

FAMILY LEAVE RIGHTS: A CONSULTATION

JUNE 2022



Isle of Man
Government

Reiltys Ellan Vannin

Introduction

The Island Plan has set out the vision of a secure, vibrant and sustainable Island. Part of that vision includes looking at developments in employment rights that we can adopt in the Isle of Man to ensure that employees have secure jobs and the Island is an attractive place to work.

Though in 2017 the Equality Act made a number of significant changes to employment law in the Island in relation to discrimination, over a number of years the Isle of Man has been falling behind international standards in relation to employment rights. The Department intends to make a number of changes to employment law in the current administration.

This consultation seeks views on changes to the law on time off work and family leave rights. It is being issued alongside two other consultations, one on regulation of zero hours contracts, and one on whistleblowing. The other consultations are available on the Consultation Hub on the IOM Government website here:

<https://www.gov.im/about-the-government/government/government-consultations/>

About the consultation

Consultees are asked a number of questions. If you would like to respond to any or all of these questions please send a submission by email or post or to:

Steven Tallach

Legislation Officer

Email: steven.tallach@gov.im

Please note that the Department will assume, unless you tell us otherwise, that you **do not** object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public. If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

The consultation period ends on **26 August 2022**.

Following consultation, the Department will:

- review and evaluate comments received from consultees; and
- publish a review of the comments received; and
- set out the next steps for any legislative changes.

Section 1: Background

Rights to time off work and family leave from work, such as maternity and paternity leave, are set out in the Employment Act 2006.

It is proposed that an Employments Rights Bill amends the Employment Act 2006 to enable a number of new rights for time off work and family leave. The specific changes are:

Time off work (further information can be found in Section 2)

- Extension of rights to time off for ante natal care
- Introduction of time off for adoption appointments; and
- Time off for dependants.

Family Leave (further information can be found in Section 3)

- Introduction of powers to make secondary legislation for shared parental leave;
- Introduction of powers to make secondary legislation for parental bereavement leave;
- Provision for “keeping in touch” days for maternity/paternity etc leave.

Section 2: Time off work

In the Employment Act 2006 there are already a range of provisions entitling employees for time off work for various reasons such as trade union duties and activities, for public duties (such as being a member of a jury, or a member of a local authority) and for pregnant women to have time off to attend ante natal appointments.

In the UK, the right to time off to attend ante natal appointments has been extended to a pregnant woman's partner being allowed time off to accompany a mother to the appointment. It has also been extended to cover time off for adoption appointments.

Right to time off to accompany to ante natal appointments

It is proposed that the Employment Act 2006 is amended to include provision to allow an employee who has a qualifying relationship with a pregnant woman a right to unpaid time off from work to accompany the woman to an ante natal appointment. The employee would only be entitled to time off for up to two such appointments in relation to one pregnancy and a maximum of six and a half hours for each appointment.

A person with a qualifying relationship includes the spouse or civil partner of the pregnant woman and a person (of either sex) in a long term relationship with her. A person may also have a qualifying relationship with the expected child, for example by way of being the father of the child.

It should be noted that, whereas a pregnant women is entitled to paid time off to attend an ante natal appointment, the accompanying person is entitled to only unpaid time off.

Q1: Do you agree with the proposal for a right to time off to accompany an expectant mother to an ante natal appointment? Please explain your view.

Time off for adoption appointments

It is proposed that the Employment Act 2006 is amended to include provision to allow an employee to take time off for appointments relating to adoption of a child, in the run up to a potential placement of an adopted child. The employee would be entitled to paid time off for this purpose for a maximum of five occasions and up to six and a half hours at a time.

That person's partner would also be entitled to unpaid time off work for a maximum of two appointments at a maximum of six and a half hours at a time.

Q2: Do you agree with the proposal? Please explain your view.

Time off for dependants

It is proposed that the Employment Act 2006 is amended to include a new right of time off for dependants. This would entitle an employee to take off a “reasonable” amount of time to take action which is necessary in a number of circumstances. Specifically, those circumstances are:

- to assist when a dependant falls ill, gives birth or is injured or assaulted;
- to make arrangements for care for a dependant who is ill or injured;
- in consequence of the death of a dependant;
- because of unexpected disruption or termination of arrangements for the care of a dependant; or
- to deal with incidents involving a child of the employee and which occur unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

The purpose of the right is to account for unexpected situations where taking time off is a necessity. A dependant is defined as a spouse or partner, a child, a parent or a person who lives in the same household other than a tenant.

It should be noted that in this case the provision makes no requirement as to whether an employee is paid for the time that he or she takes.

Q3: Do you agree with the proposal for time off work for caring for dependants? Please explain your view.

Section 3: Family Leave Rights

The Isle of Man has had a number of family leave rights, such as maternity leave, paternity leave and parental leave.

However currently, in terms of maternity and paternity leave, a mother may take up to 52 weeks of leave, while a father may only take 2 weeks of leave. This limits the flexibility of parents to care for their new children.

In the Isle of Man Maternity Allowance is payable for a maximum of 39 weeks. If you are an employee, MA will be paid to you at the rate of 90% of your average weekly earnings, up to a maximum of £179.85 a week. If you are self-employed and have paid class 2 National Insurance contributions, you will be paid maternity allowance at the weekly rate of £156.66. For paternity, you can claim paternity allowance for 1 or 2 whole weeks at any time up to 8 weeks after the child's birth.

It should be noted that one of the significant differences between maternity leave and paternity leave in the Isle of Man and the UK, is that in the UK statutory maternity and paternity pay is available. This is a minimum amount of pay which must be paid by an employer to those on maternity or paternity leave for 39 weeks. The minimum is:

- 90% of the employee's average weekly earnings (before tax) for the first 6 weeks;
- £156.66 or 90% of the employee's average weekly earnings (whichever is lower) for the next 33 weeks.

There are no plans to introduce statutory maternity pay, paternity pay or shared parental leave pay at present.

Shared Parental Leave

It is proposed that the Employment Act 2006 is amended to include provision for shared parental leave.

In the UK, shared parental leave was introduced in 2014. The system allows couples who have had a baby, used a surrogate to have a baby, or adopted a baby, to share up to 50 weeks leave. Mothers and fathers can share the leave in the first year after the child is born or placed with the family. In order to take shared parental leave the parents must take less than the 52 weeks of maternity or adoption leave and use the rest as shared parental leave.

For example, if a mother has taken 22 weeks of Maternity Leave they will still be able to share 30 weeks of shared parental leave with their partner.

Shared parental leave may be taken in blocks separated by periods of work, or taken all in one go. Parents can also choose to be off work together or alternate the periods of leave taken by each parent.

It should be noted that in the UK it is estimated that only between 2 to 8% of eligible couples have opted to use shared parental leave. However without introduction of the powers then there is no opportunity for parents in the Isle of Man to opt to do so. Introduction of shared parental leave would:

- give parents more choice and flexibility in how they care for their child in the first year by increasing the share of leave fathers can take, thus enabling both parents to retain a strong link with the labour market;
- encourage more fathers to play a greater caring role (pre-birth and in the first year) via more flexible shared leave;
- increase flexibility for employers and employees to reach agreement on how best to balance work and domestic needs.

The following figures on claims for maternity and paternity allowance in the Isle of Man between 2017 and 2021, gives an indication of the current numbers of mothers and fathers that currently take maternity and paternity leave:

| Number of maternity and paternity allowance claims 2017-2021¹ | | |
|---|---------------------|---------------------|
| Year | Maternity allowance | Paternity allowance |
| 2017 | 816 | 252 |
| 2018 | 779 | 262 |
| 2019 | 768 | 274 |
| 2020 | 747 | 224 |
| 2021 | 747 | 243 |

The amendments to the Employment Act 2006 will simply insert powers in the legislation which enable the Department to make, at a later date, secondary legislation to specify the details of a shared parental leave framework - for example, the specific conditions of entitlement to shared parental leave, the duration of such leave, and generally how the system will work in practice. This secondary legislation will itself require approval by Tynwald.

Q4: Do you support the proposal that the Employment Act 2006 be amended to enable shared parental leave to be introduced? Please explain your view.

Q5: Do you have any comments on the way in which shared parental leave should work in practice?

Parental Bereavement Leave

It is proposed that the Employment Act 2006 is amended to include provision for parental bereavement leave.

The amendments would enable the Department to make regulations specifying the details of entitlement, e.g. the maximum amount of leave available, and conditions for entitlement.

¹ Figures supplied by Social Security Division, the Treasury

In the UK a parent can take up to 2 weeks' leave for each child who has died or was stillborn if the parent is eligible. A parent may opt to take only one week, 2 weeks together or two separate weeks.

A week is the same number of days that you normally work in a week.

The leave can start on or after the date of the death or stillbirth but must finish within 56 weeks of the date of the death or stillbirth.

In the case of introduction of parental bereavement leave to the Isle of Man in addition to covering the death of a child or a stillbirth, it will also cover miscarriages (the loss of a pregnancy before 24 weeks).

Q6: Do you support the proposal that the Employment Act 2006 is amended to include provision for parental bereavement leave? Please explain your view.

Q7: Do you have any comments on the way in which parental bereavement leave should work in the Isle of Man?

"Keeping in touch" days

"Keeping in touch" days in the UK allow an employee on maternity leave, shared parental leave or adoption leave to work for a certain limited number of days within the period of leave without bringing the period of leave to an end, for example to take part in training or to attend meetings in an office. In the UK the maximum number of keeping in touch days is 10.

The Isle of Man currently does not have provision for keeping in touch days. It is proposed that an amendment is made to the Employment Act 2006 to introduce keeping in touch days to the Island.

Q8: Do you support the proposal to introduce provision for keeping in touch days? Please explain your view.

Section 4: Additional comments

Q9: Do you have any other comments on family leave rights in the Isle of Man?

Section 5: Relevant documents

The following documents are relevant to this consultation:

Employment Act 2006 (of Tynwald):

https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0021/EmploymentAct2006_14.pdf

Employment Rights Act 1996 (of Parliament):

<https://www.legislation.gov.uk/ukpga/1996/18/contents>

