



Department
for Business
Innovation & Skills

MODERN WORKPLACES:

Consultation on the
administration of Shared
Parental Leave and Pay -

government response

NOVEMBER 2013

Contents

Contents	2
1. Foreword from the Minister for Employment	3
2. Executive Summary	4
Aligning paternity leave and pay.....	4
Revoke binding notice to end maternity leave when it has been given before birth	4
Notice periods	5
Time limit in which to use shared parental leave	5
Keeping in Touch Days (KIT days).....	6
Right to return.....	6
Fostering to adopt - notice periods	6
Next steps	6
3. Consultation on the administration shared parental leave - Government response	7
Introduction and Background	7
Consultation process.....	8
Analysis of responses and Government response	10
Aligning paternity leave and pay.....	10
Question 1	10
Question 2	11
Question 3:	12
Question 4:	13
Question 5:	14
Question 6:	14
Question 7:	17
Question 8:	18
Question 9:	19
Question 10:	21
Annex A - List of Consultation Questions.....	22
Annex B - List of Respondents:	24

1. Foreword from the Minister for Employment



We want working parents to have more flexibility in how they arrange their time off and their work in a way that makes sense for their family in the year after the birth or adoption of a child.

It is our aim that the new system of shared parental leave creates a framework that better supports modern working families. We want to allow working parents to balance the responsibility of caring for their child without it having a negative impact on their career.

We want the new system of shared parental leave and pay to be simple to use and to understand. Where possible, we propose to build on well-understood and well-established practices. Parents and employers are familiar with the current system and it makes sense to maintain a level of continuity, building on the processes that are already in place for maternity, paternity, adoption and additional paternity leave and pay.

We think that the shared parental leave and pay system will function at its best where parents and employers can have open and honest conversations. We will encourage this at all stages in the guidance that will accompany the legislative changes.

We announced in November our intention to introduce a new system of shared parental leave and pay in 2015. Legislative provision for this is included in the Children and Families Bill, which is currently before Parliament. In February we consulted on the administration of the shared parental leave system in order to deliver an effective and proportionate system.

This document sets out the Government's response to the comments received on each of the issues addressed in the consultation on the administration of shared parental leave and pay. We are committed to developing and implementing a system that has simplicity and good communication at its heart.

A handwritten signature in blue ink, which appears to read 'Jo Swinson'.

Jo Swinson MP
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs

2. Executive Summary

In November 2012, the Government response to the Modern Workplaces consultation set out the Government's intention to introduce a new system of shared parental leave and pay. This system is intended to reform the leave and pay provision for working parents, providing choice and flexibility for parents and employers in how they balance taking time off work in the early stages of their child's life.

We understand the importance for businesses in being able to adapt to changing regulations and we want to ensure that employers find the transition to the new arrangements as simple and straightforward as possible.

In February this year, we launched the consultation on the administration of the new shared parental leave and pay system to seek views on how the new system will operate. Our approach aims to support our flexible labour market by taking account of the needs of modern working families and helping business respond to changing demands and economic circumstances.

Following analysis of responses to the consultation and feedback from stakeholders during the consultation process this document sets out the Government's plan for how the administration of the new shared parental leave system will be managed.

Aligning paternity leave and pay

In the consultation document we asked whether respondents had any evidence of administrative difficulties experienced by employers caused by the different notice periods for paternity leave and pay. We proposed aligning the notice period for paternity leave and pay at the end of the 15th week before the expected week of childbirth, or within 7 days of a child being matched with adopters.

We will align the notification periods for paternity leave and pay at the end of the 15th week before the expected week of childbirth or as soon as reasonably practicable.

Revoke binding notice to end maternity leave when it has been given before birth

We consulted on whether to make the cut-off point for mothers wishing to revoke a binding notice to end maternity leave that was given prior to birth at four or six weeks after birth.

We will set the cut-off point at 6 weeks following birth.

Notice periods

In the consultation we proposed that employees will be required to provide the same mandatory information when opting into the shared parental leave system as is currently required to be provided when fathers intend to use additional paternity leave (that is, the name and National Insurance numbers of the mother and the father or mother's partner, the number of weeks of maternity leave and pay or allowance taken). This will be in addition to the information about the total number of weeks available as shared parental leave and/or pay and how shared parental leave and/or pay will be shared between the mother and the father or the mother's partner. We stated that we had ruled out a limitation on the number of notifications for leave a parent could make. We proposed that parents would be allowed to notify their employer of their leave intentions as they require it and that employers and employees should have a two week discussion period for agreeing leave requests.

We intend to proceed with the proposals to require the same mandatory information that is currently required under additional paternity leave. We plan to set the notice period for an employee to notify a specific period of leave at 8 weeks, inclusive of a two week discussion period.

We have decided to introduce a procedural requirement for employees to provide a non-binding indication of their expected pattern of leave as part of the notification of their eligibility and intention to take shared parental leave.

We have also decided to introduce a cap of three notifications for periods of leave to be taken, in order to create a greater certainty for employers. This means that an employer does not have to accept any more than three notifications to take shared parental leave on specific dates or changes to dates already agreed. We will make provisions for changes that are mutually agreed between the employer and employee to not count towards the cap. This approach will balance the need for flexibility for parents and certainty for employers. Employers may choose to accept notifications or changes beyond the cap of three by mutual agreement with the employee.

Time limit in which to use shared parental leave

The consultation sought views on where the cut-off point for taking shared parental leave should be set. Two options were given: 52 weeks from the start of maternity leave or 52 weeks from birth.

We will set the time limit for taking shared parental leave at 52 weeks from birth.

Keeping in Touch Days (KIT days)

We consulted on whether 10 KIT days per parent to use whilst on shared parental leave was the right number.

We will create a provision for parents to have up to 20 days per parent to use whilst on shared parental leave. We will rename the days that will be available to parents on shared parental leave to distinguish them from KIT days for use during the maternity leave period. The KIT days on shared parental leave will be additional to the 10 KIT days will continue to be available to a woman whilst she is on maternity leave.

Right to return

We consulted on how to apply the right to return to the same, or the same or similar job under the new shared parental leave system.

We will adopt Option B as set out in Question 9 of the consultation. The right to return to the same job will be maintained for employees returning from any period of leave that includes maternity, paternity, adoption and shared parental leave that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks.

Fostering to adopt - notice periods

The Children and Families Bill includes provision to introduce a fostering-for-adoption status. We consulted on how employees involved in this procedure could provide their employers with realistic notice of the need to take adoption leave and pay in these instances.

We will make no change to the current notification arrangements for adoption leave and pay for employees who qualify for adoption leave and pay under the new fostering-for-adoption placement process.

Next steps

The legislative requirements for shared parental leave and pay are contained within the Children and Families Bill. The Bill was introduced into Parliament on 4 February 2013 and completed its passage through the House of Commons on 11 June. It was introduced in the House of Lords on 12 June and completed Committee scrutiny in the House of Lords on 20 November 2013.

In order to implement the new system by 2015, we are preparing the secondary legislation which we intend to publish in draft before the Bill receives Royal Assent.

3. Consultation on the administration shared parental leave - Government response

Introduction and Background

The Coalition Government affirmed its commitment to family-friendly working and workplaces with the commitment to “encourage shared parenting from the earliest stages of pregnancy – including the promotion of a system of flexible parental leave” (page 20, The Coalition; Our programme for Government).

The Government’s response to the consultation on Modern Workplaces was published last November and set out our ambitious plans to reform the pay and leave system currently available to working parents, whether through birth or adoption. We announced that 52 weeks of maternity leave would remain in place as the default position for all employed women. A woman with a working partner where they both meet the qualifying conditions for the shared parental system would be able to end her maternity leave early and she and her partner would be able to take shared parental leave and pay. In addition, we announced that adoption leave would remove the 26 week continuous service qualifying condition; that we would align statutory adoption pay with statutory maternity pay by increasing it to 90% of the adopter’s salary for the first 6 weeks; and extend adoption leave and pay to intended parents in surrogacy arrangements where they will be applying for a parental order. We also announced plans for unpaid time off work for father or a mother’s partner to attend ante-natal appointments, and for adopters to take time off work to attend adoption appointments. The full text is available at: <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/m/12-1267-modern-workplaces-response-flexible-parental-leave.pdf>.

For working families that decide to end maternity leave early, shared parental leave will give parents more choice and flexibility in how they share the care of their child following birth or adoption. We want to encourage more fathers and partners to play a greater caring role; enable both parents to retain a strong link with the labour market; and allow employers and employees greater flexibility in how work and family commitments are balanced.

The Children and Families Bill takes forward the Coalition Government’s commitments to encourage the full involvement of both parents from the earliest stages of pregnancy, including by promoting a system of shared parental leave, and provides the legislative basis for the commitments in the Government’s response to the Modern Workplaces consultation (November 2012).

The Bill was introduced into parliament on 4 February 2013 and completed its passage through the House of Commons on 11 June. It was introduced in the

House of Lords on 12 June and completed Committee scrutiny in the House of Lords on 20 November 2013.

Consultation process

On 25 February the Department for Business, Innovation and Skills (BIS) launched a public consultation to seek practical comments and suggestions on the administrative process of shared parental leave. The consultation set out proposals for how shared parental leave and pay could work in practice. The consultation closed on Friday 17 May 2013. Further information can be found at: <https://www.gov.uk/government/consultations/consultation-on-the-administration-of-shared-parental-leave-and-pay>.

Responses were received through the online survey at Survey Monkey and via the Modern Workplaces consultation mailbox. Electronic copies of the consultation papers were made available via the Government website at www.gov.uk which received 4,807 unique visits to the consultation page.

As part of the consultation process Jo Swinson, Minister for Employment Relations and Consumer Affairs, and BIS officials have undertaken a range of engagement activities with key stakeholders to canvass their views around key issues relating to the practical operation of shared parental leave and to help inform policy development. For an overview of the key engagement activities undertaken with key stakeholders, please see annex B.

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. The consultation received 87 responses from a broad spectrum of interested stakeholders. Not all respondents responded to all of the questions. Individuals, in particular, often responded to a single question that was of particular interest to them, or used the “any other comments” section to raise specific points outside the context of the consultation. Of those who responded to the consultation, 43.7% represented employers including representative bodies, small and medium sized business, and local government and 56.3% were from non employers, such as family groups, trade unions /staff associations, legal representatives, individuals and others (e.g. National Centre for Social Research).

A list of the questions contained in the consultation is set out in Annex A.

The table below provides a comprehensive breakdown of responses by sector group.

Employer respondents	Number of respondents	Percentage of Total
Business representative organisation/trade body	16	18.4
Large business (over 250 staff)	13	14.9
Medium business (50 to 250 staff)	1	1.1
Micro business (up to 9 staff)	3	3.5
Small business (10 to 49 staff)	3	3.5
Local government	2	2.3
Total Employer	38	43.7
Non-employer respondents (including family groups and employee bodies)		
Charity or social enterprise	9	10.3
Legal representative	3	3.5
Trade union or staff association	12	13.8
Other	1	1.1
Individual	24	27.6
Total Non employer	49	56.3
Total Employer and Non employer	87	100%

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

Analysis of responses and Government response

The consultation asked 10 questions of substance in addition to 2 questions inviting further comments. This section sets out the analysis of the responses received to each of the issues raised in the consultation document, the Government's formal response and our decision on how to progress.

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

Aligning paternity leave and pay

Under the current rules, to be eligible to take paternity leave an employee must provide their employer with notice by the 15th week before the estimated week of confinement (or within 7 days of being matched with a child for adopters) of their intention to take paternity leave; the number of weeks they plan to take and when they intend to take it. To be eligible for paternity pay, the employee must provide their employer with notice at least 28 days before they intend to take it. We know from engagement with stakeholders that the different notice periods could potentially result in confusion and may result in an employee being unable to take leave but being entitled to paternity pay. The consultation sought comments on how the process could be simplified.

Question 1

Do you have any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

Analysis of responses

Responses to Q1	
Total valid responses	64
Employer	32 (50%)
Non employer	32 (50%)

Summary of responses

A small number of respondents (7%) who responded to this question offered some form of anecdotal feedback relating to difficulties arising from the different notice periods for paternity leave and pay. Of these, 33% were employers and 67% non-employers. The conclusions taken from the responses highlighted that:

- Aligning the notice periods was a positive step that streamlined the process and reduced administration

- Simplicity is paramount as employees already find the notice periods confusing.

Question 2

Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)?

Analysis of responses

Responses to Q2	
Total valid responses	76
Employer	35 (46%)
Non employer	41 (54%)

Summary of responses

87% of respondents supported the proposal to align the leave and pay notice periods because this would simplify the process for both parties. Of these, 52% were employers and 48% non-employers. Their comments echoed those of employers in response to question 1, commenting that aligning the notice periods was a positive step that streamlined the process and reduced administration. The small number (12%) of respondents who did not support aligning the notice periods, were predominantly non-employers (89%) who called for the right to provide notice as soon as reasonably practical to be retained.

Government response

The Government will align the notification periods for paternity leave and pay at the end of the 15th week before the expected week of childbirth (or within 7 days of being matched with a child for adopters); or as soon as reasonably practicable (for example, where a pregnancy is not identified until a late stage). This decision to align the leave and pay notice periods is supported by the majority of respondents who agreed that this would simplify the process for both employers and employees. It provides certainty for employers in having sufficient notice of their employees' leave and pay plans, whilst maintaining minimum protections for those employees who might not be in a position to provide notice within the 15th week prior to the estimated week of confinement.

The opportunity to revoke binding notice to end maternity leave when it has been given before birth

For parents to take advantage of the shared parental system, a mother must give 8 weeks' notice to bring her maternity leave to an end. This notice is binding and can be given at any stage, including before birth. However, we

know that many mothers can feel very differently once they have given birth, and we therefore think that it would be both unreasonable and impractical to hold a woman to a commitment that she has made prior to giving birth. The consultation sought views on setting a reasonable time limit for revoking a binding notice given prior to birth.

Question 3:

Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth?

Analysis of responses

Responses to Q3	
Total valid responses	76
Employer	35 (46%)
Non employer	41 (54%)

Summary of responses

72% of overall respondents to this question favoured the 6 week cut-off period. Of these, 36% were employers and 64% non-employers. Non-employers argued that nothing should hinder mothers from giving their employer binding notice prior to birth, and that a 6 week cut-off point was an appropriate length of time for mothers to revoke a binding notice given prior to birth.

25% of respondents opted for a 4 week cut-off period. 79% of these were employers who commented that the ability to revoke a binding notice would reduce certainty for employers; or that the facility to revoke a binding notice should be restricted to special circumstances only. The remaining 3% of overall respondents were trade unions/staff associations who remained neutral but said that women should be able to revoke binding notices given prior to birth at any stage before the maternity leave ended.

Analysis showed that employers favoured the 4 week cut-off point for revoking a binding notice because early notice aided planning, whilst non-employers preferred 6 weeks or more.

Government response

We will set the cut-off point for revoking a binding notice at 6 weeks after birth to ensure employed mothers who wish to revoke a binding notice to end maternity leave given prior to birth have sufficient flexibility to do so. Six weeks provides employers with sufficient time for planning their workforce whilst giving mothers time to readjust and cope with any unplanned situations that might only become apparent following birth.

Notice periods

Employees will need to give notice to their employers of their intention to opt into the shared parental system. In addition, they will need to give notice to take specific periods of leave. We recognise that employers need an appropriate period of notice to be able to organise their workforce when employees will be absent from work on shared parental leave. We consulted on how the notice should work and what information should be provided by an employee to an employer.

In the consultation we included an example form (the ShPL1 form) which contained the information we proposed an employee would need to give to an employer when they opt into the shared parental system. We intend that the ShPL1 form will form the basis of notifications to take shared parental leave and pay. This draft form included the mandatory information on pay and leave that an employer will need to receive.

Question 4:

Do you agree that this level of information proposed (name and national insurance number of the employee and the other parent; how much leave and pay the mother had taken as maternity in order to determine the remaining leave and pay available as shared parental leave and pay; the maximum amount of leave available as shared parental leave and how it was divided between the 2 parents; and the signature of both parents) is sufficient from an employee?

Analysis of responses

Responses to Q4	
Total valid responses	70
Employer	36 (51%)
Non employer	34 (49%)

Summary of responses

56% of respondents agreed that the proposed level of information to be contained in the “ShPL1” form was sufficient. Of these, 26% were employers and 74% non-employers who said that the level of detail was similar to the information currently required when triggering additional paternity leave and pay and that it was a familiar process that users could adapt to quickly.

84% of the total number of respondents who said that the level of information was not sufficient were employers who suggested that the “ShPL1” should also include details of the proposed patterns of leave (dates of when leave will be taken); and details of the partner’s employer.

Question 5:

We are proposing to allow parents to notify their employer of their leave intentions as they require them rather than requiring them to formally notify all their leave plans for the entire shared parental leave period upfront. Do you agree?

Analysis of responses

Responses to Q5	
Total valid responses	75
Employer	36 (48%)
Non employer	39 (52%)

Summary of responses

51% of respondents were in favour of allowing parents to notify their employer of their leave intentions as they required them. Of those who agreed with this proposal, 24% were employers and 74% non-employers who said that the 8 week notice period for requesting leave provided sufficient time for employers to plan ahead and that flexibility was an important factor for parents. Key issues for the 37% of respondents opposed to this proposal centred on the burden to business in terms of workforce planning and payroll and the difficulty in arranging cover for short leave patterns. 75% of these respondents were employers and 25% were non-employers. They also called for leave patterns to be specified up front. This was a sentiment echoed by the remaining 12% of respondents, who opted against committing to either option.

Question 6:

Analysis of responses

Responses to Q6	
Total valid responses	77
Employer	37 (48%)
Non employer	40 (52%)

Summary of responses

60% of respondents supported restricting the discussion for agreeing requests to take shared parental leave to two weeks. Of these, 59% were non-employers and 41% were employers. They agreed that this provided sufficient time for employers to consider requests; avoided the discussions dragging on without resolution; allowed time for the employee to resubmit an alternative request; and fostered a balanced level of certainty for both parties. A number

of family stakeholders and trade unions argued that there should be a presumption that leave be granted unless there was a genuine business case for refusing and that business grounds for refusing should be set, along the lines of the arrangements in place under the right to request flexible working.

40% of respondents did not consider the two week discussion period as sufficient time to agree leave requests. Of these, 58% were employers and 42% non-employers. They commented that they were concerned that employers need more time to consider business needs, iron out any issues and make changes to accommodate the employee's absence. A small number of business representatives and trade unions/staff associations argued that a two week discussion period would be easier for larger businesses but more difficult for smaller businesses and those who employ specialist and highly qualified staff where arranging temporary cover may not be easy.

Government response

Our intention is that notification periods for leave should provide employers with a practical amount of time to make plans, whilst allowing parents sufficient certainty and flexibility to take shared parental leave.

Respondents have highlighted key concerns for employers around their ability to plan for employee absences. We have therefore decided to:

- (a) introduce a procedural requirement on employees to provide a non-binding indication of their expected pattern of leave as part of the mandatory information for notifying their employer of their eligibility and intention to take shared parental leave.

A non-binding indication of the expected pattern of leave will not constitute a formal notice to take that leave, and an employee will need to submit a formal notice with the minimum notice period of 8 weeks for any leave they wish to take. Such a non-binding indication will ensure that parents consider their leave plans from the outset and give an early indication to employers of the leave they intend to take. In addition, it will promote a culture where open and honest conversations can take place between employers and employees, which is at the heart of what we are trying to achieve.

- (b) apply a cap of three notifications for leave or changes to periods of leave.

We stated in the Administration Consultation that we did not intend to apply any limitation on the number of notifications of leave or "change requests" (a notification to change a period of leave formerly notified) or to limit the frequency of such notifications. However, in light of the consultation responses and discussions with stakeholders we have decided that it would be appropriate to apply a cap of three to the number of notifications that an

employee can make to an employer to take a period of leave. This will include changes to previous notifications.

We will make provisions for changes that are mutually agreed between the employer and employee to not count towards the cap. This will allow an employer to discuss changes to an employee's requested pattern of leave, where it would be beneficial to the business, such as asking whether an employee is able to return to cover the Christmas rush without the employee being concerned that agreeing to the change will restrict their flexibility to make additional notifications in future.

For the new system to function, it is essential that employers feel confident that the changes we are making will work for their business as well as for parents. Allowing employees to make unlimited notifications reduces certainty for employers. If an employer knows that an employee can chop and change the leave they take (albeit with notice) they are more likely to refuse to even consider patterns of leave that would require a complex system of covering the absent employee's work. They are more likely to require that parents take continuous periods of leave as a default position. We believe that this will undermine the spirit of shared parental leave and the potential benefits that might accrue to employers and parents. A cap of three notifications (excluding the notification of entitlement) will provide a greater level of certainty to an employer and may encourage the employer to be more accommodating to an employee wishing to take a more complex pattern of leave.

We believe that three is an adequate number, given that parents will have considered in advance how they will take the leave and will have indicated this (in a non-binding manner) to their employer at the point of notifying entitlement to leave.

The maximum of three notifications would not, however, stop an employer and employee agreeing a fourth or further notification, if that is what works for both sides. However, the employer would not be under any requirement to accept more than three notifications.

We will also proceed with the proposals to require the same mandatory information currently required under additional paternity leave, that is: the names and National Insurance numbers of both the applicant (i.e. the father or the mother's partner) and the mother; the total maternity leave and maternity pay or allowance that the mother has taken.

We will set the notice period for parents taking shared parental leave at 8 weeks, inclusive of a two week discussion period. This approach was broadly supported by respondents to the consultation. It balances the employer's need to know their employee's leave plans, whilst maintaining flexibility for parents to be able to take leave when they need to. It will ensure that an employer has no less than 8 weeks' notice of any leave to be taken.

To encourage parents to have open discussions with their employers about their plans ahead of making a formal request for leave, we will develop guidance on the benefits to both parties of engaging in early discussions on leave patterns prior to submitting formal notice.

Period in which shared parental leave is to be taken

We need to set the limit within which shared parental leave must be taken in a way that balances employers' need for certainty with parents' ability to share the responsibility of caring for their new child. The consultation set out two options on where the cut-off point for taking shared parental leave should be set: 52 weeks from the start of maternity leave or 52 weeks from birth.

Question 7:

Do you think that the cut-off point for parents taking shared parental leave should be 52 weeks from the start of maternity leave or 52 weeks from birth?

Analysis of responses

Responses to Q7	
Total valid responses	74
Employer	37 (50%)
Non employer	37 (50%)

Summary of responses

Responses for the two options regarding the appropriate the cut-off point for taking shared parental leave were finely balanced. 51% of respondents were in favour of setting the cut-off point at 52 weeks from the start of maternity leave. These responses were largely from employers (76%) who favoured a familiar system that mirrored the current cut-off point for maternity leave. It also provided a pre-determined date when leave will start and come to an end, thereby giving greater certainty for employers. This is a sentiment echoed by over half (54%) of our key employer stakeholders and individuals who stated that women who are not entitled to shared parental leave or who choose to remain on maternity leave should not be at a disadvantage.

Those in favour of setting the cut-off point at 52 weeks from birth were made up of 22% employers and 78% non-employers. These respondents were concerned that a cut-off point set at 52 weeks from the onset of maternity leave would be a regressive step from the current additional paternity leave arrangements which require the leave to be taken by the child's first birthday.

Government response

We will set the cut-off point for taking shared parental leave to 52 weeks from birth. This reflects the current arrangements in place for additional paternity

leave and encourages greater paternal involvement.

Keeping in touch (KIT) days

Keeping in Touch (KIT) days are currently available to mothers, fathers and adopters on maternity, adoption or additional paternity leave. They allow employees to spend up to 10 days at work without bringing their statutory leave and pay to an end. This means that people can keep in touch with their manager and colleagues whilst they are taking extended periods of statutory leave. KIT days can only be used if both the employee and employer agree to them. We recognise the benefits that KIT days could bring to shared parental leave in terms of facilitating training days, attendance at team events and supporting employers and employees in planning return dates. They would also be available to parents who want to try out a new part-time working pattern, or to phase their return to work.

Question 8:

Is 10 KIT days per parent for shared parental leave the right number?

Analysis of responses

Responses to Q8	
Total valid responses	73
Employer	35 (48%)
Non employer	38 (52 %)

Summary of responses

59% of employers and non-employers agreed with the provision of 10 KIT days per parent. Of those who disagreed, 60% were employers who provided limited commentary on the focus of their concerns. Some argued that 10 KIT days should either be shared between parents to align with the number of days available under the maternity leave system or that less than 10 days should be available. A small number (14%) of respondents remained neutral, choosing not to agree or disagree with the proposal. Some commented that KIT days were being used as a substitute for part time working.

Government response

The principle of KIT days during maternity leave is well-understood by both employers and employees. It is a light-touch mechanism that enables employers and employees to come to a mutually beneficial agreement about returning to work for a few days during a longer period of leave. It is up to both parties to decide how to make use of that time, and to agree whether it will be remunerated above the statutory pay level for the week.

We believe that it is appropriate to roll forward the KIT-day principle for parents to use whilst on shared parental leave. Several stakeholders have suggested that it is important to keep KIT days for use whilst on shared parental leave distinct from those available to women on maternity leave. This is to avoid putting potential pressure on women to return early to the workplace. We propose providing for parents to have up to 20 'KIT-style' days each whilst on shared parental leave. We will create a different name to keep this distinction clear. We are currently considering appropriate names. These KIT days will be additional to the 10 days available to a woman on maternity leave.

Right to return

The right to return to the same job following maternity, adoption and paternity leave is an important protection for parents that we were keen to apply to shared parental leave. The existing arrangement for maternity leave allows women who return to work within 26 weeks from the date their leave began to return to the same job. Women who return to work after 26 weeks of leave are entitled to return to the same job or, where that is not reasonably practicable, a similar job. This situation cannot be mirrored in shared parental leave as leave can be taken discontinuously. The consultation set out two approaches to maintaining a balance between protecting parents and the needs of employers.

Question 9:

Which "right to return to the same job" option would you prefer be applied to shared parental leave; Option A) a right to return to the same job for employees returning from the first continuous block of leave of 26 weeks or less or Option B) a right to return to the same job for employees returning from a period/or periods of leave totalling 26 weeks or less in aggregate, including where leave is taken in discontinuous blocks?

Analysis of responses

Responses to Q9	
Total valid responses	68
Employer	35 (51%)
Non employer	33 (49%)

Summary of responses

There was clear divide between business and family groups. 59% of respondents preferred Option A. Of these, 70% were employers and 30% non-employers. 18% of respondents opted for Option B, 25% of who were employers, 75% non-employers. The remaining 24% chose not to opt for either of the options outlined in the consultation document, many of whom

suggested alternative options. These included the right to return to the same job for all leave of any length; the right to return to the same job for all periods of leave of less than 26 weeks; and the right to return to the same job for a single continuous block of any length. Key comments from family groups included concerns that under Option A, employees may feel pushed into taking one large block of leave and that Option A was a regressive step that reduced existing employee rights. Employers cited concern over Option B placing an administrative burden on them and having to hold the same job open for a full year in some cases.

Government response

We want the new shared parental leave system to provide suitable protection for parents whilst maintaining flexibility for employers.

Alongside the consultation we held focus groups with stakeholders to explore this issue in more detail. A number of consultation respondents suggested additional options for applying this protection. We have considered all these responses in detail and looked at the pros and cons of a number of options. It has not proven possible to simply roll forward the current right to return protections that apply to continuous periods of leave. The discontinuous nature of shared parental leave requires a different approach.

We have decided to adopt Option B. The right to return to the same job will be maintained for employees returning from any period of leave that includes maternity, paternity, adoption and shared parental leave that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks.

Although the majority of consultation respondents favoured Option A, it risked creating arbitrary results. Under Option A, if a woman took 2 weeks maternity leave and her partner took 2 weeks paternity leave and then both returned to work, the woman and her partner would have different rights while being on shared parental leave after week 26. This difference in treatment would also raise problems of sex discrimination.

Fostering-for-adoption - notice periods

The Children and Families Bill includes provisions to introduce a new fostering-for-adoption status. Under the new system there will be a small number of cases where a child could be placed with approved prospective adopters with little or no notice of the placement. Whilst the new status will be used in a relatively small number of cases, the consultation considered how we could provide employers with realistic notice of the need to take adoption leave and pay in these incidences.

Question 10:

In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay?

Analysis of responses

Responses to Q10	
Total valid responses	58
Employer	31 (53%)
Non employer	27 (47%)

Summary of responses

It is clear that in some cases there was a lack of clarity amongst respondents as to whether this proposal related to fostering or adoption (*fostering-for-adoption is a new status being introduced by the Children and Families Bill*). 35% of employers said that prospective adopters should have an early discussion with their employer; at the very least once they had been approved as an adopter. However, it was recognised by all respondents that the incidence of 'instant placements' would be rare, and though leave could be for a long period, managing situations like this would not present a situation that would be substantially different from an employee falling sick or having an accident.

Government response

After carefully considering the responses we propose to make no changes to the current notification arrangements for adoption leave and pay for employees who qualify for adoption leave and pay under the new fostering-for-adoption placements process. This is based on respondents' view that the fostering for adoption system does not facilitate different notice arrangements. We recognise that an employer will, in these circumstances, often be presented with almost no notice of an employee's absence from the workplace on adoption leave. However, we expect the occasions where a child is placed with little or no notice to be rare, certainly rarer than situations where an employee for example has an accident or is diagnosed with an illness and goes on long term sick leave without notice.

To support employers in managing situations of this nature, we will develop best practice guidance and encourage parents to have open discussion with their employers from the earliest stages.

Annex A - List of Consultation Questions

Question 1: Do you have any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

Please explain your response:

Question 2: Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)? **Yes/ No If not, please explain why.**

Question 3: Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth? **4 weeks or 6 weeks; please explain your response:**

Question 4: Do you agree that this level of information is sufficient from an employee? If not, please explain why and what information you would like to be required. Set out in paragraphs 74 – 76 of the consultation document. **Yes/ No; If not, please explain why and what information you would like to be required**

Question 5: We are proposing to allow parents to notify their employer of their leave intentions as they require them. Do you agree? (Please explain) **Yes/ No; please explain your response:**

Question 6: To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, we propose setting the negotiation period at 2 weeks. Do you agree that a 2 week negotiation period is appropriate? **Yes/No; please explain your response:**

Question 7: Do you think that the cut-off point for parents taking shared parental leave should be: **a) 52 weeks from the start of maternity leave, or b) 52 weeks from birth?**

Question 8: Is 10 KIT days per parent for shared parental leave the right number? **Yes/ No; please explain your response:**

Question 9: Which “right to return to the same job” option would you prefer be applied to shared parental leave; **a) or b)? Set out in paragraphs 109 – 121 in the consultation document. Option A/Option B; please explain your response:**

Question 10: In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay? Please explain your response:

Question 11: Do you have any other comments that might aid the consultation process as a whole?

Question 12: Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Annex B - List of Respondents:

This list represents those organisations that were willing for their response to be disclosed.

<ul style="list-style-type: none"> • Association of Breastfeeding Mothers • Association of School and College Leaders • Association of Teachers and Lecturers • Birmingham Chamber of Commerce (BCC) • Birmingham Law Society • BLISS • British Retail Consortium (BRC) • Buckinghamshire County Council • Confederation of British Industry (CBI) • Chartered Institute of Payroll Professionals (CIPP) • Chartered Institute of Personnel and Development (CIPD) • Chartered Society of Physiotherapy • Children in Scotland • Constructing Equality • Creative Max Limited • EEF the Manufacturers Association • Employer Network • Employment Lawyers Association (ELA) • Fawcett Society • Federation of Small Business (FSB) • Food and Drink Federation (FDF) • Ford of Britain • Hampshire County Council • Institute of Directors (IoD) • The Law Society • Lewis Silkin LLP • Local Government Association (LGA) 	<ul style="list-style-type: none"> • Marks and Spencer • Maternity Action • Mothers' Union • My Family Care • NatCen Social Research • National Childbirth Trust (NCT) • National Union of Teachers (NUT) • North East Chamber of Commerce (NECC) • Prospect • Royal College of Midwives • Severn Trent Water • Tesco • The Law Society of Scotland • Toyota Motor Manufacturing (UK) Ltd • Transport for London (TfL) • Travers Smith LLP • Transport Salaried Staffs' Association (TSSA) • Trade Union Congress (TUC) • Unite The Union • Universities and Colleges Employers Association • The Welsh Government • Working Families
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