

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Employment in Hampshire County Council Committee
Date:	20 July 2011
Title:	Government Consultation on Modern Workplaces
Reference:	3080
Report From:	Director of Human Resources

Contact name: Gavin Wright

Tel: 01962 833023

Email: gavin.wright@hants.gov.uk

1. Executive Summary

1.1 The purpose of this paper is to update EHCC on a Government consultation which is currently taking place on “Modern Workplaces”, to identify the potential implications for the Council and to seek the views of EHCC which will then be incorporated into the Council’s response to the proposals. The consultation commenced on 16th May 2011 and will conclude on the 8th August 2011.

1.2 The Government’s stated intention in making the proposals contained within the consultation is to create a society where:

- Work and family complement one another.
- Employers have the flexibility to recruit and retain the skilled labour they need to develop their businesses, and
- Employees no longer have to choose between a rewarding career and a fulfilling home life.

1.3 Fairness and responsibility are central to the Government vision of modern workplaces and that by applying these values through an effective, efficient labour-market framework, they will give businesses the confidence they need to grow, which in turn will help encourage growth in the wider economy and minimise the costs and complexities for businesses.

2. Proposals

2.1 There are four elements to the proposals and these are set out below together with details of the potential implications for HCC.

2.1.1 Flexible Parental Leave

The consultation seeks views on proposals for “a system of genuinely flexible parental leave that will give parents choice and facilitate truly shared parenting, helping both parents to retain their attachment to the workplace.”

The specific proposals are:

- To retain 18 weeks maternity leave. This will be reserved exclusively for mothers and will continue to be taken in a continuous block around the time of the baby’s birth.
- To retain the current statutory maternity pay and maternity allowance arrangements during this period, as well as two weeks (ordinary) paternity leave and pay.
- Existing employment protections concerning maternity leave to be maintained.
- Following the basic period of 18 weeks maternity leave the options for employers and employees would become more flexible. Fathers would be guaranteed at least 4 weeks paternity leave (which can be taken concurrently with the mothers maternity leave) and the remaining period of maternity leave to be shared between the parents on an equal basis (similar provisions will apply for adopters and same-sex couples). The aim is to incentivise greater involvement by fathers in the early stages of a child’s life.
- The new parental leave provisions will incorporate the existing right to unpaid parental leave beyond the first year of a child’s life, up to the age of 5, so parents will have a single right to parental leave which they can use from the end of maternity leave through the child’s early years.
- The new system would be introduced in April 2015, although this timescale is subject to affordability.

The Government is also seeking views on:

- The desirability of allowing employers and employees to agree greater flexibility in when the leave may be taken, such as allowing parents to take their leave on a part-time basis or breaking the leave into two or more periods.
- Extending the age limit for taking unpaid parental leave beyond the existing limit of the child’s fifth birthday.
- Giving fathers the right to attend antenatal appointments.

The County Council already has robust arrangements in place for administering maternity, paternity and adoption leave, and whilst any new arrangements will require amendments to policies and procedures, they are considered unlikely to create a significant new administrative burdens.

2.1.2 Flexible Working

The current right to request flexible working applies to parents of children under 17, or disabled children under 18, and to certain carers. Employers are required to consider requests seriously.

The Government wishes to promote a culture in which flexible working is a legitimate ambition for all employees, not just for parents and carers. The proposals *allow* but not *require* employers to prioritise competing requests to take account of the employees' personal circumstances but employers would still have to show that competing requests could not be accommodated on business grounds.

The Government is therefore proposing to:

- Extend the right to request flexible working to all employees.
- Replace the existing statutory process for considering requests with a duty to consider requests “reasonably” alongside a new Code of Practice to guide employers in considering requests.

The Government do not intend to change the existing business reasons under which an employer may refuse a request. They also do not propose to remove the requirement for the employee to have been continuously employed for twenty six weeks before they can make a request. Instead, they want employers to consider flexible working before appointing staff, and to discuss flexibility at interview.

The Government also want to provide support to individuals who have a temporary need for flexibility, such as an employee who is caring for someone with a short-term illness. Existing rules restrict employees to one request for flexible working per 12-month period. They are seeking views on whether amending this restriction would help employees who have a temporary need for flexibility.

The County Council's current flexible working policy allows all HCC employees to request flexible working although managers must ensure that those protected under the statutory scheme are given priority.

Although the Government do not intend to change the existing business reasons under which an employer may refuse a request, the County Council will want to take note of any proposals by the Government in respect of the process to be followed for considering requests and any increased emphasis relating to the “reasonableness” of the process.

2.1.3 Working Time Regulations

There have been a number of judgements in the Court of Justice which have established the principle that workers who have not been able to

take their leave because of sickness, maternity or parental leave in the current year, must be able to carry it forward to the following year.

The Government intends to amend the Working Time Regulations to comply with these rulings. Its proposals are:

- Where an employee has been on sick leave, to allow employers to limit the carry-over of annual leave to four weeks of leave.
- To allow employers to insist that leave untaken due to sickness absence must be taken in the current year, where possible, rather than being carried forward.
- To allow employers to defer the leave until the following year where this can be justified in terms of business need.

The Government is also seeking views on further options for increasing flexibility for employers around the operation of statutory annual leave. Employees could, for example, be allowed to “buy out” of the additional 1.6 weeks allowed in the UK under the WTR, or to defer that leave until the first six months of the following year if this could be justified as a business need.

The County Council currently allows employees who have been unable to take their leave because of sickness absence to carry forward four weeks leave into the following year. Any further changes by the Government would require amendments to the County Council’s policies and procedures relating to annual leave.

2.1.4 **Equal Pay**

Although the legal framework on equal pay has been in force since 1975, there is still a significant pay gap. The Government says it is committed to addressing this through:

- Improving flexibility at work
- Encouraging greater transparency, and
- Ensuring effective enforcement of equal pay law.

As part of this approach views are being sought on a legislative proposal aimed at ensuring that employers who have breached the law take appropriate action to rectify the problem. The Government propose to require Employment Tribunals which have found an employer to have discriminated in contractual or non-contractual pay matters to make that employer conduct a pay audit, unless the tribunal is satisfied that it would not be productive to do so.

The Government believes that by focussing on employers who have failed to comply with the law, this will not add burdens to good employers who have taken steps to ensure they do not discriminate against women.

This proposal is not considered to have any significant implications for the County Council which already has sound policies and procedures in place in respect of equal pay.

3. Proposed Consultation Response

Depending on the views of EHCC to the consultation, it is proposed that the Council's response is to broadly welcome the proposals. In relation to flexible parental leave and flexible leave, it is clear that the way in which these might be implemented is going to be of crucial importance. The proposals will inevitably bring with them increased risks of falling foul of equality legislation and smaller organisations in particular may find it challenging to balance the wishes of the parent with the needs of the organisation given the reduced flexibility that a smaller workforce might present.

The proposals to change the Working Time Regulations should help clarify what is currently an area of considerable confusion given the case law that has developed since the regulations came into place. Furthermore, the proposals as they currently stand strike a good balance between the respective needs of both employer and employee.

The tightening up of equal pay legislation is likely to cause the greatest level of concern amongst employers particularly in the Private Sector. One of the primary objectives of the proposals is to increase transparency right across the employment market in terms of salaries and highlight any potential gender pay gaps. The Public Sector has become largely accustomed to this as a normal way of working but for many parts of the Private Sector, this will be new. The key challenge in implementing any changes to the current legislation will be to ensure that good practice in relation to pay is brought to the fore whilst ensuring employers can remain competitive in terms of their costs and not be overly burdened with cumbersome pay audits and litigation.

4. Recommendation

EHCC are requested to:

- i) note the proposals contained within the Government's proposals to create "Modern Workplaces" and the Councils position in relation to these.
- ii) agree the broad response to the consultation as detailed in section 3 of this report and to include any further points raised by the EHCC Committee.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. This report describes potential actions required by the Council if the proposals contained within the Government’s consultation “Modern Workplaces” are implemented. The proposals as currently laid out will provide greater equity in the areas of flexible parental leave, flexible leave and pay.

2. Impact on Crime and Disorder:

2.1. This report is unlikely to have an impact on crime and disorder.

3. Climate Change:

3.1 This report is unlikely to have an impact on climate change.