

Work Life Balance and Miscellaneous Provisions Bill 2022

REGULATORY IMPACT ANALYSIS

December 2021

SUMMARY OF REGULATORY IMPACT ANALYSIS (RIA)			
Department: Children Equality Disability Integration and Youth			
Title of Legislation: Work-Life Balance and Miscellaneous Provisions Bill 2022			
Stage: Preparation of General Scheme		Date: December 2021	
Related Publications:			
1. Work Life Balance and Miscellaneous Provisions Bill 2022			
Available to view or download at:			
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TRANSPOSITION OF <i>ARTICLE 6</i> EU WORK-LIFE BALANCE DIRECTIVE (1158/2019) – LEAVE FOR MEDICAL CARE PURPOSES - OPTIONS			
<p>What policy options have been considered in relation to the introduction of 5 days leave for medical care purposes (transposition of <i>Article 6</i> of the Directive)?</p> <p>A. No policy change;</p> <p>B. Examine whether the current form of Carer’s Leave meets the requirements of <i>Article 6</i>; or</p> <p>C. Amend the Parental Leave Act 1998 to provide for a new leave for medical care purposes</p> <p><i>Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</i></p>			
No.	COSTS	BENEFITS	IMPACTS
A	No direct financial costs.	No benefit.	Ireland would fail to meet legal obligations under EU Work-life Balance Directive (1158/2019).
B	No direct financial costs.	No benefit: The current form of leave provided for in the <i>Carer’s Leave Act 2001</i> does not meet the requirements of the Directive - it limits the scope of who can take the leave; an application for less than 13 weeks leave at a time, can be refused by an employer with good reason; and will be granted only where a person needs full-time care and support.	Ireland would fail to meet legal obligations under EU Work-life Balance Directive (1158/2019).

<p>C</p>	<p>As the leave will be unpaid, the cost to the exchequer and employer are lower than those of a form of paid leave and will generally relate to replacement costs.</p> <p>Given the leave provided for under <i>Article 6</i> of the Directive is more akin to <i>force majeure</i> leave or to unpaid parental leave, than it is to carers' leave, DCEDIY officials requested figures from the NSSO relating to the uptake of both <i>force majeure</i> leave and parental leave in the Civil Service in 2018 (prior to covid-19) to provide an indication of the potential numbers who might avail of the leave.</p> <p>Of the 39,775 staff active in 2018, 3,168 (7.96%) availed of parental leave and 1,907 (4.79%) availed of <i>force majeure</i> leave in 2018.</p> <p>Given the leave is unpaid it is anticipated the numbers availing of leave for medical care purposes may be lower than those availing of <i>force majeure</i> leave.</p>	<p>Introducing 5 days leave for medical care purposes (transposition of <i>Article 6</i> of the Directive) by amending the Parental Leave Act 1998 provide parents and carers with flexibility to attend medical appointments and to provide care, while remaining in employment.</p>	<p>Meets Ireland's obligations under EU Work-life Balance Directive (1158/2019)</p>
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Preferred Option: C

TRANSPOSITION OF ARTICLE 9 EU WORK-LIFE BALANCE DIRECTIVE (1158/2019) – RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENTS FOR CARE PURPOSES - OPTIONS

What policy options have been considered in relation to the introduction of a right to request flexible working arrangements for care purposes (transposition of *Article 9* of the Directive)?

A. No policy change; or

B. Amend the Parental Leave Act 1998 to provide for a new right to request flexible working arrangements for care purposes.

Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.

No.	COSTS	BENEFITS	IMPACTS
A	No direct financial costs.	No benefit.	Ireland would fail to meet legal obligations under EU Work-life Balance Directive (1158/2019).
B	No direct financial costs.	<p>Introducing a right to request flexible working arrangements for care purposes (transposition of Article 9 of the Directive) by amending the Parental Leave Act 1998 provides parents and carers with flexibility to work in a manner that best suits their needs while ensuring that they remain in employment. An employer must consider the needs of the employee and their own needs when making a decision in relation to a request.</p> <p>Flexible working arrangements can be beneficial to both employees and employers and positively impacts on society in general.</p>	Meets Ireland's obligations under EU Work-life Balance Directive (1158/2019)

Preferred Option: B

INCREASE THE CALCULABLE PERIOD FOR BREASTFEEDING BREAKS FOR EMPLOYEES WHO ARE BREASTFEEDING - OPTIONS

What policy options have been considered in relation to increasing the calculable period for employees to avail of breastfeeding breaks?

- A.** No policy change; or
- B.** Amend the Maternity Protection Act 2004 to increase the calculable period from 26 weeks to 104 weeks.

Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.

No.	COSTS	BENEFITS	IMPACTS
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<p>A</p>	<p>No direct financial costs.</p>	<p>No direct benefits to anyone.</p>	<p>This would reflect negatively on the Government, as it would fail to implement: Action A.1.2.1 of the First 5 Implementation Plan which commits to extending the entitlement to breastfeeding breaks to breastfeeding mothers in the workforce from 26 weeks post birth to 104 weeks post birth.</p> <p>This action builds on previous commitments included in the National Strategy on Women and Girls (2.18 Extend provision for breastfeeding breaks under employment legislation (currently available to mothers of children under 6 months).) and the Breastfeeding Action Plan (Action: 4.3 Advocate for the extension of entitlement to breastfeeding / lactation breaks for all breastfeeding mothers returning to work, until their child is one year of age, and the provision of supportive policies and suitable facilities in all workplaces.).</p>
<p>B</p>	<p>No direct financial costs where an employer who does not have adequate facilities to allow a mother to breastfeed/express and store breast milk, can instead facilitate a mother with reduced working hours (1 hour each day) without loss of pay.</p> <p>The analysis shows that any extension to the existing entitlement will only affect a very small number of</p>	<p>Breastfeeding is the biologically normal feeding method for infants and young children and ensures optimum growth and development.</p> <p>Recommendations from the HSE, UNICEF and the WHO are that breastfeeding should be continued until the age of two. Currently, Ireland</p>	<p>Proven significant positive impacts on mother and baby.</p> <p>Would implement: Action A.1.2.1 of the First 5 Implementation Plan which commits to extending the entitlement to breastfeeding breaks to breastfeeding mothers in the workforce from 26 weeks post birth to 104 weeks post birth.</p>

	<p>employees and employers in this initial phase and for a short period of time only.</p> <p>Under 2,500 working mothers are expected to benefit from this extended entitlement – with entitlements to breastfeeding breaks calculated on a pro-rata basis.</p>	<p>has the lowest rate of breastfeeding in the EU.</p> <p>Policies that support extended breastfeeding are strongly supported by research. Given that the return to work is associated with a cessation of breastfeeding, supports for working mothers are essential.</p>	<p>Supports mothers returning to work after birth to continue to breastfeed, to the benefit of their child and helps to create a culture which normalises extended breastfeeding.</p>
<p>Preferred Option: B</p>			

1 POLICY CONTEXT

1.1 This Regulatory Impact Analysis (RIA) examines the substantive legislative proposals of the Work Life Balance and Miscellaneous Provisions Bill 2022. Necessary technical amendments to rectify legislative anomalies are also included in the Bill but it was not considered necessary to conduct an assessment of the impact of same.

Work life Balance Directive:

1.2 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers aims to increase the participation of women in the labour market and the shared take-up of family-related leave and flexible working arrangements. It also provides opportunities for workers to be granted leave to care for relatives and those in the same household who need support. By modernising the existing EU legal framework in the area of family-related leaves and flexible working arrangements it is envisaged that parents and carers will be better able to reconcile their professional and private lives, and employers will benefit from more motivated workers. Member States have three years to adopt laws, regulations and administrative provisions necessary to comply with the Directive (2 August 2022).

1.3 The current provisions of Paternity leave (*Article 4*) and *force majeure* leave (*Article 7*) in Ireland meet the requirements of the Directive.

1.4 Government granted approval to the Minister for Justice and Equality to part-transpose the requirements of *Article 5* of the Directive which requires Member States to provide for two months of non-transferable paid parental leave. The Parent’s Leave and Benefit Act 2019, which was signed into law on 24 October 2019 provided for 2 weeks parent’s

leave and benefit to be taken during the first year of a child's life, or in the case of adoption, within the first year of the placement of the child with the family.

1.5 On 9 March 2021 Government decision SI80/20/10/2592 granted approval to the Minister for Children, Equality, Disability, Integration and Youth to further part-transpose the requirements of Article 5 of the Directive, via the Family Leaves and Miscellaneous Provisions Bill 2021, enacted on 27 March 2021, which provided a further 3 weeks (5 weeks in total) of parent's leave and benefit which could be taken during the first 2 years of a child's life, or in the case of adoption, within 2 years of the placement of the child with the family. The Minister intends to extend the entitlement to Parent's Leave to seven weeks in 2022 by regulation, as provided for under the 2019 Act, in order to meet the requirements of the Directive. The Directive requires that a period of nine weeks be in place by August 2024.

1.6 The key Articles within the Directive requiring transposition by 2 August 2022 and provided for in the general scheme attached to this memo are:

- *Article 6* – Member States shall take the necessary measures to ensure that each worker has the right to carer's leave of five working days per year.
- *Article 9* - Member States shall take the necessary measures to ensure that workers with children up to a specified age, and carers, have the right to request flexible working arrangements for caring purposes.

1.7 The amendments to transpose these Articles will be done by way of amendment to the Parental Leave Act 1998:

- A new section 6A "Right to request flexible working arrangements for caring purposes" will be inserted into the Act, to provide employees with children up to age 12, and carers as defined under the Directive, with the right to request flexible working arrangements for caring purposes.
 - The right to request flexible working arrangements will be limited to a period of work qualification of 6 months.
 - An employee will be required to submit a request for flexible working arrangements in writing at least 6 weeks prior to the proposed start date.
 - An employer will be required to consider and respond to a request for flexible working for care purposes no later than 4 weeks after receiving same, provisions is made to extend this period where the request relates to remote working and the employer is experiencing difficulties carrying out the necessary assessments.
 - An employer will be required to provide reasons for refusing or postponing a request for flexible working arrangements for caring purposes.
 - An employer will be required to consult with an employee prior to postponing a request.

- An employee will be provided with an opportunity to revoke a request and both parties once agreeable can amend a start date.
- Circumstances where an employee becomes sick are also provided for.
- A new section 13A “Leave for medical care purposes” will be inserted into the Act, to provide for 5 days of carers’ leave (unpaid) as set out in the Directive.
 - In line with the Directive, there will be no notice period required to take carer’s leave.
 - Provision is made for an employer to request evidence of the medical need for the leave.
 - The leave cannot be taken in periods of less than one day.
 - An employee will be entitled to return to the role they were in immediately prior to taking the leave.

1.8 The draft scheme will provide for amendments to various employment rights and protections directly associated with the amendments introduced by *Articles 6 and 9* of the Directive. (Heads 5 to 9 and heads 19 to 21)

Extension of Calculable period for breastfeeding breaks:

1.9 Currently, under Section 9 of the Maternity Protection (Amendment) Act 2004, women in employment who are breastfeeding are entitled to take time off work each day in order to breastfeed. The provision applies to all women in employment who have given birth within the previous 6 months (26 weeks). Employers are not obliged to provide facilities in the workplace to facilitate breastfeeding if the provision of such facilities would give rise to considerable costs.

1.10 At the choice of the employer, women may:

- Breastfeed in the workplace or express breast milk, where facilities are provided in the workplace by the employer.
- Have their working hours reduced (without loss of pay) to facilitate breastfeeding where facilities are not made available.

1.11 Women who are in employment and are breastfeeding are entitled to take 1 hour (with pay) off work each day as a breastfeeding break for up to 26 weeks after birth. This time may be taken as:

- One 60 minute break
- Two 30 minute breaks
- Three 20 minute breaks

1.12 Breaks may be longer and more frequent if agreed between the woman and her employer. Part-time workers are also entitled to breastfeeding breaks, calculated on a pro-rata basis.

1.13 After 26 weeks, there is no legal entitlement to breastfeeding breaks. However, many workplaces, particularly the public sector, have policies which support employees to continue to breastfeed.

1.14 The extension of paid maternity leave in Ireland to 26 weeks in March 2007 effectively rendered obsolete this entitlement to paid breastfeeding breaks in the workplace under the Maternity Protection (Amendment) Act 2004 for women returning to work from 26 weeks after the date of confinement.

1.15 According to Growing Up in Ireland data, of women in employment during pregnancy who returned to work, 35% did so at the end of the statutory paid maternity leave period and 31% at the end of the period of statutory paid and unpaid maternity leave. About 12% took less than their statutory paid leave entitlement.

1.16 Commitments to extending entitlements to breastfeeding breaks for working mothers

Action A.1.2.1 of the First 5 Implementation Plan commits to extending the entitlement to breastfeeding breaks to breastfeeding mothers in the workforce from 26 weeks post birth to 104 weeks post birth.

1.17 This action builds on previous commitments included in the National Strategy on Women and Girls (2.18 Extend provision for breastfeeding breaks under employment legislation (currently available to mothers of children under 6 months).) and the Breastfeeding Action Plan (Action: 4.3 Advocate for the extension of entitlement to breastfeeding / lactation breaks for all breastfeeding mothers returning to work, until their child is one year of age, and the provision of supportive policies and suitable facilities in all workplaces.).

1.18 Current entitlement to extended breastfeeding breaks

Some workplaces have policies which support employees to continue to breastfeed. Extended breastfeeding breaks (up to two years) are in place for the majority of public sector jobs, including civil servants and teachers. The HSE, through its forthcoming breastfeeding policy for staff, will also provide for extended lactation breaks of up to two years.

1.19 According to data from the Labour Force Survey, 42% of working women work in the public sector and will therefore, already have an entitlement to extended breastfeeding breaks.

1.20 ICTU have made repeated calls for extended breastfeeding breaks for women working in other sectors.

1.21 Data on prevalence of breastfeeding among working mothers

Growing Up in Ireland data demonstrates that only 11% of mothers are breastfeeding when their child is nine months old, that those who are breastfeeding when their child is this age are less likely to be in the workforce and that women’s return to work is clearly associated with a cessation of breastfeeding.

1.22 Data on the proportion of mothers who are breastfeeding at the time children are 12 months is not collected in Ireland. The closest available estimate is Northern Ireland were only 6.9% of mothers are breastfeeding at this point and a significant proportion of this small cohort will still be on leave from work or not in employment.

1.23 When labour force participation rates among women are taken into account (approximately 70%), the proportion of working mothers who are breastfeeding their children at 9 months and 12 months is even smaller again.

1.24 Estimated numbers of working mothers expected to benefit from extended breastfeeding breaks

The estimated number of working mothers expected to benefit from this new entitlement, in the initial period, is shown below. These estimates draw on prevalence of breastfeeding among mothers, labour force participation rates among women and the proportion of women working in the private sector, which according to the recent Labour Force Survey is 58% of all working women.

1.25 This analysis shows that any extension to the existing entitlement will only affect a very small number of employees and employers in this initial phase and for a short period of time only. Under 2,500 working mothers are expected to benefit from this extended entitlement –with entitlements to breastfeeding breaks calculated on a pro-rata basis. This estimate assumes 7% of working mothers will breastfeed their children up to age two. In reality, this percentage may be lower. It also assumes no current entitlement to extending breastfeeding breaks in the private sector.

Number of children aged 9 months- 24 months:	76,250
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Number of breastfed children aged 9 months-12 months (assume 11% uptake)	1,677
Number of breastfed children aged 12 months-24 months (assume 7% uptake)	4,270
Number of breastfed children aged 9 months-24 months	5,947
Number of breastfed children aged 9 months- 24 months with working mothers (assume 70% labour force participation rate)	4,163
Number of breastfed children aged 9 months- 24 months with working mothers in the private sector	2,414

As entitlements to paid parental leave increase over time, women will be breastfeeding for a shorter period on return to work.

1.26 This provision is primarily about signalling Government’s support for the small numbers of women who are currently breastfeeding, normalising breastfeeding in work, and supporting the broader effort to create a culture that enables parents to balance working and caring responsibilities in the best interests of children and their families.

1.27 Given the very gradual increases in breastfeeding rates over the past decade, it is unlikely that extended breastfeeding breaks will lead to very significant increases in extended breastfeeding rates in the short or medium term.

1.28 Evidence for the importance of continued breastfeeding beyond six months

Breastfeeding is the biologically normal feeding method for infants and young children and ensures optimum growth and development. There is considerable evidence to demonstrate the importance of breastfeeding for the health of both mothers and infants.

1.29 Recommendations from the HSE, UNICEF and the WHO are that breastfeeding should be continued until the age of two. Currently, Ireland has the lowest rate of breastfeeding in the EU.

1.30 Breastfeeding has a significant impact on child health. Long recognised as the gold standard for nutrition in infancy and early childhood, its benefits for babies include healthy development of the brain, digestive and immune systems. Breastfed babies demonstrate stronger cognitive developmental scores and are less likely to develop ear, nose and throat infections, gastroenteritis, kidney and chest infections, asthma and eczema.

1.31 Breastfeeding is also a significant protective factor against obesity in children. The protective role of breastfeeding extends beyond childhood and is important in the prevention of chronic diseases in adulthood including diabetes. Being breastfed has been

identified as providing a reduced risk of obesity and Type 1 & Type 2 diabetes. Increasingly breastfeeding research is demonstrating a dose response relationship that strongly indicates health and nutritional advantages can be maximised in the short, medium and long term by extending the duration of breastfeeding into the second year of life and beyond. Breastfeeding is also linked to better oral health outcomes. Lower levels of early childhood illnesses reduce the likelihood of parents having to time off work to care for sick children. Breastfeeding also supports positive infant mental health by promoting bonding and attachment. Breastfeeding also reduces a mother's risk of ovarian and breast cancer and diabetes

1.32 Policies that support extended breastfeeding are strongly supported by research. Given that the return to work is associated with a cessation of breastfeeding, supports for working mothers are essential.

1.33 Consultation with employers groups and social partners on the increase in the calculable period for breastfeeding initially took place in December 2019 with further consultations held in February 2021.

2. OBJECTIVES OF THE BILL

2.1 It is proposed to amend the Parental Leave Act 1998 to:

- a) Insert a new section 13A introducing an entitlement to 5 days unpaid leave for medical care purposes to parents and carers, meeting Ireland's obligation under *Article 6* EU Work-life Balance Directive (1158/2019).
 - In line with the Directive, there will be no notice period required to take carer's leave.
 - Provision is made for an employer to request evidence of the medical need for the leave.
 - The leave cannot be taken in periods of less than one day.
 - An employee will be entitled to return to the role they were in immediately prior to taking the leave.

- b) Insert a new section 6A introducing a right to request flexible working arrangements for care purposes for parents and carers, meeting Ireland's obligation under *Article 9* EU Work-life Balance Directive (1158/2019).
 - The right to request flexible working arrangements will be limited to a period of work qualification of 6 months.
 - An employee will be required to submit a request for flexible working arrangements in writing at least 6 weeks prior to the proposed start date.
 - An employer will be required to consider and respond to a request for flexible working for care purposes no later than 4 weeks after receiving same,

provisions is made to extend this period where the request relates to remote working and the employer is experiencing difficulties carrying out the necessary assessments.

- An employer will be required to provide reasons for refusing or postponing a request for flexible working arrangements for caring purposes.
 - An employer will be required to consult with an employee prior to postponing a request.
 - An employee will be provided with an opportunity to revoke a request and both parties once agreeable can amend a start date.
 - Circumstances where an employee becomes sick are also provided for.
- c) Provide for related amendments to the employment rights and protections provisions by:
- Inserting a section 14(6), a section 14 (7) and a section 14 (8); and
 - amending section 15(1), section 15(2), section 15 (3), section 16A(1), section 21(1)(a), section 21(3), section 21(4), section 21(5), section 21(6), section 21(7) and section 21(8), section 25(3), section 27(1), section 27(2) and section 27(4).

2.2 It is proposed to amend the Redundancy Payments Act 1967, the Unfair Dismissals Act 1977 and the Organisation of Working Time Act 1997 to:

- a) Provide for necessary, ancillary amendments to employment legislation as a result of the amendments at 2.1 transposing *Articles 6 and 9* of EU Work-life Balance Directive (1158/2019) by amending paragraph 5(c)(ii) of Schedule 3 of the Redundancy Payments Act 1967, by amending section 6(2)(dd) of the Unfair Dismissals Act 1977 and by amending section 16(5)(cc) of the Organisation of Working Time Act 1997.

2.3 It is proposed to amend the Maternity Protection Act 1994 to:

- a) Increase the calculable period for breastfeeding breaks for employees who are breastfeeding from 6 months to 2 years by amending section 2(1).
- b) Gender neutralise the Maternity Protection Acts by amending section 2(1), by deleting section 7(2) and by amending section 16(1).

2.4 It is proposed to amend the Adoptive Leave Act 1995 to:

- a) Amend anomalies brought about by amendments made to the Act in the Family leave and Miscellaneous Provisions Act 2021 by amending Section 9(3)(d) and section 19(1) and by deleting the schedule at section 7 at reference 41 (a).

2.5 It is proposed to amend the Workplace Relations Act 2015 to:

- a) Amend an anomaly which will reflect the legislative intention behind section 176(f) of the Children and Family Relationships Act 2015 by amending section 2 and section 41(7)(iii) of the Workplace Relations Act 2015 .

3. IDENTIFICATION OF POLICY OBJECTIVES

3.1 What policy options have been considered?

Transposition of Article 6 EU Work-Life Balance Directive (1158/2019) – Leave for Medical Care Purposes:

- A. No policy change;
- B. Examine whether the current form of Carer’s Leave meets the requirements of *Article 6*;
or
- C. Amend the Parental Leave Act 1998 to provide for a new leave for medical care purposes

A. No policy change:

This option would reflect negatively on the Government, as it would fail to meet Ireland’s obligation under EU Work-life Balance Directive (1158/2019).

Costs:

There are no direct financial costs associated with this option. However if Ireland does not meet its obligations under the EU Work-life Balance Directive (1158/2019) financial penalties may arise.

B. Examine whether the current form of Carer’s Leave meets the requirements of *Article 6*:

Whether the current form of Carer’s Leave provided for in the *Carer’s Leave Act 2001* met the requirements of *Article 6* of the Directive was examined. It was found that the current form of Carer’s leave provided for in the *Carer’s Leave Act 2001* does not meet the requirements of the Directive – as it limits the scope of who can take the leave; an application for less than 13 weeks leave at a time, can be refused by an employer with good reason; and will be granted only where a person needs full-time care and support.

Costs:

There are no direct financial costs associated with this option. However if Ireland does not meet its obligations under the EU Work-life Balance Directive (1158/2019) financial penalties may arise.

C. Amend the Parental Leave Act 1998 to provide for a new leave for medical care purposes:

Introducing 5 days leave for medical care purposes (transposition of *Article 6* of the Directive) by amending the Parental Leave Act 1998 provides parents and carers with flexibility to attend medical appointments and to provide care, while remaining in employment. This option meets EU commitments to legislate in this area.

Costs:

Given most employees have an option to take unpaid leave should a need arise, it is anticipated that there will be no significant additional expense associated with the leave as it is primarily an update to language and will not result in a significant rise in numbers of employees availing of the leave options.

Any replacement costs for substitution cover would be partially offset by the employee's loss of income (the requirement to pay overtime rates or engage agency workers in some instances may give rise to some additional costs).

Given the leave provided for under Article 6 of the Directive is more akin to *force majeure* leave or to unpaid parental leave, than it is to carers' leave, DCEDIY officials requested figures from the NSSO relating to the uptake of both *force majeure* leave and parental leave in the Civil Service in 2018 (prior to covid-19) to provide an indication of the potential numbers who might avail of the leave.

Of the 39,775 staff active in 2018, 3,168 (7.96%) availed of parental leave and 1,907 (4.79%) availed of *force majeure* leave in 2018.

Given the new leave under *Article 6* is unpaid it is anticipated the numbers availing of leave for medical care purposes may be lower than those availing of *force majeure* leave.

3.2 Preferred option:

Option C

3.3 Cost Analysis for all options:

A. No policy change:

There are no direct financial costs with this option, Ireland faces the risk of incurring financial penalties for failing to meet its obligations under the EU Work-life Balance Directive (1158/2019).

B. Examine whether the current form of Carer's Leave meets the requirements of Article 6:

There are no direct financial costs with this option. On examination, it does not transpose the Directive. Ireland faces the risk of incurring financial penalties for failing to meet its obligations under the EU Work-life Balance Directive (1158/2019).

C. Amend the Parental Leave Act 1998 to provide for a new leave for medical care purposes:

Given most employees have an option to take unpaid leave should a need arise, it is anticipated that there will be no significant additional expense associated with the leave as it is primarily an update to language and will not result in a significant rise in numbers of employees availing of the leave options.

Any replacement costs for substitution cover would be partially offset by the employee's loss of income (the requirement to pay overtime rates or engage agency workers in some instances may give rise to some additional costs).

Given the leave provided for under Article 6 of the Directive is more akin to *force majeure* leave or to unpaid parental leave, than it is to carers' leave, DCEDIY officials requested figures from the NSSO relating to the uptake of both *force majeure* leave and parental leave in the Civil Service in 2018 (prior to covid-19) to provide an indication of the potential numbers who might avail of the leave.

Of the 39,775 staff active in 2018, 3,168 (7.96%) availed of parental leave and 1,907 (4.79%) availed of *force majeure* leave in 2018.

Given the new leave under Article 6 is unpaid it is anticipated the numbers availing of leave for medical care purposes may be lower than those availing of *force majeure* leave.

3.4 What policy options have been considered?

Transposition of Article 9 EU Work-Life Balance Directive (1158/2019) – Right to request flexible working arrangements for care purposes:

- A. No policy change; or
- B. Amend the Parental Leave Act 1998 to provide for a new right to request flexible working arrangements for care purposes.

A. No policy change:

This option would reflect negatively on the Government, as it would fail to meet Ireland's obligation under EU Work-life Balance Directive (1158/2019).

Costs:

There are no direct financial costs associated with this option. However if Ireland does not meet its obligations under the EU Work-life Balance Directive (1158/2019) financial penalties may arise.

B. Amend the Parental Leave Act 1998 to provide for a new right to request flexible working arrangements for care purposes:

Introducing a right to request flexible working arrangements for care purposes (transposition of *Article 9* of the Directive) by amending the Parental Leave Act 1998 provides parents and carers with flexibility to work in a manner that best suits their needs while ensuring that they remain in employment. An employer must consider the needs of the employee and their own needs when making a decision in relation to a request. Flexible working arrangements can be beneficial to both the employees and the employers and positively impacts on society in general.

This option meets EU commitments to legislate in this area.

Costs:

There will be no direct financial costs associated with this option.

3.5 Preferred option:

Option B

3.6 Cost Analysis for all options:

A. No policy change:

There are no direct financial costs with this option, Ireland faces the risk of incurring financial penalties for failing to meet its obligations under the EU Work-life Balance Directive (1158/2019).

B. Amend the Parental Leave Act 1998 to provide for a new right to request flexible working arrangements for care purposes:

There are no direct financial costs with this option. This option meets EU commitments to legislate in this area.

3.7 What policy options have been considered?

Extend the calculable period for breastfeeding breaks for employees who are breastfeeding:

- A.** No policy change; or
- B.** Amend the Maternity Protection Act 2004 to increase the calculable period from 26 weeks to 104 weeks.

A. No policy change:

This would reflect negatively on the Government, as it would fail to implement:

Action A.1.2.1 of the First 5 Implementation Plan which commits to extending the entitlement to breastfeeding breaks to breastfeeding mothers in the workforce from 26 weeks post birth to 104 weeks post birth.

This action builds on previous commitments included in the National Strategy on Women and Girls (2.18 Extend provision for breastfeeding breaks under employment legislation (currently available to mothers of children under 6 months).) and the Breastfeeding Action Plan (Action: 4.3 Advocate for the extension of entitlement to breastfeeding / lactation breaks for all breastfeeding mothers returning to work, until their child is one year of age, and the provision of supportive policies and suitable facilities in all workplaces.).

Costs:

There will be no direct financial costs associated with this option.

B. Amend the Maternity Protection Act 2004 to increase the calculable period from 26 weeks to 104 weeks

Breastfeeding is the biologically normal feeding method for infants and young children and ensures optimum growth and development. Recommendations from the HSE, UNICEF and the WHO are that breastfeeding should be continued until the age of two. Currently, Ireland has the lowest rate of breastfeeding in the EU.

Policies that support extended breastfeeding are strongly supported by research. Given that the return to work is associated with a cessation of breastfeeding, supports for working mothers are essential.

This option would implement: Action A.1.2.1 of the First 5 Implementation Plan which commits to extending the entitlement to breastfeeding breaks to breastfeeding mothers in the workforce from 26 weeks post birth to 104 weeks post birth.

Signals Government’s support for the small numbers of women who are currently breastfeeding, encourages more women in continue breastfeeding, and contributes to the broader effort to create a culture that enables parents to balance working and caring responsibilities in the best interests of children and their families.

Costs:

No direct financial costs where an employer who does not have adequate facilities to allow a mother to breastfeed/express and store breast milk, can instead facilitate a mother with reduced working hours (1 hour each day) without loss of pay.

The estimated number of working mothers expected to benefit from this new entitlement draws on prevalence of breastfeeding among mothers, labour force participation rates among women and the proportion of women working in the private sector, which according to the recent Labour Force Survey is 58% of all working women.

This analysis shows that any extension to the existing entitlement will only affect a very small number of employees and employers in this initial phase and for a short period of time only. Under 2,500 working mothers are expected to benefit from this extended entitlement –with entitlements to breastfeeding breaks calculated on a pro-rata basis. This estimate assumes 7% of working mothers will breastfeed their children up to age two. In reality, this percentage will be lower. It also assumes no current entitlement to extending breastfeeding breaks in the private sector.

Number of children aged 9 months- 24 months:	76,250
Number of breastfed children aged 9 months-12 months (assume 11% uptake)	1,677
Number of breastfed children aged 12 months-24 months (assume 7% uptake)	4,270
Number of breastfed children aged 9 months-24 months	5,947
Number of breastfed children aged 9 months- 24 months with working mothers (assume 70% labour force participation rate)	4,163
Number of breastfed children aged 9 months- 24 months with working mothers in the private sector	2,414

As entitlements to paid parental leave increase over time, women will be breastfeeding for a shorter period on return to work.

3.8 Preferred option:

Option B

3.9 Cost Analysis for all options:

A. No policy change:

There are no direct financial costs with this option.

B. Amend the Maternity Protection Act 2004 to increase the calculable period from 26 weeks to 104 weeks

No direct financial costs. Where an employer does not have adequate facilities to allow a mother to breastfeed/express and store breast milk, they can instead facilitate a mother with reduced working hours (1 hour each day) without loss of pay.

The estimated number of working mothers expected to benefit from this new entitlement draws on prevalence of breastfeeding among mothers, labour force participation rates among women and the proportion of women working in the private sector, which according to the recent Labour Force Survey is 58% of all working women.

This analysis shows that any extension to the existing entitlement will only affect a very small number of employees and employers in this initial phase and for a short period of time only. Under 2,500 working mothers are expected to benefit from this extended entitlement –with entitlements to breastfeeding breaks calculated on a pro-rata basis. This estimate assumes 7% of working mothers will breastfeed their children up to age two. In reality, this percentage will be lower. It also assumes no current entitlement to extending breastfeeding breaks in the private sector.

•Number of children aged 9 months- 24 months:	76,250
•Number of bf children aged 9 months-12 months (assume 11% uptake):	1,677
•Number of bf children aged 12 months-24 months (assume 7% uptake):	4,270
•Number of bf children aged 9 months-24 months:	5,947
•Number of bf children aged 9 months-24 months with working mothers (assume 70% labour force participation rate):	4,163
•Number of bf children aged 9 months-24 months with working mothers in the private sector:	2,414

4. Consultation

- 4.1** In December 2019 officials in the then Department of Justice and Equality met with employer's representative groups and unions. The consultations aimed to invite views and discuss the impacts on proposed extensions to family leaves.
- 4.2** In early 2021 the Minister for Children, Equality, Disability, Integration and Youth and officials met again with employer's representative groups and unions to invite views and discuss the impacts associated with extending family leaves.
- 4.3** Officials in the Department of Children, Equality, Disability, Integration and Youth have consulted with officials from the Department of Enterprise Trade and Employment, the Department of Social Protection, the Department of Education, the Department of Health and the Department of Public Expenditure and Reform on the implications of providing for 5 days of unpaid leave for car for medical purposes, on the right to request flexible working arrangements for care purposes and on the proposal to extend the calculable period for breastfeeding breaks for employees who are breastfeeding.

5. Publication

- 5.1** This Regulatory Impact Analysis will be published on the Department's website.

6. Conclusions

- 6.1** The main positive benefits expected from this bill are:
- a) Providing for leave for medical care purposes and a right to request flexible working arrangements for care purposes, transposing Articles 6 and 9 of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers should increase the participation of women in the labour market and the shared take-up of family-related leave and flexible working arrangements. It also provides opportunities for workers to be granted leave to care for relatives and those in the same household who need support. By modernising the existing EU legal framework in the area of family-related leaves and flexible working arrangements it is envisaged that parents and carers will be better able to reconcile their professional and private lives, and employers will benefit from more motivated workers.
 - b) Extending the calculable period for breastfeeding breaks will encourage and accommodate the continuation of breastfeeding where a parent returns to work

from Maternity leave. The significant benefits of this to the health and wellbeing of baby and mother are well established. Policies that support extended breastfeeding are strongly supported by research. Given that the return to work is associated with a cessation of breastfeeding, supports for working mothers are essential.

Equality and Gender Equality Division

Department of Children, Equality, Disability, Integration and Youth

December 2021