's Benefit. The Public Sector Employer would cover the cost of a similar payment to modified PRSI public servants (entitled to parental leave), who it is assumed would not be eligible for a DSCFA payment.*

1. Number of modified PRSI contributors employed in public service (excluding Local Authorities)	135,130
2. Estimated births to that group	2567
3. Assuming each absence 14 weeks	691 years
4. Estimated cost (rate similar to Carer's Benefit – €147.67 p.w.)	<b>€5,306,098</b> £4,178,892
5. Number of modified PRSI contributors employed by Local Authorities	16,500
6. Estimated births to that group	314
7. Assuming each absence 14 weeks	84.5 years
8. Estimated cost (rate similar to Carer's Benefit – €147.67 p.w.)	<b>€648,864</b> £511,022
9. Estimated cost 14 weeks (excluding Local Authorities)	<b>€5,306,098</b> £4,178,892
10. Estimated cost 14 weeks for Local Authorities	<b>€648,864</b> <u>£511,022</u>
11. Estimated total cost for 14 weeks (rate similar to CB)	<b>€5,954,962</b> £4,689,914
12. Estimated total cost for 1 week (rate similar to CB)	€425,354 £334,994



# Appendix IX

## Letter from Irish Congress of Trade Unions

The following letter was submitted by the Irish Congress of Trade Unions following the conclusion of the deliberations of the Group and post Budget 2002.

18 December 2001

Mr. John Kenny  
Principal Officer  
Equality Unit  
Department of Justice, Equality & Law Reform  
Mespil Road  
Dublin 4

Dear Mr. Kenny

### **Subject: Parental Leave Review – Payment Issues**

In the section of the Parental Leave Review Group report covering Payment Issues it was agreed that representatives on the Group could include a piece outlining their organisations position in relation to this issue.

The Congress piece, which was submitted prior to Budget 2002, refers specifically to the projected surplus in the Social Insurance Fund and proposal to reduce the Employers PRSI contribution to the Social Insurance Fund.

The decisions taken by Government in relation to the Social Insurance Fund in Budget 2002 are extremely relevant to the issue raised by Congress in relation to the introduction of a PRSI based Parental Leave Payment.

Budget 2002 announced the following:

Reduction in the employer PRSI contribution by 1.25% to 10.75% at a cost to the Fund of €347 million in a full year.

Increase in employee contributions by increasing the ceiling from £28,250 to £30,501. This increase will yield €22.86m (£18m) in a full year.

Transfer of €635 million from the Social Insurance Funds to the Exchequer – The Minister for Finance in his Budget speech said:

“that the Fund is now in such a healthy financial position that the Exchequer can recover some of this funding. The Fund will have about a €1.4 billion surplus at the end of 2001. I indicated last year that it is important to keep the surplus under review. Having regard to its

strong financial position I am satisfied that it is appropriate for that Fund to make a contribution of €635 million in 2002 towards the Exchequer. Taking account of the other changes I am announcing today, the Fund will still have €1.2 billion in hand at the end of 2002."

In the light of Government decisions and the Minister for Finance statement in relation to the Social Insurance Fund in Budget 2002, the references, contained in the Review Group's Report, to the need for additional employee PRSI contributions and references to the cost of introducing a PRSI payment are no longer relevant. Clearly the concerns about sustainability and cost to the Fund expressed during the work of the Review Group are misplaced.

In the circumstances it is essential that the above be included in the report and cross-referenced to the Congress piece on Parental Leave payment issues.

Yours sincerely,

**Joan Carmichael**  
**Assistant General Secretary**

# Appendix X

## **Presentation to the Working Group – Mr. Brian Miller, Senior Policy and Public Affairs Adviser, National Disability Authority**

The NDA propose that the Parental Leave Act be modified to include extra provisions in terms of leave entitlement for parents of a child with a disability.

The current Irish Parental Leave Act makes no exceptional provisions for parents of children with disabilities. This is not the situation in the United Kingdom, for example, where the provision of parental leave for parents of children with disabilities has been given special recognition. In the UK, the right to take parental leave lasts up to the child's 18th birthday in the case of a child with a disability, and in addition this leave may be taken one day at a time (this flexibility is already a feature of the Irish legislation, subject to the employer's agreement). The UK intends to extend the overall length of parental leave in respect of children with disabilities from 13 weeks to 18 weeks. This would then entitle parents of a child with a disability to one week's parental leave for every year up to the child's 18th birthday. In the UK, a child with a disability is a child in receipt of the Disability Living Allowance. The Domiciliary Care Allowance is the nearest equivalent payment in Ireland. The total number of children in receipt of Domiciliary Care Allowance as at the end of December 1999 was 9,576. The NDA is requesting that the review group consider the inclusion of similar provisions in the Irish legislation.

The inclusion of such provisions would recognise that parents of children with disabilities are faced with extra parental duties arising from the disability, such as for example extra caring duties, attendance at medical appointments and specialised clinics. The extension of the age criteria to the child's 18th birthday in the case of a child with a disability allows for the situation where a child may be very well for many years but is due for complicated surgery in their teenage years.

As the legislation stands<sup>14</sup> parents of children with disabilities have the following options in order to cope with their child's needs:

- Take time off without pay;
- Take annual leave;
- Depend on the discretion and goodwill of the employer;
- Give up work altogether.

None of these is a satisfactory solution and places an unfair burden on families who are already coping with the challenge of living with a child with a disability.

The right of a child with a disability to have a parent available to accompany them to, for example, a hospital medical visit, is being undermined by the absence of any special provisions in the Irish

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<sup>14</sup> The Carer's Leave Act 2001 was not in force when Mr. Miller made his presentation to the Working Group.

legislation, as is the right of the parent to be available to care for the child. NDA therefore sees this issue as a rights issue and one, which should be supported and addressed in an amended Parental Leave Act.

# Appendix XI

## Presentation to the Working Group – Mr. Tommy Wilson, Department of Health and Children

### Domiciliary Care Allowance (DCA)

The Domiciliary Care Allowance Scheme is operated by the Health Boards under Section 61 of the Health Act 1970. Domiciliary Care Allowance (DCA) is paid in respect of eligible children, up to the age of 16 years, with a severe physical or intellectual disability who are living at home and who need constant care. Payments may be made in respect of children whose physical or intellectual disability is so severe that they require from another person constant care or supervision, i.e. continual or continuous care or supervision substantially greater than that which would normally be required by children of the same age. The fact that a severe disability is present does not automatically justify the payment of an allowance – the presence of the disability must necessitate constant care as already defined. The Health Board should be satisfied that the extra care required is being provided by the parent(s)/guardian(s) themselves or by arrangement by them with another person or persons.

The disability must be present at the time of the application and be likely to continue for at least a year. The Scheme should not apply to short-term illnesses or disabilities. It was not visualised that any particular condition should be debarred from consideration – each case should be considered on its merits. However, a condition such as asthma which, though it is disabling, produces attacks only intermittently, would not normally qualify a child for the payment of an allowance. Similarly, a condition such as diabetes, though inherently disabling, would not normally qualify as it can be well controlled and only creates difficulties on an infrequent basis.

Only the means of the child should be taken into account in determining eligibility for an allowance – the means of the parents should not be considered. Children who have means of their own in excess of the amount of the allowance would not be eligible. “Means”, in this context, would include payments of compensation following on court action or otherwise, in respect of injuries or disabilities sustained.

An application for an allowance under the Scheme should be made to the relevant health board by a parent or guardian of the child on the standard form of application. It is open to the applicant to submit, if he/she so desires, supporting evidence, e.g. a certificate from a medical practitioner regarding the existence of a specific condition and the care and treatment which this requires. It is a matter for the Senior Area Medical Officer in the relevant health board to determine eligibility on medical grounds in each case. Where a child qualifies for DCA and his/her condition is permanent, an allowance can be granted up to the age of 16 years. In cases, in which training can bring about a considerable improvement in the child’s capacity, certification should normally be for a limited period, the case thereafter being reviewed at appropriate intervals to establish the continued existence of the need for an allowance.

When the child reaches the age of 16 years, DCA ceases and he/she would normally become eligible for Disability Allowance (DA) – a Department of Social, Community and Family Affairs’

payment. The DCA should normally be paid to the mother of the child but, at the discretion of the Health Board it may, if circumstances so require, be paid to the father or the person who is providing care for the child. Payment of the allowance should continue to be paid during a child's absence from home while on holidays or while undergoing short courses of treatment in hospital. The allowance may be continued for periods up to 2 months in such cases; where the absence exceeds 2 months the allowance should be discontinued.

The allowance is not paid in respect of a child maintained on a full time basis in a special residential school/institution, etc. However, DCA is payable on a pro-rata basis for periods spent at home, e.g. week-ends or holidays, by an eligible child who attends a special residential school/institution, etc. The DCA may be paid in respect of all eligible children in a family.

DCA was being paid in respect of 9,576 children on 31 December 1999 and 10,570 on 31 December 2000. The increase in the numbers between 1999 and 2000 is partly due to the fact that prior to 1 January 2000, children under the age of 2 years were not regarded as eligible for DCA as it was felt that such children normally required constant care and attention in any event.

Most Common Conditions in respect of which DCA is normally paid (Information Received from EHB in 1999)

- Cerebral Palsy;
- Congenital Anomalies, including Congenital Heart Defects;
- Cystic Fibrosis;
- Spina Bifida;
- Epilepsy;
- Leukemia and other childhood cancers;
- Moderate, severe or profound learning disabilities, including children with Down's Syndrome;
- Muscular Dystrophy; and
- Behavioural Abnormalities, including Attention Deficit Disorder.

At the time this information was provided, the Eastern Health Board estimated that children with Cerebral Palsy, moderate, severe or profound learning disabilities and Downs Syndrome accounted for over 50% of DCA beneficiaries.

# Appendix XII

## Presentation to the Working Group – Ms. Miriam Maguire, Department of Health and Children

### Foster Care Arrangements in Ireland

The Child Care Act 1991 provides the legal framework for the provision of foster care services. The two main types of foster care are relative foster care, where the child is placed in the care of relatives, which is regulated by the Child Care (Placement of Children with Relatives) Regulations 1995 (S.I. No. 261 of 1995) and placement with non-relatives, which is regulated by the Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No. 260 of 1995).

In both foster care and relative care the child may be placed with the carers for a short, medium or long period of time, depending on the nature of the placement. A foster parent must sign a contract with the relevant health board which forms the basis of an agreement by the foster parent to take a child into his/her home and care for the child on behalf of the health board.<sup>15</sup> This placement can be terminated at the request of the foster carer (28 days notification requirement) or the health board. Foster carers may also refuse to provide a placement for a child if they have good reason to do so.

The majority of children who enter foster care are admitted voluntarily by the family, otherwise they enter foster care by way of a court order (for example, in the case of an emergency placement) and for a specific period of time. In the case of voluntary admissions, the health board may be aware of children in vulnerable situations and the families are requested to place the child in foster care. Alternatively, families unknown to the health board present themselves to avail of the health board's foster care service for their children.

In contrast to an adoptive parent, a foster parent is not legally the parent of the child. A foster parent cares for the child on behalf of the health board who have statutory responsibility for the child. For example, in the event of a foster child undergoing an elective medical procedure, an official from the health board is required to sign the forms granting permission for the procedure to proceed.

Foster parents do not have to work full-time in the home or be unemployed. However, where foster parents (working outside the home) arrange childminding/crèche facilities for their foster children, the relevant health board assess the suitability of the facilities.

It is not always clear from the beginning of the placement whether the placement will be short, medium or long-term. Children may be placed with foster parents on an emergency basis, with a view to reuniting them with their families as soon as the health board is sure that the child will no longer be vulnerable in that situation. However, if it is deemed that the child might not receive due care and protection in returning him/her to his/her family, a medium to long-term placement

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<sup>15</sup> The Child Care Regulations 1995, Department of Health, Stationery Office.

(possibly with another foster carer) may be considered. Other children may be placed in short-term care to allow their families respite to deal with problems that they may have, and returned to their families after a short period. Children may enter foster care on a long-term basis, for example, in cases where older siblings have been taken into foster care, on the birth of a younger sibling a social worker may be in a position to give a prognosis that the new born child would enter a foster care arrangement on a long-term basis. However, there is no guarantee the child will remain with the same foster parents on a long-term basis as foster care placements may break down for a variety of reasons. Children may therefore be the subject of a number of foster care placements of varying durations.

Another factor to be considered is that of the age of the child entering foster care. Many of the children entering foster care are of an age where, unlike infants, 24 hour care is not necessary, as the child is of school-going age.

Foster parents receive a payment from the health board of €253.94 (£200) in respect of children under 12 years old and €279.34 (£220) in respect of children over 12 years old.<sup>16</sup> Payment continues until the termination of the foster care agreement or the child's 18th birthday (whichever is earlier) – special arrangements for payment are made in respect of foster children who attend third level education. This payment reflects the fact that foster children may require particular care and attention, for example, the need for medical or psychological/psychiatric help. In some cases foster parents must facilitate contact visits between the foster child and his/her natural parents, grandparents, siblings or other relatives. The frequency of these contact visits vary for each child. In facilitating these visits, foster carers may be required to travel considerable distances.

A comprehensive review of foster care was recently completed by a Working Group set up by the Department of Health and Children. The main concern of the Working Group was to review the current service and make recommendations that would enhance the delivery of a high quality service to improve the life chances of children in foster care and promote the best possible outcomes for them. As part of its deliberations, the Group engaged in an extensive consultation process with people and organisations involved in fostering.<sup>17</sup> The issue of parental leave did not arise in the context of the review.

In 1999, there were 3,289 children in foster care.<sup>18</sup>

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<sup>16</sup> Rates applicable with effect from 1 August 2001.

<sup>17</sup> *Report of the Working Group on Foster Care: Foster Care – A Child Centred Partnership*, Department of Health & Children, May 2001.

<sup>18</sup> Foster arrangements also provide care for children for certain hours of the day (day fostering – for example, 8/9am to 6 pm), no statistics are kept relating to these arrangements.

# Appendix XIII

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