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Department for
**Employment
and Learning**
www.delni.gov.uk

INCREASING THE HOLIDAY ENTITLEMENT: Departmental Response to a Further Consultation

August 2007



Introduction

Background

The Working Time Regulations (Northern Ireland) 1998 gave many workers in Northern Ireland a right to four weeks' paid holiday for the first time. However some workers, particularly the low paid, are required to include time off for bank and public holidays against their annual holiday entitlement. As part of its 2005 Manifesto, the Government outlined a commitment to make paid leave for bank holidays additional to annual holiday entitlement.

The Department for Employment and Learning ("the Department") launched an initial consultation between 28 July 2006 and 19 October 2006, which sought views on the potential benefits and impacts of increasing the statutory holiday entitlement. The Department published a response to that consultation in February 2007, details of which may be found on the Department's website at http://www.delni.gov.uk/departamental_response-holiday_entitlement.pdf.

Following the responses to that consultation, the Department drafted an amendment to the Working Time Regulations (Northern Ireland) 1998, which proposed to increase the statutory minimum holiday entitlement from 4 weeks to 4.8 weeks from 1 October 2007, and from 4.8 weeks to 6 weeks from 1 October 2008. Views on these draft Regulations, and on how the implementation of the proposed changes could be supported through guidance and other means, were sought in a second consultation entitled: 'Increasing the Holiday Entitlement: A Further Consultation', which the Department launched between 12 February 2007 and 13 May 2007.

The Consultation

The Department issued 225 copies of the Further Consultation document to trade unions, political parties, employers' representatives, employers and employees.

The consultation launch was supported by a press release and was highlighted in the "Latest News" section of the Departmental website. The consultation document is available from the 'Consultation Zone' on the Departmental website (www.delni.gov.uk/consultation-zone), and in hard copy from the address given on page 2.

Responses

At the closing date of consultation, the Department had received a total of 13 responses. A list of respondents is contained at **Annex A**.

The Department would like to thank all those organisations and individuals who took the time to respond to the consultation. Your views have been carefully considered in order to arrive at the way forward as set out in this document.

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Departmental Response.*

Structure of this document

This document details the responses to the questions posed (including general comments that were made in respect of the overall policy proposals), and sets out the decisions that have been approved by the Executive in light of the consultation responses.

Departmental contact details

All documents referred to in this response can be obtained from the Departmental website.

Website: www.delni.gov.uk/consultation-zone

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Executive summary

On 20 July 2007 the Minister for Employment and Learning, Sir Reg Empey, announced an increase in paid holiday entitlement for workers in Northern Ireland. Details of the increase are as follows:

- The statutory minimum holiday entitlement will increase by 8 days for those working 5 days per week (pro-rata for part-time workers);
- The increase will be implemented in 2 phases; from 4 weeks to 4.8 weeks from 1 October 2007, and from 4.8 weeks to 5.6 weeks from 1 April 2009. This will be equivalent to an increase from 20 days to 24 days, and from 24 days to 28 days respectively for someone working a 5-day week;
- To encourage early implementation, employers who, by virtue of a relevant agreement in place as at 1 October 2007, provide each worker with a minimum annual leave entitlement of 5.6 weeks or 28 days, will not be bound by the new Regulations so long as they continue to meet certain criteria;
- There will be provision for carry-over of the additional entitlement to the following leave year, subject to the agreement of both employer and member of staff;
- Payment in lieu of the additional holiday entitlement will be permitted for a transitional period only, until 1 April 2009;
- The increase has been implemented through the Working Time (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 340), which were approved by the Executive on 19 July 2007. The Regulations were made and laid before the Assembly under the Confirmatory Resolution procedure on 20 July 2007. They will come into operation on 1 October 2007.

The Department had initially proposed to increase the statutory holiday entitlement by 10 days in Northern Ireland (pro-rata for part-time workers), as opposed to 8 days in Great Britain, to reflect the number of bank and public holidays here. However, following the response to this consultation, and to allow further consideration of the cost implications of the additional two days, it has been agreed that the statutory minimum holiday entitlement will be increased by 8 days in Northern Ireland in line with provisions in Great Britain. Further consultation and impact assessments will be undertaken on the impact of the additional two days.

Responses to the questions posed

Question 1: Draft Regulations

Draft Regulations are included in the consultation document. Do you have any comments on the detailed drafting of the proposed changes to the law? If so, please specify.

In total, 8 respondents answered this question, all of whom highlighted concerns.

The decision to increase the entitlement by 10 days in NI attracted criticism. Marks and Spencer and Tesco believed that it would result in those companies who trade on a UK-wide basis having to implement separate payroll systems for NI at a cost of hundreds of thousands of pounds, and taking between 6 and 9 months to develop. The Ministry of Defence foresaw operational difficulties in terms of executive staff who are mobile and who may need to have their terms and conditions changed each time they move between jurisdictions.

“The proposal in the draft regulations that employees in Northern Ireland be entitled to 30 days annual leave seems to go against Better Regulation principles and will put additional costs on Northern Ireland employers and national companies with trading operations and employees in Northern Ireland.”

CBI

“Marks and Spencer provide the same employment policies (i.e. sick pay, holidays, pay structure etc.) for all our UK employees. We feel it is important to treat everyone equally, it is one of our fundamental principles, and feel it will be a very difficult message to communicate that colleagues in Northern Ireland require more holidays to gain an enhanced work life balance and be more effective at work.”

Marks and Spencer

CBI, Marks and Spencer, and Tesco all felt that employers should be able to offer employees a choice between extra leave and additional pay.

“We believe that giving employees a choice about whether to take time off or to earn extra income (for bank holidays), is crucial to help us continue to serve customers on bank holidays and invest in reward and benefits staff really value.”

Tesco

Marks and Spencer, Tesco and CBI had major concerns over the October 2007 implementation date. Marks and Spencer felt that employers should be offered the flexibility to introduce the changes at one go within a window of October 2007–October 2008; whilst Tesco and CBI called for the implementation to be

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deferred until April 2008 in order to reduce the burden associated with adapting IT and administration systems, and to enable those in the retail, care and hospitality sectors to budget for the increased costs and inform their staff of the policy.

“A fundamental change to the holiday policy such as that described in the regulations will require significant systems development – significant both in terms of time to implement it and cost to do so.”

Tesco

Marks Spencer, Tesco, and CBI also expressed concern that companies who already provide more than the proposed statutory minimum holiday entitlement will still have to make major changes as a result of the Regulations.

“...Large as these estimates are, they do not take account of a vital part of the business community – those companies that already give 28, or even 30 days, in the case of NI, including bank holidays, but will have to review their contractual terms and conditions, with the subsequent need to consult and possibly renegotiate contracts with employers or their representatives.”

CBI

The Law Centre (NI) agreed with the broad thrust of the Regulations but believed them to be unduly complex. They believed that the requirement to limit the entitlement to 30 days would unfairly discriminate against those who work more than 5 days a week; and felt that those on short term contracts would be penalised by the proposal to omit Regulation 13(6), which provides for the rounding up of part days' holiday entitlement.

Departmental response:

The Department has taken into account the concerns raised during this consultation and has reviewed its policy proposals. Although the initial proposal had been to increase the statutory minimum holiday entitlement by 10 days in NI, as opposed to 8 days in GB, the Department accepts that the impact on business had not been fully assessed and there could also have been operational difficulties for some businesses. It has now been agreed that the statutory minimum holiday entitlement will be increased by 8 days in Northern Ireland, which will be equivalent to an increase from 4 weeks to 5.6 weeks per year. Further consultation and impact assessments will be undertaken on the impact of the additional two days.

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Departmental response (continued):

In light of concerns raised during this consultation, the Department has decided to defer the second increase in entitlement (from 4.8 weeks to 5.6 weeks) until 1 April 2009 to give businesses more time to plan financially and operationally. The entitlement will be capped at 28 days.

Employers who, by virtue of a relevant agreement in place as at 1 October 2007, provide each worker with a minimum annual leave entitlement of 5.6 weeks or 28 days, will not be bound by the new Regulations so long as they continue to meet certain criteria.

Question 2: Inadvertent impacts

Are there any other consequences of these Regulations, which the Department might not have anticipated? Please specify.

There were 8 responses to this question; all of the view that the implementation of these draft Regulations could have a negative impact.

Marks and Spencer, Tesco and CBI felt that employers should be able to offer employees a choice between extra leave and additional pay. Marks and Spencer commented that under the proposed draft Regulations they would have to give employees an alternative day's holiday for working on a Bank holiday, which would come at a considerable cost. They felt that this could impact on some stores' ability to trade profitably and result in more stores closing on Bank holidays, which may in turn result in employees losing pay and having to take holiday at a fixed time which might not be of their choice.

CBI was of the opinion that the draft Regulations would have a negative impact on businesses in the retail, care and hospitality sectors, where a large proportion of employees work on bank holidays.

“The current proposals do not refer specifically to bank holidays – but the contractual arrangements of many employers in the retail, care and hospitality sectors involve premium pay rates for bank holidays and subsequent options for both pay and leave which could well require re-negotiation of both individual and collectively-agreed contracts.”

CBI

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Departmental response:

The Department notes that many employers currently offer their staff a choice between extra leave and additional pay, which can be favourable to both parties. However, the Department believes that the ability to provide payment in lieu of holiday could be open to abuse by both employers and staff, and that routine buying out of holiday would defeat the intention of increasing holiday entitlement. The Department has, however, decided to permit payment in lieu of the additional holiday entitlement for a transitional period until 1 April 2009 only, which may help employers to align the increase in actual leave taken by staff with their own particular leave year.

Question 3: Supporting implementation

Have you any specific suggestions for additional steps that the Department might take (e.g. make available draft standard letters for workers) which might make it easier for employers to implement these Regulations?

Of the 5 respondents who commented on this question, Law Centre (NI), CBI and Marks and Spencer suggested that specific guidance (or a chart) should be included in the legislation to assist in the calculation of leave entitlement.

“Law Centre (NI) would argue that to assist employees to understand their entitlement and employers (particularly small businesses) their obligations it would be helpful if guidance could be produced setting out specific examples of how the new regulations will apply to individuals.....given the complicated nature of the calculations to be used.”

Law Centre (NI)

The remaining comments on this question came from Nortel (UK), who asked for guidance on the pro-rata approach for part-time employees, and The Cuan Licensed Guest Inn who asked if financial support would be given to small businesses to help implement the Regulations.

Departmental response:

The Department recognises that until the increase in entitlement is implemented in full, the calculation of holiday entitlement may be complex. The Department has therefore made available a ready reckoner, which can be used for the more straightforward scenarios and is available to download from the Departmental website at www.delni.gov.uk. An on-line calculator is also available on the [Business Link](http://www.businesslink.gov.uk) website (www.businesslink.gov.uk) for the more complex calculations.

A number of Frequently Asked Questions, which provide useful information on the Regulations, are available to download from the Departmental website (www.delni.gov.uk).

Question 4: Guidance requirements

Are there any particular issues you would find it helpful to see covered in the guidance accompanying these Regulations?

There were 4 detailed responses to this question, from CBI, Law Centre (NI), Marks and Spencer, and the Ministry of Defence.

Marks and Spencer made a request for guidance on the issue of Easter, and how this may affect employers whose leave year runs from April–March.

“There will be occasions when Easter either falls twice or not at all within the April – March period (which we and many other businesses use as the holiday year). We would like clarification on how we ensure we are legally compliant in giving the correct number of days’ holiday without having to overpay/underpay employees.”

Marks & Spencer

Guidance was also requested by the Ministry of Defence on the issue of how the Regulations would be applied by an employer whose employees worked for periods in Northern Ireland and the rest of the UK.

“If the regulations are implemented, guidance on their application as it affects those staff who are permanently based in another part of the UK but are on prolonged temporary duty in Northern Ireland....,and on the flip side, permanently based Northern Ireland staff who spend a prolonged period of temporary duty in another part of the UK. In what circumstances would the NI regulations apply and when would the regulations in another part of the UK apply.”

Ministry of Defence

CBI commented that many employers and employees believe that the proposals will have direct implications for bank holidays, either by granting workers the right to take leave on these days, or by relating leave calculations directly to whether employees are present in the workplace over the course of a bank holiday. They feel that it is important that these misconceptions are addressed in guidance. Tools such as the on-line calculator will play a key part in this. They also highlighted a number of what they term ‘unintended consequences’ of the Regulations, which must be dealt with in guidance, such as the difficulty in calculating entitlement for those who work irregular shift patterns; and the suggestion that a worker who is ill on a bank holiday will be entitled to a day’s leave in lieu.

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Departmental response:

A number of Frequently Asked Questions are available to download from the Departmental website (www.delni.gov.uk), covering issues such as the ‘two Easters’ scenario, the interaction between holiday leave and other forms of leave, and the calculation of holiday entitlement for those working irregular shift patterns.

The Department notes the concerns of employers whose staff work on bank holidays. The Department wishes to clarify that the purpose of the Regulations is to increase the statutory minimum holiday entitlement for workers. The Regulations will not provide workers with a statutory right to take paid leave on bank holidays. As the holiday entitlement will be the same throughout the UK, there will be no need to re-calculate leave entitlement for staff moving between Northern Ireland, England, Scotland and Wales.

Question 5: Other comments

Do you have any other comments on the proposals to increase the holiday entitlement?

Of the 5 responses to this question only the Law Centre (NI) welcomed the increase in annual leave entitlement by 10 days, although they had reservations about the manner in which it is to be introduced.

“We still believe that the decision to split the move over two years will only mean that businesses have to change their holiday practice twice and that for this reason it would have been preferable to move to the new holiday entitlement in one stage. Indeed examining the proposals in the Regulations it becomes apparent that this decision actually makes the calculation of holiday entitlement more complicated than it needed to be to the detriment of both employers and employees.”

Law Centre (NI)

The remaining responses reiterated comments on the timeframe for introducing the increase in holiday entitlement, the costs to business and the operational difficulties associated with having differing entitlements in NI and GB.

Departmental response:

The Department notes the concerns of those who question the implementation of the entitlement in two phases. However, the Department believes that the benefits of phasing the entitlement, in enabling employers to adjust, will help outweigh the additional administrative costs and initial difficulty in calculating entitlement.

Issues arising from the corresponding Department for Business, Enterprise & Regulatory Reform (formerly DTI) consultation in GB

The Department for Business, Enterprise & Regulatory Reform also carried out a consultation exercise on similar provisions for GB. The following additional issues were raised by GB respondents:

Dealing with part days

A number of respondents noted that part days would become common place when calculating the new leave entitlement for part-time employees (for example 4.8 times a 3 day week is 14.4 days) and asked for clarity on how these should be treated.

Departmental response:

An employer can decide how to treat part days (although they cannot be rounded down to the nearest full day); they do not need to be rounded up to the nearest full day but an employer can choose to do so if they wish. Other options that an employer can choose to allow include staff taking a full day's leave and just paying them for the part day they are owed; the part day could be taken off a day's shift, enabling the member of staff to leave early or come in late; or the part day could be carried over to the following leave year.

Atypical work patterns

Clarification was sought as to what exactly the increase would mean for part-time workers, and whether or not it would matter what days they usually work. Guidance was also sought on how to calculate and implement the increase for other atypical work patterns such as shifts (regular, irregular and continental), term time and seasonal working, annualised hours, compressed hours and casual and student employees.

Departmental response:

Details of how to calculate holiday entitlement for all these scenarios are available to download from the Departmental website at <http://www.delni.gov.uk/paidholidayentitlement>.

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Shift Work

A number of employees and representatives that currently work long day shifts (12 hours, for example) expressed concerns over calculations for the current entitlement. Some form of definition for a day was called for or, it was suggested, the term “shift” be used as a replacement.

Departmental response:

For workers who work long day shifts, it may be easier to calculate the holiday entitlement as shifts. So if a worker works four twelve-hour shifts, followed by four days off (the ‘continental’ shift pattern), then the average working week is 3½ twelve-hour shifts. So 4.8 weeks’ holiday is 4.8 x 3½ = 16.8 twelve-hour shifts.

Interaction with other forms of leave

A number of respondents sought greater clarity over the interaction between the holiday entitlement and sick leave.

Departmental response:

This issue is the subject of current cases before the European Court of Justice and the House of Lords and until those cases are concluded, it would be inappropriate to give detailed guidance on a position that may shortly be subject to further change.

A number of Frequently Asked Questions, which provide guidance on these and other issues, are available to download from the Departmental website at <http://www.delni.gov.uk/paidholidayentitlement>.

Annex A: List of respondents to the Consultation.

ASDA
Confederation of British Industry
Cuan Licensed Guest Inn
Institute of Directors
Labour Relations Agency
Law Centre (NI)
Limavady Borough Council
Marks and Spencer
Ministry of Defence
Nortel (UK)
Northern Ireland Judicial Appointments Commission
Northern Ireland Ombudsman
Tesco

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INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

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