



HM Government

CONSULTATION ON MODERN WORKPLACES

Modern Workplaces - Government Response on Flexible Parental
Leave

NOVEMBER 2012

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

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Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

FOREWORD

We need to create a new system of parental leave that works for modern lives and respects a family's right to choose how to care for their child. A system that works for modern lives will work for business too. The current system, based on individual leave entitlements for mothers and fathers, prevents families sharing responsibilities between them. It is time to remove the barriers that prevent choice and it is time for change.

Introducing flexible parental leave is key to the Government's commitment to become the most family friendly Government in the world. Our approach will enable working fathers to take a more active role in caring for their children and working parents to share the care of their children. It is also a crucial step towards reducing the gender bias that currently applies to women's careers.

The current statutory system acts as a barrier to parents' ability to share leave in the first year of their child's life. Removing these barriers will allow working parents to share the care of their child in a flexible way. It will also remove barriers for businesses during this time, allowing them to manage their staff in a more flexible way. This is a major step towards achieving "smart economics", the World Bank's term for the benefits of balanced participation of men and women in the workplace. In addition to the business benefits of retaining qualified and talented employees, working families will have more choice about how leave and pay is taken, enabling fathers to take on the role of primary carer, or both parents to take leave together if that suits the family best. In addition, the new right will enable fathers to take unpaid leave to attend two antenatal appointments, further encouraging them to become involved with the care of their children from that crucial early stage.

Since we consulted last year on flexible parental leave in Modern Workplaces, we have given a great deal of thought to the best way in which a policy of flexible leave and pay can work for both business and parents.

If women and men are to fulfil their potential in the workplace, including developing the leadership and management experience to rise to the very top, we need to allow families to make decisions about how they wish to share childcare and balance work and domestic commitments. We have concluded that a system based on continuity, flexibility and choice offers better outcomes and enables a cultural change in the way men and women are viewed in the workplace. We are building on the current maternity, paternity and parental leave systems and introducing more flexibility and choice for working parents. Parents will be able to discuss with their employers the patterns of leave that would best suit them, and come to a mutual agreement that works for both parties.

We don't expect to achieve fully shared childcare from day one. Cultural attitudes do not change overnight. But we believe that this new system has the capacity to bring about transformative change for parents and businesses, and is a major stepping stone towards achieving smart economics in the UK.

A handwritten signature in blue ink that reads "Jo Swinson". The signature is written in a cursive, flowing style.

Jo Swinson MP, Parliamentary Under Secretary of State for Employment, Department for Business, Innovation and Skills

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

Executive summary

The Modern Workplaces consultation ran from 16 May to 11 August 2011. The flexible parental element of the consultation document sought stakeholders' views on proposals to create a system of flexible parental leave and pay. We received 273 formal replies to the consultation.

Following the analysis of the responses to the consultation and feedback during the consultation process, the Government will implement a package of measures to encourage fathers to take a greater role in caring for their babies and enable working families to be able to share the leave and pay that is currently only available for the mother.

Flexibility in maternity leave and flexible parental leave for working parents

The 52 weeks of maternity leave will remain in place as the default position for all employed women. Women who are currently eligible to receive statutory maternity pay (SMP) or maternity allowance will continue to be able to do so for 39 weeks, as they do currently.

Women with partners where they both meet the qualifying conditions for the flexible parental system will be able to end the mother's maternity leave and pay, or commit to ending it at a future date, and share the untaken balance of maternity leave and pay as flexible parental leave and pay. The length of flexible parental leave will not exceed the balance of untaken maternity leave, and the amount of statutory flexible parental pay will not exceed the balance of untaken statutory maternity pay or maternity allowance available at the point at which the woman returned or commits to return to work. Each parent will qualify in their own right for leave and pay.

Parents will need to meet certain earnings or length of service qualifying criteria to use the new flexible parental system. Each parent will need to meet the qualifying criteria for leave and/or pay in their *own* right. Where possible, these qualifying criteria will mirror the criteria for existing entitlements such as maternity pay and allowance and paternity pay and leave so that families will be able to easily work out their entitlement.

Flexible parental leave can be taken by the biological father or the mother's partner (husband, civil partner or partner, including same sex) concurrently with the mother on maternity leave, or both parents can be on leave together, so long as the total amount of leave does not exceed what is jointly available to the couple.

Flexible parental leave must be taken in a minimum of one-week blocks. The amount available to each parent will firstly be agreed by the parents, and each will subsequently need to agree their individual pattern of leave with their employer. In the event that the pattern cannot be agreed, the leave defaults to a single block to commence on a date specified by the employee.

We propose to introduce flexible parental leave and statutory flexible parental pay in 2015. We will also consider making arrangements for working parents who do not meet the qualifying requirements to receive statutory payments. Such a provision will not be introduced before 2018 to allow time for development and to ensure it interacts appropriately with the new Universal Credit system.

Paternal Leave

We do not propose to dedicate any parental leave exclusively to fathers. However, we will be giving working families maximum flexibility in choosing how to divide leave and pay between them. In practice, this means that parents can choose for fathers to be the primary carer of the child.

In addition, we propose to keep paternity leave and pay at the current level of 2 weeks. We recognise that reserved leave for fathers supports culture change towards shared parenting, but in the current climate it is unaffordable for both Government and business to extend paternity leave and pay. We will however take powers to enable us to extend paid paternity leave and make it more flexible so that we can make this extension at a later date when Government and business finances permit.

Introducing a right for fathers to take time off to attend antenatal appointments

We will be providing the right for fathers, and partners of pregnant women, to take unpaid time off work to attend 2 antenatal appointments with their pregnant partner.

Unpaid parental leave

From March 2013, we will increase unpaid parental leave from 13 to 18 weeks in order to comply with the revised EU Parental Leave Directive. In 2015, we will increase the age limit on parental leave from the current 5 years to 18 years, providing each parent the right to up to 18 week's unpaid parental leave for each child under 18.

Adoption leave and pay

We are making changes to the leave and pay available to adoptive parents to bring it more closely into line with the leave and pay rights available to birth parents. Statutory adoption leave will become a “day one” right with no qualifying conditions for eligible adopters who are matched with a child for adoption. Statutory adoption pay will be enhanced to 90% of the primary adopter’s salary for the first 6 weeks, which mirrors the arrangement for statutory maternity pay. Working couples who adopt will also be able to opt in the flexible parental system if they meet the qualifying conditions in the same way as birth parents. An adopter who qualifies for statutory adoption leave may end that leave and if both adopters, or the adopter and his or her partner, meet the qualifying criteria they will become eligible for the flexible parental leave and pay system. Each parent will need to qualify for leave and pay in their own right. The adopters, or the adopter and his or her partner, will qualify for statutory flexible parental pay if they satisfy the qualifying criteria, from 2015.

Surrogacy

Intended parents of a child born through a surrogacy arrangement who meet the criteria to apply for a Parental Order will be eligible for statutory adoption leave and pay if they meet the qualifying criteria; and for flexible parental leave and pay if they meet the qualifying criteria. They will also be eligible for unpaid time off to attend two ante-natal appointments.

Why we are doing this?

These proposals are good for business and good for families.

Flexible parental leave will enable eligible women to return to work confident in the knowledge that their baby is being cared for by their partner. They will also be able to return to work for specific projects, knowing they can take further period of leave later to be home with their child. Over time, we would expect the sharing of parental leave to reduce the “gender penalty” that women suffer from taking time out of the workplace with their children. Making the best use of available talent will bring its own economic benefits.

Businesses will benefit from women having a stronger attachment to the workplace, enabling them to attract and retain female talent in their organisations. On a broader scale, this is likely to increase women’s participation in the labour market. This will widen the talent pool and increase the efficiency of distribution of human capital in the economy, ensuring that employers are able to find the most effective candidates for roles.

Employers will also be able to have a frank and open discussion about their employees’ leave plans to ensure that the patterns of leave an employee takes will work well for both parties.

For the first time, working families will be able to choose how to share the leave and pay entitlements in the early stages of their child’s life. Fathers will be able to be more involved with their babies from the earliest stages of pregnancy, which evidence shows has significant benefits for children’s educational and emotional development in later life. Families will have much more flexibility about how they take leave, which will enable both parents to manage better competing work and domestic responsibilities. Both parents will also be able to retain a

strong attachment both to the labour market and to their individual workplace, facilitating the return to work.

Next steps

- The Government intends to introduce legislation as soon as Parliamentary time allows, in order to implement the reforms by 2015.
- Regulations to increase the number of weeks of unpaid parental leave will be introduced in 2013. From 2015 we will implement the proposals for time off for fathers to attend 2 antenatal appointments, flexible parental leave, statutory flexible parental pay and increasing the age limit for unpaid parental leave.
- The legislation will provide the architecture for the flexible parental leave system and we will launch a consultation early in the New Year to consider the detail of how the new system will work. Our intention is to make it as simple to use as possible, building on the existing framework without creating unnecessary burdens and complexity.

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

Background

Shared parenting matters. The active involvement of both parents in caring for their children has benefits for families, relationships, children, business and wider society. Yet in Britain we retain a highly gendered, inflexible approach to parental leave rights, one that entrenches the assumption that the mother must be the primary carer in the early stages of a child's life and prevents fathers from getting involved. This must change: Britain needs a new system of parental rights fit for the 21st century that provides working families with as much support and flexibility as possible so they can choose how best to balance their work and caring responsibilities.

The current system of parental employment rights in Britain has a number of elements: statutory maternity and paternity leave and pay available in the first year; unpaid parental leave available to both parents until the child is 5, or 18 in the case of a disabled child; and paid leave for pregnant women to attend antenatal appointments. In addition, many employers provide contractual entitlements that go beyond these statutory minimums and we want these changes to enable this approach by business to expand.

The current system gives employed mothers a long period of maternity leave and pay, but offers no statutory support to employed fathers taking time off to get involved in the early months of a child's life beyond the two weeks of paternity leave and pay available to eligible employed fathers. Moreover, entitlements are quite rigid, with leave having to be taken in a continuous block, and only limited opportunity for the sharing of entitlements between parents.

We want to change this so that there is greater equity. We want to create a culture where both working parents can better balance working and home life, so as to share this crucial early parenting period. There is strong evidence of the benefits of shared parenting, in particular studies that show that fathers who are engaged in caring for their children early on are more likely to stay involved in later years. This involvement has been shown to have a range of positive effects, including better peer relationships, fewer behavioural problems, lower criminality, higher educational and occupational mobility, higher self-esteem and higher educational outcomes at age 20. A growing number of fathers say they want to spend more time with their children, but that they are prevented from doing so by the existing system.

The Government believes it is right to ensure that women, who need to take time away from the workplace because of pregnancy and childbirth, are adequately protected and provided for before the birth and for a suitable period afterwards. However, we also believe that it is important that mothers on maternity leave are able to return to work early, if they so wish, without families losing out on time together. Overall, we want families to have more choice in how they care for their children.

Moreover, employers are increasingly concerned by the existing extended period of maternity leave, which is highly inflexible. The Government recognises – but does not condone – that in a limited number of cases this may result in discrimination by employers against women, particularly during the recruitment process. The pay gap between men and women’s median earnings is 10.2 per cent, and much of this is associated with women taking time out of the workplace to care for children. If childcare responsibility is shared more equally between mothers and fathers, maternal employment and earnings may increase, enabling businesses to maximise the pool from which they recruit and to retain skilled employees.

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

Consultation process

- The Department for Business, Innovation and Skills (BIS) published the Modern Workplaces consultation document and accompanying Impact Assessments on 16 May 2011. The consultation set out the Government's proposals to implement the Coalition Agreement commitments to extend the right to request flexible working to all employees; develop a system of flexible parental leave; and promote equal pay. The consultation also included proposals to amend the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave in the light of recent EU court judgments.
- The consultation document was sent to a range of relevant stakeholders and posted on the BIS website. The consultation period ran for 12 weeks and closed on 8 August 2011. During this time we also met with a broad range of stakeholders so we could better interpret the context of their views. This document sets out the Government's formal responses to the comments received in the consultation relating to flexible parental leave. The Government is grateful to all respondents for their contributions during the consultation process.
- Responses were received through the online survey at Survey Monkey or via the Modern Workplaces consultation mailbox. Electronic copies of the consultation papers were made available via the BIS website, and during the consultation period the consultation webpage received 4,193 unique visits.
- As part of the consultation process Ministers and officials from BIS have engaged in a range of consultation meetings and events with key stakeholders. This was to canvass views around a wide range of issues relating to the Modern Workplace agenda and to help inform policy development. For an overview of the key engagement activities undertaken with business and their representative organisations, please see annex C.
- Electronic copies of the original responses, where the respondent is willing to be identified, are available on request. Please contact Sammy Harvey at modernworkplacesconsultation@bis.gsi.gov.uk for further information.
- The Department is grateful to all the respondents for their time and has considered all of the comments and suggestions received. There were 273 formal responses to the flexible parental leave section of the consultation from a broad spectrum of interested parties.

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

The table below provides a comprehensive breakdown of written responses by type of responding organisation:

Table 1 Break down of responses by type of organisation

Large business (over 250 staff)	15	5%
Medium business (50-250 staff)	5	2%
Small & micro businesses (0-49 staff)	11	4%
Individual	130	48%
Business representative organisation/trade body	30	11%
Charity or social enterprise	22	8%
Legal	18	7%
Public sector	13	5%
Trade union or staff association	16	6%
Other	13	5%

Percentage totals may exceed 100 due to rounding

A list of respondents who were willing for their name and response to be disclosed is attached at Annex D.

Analysis of Responses and Government Response

The consultation document sought the views of stakeholders on proposals to create a system of flexible parental leave and pay. This section sets out the analysis of the responses received to each of the issues raised in the consultation document, and how the Government intends to respond in line with its commitment to develop and implement policies to make UK employment practices more flexible and family-friendly.

This analysis excludes responses where statements did not respond directly to the consultation. All % figures exclude nil responses and are rounded to the nearest %.

1. Which aspects of the current system work well for parents and employers and where could improvements be made? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 208
- Responses by businesses: 22%
- Responses by non- businesses: 78%

Summary of responses

- Of those who answered this question, 22% commented that the current system represented a good deal for women. 52 weeks was considered to be a generous length of time, and sufficient to allow breastfeeding and recovery.
- 17% of respondents stated that the current system was easy to manage and was well understood by employers and employees, giving employers certainty in its administration.
- Many respondents suggested improvements to the current system of maternity and paternity leave. These included:
 - Rectifying the gender bias of the current system by enabling fathers to take a greater role in childcare and reducing the career penalties for women associated with taking time off to care for children. Respondents stated that this would reduce the wage gap associated with extended periods of leave taken by women (27%).
 - Around 21% of respondents stated that low rates of statutory pay and lack of affordable childcare were barriers to take up of leave.
 - 18% of respondents stated that the current system was problematic for businesses to manage and they require additional support to manage staff absences and administration of the leave.

2. How can the Government best encourage a culture of shared parenting? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 233
- Response by businesses: 20%
- Response by non-businesses: 80%

Summary of responses

- 26% of respondents stated that promoting greater flexibility, including flexible working in the workplace would impact on parents' willingness to share parental responsibility.
- 24% commented that higher rates of statutory pay should be introduced to encourage shared parenting. 21% stated that the gender pay gap creates an obstacle for fathers to take leave, as the household is less able to manage if the main wage earner receives only statutory pay. The main wage earner is often the father.
- 23% of respondents stated that the legislation setting out 'parental' leave entitlement will also support cultural change.
- Other proposals for encouraging culture change in shared parenting included:
 - Reserving leave for fathers on a 'use it or lose it' basis (11%), and
 - Providing separate, but equal, leave entitlements to mothers and fathers. (10%)

3. Are you aware of companies that have gone beyond the existing statutory requirements in encouraging shared parenting? Why have they done this and what have the outcomes been? How can the Government help to ensure that lessons are disseminated to other businesses?

Analysis of responses

Responses

- Total number of responses: 200
- Yes: 52 (26%)
- No: 148 (74%)
- Response by businesses: 19%
- Responses by non-businesses: 82%

Summary of responses

- The majority of respondents (74%) were unaware of companies that had gone beyond the statutory requirements.
- The free text element of this question elicited a variety of different responses based on personal experiences. This makes it difficult to identify trends. The two most common responses were that enhanced contractual schemes are beneficial to employees in facilitating a work life balance (16%), and that they are beneficial to employers in terms of staff retention, return to work rates and improved employee engagement (21%).

Government Response

The consultation document set out proposals for a flexible parental system which would give parents more flexibility in the way they take leave during the first year of their child's life. We believe that increasing flexibility in the system will encourage a culture of shared parenting and reduce the impact of childbirth on a mother's career. We are pleased to note that a significant number of respondents support this view.

The Government will therefore go ahead with its plan to reform the current system of maternity and paternity leave and pay and we will bring forward legislation as soon as the Parliamentary timetable permits.

We have noted the comments about businesses' familiarity with administering the current system and will endeavour to deliver a simple system that is easy for employers and parents to understand and operate. We intend to consult further on the administration of flexible parental leave and pay and we will work closely with employers over the next few years to ensure that the system is simple and easy to administer. We will also work with employers whose current contractual arrangements go beyond the statutory minimum, to ensure that our proposals complement these schemes and allow them to develop as the wider cultural change takes place.

Pre-birth

Antenatal appointments

Introduction

Many fathers would like to be more involved in their partner's antenatal care. Such involvement can bring significant advantages both for the child and its parents. Research suggests that a father's attendance at ultrasound scans increases his commitment to the pregnancy and helps early bonding. This involvement may also be beneficial to the well-being of the child. There are strong links between a father's attendance at ultrasound scans and antenatal classes and positive engagement throughout childhood, including an increased likelihood to read to the child and to provide nurturing care.

Fathers do not currently have any statutory entitlement to take time off work to attend antenatal appointments with their partner. The consultation sought views on whether fathers should be entitled to time off to attend some antenatal appointments, and whether two was the right number. We also asked whether the right to time off should be independent of their parental leave entitlement or not.

The consultation noted that it is important that antenatal appointments remain a safe environment for women. This proposal refers only to the right to time off work: the decision on whether or not the father attends the appointments would remain in the hands of the mother. Two appointments were considered to be the right number, as they would enable parents to attend the two major scans together. The consultation suggested that this would strike the right balance between encouraging fathers' involvement in their partners' antenatal care, and minimising the cost and disruption for employers.

18. Should the father be entitled to time off to attend some antenatal appointments? If so, is two the right number?

Analysis of responses

Responses

- Total number of responses: 228
- Yes to time off: 199 (88%)
- No: 25 (12%)
- Responses by businesses: 20%
- Responses by non-businesses: 80%

Summary of responses

- The majority of respondents (88%) were in favour of giving fathers time off to attend antenatal appointments.
- Of those who explained their answer, 51% said that two was the right number of appointments for which to grant leave. A smaller proportion said that fathers should be able to attend more appointments if there were complications (20%) attend all appointments (15%) and attend more than two appointments (12%).

19. Do you have a preference between (a) giving fathers a new right to attend antenatal appointments, and (b) allowing fathers to use parental leave? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 190
- Responses preferring Option (a): 152 (80%)
- Responses preferring Option (b): 28 (15%)
- Neither option: 10 (5%)
- Responses by businesses: 19%
- Responses by non-businesses: 81%

Summary of responses

- 80% of respondents felt that fathers should be given a new right to attend antenatal appointments, rather than use a portion of their parental leave.
- The reasons given for this view were:
 - It will be less complicated and create less of an administrative burden for business (19%);
 - This will encourage gender equality and acknowledge the importance of the second parent in caring for the child (24%).

Government response

The consultation responses support the Government's view that it would be beneficial to fathers to have the right to leave to attend antenatal appointments. Two was considered to be an appropriate number by the largest proportion of respondents.

The Maternity and Paternity Rights and Women's Survey in 2009 found that two thirds of fathers are already taking some time off work before their baby is born. Our proposals will give fathers the right to take leave to attend 2 antenatal appointments whilst their partner is pregnant. In order to minimise burdens on business, there will be no statutory requirement for fathers to be paid whilst taking this leave. However, employees may come to an agreement with their employer to receive pay if this is convenient for both parties.

We have therefore decided to proceed with giving employed fathers-to-be, or a mother's partner, the right to take unpaid leave to attend two antenatal appointments. We are proposing that this is a "day one" right and do not propose to apply qualifying conditions such as a period of continuous service.

The First Year

Maternity leave

Introduction

It is important to ensure that women who are pregnant or who have recently given birth are given sufficient time to recover and to bond with their baby. However, we also believe that working families should be able to make choices about the leave arrangements that work best for them. EU law places rigid requirements on maternity leave, but parental leave can be much more flexible. It is therefore important to find the right balance between a period of maternity leave that can be used exclusively by mothers, and a period of parental leave that can be used by both parents in a much more flexible way.

The consultation proposed a maternity period of 18 weeks to be reserved for exclusive use by mothers. This would attract statutory maternity pay or maternity allowance in the same way as it does currently.

4. Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers? If not, what proportion should be reserved? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 226
- Yes: 89 (39%)
- No: 137 (61%)
- Response by businesses: 20%
- Response by non-businesses: 80%

Summary of responses

- 61% of respondents disagreed with our proposal to reserve 18 weeks of maternity leave exclusively for mothers. The reasons given for disagreeing included:
 - That the period of maternity leave reserved exclusively for women should be shorter (49%);
 - 20% of respondents thought that no period should be reserved at all, and that all of the leave should be available to parents to choose how to share it;
 - A smaller number of respondents (10%) thought that only the minimum time required for mothers' physical recovery should be reserved.
- 39% of respondents agreed that 18 weeks of maternity leave should be reserved for mothers' exclusive use. The most common reason given by those who agreed was that this time was needed for recovery, bonding and breastfeeding (14%).
- Of those who thought that the period of maternity leave should be longer, 26 weeks was the most frequent suggestion. The reasons given for this were to be in line with breastfeeding guidance (10%) and to mirror the length of ordinary maternity leave (8%). Respondents also stated that this would fit with the majority of occupational maternity leave schemes (8%). This view was held particularly strongly by the unions and women's groups.
- Business respondents are slightly more in favour of the 18 weeks' reserved period, with 57% of businesses and business representative bodies who answered this question agreeing with the proposal.

Government response

The consultation responses reveal divergent views on the ideal length of maternity leave. We understand that maternity leave requirements will vary between women. In our view, a period of 18 weeks is an appropriate minimum time for maternity leave and this was supported by many respondents to the consultation. However, we recognise that the needs of some women may be different and that it is important that the new system acknowledges this. In light of this, we have amended our proposals to account for the needs of different women during maternity leave and provide them with more choice.

Under the new proposals, all women will continue to be entitled to 52 weeks of maternity leave as a “day one” right, as they are currently. However, women whose partners are employed or self-employed, and where the woman and her partner both meet the qualifying conditions may choose to end their maternity leave early and share between them the balance of the untaken maternity leave and pay as flexible parental leave and pay. This is set out in more detail in the section below on flexible parental leave.

We do not propose to make any amendments to the current arrangements for starting maternity leave or notifying an employer of pregnancy. However, we are introducing new arrangements for a woman returning to work to enable parents to opt into flexible parental leave. The 8 week notification of return to work will remain. The notification period for a woman who wishes to end maternity leave (where the woman might not return to work but go straight on to take flexible parental leave) will mirror this. We propose that women will be able to indicate in advance of the birth the date of their intended return to work or the end of their maternity leave.

The protections provided to women during the maternity leave period will remain in place.

Maternity pay

A woman on maternity leave will continue to be eligible for 39 weeks of statutory maternity pay or 39 weeks of maternity allowance if she meets the qualifying conditions. For women not eligible to access flexible parental leave and women who are eligible but have not elected to take flexible parental leave, the maternity pay period will continue to run until the end of 39 weeks after it began. This mirrors the current system.

Paternity leave and pay

Introduction

International evidence suggests that fathers’ usage of leave is higher when systems offer them targeted or reserved leave as opposed to just making shared parental leave available to the father.

The consultation proposed retaining the current entitlement of 2 weeks of paternity leave for eligible fathers, and introducing a separate individual right to a period of 4 weeks of reserved parental leave for both mothers and fathers.

11. Should a portion of flexible parental leave be reserved for each parent? If so, is four weeks the right period to be reserved for each parent? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 206
- Yes, a portion of leave should be reserved: 118 (57%)
- No, a portion of leave should not be reserved: 88 (43%)
- Response by businesses: 20%
- Response by non-businesses: 80%

Summary of responses

- Of those who answered this question, 27% felt that reserved periods would encourage shared parenting and may boost fathers' uptake. However 16% of respondents felt that parents should have as much flexibility as possible in determining leave allocation, and that this flexibility would be undermined by reserving periods for each parent.
- 10% of respondents felt that finance would be a barrier to the uptake of reserved periods of leave. They argue that the rate of pay, rather than the reserved nature, is the most important factor in determining take-up.
- 14% of respondents felt that 4 weeks was an appropriate length of time to reserve, and a small number (7%) suggested that the reserved period should be longer.

Government response

In the consultation we proposed a system in which there would be several different types of leave available to parents in the first year of their child's life. These would include maternity, paternity, reserved parental, flexible parental and unpaid parental leave. Subsequent discussions with stakeholders suggested that this system was complex and potentially confusing. We concluded that it would be simpler to reduce the amount of different types of leave by retaining paternity leave as the only type of leave reserved exclusively for fathers.

During the consultation period many employers and employer organisations expressed concern that increasing the overall amount of leave available to a family was not appropriate in the current economic climate and would cause significant additional costs to employers that they cannot afford. We accept this view and we have decided not to extend paternity leave and pay until the economy has properly recovered and Government finances can afford the extension. We will therefore take appropriate powers in the forthcoming legislation to allow the extension to paid paternity leave to be made but delay making any extension until flexible parental leave has been fully embedded and we can assess the impact on shared parenting.

5. Should parental leave and pay be available to mothers and fathers on an equal basis? What benefits do you foresee? What difficulties are likely to arise?

Analysis of responses

Responses

- Total number of responses: 236
- Yes: 195 (83%)
- No: 41 (17%)
- Response by businesses: 19%
- Response by non-businesses: 81%

Summary of responses

- 40% of respondents stated that equal access to parental leave would encourage shared parenting and provide better gender equality.
- A significant number of respondents (19%) stated that equal access to parental leave would boost fathers' involvement and allow families to exercise choice. 28% of respondents said that enabling leave on an equal basis would give families choice and freedom.
- However 23% stated that this would cause logistical difficulties for employers, if they were required to keep track of leave taken by both parents. Respondents stated that this would create additional business burdens.

6. Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 239
- Yes: 193 (81%)
- No: 46 (19%)
- Response by businesses: 22%
- Response by non-businesses: 78%

Summary of responses

- Business respondents were less in favour of flexibility than non-business respondents. 65% of business respondents agreed with our proposals compared to 85% of non-business respondents.
- Of those who explained their answer the most common response (cited by 48% of respondents) was that greater flexibility would be beneficial for parents – providing choice, and promoting shared parenting.
- The most common concern (18%) was that greater flexibility will increase business burdens and cost.

7. If parents are not living together, should the default position be for the parent with the main responsibility for the child to be able to take all the unreserved leave and pay? Please explain your response.

Analysis of responses

Responses

- Total number of responses: 221
- Yes: 159 (72%)
- No: 62 (28%)
- Response by businesses: 19%
- Response by non-businesses: 81%

Summary of responses

- Of those who explained their answer the most common response (30%) was that the parent with principal caring responsibility should be entitled to the leave. Additional supportive comments stated that:
 - This approach would simplify the administration of the system and avoid legal intervention (9%);
 - There needs to be some flexibility and the ability to make exceptions in special cases (8%)
 - Employers need clarity and should not have to mediate these situations (8%)
- However, some respondents stated that this approach does not recognise the role of both parents and it ignores the rights of non-custodian parents, conflicting with the principles of flexible parental leave (8%).

8. On what principles should the notification process for parental leave be based? Do you have any comments on our proposal that the process be based on that for additional paternity leave?

Analysis of responses

Responses

- Total number of responses: 141
- Response by businesses: 33%
- Response by non-businesses: 67%

Summary of responses

- 48% of respondents stated that the notification system for the flexible parental system should be based on the system used by additional paternity leave. 14% of respondents favoured a system of self-certification.
- 29% of respondents stated that there needed to be employer protections built into the system to avoid fraud as well as sufficient notice periods for employers.

9. Should parents be expected to provide an indication of their full plans for taking the paid elements of parental leave prior to the child's expected date of birth (with the ability to change these plans subject to notice); or should separate notification be allowed for each period of parental leave?

Analysis of responses

Responses

- Total number of responses: 208
- Yes: 137 (66%)
- No: 71 (34%)
- Response by businesses: 24%
- Response by non-businesses: 76%

Summary of responses

- 49% of respondents stated that it would be important to have an indication of parents' full plans for leave upfront to enable businesses to plan ahead and accommodate the leave.
- 32% of respondents stated that it would be difficult for parents to foresee every circumstance and plans may need to change following the birth. 22% stated that separate notifications should be allowed to give greater flexibility if it is needed.

10. Do you agree that it would be inappropriate to exempt small and medium-sized employers from the flexibility provisions? Are there any other special arrangements that would be helpful for such businesses?

Analysis of responses

Responses

- Total number of responses: 221
- Yes: 174 (79%)
- No: 47 (21%)
- Response by businesses: 21%
- Response by non-businesses: 79%

Summary of responses

- 30% of respondents stated that the flexible parental system needs to be applied consistently to businesses of all sizes in order to be effective. 22% of respondents stated that the size of an employer should not affect employee rights.
- However 20% of respondents stated that the disproportionate impact of flexible parental leave on micro businesses needs to be acknowledged.

12. What do you see as the core challenges to administration? Do you support the initiatives described above as a means of addressing them? What other opportunities for improvement to administration can you identify?

Analysis of responses

Responses

- Total number of responses: 138
- Response by businesses: 33%
- Response by non-businesses: 67%

Summary of responses

- 39% of respondents said that monitoring leave and minimising fraud across two employers would be a challenge.
- 27% of respondents identified that the flexibility in the new system would add complexity and would be administratively difficult. Respondents gave the examples of ensuring ample notice periods and covering employee absences.
- The most frequent suggestion (19%) for how to overcome the administrative challenges was to simplify the proposals and remove complexity, for example by reducing the number of different types of leave.
- Additional suggestions were:
 - Government should centrally manage the system (15%).
 - Extensive guidance should be issued to employers and employees (14%).

16. Do you agree with the proposed approach on employment protections? How can the protections given to employees on parental leave be made more effective?

Analysis of responses

Responses

- Total number of responses: 154
- Yes: 128 (83%)
- No: 26 (17%)
- Response by businesses: 29%
- Response by non-businesses: 71%

Summary of responses

- Business respondents were less likely to be in favour of employment protections applying to all parents away from the workplace in the first year, although they were still in favour overall. 66% of business respondents agreed, and 34% disagreed. 88% of non-business respondents agreed, and 12% disagreed.

- The most common response (45%) was that employment protections should apply in order to protect parents and provide equality.
- Commenting on how employment protections could be made more effective, similar numbers of respondents said that:
 - Clear guidance is needed for employers and employees (19%)
 - Rights need to be better enforced and monitored (15%)
 - Employment protections should be extended and increased (14%)

17. Can you provide case studies on occupational paternity and maternity schemes and the benefits these bring to business and employees? We would also welcome thoughts on how the new system will affect these schemes.

Analysis of responses

Responses

- Total number of responses: 58
- Response by businesses: 33%
- Response by non-businesses: 67%

Summary of responses

- The most common response (28%) in answer to this question was the concern that the proposals might have a negative impact on existing occupational maternity leave schemes. This was the most common response for both business (32%) and non-business (25%).
- The most commonly identified benefit (19%) of occupational schemes was the retention of staff and skills.

Government response

Flexible parental leave

Introduction

The current system of maternity and paternity leave and pay is rigid and restrictive. It dictates to families and employers how leave and pay must be taken. Allocating a long period of maternity leave to a woman that is lost irrevocably if she returns to work early is restrictive and makes it difficult for working couples who want to share the baby's care to do so. Whilst additional paternity leave offers some flexibility to working parents, the rules governing it constrain couples and businesses because it can only start once the baby is already 20 weeks old; it is restricted in time and it is contingent on the mother returning to work so that parents can only take leave consecutively.

Our initial proposal looked at offering parental leave and pay to fathers whose partners are not currently eligible for maternity leave and pay/allowance. This would have extended the right to leave and pay very widely and it would not have been focused on those working couples who are most likely to benefit from being able to share the care of the baby, enabling them both to maintain an attachment to the labour market whilst raising their family.

We have therefore decided to create a system whereby *working* families, those where both parents are economically active and who most need to share the leave and pay to combine childcare with working, can share between them up to 50 weeks of the leave and 37 weeks of pay that is currently available to the woman.

Under the new system, a woman who meets the eligibility criteria for the flexible parental system, and who has a partner who also meets the eligibility criteria, would be able to share her untaken maternity leave and pay or allowance as flexible parental leave and pay. The length of flexible parental leave available would be equal to the untaken balance of maternity leave when the woman returns to work, or at the notified return date. The amount of flexible parental pay available to the parents cannot exceed the balance of untaken statutory maternity pay or maternity allowance. Parents will qualify individually to take the leave and pay.

In order to allow concurrency of leave (where the woman is on maternity leave and her partner can be on flexible parental leave at the same time), we propose to enable a woman to specify in advance the date she intends to end her maternity leave and for the remaining leave and pay to become available as flexible leave and pay.

Where an eligible woman and her partner have chosen to opt into the flexible parental system, flexible parental leave and pay can be taken by each parent (or the mother and her partner), according to their individual entitlements. Unlike the current arrangements for additional paternity leave, a woman ending her maternity leave will not have to return to work in order for the remaining leave to become flexible parental leave. As mentioned above the mother will be able to notify the date on which she plans to end maternity leave in advance, and the balance can become available immediately. Her partner will be able to start taking flexible parental leave (with the necessary notification period) whilst the mother is still on maternity leave. This will allow parents to choose to take leave at the same time to spend time at home with the baby together from the very early weeks of the baby's life.

Once they know they qualify for the flexible parental system, the parents will need to notify their employer(s) (or JobCentre Plus for women in receipt of maternity allowance) of their intention to access the flexible parental system. Each employed parent will notify their employer of the amount of joint flexible parental leave and pay arising and of the amount the family has decided each parent will take. The employer will simply need to check that their employee meets the qualifying criteria for flexible parental leave and for pay, if applicable. At no point will the respective employers of each parent need to contact one another to discuss their employees' leave entitlements.

Flexibility is an important element of the proposed new flexible parental system. It will allow working parents to take leave in shorter blocks; to intersperse periods of work with periods of leave and to take leave at the same time if they choose to. They will also be able to share leave between them in a way that suits them best. This approach was supported by the majority of consultation respondents. We have therefore decided to proceed with the increased level of flexibility proposed by the consultation document. We propose that each employed

parent will agree with their employer the pattern of leave that will be taken. In the event of their not reaching agreement, the employee is entitled to take their flexible parental leave in a single block commencing on a date specified by the employee.

This system will offer families where both parents are working real choice and flexibility, whilst recognising the different needs that women have during their pregnancy and maternity period. It will allow employers to manage their staff more flexibly, too. It will enable women to return to work before the end of their maternity leave without sacrificing the rest of the leave. In addition, it will enable a woman to return to work for a specific period, for example for a project that is important to her and her employer, and to then resume looking after the child by taking flexible parental leave.

Additional paternity leave will be abolished when the new flexible parental arrangements come into effect.

Eligibility

Both parents (or the mother and her partner) will need to meet set length of service or economic activity qualifying conditions in order to give rise to the flexible parental system. Where possible, we will mirror the qualifying conditions that already exist for the maternity and paternity leave and pay systems to ensure simplicity for employers and employees. Each parent will need to qualify for leave and/or pay in their own right. The balance of flexible parental leave and pay available to both parents will not exceed the amount of untaken maternity leave and pay or allowance.

To qualify for statutory flexible parental leave, we plan to mirror the current qualifying criteria for ordinary paternity leave. An employee must have been employed by the same employer for 26 weeks by the 15th week before the baby's due date. The employee must also continue to be working for the same employer before each period of flexible parental leave that he or she takes.

We believe that this new system will be a significant step in promoting genuinely shared parenting. It will also help to strengthen parents' attachment to the labour market, as they will have more choice about how to arrange their leave which will widen the employment opportunities they have. We hope that it will avoid either the mother or the father in working couples having to resign from their job to participate in shared parenting. It will also shift the perception that women do all the caring, and start to address the resultant career penalty that women face when trying to achieve senior positions in business.

The consultation sought views on the system of parental leave and pay, and how this should be made available for use by families. It also requested opinions about the administration of the system. We recognise that increased flexibility may require a new approach by businesses, and will mean new administrative arrangements. We are keen to ensure that the administration of the new system is as light-touch as possible, and can be easily understood and put into practice by employers and employees. The consultation requested feedback on how administration of the new system could operate in the most effective way. Where we can, we will build on the existing administration, so that both parents and employers have less to learn about the changes. Where things are genuinely new or need updating we will ensure things are as simple as possible. We plan to consult further on the administrative details of the system in 2013.

Flexible parental pay

A new form of statutory pay, statutory flexible parental pay, will be payable to an employed mother or father or mother's partner who qualifies in their own right for the payment. It will replace additional statutory paternity pay, which will be abolished. It will be paid at the same rate as flat rate statutory maternity pay and ordinary statutory paternity pay (currently the lower of 90% of salary or £135.45 a week for 2012-13) and cannot exceed the untaken balance of statutory maternity pay or maternity allowance. In the same way as statutory maternity pay and ordinary statutory paternity pay, it will be paid to the employee by the employer and reclaimed by the employer from the government¹.

We propose to apply the same qualifying criteria for an employee to be entitled to statutory flexible parental pay as currently applies to statutory maternity pay and ordinary statutory paternity pay; i.e. that an employee must have completed at least 26 weeks of continuous service with his or her employer at the 15th week before the expected week of childbirth and is still working for the same employer, and has earned at least the Lower Earnings Limit, currently £107 per week.

It is our intention to introduce statutory flexible parental pay for eligible employees alongside the introduction of flexible parental leave in 2015.

¹ Companies whose annual Class 1 National Insurance Contributions are less than £45,000 can reclaim 103% of the cost; those whose Class 1 National Insurance Contributions exceed £45,000 are entitled to reclaim 92%.

Self-employed mothers and mothers with a recent attachment to the labour market

Some women are not eligible for maternity leave, but can claim maternity allowance for 39 weeks. This may be because they are self employed, or meet the earnings criteria for maternity allowance even if they are not employed when their baby is due. For the purpose of opting into flexible parental leave (and statutory flexible parental pay) for the father or her partner, a woman entitled to maternity allowance (but not maternity leave) will be deemed to have a notional entitlement to 52 weeks of “leave”. Each week of allowance that she takes will reduce the amount of leave and pay available (respectively 52 and 39 weeks) for the father or partner by one week. If she stops claiming maternity allowance because she returns to work, the balance of the entitlement may be taken by the employed father or mother’s partner. So the mother’s partner or father will be entitled to 52 weeks of leave and 39 weeks of pay, each reduced by the number of weeks of maternity allowance the mother has claimed. If a self-employed mother claimed 20 weeks of maternity allowance before giving rise to the flexible parental system, a maximum of 32 weeks of flexible parental leave could become available to her partner. The father or mother’s partner will be entitled to claim statutory flexible parental pay for the remaining weeks of pay (provided the father or mother’s partner is on flexible parental leave for those weeks (if that person qualifies for such leave) and if that person meets the qualifying conditions.

A similar approach will apply to employed mothers who receive maternity allowance because they do not meet the qualifying conditions for statutory maternity pay. i.e. these mothers will also be able to end their maternity allowance early so that the employed father or mother’s partner can claim statutory flexible parental pay for the remaining weeks of pay.

There may be some couples who can access the flexible parental system but where one parent does not meet the length of service qualifying criteria to be eligible for flexible parental leave in their own right. There may, however, be benefits for such couples in enabling the sharing of leave and pay between parents. In these cases, the family will need to choose whether it would be more beneficial for them to opt into the flexible parental system, or remain in the maternity system. This will depend upon the couple’s individual circumstances and personal preferences.

We will consider making arrangements for those working parents who do not meet the qualifying requirements to receive statutory payments. Such a provision will not be introduced before 2018 to allow time for development and to ensure it interacts appropriately with the new Universal Credit system.

Other employment matters*Employment protections whilst on maternity, paternity and flexible parental leave*

- The majority of consultation respondents supported the extension of employment protections to all employees out of the workplace on parental leave during the first year of their child’s life. We propose to introduce employment protections (right to return to the same or similar job, protection from dismissal and protection from detriment) for parents that take flexible parental leave that are comparable to those that exist currently for fathers who take additional paternity leave.

Occupational schemes

- We recognise the important role played by occupational schemes both in enabling families to take extended periods of leave in the first year of their child's life, and in ensuring high retention and recruitment rates for businesses. We believe it is essential that employers continue to be able to offer the occupational schemes that they wish to, and that employees continue to be able to benefit from them. The new system will not affect the ability to offer occupational maternity schemes. Maternity leave is a protected period, and companies are able to offer maternity benefits to women only. There is no legal requirement for companies to create occupational parental leave schemes. We have discussed this issue at length with business stakeholders and they have commented that the types of schemes that are offered are dependent on a large number of different factors, including the size of the business; the sector; and the ratio of men and women in the company. The way in which employers respond to these changes will therefore vary across different employers. We are clear that where employers wish to offer a maternity scheme of a fixed length, as many do currently, they will continue to be able to do so. The ability to offer such schemes will be unaffected by a family's choice to convert their statutory entitlement of maternity leave to flexible parental leave at an earlier stage.

Notification periods

- Where possible, we want to use the existing conditions from the current system, as these will be familiar to users. However, we also recognise that we need to balance the needs of both businesses and parents, and we will consult further on the notification periods and other operational requirements.

Patterns of flexible parental leave

- A couple will discuss how much of the combined amount of flexible parental leave and pay each will take and will each notify their employer of their individual entitlement. It is then up to the employee to propose the pattern of leave that he or she wishes to take, and to discuss this with his or her individual employer.
- Parents will be able to take flexible parental leave in minimum blocks of one week, in a pattern of their choice, provided their employer agrees. We acknowledge that for some businesses this increased flexibility will be beneficial, whilst for others it may present more challenges with regards to covering employee absence. We therefore encourage employers and their employees to discuss as early as possible the patterns of flexible parental leave. We want to be clear, however, that parents will be entitled to take the full amount of leave that they wish to take as specified in their notification of maximum entitlement (this mirrors current arrangements). This can subsequently be changed by mutual consent, with a minimum notice period. In cases where employers and employees cannot agree on a proposed flexible pattern of leave, the default position will be that the employee takes the full amount of leave available to them in a single continuous block to start on a date of their choosing. We anticipate that in the vast majority of cases employers and employees will be able to come to a mutually beneficial arrangement.

- We plan to proceed with implementing these changes for all employers and employees, regardless of size. This reflects the support that we received for including small and medium sized companies in scope of the changes. For the system to work and for all families to be able to benefit from these changes, it is important that all employees and employers are able to use it.

Unpaid parental leave

Introduction

- In addition to the rights conferred to parents exclusively during the first year of their child's life the consultation also sought views on unpaid leave which can be taken in the first and subsequent years of the child's life.
- As outlined in the consultation in March 2013 we will be implementing the revised European Parental Leave Directive agreed by European Social Partners in 2010. To implement the directive we will increase the number of weeks of unpaid leave from 13 to 18 weeks per parent per child by the transposition deadline of 8 March 2013.
- The consultation sought views on whether to retain the existing requirement that an employee must have been with their employer for at least a year to take unpaid parental leave or to remove this requirement and create a single entitlement to parental leave. Having two parental leave systems with distinct qualifying criteria has the potential to cause confusion and so the consultation proposed creating a single parental leave system that incorporated both the EU allowance and proposed new entitlements with the same eligibility criteria whether the parental leave is taken during or after the first year of the child's life.
- The consultation also recognised that caring responsibilities do not end when the child reaches their first birthday or even with the start of school. It therefore sought views on whether the point until which a parent can take their unpaid leave entitlement should be extended beyond the child's fifth birthday.

13. *Should the year's qualifying period for existing parental leave under the European Parental Leave Directive be retained, or should the two types of leave be consolidated to avoid confusion? Please explain your response.*

Analysis of responses

Responses

- Total number of responses: 133
- Response by businesses: 26%
- Response by non-businesses: 74%

Summary of responses

- Views on whether the two types of parental leave should be consolidated into a single system of parental leave were mixed. 32% of respondents expressed support for the consolidation of the two types of leave in order to achieve greater simplicity with a further

17% agreeing that the systems should be consolidated in order to remove the qualifying period.

- Only small numbers (below 10%) said that the two types of leave should remain separate. The reasons cited by these respondents were that employers needed a qualifying period, and that it would be simpler to keep the two types of leave separate.
- A number of groups representing both businesses and families indicated that greater administrative simplicity would be achieved through the retention of the two clearly differentiated systems.
- 40% of business respondents agree that the two types of leave should be consolidated for simplicity. This was the most common response amongst business respondents. The non-business view was more divergent: 29% agreed the two types of leave should be consolidated for simplicity, and 20% felt they should be consolidated to remove the qualifying period.

14. *Is the child's first birthday the right cut-off point for parents to receive parental pay? Please explain your response.*

Analysis of responses

Responses

- Total number of responses: 164
- Response by businesses: 21%
- Response by non-businesses: 79%

Summary of responses

- Of those who responded to this question 69% agreed that one year from the birth of the child was the right cut off point, and 28% disagreed; 3% didn't know.

15. *Up to what age of the child should unpaid parental leave be available? Five (as it is currently), eight, 12, 16 or 18? Please explain your response.*

Analysis of responses

Responses

- Total number of responses: 228
 - Preferred age limit of 5: 68 (30%)
 - Preferred age limit of 8: 12 (5%)
 - Preferred age limit of 12: 32 (14%)
 - Preferred age limit of 16: 48 (21%)
 - Preferred age limit of 18: 72 (32%)
- (Multiple responses allowed)
- Response by businesses: 24%
 - Response by non-businesses: 76%

Summary of responses

- Views on the appropriate age limit for unpaid parental leave were again mixed with roughly the same numbers of respondents indicating a preference for retaining the current age limit of 5 (30%) or extending the age limit to 18 (32%). There was little support for the ages in between. Of those who explained their answers, those in favour of raising the age limit to 18 acknowledged that parents remain responsible for their children until the age of 18 and that parenting responsibilities do not diminish over time. Those in favour of retaining the current age limit of 5 were most likely to cite the fact that the current system is already working well.

The Government's response

The consultation responses support the Government's view that the first year after the child's birth is the appropriate cut-off point for parents to receive parental pay and we have decided to proceed on this basis. In light of the consultation responses and further discussion with stakeholders we have decided to maintain two separate systems of parental leave, retaining the year qualifying period for unpaid parental leave. It is our view that maintaining the distinction between parental leave associated with the first year after a birth, and the unpaid parental leave system resulting from the transposition of the Parental Leave Directive will reduce complexity. The system related to the first year after birth provides for statutory payments which will not be available in subsequent years and retaining separate systems will enable us to make changes to these 'separate' systems without having to unravel any future regulations. However, there is no prohibition on this unpaid parental leave being taken in the first year if the parents wish to.

The Government acknowledges that, for a whole range of reasons, caring responsibilities for parents do not end when their children reach 5 years old. Consistent with our commitment to encourage shared parenting we have therefore decided to extend the age limit up to which parental leave is available to the child's 18th birthday. This will also harmonise the unpaid system so that it is the same for parents of all children (currently only parents of disabled children are entitled to take unpaid parental leave up to the child's 18th birthday), and provide parents with leave to look after their children throughout the various stages of their childhood and teenage years, where, in some circumstances, balancing care and work responsibilities becomes even more challenging.

In order to minimise the costs and disruption to business, we will maintain the position where employees will be limited to a maximum of four weeks' unpaid parental leave per year. We will also raise the age limit as part of the wider system changes rather than introducing them at the same as increasing the number of weeks from 13 to 18 when we transpose the Parental Leave Directive in 2013.

General

20. Are there any special circumstances in which parents will need additional support?

Analysis of responses

Responses

- Total number of responses: 135
- Response by businesses: 16%
- Response by non-businesses: 84%

Summary of responses

- The key concern that emerged from the consultation process was centred on health concerns for mother and baby. Circumstances can change dramatically around the time of a birth, and we understand the need for the new system to take account of these changes. The proposal for mothers to decide how much maternity leave they need acknowledges that different women will have different needs that will mean that they wish to stay on maternity leave for different lengths of time.
- The consultation noted that leave and pay would be provided on a per-pregnancy basis, as it is currently. We have no plans to change this. Parents of twins and multiple children will be entitled to additional unpaid parental leave emanating from the EU Parental Leave Directive, which is granted on the basis of per parent per child and this will enable those parents to take more time off work to care for additional children if that is required.

Adoption Leave and Pay

- Under the new proposals for maternity and flexible parental leave, we propose that the eligibility criteria for adopters mirror the eligibility criteria for birth parents so that the parental leave arrangements available for adopters can be more closely aligned to what is available for birth parents. The proposals mean that a couple adopting a child through an approved agency, or from overseas, will continue to nominate a 'primary' and 'secondary' adopter who would then be able to use the system in the same way as birth parents. Where both adoptive parents, or the adopter and his or her partner, would be eligible for flexible parental leave and pay, the primary adopter will then be able to decide when the adoption leave will end giving rise to flexible parental leave and pay to allow eligible parents to share the leave and take it in a flexible way.
- In addition, we propose to bring the right to adoption leave into line with the right for maternity leave. We will be abolishing the continuous service qualifying test for statutory adoption leave and making it a "day 1" right. However, as with birth parents, in order to qualify for the flexible parental system, both parents will need to meet the qualifying criteria outlined above.
- We also propose to enhance the first 6 weeks of statutory adoption pay to 90% of the primary adopter's salary. Thus statutory adoption pay for the primary adopter will mirror the arrangements for statutory maternity pay for birth mothers.

- The new leave system for adopters will include:
 - Statutory adoption leave up to 52 weeks for an employed primary adopter;
 - Statutory adoption pay for 39 weeks, enhanced to 90% of salary for first 6 weeks, and thereafter payable at the lower of 90% of salary or the flat rate (currently £135.45 a week) for the remaining weeks;
 - Once the primary adopter returns to work or commits to end the period of adoption leave it gives rise to an entitlement to the flexible parental system, if both parents meet the qualifying criteria. In order to take flexible parental leave and pay, each parent will need to qualify in their own right. The amount of flexible parental leave and statutory flexible parental pay available will not exceed the balance of untaken adoption leave and pay;
 - The secondary adopter will be entitled to a total of 2 weeks paternity leave;
 - Both adopters will be entitled (subject to meeting the employment qualifying criterion) to 18 weeks unpaid parental leave until the child is 18.

Surrogacy

- We propose that intended parents in surrogacy cases who satisfy the criteria for a Parental Order and intend to apply, or have applied, to a court for a Parental Order will be entitled to leave and pay on the same basis as adopters who are eligible for statutory adoption leave and pay, subject to the qualifying conditions and evidential requirements. In addition, both intended parents will be entitled to take unpaid time off to attend two antenatal appointments with the surrogate mother carrying their child.

21. Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible parental leave?

Responses

- Total number of responses: 114
- Response by businesses: 32%
- Responses by non-businesses: 68%

Summary of comments

No single issue emerged on this question. Many respondents used this as an opportunity to reinforce the responses given to previous questions. The most common response (20%) highlighted concerns around burdens to businesses including the administration of any new system. Additionally some respondents (12%) asked for specific circumstances surrounding adoption and multiple births to be addressed in our proposals.

Modern Workplaces Consultation: Government Response to Flexible Parental Leave Proposals

Summary of policy proposals

Following the analysis of the feedback during the consultation process, the Government will implement a package of measures to encourage fathers to take a greater role in caring for their babies and enable working families to be able to share the leave and pay that is currently only available for the mother.

Flexibility in maternity leave and flexible parental leave

The 52 weeks of maternity leave (39 weeks paid) will remain in place as the default position for all employed women. Women with partners where they both meet the qualifying conditions for the flexible parental system will be able to end their maternity leave, or commit to ending it at a future date, and share the untaken balance of maternity leave and pay as flexible parental leave and pay. The length of flexible parental leave will not exceed the balance of untaken maternity leave, and the amount of statutory flexible parental pay will not exceed the balance of untaken statutory maternity pay or maternity allowance available at the date on which the woman returns to work or notifies that her maternity leave will end. Each parent will qualify in their own right for leave and pay.

Both parents, or the mother and her partner have to meet certain length of service or economic activities tests in order to access the flexible parental system. We envisage that these will be as follows:

- 26 weeks of continuous service with the same employer by the 15th week before the expected week of child birth; and/or
- To have worked for 26 out of the 66 weeks prior to the expected week of child birth, and to have earned a minimum average specified amount for 13 out of those 66 weeks

Flexible parental leave can be taken by the father or mother's partner concurrently with the woman on maternity leave, or both parents can be on leave together, so long as the amount of time does not exceed what is jointly available to the couple.

Flexible parental leave must be taken in a minimum of one week blocks. The amount available to each party will be decided by the parents, and each will subsequently need to agree their individual pattern of leave with their employer. In the event that the pattern cannot be agreed, the leave defaults to a single block to commence on a date specified by the employee.

We propose to introduce flexible parental leave in 2015.

Paternity Leave

We have decided not to provide any dedicated parental leave for fathers. Any “use it or lose it” leave for fathers will be in the form of paternity leave. We have decided not to extend paternity leave and pay until the economy has properly recovered and Government finances can afford the extension. We will therefore take appropriate powers in the forthcoming legislation to allow the extension to be made but delay making any extension until flexible parental leave has been fully embedded and we can assess the impact on shared parenting.

Maternity, Paternity and Parental payments

So long as they meet the current eligibility criteria, women will continue to be entitled to statutory maternity pay during their maternity leave, up to 39 weeks as they are currently.

Eligible fathers and partners who meet the eligibility criteria will continue to be entitled to 2 weeks of ordinary statutory paternity pay.

In addition, we will be introducing a new payment, statutory flexible parental pay, payable to employed parents who meet similar qualifying conditions as for statutory maternity pay and ordinary statutory paternity pay. It will replace additional statutory paternity pay, which will be abolished.

It is our intention to introduce this new payment in 2015 when the changes to leave come into effect.

Women who currently receive maternity allowance will continue to be able to do so for 39 weeks if they choose. Although self-employed women and women with a recent attachment to the labour market who are not employed when their baby is born are not granted “leave”, maternity allowance is not payable whilst they are working. If they wish to return to work or end their period of claiming maternity allowance, the balance of a notional 52 weeks of leave (less the number of weeks for which maternity allowance has been claimed) is available as flexible parental leave for the mother and her partner to share if they are eligible and meet the qualifying requirements for leave in their own right.

We will consider making arrangements for working parents who do not meet the qualifying requirements to receive statutory payments. Such a provision will not be introduced before 2018 to allow time for development and to ensure it interacts appropriately with the new Universal Credit system.

Extend to fathers the right to time off to attend antenatal appointments

We will be providing the right for fathers, or a mother’s partner, to take time off work to attend 2 antenatal appointments with their pregnant partner. This will be unpaid.

Unpaid parental leave

We will increase the number of weeks of unpaid leave from 13 to 18 weeks from March 2013 in order to comply with the revised EU Parental Leave Directive. In 2015, we will increase the age limit on parental leave from the current 5 years to 18 years. From 2015, each parent will have the right to 18 weeks of unpaid parental leave for each child up to the age of 18. We are not proposing to make any changes to the current arrangements regarding notification and time limits on taking leave.

Adoption leave and pay

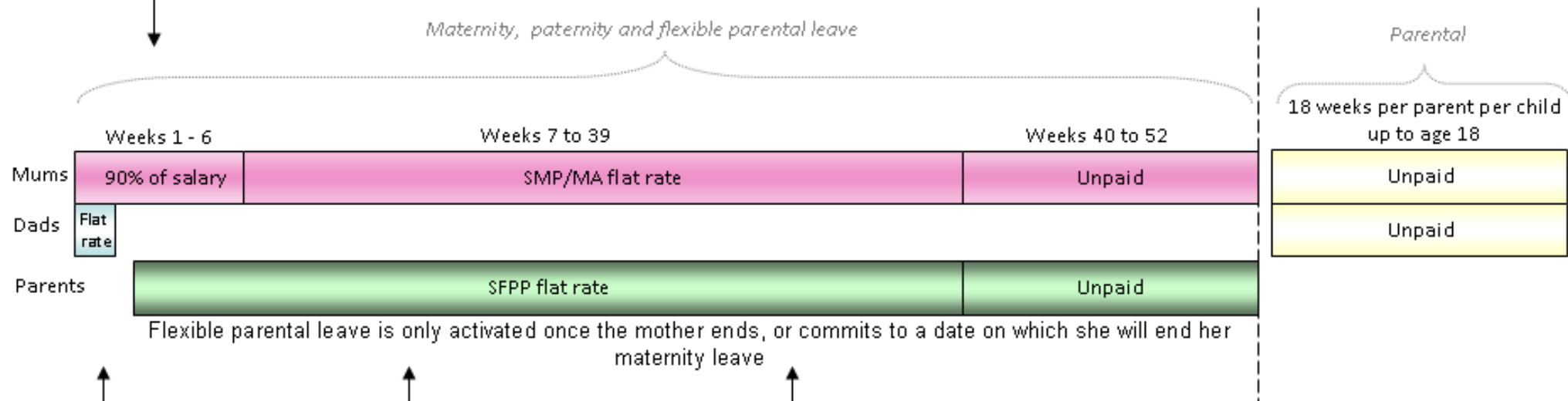
Statutory adoption leave will become a “day one” right with no qualifying conditions for eligible adopters who are matched with a child. Statutory adoption pay will be enhanced to 90% of the primary adopter’s salary for the first 6 weeks. An adopter who qualifies for statutory adoption leave may end that leave and if both adopters, or the adopter and his or her partner, meet the qualifying criteria they will become eligible for the flexible parental leave and pay system. Each parent will need to qualify for leave and pay in their own right. The adopters, or the adopter and his or her partner, will qualify for statutory flexible parental pay if they satisfy the qualifying criteria, from 2015.

Surrogacy

The intended parents in a surrogacy arrangement who meet the criteria to apply for a Parental Order and intend to apply for one or have applied for one are to be eligible for statutory adoption leave and pay if they meet the qualifying criteria; and for flexible parental leave and pay if they meet the qualifying criteria. Both intended parents will be entitled to time off to attend two antenatal appointments with the surrogate mother carrying their child.

The flexible parental system from 2015

An eligible woman can commit in advance to ending her maternity leave on a specified date, allowing her partner to take flexible parental leave concurrently with her maternity leave



Flexible parental leave is only activated once the mother ends, or commits to a date on which she will end her maternity leave

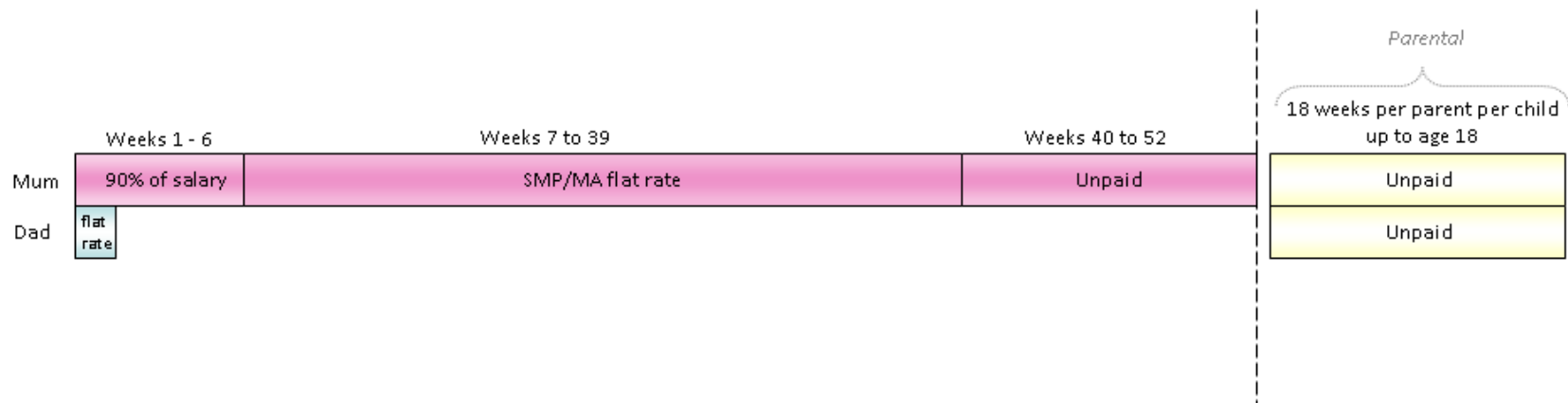
Paternity leave can be taken in blocks of one week

Flexible parental leave can begin at any point that the family chooses after the period of compulsory maternity leave (2 weeks after birth or 4 weeks for factory workers)

Entitlement to SFPP will be based upon each parent's individual employment history. The total entitlement cannot exceed the amount of untaken SMP/MA from the mother's maternity entitlement

The family are not eligible for the flexible parental leave system or do not elect to use it:

- Mum has 52 weeks' maternity leave and 39 weeks' statutory maternity pay
- Dad has 2 weeks' paternity leave and pay
- Both parents have 18 weeks of unpaid parental leave to use before their child's 18th birthday

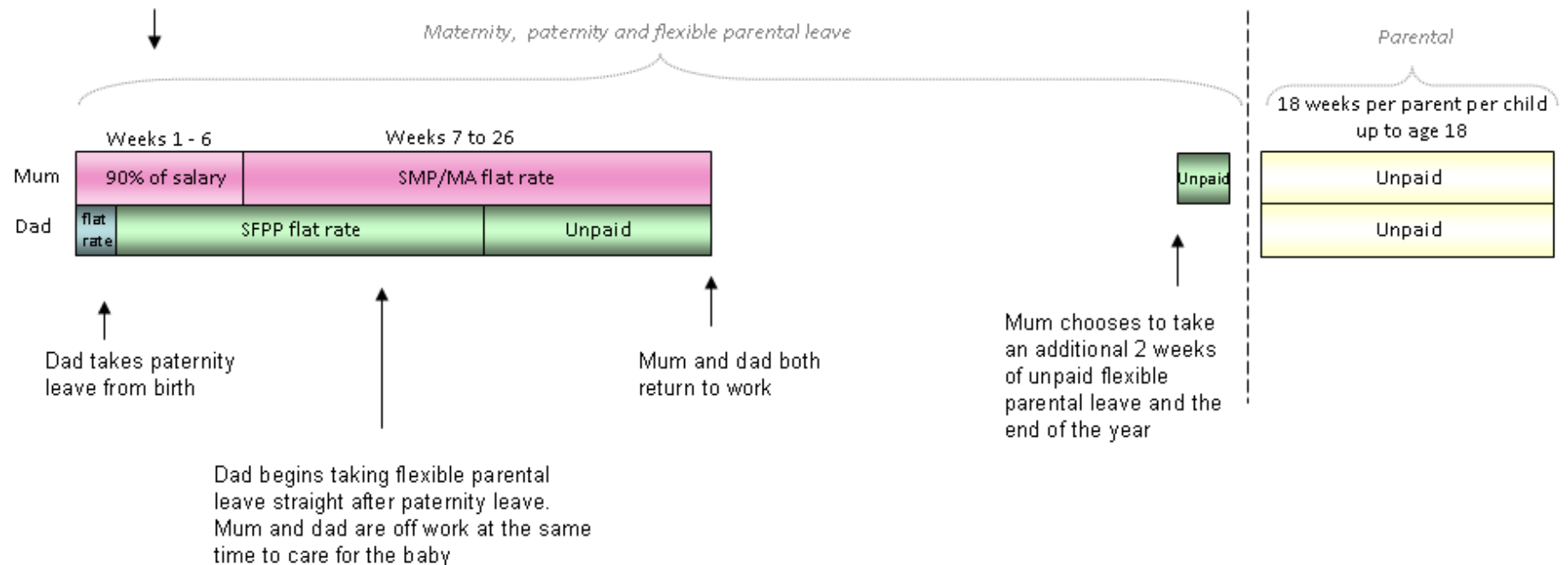


This scenario is based on an employed couple who both meet the qualifying criteria for flexible parental leave and statutory flexible parental pay

Mum and dad are having their fourth child. They want to take time off together for dad to look after the other children whilst mum cares for the new baby. At week 27, dad's mother is coming over from Australia to care for all the children for 5 months:

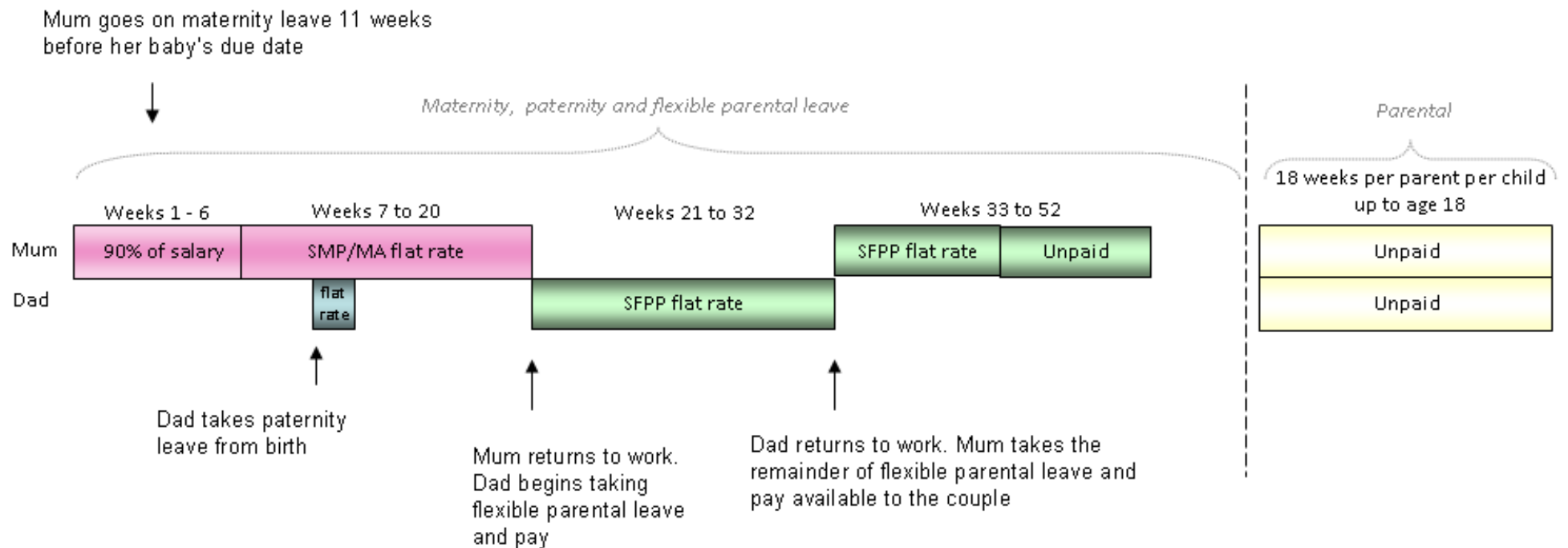
- Mum starts her maternity leave at the birth and notifies her employer that she will return to work at week 27. She takes 26 weeks' maternity leave and statutory maternity pay
- Dad has 2 weeks' paternity leave and pay followed by 24 weeks' flexible parental leave and 13 weeks' statutory flexible parental pay
- Mum chooses to take an additional 2 weeks' unpaid leave at the end of the year
- Both parents have 18 weeks of unpaid parental leave to use before their child's 18th birthday

Mum commits in advance to ending her maternity leave at the end of week 26. She goes into early labour and ends maternity leave immediately



Mum works in a school and dad works in the hospitality industry, so it would suit them to mix periods of work with periods of leave. Given the nature of their work, this pattern also works well for their employers:

- Mum stops work 11 weeks before her baby's due date. She is on maternity leave for 20 weeks. She returns to work at week 21 for 12 weeks.
- Dad has 2 weeks' paternity leave and pay at the time of the birth. He then returns to work for 9 weeks, then takes flexible parental leave for 12 weeks.
- Both parents have 18 weeks of unpaid parental leave to use before their child's 18th birthday



NEXT STEPS

- The Government intends to introduce legislation as soon as Parliamentary time allows, in order to implement the reforms by 2015
- Consult on implementation arrangements Jan – June 2013
- Implementation: 2013 for extending the number of weeks of unpaid parental leave from 13 weeks to 18 weeks; 2015 for time off to attend 2 ante-natal appointments, flexible parental leave, statutory flexible parental pay, and increasing the age limit for unpaid parental leave.

Enquiries

Enquiries can be addressed to:

Sammy Harvey
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET
Email: modernworkplacesconsultation@bis.gsi.gov.uk

List of Questions**Annex A**

- 1 Which aspects of the current system work well for parents and employers, and where could improvements be made?
- 2 How can the Government best encourage a culture of shared parenting? Please explain your response.
- 3 Are you aware of companies that have gone beyond the existing statutory requirements in encouraging shared parenting? Why have they done this and what have the outcomes been? How can the Government help to ensure that lessons are disseminated to other businesses?
- 4 Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers? If not, what proportion should be reserved? Please explain your response.
- 5 Should parental leave and pay be available to mothers and fathers on an equal basis? What benefits do you foresee? What difficulties are likely to arise?
- 6 Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave? Please explain your response.
- 7 If parents are not living together, should the default position be for the parent with the main responsibility for the child to be able to take all the unreserved period of leave and pay? Please explain your response.
- 8 On what principles should the notification process for parental leave be based? Do you have any comments on our proposal that the process be based on that for additional paternity leave?
- 9 Should parents be expected to provide an indication of their full plans for taking the elements of parental leave prior to the child's expected date of birth (with the ability to change these plans subject to notice); or should separate notification be allowed for each period of parental leave?
- 10 Do you agree that it would be inappropriate to exempt small and medium-sized employers from the flexibility provisions? Are there any other special arrangements that would be helpful for such businesses?
- 11 Should a portion of flexible parental pay be reserved for each parent? If so, is four weeks the right period to be reserved for each parent? Please explain your response.
- 12 What do you see as the core challenges to administration? Do you support the initiatives described above as a means of addressing them? What other

- opportunities for improvement to administration can you identify?
- 13 Should the year's qualifying period for existing parental leave under the European Parental Leave Directive be retained, or should the two types of leave be consolidated to avoid confusion? Please explain your response.
 - 14 Is the child's first birthday the right cut-off point for parents to receive parental pay? Please explain your response.
 - 15 Up to what age of the child should unpaid parental leave be available? Five (as it is currently), eight, 12, 16 or 18? Please explain your response.
 - 16 Do you agree with the proposed approach on employment protections? How can the protections given to employees on parental leave be made more effective?
 - 17 Can you provide case studies on occupational paternity and maternity schemes and the benefits these bring to business and employees? We would also welcome thoughts on how the new system will affect those schemes.
 - 18 Should fathers be entitled to time off to attend antenatal appointments? If so, is two the right number?
 - 19 Do you have a preference between (a) giving fathers a new right to attend antenatal appointments, and (b) allowing fathers to use parental leave? Please explain your response.
 - 20 Are there any special circumstances in which parents need additional support?
 - 21 Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible parental leave?

Responses to specific questions

Annex B

1. Which aspects of the current system work well for parents and employers, and where could improvements be made? Please explain your response.

Responses

- Total number of responses 208
- Responses by businesses (22%)
- Responses by non- businesses (78%)

2. How can the Government best encourage a culture of shared parenting? Please explain your response.

Responses

- Total number of responses 233
- Response by businesses (20%)
- Response by non-businesses (80%)

3. Are you aware of companies that have gone beyond the existing statutory requirements in encouraging shared parenting? Why have they done this and what have the outcomes been? How can the Government help to ensure that lessons are disseminated to other businesses?

Responses

- Total number of responses 200
- Yes 52 (26%)
- No 148 (74%)
- Response by businesses (19%)
- Responses by non-businesses (82%)

4. Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers? If not, what proportion should be reserved? Please explain your response.

Responses

- | | |
|------------------------------|-----------|
| - Total number of responses | 226 |
| - Yes | 89 (39%) |
| - No | 137 (61%) |
| - Response by businesses | (20%) |
| - Response by non-businesses | (80%) |

5. Should parental leave and pay be available to mothers and fathers on an equal basis? What benefits do you foresee? What difficulties are likely to arise?

Responses

- | | |
|-----------------------------|-----------|
| - Total number of responses | 236 |
| - Yes | 195 (83%) |
| - No | 41 (17%) |
| - Response by businesses | (19%) |

- Response by non-businesses (81%)

6. Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave? Please explain your response.

Responses

- Total number of responses 239
- Yes 193 (81%)
- No 46 (19%)
- Response by businesses (22%)
- Response by non-businesses (78%)

7. If parents are not living together, should the default position be for the parent with the main responsibility for the child to be able to take all the unreserved leave and pay? Please explain your response.

Responses

- Total number of responses 221
- Yes 159 (72%)
- No 62 (28%)
- Response by businesses (19%)
- Response by non-businesses (81%)

8. On what principles should the notification process for parental leave be based? Do you have any comments on our proposal that the process be based on that for additional paternity leave?

Responses

- Total number of responses 141
- Response by businesses (33%)
- Response by non-businesses (67%)

9. Should parents be expected to provide an indication of their full plans for taking the paid elements of parental leave prior to the child's expected date of birth (with the ability to change these plans subject to notice); or should separate notification be allowed for each period of parental leave?

Responses

- Total number of responses 208
- Yes 137 (66%)
- No 71 (34%)
- Response by businesses (24%)
- Response by non-businesses (76%)

10. Do you agree that it would be inappropriate to exempt small and medium-sized employers from the flexibility provisions? Are there any other special arrangements that would be helpful for such businesses?

Responses

-	Total number of responses	221
-	Yes	174 (79%)
-	No	47 (21%)
-	Response by businesses	(21%)
-	Response by non-businesses	(79%)

11. Should a portion of flexible parental leave be reserved for each parent? If so, is four weeks the right period to be reserved for each parent? Please explain your response.

Responses

-	Total number of responses	206
-	Yes	118 (57%)
-	No	88 (43%)
-	Response by businesses	(20%)
-	Response by non-businesses	(80%)

12. What do you see as the core challenges to administration? Do you support the initiatives described above as a means of addressing them? What other opportunities for improvement to administration can you identify?

Responses

-	Total number of responses	138
-	Response by businesses	(33%)
-	Response by non-businesses	(67%)

13. Should the year's qualifying period for existing parental leave under the European Parental Leave Directive be retained, or should the two types of leave be consolidated to avoid confusion? Please explain your response.

Responses

-	Total number of responses	133
-	Response by businesses	(26%)
-	Response by non-businesses	(74%)

14. Is the child's first birthday the right cut-off point for parents to receive parental pay? Please explain your response.

Responses

-	Total number of responses	164
-	Response by businesses	(21%)
-	Response by non-businesses	(79%)

15. Up to what age of the child should unpaid parental leave be available? Five (as it is currently), eight, 12, 16 or 18? Please explain your response.

Responses		
-	Total number of responses	228
-	5	68 (30%)
-	8	12 (5%)
-	12	32 (14%)
-	16	48 (21%)
-	18	72 (32%)
(Multiple responses allowed)		
-	Response by businesses	(24%)
-	Response by non-businesses	(76%)

16. Do you agree with the proposed approach on employment protections? How can the protections given to employees on parental leave be made more effective?

Responses		
-	Total number of responses	154
-	Yes	128 (83%)
-	No	26 (17%)
-	Response by businesses	(29%)
-	Response by non-businesses	(71%)

17. Can you provide case studies on occupational paternity and maternity schemes and the benefits these bring to business and employees? We would also welcome thoughts on how the new system will affect these schemes.

Responses		
-	Total number of responses	58
-	Response by businesses	(33%)
-	Response by non-businesses	(67%)

18. Should the father be entitled to time off to attend some antenatal appointments? If so, is two the right number?

Responses		
-	Total number of responses	228
-	Yes	199 (88%)
-	No	25 (12%)
-	Responses by businesses	(20%)
-	Responses by non-businesses	(80%)

19. Do you have a preference between (a) giving fathers a new right to attend antenatal appointments, and (b) allowing fathers to use parental leave? Please explain your response.

Responses

- Total number of responses 190
- Option (a) 152 (80%)
- Option (b) 28 (15%)
- Neither option (5%)
- Responses by businesses (19%)
- Responses by non-businesses (81%)

20. Are there any special circumstances in which parents will need additional support?

Responses

- Total number of responses 135
- Response by businesses (16%)
- Response by non-businesses (84%)

21. Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible parental leave?

Responses

- Total number of responses 114
- Response by businesses (32%)
- Responses by non-businesses (68%)

Key Events**Annex C**

<u>Date</u>	<u>Event</u>
	BIS Stakeholder Engagement Meetings with key stakeholders including the British Chambers of Commerce, Federation of Small Business, Institute of Directors, Confederation of British Industry, Engineering Employers Federation, Employers for Carers, Working Families, Equalities and Human Rights Commission.
16 May 2011	Launch event to raise awareness of the consultation
	BIS Focus Group meetings with stakeholders.
29 June 2011	Confederation of British Industry (CBI) meeting with business to encourage contributions to be more candid and more focused)
	Ministerial meetings included The Chartered Institute of Personnel and Development (CIPD)
	Working Families Annual Review included a quote on Governments proposed reforms to parental leave and flexible working to raise awareness of the consultation
6 July 2011	EEF Focus Groups meetings with members

Written responses to the consultation were received from: Annex D

1. List of Respondents:

- Anglia Business Resources
- Arup
- ASCL
- Association of convenience Stores
- Bauer Group
- Beachcroft LLP
- Berwin Leighton Paisner LLP
- Birmingham Law Society
- Bliss, the special care baby charity
- Breastfeeding Manifesto Coalition
- British Chamber of Commerce
- British Hospitality Association
- British Retail Consortium
- BT
- Business West
- Care for the Family
- CBI
- Chartered Institute of Payroll Professionals
- Chartered Institute of Personnel and Development
- Chartered Management Institute
- Chartered Society of Physiotherapy
- Children in Scotland
- Children's Centre
- Chwarae Teg
- CIFAS – The UK's Fraud Prevention Service
- Citizens Advice
- CLIC Sargent
- CMS Cameron McKenna LLP
- Constructing Equality
- COSLA (the Convention of Scottish Local Authorities)
- Crown Prosecution Service
- CWASU
- Daycare Trust
- Derbyshire County Council
- Dickens Dees
- Diverse Cymru
- DLA Piper UK LLP
- EEF
- EHRC
- Emplex Employment Lawyers
- Employers Forum on Age
- Employment Lawyers Association
- Equality & diversity officer
- Eversheds LLP
- Every Disabled Child Matters
- Family and Parenting Institute
- Fatherhood Institute
- Federation of Small Businesses
- Fire Brigades Union
- Ford Motor Company Ltd
- Forum of Private Business
- Fox Williams LLP
- Gingerbread
- Grandparents Plus
- Greater Manchester Chamber of Commerce
- Hampshire Chamber of Commerce
- Hawick Knitwear
- Hertfordshire County Council
- Hogan Lovells
- Tavistock Clinic and, Whittington Hospital
- Horticultural Trades Association
- Institute of Directors
- Jaguar Land Rover -Commercially confidential
- Jenkins Shipping
- John Lewis Partnership
- KHL
- Law-Lyons Consulting
- Legal & General Group Plc's

- Lewis Silkin LLP'S - Human Resource's Lawyers
- Lifestyle Services Group Limited
- Local Government Group
- Lyons Davidson Solicitors
- Mark J Michaels - The Dragon Hotel
- Marks and Spencer
- Maternity Action
- Merseyside Fire and Rescue Service
- Ministry of Defence
- Mother's Union
- Mumsnet
- My Family Care
- Nation Union of Teachers
- National Museum Director's Conference HR Forum
- National Union of Journalists
- Nationwide Building Society
- Newspaper Society
- North East Chamber of Commerce
- Opportunity Now, Business in the Community
- Payne Hicks Beach
- Payroll Alliance
- People Matters HR Consultancy
- PepsiCo UK & Ireland
- Police Federation of England and Wales
- PricewaterhouseCoopers LLP
- Institute of Education University of London
- Prospect
- Public and Commercial Services Union
- RBS NatWest Mentor services
- Recruitment Employers Confederation
- Redcar and Cleveland Borough Council
- Road Haulage Association Ltd
- Royal College of Midwives
- Royal College of Nursing
- Scope
- Shelback LTD
- South Lanarkshire Council
- Stephenson Harwood
- Sussex Community NHS Trust
- Talking Talent
- The British Psychological Society
- The Chamber of Shipping
- The Co-operative Financial Services
- The General Council of the Bar
- The Law Society
- The Law Society of Scotland
- The National Council of women of Great Britain
- The Single Parent Action Network
- Torah Temimah Primary School
- Toshiba Information Systems (UK) Ltd
- Trades Union Congress
- Transport for London
- Travers Smith LLP - Employment Law Department
- UCU
- Unison
- UNITE
- Universities and Colleges Employers
- University of Oxford
- University of Warwick
- Usdaw
- Verdant Consulting
- Webmart Ltd
- West Yorkshire Police
- Withers LLP
- Women's Transportation Seminar, London
- Working Families
- York College
- Zurich Employment Services Ltd
- 3SL
- 4Children

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