

**WORK AND FAMILIES ACT 2006  
EVALUATION REPORT**

BIS Employment Relations

MARCH 2010

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# Chapter 1: Introduction to the Work & Families Act

## 1.1 Introduction

This memorandum provides a preliminary assessment of the *Work and Families Act 2006* and has been prepared by the Department for Business, Innovation and Skills for submission to the Business, Innovation and Skills Committee. It will be published as part of the process set out in the document *Post Legislative Scrutiny – The Government's Approach* (Cm 7320). The paragraphs below follow the order of the provisions in the Act.

## 1.2 Introduction to the Work and Families Act (“The Act”)

The *Work and Families Act* received Royal Assent on 21 June 2006. In the Act the Government introduced a package of measures to make provisions for extending statutory rights to leave and pay in connection with the birth or adoption of children; to extend the provision for workers to request flexible working patterns to carers; to make provision for workers' entitlement to annual leave; to provide for an increase in the maximum amount of a week's pay affecting compensation payments.

The Act delivered some of the measures set out in the Government response to the February 2005 consultation, *Work and Families: Choice and Flexibility*, which sought views on the commitments made in the 2004 Pre-Budget Report and Ten Year Childcare Strategy.

The Act was a key part of implementing Government commitments to improve maternity leave and encourage family friendly working. Other elements of the package were provided through secondary legislation, through improved guidance and through practical support for employers through HMRC's Employers' Helpline.

This assessment looks at the legislative elements of the package, including both primary and secondary legislation.

## 1.3 Objectives of the Act

The Government's aim was to give children the best start in life, and to enable all families to have genuine choices about how they balance work and family caring responsibilities. There are substantial public benefits, both social and economic, to be gained from working parents successfully balancing the demands of work and family life. By increasing choice for working parents, the Government also hoped to support employers in recruiting and retaining the best people.

The legislation aimed to enable parents to spend more time with their children, particularly during the first year of their child's life; support carers in balancing

their work and family commitments through flexible working; and provide joined up support and advice. The Act also sought to ease employers' administration of leave and pay associated with a child's birth.

### **1.3.1 Extending Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance**

These measures were intended to help mothers and adopters to take more time off work following the birth or placement for adoption of their child. Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance were extended from 26 weeks to 39 weeks in relation to children expected on or after 1 April 2007.

### **1.3.2 Qualification for Additional Maternity Leave**

This was an enabling measure introduced by amending the *Maternity and Parental Leave Regulations 1999 (MPLR)* using power in the *Employment Rights Act 1996*. This ensured that mothers entitled to 39 weeks' Maternity Allowance are also able to take that time off work on maternity leave. The qualification requirement for Additional Maternity Leave was changed for children expected on or after 1 April 2007 allowing all employees to take up to 12 months maternity leave. Although this change was not directly introduced by the Act, it will be examined in this Memorandum as without the change, some women would not be able to benefit from the extension of maternity pay since they would be eligible for 39 weeks' maternity pay but only 26 weeks' maternity leave.

### **1.3.3 Measures to help employers with the management of maternity and adoption leave and administration of statutory payments**

- **Notice Periods.** This provision increased the notice period a mother or adopter must give if she intends to change her planned return to work date from 28 days to two months. This measure was intended to give employers more time to plan for the return to work. It was also introduced through amendment to the MPLR and the Paternity and Adoption Leave Regulations 2003 but is included in this memorandum as it formed part of the package of measure to help employers with the management of maternity leave and administration of statutory payments.
- **Statutory Maternity Pay start date.** The Act introduced an 'any day start' for the Maternity Pay Period to "match" the start of Statutory Maternity Pay and Maternity Allowance with the day on which maternity leave begins. Prior to the Act the first day of the Statutory Maternity Pay period would either be a Sunday or, where the start of a woman's maternity leave and pay was triggered by the birth of the baby or by a pregnancy related illness, the day after the birth or the day after the first day of absence from work for such illness.
- **Daily Rates.** So that employers can align Statutory Maternity Pay payments more easily with their own pay periods, the Act enabled the weekly payment of Statutory Maternity Pay to be divided by seven.

#### *1.3.4 Measures to encourage better communication between women and employers.*

The objective of these measures was to make it easier for an employee to keep in touch with the employer during a period of leave.

- **Clarifying the law.** Prior to the Act, an employer could make reasonable contact with an employee during her maternity or adoption leave. The Act enshrined this reasonable contact in law.
- **Keeping in Touch Days.** The Act created the power to provide for optional “Keeping in Touch Days” enabling women to work for up to ten days within their maternity leave or payment period without losing any Statutory Maternity Pay, Maternity Allowance or maternity leave – for example to undertake the odd training day or to go into work. This was also applied for adoption leave and pay.

#### **1.3.5 Flexible working**

Prior to the Act parents with children under 6 and those with disabled children under 18 had the right to ask their employer for flexible working. The Act made provision to extend the Right to Request Flexible Working to carers of adults. This was implemented on 6 April 2007.

#### **1.3.6 Additional Paternity Leave**

The Act included powers to increase fathers’ entitlements to paternity leave and pay by providing Additional Paternity Leave and Additional Statutory Paternity Pay. The new system will give employed fathers the right to take up to six months additional paternity leave which can be taken once the mother has returned to work. This new provision will be available during the second six months of the child's life and may be paid if taken during the mother's maternity or adoption pay period.

This will have effect for parents of children due on or after 3 April 2011. This evaluation will therefore, not be examining this area of the Act. The Regulations have been laid before Parliament and, subject to receiving Parliamentary approval, are intended to come into force in April 2010.

#### **1.3.7 Holidays**

The Act provided an enabling power to extend the entitlement to four weeks’ paid annual leave, making it additional to time equivalent to bank (and public) holidays. Since April 2009, all workers have been entitled to 5.6 weeks’ annual leave per year.

### **1.3.8 Compensation payments**

The Act provided the Secretary of State a one-off power to increase the maximum amount of a week's pay affecting compensation payments in connection with redundancy, unfair dismissal and insolvency. The *Work and Families (Increase of Maximum Amount) Order 2009* (SI 2009/1903) came into force October 2009. It is therefore too early to evaluate this part of the Act.

## **1.4 Background to Act**

The Government policy and the subsequent introduction of the Act was informed and driven by changes which were taking place in family structures and the labour market, and the need to give children the best start in life.

### **1.4.1 The role of Government**

Government's central concern in this area is the balance between professional and parental responsibilities. There are substantial public benefits, both social and economic, to be gained from helping give children the best start in life and supporting parents in reconciling the demands of work and family life. These include expanding opportunities within and across generations, tackling disadvantage and social exclusion and increasing the productive capacity of the nation, leading to greater growth and competitiveness.

### **1.4.2 Labour markets and changing family structure**

There have been considerable changes in family structures and in household working patterns over recent years. In general work has become more polarised between households, with a growth in the proportion of 'work rich' households where all adults work mirroring a rise in the proportion of 'work poor' households where no one works. The number of households relying on a single breadwinner has fallen substantially over the same period.

Underlying these changes are broader shifts in the labour market with male employment rates falling while the proportion of women working increased from around 56 per cent to around 70 per cent between 1971 and 2008. The proportion of women with children who work has also risen. The decision of women with children to work is influenced by a number of factors, including previous work history, educational attainment and the experience of motherhood.<sup>1</sup> Research has also shown that a lack of flexibility in the hours and types of work that are available to mothers who wish to return to work are significant barriers to finding employment.<sup>2</sup>

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<sup>1</sup> Marks, G. and Houston, D., "Attitudes towards work and motherhood held by working and non-working mothers", 2002

<sup>2</sup> "Parents' perceptions of and attitudes towards Government work-life balance initiatives – a survey of parents", Women and Equality Unit, 2001



It is not just the lives of families with children that have changed over recent decades. Many families now have responsibility for caring for elderly or vulnerable relatives. An estimated 5.3 million carers are of working age (between 16 and 64 years old). Approximately 3.5 million of these are working either full or part-time.

A number of families have responsibility for caring for both children and an elderly or sick or disabled relative. Research suggests around a quarter of carers also have dependent children.<sup>3</sup> This group is therefore 'sandwiched' between caring for different generations and may face particular difficulties in balancing their work and caring responsibilities.

#### ***1.4.3 Expected Benefits of the Act to individuals***

For mothers the expected benefit of the measures introduced by the Act was to reduce labour market disengagement. The rationale was that the provision of longer periods of maternity leave and pay, coupled with the statutory right to return, would encourage more mothers to return to work. It would allow mothers to return to their jobs in a planned and ordered way.

The provisions of Additional Paternity Leave will, when implemented, will provide parents with more flexibility over their childcare arrangements, giving mothers the option to return to work earlier while enabling employed fathers to have a greater involvement in raising their child in the first year of the child's life.

The right to request flexible working for carers was designed to support carers in work.

#### ***1.4.4 Expected Benefits of the Act to employers***

Business success depends on being able to recruit and retain people from the widest possible pool of talent and developing the skills, creativity and imagination of all their staff.

Employers who have introduced family friendly working policies report improved morale, commitment and retention of staff, which lead to wider business benefits such as improved customer service and the ability to react effectively to changes in demand.

Specific measures in the Act were aimed to make the administration of maternity leave and pay simpler and to help employers to manage absences and returns more easily.

#### ***1.4.5 Expected Benefits of the Act to the wider economy***

Higher female employment rates enlarge the economy, increase tax revenues and create a more dynamic economy by increasing the supply of skills in the labour market.

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<sup>3</sup> General Household Survey, ONS 2000

Similarly, the benefits to carers of remaining in employment affect not just the individual, but the wider economy as well.

The Impact Assessment prepared prior to the Act provides more detail on the background to the Act. The most relevant details from the Impact Assessment for this evaluation can be found at Annex A.

# Chapter 2: Secondary Legislation

## 2.1 Outline of primary and secondary legislation

The *Maternity and Parental Leave Act* and the *Paternity and Adoption Leave (Amendment) Regulations 2006* (SI 2006/2014) (1st October 2006) apply to employees whose expected week of childbirth begins on or after 1st April 2007)

These Regulations amended the maternity provisions of the *Maternity and Parental Leave Regulations 1999* and the adoption provisions of the *Paternity and Adoption Leave Regulations 2002*. In particular, they:

- removed the length of service requirement for entitlement to additional maternity leave;
- increased the notice period for the notice an employee must give of a change to the return date from maternity or adoption leave;
- provided for keeping in touch days during maternity and adoption leave; and,
- clarified the rules governing reasonable contact during maternity and adoption leave.

The *Statutory Paternity Pay and Statutory Adoption Pay (General)* and the *Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations 2006* (SI 2006/2236) (1st October 2006) apply to employees whose expected week of childbirth begins or with whom a child is expected to be placed on or after 1st April 2007)

These Regulations amended the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002. In particular, they:

- extended the Statutory Adoption Pay period from 26 to 39 weeks;
- provided for keeping in touch days during the Statutory Adoption Pay period; and
- enabled employers to pay Statutory Adoption Pay in split weeks where this accords with their payroll system.

The *Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006* (SI 2006/2379)

1st October 2006 (apply to employees whose expected week of childbirth begins on or after 1st April 2007)

These regulations amended the *Social Security (Overlapping Benefits) Regulations 1979*, the *Statutory Maternity Pay (General) Regulations 1986* and the *Social Security (Maternity Allowance) Regulations 1987*. In particular, they:

- extended the Statutory Maternity Pay and Maternity Allowance periods from 26 to 39 weeks;
- enabled these periods to start from any day of the week and enabled employers to pay Statutory Maternity Pay in split weeks where this accords with their payroll system; and
- provided for keeping in touch days during the Statutory Maternity Pay and Maternity Allowance periods.
- The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006 (SI 2006/3314) (6th April 2007)
- These Regulations amended the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002, in particular providing for the eligibility of those caring for adults to request a change in their working pattern.

The *Working Time (Amendment) Regulations 2007* (SI 2007/2079) (1st October 2007)

- These Regulations amended the Working Time Regulations 1998, increasing the annual leave entitlement from 4 to 5.6 weeks subject to certain conditions.

The *Work and Families (Increase of Maximum Amount) Order 2009* (1st October 2009)

- This Order increased the maximum weekly limit for the purpose of calculating certain compensation and redundancy awards
- Four Commencement Orders have progressively brought into force the provisions of the Act, all of which will be in force as of 6th April 2010.

# Chapter 3: Maternity and Adoption Leave & Pay

## 3.1 Policy background

The *Work and Families Act* package introduced two measures related to maternity and adoption leave and pay. The first of these was to provide for an extension of the period for payment for Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP). Accordingly, these periods were increased from 26 weeks to 39 weeks in relation to children expected to be born or placed for adoption on or after 1 April 2007.

Regulations associated with the Act removed the qualifying length of employment criteria for Additional Maternity Leave (the second six months of leave) to ensure that all employed women who are eligible for 39 weeks' Maternity Allowance are also entitled to 52 weeks' maternity leave. This was introduced for mothers of babies due from 1 April 2007. Different eligibility criteria meant that adopters eligible for Statutory Adoption Pay were already also eligible for a year's adoption leave.

## 3.2 Extending Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Maternity Allowance (MA)

The ***Work and Families Act*** package extended the period for payment for Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Maternity Allowance (MA) from 26 weeks to 39 weeks for babies expected on or after 1 April 2007.

### 3.2.1 Rationale

By extending the period covered by Statutory Maternity Pay and Maternity Allowance, the Government anticipated more women would be able to take a longer period of maternity leave before returning to work.

### 3.2.2 Expected Benefits

The expected benefits of extending periods of maternity leave and pay included:

- More mothers would be able to afford to take longer off work following the birth of their baby
- The extension of the payment period would help a small number of women to remain in their original job. Some mothers who returned to work for financial reasons then changed jobs or left the workforce altogether because they found they had returned to work too early.

A more detailed description of the expected benefits can be found in **Annex A**.

**Table 3.1: Legislative developments in maternity leave and pay**

	1994	2000 (April)	2003 (April)	2007 (April)
<b>Ordinary Maternity Leave (OML)</b>				
Qualifying length of service	None	None	None	None
Length of leave	14 weeks	18 weeks	26 weeks	26 weeks
<b>Additional Maternity Leave (AML)</b>				
Qualifying length of service	2 years (by 11th week before ewc*)	1 year (by 11th week before ewc*)	26 weeks (by 14th week before ewc*)	None
Length of leave	max 40 weeks (up to 11 weeks before expected birth and 29 weeks after childbirth)	max 40 weeks (up to 11 weeks before expected birth and 29 weeks after childbirth)	52 weeks in total (OML + AML)	52 weeks in total (OML + AML)
<b>Statutory / Maternity Pay (SMP)</b>				
Qualifying length of service	26 weeks continuously with the same employer (by 15th week before ewc*)	26 weeks continuously with the same employer (by 15th week before ewc*)	26 weeks continuously with the same employer (by 15th week before ewc*)	26 weeks continuously with the same employer (by 15th week before ewc*)
Length of pay	18 weeks	18 weeks	26 weeks	39 weeks
Rate of pay	Rate of pay 90% of average salary for 6 weeks. Then flat rate of £52.50	Rate of pay 90% of average salary for 6 weeks. Then flat rate of £60.20	Rate of pay 90% of average salary for 6 weeks. Then flat rate of £100	Rate of pay 90% of average salary for 6 weeks. Then flat rate of £112.75
<b>Maternity Allowance (MA)</b>				
Qualifying length of service	26 out of 66 weeks prior to ewc*	26 out of 66 weeks prior to ewc*	26 out of 66 weeks prior to ewc*	26 out of 66 weeks prior to ewc*
Qualifying earnings	26 weeks of NIC contributions	Min. of £30 pw for 13 weeks		
Length of pay	18 weeks	18 weeks	26 weeks	39 weeks
Rate of pay (flat rate)	£52.50 or £44.55 (if self-employed or not employed)	£60.20 (or 90% of earnings if lower)	£100 (or 90% of earnings if lower)	£112.75 (or 90% of earnings if lower)
Note: "ewc" stands for "expected week of confinement"				

### 3.3 Participation rates of women in the labour market

The recent Social Trends report from ONS found that although there has been stability in the overall employment rate between 1971 and 2008, trends for men and women converged over the period.<sup>4</sup> The employment rate of working age men fell from 92 per cent in 1971 to 79 per cent in 2008, while the rate for working age women rose from 56 per cent to 70 per cent over the same period.

The 2009 LFS figures show that there are clear differences in employment rates between parents and people without dependent children, between mothers and

<sup>4</sup> *Social Trends*, Office for National Statistics, No 39, 2009 Edition

fathers, and between couple parents and lone parents. Working age mothers in the UK with dependent children were less likely to be in employment than working-age women without dependent children (63 per cent compared with 76 per cent). The differential decreases as the age of the youngest child increases. Lone mothers with a child under five were least likely to be working with only 37 per cent in employment.

Thus, whilst more women are in employment, the presence of dependent children has a clear impact on women's economic activity.

**Table 3.2: Woman's Labour Market Employment Rate with & without dependent children**

Age of youngest dependent child	All Women	Married / cohabiting / in Civil Partnerships	Not married / cohabiting / in Civil Partnerships
	% in employment	% in employment	% in employment
Under 5	54.8%	60.7%	36.9%
5 to 10 years	66.9%	74.2%	52.9%
11 – 15 years	70.7%	81.1%	58.6%
16 – 18 years	62.5%	81.9%	50.7%
Any dependent children (<19 years)	62.9%	70.5%	50.4%
No dependent children	76.1%	79.7%	71.3%
All women	69.4%	74.8%	61.3%

Source: Labour Force Survey, Quarter 3 2009 (seasonally adjusted using 4-quarter moving average)

Note: Table shows the seasonally-adjusted employment rate of women of working age (16 to 59)

### 3.4 Length of absence

The most immediate proposed outcome from the extension of SMP and MA was to enable mothers and adopters to take longer off work following the birth or placement for adoption of their child.

#### 3.4.1 Survey Evidence

The most recent survey data on mothers' behaviour have been the DWP surveys in 2002 and 2007 and the DTI survey in 2005. (2002 survey in Hudson et al (2004)<sup>5</sup>, 2005 survey in Smeaton (2006)<sup>6</sup> and 2007 survey in La Valle (2008)<sup>7</sup>. These surveys are based on mothers who were in work prior to the pregnancy and qualified for statutory maternity leave and pay.

Between the 2002 and 2005 DWP and DTI surveys Ordinary Maternity Leave (OML) was extended from 18 to 26 weeks and the total Maternity Leave

<sup>5</sup> Hudson, M, Lissenburgh, S and Sahin-Dikmen, M, (2004) *Maternity and paternity rights in Britain 2002: Survey of Parents*, DWP In-House Report 131, London: Department for Work and Pensions.

<sup>6</sup> Smeaton, D and Marsh, A (2006) *Maternity and Paternity Rights and Benefits: Survey of Parents 2005*, DTI London (URN06/836)

<sup>7</sup> La Valle, I, Clery, E and Huerta, M (2008) *Maternity Rights and Mothers Employment Decisions*, DWP Research Report 496, London

(Additional Maternity Leave and OML) from 29 to 52 weeks. The report on the 2005 survey found the response to these changes had been significant. In 2002 just nine per cent of mothers took six months' maternity leave and five per cent one year or more. Nearly half the mothers in 2002 took up to four months of leave. In 2005 nearly half the mothers took exactly six months of maternity leave. These periods of leave reflect the length of the maternity pay period at the time. In 2005 a further 14 per cent took their full 52-week entitlement.

The 2007 DWP survey found that the proportion of mothers taking longer periods had increased since 2003. Of all mothers interviewed just under three-quarters of mothers were entitled to AML and of those 46 per cent of mothers took between 27 and 52 weeks. However, a proportion of those eligible for AML took less time off. Sixteen per cent of mothers took less than the statutory minimum entitlement (i.e. 26 weeks) and 35 per cent took exactly 26 weeks maternity leave;

This suggests that the extension of paid leave to 39 weeks and unpaid leave to 52 weeks for all mothers will lead to an increase in the length of leave taken.

### **3.4.2 Effect of 2006 Act**

As yet there is limited evidence to review what changes have taken place since the implementation of the *Work and Families Act* measures in April 1 2007.

However, the labour force survey can provide some evidence on duration of leave. The LFS can provide data on the number of women who are not working their usual hours and the reasons why. Figure 3.1 clearly illustrates that the number of women away from work has increased since 2003 when the first changes were made. This is as expected; if women are taking longer off for maternity leave, there will be more women on maternity leave in any one quarter.

DWP Maternity Allowance statistics show a clear shift in women claiming Maternity Allowance. Almost 100 per cent of women claiming MA now do so for between 26 and 39 weeks whereas prior to the 2007 changes, nearly all those claiming did so for 26 weeks. Unfortunately, the data is not available on a more disaggregated scale to see how many take the full 39 weeks available.<sup>8</sup>

## **3.5 Rate of return**

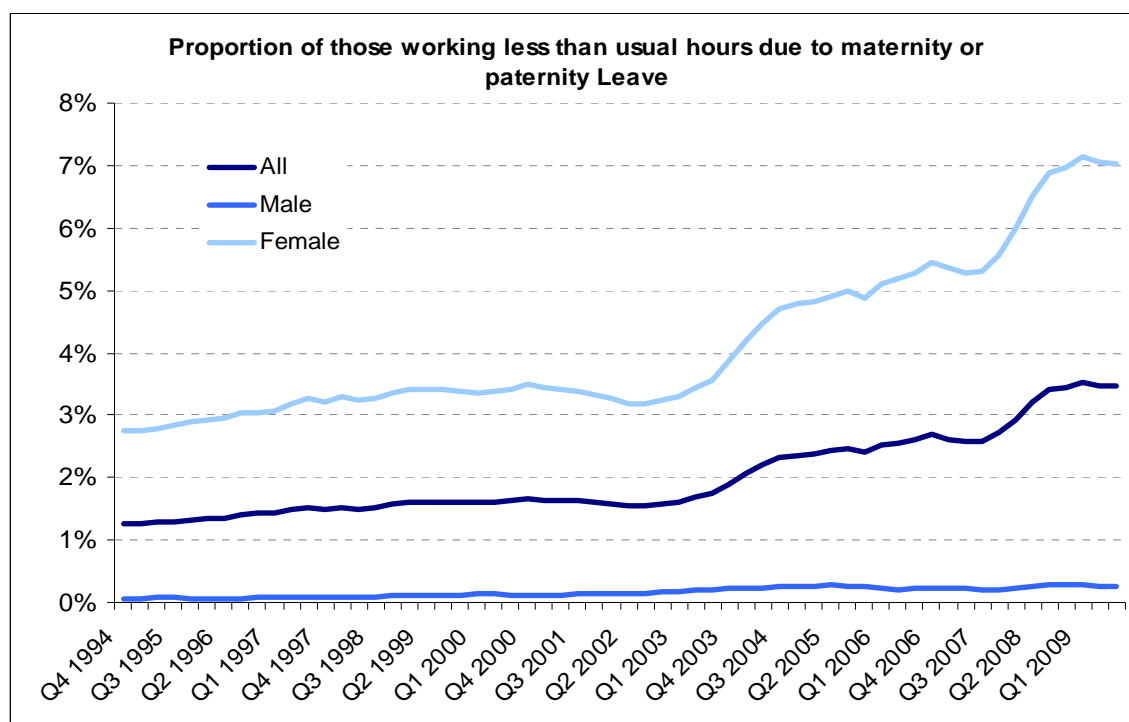
Much of the research on the impact of the birth of a child on women's employment focuses on whether mothers return to formal paid employment, how quickly they return and whether they remain in employment. One of the expected benefits of extending maternity leave and pay was to allow women to have more opportunity to return to work at a time of their choosing. This would encourage them to return to work, and to stay once back in work.

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<sup>8</sup> From statistics available to download at: [http://research.dwp.gov.uk/asd/asd1/ma/ma\\_quarterly\\_aug09.asp](http://research.dwp.gov.uk/asd/asd1/ma/ma_quarterly_aug09.asp)



**Figure 3.1: Proportion of those working less than their usual hours due to maternity or paternity leave**



Source: ONS Quarterly Labour Force Survey, 1994-2009

The most recent survey data on mothers' behaviour have been the DWP surveys in 2002 and 2007 and the DTI survey in 2004.<sup>9</sup> These generally report similar rates of return. The most recent 2007 survey by DWP found that 76 per cent returned by between 12 and 18 months.

The DWP survey interviewed mothers between February and May 2007 and so can not provide evidence as to how the latest changes implemented in April 2007 are operating. The next DWP survey, focusing specifically on the impact of the changes which took place in 2007, is currently in the field and due to be published later in the year. This will provide more detail on rates of return since the 2007 changes.

The alternative source of data to assess any change in women's employment patterns since the April 2007 is the Labour Force Survey. This can provide some information on the proportions of women in employment depending on the age of their youngest child. The table below shows the difference in employment rates for women with dependent children under the age of one year, one to two years and two to three years, in April 2006 and April 2009.

<sup>9</sup> (2002 survey in Hudson et al (2004)<sup>9</sup>, 2005 survey in Smeaton (2006)<sup>9</sup> and 2007 survey in La Valle (2008). These surveys are based on mothers who were in work prior to the pregnancy and qualified for statutory maternity leave and pay.

**Table 3.3: Changes in women's labour market employment rate by age on youngest dependent child from Q3 2003, 2006 to Q3 2009**

Age of youngest child	2003	2006	2009
	% in employment	% in employment	% in employment
Less than 1 year	48.8%	53.9%	55.8%
1 to under 2 years	48.7%	50.0%	51.8%
2 to under 3 years	51.3%	54.6%	54.1%
3 to under 5 years	56.5%	58.1%	56.8%
5 to 10 years	68.0%	67.6%	66.9%
11 to 15 years	72.0%	71.0%	70.7%
16 to 18 years	66.9%	65.1%	62.5%
No dependent children	75.7%	76.3%	76.1%
All women	69.6%	70.0%	69.4%

Source: Labour Force Survey, Quarter 3 2003, 2006 & 2009 (seasonally adjusted using 4-quarter moving average)

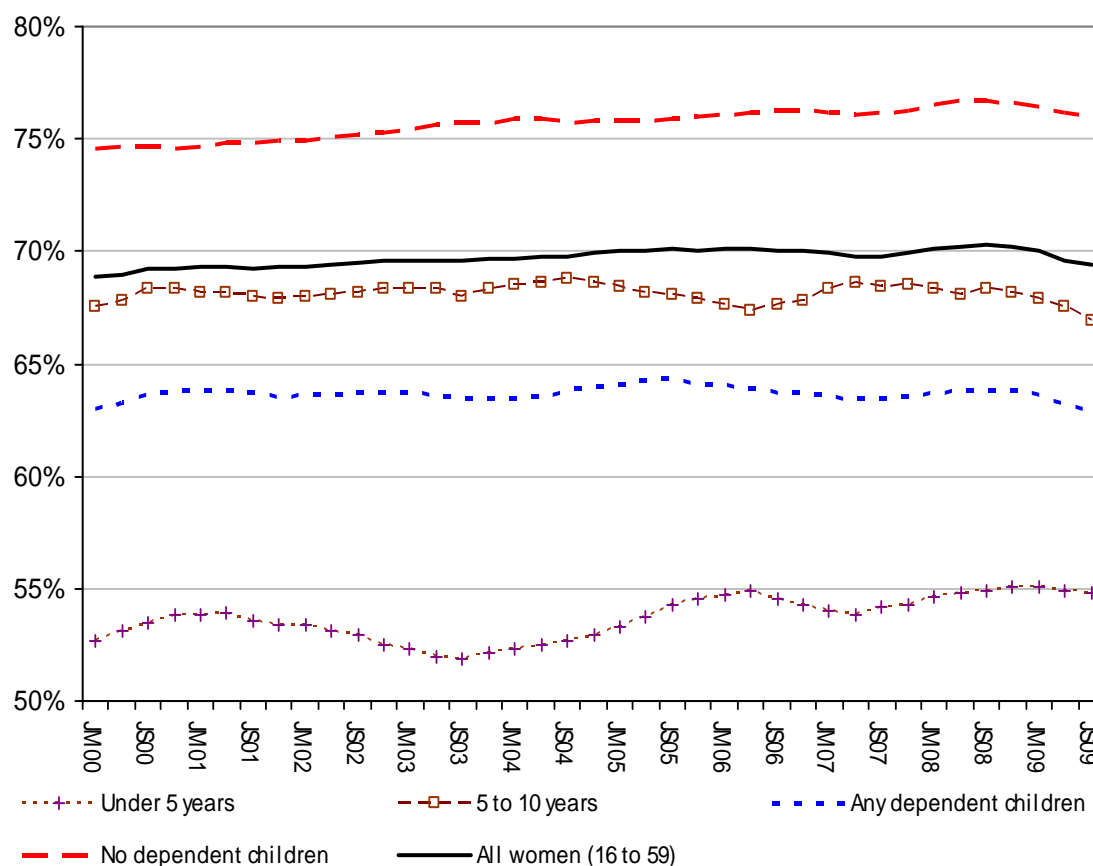
Note: Table shows the seasonally-adjusted employment rate of women of working age (16 to 59)

Notes: Participation rate is given as the percent of women of working age (aged 16 to 59) in employment. Rates have been seasonally-adjusted using a four-quarter moving average.

The LFS data show that the biggest change has been in participation rates of women with a child under one year old. Between 2006 and 2009, the number of mothers in work with a child under one rose from 54 per cent to 56 per cent.

Figure 3.2 shows the trend in women's labour market participation since 2000. Over this period, participations rates have increased for mothers with children under the age of five. There is a big increase in the participation rate for mothers when their dependent child reaches school age.

**Figure 3.2: Changes in women's labour market participation by age on youngest dependent child from Q1 2000 to Q3 2009**



Source: ONS Labour Force Survey, Q1 2000 to Q3 2009

### 3.6 Returning to pre-birth employer

Critics of longer maternity absence sometimes argue that women often do not return to their pre-birth employer. Returning to the same employer after maternity leave helps to guard against women returning to a job with lower pay, skill level or responsibility. There has been a dramatic change in behaviour. The 2007 DWP survey found a dramatic decline in the proportion of mothers who changed employer upon returning to work after childbirth – down from 41 per cent in 2002 to 14 per cent by 2007.

Using LFS Data, the table below shows the length of time mothers have been with their current employer by age of youngest dependent child comparing 2006 with 2009. This shows that for women with children under one, the mean length of time they have been with their current employer is over six years.

**Table 3.4: Length of time with current employer by age on youngest dependent child from Q3 2006 and Q3 2009**

Age of youngest child	2006	2009
	Mean Years	Mean Years
Under 1 year	5.4	5.4
1 to 2 years	5.6	5.7
2 to 3 years	5.6	5.3
3 to 5 years	5.8	5.9
5 to 10 years	6.3	6.6
11 to 15 years	6.8	7.2
16 to 18 years	5.8	6.8
No dependent children	7.3	7.5
All women	6.8	7.0

Source: Labour Force Survey Q3 2006 and Q3 2009

## **3.7 Changing the qualification requirement for Additional Maternity Leave (AML) from 1 April 2007**

### **3.7.1 Background**

The eligibility criteria for AML at the time of the Act was that a woman must have completed 26 weeks' service with her employer by the 15th week before the baby was due. This was also a qualifying condition for a mother to be entitled to SMP, but not for MA.

If the qualifying requirement for additional maternity leave remained unchanged when pay was extended, some women would have been entitled to 39 weeks' MA but only 26 weeks' leave.

This regulatory change was necessary to ensure that all employed mothers are able to benefit from the additional 13 weeks' Maternity Allowance. Without this change some mothers may have opted to resign in order to receive maternity allowance and therefore been at risk of dropping out of the labour market.

### **3.7.2 Take-up of Maternity Allowance**

Data from Department of Work and Pensions suggests that most women entitled to Maternity Allowance have taken up the extra period of leave. Whilst it is not possible to distinguish whether they are taking longer than 39 weeks, the data show a clear shift from 26 weeks to 39 weeks in the quarter covering 1 December to 28 February 2008, the quarter in which the first women after the changes would be ending their MA claim. Although the data does not allow a breakdown of durations between 26 and 39 weeks, the average durations show that nearly all of these awards are for the full entitlement. Table 3.5 below shows the numbers of women receiving MA, the durations of the claim and the average durations in weeks and days.

**Table 3.5: Maternity Allowance spells by duration of MA period, with average duration 2007 to 2009**

Length of award	Feb 07	May 07	Aug 07	Feb 08	May 08	Aug 08	Nov 08	Feb 09	May 09
All Awards	15.0	15.3	13.0	16.1	18.2	18.0	17.0	16.6	17.6
Up to 20 weeks	*0.3	*0.2	*0.1	*0.1	*0.1	-	*0.1	-	*0.1
20 up to 22 weeks	-	*0.1	-	-	-	-	-	-	-
22 up to 24 weeks	-	*0.1	-	-	-	-	-	-	-
24 up to 26 weeks	14.6	14.8	12.8	-	-	-	-	-	-
26 up to 39 weeks				16.0	17.9	17.9	16.9	16.6	17.5
Average Duration	25w4d	25w4d	25w4d	38w5d	38w4d	38w5d	38w5d	38w5d	38w5d

Source: DWP Maternity Allowance Quarterly Statistics. Note Data for Nov 07 not available

### 3.8 Employers' experience of maternity leave

The *Third Work Life Balance Employers' Survey (2007)* was timed to coincide with the provisions from the *Work and Families Act* coming into force in April 2007. This explored employers' awareness of and attitudes towards the changes introduced in the Act, and employers attitudes and experiences of maternity rights and leave in general.

Fifty per cent of workplaces, covering 73 per cent of employees, were aware of at least one of the four main changes being made to maternity rights legislation. Very few workplaces (less than one per cent) were spontaneously aware of all four of the main changes to maternity rights legislation and only five per cent could name three of the four.

More detailed results of this survey are set out in **Annex B**.

### 3.9 Conclusion

Much of the debate on the impact of the birth of a child on women's employment focuses on whether mothers return to formal paid employment, how quickly they return and whether they remain in employment.

Data from previous *Maternity Rights Surveys* suggest that rates of return are high for mothers who were in employment prior to the birth of their first child. Rates of return are smaller for women after the birth of a second child, especially if they were not working prior to the birth.

Broad trends from the *Labour Force Survey* show that women seem to be taking longer maternity leave. DWP maternity allowance data support this finding showing an increase in duration of MA claims from 26 to 39 weeks in the quarter

covering 1 December to 28 February 2008, the quarter in which the first women after the changes would be ending their MA claim.

Whilst the direct effect of the Act is difficult to measure at this stage, indicators suggest that the objective of increasing the amount of time women take off after the birth of a child has been met. However, this seems to be part of a longer term trend and it is difficult to disentangle the effect of the Act from this trend and other factors that affect women's employment decisions after the birth of a child.

# Chapter 4: Helping employers to manage leave & statutory payments

The *Work and Families Act 2006* and its associated regulations introduced a package of measures to help employers with the administration of statutory payments for employees taking maternity leave, and to encourage better communication between mothers and employers during maternity leave. These included:

- a regulatory change that increased the notice period for a change in the date of returning to work;
- providing an 'any day start' for SMP;
- enabling the weekly rate of SMP, SAP and SPP to be divided by seven;
- introduction of 'Keeping in Touch' (KIT) days;
- clarifying the law regarding reasonable contact during maternity and adoption leave.

These will be dealt with in turn below.

## 4.1 Notice periods

### 4.1.1 *The background*

At the time of the Act, a mother going on maternity leave would agree with her employer the date when she expected to return to work. If a mother intended to change her return to work date, she had to give her employer at least 28 days' notice of her new date of return.

It is important for employers to be able to plan for a mother's return from maternity leave so they can organise for cover. After consultation with employers and employees the Government increased the 28-day notice period to two months by amending the *Maternity and Parental Leave Regulations* (MPLR) using powers in the *Employment Rights Act*.

### **4.1.2 Rationale/Objectives**

The changes were proposed by the Government because it was thought that intervention would result in less disruption to business when a mother changes her return date. It was also hoped a longer notice period would increase dialogue between the mother and her employer. Improving employer confidence about managing maternity leave and improving communication were also identified by the former Equal Opportunities Commission's general formal investigation into pregnancy discrimination<sup>10</sup> as ways to address pregnancy discrimination.

### **4.1.3 Expected Benefits**

The main expected benefit was that the change would assist with business planning.

## **4.2 Administration of Statutory Payments**

### **4.2.1 Background**

During the course of the consultation period employers, representatives of employers, Trade Unions and parents' groups made a number of suggestions to bring more consistency to the rules governing maternity leave and SMP calculations. These aimed to help employers align the payment of SMP with an employee's existing pay arrangements and to make arrangements simpler and more consistent from the employee's perspective.

### **4.2.2 'Any day start'**

At the time of the Act the first day of the SMP payment period would either be a Sunday or, where the start of a woman's maternity leave and pay was triggered by the birth of the baby or by a pregnancy related illness, the day after the birth or the day after the first day of absence from work for such illness. Maternity leave, however, could begin on any day of the week. This meant that maternity pay and leave periods often did not run from and to the same day of the week, adding to the complexity of administration for employers.

Providing an "any day start" rather than a Sunday start date allows women to start their maternity pay on the day their maternity leave begins.

The objective of allowing SMP to begin on any day of the week was to make it simpler. It also introduced consistency with the current rules on SAP and SPP, payment of which already had an 'any day start'.

### **4.2.3 Daily payments**

SMP, SAP and SPP are paid on the basis of a set amount for the week the payment covers. It was not possible to "split" the weekly rate to take account of a woman's usual contractual pay period which typically might cover 30/31 days of a

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<sup>10</sup> Greater Expectations, EOC, 2005



month rather than be related to an exact number of weeks. Enabling the weekly rate of SMP, SAP and SPP to be divided by seven made it easier for payments to be aligned with the employee or worker's pay period making the payment and administration of statutory payments simpler for employers, and the payments easier for employees to understand.

#### **4.2.4 Expected Benefits**

Government anticipated that both of these measures would result in administrative simplifications for employers. There was good anecdotal evidence from the consultation responses that these measures would ease existing administrative burdens on employers, as well as remove rules that employees could see as inconsistent and inconvenient.

### **4.3 Measures to encourage better communication between women and employers**

#### **4.3.1 Background**

The objective of these measures was to make it easier for an employee to keep in touch with the employer during a period of leave, especially given the extension to paid maternity leave which meant women would be away from the workplace for longer periods.

At the time of the Act an employer was able to make reasonable contact with an employee during her maternity leave. However, there was nothing in law which clearly stated this fact. Employers argued during the consultation period that they were often reticent about making contact for fear that it could be perceived as harassment. Improving communication during leave would support employers and employees in planning for and easing the return to work.

#### **4.3.2 Clarifying, in law, that reasonable contact is permitted at any stage during maternity leave**

By clarifying that an employer may make reasonable contact it was intended to encourage employers to discuss e.g. a woman's return to work. This would have the effect of reducing the uncertainty some employers felt about the lawfulness of making contact. Setting out in detail in the guidance what 'reasonable contact' means clarified the contact employers can make.

### ***4.3.3. Allowing a limited number of days' work during the maternity or additional paternity pay period***

The Act created optional "Keeping in Touch Days" (KIT days) enabling women to work for up to ten days without losing any SMP or MA – for example to undertake the odd training day or to go into work – or bringing their leave period to an end..

The purpose of this measure was to allow employees to carry out a limited number of days' work under their contract of service without losing the right to any statutory pay for that week or bringing maternity leave to an end. It was hoped that maintaining some contact with their workplace throughout maternity leave would improve their longer term retention rates and make the return to work easier for women and employers.

### ***4.3.4 Expected Benefits***

It was expected that both measures would result in benefits for employers. Improved dialogue would result in greater certainty over employees' plans both in terms of likely return dates from leave and any requests employees might have for changes to their working patterns on their return. Both employers and employees would benefit from any skills retention or acquisition that resulted from work or training carried out during KIT days.

## **4.4 Employers' experiences of maternity leave**

### ***4.4.1 Problems with maternity leave in the workplace***

The changes introduced in the Act aimed to reduce the numbers of problems and disputes experienced surrounding maternity rights. Evidence from the Third Work Life Balance Employers' Survey suggests that even before the Act, problems were not widespread.

The Work Life Balance Employers Survey explored employers' experience of administering these rights. Employers were asked whether they had experienced any problems with maternity rights and benefits in the previous two years. Two per cent of employers reported not having any problems. This figure rises to five per cent when the analysis is limited to just those establishments that had experienced a recent pregnancy.

Of the 26 employers in the survey that had experienced a problem, the majority of these (92 per cent) were based in the private sector. Commonly cited problems included employees wanting to return to work on a flexible basis and employees using maternity rights as a way of having an extended period of paid leave.

More recent evidence suggest that small employers find maternity rights more difficult than large employers. The Federation of Small Businesses undertook a

survey of members in 2009. This found that half of small businesses responding found the maternity rights legislation difficult to follow.<sup>11</sup>

#### **4.4.2 Disputes about maternity rights and pay**

Due to the low incidence of any reported problems, the number of disputes and formal complaints was also very low. In fact, in the Work Life Balance survey showed that 98 per cent of workplaces had not had any employees or their representatives raise a complaint about their compliance with maternity rights legislation.

Of the small number of workplaces that did report that there had been complaints raised, just over a third (38 per cent) reported that some of the parties involved were considering making an application to an employment tribunal. However, in none of the cases was it reported that the complaint actually led to an employee making a claim to an employment tribunal.

#### **4.4.3 Recent evidence**

More recent evidence regarding employers' experience of the administration of SMP is fairly limited. The 2008 *Survey of Employment Tribunal Applications* and 2008 *Fair Treatment at Work Survey* shows only 41 cases related to maternity and paternity in the employers' survey out of 2007 surveyed. There were only 25 cases from the claimant's survey out of 2020 surveyed.

The recent *Fair Treatment at Work survey (2009)* also found few problems relating to maternity/paternity leave.<sup>12</sup> Only one per cent of individuals interviewed had experienced a problem in this area in the last five years.

The survey also asked whether respondents felt they had been treated unfairly and the reasons why. Only four per cent of respondents felt they had been treated unfairly for reasons to do with taking maternity/paternity and parental leave and three per cent for reasons to do with pregnancy.

### **4.5 Notice periods**

The Third Work Life Balance survey asked employers what they thought about the proposed extension to the notice period. Over three-quarters (78 per cent) agreed that the new eight week notice period was about right. Around one in ten employers (11 per cent) felt that employees should provide more notice while six per cent felt that employees should be able to give less.

In order to gather some more recent views from employers about the detailed administration of SMP, the Institute for Payroll Professionals asked their members to respond to a brief survey in January 2010. Whilst not a

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<sup>11</sup> Federation of Small Businesses survey was conducted in June 2009. It was a specific survey that just asked about employment. The survey was emailed to 10,000 FSB members and we had just over 3,000 responses. The results have not been published as a single report, but fed into a number of publications.

<sup>12</sup> Favre, R, Nichols, T, Prior, G, Rutherford I, (2009) *Fair Treatment at Work Report: Findings from the 2008 Survey*, Employment Relations Research Series No 103, London. The survey interviewed those currently in paid work or who had been in the last two years.

representative sample of employers, the responses from 92 members provides some insight into the operation of SMP and maternity leave.

Experience of mothers changing their return date was mixed. Forty-seven per cent said it was common for mothers to change their return date whilst 40 per cent said it was not. Ninety-three per cent felt that the two month notice period was adequate. There were some comments which implied that in some circumstances problems did arise. For example, one respondent wrote:

'They [the employees] don't understand why they have to give two months notice particularly if they decide they want to return early.'

## **4.6 Daily rate and any day start dates**

Feedback on daily rates and 'any day start' has been received from the HMRC's Statutory Payments Consultation Group<sup>13</sup> and from the 2010 Institute of Payroll Professionals survey.

### **4.6.1 Any day start**

Feedback from the *Statutory Payments Consultation Group* suggested that in general, there were relatively few problems with administration. The main concern regarded the continued belief amongst employers, particularly small firms that Sunday still has to be the start day for SMP. This was partly because the Sunday start was used for so long before 2006 but also because Sunday was still the reference day used for other calculations, such as the Expected Week of Confinement. This lack of awareness may not cause any disadvantage but it may mean some employers and women are not benefiting from this simplification.

It was also suggested that there can be confusion around the time when the rate of SMP is increased at the start of the new tax year, since the increase always come into force on a Sunday. If a mother has chosen another start day, there can be confusion as to when she receives the increased rate.

The IPP survey found that half of respondents agreed that the any day start date had made it simpler for employers to administer payments. However, 37 per cent said it had not and there were a number of comments setting out why this had not improved administration.

'Although the principle is great, and makes it simpler, as it still has to be paid out in whole weeks, it can complicate matters if the employee returns early, and doesn't return on the same day of the week.'

Respondents were also asked whether this change had made the payment of SMP easier for employees to understand. Just over half agreed that it had, although 30 per cent said it had not (17 per cent did not know). The main reason

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<sup>13</sup> HMRC's Statutory Payments Consultation Group is a meeting of policy officials from HMRC, BIS and DWP and representatives from groups of payroll professionals and small businesses. The group meets on a quarterly basis to discuss developments in statutory payments.

given by those who said the change had made SMP harder to understand was that employees found it difficult to understand how SMP works especially if they are paid monthly. The following quote was typical of these responses:

'Employee on a weekly payroll is used to being paid Monday to Sunday to then change the pay reference period makes it hard for employee to understand and is particularly hard at start and end of SMP payment period.'

#### **4.6.2 Daily payments**

The IPP survey asked members whether the ability to divide a week's SMP into daily amounts made the calculation and administration of SMP and SAP simpler for employers. Forty-seven per cent agreed that it had, with 40 per cent saying it had not (14 per cent did not know).

### **4.7 Measures to improve communication**

#### **4.7.1 Keeping in Touch Days**

The *Third Work Life Balance Employer survey* asked employers about 'Keeping in Touch' days. Forty-four per cent provided a KIT scheme, increasing from just over a third in 2003.

The size of the establishment and the presence of unions have an impact on KIT schemes. KIT schemes were operated in 72 per cent of workplaces with 100 or more employees compared with 40 per cent of workplaces with between five and 24 employees. KIT schemes were operated in 63 per cent of workplaces with a recognised trade union compared with 38 per cent of workplaces with no union presence.

It would be expected that the use of KIT schemes would increase once the Act had more time to bed down. The next Maternity Right Survey will provide more information on their take-up.

The more recent IPP survey of members suggests that KIT days are more widespread. Eighty-four per cent of members who responded said that KIT days were being used and only 11 per cent said they were not (4.5 per cent did not know). Two thirds said that they were easy to administer and only a fifth said that they were not.

Other issues were more specific:

- 'Teachers ask us to let them do KIT days in situations where we already have a supply teacher on a fixed term contract teaching their class. We don't need or want to pay two teachers for the same job, but the employee often expects this as a right.'

#### **4.7.2 Clarifying the lawfulness of contact during maternity leave**

The IPP members were asked whether clarifying the law about reasonable contact had helped to reduce the uncertainty some had employers felt prior to the Act. Just over half said yes, whilst 11 per cent said no. Around a third said they

did not know because this was largely an HR issue and so not something they would deal with.

A number of comments were made that in small firms particularly, communication was done before on an informal basis.

## **4.8 Conclusions**

The operation of maternity pay and leave do not seem to generate significant problems for employers or large numbers of disputes from employees. Employers generally feel that the administration is relatively easy to operate and guidance is clear, although there was some reported confusion surrounding the 'Any day start dates' and 'Daily payments'.

The biggest area of difficulty, especially for smaller employers is the requirement to keep an employee's job open for them. However, improvements in communication and KIT days can help to ease this process.

# Chapter 5: Extending the right to request flexible working to carers

## 5.1 Background

Since April 2003, the flexible working law, commonly known as ‘the right to request and duty to consider’, has provided parents with children under six or disabled children under 18 with the right to request to work flexibly. Employers have a statutory duty to consider such requests seriously and according to a set procedure.

In light of the apparent success of the law, in the ‘Work and Families, Choice and Flexibility’ 2005 consultation the Government asked if there was a case for extending its scope to ensure more people with caring responsibilities have access to flexible working opportunities. The consultation document stated the Government’s view that carers of adults should be the priority. In light of the responses received the Government introduced the right to request flexible working for carers of adults in the Act.

## 5.2 Rationale

The Government believed that if there was no intervention carers might drop out of the labour market because they are not able to change their working patterns to fit around caring responsibilities. There was also a concern that carers may end up in lower paid or lower skilled jobs because they provided more suitable flexible working or part time working patterns.

## 5.3 Review of the right to request flexible working

Evidence looking specifically at the effect of the Act on carers is rather limited. This review will therefore examine the attitudes and practices of employers towards flexible working in general, before going on to look at the benefits to both carers and businesses of flexible working.

## 5.4 Numbers of carers

**Annex A** sets out the findings of the Impact Assessment for the Work and Families Act. This details how the Government estimated the number of carers in employment and how many of them are eligible to make a right to request a flexible working pattern. The Impact Assessment assumed that there were just over two million employees caring for any relative or friend representing 8.2 per cent of all employees. It estimated that of these 2 million employees, 1.8 million carers would be eligible to make a request.



#### **5.4.1 2006 Work-Life Balance Employee Survey Estimates**

The *2006 Work-Life Balance Employee Survey* included a series of questions on caring responsibilities in anticipation of the right to request flexible working for carers coming into force in April 2007.

This found that nine per cent of employees interviewed did have such responsibilities. This percentage was fairly similar to the 8.2 per cent used in the Impact Assessment for the Act.

The survey found that women employees were more likely to be carers than men (12 per cent compared to seven per cent). Older employees and public sector employees were also more likely to have caring responsibilities. Seventy-three per cent of these carers worked full-time. Carers were fairly evenly spread between those who worked part-time, those who worked flexibly and those who were not flexible workers.

The *Work-Life Balance Employee survey* showed that the majority of employees were caring for less than 20 hours a week.

Finally, the survey asked all employees, not just those with caring responsibilities, whether they were aware that the Government planned to extend the right to request to carers. Forty-two per cent said that they were aware of the planned extension to the right to request flexible working to carers of adults.

### **5.5 Effect of the Act**

The *Third Work-Life Balance Employer Survey* was timed to coincide with the introduction of provisions which came into force following the Work and Families Act 2006. A number of provisions took effect in April 2007 which included the right for carers of adults to request to work flexibly. The survey of employers was undertaken during April through to June in 2007 and so can provide some insight as to the operation of the right to request at its early stages. However, in the most part, the survey looked at procedures and attitudes to flexible working in general, and not specifically relating to carers. Indeed, as will be seen in the following sections, those employers who offer the option of flexible working, often do so for all employees and do not make a distinction between parents, carers and the whole workforce.

Survey evidence from employers and employees relating specifically to carers is limited. It is unclear whether the issues facing carers in terms of their needs for flexible working and their patterns of flexible working are very different than for parents of younger or older children. This is an area which may need to be explored further in the future.

### **5.6 Flexible working and carers**

**Annex C** sets out a detailed analysis of the extent and types of flexible working on offer to UK employees. These include part-time working, job sharing, flexi-time, working a compressed working week, working reduced hours for a limited period and working from home.



The 2009 DWP Omnibus survey data, did distinguish the flexible working patterns of different groups of employees.<sup>14</sup> Although the numbers were fairly small for carers, this shows that their patterns of flexible working were not very different from those of parents or all employees. The largest difference is the greater use of part-time work, used by 45 per cent of carers compared with a third of parents and 29 per cent of all employees. Details are given in Table 5.1 below.

**Table 5.1: Employee flexible working arrangements**

Working arrangement	Parents – child under 6	Parents – older children	Carers	All employees
	%	%	%	%
Works flexibly	71	78	78	69
Type of arrangement				
Part-time working	33	32	45	29
Term time only working	14	23	24	16
Job-sharing	7	8	17	8
Flexi-time	30	33	33	32
Compressed hours	17	14	17	16
Annualised hours	19	16	17	20
Work from home	17	22	13	15
Other	28	26	28	23
Base	216	264	180	1288

Source: DWP Omnibus Survey, 2008

More generally, the more recent Carers UK report found that about two-thirds of carers agreed with the statement 'My employer is carer-friendly and I feel supported at work when my caring responsibilities affect my job'.<sup>15</sup>

### **5.6.1 Eligibility for flexible working practices**

Where flexible working arrangements were available, the *Third Work Life Balance (2007)* survey asked employers whether they placed any restrictions on the types of employees who were eligible to use them. For each of the five flexible working time arrangements covered (i.e. excluding home-working), over 60 per cent of employers who provided these arrangements said that all employees were eligible. Part-time working was least likely to be universally available.

<sup>14</sup> Elsmore, K, *Caring and flexible working*, Department for Work and Pensions Research Summary, London 2009. This survey placed questions on BMRB's Omnibus Survey on caring for older people and availability and take-up of flexible working. Just over 3000 respondents, weighted to be representative of the GB population were interviewed by telephone as part of the survey during a three week period between May and the June 2008.

<sup>15</sup> Yeandle, S, Bennett, C, K Buckner, L, Fry, G, Price, C (2007) 'Managing Caring and Employment Report No2, University of Leeds. This study was based on 1909 responses to a national survey targeting carers of working age and 134 face-to-face interviews with carers aged 25-64.

The surveys show therefore, that irrespective of the right to request flexible working, for the majority of employees the opportunity to work flexibly was available, with limited restrictions in some cases.

Despite flexible working being so widespread, the evidence shows that there is still a small proportion of employees who would benefit from the right to request and need the encouragement the right provides to consider flexible working with their employers.

## **5.7 Employers' experience of requests**

Employers in the *Third Work Life Balance Employers survey* were asked about their experience of requests for flexible working. Overall, 40 per cent of workplaces had received a request from an employee. Of those that had received a request 90 per cent of employers had accepted all requests.

Only nine per cent of employers reported that they had turned down at least one request. The most frequently turned down requests were those to work part-time (27 per cent of requests) and requests to work reduced hours for a limited period (15 per cent of requests). The most common reasons given for turning down requests were the disruption that the change would cause and the difficulty of reorganising work among existing staff.

Data from the earlier Work Life Balance employee survey (2006) showed that whilst over half of all employees were working flexibly in some way, only 17 per cent had made a formal request. Of these requests, 78 per cent were either fully or partially granted. Again this supports the employer data that suggests the incidence of flexible working is much higher than the number of formal requests made but that of those requests, few are refused.

## **5.8 Problems with the right to request**

The BIS *Work-Life Balance Employers Survey (2007)* asked all employers whether in the previous year any of their employees had suggested making a claim at an employment tribunal over the right to request flexible working. Only five workplaces in the sample (less than 0.5 per cent) reported that a request to work flexibly had resulted in an employee suggesting making a claim at an employment tribunal.

## **5.9 Benefits for carers**

At the time it was estimated that for the first two years, the number of requests for flexible working from carers would be in the region of 400,000. It was expected this number would then fall. More detail on this can be found in **Annex C**.

The earlier *Work Life Balance employee survey* asked those working flexibly what the positive and negative consequences were of working flexibly. Eighty-nine per cent of employees felt there were positive consequences and these were cited as having free time in general (34 per cent) and having more time to spend with family (33 per cent). Whilst a proportion said there were negative

consequences, these tended to be related to reduced pay, where hours were reduced.

The Carers UK 2006 report *Who Cares Wins*, cites numerous examples of benefits to carers. These all revolved around having the flexibility to cope with emergencies and being able to change working patterns to fit in with caring needs as and when necessary. Some examples included:

- 'I'm still part-time so that I can swap my working days, without taking a holiday so I can take my mother to the hospital.'

The case study evidence also suggests that without such support, some of these carers would not continue working.

### **5.9.1 Better employment prospects for carers**

Greater opportunities for flexible working would enable some carers who would otherwise leave the labour market to remain in employment. It was thought at the time to be difficult to quantify the number of carers who leave the labour market because they have no flexible working opportunities. However, it was felt that it was reasonable to assume that some carers do leave the labour market because they are unable to work flexibly.

In 2004, the last date for which we have data relating to carers, the rate of employment for all carers aged 16 and over was 53 per cent compared to the 60 per cent employment rate for all individuals aged 16 and over.<sup>16</sup> It was assumed that, as a group, carers would have an employment rate of 60 per cent in the absence of caring responsibilities and an additional seven per cent of carers would be in employment if they had no caring responsibilities. The Impact Assessment assumed that ten per cent of the target group could return to employment as a result of the policy – in the region of 26,000 individuals. More detail on this can be found in **Annex A**.

At this stage, the data is not available to assess whether these estimates for the number of new requests or carers returning to work are accurate.

## **5.10 Benefits to business**

Since the first introduction of the right to request flexible working for parents of children under six, there has been evidence from businesses about the positive effects of flexible working. However, given that many employers do not distinguish between employees in terms of availability of flexible working, there is little survey evidence focusing specifically on the benefits of offering flexible working to carers.

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<sup>16</sup> ONS, this rate of employment is for the 3 months ending October 2004.

Many employers who adopt flexible working patterns generally do report benefits to their business including:<sup>17</sup>

- staff morale improves and absenteeism decreases;
- skilled staff are retained and better returns are gained from training;
- staff turnover decreases;
- staff are easier to attract and recruitment costs are less; and
- changing market conditions are met more effectively.

#### ***5.10.1 Reduced vacancy costs and increased skill retention***

Evidence from the Work Life Balance 2007 survey and the 2008 CBI survey suggest that these benefits are still being realised. In Work Life Balance 2007 survey showed that 42 per cent of employers noted a positive effect of flexible working on recruitment and labour turnover at their establishment. In the CBI survey 63 per cent of employers noted this positive impact.

#### ***5.10.2 The effects of flexible working arrangements***

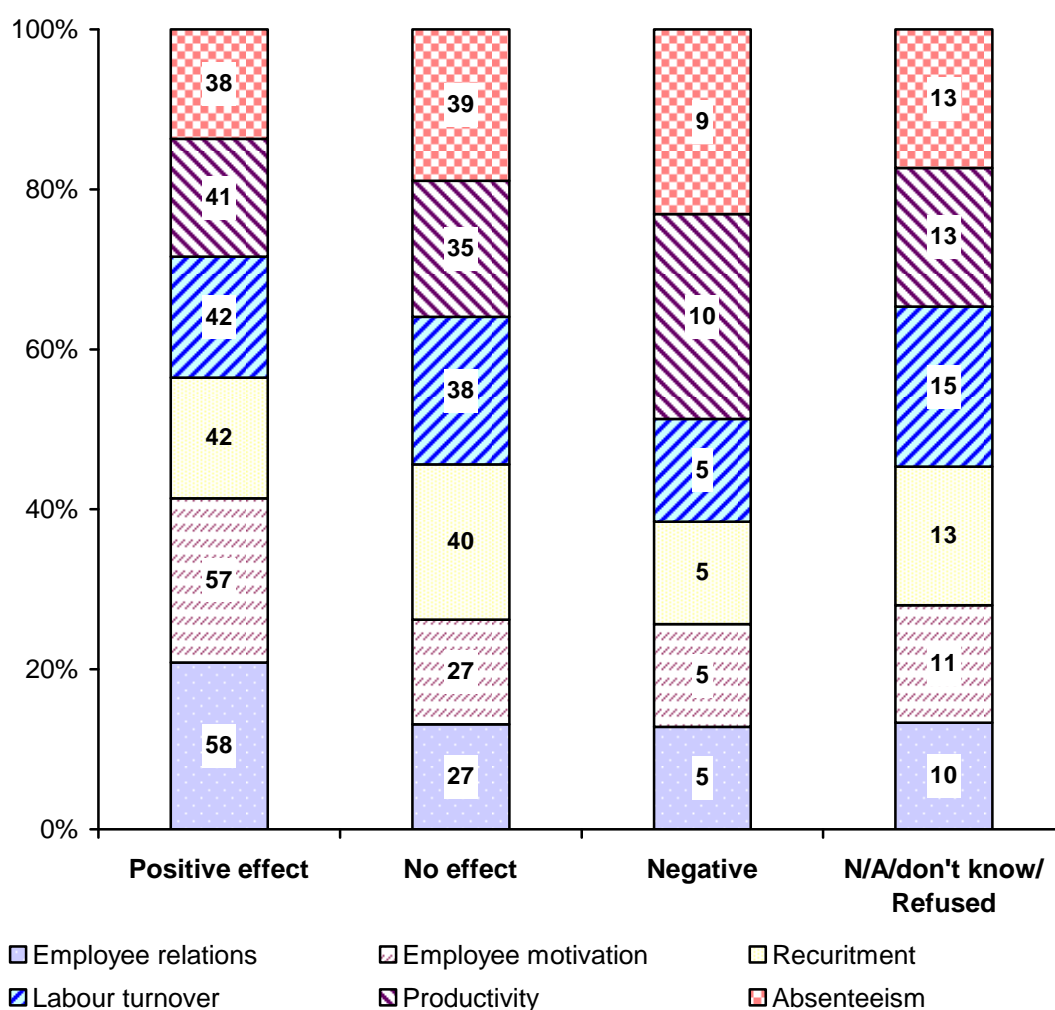
The ***Third Work-Life Balance Employer survey*** asked respondents about the effect flexible working practices had on employees and human resource management. For each of six criteria, employers were asked whether they thought flexible working and leave arrangements had a positive, negative or no effect. Details are shown in Figure 5.1 below.

Over half of workplaces felt that flexible working had had a positive effect on employee relations and motivation and commitment at the workplace. Just over 40 per cent felt effects on recruitment, labour turnover and productivity had been positive whilst 38 per cent perceived a positive effect on absenteeism.

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<sup>17</sup> Supporting evidence can be found in the DTI's second Work-Life Balance Survey. Source: Woodland et al., 2003, The Second Work-Life Balance Study: Results from the Employers' Survey – Main Report, DTI, Employment Relations Research series No. 22.

**Figure 5.1: Employers' perceived effects of flexible working (WLB 07)**



Source: BIS Third Work-life Balance Employers Survey (2007)

More recently, the CBI Employment Trends Survey (2008) also explored the impact of flexible working on businesses. Employers were asked about the impact on their business of granting requests to work flexibly. Thirty-eight per cent of employers believed the right to request flexible working had had a positive impact on their business. A further 52 per cent said the impact had been neutral. The clear majority (69 per cent) of employers saw a positive impact of flexible working on employee relations, with only a few (four per cent) noting a negative impact. Recruitment and retention had also been affected positively as a result of employers offering more diverse working patterns – with 63 per cent noting a positive impact.

In addition, 35 per cent of employers reported a positive correlation between granting requests to work flexibly and absentee rates, 28 per cent noted improved productivity, 17 per cent noted improvement in labour costs and 16 per cent reported improved customer service.

The survey however, also illustrated that there is a limit to the flexibility that firms can offer. Twenty-two per cent of employers felt that granting requests has had a negative impact on their labour costs and 15 per cent have noticed a negative impact on productivity.

The report concluded that firms needed to consider requests for flexible working carefully and that not all jobs are suitable for flexible working. It also concluded that while in the medium-term there may be business benefits in terms of improved morale and retention, there are also upfront costs for arrangements such as job-sharing and tele-work.

The CBI 2009 Employment Trends survey found that flexible working was being used during the recession to cope with the more difficult business climate. The survey asked employers whether they had taken, planned to take, or were considering, a wide variety of measures to reduce labour costs while saving jobs and retaining skilled employees. Increasing the use of flexible working can help employers to reduce working hours or make better use of existing staff resources, while benefitting employees by helping them balance work with their outside lives. It was the most popular change to work organisation and working patterns – more than two thirds of employers had already increased flexible working (45 per cent), intended to (13 per cent), or were considering it (11 per cent).

## **5.11 Conclusions**

Evidence from various sources suggest that flexible working is now generally widespread with many employers offering some forms of flexible working and most employees having some form available to them.

Eligibility for flexible working tends not to be restricted to those covered by legislation. As the Government does not require companies to classify the type of request to work flexibly, it has not been possible to explore how many have been made by carers. Where requests are made they are generally accepted either in full or a compromise arrangement is made.

There is little evidence yet available specifically looking at the experience of carers but the practice in general suggests that employers' attitudes to flexible working is positive.

One of the main objectives of extending the right to request flexible working was to improve the work life balance of carers and to provide greater employment opportunities. Whilst there is little survey data available to indicate whether this has taken place, anecdotal evidence suggests that where flexible working is available to carers, they are able to balance their work and caring responsibilities more easily and so remain in employment.

Business also report benefits from providing flexible working, not just for carers but for all employees. Benefits experienced include reduced staff turnover resulting in higher skill retention and lower vacancy costs. Some businesses felt that flexible working had a positive impact on productivity and absenteeism rates.

There was also evidence to suggest that morale and employee motivation can be improved as a result of flexible working.

# Chapter 6: Making paid leave for Bank Holidays additional to annual leave

## 6.1 Background

Prior to 2006, the ***Working Time Regulations 1998*** (the “WTR”) gave workers the right to a minimum of four weeks’ paid annual leave (20 days based on a five-day working week).

This right did not give workers the opportunity to take these four weeks whenever they wanted and the four weeks could include the eight days of public and bank holidays as these are not a statutory entitlement. Although many employers provided paid leave on bank holidays (in addition to their four weeks statutory leave entitlement), some required workers to count the bank and public holidays as part of their four weeks’ leave entitlement.

The ***DTI Paid Annual Leave Survey***<sup>18</sup> on annual and bank holiday entitlement showed that the lowest paid, including part-time workers, women and those from ethnic minorities were more likely to have bank and public holidays included in their four-week holiday entitlement.

## 6.2 Rationale

Without Government intervention, the inequality in holiday provision would have been maintained, with a growing disparity between those on contractual arrangements in excess of the statutory minimum and those on the statutory minimum. Research at the time of the Act by IDS indicated that contractual holiday entitlements were increasing gradually year-on-year and hence it was likely that the gap between those receiving only the statutory entitlement and those receiving more generous contractual arrangements would continue to widen further.<sup>19</sup>

Evidence shows that the ability to spend time away from work on holiday is a key component in work-life balance and that there are significant health benefits related to taking holiday, including reduced stress levels and sickness absenteeism.

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<sup>18</sup> See Partial Regulatory Impact Assessment: Increasing the Holiday Entitlement January 2007

<sup>19</sup> IRS Employment Review No. 817 11 February 2005



In its March 2006 Success at Work policy document the Government restated its manifesto commitment to make the four-week holiday entitlement additional to bank and public holidays. This was put in place through the Work and Families Act and the statutory entitlement subsequently increased from four weeks to 4.8 weeks in October 2007 and to 5.6 weeks in April 2009.

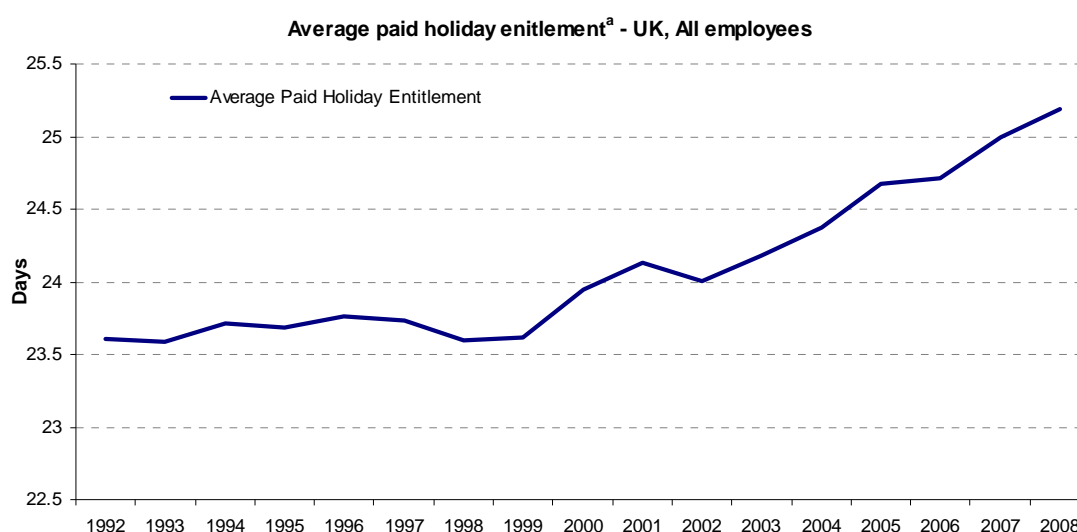
### 6.3 Number affected

Estimates at the time of the Act (based on the DTI Paid Annual Leave Survey 2006) showed that 6 million workers (22 per cent of the British workforce, including 19 per cent of employees) received less than the full 5.6 weeks' (28 days) holiday entitlement a year (pro-rata for part-timers).<sup>20</sup>

### 6.4 Effect of the Act

The **DTI Paid Annual Leave survey** has not been repeated and it is still too early to assess in detail the extension which came into effect in April 2009. However, data from the Labour Force Survey can provide some evidence that annual paid leave has been increasing.

**Figure 6.1: Average paid holiday entitlement (UK, All employees)**



Source: Labour Force Survey Q4 1992 to 2008

Figure 6.1 shows that the average paid holiday entitlement, excluding bank holidays, has been increasing since 1999 rising to 25.2 days in 2008. There was a small jump around 2006/2007 when the Act was passed although the increase did not come into force until October 2007. This early jump probably indicates employers providing more leave in advance of the Act coming into force.

<sup>20</sup> DTI Paid Annual Leave Survey 2006. Details of these estimates are provided in the Partial Regulatory Impact Assessment, Increasing the Holiday Entitlement, DTI, January 2007

There are some difficulties with using this data however. The relevant question is only asked in Q4 each year. Respondents are asked what their annual paid holiday entitlement is excluding public and bank holidays. It is not clear whether individuals are answering this question accurately in terms of excluding the right number of bank holidays or whether they exclude them at all.

To overcome this problem, the table below shows the proportions of full-time employees who state that they receive no paid leave, less than 20 days annual paid leave and those receiving 20 days or over. If it is assumed that employees are including the bank holidays, those receiving less than 20 days after April 2007 would not be getting their statutory entitlement.

The table show that the proportion with less than 20 days a year has been decreasing whilst those with more has been increasing. In 1998, one third of full-time employees had less than 20 days paid annual leave excluding bank holidays. By 2008 this had fallen to 22 per cent with the largest drops taking place between 2006 and 2007 and 2007 and 2008.

**Table 6.1: Proportion of full-time employees entitlement to 20 days' paid annual leave – excluding bank holidays**

Length of award	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	%	%	%	%	%	%	%	%	%	%
Zero days	2.6	2.0	1.7	1.6	1.6	1.5	1.5	1.5	1.4	1.3
1 to 20 days	33.2	32.4	32.0	31.3	30.4	29.6	28.2	26.9	24.2	22.3
20 or more days	64.2	65.6	66.2	67.2	68.1	69.0	70.4	71.6	74.4	76.5
Mean annual leave for all employees	23.6	23.9	24.1	24.8	24.2	24.4	24.7	24.7	25.0	25.2

Source: Labour Force Survey Q4 1998 to 2008

This analysis can be improved by using the number of public and bank holidays the respondent took off during the year.

## 6.5 Conclusion

The LFS evidence suggests that durations of annual leave have been increasing and that the average annual leave provision was just over 25 days, excluding bank holidays. The data also show that the proportions of employees with less than 20 days leave excluding bank holidays has been falling. While this trend was already in place before the provisions of the Act came into force in October 2007 and April 2009, the speed of change increased over this period suggests the Act having some influence over paid holiday entitlement.

# Annex A: Details of the Impact Assessment

**Extending the period for payment for Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Maternity Allowance (MA) from 26 weeks to 39 weeks from 1 April 2007.**

The Impact Assessment at the time of the Act identified a number of benefits:

- Extending paid maternity leave to 39 weeks would mean that more mothers would be able to afford to take longer off work following the birth of their baby
- Extending maternity leave would encourage more mothers to return to work. The provision of longer periods of maternity leave and the statutory right to return would encourage more mothers to return to work. It would allow mothers to return to their jobs in a planned and ordered and so return at a time which suits their circumstances better.
- The extension could help a small number of mothers to remain in a more appropriate job than would have been the case if, for financial reasons, they returned after 26 weeks only then to resign soon afterwards because of having gone back to work too early. In such cases this might therefore represent a small saving in recruitment and training costs for those employers.
- More significant but less quantifiable benefits included the socio-economic benefits of mothers having more time off following the birth of their baby. It was suggested that there may be improvements to the quality of life of the mother and her partner in the first year.
- There were also thought to be longer-term benefits to children and the rest of society if more time that children have with their primary carer in their first year leads to better outcomes for them through childhood and later life.

## ***Length of absence (Maternity Leave)***

The most immediate proposed outcome from the extension of SMP and MA was to enable mothers and adopters to take longer off work following the birth or placement for adoption of their child.

For SMP, the Impact Assessment calculated how many mothers were already thought to be taking more than 26 weeks' leave (even though that leave was currently unpaid) and how many mothers would take extra weeks of leave if

some of the period of unpaid leave became paid. Data from the 2005 Maternity Rights Survey allowed an assessment of rates of maternity pay and maternity leave take-up following the April 2003 reforms. This produced a pattern of how much time mothers took off around the time of giving birth.

**Table A1: Distribution of mothers' time off work 2005**

Number of weeks taken off work around time of birth	Number of women as a proportion of all those eligible for OML and AML
	%
0 – 25 Weeks	16.1
26 Weeks	9.5
27 to 39 weeks	28.3
40 – 52 weeks	11.8
More than 52 weeks	34.2

Source: BIS analysis of Maternity Rights Survey 2005

It was assumed that the extension of SMP would lead to a shift in the durations of leave as women chose to take more time off. The data showed that there was already a group of women taking more than 39 weeks and it was assumed that their behaviour was unlikely to change. Of those who decide to take longer, their decisions would be based on income and other socio-economic factors. The Impact Assessment produced a pattern of likely take-up once the extension to 39 weeks was in place.

The Impact Assessment at the time assumed a continuation of a peak in the distribution at 26 weeks, even when the proposal to extend paid maternity leave to 39 weeks was implemented. Even in 2002, when the key dates governing mothers' return to work were week 18 (end of OML and SMP/MA) and week 40 (end of AML for all mothers) there was a small peak at 26 weeks.

One key point is that these were estimates of the initial impact of the extension to paid maternity leave. The projections used did not aim to pick up on the further dynamics that are likely over time. Following the first couple of years immediately after the extension, it was expected the distribution to evolve further with a lengthening in mothers' time off leading to a gradual flattening of the 26-week peak over time.

**Table A2: Projected time off work by mothers around the time of birth following the extension of paid maternity leave**

Number of weeks taken off work around time of birth	Estimated maternity leave distribution	
	Percentage take-up	Number of mothers
0 – 25 Weeks	16.1	51,200
26 Weeks	8.7	27,691
27 to 39 weeks	14.0	44,266
40 – 52 weeks	15.1	47,948
More than 52 weeks	46.1	146,087
Total	100	317,190

Source: BIS analysis of Maternity Rights Survey 2005

It was also expected that following the extension there would be a new peak in week 39. This new peak would be a result of much lower frequencies in the weeks leading up to week 39. From week 40 onwards the projected distribution following the extension was predicted to be identical to the distribution in 2003.

Overall, the proposed extensions to SMP and MA were assumed to mean that on average women were likely to take longer maternity leave. Around 317,000 women each year currently qualify for SMP and around 63,000 female employees a year qualify for MA.<sup>21</sup> The Impact Assessment assumed that as a result of extending maternity pay, an extra 2,700 mothers would take 39 weeks off instead of 26 weeks; and around 54,200 mothers who currently take between 27 and 38 weeks off at the time of giving birth would move to taking 39 weeks. The return to work of mothers who already take more than 39 weeks off was assumed to be unaffected by the proposal.

### ***Retention rates following Maternity Leave***

The Impact Assessment assumed that 43,000 mothers would take extra leave each year and that of these just under 2,500 were likely to stay in work longer as a result of the longer leave. The next DWP Maternity survey will provide more up to date evidence to assess the ‘quit-rate’ of mothers when the data becomes available.

<sup>21</sup> DWP estimates for 2004/05. The number of women receiving MA who are on maternity leave might be a slight over-estimate, since some women entitled to MA will have left their employer by the time of birth

## Notice Periods for changing the date of return from maternity leave

### *Numbers affected*

The Impact Assessment at the time used findings from the 2005 Maternity and Paternity Rights survey which revealed that 22 per cent of mothers who had given their employer an intended date of return changed their return date. It was assumed that 22 per cent of mothers decide to change their return date with the notice period currently at 28 days. It was assumed that 60 per cent of these mothers decide to return to work early and the remaining 40 per cent returned later than the originally agreed date. During the Government consultation employers expressed views that mothers were more likely to return to work early for financial reasons. These assumptions can not be reviewed until the data becomes available from the next Maternity Rights survey due to be published in the Summer 2010

### ***Numbers of carers: Impact assessment estimates***

There are no up-to-date figures on caring responsibilities. The General Household Survey (GHS) 2000 dataset provides the most recent comprehensive figures, where respondents have themselves defined the level of care provided.

The DTI Impact Assessment considered that to use the GHS figures would significantly overestimate the total number of individuals with caring responsibilities impacting on the labour market. The GHS cites 72 per cent caring for fewer than 20 hours per week, and has a very wide definition of what constitutes caring.<sup>22</sup>

The Impact Assessment used the numbers in receipt of Disability Living Allowance or Attendance Allowance (DLA or AA) to estimate the proportion of carers with significant caring responsibilities and so scale down the GHS data.<sup>23</sup> The scaling down factor is 3,702,320 (all individuals in receipt of DLA or AA) divided by 6,637,297 (total number of people caring for a partner, relative or friend), which equals 56 per cent.

The table below represents the raw GHS figures for carers and the scaled down numbers that the Impact Assessment considered representative of those providing a significant amount of care.

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<sup>22</sup> GHS Q19 categories are very loose, including "keeping an eye on", "keeping company", "taking out for a walk/drive".

<sup>23</sup> As at 31 May 2004, source: IAD Information Centre.

**Table A3: Number of individuals cared for ('000)\***

Scope of the law	Unadjusted estimate	Adjusted estimate**
Caring for partner only	1,200	670
Caring for immediate relative	3,820	2,130
Caring for any household member	3,930	2,190
Caring for near relative	5,270	2,940
Caring for any relative or friend	6,640	3,700

Source: General Household Survey (GHS) 2000 (ONS) IAD Information Centre and DTI estimates. \* Rounded to nearest 10,000. \*\*56% of raw estimate

### ***Employment level of carers***

The GHS reported a 53 per cent rate of employment for all carers. The Impact Assessment assumed that the employment rate would be constant at 53 per cent for all individuals, irrespective of who they care for, and that the level of employed carers has grown at the same rate of growth for all employees in the economy.<sup>24</sup> The Impact Assessment assumed that there were just over 2 million employees caring for any relative or friend representing 8.2 per cent of all employees.

This estimate was then scaled down to 91 per cent of the original estimate to reflect the fact that some carers would not have accumulated six months' continuous employment with their existing employer and will therefore not be entitled to make a request.<sup>25</sup> The Impact Assessment assumed that 1.8 million carers would be eligible to make a request.

The Impact Assessment at the time estimated the number of new working arrangements (per year) expected from carers, according to a range of alternatives. The Impact Assessment assumed that the number of carers taking on flexible working arrangements (at any one point in time) would depend on job turnover and the average number of requests made per carer. It concluded that there was clear potential for a substantial impact. It was estimated that for the first two years the number of requests could be in the region of 400,000. In the third and following years it was expected that the number of requests would fall. This was because the stock of carers was assumed not to change significantly over time and the inflow of carers per year into the stock was assumed to be small.

<sup>24</sup> The proposed options will not apply to self-employed individuals.

<sup>25</sup> In the absence of reliable data, this scaling down factor assumes the same employment profile for employed carers as for parents with children under 6. The table below presents the estimated number of employed carers.

### ***Increased productivity and profits***

The IA assumed that that overall 44 per cent of firms experience a net positive impact on productivity and that therefore, 44 per cent of new working arrangements would result in an increased level of productivity.<sup>26</sup>

### ***Other sources of data on numbers of carers***

More recent reports by Carers UK looked at the 2001 Census data.<sup>27</sup> This found that the estimates in the Impact Assessment are similar to the figures produced from the 2001 Census analysis. The Census showed that:

- ten per cent of the populations (5.2million people) are carers, of which 3.9 million are men and women of working age;
- caring is most common among women and men aged 45-64 years – almost a quarter of all women in their 50s, and almost one in five men of this age, are carers;
- over 1.5m carers work full-time, of whom 58 per cent are men;
- almost 675,000 carers are in part-time employment of whom 89 per cent are women;
- approximately ten per cent of male employees and 14% of female employees are carers;
- ninety per cent of working carers are aged 30+ in their prime employment years
- those who care for 20+ hours a week are much less likely to be in higher level jobs.

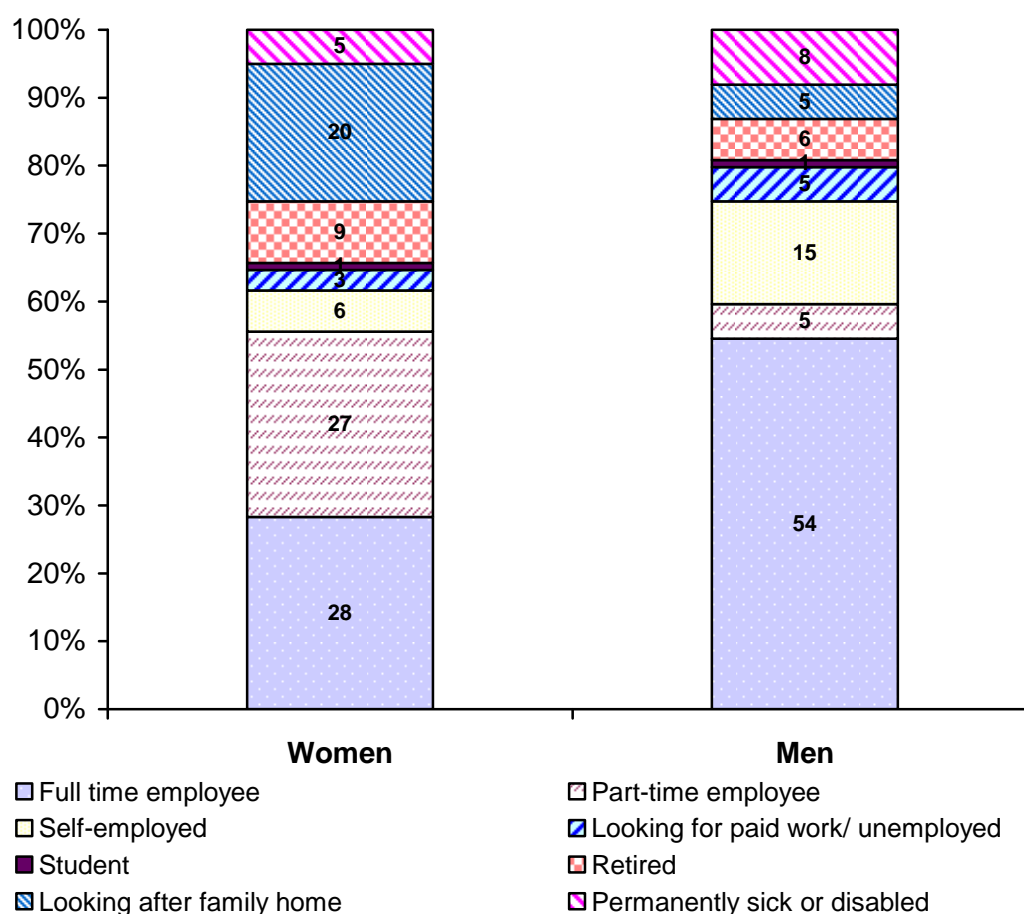
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<sup>26</sup> The DTI examined its own data source for the survey.

<sup>27</sup> Yeandle, S, Bennett, C, K Buckner, L, Fry, G, Price, C (2007) 'Managing Caring and Employment Report No2, University of Leeds; Yeandle, S, Bennett, C., Buckner, L, Shipton, L, Suokas, Anu, 'Who Cares Wins: The Social and Business Benefits of Supporting Working Carers', Centre for social Inclusion, Sheffield Hallam University, 2006.



**Figure A4: Economic activity of carers (UK Census, 2001)**



Source: ONS Census 2001

The Census data shows that of all carers irrespective of the extent of their caring responsibilities, around 60 per cent are working, either full-time, part-time or self-employed. Men are far more likely to be working full time and women more likely to be working part-time. There are more women who indicated that they were looking after the family home.

The data also showed that the level of caring did not vary much between men and women, with the majority of those in employment caring for between one-19 hours per week, around ten per cent caring for 20 to 49 hours per week and a further ten percent caring for over 50 hours per week.

# Annex B: Employers' experience of maternity leave

## **B1 Employers' spontaneous awareness of the Act**

Employers were asked first to describe what changes they thought were being made to employment legislation that would affect maternity leave and pay. Fifty per cent of workplaces, covering three quarters (73 per cent) of employees, were aware of at least one of the four main changes being made to maternity rights legislation. Five per cent of workplaces were able to name three out of the four changes to maternity rights legislation; less than one per cent of workplaces were spontaneously aware of all four.

Public and private sector establishments were equally likely to be aware of at least one of the changes, with respondents in larger establishments in each sector more likely to be able to name one of the changes than those in smaller establishments. Workplaces where there had been at least one pregnancy in the previous two years were more likely than those where there had been no recent pregnancies to be aware of changes. Union presence at the workplace also appeared to be a factor.

Of the four main changes to maternity and adoption pay and leave, those which workplaces were most likely to recall were the extension of statutory maternity pay from 26 to 39 weeks (33 per cent of workforces, covering 58 per cent of employees) and the introduction of a statutory twelve months maternity leave for all mothers (31 per cent of workplaces, covering 43 per cent of employees).

The introduction of KIT days and increase in the notice period required for women wanting to change their return date following maternity leave were less familiar to respondents. Six per cent of workplaces, covering 20 per cent of employees, mentioned KIT days as a change that they thought was being introduced in April 2007 while one in twenty (five per cent), covering ten per cent of employees, cited the increased notice period.

## **B2 Employers prompted awareness in 2007**

Once respondents had been asked to describe what changes they thought were being made to maternity legislation, subsequent questions were asked to establish a measure of prompted awareness of the changes. The precise detail of the specific change was described to employers and they were then asked whether they were aware of the change or not.

Over three-quarters (78 per cent) of workplaces, covering 93 per cent of employees, were aware, after prompting, of at least one of the four main changes being made to maternity rights legislation. The proportion of workplaces that were aware of all of the four main changes to maternity rights legislation increased from under one per cent before prompting to 29 per cent (covering 55 per cent of employees) with prompting.

As was the case in relation to spontaneous awareness, public and private sector establishments were equally likely to be aware of at least one change. Awareness levels tended to increase in line with the size of the establishment. Experience of recent pregnancies and union presence were again differentiating factors.

As would be expected, prompted awareness levels were considerably higher for each change in legislation than the equivalent spontaneous measures. This was particularly true in relation to KIT days and the increase in notice period for a woman notifying her employer of a proposed change in the date of her return from maternity leave. The latter saw an increase from five per cent unprompted awareness to 45 per cent after prompting, somewhat higher than the increase for keeping in touch days (from six per cent to 36 per cent).

The extension to twelve months maternity leave for all women was the most widely recognised of the four changes, increasing from 31 per cent unprompted awareness to 68 per cent following prompting, while awareness of the extension of statutory maternity benefits from 26 to 39 weeks increased from 33 per cent to 59 per cent.

### **B3 Managing maternity leave**

As discussed earlier, much debate surrounding maternity rights is focused on the mother's return to work. The Work Life Balance employers' survey also explored the management of a woman's return after maternity leave. The survey looked at whether women returned to the same job and what problems their absence posed for employers.

Employers were asked whether women who had come back from maternity leave in the last two years had come back to the same job or not. Over eight in ten employers (83 per cent) reported that all women returned to the same or a very similar job. This was comparable to the result obtained in the MRS 2002 when 85 percent of establishments said that all women returned to the same or a very similar job.

If an employer had said that not all women had returned to the same job, they were asked whether they thought that those women had been unhappy about coming back to a different job and not being able to return to their previous job. Over four in five employers (82 per cent) reported that this group of women had not been unhappy, although it should be remembered that is the employer's perception, not that of their employees.

Employers that had experienced a woman taking maternity leave in the last two years were also asked whether they had ever found it difficult to hold a job open

for an employee on maternity leave. One in five (20 per cent) reported that they had found it difficult. Establishments were disproportionately likely to report difficulties if they were:

- in the private sector (24 per cent reporting difficulties, compared with 8 per cent of public sector establishments);
- had no union presence (26 per cent, compared with 12 per cent of those with a union presence);
- part of an organisation with less than 1,000 employees (28 per cent, compared with nine per cent that were part of an organisation with over 1,000 employees);
- a single site workplace (28 per cent, compared with 16 per cent of workplaces that were part of a larger organisation).

As these findings suggest, experiencing difficulty keeping jobs open was strongly associated with operating in the private sector, having a relatively small workforce and having no union presence. Indeed, 62 per cent of those workplaces that said they experienced these difficulties were small private sector workplaces with between five and 24 employees and over three quarters (79 per cent) had no union presence.

Employers that reported ever having difficulties holding a job open for an employee on maternity leave, or that women had returned to a different job and been unhappy about it, were asked to describe the extent of their difficulties.

Around half (49 per cent) described their difficulties as substantial, 38 per cent described them as moderate and the remainder (12 per cent) said that the problems were minimal. The results suggest that smaller establishments and those in the private sector were particularly likely to experience significant difficulties. The most common difficulty that these workplaces experienced was with finding staff to cover the job temporarily, mentioned by two-thirds (67 per cent) of those who had experienced difficulties. Other problems cited were that it was expensive to hire temporary staff to cover maternity leave (12 per cent); that the business performance was adversely affected (nine per cent); and that the absence of experienced staff on maternity leave left a skills gap in the organisation (eight per cent).

### **B3 Employers' attitudes to extended leave**

The Third Work Life Balance survey asked employers about the extension of leave to 52 weeks for all mothers. All employers were asked whether they allowed all mothers who were due to have a baby before 1 April 2007 to have a full year off work. Just over half (53 per cent) of workplaces had already allowed all mothers to have a full year off work if their baby was due before 1 April 2007. Thus, even prior to the extension coming into force, many employers were already allowing all mothers to the full 52 weeks.

# Annex C: Extent and types of flexible working

## ***Flexible working***

The *Third Work-Life Balance Survey (2007)* asked employers whether any employees at their workplace had used any of six forms of flexible working in the last 12 months.<sup>28</sup> Most of the findings in the survey relate to flexible working for all employees, not just parents or carers. As mentioned above, for many employers, flexible working was offered to all employees and no special arrangements were made for parents or carers.

The forms of flexible working covered were:

- part-time working;
- job sharing;
- flexi-time;
- working a compressed working week;
- working reduced hours for a limited period
- working from home.

The survey found that at least one of the six types of flexible working arrangement was available for employees to use in 95 per cent of workplaces and had been used by an employee in the last 12 months in 85 per cent. Eighty-four per cent of workplaces had two or more flexible working arrangements available. Only four per cent of workplaces had no flexible working arrangements available. Seventy-one per cent of these said that this was because flexible working arrangements were not compatible with the nature of their business.

This finding is supported by the earlier Third Work Life Balance survey of employees (2006). This showed that 90 per cent of employees had at least one flexible working arrangement available to them if they needed it. Of those, 62 per cent said they were either currently working flexibly, or had taken up some flexible arrangement in the last 12 months. A more recent survey by the

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<sup>28</sup> The survey categorised the first five forms of flexible working as flexible working time arrangements.

Department of Work and Pensions found that 91 per cent of employees had flexible working available to them and 69 per cent were working flexibly.<sup>29</sup>

These surveys also showed that whilst the availability of flexible working had increased significantly since the previous survey in 2003, employees' use of flexible working had only increased slightly. Thus the growth of take-up had not matched the growth of availability.

More recent findings are available from the *CBI / Pertemps Employment Trends Survey* undertaken in 2008.<sup>30</sup> The survey found that flexible working is widespread: almost all (93 per cent firms responding to the survey had introduced at least one type of flexible working, be it part-time working, tele-working or job-sharing, for example. More than half (57 per cent) of firms have offered three or more types of flexible working arrangement to their employees, up from a third only three years ago.

Opportunities to work flexibly were offered by employers of all sizes. The survey found that in small firms, despite their more limited HR resources, the vast majority offered at least one flexible working arrangement.

### ***Types of flexible working used***

Findings from the *Third Work Life Balance Employers survey*, showed that part-time working was the most universally available flexible working arrangement, an option for employees in more than nine in ten workplaces (92 per cent). It was also the most widely used arrangement (in 79 per cent of workplaces). The Work Life Balance employee survey found part-time working and flexi-time most common whereas the DWP research found flexi-time taken up by a slightly higher proportion of employees than part time.

The more recent CBI survey also found that part-time work remained the most widespread form, with nine in ten (89 per cent) employers offering it. It was particularly prevalent in the largest organisations, where almost all offered it. The CBI survey also found a dramatic rise in the use of tele-working (46 per cent of firms offered this form of flexible working, compared with only 14 per cent two years ago).

Thus, at the time of the Act and its implementation, flexible working in some form was widespread amongst workplaces and was being used by over half of all employees. There was some evidence however, that whilst availability had increased, take-up of flexible working had not increased to the same extent. The more recent CBI surveys suggest that the widespread use of flexible working has continued.

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<sup>29</sup> Elsmore, K, *Caring and flexible working*.

<sup>30</sup> Pulling Through, Employment Trends Survey 2008, CBI/Pertemps, London 2008

