

DÁIL ÉIREANN

AN ROGHCHOISE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 6 Iúil 2016

Wednesday, 6 July 2016

The Select Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Colm Brophy,	Deputy Frances Fitzgerald (<i>Tánaiste and Minister for Justice and Equality</i>),
Deputy Jack Chambers,	Deputy Jim O'Callaghan,
Deputy Clare Daly,	Deputy Mick Wallace.
Deputy Alan Farrell,	

In attendance: Deputy Jonathan O'Brien.

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR.

Business of Select Committee

Chairman: It is now 9 o'clock. It is a good way to start in that all our members will know we intend to be prompt in our business. I, therefore, propose we get under way. With the Minister's indulgence, I would like to take the opportunity to welcome Deputies Colm Brophy and Jim O'Callaghan and to say, as I have said to them privately, that I hope our committee will prove to be a very efficient, effective and productive one over the term of the Thirty-second Dáil. I have no doubt this is within our capacity and I hope it is the intent of all of us. I also welcome Deputy Jack Chambers.

As we are in public session, I ask that all mobile telephones be switched off as they cause interference, even if on silent mode, with the recording equipment in the committee rooms.

Paternity Leave and Benefit Bill 2016: Committee Stage

Chairman: This meeting of the Select Committee on Justice and Equality has been convened to consider Committee Stage of the Paternity Leave and Benefit Bill 2016. I welcome the Minister and her official to the meeting. Before going into the sections of the Bill, I invite the Minister to address the committee.

Tánaiste and Minister for Justice and Equality (Deputy Frances Fitzgerald): I wish to take this opportunity to wish Deputy Ó Caoláin the very best in his role as Chairman of the committee. I have had a very constructive working relationship with this committee and I look forward to working with all members of it in the months ahead. My Department and I will be as helpful as we possibly can.

I wish to start by saying how privileged I am to be able to bring forward this Bill today. It is worth saying at the outset - I think members would agree with me - that it is a groundbreaking Bill in the Irish context. We are recognising the role of fathers in the care of young children and taking the first step in meeting our programme for Government commitment to move to paid leave to cover the entire first year after the birth of a child.

I will table a number of amendments on Report Stage, which I want to flag at this point, with the permission of the Chairman. I will table amendments to section 2 and a number of other sections that relate to male same-sex couples who adopt. The intention of the Bill is to cater for same-sex couples on the same basis as any other couple. However, due to the interaction between a number of Acts - the Marriage Act 2015, the Child and Family Relationships Act 2015, specifically section 177, which has not yet been commenced, the Adoptive Leave Act 1995, which provides for adoptive leave for an adopting mother only, and the Adoption Acts, to which there is an amending Bill before the Oireachtas at present - there is a technical difficulty regarding same-sex male couples who adopt and I need to sort that out, with the permission of the committee, on Report Stage. I will table the necessary amendments to ensure that paternity leave is available to male same-sex couples who adopt and there will be some consequential amendments to section 37 of the Bill, on page 35, in lines 16 and 17, to change the proposed reference in the Workplace Relations Act to "adopting mother, sole male adopter" to "adopting parent". This will be dealt with; it is just not in the Bill at present. In addition, on the same page, at lines 7 and 8, there will be an amendment to the provision relating to the day of placement, having the meaning assigned to it by the 1995 Act, as it is now the case that there will be

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a stand-alone definition of “day placement” in the Bill itself.

In addition, sections 30 and 31 in Part 5 of the Bill, which in turn make the necessary amendments to the Social Welfare Consolidation Act 2005 to provide for paternity benefit, will need to be amended. It is not possible to resolve the larger anomaly, namely, that the Adoptive Leave Acts do not allow adoptive leave for one of a male same-sex couple. This is because the leave is available to an adopting mother only. We have consulted the Department of Children and Youth Affairs and the Adoption Authority in this regard. There have not been any sole male domestic adopters in the past three years and there are currently no domestic adoptions by a same-sex couple in the assessment process, so it looks like there will not be any over the next 12 to 18 months. There is, however, the possibility of a same-sex couple registering a foreign adoption here and subsequently moving to Ireland, but it is a small number.

The anomaly does need to be fixed and it will be. Members of the committee know that I need to have this paternity Bill dealt with in order that we can start payment of paternity benefit in September. Amendments will need to be made to the adoption Acts at a later point to deal with that issue, certainly not later than the end of next year. It may possibly be dealt with in the Bill that will be published in the next session to allow ratification of the UN Convention on the Rights of Persons with Disabilities. We are committed to ratifying the convention before the end of the year.

I will also table an amendment to section 22 of the Bill to ensure an employee will be protected against any threat of penalisation.

Would the Cathaoirleach like me to turn to amendments Nos. 1 and 19 at this point?

Chairman: Before doing so, as this is the first meeting of the select committee, I want to welcome the other members. I welcome Deputies Mick Wallace, Clare Daly and Alan Farrell. As I said to my colleagues at the outset, I hope we will have a very efficient and productive term. I look forward to working with each and every one of them.

The list of amendments which have been grouped has been circulated and everybody has received a copy. There are no amendments to section 1.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 1 and 19 are related and will be discussed together.

Deputy Frances Fitzgerald: I move amendment No. 1:

In page 8, to delete line 4 and substitute the following:

““sole male adopter” has the same meaning as it has in the Act of 1995 and includes, for the purposes of this Act, a person who would be a sole male adopter but for the fact that he is not an employee;”.

We are discussing amendments Nos. 1 and 19 together. They relate to the definition of “sole male adopter” for the purposes of paternity leave, a matter which is dealt with in section 2, and paternity benefit which we are introducing, and a matter which is dealt with in section 31. We are amending the definition to ensure self-employed fathers are covered in the Bill. Specifically, the change relates to the definition of “sole male adopter” in the Adoptive Leave Act

1995. We are expanding the definition for the purposes of the Bill to include self-employed sole male adopters. This was always the intention and the two amendments resolve a technical issue to ensure the Bill will do what was and is intended. They provide clarification that self-employed male adopters will receive paternity benefit in the same way as women receive maternity benefit.

Chairman: Is there broad agreement on the amendment in the Tánaiste's name? I will proceed as expeditiously as possible.

Amendment agreed to.

Chairman: Amendments Nos. 2, 4 to 8, inclusive, 11, 16 to 18, inclusive, 21 and 22 are related and may be discussed together.

Deputy Frances Fitzgerald: I move amendment No. 2

In page 8, line 9, to delete "in *section 15(1)*" and substitute "by *section 15(1)*".

These 13 amendments are technical. Obviously, the Bill was produced under considerable pressure. I thank colleagues in the Office of the Parliamentary Council and in the Department of Social Protection who worked very hard to ensure we could commence this benefit in September. In order to do that, we need to have the Bill through both Houses by the end of this Dáil session. The amendments are totally technical and deal with linguistic and stylistic issues. There are some errors in cross-referencing sections of the Bill and other Acts. I hope the committee members will accept them without debate. They are very straightforward corrections to the Bill.

Amendment agreed to.

Section 2, as amended, agreed to.

Sections 3 to 5, inclusive, agreed to.

SECTION 6

Chairman: Amendment No. 3 in the name of Deputy Shortall is out of order. It is not relevant to the provisions of the Bill. In fact, it directly referred to other legislation, as I recall. Therefore, there are no valid amendments for consideration on section 6.

Amendment No. 3 not moved.

Section 6 agreed to.

SECTION 7

Deputy Frances Fitzgerald: I move amendment No. 4:

In page 10, line 30, to delete "is".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 5:

In page 10, line 32, to delete "is".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 6:

In page 10, line 39, to delete “is”.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 7:

In page 11, line 21, to delete “is”.

Amendment agreed to.

Section 7, as amended, agreed to.

SECTION 8

Deputy Frances Fitzgerald: I move amendment No. 8:

In page 12, line 10, to delete “to 15” and substitute “to 14”.

Amendment agreed to.

Section 8, as amended, agreed to.

Sections 9 and 10 agreed to.

SECTION 11

Chairman: Amendments Nos. 9, 10, 12 and 13 are related. Amendment No. 9 is consequential on amendment No. 10. Amendments Nos. 9, 10, 12 and 13 will be discussed together. I invite the Minister to address her amendment and the related amendments.

Deputy Frances Fitzgerald: I move amendment No 9:

In page 13, line 2, to delete “*subsection (3)*” and substitute “*subsection (4)*”.

These are three amendments that relate to very technical issues regarding notification or commencement of paternity leave, and another technical amendment that is consequential on one of these, which we can discuss together. Section 11 provides for postponement of paternity leave in cases where the relevant parent - usually, the father, but we are providing for same-sex couples also - has given notice of intention to take the leave but becomes ill before the leave is due to be taken. The proposed new subsection (4) links in to sections 13 and 14. These sections provide for a situation where the relevant parent - usually the father - becomes entitled to maternity leave or adoptive leave in those rare and tragic circumstances where the mother dies while on maternity or adoptive leave.

Amendment No. 10 gives clarity on when the postponed paternity leave should be resumed in such circumstances by stating that it should be commenced not later than seven days after relevant parent - the father - ceases to be sick or on another date if the relevant parent and the employer so agree. The normal 28-week window in which paternity leave must be taken does not apply, hence we need this extra clarification. Amendment No. 9 is a consequential change to a cross reference.

Amendments Nos. 12 and 13 to section 15 provide for equally rare and tragic circumstances

where a person who is entitled to paternity leave dies before he - or she, in the case of same-sex couples - has taken it. In these circumstances, section 15 transfers the paternity leave to the mother. The new subsection (5) tidies up the language but does not change the idea in the existing subsection, which is that the transfer takes place regardless of whether or not the deceased had applied for paternity leave. It is sufficient that the entitlement existed at the time of death.

The new subsection (6) resolves a technical issue so as to link the notification required under section 15(3)(a) with the other relevant notification procedures required under the Bill. A notification under this section is deemed to satisfy the notification requirements of other related sections. Subsection (7) deals with a situation where paternity leave has transferred to a surviving parent and where that leave is subsequently postponed due to sickness. In such a case, the leave should commence not later than seven days after the surviving parent is no longer sick or on another date agreed between parent and employer. Again, the normal 28-week window in which paternity leave must be taken does not apply in these circumstances. It is to build flexibility into the legislation for cases in which death or unexpected illness occurs and ensure the transfer can take place between the relevant people.

Deputy Alan Farrell: It is a very compassionate approach and I commend the Minister and the Department on it. From reading the original Bill, it provides the clarity required.

Deputy Jack Chambers: I agree with Deputy Farrell. It provides the flexibility and is a very compassionate amendment. It is important that we allow this transfer and flexibility if such issues arise within a family. I welcome the amendment. It is a positive move.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 10:

In page 13, between lines 11 and 12, to insert the following:

“(4) Where *section 13(1)* or *14(1)* applies, the period of postponed leave shall commence not later than 7 days after the relevant parent is no longer sick or on such other date as may be agreed between the relevant parent and the employer.”.

Amendment agreed to.

Section 11, as amended, agreed to.

Sections 12 to 14, inclusive, agreed to.

SECTION 15

Deputy Frances Fitzgerald: I move amendment No. 11:

In page 15, line 35, to delete “is”.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 12:

In page 16, to delete lines 1 to 3 and substitute the following:

“(5) A reference in *subsection (1)* to a relevant parent entitled to paternity leave includes a reference to a relevant parent who would be so entitled but for the fact that he or

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she did not notify his or her employer in accordance with *subsection (2) or (5) of section 7*, as the case may be.”.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 13:

In page 16, to delete lines 4 to 6 and substitute the following:

“(6) Subject to *subsection (7)*, *sections 11 and 12* shall apply to a surviving parent who is entitled to, or is on, transferred paternity leave as they apply to a relevant parent who is entitled to, or is on, paternity leave and a reference in those sections to notification by a relevant parent to his or her employer in accordance with *subsection (2) or (5) of section 7*, *section 13(2) or 14(2)*, as the case may be, shall be construed as including a reference to notification by a surviving parent under *subsection (3)(a)*.

(7) Where *section 11(1)* applies to a surviving parent who is on transferred paternity leave, then, notwithstanding *section 11(3)*, the period of postponed leave shall commence not later than 7 days after the surviving parent is no longer sick or on such other date as may be agreed between the surviving parent and the employer.”.

Amendment agreed to.

Section 15, as amended, agreed to.

SECTION 16

Deputy Frances Fitzgerald: I move amendment No. 14:

In page 16, to delete lines 41 and 42 and substitute the following:

“(6) A person shall retain a notice given to him or her under this section.

(7) A person who gives a notice under this section shall retain a copy of the notice.”.

This amendment clarifies that the obligation to retain a notice under section 16 which deals with the abuse of paternity leave applies to the persons giving and receiving the notice. The Attorney General advised that this was a technical amendment that needed to be made.

Amendment agreed to.

Section 16, as amended, agreed to.

Sections 17 to 21, inclusive, agreed to.

SECTION 22

Chairman: Amendment No. 15 is in the name of Deputy Jonathan O’Brien. I welcome him to the first meeting of the select committee.

Deputy Jonathan O’Brien: I move amendment No. 15:

In page 19, between lines 16 and 17, to insert the following:

“(4) An employer found to have penalised an employee for exercising their rights to

or entitlement to paternity leave shall be subject to a fine of up to €10,000.”.

I am sorry for being late; traffic was a little heavy.

The section deals with the protection of employees from penalisation. It lists penalisations such as the dismissal of an employee, unfair treatment of an employee and unfavourable changes in terms and conditions. It goes on to state that if a penalisation of an employee in contravention of subsection (1) constitutes dismissal, the employee can institute proceedings under the 1977 Act. In a case of unfair treatment or unfavourable changes in their terms and conditions, what penalties are in place to protect employees? That is the reason we have tabled the amendment. There should be some penalisation of employers who treat their employees unfavourably or look unfavourably on them in taking paternity leave.

Deputy Frances Fitzgerald: There are a number of difficulties with the amendment which I hope the Deputy will consider in his approach to it as I go through them. The first issue that arises with the amendment is proportionality, something about which the committee might think. This concerns the very important entitlement to paternity leave, but the Deputy is suggesting the imposition of a €10,000 fine to resolve a dispute between an employee and an employer. The provisions included in the Bill allow the Workplace Relations Commission in cases of dispute to order the granting of leave, the payment of compensation of up to two weeks pay or both. That is what is actually in the Bill. It is one issue I wish to raise in respect of Deputy O’Brien’s amendment. We have a mechanism in place to deal with any disputes that might arise, namely, the Workplace Relations Commission.

The second issue with the amendment is that we would be taking disputes about penalisation away from the Workplace Relations Commission, which handles all employment and industrial relations disputes, and in to the area of criminal law. I am unsure whether it is Deputy O’Brien’s intention that complaints around penalisation of employer-employee disputes would be taken into criminal law and put before the courts, away from the Workplace Relations Commission. I do not think that is what Deputy O’Brien was intending, but it seems to us that is the implication.

The third reason I have some concerns about the amendment is that I do not believe it achieves the objective if the objective is to allow for an employer to be fined. The amendment creates a fine without creating an offence or the power to prosecute for that offence or assigning the responsibility to a particular court to hear such cases. The Deputy should note that a decision by the Workplace Relations Commission cannot be a finding for the purposes of criminal law. It could be confusing because only the courts can try cases and make convictions or impose fines.

There is another serious issue. The amendment could be taken as imposing a maximum payment in cases of penalisation involving unfair dismissal. The Workplace Relations Commission already has the power and should continue to have the power to order higher amounts of compensation in unfair dismissal cases. As it stands, the maximum compensation that can be awarded by the Workplace Relations Commission is two years’ remuneration, which is far more than €10,000. This amendment could be seen as imposing another maximum on the Workplace Relations Commission. Let us suppose there was a complaint between an employer and an employee about paternity leave and the man in question was dismissed. Under current law, the man could go to the Workplace Relations Commission and the commission could make an order for two years. If we accepted this amendment, it could be taken as imposing a maximum payment in cases of penalisation.

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I can see that Deputy O'Brien is keen to give a message to employers to the effect that it is serious to do anything that would appear to be abusive or in some way fail to implement the legislation. However, this amendment would confuse labour law and criminal law and I imagine that is not what Deputy O'Brien intended. I suggest that Deputy O'Brien might consider withdrawing it on the basis of the information I have given to the committee.

Deputy Alan Farrell: I might defer to Deputy O'Brien's response and then come in, if required.

Deputy Jonathan O'Brien: I thank the Minister for her clarification on the amendment. Certainly, I will take on board some of what the Minister has said. The purpose of the amendment is not to deal with cases of dismissals - such cases are already dealt with in the legislation under section 22(3) - but any cases of penalisation that amount to less than dismissal. For example, if a man's conditions were looked upon unfavourably or if he was not considered for promotion because he exercised his right to paternity leave, then some sanction would be in place.

I will take on board what the Minister has said and I will try to come up with a better wording for the amendment on Report Stage. I am willing to withdraw the amendment at this stage but I am giving notice that I will look to try to come up with better wording for the amendment on Report Stage.

Chairman: We note that Deputy O'Brien has withdrawn his amendment. He has the opportunity to revisit it for Report Stage.

Amendment, by leave, withdrawn.

Section 22 agreed to.

SECTION 23

Chairman: Amendment No. 16 has already been discussed with amendment No. 2.

Deputy Frances Fitzgerald: I move amendment No. 16:

In page 20, line 4, to delete "is".

Amendment agreed to.

Section 23, as amended, agreed to.

SECTION 24

Deputy Frances Fitzgerald: I move amendment No. 17:

In page 20, line 33, to delete "is".

Amendment agreed to.

Section 24, as amended, agreed to.

Sections 25 to 30, inclusive, agreed to.

SECTION 31

Deputy Frances Fitzgerald: I move amendment No. 18:

In page 25, line 13, to delete “that” and substitute “the”.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 19:

In page 25, to delete line 15 and substitute the following:

“ ‘sole male adopter’ has the same meaning as it has in the Act of 1995 and includes, for the purpose of this Chapter, a person who would be a sole male adopter but for the fact that he is not an employee within the meaning of that Act;”.

Amendment agreed to.

Chairman: Amendment No. 20 has not been previously discussed, so I invite the Minister to address the members.

Deputy Frances Fitzgerald: I understand it has been discussed already.

Deputy Mick Wallace: The Chairman should not allow the Minister to bring her telephone in here.

Deputy Frances Fitzgerald: Sorry, my apologies. I had a note to the effect that the amendment was already discussed.

Chairman: No, Minister, not to my knowledge. It is not part of any of the groupings.

Deputy Frances Fitzgerald: I understood amendments Nos. 20 to 22, inclusive, were taken together.

Chairman: No, amendments Nos. 21 and 22 were discussed but not amendment No. 20. Amendment No. 20 has not been previously discussed. If your speaking note has been misplaced, Minister, we will give you a minute.

Deputy Frances Fitzgerald: I move amendment No. 20:

In page 28, to delete lines 24 and 25 and substitute the following:

“(a) pursuant to section 47(4), to maternity benefit under Chapter 9, or

(b) pursuant to section 58(4)(b)(ii), to adoptive benefit under Chapter 11,”.

This relates to the points I made on earlier amendments already discussed. It is to do with the fact that a number of linguistic and stylistic issues need to be dealt with, including errors in cross-referencing sections of the Bill. This is the purpose of the amendment.

Amendment agreed to.

Section 31, as amended, agreed to.

Sections 32 to 36, inclusive, agreed to.

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SECTION 37

Chairman: We are on to the final section. The Minister will be glad to know that these amendments have already been discussed. Amendment No. 21 has already been discussed with amendment No. 2.

Deputy Frances Fitzgerald: I move amendment No. 21:

In page 35, line 7, to delete “*Section 27(1)*” and substitute “*Section 28(1)*”.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 22:

In page 35, line 10, to delete “*Section 27(2)*” and substitute “*Section 28(2)*”.

Amendment agreed to.

Section 37, as amended, agreed to.

TITLE

Question proposed: “That the Title be the Title to the Bill.”

Chairman: I wish to ask for a clarification. It has been asked of me in a couple of situations and I would appreciate what clarity the Minister can give. Is the event of a stillbirth, where access to paternity leave would arguably, in the minds of many, be even more important, properly provided for in the terms of the Bill?

Deputy Frances Fitzgerald: It does apply in that situation. The use of the word “confinement” covers that.

Chairman: I welcome the clarification that that is exactly what that is. I know that will be greatly appreciated by so many.

Deputy Jack Chambers: On a matter of clarification, the Minister mentioned a “relevant parent” in one of the amendments. Is that reflected in the Bill? It mentions “certain employees”. Is it worth mentioning “a relevant parent” and “certain employees” in the Bill? As a matter of clarification, would that be worth including?

Deputy Frances Fitzgerald: My advice is that it does not need to be repeated in that way.

Deputy Jack Chambers: Thank you.

Chairman: But, as the Deputy has raised it, if he feels it might need further address, he has the option of tabling his own amendment on Report Stage.

Deputy Jack Chambers: I thank the Chairman.

Title agreed to.

Chairman: As there is no other business, my understanding is that we have concluded Committee Stage of the Paternity Leave and Benefit Bill 2016. I again thank the Minister and her officials for attending this morning. I thank all the members of the Select Committee on Justice and Equality. This was a very good start. We had full attendance. I hope members will

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attend all our meetings throughout the term before us. We still do not have a joint committee because the Seanad has not yet notified us of its appointees, which from my point of view as Chairman is quite depressing. I would like to get up and running as a joint committee at the earliest possible opportunity. If any members have any influence in arranging for that matter of business to be progressed, we would appreciate it very much indeed.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Justice and Equality has completed its consideration of the Paternity Leave and Benefit Bill 2016 and has made amendments thereto.

The select committee adjourned at 9.40 a.m. *sine die*.