

THURSDAY 12 MARCH 2009

---

Present

Cotter, L  
Eames, L  
Gale, B  
Howarth of Breckland, B (Chairman)  
Inglewood, L  
Kirkwood of Kirkhope, L  
Lea of Crondall, L  
Morgan of Huyton, B  
Wade of Chorlton, L  
Young of Hornsey, B

---

Witnesses: **Rt Hon Pat McFadden**, a Member of the House of Commons, Minister of State for Employment Relations and Postal Affairs; **Ms Julie McLynchy**, Director, Participation Branch in Employment Relations Directorate of BERR; and **Ms Alison Scott**, Head of Division, Work of Department for Work and Pensions, examined.

**Q1 Chairman:** Minister, can I welcome you and your colleagues to the Committee and thank you very much indeed for giving us the time this morning to come and talk to us about this proposed Directive for health and safety for pregnant workers and workers who have recently given birth or are breast-feeding. At the end of the session, if you wish, you may submit supplementary evidence if you think we have not covered everything you think we should properly have covered during the session. Although it is fairly obvious to us, we have to ask you to state your name for the record and your positions. After that, do you have an introductory statement that you would like to make?

**Mr McFadden:** I am Pat McFadden. I am the Minister for Employment Relations in BERR. On my right is Julie McLynchy, who is the Director of Participation in the Employment Relations Directorate and on my left is Alison Scott, who is the Deputy Director in the Health, Work and Wellbeing Directorate in the Department for Work and Pensions.

**Q2 Chairman:** Thank you. I should say one other thing and that is I can hear you, Minister, but this room is acoustically difficult. That is why I am projecting my voice and perhaps you could do the same, otherwise the sound disappears into the roof and we lose valuable contributions. Do you want to make an opening statement?

**Mr McFadden:** No. I am quite happy to go straight to the questions.

**Q3 Chairman:** Thank you very much indeed. Members will want to ask you questions. They may want to ask you supplementaries, as you know. In the original EM on this proposal, you said that in responding to the Commission's questionnaire on the possibility of bringing this proposal forward, the UK Government believed that the Directive as it currently stood set out a reasonable baseline on which Member States can build and that consequently there was no need for any change to the existing Directive. But subsequently, in your letter of 15 December, it was stated that the Government believed there may be a case for strengthening the baseline of maternity rights at EU level. Really, we are wondering what need for action you see in this area, as we seem to have two different positions there. What limits, if any, would you place on the Commission's approach to amending the existing Directive? At the same time, maybe you would like to answer where the impetus for action on the existing pregnant workers Directive has come from.

**Mr McFadden:** I deal with a number of Directives in the employment and social affairs area – agency workers, Working Time Directive, this Directive – and one of the things you have always got to bear in mind is that we are always dealing with national labour markets and a European context. That has probably become more complex with 27 Member States as distinct from the 15 that we used to have. Now looking at this particular Directive, in the UK context there has been very significant change over the past decade. We have a much longer period of maternity leave, we have a much longer period of paid maternity leave, and that pay is at a significantly higher level. So, from a national point of view, we feel that there is

probably not a huge amount that a new Directive can add to what we are doing, and I will go through the detail of this and talk about the particular aspects. Looking at it across Europe as a whole, that may not always be the case and, if you look through what the different Member States are doing, you will find quite a wide variety in terms of periods of leave, periods of paid leave, and how parental leave is used. So across Europe we do see some value in perhaps looking at the baseline, if you like. It is now 17 years since the original Directive was written. An awful lot has happened in Europe since then. There has been a lot of new case law since then. That explains why we may say we do not think this Directive will have a huge amount of impact here or that it needs to have a huge amount of impact here but we nevertheless can see some value in taking another look at this across Europe 17 years after the first Directive came in. In terms of where the impetus has come from, I think every institution at the European level has thought we needed to take another look at this. There have been renewed calls from the Parliament, from the Council itself and from the Commission, so no single place. If you asked me to pick a driver out among all three, it is probably the Commission but I think in the Council and in the Parliament there have been calls to take another look at this too.

**Chairman:** Thank you very much. As you know, we are pretty familiar with some of the other Directives in this Committee. I am going to move on to Lord Wade, who is going to talk about the potential burden on employers.

**Q4 Lord Wade of Chorlton:** Good morning, Minister. The Government have made the comment that they are concerned that there is no undue and unnecessary burden put on businesses as a result of this Directive. I was interested in which areas you are particularly concerned might have an undue impact on employers if this Directive is implemented as it stands. What will you be doing to address these concerns and how, if at all, do you think they

may be overcome? How helpful do you and other Member States consider the European Commission's impact assessment to have been in this regard?

**Mr McFadden:** We take this very seriously, the impact on employers. One of the reasons that our extension of maternity leave, maternity pay and other rights which are connected to the balance between work and family life, such as, for example, the right to request flexible working, have been successful in the UK is because we have taken employers' views seriously, we have discussed them with employers and, when introducing new rights, we try to do so in such a way that minimises the administrative burden on employers. For example, one of the ways that we do this is, when it comes to statutory maternity pay, small businesses – that is, those who have a National Insurance contribution of less than £45,000 a year – actually get 104.5 per cent of the costs back in terms of statutory maternity pay in recognition of the admin burden on small businesses that some of these benefits can create. So from the UK point of view, we take that very seriously and this is a point we always make when employment and social affairs Directives are discussed at the European level. In terms of the content of this specific Directive and its impact on employers, we think, as it stands at the moment, that impact should be fairly minimal. One area that we have identified, which will actually be a cost principally to the Exchequer rather than to employers, and a fairly modest one at that, is the proposal within the Directive to increase the period of compulsory maternity leave from two weeks to six weeks. Hardly any mothers take less than six weeks maternity leave so this is not going to have a big impact. The costing that we have put on that, which is principally a cost to the Exchequer, given that for the first six weeks of maternity pay 90 per cent of people's earnings are paid by statutory maternity pay, is around £7 million. That is principally a cost to the Exchequer. Where we would see a real red warning light would be if the extension of fully paid maternity leave were to extend beyond its current provisions. The wording in the Directive at the moment says we think it should be full pay except when

people have a ceiling which is around statutory sick pay levels. So we can accommodate that because we are well above statutory sick pay levels for the period between six weeks and 39 weeks but we want legal clarity that we are not being directed to pay full pay throughout maternity leave, because then you really would have a significant cost. We have been told that is not what the Directive means but we want to make absolutely sure that that is not what it means and that it allows us to continue with a successful system whereby statutory maternity pay is set at 90 per cent of earnings for the first six weeks and then at the level that we have set between six and 39, which is at the moment £117.18 a week, well above the level of statutory sick pay, and that will go up to £123.06 a week from next month.

**Q5 Lord Wade of Chorlton:** That is very reassuring but I would make the point that the cost to the Exchequer is actually a cost to the taxpayer.

**Mr McFadden:** It is a fair point and, as I say, it is a relatively modest one, at £7 million. We do not see significant costs arising from this Directive at the moment and that is partly because, for example, the extension of paid maternity leave from 14 weeks to 18 weeks as is proposed in the Directive is still well below what happens in this country, which is reflective of the changes that we have made over the last decade.

**Q6 Baroness Morgan of Huyton:** The right to request flexible working. Obviously, I think most of us would view this as a UK success story. It was introduced well and it is pretty well supported all round but it seems from your response that you have a level of concern about the exact proposal on the right to request flexible working in the proposed Directive. Can you expand on that today, why there is a level of concern?

**Mr McFadden:** Yes, it is partly process and it is partly substance. On process, I referred to other Directives at the beginning of our discussion. We have new wording in the revised Working Time Directive which deals with flexible working. We do not see a need to be

legislating on the same things in different Directives. There is also a substance reason for dealing with it in the Working Time Directive. We have been quite careful in this country to make clear that we do not regard flexible working as just something that applies to new mothers, or indeed just to mothers, but this is a right for parents, and we have gradually extended that, first of all, to carers as well as parents of young children, and from next month we will extend it to parents of older children. So you are absolutely right to say we have led the way on this in Europe, I think that is probably recognised among EU institutions, and we have been very clear that this is a right for parents. It should be seen in the broader context of balancing work and family life. So we do not think it is the right place to legislate for this in a Directive which is focused on maternity leave and pay for new mothers. There is that reason to it. On the actual substance of how it would apply, one of the reasons it has been successful in the UK is because we have been careful – and this goes back to our earlier discussion about employers – to balance the rights of the employee and the employer here. The employer does have to consider the request but in our legislation there are eight business reasons why a request might be refused. That can be around cover or it can be around a whole number of things. They are set out and I am sure the Committee has them but if not, we can make them available. That balancing of those rights has made the right to request successful in the UK. I think around 90 per cent of requests are agreed and I believe that business has greater confidence in this system because there are clearly written reasons why this is a right to request, not a right to demand. On the content, we will want satisfaction that that careful balance is not upset. We do not believe it has been upset by the words in the Working Time Directive. The words in this Directive are slightly different so we would want to explore that but, actually, our bigger point is that we do not think this is the right place for Europe to be legislating on flexible working. That is better done in the Working Time Directive because that places it more in the context in which we see it.

**Q7 Baroness Morgan of Huyton:** In the Working Time Directive is there the same right to flexible working in that Directive?

**Mr McFadden:** Yes. Of course, that Directive is still under discussion.

**Q8 Chairman:** It is eternally under discussion.

**Mr McFadden:** It is eternally under discussion. It was in the common position agreed last June and the wording there reflected and allowed us to continue the system that we operate, where it is a right to request, not a right to demand, and we balance the interests of the employee with the business needs. Those two things are very important.

**Q9 Chairman:** Just before we move on, could I ask you a couple more points on the increased costing areas? I wondered on the areas of concern what clarity you have from the Commission on what might or might not be the way forward. What is the Commission saying so far? Do we have any clarity?

**Mr McFadden:** They are saying to us that we need not be concerned that this reference to maternity pay shall reflect the previous month's salary or there is wording along those lines in the amended Article 11. They are saying to us that does not mean full pay because you are allowed a ceiling, and the ceiling is set at the level of sick pay. That would mean we would be unaffected but what we want to make sure is, because there was not this reference to the previous month's salary or average salaries in the 1992 Directive, we are asking why you have that in if you do not have to abide by it, and whether this creates a legal uncertainty. We would not want to see that because, as I said, and we will talk in a few minutes...

**Q10 Chairman:** We do not have a response to that issue?

**Mr McFadden:** We do not have a response to that. In the working groups, the Commission have been saying, "You have no need to worry. This does not mean you have to pay

maternity pay at full pay. The ceiling will allow you to do what you are doing” but we have not been fully satisfied with that. We have gone back and said, “If this means no change, why have you got it here?” and, of course, government lawyers are looking very closely at the implications. We think we can continue with the system we currently have at the moment but, obviously, we want to be certain about that.

**Q11 Chairman:** That is very helpful. It tells us where the area of vulnerability is.

*Mr McFadden:* I do not know if it is an area of vulnerability.

**Q12 Chairman:** Of concern maybe.

*Mr McFadden:* It is an area where we have asked a question.

**Q13 Chairman:** You have been discussing in the working groups. Do we have any sense of what the other Member States think?

*Mr McFadden:* Yes. I was in Brussels on Monday at the Social Affairs Council, where this was discussed. I reflected some of the things we have been talking about this morning, saying that from 14 weeks to 18 weeks was not a concern for the UK because we have 39 weeks pay, that we have a successful system of flexible working that should be allowed to continue, and so on, and I made some other points. I think it would not be possible to say there were firm conclusions based on Monday’s discussion. It was almost a pre-Second Reading discussion, to put it in our terms. Different Member States said in different ways that they thought whatever was being done at the European level had to accommodate the fact that we have 27 labour markets, which you could say about all these Directives. That is a constant thing that is raised. Some Member States are interested in the interplay between this Directive and the discussions which are also taking place between the social partners on parental leave, and some Member States have systems of paid parental leave. In our system, the pay is

concentrated on maternity leave and the parental leave is unpaid. Member States are raising all these different points, saying the UK has this system, Germany has this system and so on, and that is the way they will always come at this. What is the wider lesson of this? The wider lesson of this is that, if Europe is to legislate on employment and social affairs issues, it needs to take into account the variety of systems that operate in different labour markets. Yes, it can set minimum standards and, by setting minimum standards, that can have value but to try to be too prescriptive could end up taking us into an area where we just were not taking into account the flexibility and the variety that exists across the Member States.

**Q14 Lord Lea of Crondall:** I have a question about your reference at the beginning, Minister, to the consequences of moving from 15 to 27 Member States or whatever it is, because the implication that might be in people's minds – and this is a chance to clarify it if you did not mean this – is that it is not just the administrative complexity of having a bigger number. It is that in some sense Eastern Europe has a different social tradition or something like this. I am wondering what the significance in your mind is of 27 in this context. As you know, I wrote a pamphlet about all of the things done under the Social Chapter, of which there are over a dozen and, despite all the bleating on every occasion, I do not know anybody who is proposing to repeal any of them, and they have all gone down rather well. So this distinction between being over-prescriptive and so on, is this somehow connected in your mind with what you call 27 labour markets, which I think is one way of looking at it – and of course, there are other ways of looking at it, that there is a greater integration coming in Europe. Can you tell us why you put so much emphasis on this 27 versus 15?

**Mr McFadden:** The experience of the last two years of going to these meetings is the short answer. In terms of this Directive, if I run through quickly, without even naming the countries, the different periods of leave there are at the moment: 16 weeks, 15 weeks, 315 days, 28 weeks, 14 weeks, 140 days, 17 weeks. I think that illustrates the point. If you are

going to set a common Directive across all of those, it is going to be potentially more complex among 27 than it is among 15. That is not to say there is no role for Europe in legislating on social affairs or employment issues. I do not believe that is the case but I do believe that it makes sense to take account of the difference a union of 27 makes compared to a union of 15. Nor am I saying – and let me be clear – that somehow Eastern European countries have a unique, different tradition compared to the UK. There are different traditions around Europe anyway. There is the Scandinavian tradition, as you will know from your own experience. Collective agreements, for example – and I do not want to take us off our subject – have many different kinds of legal force in some states compared to others. All of those factors just become that bit more complex as the membership of the European Union rises, and that is reflected in the Council when these things are discussed.

**Q15 Lord Inglewood:** I entirely agree with you that what you are trying to achieve across Europe in the different labour markets is some kind of equivalence – that was not your word but that is my interpretation of what you said, and I think it is a fair one. The problem you have is surely that the Directives slice up bits of the labour market in one way and at the same time, across Europe, as it were horizontally, the labour market is divided up in a different way. You yourself commented on stuff that was in the Working Time Directive. Do you have a clear overview of how you see this? Otherwise, if we, for example, introduce certain harmonised provisions in the Directive like this, you can cut across and completely change the balance in the labour market somewhere else.

**Mr McFadden:** I think you just have to take it into account. For example, in Monday's discussion at the Council a number of states made the point that we should not see what we are doing here on maternity leave and maternity pay in isolation from the social partners' discussions that are going on on parental leave. Why would that be a sensible approach? Because in a number of Member States – and I was running through those numbers I read out

in relation to the maternity leave that applies in different Member States but another call on parental leave could be up to two years, could be seven months, could be three years and so on. You have the same variety there. Because Member States interrelate maternity pay and leave with parental leave, it makes sense to take those two things into account. This is not a new problem. We legislate in this building all the time and we have to have regard to other legislation which may be happening elsewhere. It is not insurmountable, it is not impossible but it is just good government and good legislative practice to know what is happening elsewhere when you are legislating in a particular field.

**Q16 Baroness Gale:** Good morning, Minister. My question relates to the additional maternity leave in special circumstances. We note that it will be up to the Member States to decide the length of any additional leave to be afforded to mothers in the event of premature childbirth, children hospitalised at the time of birth, newborn children with disabilities, or multiple births. Is this compatible with the UK Government's position that women in the UK already have a good level of maternity leave to take account of their needs in these circumstances? Would you prefer to see a change in the Directive and, if so, what form should this take?

**Mr McFadden:** There is quite a wide variety of circumstances there in the list that you read out, which is the list reflected in the draft Directive. Our view is that, if there is any additional leave to be granted in the event of those circumstances, it should be additional to the 18 weeks that the Directive talks about and not additional to the 52 weeks, 39 paid, 13 not paid, in the UK system. We believe that that is what the Directive again intends and means but, before agreeing to it, we want to make sure of that, because in our domestic system we have not found demands for extensions beyond 39 or 52 weeks on the basis of those kinds of circumstances. When we go back ten years and look at the amount of leave that was available then, in those circumstances we did face calls for increased leave in the event of some of the

special circumstances that you have outlined. Those calls have tended to fall away as the UK system has improved, so we see less call for extensions on those grounds now. We think our system is flexible enough to accommodate those kinds of special circumstances, and that is another benefit from extending maternity pay and leave in the way that we have done.

**Q17 Baroness Young of Hornsey:** Good morning. You have already referred to the social partners and some discussions they have been having about family leave. Do you know how far those negotiations on family arrangements have got? Secondly, as far as you are aware, are they still intending to exclude maternity leave from those negotiations?

**Mr McFadden:** In terms of timescale, we expect the social partners to conclude in June. As far as content goes, I do not know in detail precisely what they are going to come up with. The current system is up to three months parental leave, which in this country is unpaid. Obviously, we will look closely at what they have to say about that and, in terms of the difference between parental and maternity leave, we do not expect those discussions to make recommendations on maternity leave because that is being dealt with in this Directive.

**Q18 Lord Inglewood:** You have answered one part of the question I was going to put to you about the Council meeting recently but as far as arguing our case is concerned, how do you feel the issues we are raising are being received? Do you think others are sympathetic? Do you think we are likely to be heading towards a conclusion where we may get what we want, and what is the position in the European Parliament? You may or may not know what is happening in the committees but how do you feel that their attitude is going to develop?

**Mr McFadden:** It is always rash to make predictions about how these things will turn out so I think I will resist that temptation. What I would say is that my evidence from the discussion at the Council on Monday is that it is not only the UK which is seeking clarification on the various legal points, some of which we have discussed, around pay and so on, or making clear

that there is an inter-relationship between this and parental leave. Other Member States are doing that too. I think it is too early to say how this will eventually conclude. The overall point we have made beyond the specifics that we have talked about is that here in the UK we have taken a very conscious decision over the past decade to increase maternity pay and leave as part of a broader move to create what we believe is a better balance between work and family life, also affected by flexible working, by increased paid leave from work, as part of the Working Time Directive and so on. We do not want a new Directive in Europe to run against the grain of that and we believe that the added value of a new Directive in Europe is to set some minimum baselines on which Member States can build according to their own different labour markets, their own traditions and so on. If we get a Directive like that, we can happily agree to it. What we would not want is something that was a huge extension of European competence in this area, because we do not see the need for that, or something which imposed huge new costs on business, because we do not want to see that either.

**Q19 Lord Inglewood:** Can I just follow that up? You have said that you felt it was appropriate that this legislation should be updated, and at the same time you are saying that you did not think – and I paraphrase – it was going to have an especially big impact on this country and it would not necessitate many changes here. Is your reason for wanting to see an update to the legislation good housekeeping or is it that you feel that, from a social perspective, it would be good in a general way for the citizens of elsewhere in Europe to have more leave of this kind, or is it an attempt, rather cynically, I put it, in the context of the single market to try and impose some costs on other people?

**Mr McFadden:** I think it goes back to the table with some of the numbers that I read out. There is a huge variety of entitlements in this field across Europe. I can see the sense in having some minimum baselines, provided they are not over-prescriptive and do allow Member States to build on that, to fashion that according to their own traditions. Leaving

aside the expansion of the European Union, to go back to Lord Lea's point, the difference between Scandinavian systems and our own are quite well known and we do not want to have a "one size fits all" – I am sorry to use that clichéd phrase – in this field but Europe legislating for some minimum baselines is, I think, perfectly fair. I do not think the intention is some underhand one to impose costs. I think there is a genuine intention behind this that in a single market, the European institutions do have legitimate concern and place a legitimate value on a proper balance between work and family life. That is, going back to the first question about where the impetus has come from, if you look at the impetus behind this, that is what it is always couched in.

**Chairman:** Thank you very much indeed. Lord Eames, you are going to ask about public consultation. We think Lord Eames knows as much about public consultation as anyone in the world.

**Q20 Lord Eames:** Good morning. You are shortly going to launch the public consultation process. I would be interested to know what particular areas you are going to concentrate on, and who you are going to concentrate on for a response, and secondly, when you get that response, how is that going to feed into the Government's attitude to the Directive?

**Mr McFadden:** I will probably bring Julie in on this in a moment but yes, we are shortly going to launch a public consultation on this. In terms of who we are aiming at, as I said in response to Baroness Morgan, we have treated the views of trade unions, employers, equalities bodies, very seriously in the development of policy on this and I would have thought they would all have an interest and want to say something on this. This is a field of interest. You only have to look at your daily newspapers to know that stories around pregnancy, leave, discrimination at work, are highly topical and highly interesting areas. So I think there will be an interest in what Europe is doing in this regard and that is why it is right that we have a public consultation. What will it result in? It will inform our stance in terms

of some of the questions that we have discussed this morning. I am never one who believes that the fount of all wisdom lies in Whitehall or in Government or among ministers. I think it makes sense to ask people what their view is on this. Of course, the Government has to decide its position at the end of the day and the Government has to take responsibility when it is deciding its position but it makes perfect sense to have a consultation as these proposals are being developed. Julie, do you want to add anything?

**Q21 Lord Eames:** Just before she does, may I presume to interrupt? One of the things that I have noticed, particularly of late, in the whole process of public consultation is you will get contradictory responses and you will get conflicting responses. What I would love to know is, can you give the Committee any indication of how you are going to set your priorities in looking at those responses, because that, in my opinion, is as much a judgemental situation as even going into the public domain?

**Mr McFadden:** That is absolutely right. If I were going down to Ladbrokes to put a bet on, I would put quite a large amount of money on the fact that we will get conflicting views expressed in the consultation about some of these questions. How do we decide? In the end, the Government has to make its judgement. That is what we are there for. We do not franchise out our judgement and we do not franchise out our power of decision-making. I think it is an interesting generic question actually. If the Government is going to decide its position at the end of the day, what value is there in consultation? What value is there for me, as a citizen, to take part when I might want to take a very different view and I might want to say that you should adopt an entirely different stance? I might want to say you should not have a Directive on this at all. There is a whole variety of opinions that could be expressed. That is true of every consultation. Again, I do not want us to stray from our subject but it is something government has to think about, about how it gets it right, because if we do not get it right – and I am not making a point about this Government but about government in

general, local or national – if we do not get the contract of consultation, if I can put it like that, correct, that can result in people not thinking it is worth taking part. One of the things I always think when you are doing consultation is make clear what is up for grabs and what is not up for grabs.

**Q22 Lord Eames:** That is precisely behind my question, because there is a sense in which the general public has a very confused notion about the purpose of public consultations from a government source and I think in an area such as where your responsibilities lie, it is going to be an even more sensitive reaction to how you would take cognisance of what different groups and pressure groups will say in a consultation. I am really trying to share a feeling of the difficulties that you are likely to have if you do not have a set of priorities.

**Mr McFadden:** You are right about that but then what would be the alternative? We have to think that through and take that seriously. What would be the alternative if we did not do it? We would miss out on a significant amount of human wisdom on things that we had not thought of or had not spotted. Also, for all that you say there is probably sometimes some public scepticism about consultation, we would miss out on giving a legitimate voice to people who have a legitimate interest in government decision-making. It takes me back to the contract: what is the contract here in consultation? It is not that we will always do what whoever shouts the loudest asks for, and it cannot be; that would be wrong, but it is an avenue for people to express their view, for Government to learn things that it did not know before, and some decisions will be changed by consultation. At the end of the day, representative government means the government takes the decision and the government goes and answers to the people for it, and they take a rounded view of how you have done every few years. That is the foundation of our system and I think that is right. It means that you have to make the call. Look at what we are doing at the moment on the economy and on the recession. We are having to react in a very big way to a big global problem. We are having to make big

decisions about finance, about intervention in markets and so on. We have not gone and had a referendum about each one of them before we have done it and, at the end of the day, there will be an election some time and the public will pass their view on how we have done. That is representative government for you.

**Lord Eames:** Yes, I accept that.

**Q23 Chairman:** That was an excellent explanation. Did you want one of your colleagues to add anything?

**Mr McFadden:** I was just wondering if Julie wanted to add anything about how we are going to approach the consultation.

**Ms McLynchy:** As the Minister said, we will be consulting on what people think about the Commission's proposals and what we intend to do is to set those out alongside how we think they impact on the UK's current provisions, inviting people to give us their views on whether they agree with that and what the impacts, they think, are. In terms of the bodies we will be targeting, as you would expect, we talk a lot in this area to employers, to unions, to parents' groups and to equality bodies. We will continue to do that. We will be wanting to talk to them as this proposal moves forward. What we also want to do is to talk particularly to representatives of those sectors who have particularly high rates of female employment, for example, retail and hairdressing, because obviously those sectors potentially have a more disproportionate impact from this proposal.

**Chairman:** I am sure the Committee would be interested in seeing some of that documentation, if we could. That is incredibly helpful.

**Q24 Lord Kirkwood of Kirkhope:** Minister, I have been listening carefully to what you have been saying and really I only have two observations on which I would like your comments. In relation to the impetus for the driver for change in all of this, it is interesting to

me, if I understand the explanatory memorandum properly, that the social partners have confirmed that they are not going to touch maternity leave. It is interesting to me that maybe that says something about their new diminished role. Maybe this is an old-fashioned view and Lord Lea knows a lot more about this than I do but in the old days, if I can put it that way – the nostalgia of an old man – the driver for all this would come from the social partners. Therefore, for the Commission to take over that role and then for governments to go out to a consultation seems to diminish the role of the social partners. I would just like your view about whether this is significant in the long run and we are going to see less of the opportunity for business partners, who are very aware of their own local markets across Europe – they do not need to be told that – to generate ideas for government to consider rather than the other way round.

**Mr McFadden:** I do not think it is a diminished role for the social partners. I think it is actually a kind of European view about how policy is made. For example, in the consultation that we just talked about, the social partners in the UK will be asked their view and they will express their view.

**Q25 Lord Kirkwood of Kirkhope:** They will not be leading it. They will be asked, like everybody else.

**Mr McFadden:** Yes, they will not be leading it because this is European legislation, and we all know how that works, with co-decision-making and so on, but they will be asked by the Government for their view. Without repeating the discussion I had with Lord Eames, the Government will then reach a view. With regard to the parental leave discussion among the social partners, I actually think that the fact that they are being asked to lead that shows how seriously they are taken at a European level. You might come back to me and say if they are taken seriously on parental leave, why not on other decisions? It is something that is not the same in our tradition, in the UK tradition. We tend to have a view that the Government

makes the law and the Government consults certain people on making the law and then, as I said a few moments ago, you are answerable when you go out and the voters pass their verdict. The social partners in Europe are sometimes asked to lead in a way that they are probably not here. I think that is probably reflective of the different collective agreement tradition that applies in some countries.

**Q26 Chairman:** I suppose the real question is, why are the social partners not dealing with maternity leave?

**Mr McFadden:** It is circular, because the Commission and the Council are leading it.

**Chairman:** Presumably there is some link.

**Q27 Lord Kirkwood of Kirkhope:** This is another observation. I think your evidence is very compelling. Certainly speaking for myself, you are obviously on top of all of this and that is very reassuring because that is what we are here to do. I am not suggesting that you think this at all but I would not like the Government to have a degree of complacency being built into the fact that, because we do things better than some of our sister European nations, that means there is not still real pressure for change, because particularly low-income families deserve all the support they can get, particularly in the economic circumstances we are in. For me, it would be nice to have a reassurance that, because we may be ahead of the game, broadly speaking, in terms of maternity leave and parental leave, that does not mean to say we are going to rest on our laurels and not take opportunities to reform and progress in the future.

**Mr McFadden:** It is a fair point, and I would not want anyone to think that we were complacent but I would have to point out to the Committee the enormous strides that have been made in this field in the UK in the last decade. For a new mother, the package around pay alone compared to a decade ago is worth £3,000 more, and that is before we start talking about tax credits, before we start talking about a number of other things. If you look at the

whole package around support for families in the early months after a child's birth and in the early years, it is an enormously different and improved situation compared to a decade ago. Does that mean that I or the Government are complacent or do not think further improvements in this area can be made? No, it certainly does not but I think it is fair for us to point out that this has been a real priority for us over the past decade and that is why, when we look down this table of how we compare with other Member States, it is a very different position now compared to what it used to be.

**Q28 Lord Kirkwood of Kirkhope:** That is acknowledged and accepted. I just would make the point that child poverty does not put us in a comfortable position in relation to European sister nations, so we still have a lot to do.

**Mr McFadden:** We have a lot to do but we have significantly reduced it.

**Q29 Lord Lea of Crondall:** I think it is fair to say, am I not right, that the issue about the social partners is not whether the Commission ask them to do something? When we negotiated the Social Protocol to the Maastricht Treaty, what it says is the social partners *may* agree to come forward with proposals and, of course, they have done it on a whole string of matters that they are not obliged to or asked to. They do come forward with proposals and I think they will continue to come forward with proposals. One can well understand that it may well be a sensible view, given everything else that is going on at the moment, on working time and so on, that with this one they do not get overambitious. Can I just relate this to Lord Eames' question? Is not one of the problems about public consultation that people do not think consistently – not just on the crude “I would like more money and I would also like lower taxes” level but, on the great debate about the code, on the one side is something called work/life balance, which means you do not have to work like a dog; fathers and mothers – why can they not spend more time at home with their children? Is that not a good social goal?

– and objective (b), which people say with a straight face, almost in the same paragraph, “We want women to have the chance to go out to work. It is good for society, it is good for the economy.” Amsterdam we all signed up to years ago. We in Britain want to increase from 70 per cent to 80 per cent the number of women in paid employment. I am asking, is this not part of the debate that it is not just work/life balance but we do want more women to have the chance of participating in the labour market?

**Mr McFadden:** To govern is to choose. You are right about that. In terms of participation, yes, and it is interesting actually that the number of women in the UK choosing to change their job after childbirth has significantly reduced in the past ten years, which does suggest something about the package that has been put together. I am not saying it is down to any single factor but it does suggest something about the package that has been put together making it easier for people to balance those responsibilities of family and working life. Yes, we do want people, parents, to be able to participate in the labour market if they choose to do so. I think that is good for individual opportunity and I think it is good for the country as a whole. This is not just a package about health and safety or welfare. It is a package with a wider significance.

**Q30 Chairman:** Minister, we have reached 10.30 and you can see the Committee would go on asking you both philosophical and precise questions. The only one I would simply want to clarify is that I gained the impression that you did not think this was particularly increasing the competencies of the Commission but it does retain our own areas of cover and that you are happy with all of that, because that is important to our scrutiny.

**Mr McFadden:** Yes, as it stands, we do not think it will have a major impact on the system that we operate in the UK.

**Q31 Chairman:** So long as you can meet the requirements.

**Mr McFadden:** We want, as we always do, to watch that very carefully, seek legal clarity where we think there is doubt, and to make sure that we try and get a Directive at the end of the day that adds to the general good without creating legal problems or affecting the UK; that we would not support.

**Q32 Chairman:** Can I thank you and your colleagues for an extraordinarily interesting session. I know Members have enjoyed it. I hope you found the diversity of the questions interesting. We also would like to wish you well with the Working Time Directive because, just as you would like it off your agenda, we would quite like it off ours too!

**Mr McFadden:** I do not know what I will do when it is over!

**Chairman:** Thank you very much.