

## **Good Work Plan – Proposals to Support Families: Consultation**

The Government has issued a consultation document on various proposals which aim to support families. There are effectively three separate consultations on:

- parental leave and pay;
- neonatal Leave and Pay; and
- transparency in flexible working and familyrelated leave and pay policies.

The closing date for the parental leave and pay consultation is 29 November 2019, whereas the closing date for the other two is 11 October 2019. We will therefore cover the consultations on Neonatal Leave and Pay and Transparency in Policies in this bulletin and cover the parental leave consultation in September's bulletin.

Details of these consultations are set out below, including the consultation questions with our comments, and the LGA will be responding to the consultation. To assist with this we should be grateful if authorities could send us their views on the points and questions set out below. Please send your comments to [eru@local.gov.uk](mailto:eru@local.gov.uk) by 13 September. Should authorities want to respond directly to the consultation then details of how to do so are on the consultation website. We should be grateful if you would send us a copy of any such response, again to [eru@local.gov.uk](mailto:eru@local.gov.uk).

## **Neonatal Leave and Pay Introduction**

An estimated 100,000 babies are admitted to neonatal care every year following their birth. (For context, the Office for National Statistics reports that there were 679,106 live births in 2017.)

Bliss (the charity for premature and sick babies) estimates that:

- of the 60,000 babies a year who are born prematurely (before 37 weeks' gestation), around two thirds require neonatal care; and
- a further 60,000 babies who are born full-term are admitted each year to neonatal intensive care.

A baby born at 24 weeks will spend an average of 17.6 weeks in neonatal care, whereas a baby born between 32 and 36 weeks will spend an average of 12 days there. The effect on parents of their new born baby requiring medical intervention can obviously be very traumatic and can have a significant effect on their mental health and wellbeing.

Having a baby who is being cared for in a neonatal ward can lead to considerable practical difficulties for parents. In the interests of the baby's health and wellbeing, parents are encouraged to be present as much as possible to provide care, as such things as skin to skin contact with both parents is associated with better health outcomes for the baby. Parents

may need to travel significant distances between their home and hospital on a daily basis or even stay in temporary accommodation closer to the hospital. This can lead to problems with providing child care for older children and the ability of a parent to return to work at the end of arranged leave, plus financial difficulties associated with these issues. For many, the medical issues for their child will continue after discharge from hospital and there are often developmental issues, which can both impact on a parent's ability to return to work.

The Department for Business, Energy and Industrial Strategy conducted an internal review of provisions for premature, sick and multiple babies. The review sought to understand the barriers that these parents can face to returning to, and staying in, the labour market following the birth of their child. Evidence gathered from the review suggests that current leave and pay entitlements do not adequately support parents whose baby or babies need to spend a prolonged period in neonatal care.

### **Proposal for new entitlement to Neonatal Leave and Pay**

Parents with a baby receiving neonatal care often spend all (in the case of a father or partner), or a considerable proportion of, their statutory leave caring for their child in hospital. They may therefore spend little or no time caring for the child at home.

The Government wants to consider the option of providing Neonatal Leave and Pay at the rate of one week for every week that a baby is in hospital up to a maximum number of weeks. It would apply to parents of babies who have spent a minimum of two continuous weeks in neonatal care immediately following birth. For fathers and partners this would be taken at the end of their paternity leave, where eligible. For mothers it would be taken at the end of maternity leave.

### **Eligibility for Neonatal Leave and Pay**

The Government intends that the right will be restricted to the individuals who would have had the main responsibility for caring for the child, had it not been admitted to neonatal care i.e.

- The mother of the baby or babies
- The father of the baby or babies
- The mother's spouse, civil partner or a partner who will be living with the mother and baby that is in neonatal care in an enduring family relationship
- The intended parents in a surrogacy arrangement (where they are eligible for and intend to apply for a Parental Order)
- The intended parents in cases of adoption, where the intention was that the baby or babies would be placed with the individuals that they have been matched with at birth or shortly after birth.

**Question 1** Do you agree with the principle that entitlement to Neonatal Leave and Pay should be restricted to the individuals who would have had the main responsibility for caring for the child following birth, had it not been admitted to neonatal care (i.e. those listed above)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

If you disagree or strongly disagree please specify who else you think should be entitled.

**LGA comments** We would expect that local authorities would agree with this approach.

### **Targeting those parents who are most in need**

The Government believes that only parents whose baby has been in neonatal care for two weeks should be eligible for accessing Neonatal Leave and Pay. This ensures that there is no gap between the end of paternity leave and the start of neonatal leave. If the threshold was higher a father/partner might have to return to work between the two entitlements or rely on another form of leave such as annual leave or sick leave.

**Question 2** Do you agree that parents of babies who need to spend time in neonatal care should have access to additional pay and leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

If you disagree or strongly disagree, please provide a reason for your answer.

**LGA comments** Given the issues that parents with babies in neonatal units face, we would expect authorities to agree that they should have such a right.

**Question 3** Do you agree that access to Neonatal Leave and Pay should be restricted to parents whose children have spent a minimum of two weeks in neonatal care i.e. are seriously ill or likely to be in hospital for an extended period of time?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree

- Strongly disagree
- Don't know

If you disagree or strongly disagree, please provide a reason for your answer.

**LGA comments** It would seem acceptable to limit the right in this way.

**Question 4** If you agree that access to Neonatal Leave and Pay should be restricted to parents whose babies are most seriously ill, after what length of time in neonatal care should the parents' entitlement to Neonatal Leave and Pay crystallise?

- After 2 weeks
- 4 weeks
- Other

Please provide reasons for your answer.

**LGA comments** It would seem appropriate to provide this right for parents whose babies are in a neonatal care for two weeks or more. Where a baby is in hospital for a shorter period of time, it will be easier for the parents to deal with the situation, but the longer the period of time, the more assistance will be required.

### **Other circumstances**

The Government recognises that there may be other circumstances in which parents face significant barriers to returning to, and staying in, work once they have used up their existing statutory leave and pay entitlements.

The following are examples of the type of circumstances that the Government may wish to consider for inclusion within scope of the provision.

- Circumstances where there is a break between the baby's birth and admission to hospital e.g. of a few days or at a later point in the baby's first year.
- Circumstances where a baby is receiving lifesupporting treatment outside of a hospital environment e.g. oxygen therapy administered by the parents at home.

**Question 5** Are there other circumstances that you think should be considered for inclusion within the scope of Neonatal Leave and Pay? What are they?

**LGA comments** We would welcome authorities' suggestions of any other situations that should be considered.

## Qualifying conditions for Neonatal Leave

It is proposed that there will be no qualifying period for the right to take Neonatal Leave i.e. it will be a day-one right as is currently the case for Maternity and Adoption Leave and will be the case for Parental Bereavement Leave.

## Qualifying conditions for Neonatal Pay

It is proposed that the qualifying conditions for Neonatal Pay will mirror existing family-related statutory payments. Therefore, parents would need to have:

- average earnings over a prescribed reference period above the Lower Earnings Limit and be continuously employed by the employer who is liable to pay them Neonatal Pay up until the baby's birth; and
- at least 26 weeks' continuous service with their employer at the 15th week before the baby is due (this essentially means that they must have been employed by their current employer at the point the mother became pregnant).

Statutory Neonatal Pay would be paid by the parent's employer. The employer will then be able to reclaim 92% of it from HM Revenue & Customs (or 103% in the case of small employers). Neonatal Pay would be paid at the statutory flat rate (currently £148.68 for the year 2019/20) or 90% of average weekly earnings, where that is lower.

**Question 6** Do you agree that Neonatal Leave should be a 'day one right' in line with Maternity Leave, Adoption Leave and Parental Bereavement Leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** We would expect authorities would agree that this should be a day one right given the difficulties that such parents face.

**Question 7** Do you agree that the qualifying period of service for Statutory Neonatal Pay should mirror the qualifying period of Statutory Paternity and Shared Parental Pay?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** Although in some ways it makes sense for the right to mirror the qualifying period for Statutory Paternity and Shared Parental Pay, some authorities may be sympathetic to there being no qualifying period, bearing in mind the circumstances, and we would welcome views on this.

## **The length of leave and pay**

The length of time that babies spend in neonatal care in hospital varies according to the baby's prematurity and the severity of their condition. The majority of babies (54%) spend one week or less in neonatal care. 19% spend between one and two weeks and only 13% of babies spend more than four weeks in hospital. However, some will obviously spend much longer. For example, the average length of stay for a baby born at 24 weeks is 18 weeks.

The Government proposes that entitlement to leave should be capped at a maximum number of weeks on the grounds of providing a degree of certainty for employers as to the length of their employee's absence and affordability.

However, the Government is considering applying a different cap to the number of weeks' leave to that which would apply to pay, which would allow the parents of babies spending the longest time in hospital to remain on leave, but with a trade off in terms of pay to maintain affordability. It recognises that other types of leave, such as the unpaid parental leave that is available up to the child's 18th birthday, may be used if a baby's stay exceeds the cap.

**Question 8** Do you agree that the entitlement to Neonatal Leave should be capped?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** Applying a cap would affect fathers/partners who are in the most need of time off because their children would have the most serious medical care needs and would continue to be in hospital when their leave entitlement ended. (In most cases a mother would continue to be on maternity leave and so would not face this difficulty).

Although a cap would mean that the employer would know when their employee's statutory leave would definitely come to an end, it would not mean that the employer would know when their employee would be in a position to realistically fulfil all their contractual duties given the effect of having a child in this situation would have. If there is a need to introduce a policy to protect parents in this situation it would seem somewhat

arbitrary to impose a cap on the amount of leave that they are entitled to, as the reasons for the policy continue regardless of any time limit imposed.

**Question 8(a)** If you agree that the number of weeks of Neonatal Leave that are available to parents should be capped, what is the optimal maximum number of weeks of Leave that should be available?

- 2 weeks
- 4 weeks
- 6 weeks
- 12 weeks
- Other

Please provide reasons for your answer.

**LGA comments** If leave is capped, it would seem appropriate to have a cap of at least 18 weeks if this is the average stay for a baby born at 24 weeks. Fortunately, only a small proportion of parents would be in the situation that they would need this length of time, but it would mean that the majority of parents were able to take statutory leave as necessary according to the medical needs of their baby.

**Question 9** Do you agree that the maximum number of weeks of Neonatal Leave should be the same as the maximum number of weeks of Neonatal Pay in order to ensure eligible parents can receive pay throughout their leave period?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** Providing that all leave is paid would obviously be the most effective way of assisting parents in these circumstance, otherwise the right to leave may be of little benefit. However, if the wish is to restrict the number of weeks' paid leave for affordability reasons, then it may be preferable to provide for extra unpaid weeks so that parents are able to take time off if necessary and they can afford to.

**Question 9(a)** If you disagree with question 9 do you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped?

- Strongly agree
- Agree

- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** See answer to question 9.

**Question 10** If you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped, what is the optimal maximum number of weeks of Pay?

- 2 weeks
- 4 weeks
- 6 weeks
- 12 weeks
- Other

Please provide reasons for your answer.

**LGA comments** Again, given that the number of weeks' paid leave a parent would be entitled to is limited by the length of stay of their baby in hospital and that number of parents affected dramatically reduces with the length of stay, it would not seem unreasonable to provide a maximum of 18 weeks' paid leave to ensure those with the greatest need do not lose their entitlement when they are still facing such a challenging time.

### **When Neonatal Leave and Pay can be taken**

It is proposed that the entitlement to Neonatal Leave and Pay be taken at the end of any existing entitlement to family-related leave and pay, i.e. at the end of Maternity Leave or Paternity Leave, in a continuous block. The Government is considering how this will interact with Shared Parental Leave and Pay. Providing the leave entitlements as one continuous block will allow employers more ability to plan for the absence. It also makes it easier to understand and administer.

**Question 11** Do you agree that Neonatal Leave and Pay should be taken in a continuous period at the end of existing entitlements to family-related leave and pay, e.g. Maternity or Paternity Leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** Taking the leave in this way would seem to be appropriate for the above reasons. The proposals are made on the basis that parents will wish to maximise the time spent caring for their child at home following discharge from hospital. However, clarity will be required as to whether a mother will have to serve the full period of maternity leave entitlement before the right to neonatal leave and pay commences or if she can signal the intention to end her maternity leave early in order to trigger the commencement of the new right. For example, ending her maternity leave at the end of the 39 weeks' paid period could trigger the new right to a period of leave paid at the statutory rate from that point although it would reduce her overall period of leave.

### **Notice and evidence requirements**

It is unlikely that a parent will know that their baby will need to be admitted to neonatal care before it is born. Also, when a baby is admitted, it will not be clear for how long it will need to stay there. However, although a woman would not take Neonatal Leave and Pay until the end of her 52 weeks' Maternity Leave, a father's entitlement would arise at the end of their two week paternity leave period. There are, therefore, issues around providing notice to employers of entitlement to Neonatal Leave and Pay, which also need to take into account the parent's need for compassion and flexibility at such a difficult time.

If the entitlement to Neonatal Leave and Pay is to arise after the baby has been in hospital for two weeks, the Government proposes that this might be an appropriate point by which to notify the employer of the employee's entitlement and the likely length of time the baby may stay in neonatal care, although an early point in time would be preferable.

**Question 12** Do you agree that a father/partner should be required to give notice in advance of the end of their other statutory leave entitlement to Paternity Leave in order to take Neonatal Leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** We would agree with this approach so that employers have some warning that their employee was not able to return to work, if they were not already aware of the situation.

**Question 13** Do you agree that a mother should be required to give notice in advance of the end of her other statutory leave entitlement to Maternity Leave in order to take Neonatal Leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** See answer to question 12.

**Question 14 (a)** What would be a reasonable notice period for Neonatal Leave for fathers/partners taking Neonatal Leave at the end of Paternity Leave?

- 2 weeks
- 1 week
- Less than 1 week
- Other

**LGA comments** We would suggest requiring a week's notice, where reasonably practicable, would balance the need of the employer for notice with issues of practicality for the employee, given that they may not be aware of how long their baby may need to spend in hospital at an earlier date.

**Question 14 (b)** What would be a reasonable notice period for Neonatal Leave for mothers taking Neonatal Leave at the end of Maternity Leave?

- Less than 4 weeks
- 4-8 weeks
- More than 8 weeks
- Notice that should be given as soon as baby discharged from neonatal care
- Notice should be given at point baby admitted to neonatal care

Please provide reasons for your answers.

**LGA comments** An employer would appreciate as much notice as possible that a woman will not be returning from maternity leave at the time anticipated, given that this may have implications for the cover that has been put in place. It would not seem appropriate to require a mother to give notice at the point the baby is admitted. Requiring the mother to provide notice within a reasonable period after the baby is discharged would normally be sufficient. At this point the mother will know how many weeks the baby was in hospital for. She will therefore have knowledge of the extent of her entitlement and will also be aware of any longer term implications for the

care of her child. It will obviously be very important that both parents are made sufficiently aware of the notice requirements so that they are able to fulfil their obligations at a time when their thoughts may not be fully engaged with such matters.

**Question 15** What level of communication could be expected between a father/partner wishing to take Neonatal Leave at the end of Paternity Leave on a week-to-week basis while the baby is in hospital and their employer?

- Employer should be kept informed on a weekly basis
- Communication should be light-touch, and only when new information is available
- No requirement to communicate with employer

**LGA comments** Employers who are trying to cover the employee's workload would no doubt welcome some form of communication, be it email or phone call, once a week on the expected timescales.

### **Evidence of entitlement to Neonatal Leave and Pay**

As the right to Neonatal Leave and Pay would provide an employee with an entitlement to potentially a significant number of weeks of paid leave, the Government recognises that there is a need to guard against fraud. However, this needs to be balanced against the sensitivity of the situation and the challenging circumstances that a parent will already be facing. Another issue is the fact that mothers and fathers/partners may be taking Neonatal Leave and Pay at different times and therefore depending on when the entitlement is taken, different types of information may be available to each parent.

**Question 16 (a)** Do you agree that employers should be allowed to ask for evidence of entitlement to Neonatal Leave and Pay from fathers and partners taking Neonatal Leave and Pay at the end of Paternity Leave?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

**LGA comments** We would agree.

**Question 16 (b)** Do you agree that employers should be allowed to ask for evidence of entitlement to Neonatal Leave and Pay from mothers taking Neonatal Leave and Pay at the end of Maternity Leave?

- Strongly agree
- Agree

- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

**LGA comments** We would agree.

**Question 16 (c)** If you agree or strongly agree, what evidence would it be reasonable for an employer to request?

**LGA comments** A letter or similar from the hospital would seem appropriate evidence.

### **Employment protections and the right to return to the same job**

The Government proposes to give a parent who takes Neonatal Leave and Pay the same employment protections as a parent who is taking parental leave in respect of older children. This would include the right not to be treated unfavourably or be dismissed because they are taking, or are seeking to take, Neonatal Leave. The rights that currently apply in relation to parental leave in relation to returning to their job would also apply to Neonatal Leave.

**Question 17** Do you agree that parents on Neonatal Leave should have the same protections as employees on parental leave in respect of older children?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** It would be appropriate to give employees taking such leave protection from such treatment.

**Question 18** Do you agree that parents on Neonatal Leave and Pay should have the same right to return to work as employees on parental leave in respect of older children?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please provide reasons for your answer.

**LGA comments** The right to return for employees who take parental leave of four weeks is to the same job. If more than four weeks is taken, the employee has a right to return to the same job or, if it is not reasonably practicable for the employer to permit them to return to the same job, to another job which is both suitable and appropriate in the circumstances. It is not clear from the consultation document whether this four-week limit would apply to those taking Neonatal Leave and Pay or whether some other cut off would be used, such as in the case of maternity leave where the limit is 26 weeks. We would welcome authorities' views on whether they would consider a four-week cut off point appropriate for allowing this potential flexibility in terms of altering the job an employee is employed to do in the circumstances where an employee is taking leave to care for their baby in a neonatal unit.