

## EXPLANATORY MEMORANDUM ON A EUROPEAN UNION DOCUMENT

8631/17  
COM(2017) 252 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS AN INITIATIVE TO SUPPORT WORK-LIFE BALANCE FOR WORKING PARENTS AND CARERS**

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**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

**ANNEX to the Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

**COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT**  
**Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

**COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**  
**Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU**

Submitted by the Department for Business, Energy and Industrial Strategy on 6th July 2017

### **SUBJECT MATTER**

#### **Summary**

##### The new proposal

1. The European Commission published on 26 April 2017 a communication on an initiative to support work-life balance for working parents & carers. This includes a proposal for a Work-Life Balance Directive.

2. The main points from the legislative proposal are:
  - 10 working days of paternity leave paid at least at the level of sick pay;
  - 4 months parental leave per parent that can be taken in flexible forms (full-time, part-time, in a piecemeal way) up until the child is 12 years old. Compensated at least at the level of sick pay;
  - 5 days of carers' leave per year to take care of seriously ill or dependent relatives. Compensated at least at the level of sick pay;
  - The right to request flexible working for all working parents of children up to the age of 12 and carers with dependent relatives.
3. In addition, the Commission proposes non-legislative measures, including: guidance on the better use of EU funds to support work-life balance choices; work on addressing disincentives for second earners to join the labour market; improved guidance and monitoring, including country specific recommendations; and sharing of best practice.
4. The proposal follows extensive consultation and represents the Commission's response to the withdrawal of their 2008 proposal to revise Council Directive 92/85/EEC (Maternity Leave Directive). The new Directive will entail the repeal of Council Directive 2010/18/EU (Parental Leave Directive)

## **Background**

5. In August 2015, the Commission announced the official withdrawal of the 2008 proposal to amend the 1992 Pregnant Workers Directive (PWD) and issued a "Roadmap" as a replacement initiative. Although the withdrawn proposal only focused on the areas covered by the PWD, the Roadmap set out potential legislative and non-legislative options for a much broader scope. It included leave arrangements (maternity, paternity, parental and careers' leave), flexible working, fixed-term and part-time work, childcare, long-term care, tax-benefit disincentives and equal treatment. By expanding the scope, the Commission aimed to address the challenges of work-life balance faced by working families (not only pregnant women at work), particularly women with children or those who are about to have a child and also increase the female labour market participation across the Member States.
6. Following extensive consultation, with which the UK engaged, the proposal for a Directive was announced alongside a package of proposals on the Social Pillar on 26 April 2016.

## **SCRUTINY HISTORY**

7. EM 13983/08 - Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work pregnant workers and workers who have recently given birth or are breastfeeding was submitted by the Department for Business, Enterprise and Regulatory Reform (BERR) on 27 October 2008. The Commons European Scrutiny Committee considered it to be politically important and cleared it from scrutiny (Report No. 16, Session 08/09). The Lords European Union Select Committee cleared it from scrutiny (Sift No. 1338, Session 10/12).

## **MINISTERIAL RESPONSIBILITY**

8. As an employment policy legislative proposal, this matter falls within the responsibility of the Secretary of State for Business, Energy and Industrial Strategy. The Secretaries of State for Work and Pensions, Health, and Her Majesty's Treasury also have an interest.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

9. In Scotland and Wales, matters arising from this proposal are a reserved matter under the UK's devolution settlement. The devolved administrations in Scotland and Wales have been advised of this Explanatory Memorandum.
10. In Northern Ireland, matters arising from this proposal would normally be the responsibility of Northern Ireland Executive Ministers. The Executive Office in Northern Ireland has been consulted.

## **APPLICATION TO THE EUROPEAN ECONOMIC AREA**

11. The proposal is relevant to the European Economic Area.

## **SUBSIDIARITY**

12. Social policy, including employment law, is an area of shared competence in the EU. The UK hopes that legislative proposals will be sufficiently flexible to allow for national implementation that complements existing national arrangements for work-life balance.

## **POLICY IMPLICATIONS**

13. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation, including new legislation that requires transition prior to exit.
14. The Commission aims to address the challenges of work-life balance faced by working families, particularly women with children or those who are about to have a child, and also increase the female labour market participation across the Member States.
15. Whilst an entitlement to carers' leave would be a completely new entitlement, there is already domestic legislation in place covering the other provisions of the Directive: paternity leave and pay, parental leave and the right to request flexible working.
16. In Great Britain the entitlement for a father or a mother's or adopter's partner to take up to two weeks of paternity leave during the 8 weeks following the birth or adoption of a child (or within 8 weeks of the due date for a child born prematurely). There is a length of service qualifying requirement and also a minimum earnings level for statutory paternity pay which is paid at the lower of 90% of average salary

or £140.98 a week. The Directive proposal for at least 10 working days' leave would largely coincide with existing provisions, but would potentially create an additional entitlement for a father or a mother's/adopter's partner who works fewer than 5 days a week.

17. There are also some further questions relating to the paternity leave proposal which will still require clarification in order to assess their full impact. For example, the mechanics of when the proposed leave will need to be taken (i.e. will it need to be taken within 8 weeks of birth, like domestic law) and in what increments (domestic law requires consecutive weeks) are not yet clear.
18. Up to 18 weeks of unpaid parental leave is currently available for all parents for each child and that can be taken up until the child's 18th birthday. Protections are in place guaranteeing the job the parent can return to.
19. The right to request flexible working has existed in Great Britain since 2002 and was extended to all employees in 2014, having been previously restricted to parents and carers.
20. There has been a negative reaction to the proposals from business and some Member States (particularly regarding concerns that these proposals could cut across existing well-developed national rights in this area). However, the Commission has argued that the package would bring benefits in terms of improved participation, motivation and retention.

## **CONSULTATION**

21. Consultation is not deemed necessary at this stage.

## **IMPACT ASSESSMENT**

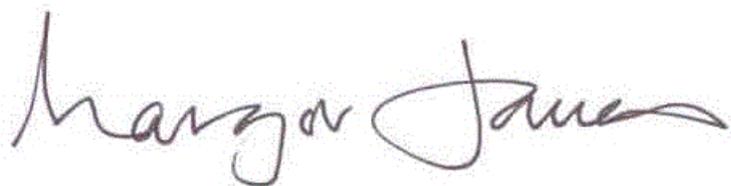
22. The European Commission has produced an impact assessment which accompanies the proposal. This includes information on the phenomena of work life balance and female market labour participation across the Member States. The UK will assess the impact of the legislative proposals as appropriate.

## **FINANCIAL IMPLICATIONS**

23. The Commission has stated that the proposal does not require additional resources from the European Union's budget. We will be assessing the financial implications of the proposal to the UK.

## **TIMETABLE**

24. The timetable for consideration of this proposal by the Council and European Parliament has not yet been set.

A handwritten signature in black ink that reads "Margot James". The signature is written in a cursive, flowing style.

**Margot James MP**

Minister for Small Business, Consumers and Corporate Responsibility  
Department for Business, Energy and Industrial Strategy