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Department for Business, Energy and Industrial Strategy
Family-related Leave and Pay Team
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Sent via email to: supportingfamiliesconsulation@beis.gov.uk

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Parental leave and pay: Supporting parents and achieving equality

Dear Family-related Leave and Pay Team

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support though their lives.

The Association welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy's consultation on parental leave and pay.

We hope that our submission is useful - please do not hesitate to contact us for more information if required.

Yours sincerely



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Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



The BMA welcomes the government's consultation on reforming parental leave. Some progress was made with the introduction of Shared Parental Leave (SPL) towards creating a system with more choice and flexibility. However, there are still aspects of the current system that reinforce gendered norms around caring responsibilities and fail to provide sufficient flexibility and choice to all families, notably such as the low level of statutory pay for fathers and partners. This has significant impacts on gender equality and the gender pay gap, but as importantly, it has impacts on child and family wellbeing. Research shows that fathers and second partners want to be able to participate more in parenting but are often hindered from doing so by the practical and financial challenges that exist within, and are created by, the current system.

The government has acknowledged in the consultation paper that take-up of SPL since its introduction in 2015 is likely to be very low. It says it is likely to be in the middle of the 2-8% of eligible fathers and partners originally estimated.

The BMA has been a strong advocate of enhancing pay for SPL in the NHS. In 2019 we succeeded in getting enhanced pay for our junior doctor members (alongside enhanced pay for staff on Agenda for Change terms and conditions), but the same rights have not been extended to all doctors in the NHS.

During August 2019, the BMA surveyed over 600 consultants, SAS doctors, and employed and contractor GPs about SPL. The survey showed that enhancing the rate of pay for those sharing leave to the same level as those taking maternity or adoption leave is likely to greatly increase take up: 44 per cent of respondents said that if SPL was paid at the rate of maternity and adoption leave, they would be more likely to take it. This rate was higher for men with over half (53%) saying that this would make them more likely to use the entitlement. There was a strong feeling amongst respondents that enhancing pay, and thus giving families real choice over who takes parental leave, would have a positive impact. 88 per cent agreed or strongly agreed that extending enhanced SPL pay to all doctors would have a positive impact on their/their colleagues work as a doctor. In November 2019 the Conference of England LMCs passed a motion calling for the negotiation of appropriately funded parental leave for salaried, contractor and locum GPs, as well as non-clinical NHS roles.

Evidence from other countries shows that take up from fathers and partners tends to be low in transferable leave systems (like SPL) and in systems where there is no pay or the pay is very low (as statutory pay for SPL is). Take up is higher where fathers have access to well-paid leave on a 'use it or lose it' basis. In addition, the SPL scheme's complexity could be an additional barrier to take up.

There are wider issues around parental leave and pay which we believe this consultation could help address. In summary:

- there should be a substantial period of non-transferable, well-paid leave to be available to each parent, with an additional pot to be shared between parents as they choose.
- Well-paid leave means paying leave at or near earnings replacement rates.
- If statutory pay is enhanced to at or near earnings replacement rates, employers who are currently funding enhanced occupational pay should demonstrate how they are recycling any savings into other employee benefits that support work-life balance and well-being.

- There must be continued recognition of the importance of health and safety and anti-discrimination protections for women around pregnancy, childbirth, maternity and breastfeeding.
- Paternity leave and parental leave rights should be day one rights as maternity and adoption leave are.
- Any reforms or new leave rights should take into account the diversity of families, in particular, the needs of lone parents, same-sex partners, adoptive parents and intended parents having children through surrogacy.
- For working fathers, partners and adoptive parents who do not qualify for statutory pay (e.g. because they are not employees but are self-employed or locums) there should be access to an allowance, similar to Maternity Allowance, so that they are financially supported to take time off to care for a new child.
- Cultural and organisational barriers to taking leave need to be addressed. In particular, government and organisations should consider what more could be done to promote awareness of rights, to make them as simple as possible to access, and to challenge gendered expectations about leave-taking and caring.

Question 1: What emphasis should be placed on enhancing Statutory Paternity Pay versus the length of Paternity Leave available?

The consultation document points to a range of evidence that shows that the low level of pay available for paternity leave is the most significant factor in determining uptake. This is why the BMA has pressed in its negotiations with NHS employers for enhanced pay for leave for fathers and partners. We also believe that paternity leave should be a day one right, as maternity leave is.

Research shows that offering well-paid paternity leave around the time of birth, and encouraging new fathers to take it, increases fathers' involvement in childcare over the long term, helps to break down traditional gender stereotypes, benefits families, and contributes to a culture of inclusion. The immediate weeks after a birth or adoption are also crucial in providing support to birth mothers and primary adoptive parents, helping families to adapt to their new situation.

As a minimum, to enable all fathers and partners to take time off at this time, we believe that the current two weeks of paternity leave should be paid at 90% of earnings as the early weeks of maternity leave are.

The BMA believes there should be an additional longer period of well-paid, non-transferable leave made available to fathers and partners too to be taken around the time of the birth or adoption or later in the first year (see answer to question 5 below).

In addition, a Paternity Allowance and Shared Parental Allowance should be created, (mirroring the Maternity Allowance benefit) so that self-employed, locums and others who do not qualify for statutory payments are also financially supported to take time off after having children.

Question 2: What impact would changing either leave or pay have on our policy objectives?

It is vital that any reforms to existing leave or pay do not undermine the important policy objectives of: enabling mothers to prepare for and recover from birth; facilitating women's return to work and staying in work; and preventing pregnancy and maternity discrimination.

If properly designed and delivered, further reforms to parental leave and pay could have a range of positive impacts on the policy objectives outlined in the consultation.

We consider that any proposed reforms should be designed to make progress against the following policy objectives to:

- give working families more choice and flexibility
- increase paternal involvement in childcare
- help to narrow the employment and gender pay gaps.

Question 3: How should the costs of providing Paternity Leave and Pay be apportioned between Government, employers and parents?

We believe the majority of the cost should be borne by government rather than parents or employers. Parental leave and pay should be available to all working families, regardless of their personal financial circumstances or employment status.

Strengthening universally available statutory leave and pay entitlements for fathers and partners should also help to reduce gendered assumptions about who needs or will take time off.

Question 4: Could enhancing Statutory Paternity Pay and extending Paternity Leave result in differential impacts across families with different characteristics (e.g. families from different socio-economic groups or cultural backgrounds)?

Yes, as research referenced by the consultation paper shows the rates of take-up of existing paternity entitlements is different across families. For example, those in receipt of enhanced pay from their employer are more likely to take it. Therefore, enhancing statutory paternity pay is likely to have differential impacts. Families who currently do not have access to enhanced pay from their employer are likely to benefit more from enhanced provision and face less barriers to taking leave.

The clear principle which should underpin any reforms is to create a universally accessible, well-paid and flexible system that works for all families regardless of their different characteristics or employment status.

Question 5: Should support vary according to family characteristics, including income levels? For example, should there be a cap on Statutory Paternity Pay for high earners?

It is important that there is a universal entitlement with statutory pay set at or near to earnings replacement rates, particularly to encourage take up of this leave by fathers and partners. Families have established living and housing costs that reflect their normal earnings and they must meet those costs while on leave after having children.

At minimum, the two weeks of statutory paternity leave immediately after birth or adoption should be paid at the same rate as the first weeks of statutory maternity leave, i.e. 90% of normal earnings. Ideally, a further 4 weeks of non-transferable leave should be made available to the father or partner, also at 90% of normal earnings, which could be taken any time in the first year. This would give each parent at least six weeks of leave at 90% of their normal pay.

A lower cap on statutory pay, such as the 80% earnings cap that applies in Sweden, Iceland or Norway should only be considered if there's a proposal to introduce similarly long periods of well-paid leave as exist in those countries.

Question 6: Should the level of reimbursement for employers vary according to their size (as now)?

Yes, we believe small employers should be able to reclaim more from the state to cover the additional costs and difficulties they face in administering leave and pay and arranging cover (as they can at present). It is vital that employers are promptly and sufficiently reimbursed too.

Our membership has highlighted specific problems with the current system for providing reimbursement for maternity locum cover in GP practices. The amount of money available from government is insufficient to cover the cost of providing this cover and this exacerbates workforce pressures and recruitment and retention difficulties.

Question 7: How might businesses that already provide enhanced Paternity Pay respond to any enhancement to Statutory Paternity Pay? For example, would they extend the period of contractual leave and pay?

As a trade union that has collectively agreed enhanced pay for leave from employers, we would like to see further improvements in contractual benefits if statutory pay is increased. We believe employers should demonstrate how any money saved from increased statutory pay is recycled into improving paid leave, work-life balance or well-being of staff. This is particularly important given the current workforce shortages in the NHS and the impact this has on working hours, mental health and well-being of staff, which impacts significantly on the time and quality of doctors' family lives too.

Question 8: How should the timing of when leave can be taken be balanced between giving families choice and flexibility, and incentivising particular parental behaviours? For example, should fathers/partners be able to take leave and pay at any point in the first year or be required to take leave when the mother has returned to work to incentivise solo parenting?

We believe the priority should be to remove current barriers and disincentives to leave-taking and caring by fathers and partners. The BMA has advocated strongly for enhanced pay for Shared Parental Leave as we believe the current low rates of statutory pay are a major disincentive for fathers and partners to take time off to care for children. We believe that other amendments could also be made to our leave and pay system to encourage more equal sharing of caring responsibilities in the home and enable greater gender equality in the workplace.-The evidence from Scandinavian countries that have a non-transferable period of leave for shows that this increases take-up of leave by men

We also recognise that modern families come in all shapes and sizes and government policy should also support families to have choice and flexibility rather than compel families to follow any one particular model. For example, within the medical profession, there is a huge variety of working patterns and many doctors have children during their training when they may be rotating through placements with different employers. Outside of the compulsory period of maternity and adoption leave and the immediate period of paternity leave after birth, there should be flexibility to support choice for both parents to take leave and pay in a pattern that fits with their family, work and career opportunities in the first year.

Question 9: How should we balance giving fathers/partners flexibility and choice (e.g. to take paternity leave in blocks) with the needs of employers and co-workers for certainty around when the father/partner is likely to be off work?

As indicated above, flexibility and choice is important. We would like to see the flexibility that exists within SPL (i.e. being able to stop and start leave in the first year) maintained. We would also like to see single parents have access to more flexible leave in the first year too. At the moment they only have access to maternity or adoption leave which lacks the flexibility of SPL and has to be taken in a single continuous block.

We believe the existing eight-week notice required before a period of SPL is sufficient to give employers and co-workers certainty.

Question 10: What aspects of the current Shared Parental Leave and Pay scheme are most successful, and which are most in need of reform? Please give reasons for your answer.

The current SPL and Pay scheme is overly complex, difficult for both employers and employees to understand, and administratively cumbersome. All these factors may hinder take-up. It could be simplified by simplifying notification requirements and eligibility requirements, for example, by making SPL and Pay a day one right. In addition, research shows that in transferable leave systems, mothers are still seen as the primary care-givers and leave-takers, with some people viewing the shared element as 'taking away' some of the mother's entitlement.

The government should therefore look at the work of the Women and Equalities Select committee¹ and the evidence provided by EHRC and Working Families and focus its reforms on:

- simplifying the system including the administrative elements
- creating non-transferable entitlements to incentivise each parent to use their entitlement
- ensuring that all leave periods are sufficiently well-paid to make them attractive to families.
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Question 11: Should there be a dedicated pot of leave and pay for each parent within the Shared Parental Leave and Pay scheme?

Yes. As set out above, each parent should have a dedicated, non-transferable leave and pay entitlement, with an additional pot to be shared between the parents as they choose.

Question 12: Should mothers continue to be the 'gatekeeper' for the Shared Parental Leave and Pay scheme?

As above, we believe each parent should have a dedicated, non-transferable period of leave. There must be a protected period of maternity leave for the health and wellbeing of both mother and baby after birth.

We support an additional shared entitlement, provided there is an adequate protected period of well-paid guaranteed leave for mothers after birth, and fathers and partners have access to their own well-paid period of leave that does not depend on a mother cutting short her leave.

Question 13: Should there be an element of pay enhancement in the Shared Parental Leave and Pay scheme?

Yes. See previous answers on why pay enhancement is important.

Question 14: Could enhancing Statutory Shared Parental Pay and/or giving fathers access to 'use it or lose it' leave through the Shared Parental Leave and Pay scheme result in differential impacts across families with different characteristics (e.g. families from different socio-economic groups or cultural backgrounds)?

Yes. See answer to question 4. The clear principle which should underpin these reforms is to create a universally accessible, well-paid and flexible leave system that works for all families regardless of their different characteristics. As access to enhanced pay and leave is variable at

¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2017/fathers-workplace-government-response-17-19/>

present (depending on eligibility for contractual employment benefits) there will be differential benefits from introducing an enhanced statutory scheme.

Question 15: Should support vary according to family characteristics, including income levels?

See our answer to question 5.

Question 16: How should any enhancement to Statutory Shared Parental Pay interact with the level of statutory pay available under paternity and maternity provisions, in particular, how should Government prioritise the different entitlements in terms of providing enhanced pay?

It is important that the government reforms do not undermine existing maternity provisions. A minimum of six weeks' maternity leave at 90% should be retained. At minimum, the two weeks' paternity leave after birth should also be paid at 90%. Fathers should also be given an additional month of 90% pay, which would give them a total of six weeks at 90% pay. We believe there should then be, at minimum, an additional six weeks of 90% pay for SPL.

Question 17: How might businesses that already provide enhanced Shared Parental Pay respond to any enhancement to Statutory Shared Parental Pay? For example, would they extend the period of contractual leave and pay?

As a trade union we would be seeking to ensure that any money saved by employers from increasing statutory pay is recycled into improving contractual benefits, as stated in our response to question 7. In addition, employers must be reminded that they cannot unilaterally reduce or alter existing collectively agreed contractual benefits. Any changes would need to be negotiated and collectively agreed. We hope that employers would continue to recognise the benefits of providing good occupational schemes in terms of improved recruitment, retention, employee engagement and well-being and the damage they could cause by reducing them, particularly given the current recruitment and retention difficulties and workforce pressures in the NHS.

Question 18: Given your views on priorities for reform of Paternity Leave or Shared Parental Leave, are there any implications for maternity arrangements including:

A. *The length of Maternity Leave?*

Not sure.

B. *The level and extent of Statutory Maternity Pay*

Not sure.

C. *The current inflexibility as to when Maternity Leave can be taken?*

Not sure.

The implications on maternity entitlements will need to be fully considered in any proposed reforms of other types of leave. As set out above, it is vital that existing maternity leave and pay provisions designed to protect the health and safety of mother and child immediately after birth and to protect women from discrimination are not undermined by any proposed reforms.

Question 19: What aspects of the current arrangements for parental leave (which can be taken up to and including the child's 18th birthday) are most successful, and which are most in need of reform? Please give a reason for your answer.

As the consultation document says, responsibility for caring for a child does not end after the first year of a child's life. When unpaid leave is the only option available, financial concerns are likely to be a key determinant of whether the parental leave for older children is used.

This is exacerbated by the inflexibility of the current system where unpaid parental leave for older children can only be taken in week long blocks (unless a collective agreement provides otherwise). This could place parents (and employers) in a difficult position, as they may have to lose a whole week's salary (or labour) when the amount of leave actually needed might be only a few days or even a few hours.

We would like to see more flexibility built into parental leave to allow for shorter periods to be taken as needed. We also do not believe that such a long qualification period (one year of service) is necessary for parental leave.

Question 20: How should the Government balance the length of leave for parents of older children with the level of pay in order to incentivise take up?

The government should prioritise making pay available for parental leave of older children, making it more flexible and reducing the qualifying period for the leave. At present, this leave is not widely used because it is unpaid and inflexible so simply extending the leave entitlement will bring minimal benefits.

Collective bargaining through unions has led to some employers offering better and more flexible systems, including pay for some or all of this type of parental leave. For example, NHS Scotland's model policy requires employers to provide eligible employees four weeks of their parental leave on full pay.² This has clear benefits in supporting working parents to remain in the labour market and establishing a culture of family-friendly workplaces, which accords strongly with the government's stated policy aims.

Question 21: Are there any other reforms to parental leave for older children that would support the Government's wider goals for parental leave policies?

No.

² https://www.tuc.org.uk/sites/default/files/Congress_2016_TUC%20Equality%20Audit_Digital.pdf

Question 22: Do you agree with the Government's objectives for parental leave and pay policies? (Objectives can be found in section 1)

Yes. We strongly agree with the policy objectives to improve support for working families. At a time when there are severe shortages across the medical workforce, it should be a policy priority to maximise efforts to ensure that working parents are given the support they need to balance their careers with child-raising responsibilities. We believe this will help with recruitment and retention in the profession and NHS thus alleviating pressures on existing staff and their families. It is also imperative that government policy also recognises the wider societal value of ensuring a good work-life balance, more gender equality in leave and care-giving, and the importance of effective parenting to child development.

Question 23: Do you think the Government should consider a more radical change – potentially moving to a single 'family' set of leave entitlements, or seek to reform the existing entitlements?

As the consultation document sets out, a new model of family-related leave and pay would require significant and sustained investment, both financially and politically. However, this consultation represents an opportunity to make some significant steps towards transforming our current system to a simpler, fairer, and more equitable approach.

The government needs to be careful that any piecemeal reform of existing entitlements does not add to complexity or involve small changes that do not really deliver the transformational change we need, especially in improving take-up of leave by fathers and partners and families that currently have less choice because of the poor levels of statutory pay. It also needs to be mindful that it does not weaken any existing protections, collective agreements or positive employer policies and practices, which would then undermine the policy objectives it is seeking to achieve.

Question 24: If we were to move to a new model for parental leave and pay, which areas for reform are most important? Please give a reason for your answer. In particular:

A. *Is more support needed for families around the time of the birth of a child or later, when the child is older?*

Ideally, we would like to see the government introduce a comprehensive set of well-paid family leave entitlements that support working parents (and consideration should also be given to the needs of working carers although this is not the subject of this consultation).

The transition to parenthood is a time when families clearly need the additional support which maternity, paternity and Shared Parental Leave and pay provides.

However, there are other times that create pressure on parents, for example, around return to work, settling into childcare, from nursery to school, during school holidays or exams. Periods of family illness or disability can also greatly add to the pressure on some families, as can things like divorce. The leave system should be flexible enough to provide adequate support in

challenging times and not increase the pressure on families when they are already under stress. This will also have benefits in enabling employees to be more focused and productive when they are at work.

B. Should any incentives for fathers to take more responsibility for childcare focus on: a specific paternity entitlement; changes to the Shared Parental Leave and Pay scheme; or parental leave for older children?

All of the above. As indicated throughout our response, we believe that a comprehensive approach is required. Paternity leave and pay entitlements around birth or adoption encourage bonding and active involvement in childcare from the earliest stage. But there must be support for this to continue or develop in later stages too. Parental leave for older children needs to be improved and there should be a simpler, more equitable approach to SPL in the first year. We consider that creating a specific well-paid and longer entitlement to leave and pay for fathers and partners in the first year is likely to be a very effective enabler of a cultural shift towards more equal parenting responsibilities, but a combination of all these factors will be important to ensure a cohesive system is developed.

C. Should the Government give greater priority to the length of leave available or to the pay enhancements available?

Length Pay enhancements Don't know

As set out in our earlier answers, we consider low pay to be the most significant barrier to uptake of all forms of leave. But we do not consider that the government should create a false dichotomy between length of leave and pay enhancements. Both elements may have different impacts based on a family's particular situation, and these should be considered holistically. The flexibility of leave, the current restrictions on eligibility to leave, and the complexity of SPL which could also act as a disincentive to leave-taking also need to be considered as part of any reforms.

D. Should support be directed to any particular groups of families? If so which groups, and how?

We suggest that the government targets its efforts based on the principle of proportionate universalism i.e. resourcing and delivering a universal offer at a scale and intensity proportionate to the degree of need. All families, irrespective of their characteristics, should be able to access the support they need. The government should carry out and make public a full equality impact assessment of its final proposals to ensure that it is appropriately tailored.

E. How should the costs of any reforms fall between families, the Government and business? Please provide reasons for your answer.

If the government wishes to make serious progress towards a cultural shift of more equal child-caring responsibilities, it should be prepared to make the significant and sustained investment that will be needed to provide this. Employers have a role to play, but many are likely to need incentivising to take the action necessary to support working families effectively. We would be

concerned if the costs of these reforms were to fall predominantly on employers and especially on families, as this is likely to re-entrench and reinforce existing inequalities.

Question 25: Should Government prioritise reform of parental leave policies over other Government policies which support parents to combine work with family life?

It is not clear from the consultation which other government policies are being referenced by this question. However, we do not believe that the government should create a false dichotomy between reforming parental leave and other government policies, like providing a universal free childcare offer, supplemented by additional support with childcare costs and rights to encourage access to flexible working. Parental leave is part of a whole range of inter-connected and wide-ranging policies all of which have a greater or lesser impact on work and family life. We do however, reiterate our view that reforming parental leave has a wide range of potential policy benefits and would urge the government to be ambitious in this area.

Finally, we note the scope of the consultation is Great Britain, due to the devolution of employment law to the Northern Ireland Assembly. However, given the Assembly has not sat for over two years we fear that our members in Northern Ireland will lose out by not benefitting from the changes this consultation will result in. It is possible that this could result in further difficulties for the HSC in Northern Ireland to recruit and retain staff.