



Law Society
of Scotland

70
Years
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Consultation Response

Good Work Plan: Proposals to support families –
neonatal leave and pay

October 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Equalities Law and Employment Law sub-committees welcome the opportunity to consider and respond to the Department for Business, Energy & Industrial Strategy consultation: Proposals to support families – neonatal leave and pay. The committees have the following comments to put forward for consideration.

Consultation questions

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)?

Agree.

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

Agree.

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?

Agree.

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 two weeks.

We agree with the government position as set out in the consultation paper. Two weeks would appear to us to strike the correct balance.

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

We believe it would be worthwhile giving consideration to the inclusion of cases where there is a very short period of time between discharge after birth and re-admission to hospital. It would be wrong to exclude parents from this additional support in circumstances where a discharge was made in error or complications set in almost immediately after discharge. Medical views may be required to consider this but our initial view is that any such period would be a very short one.

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

Agree.

It is consistent with the treatment of these other rights.

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?

Agree.

It is consistent with the treatment of these other rights.

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

Please provide reasons for your answer.

Agree.

This would give employers certainty, particularly in circumstances where some babies are in neonatal care for lengthy periods of time.

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?

4 weeks.

This will cover 87% of babies and will make it more likely that employers will support the proposal

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

Agree.

It will simplify the position for both parents and employers. Providing extended unpaid leave will complicate the picture - particularly when employers and parents will also be dealing with the correlation of other types of leave.

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?

Not applicable.

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?

Please provide reasons for your answer.

Not applicable.

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?

Agree.

It will simplify the way in which this operates. This whole area is complex enough without adding to that complexity if it can be avoided.

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?

Agree.

It is important that employers obtain notice to allow them to plan.

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?

Agree.

It is important that employers obtain notice to allow them to plan

14. What would be a reasonable notice period for Neonatal Leave:

a) For fathers/partners taking Neonatal Leave at the end of Paternity Leave?

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

One week.

b) 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**

Notice should be given as soon as baby discharged from neonatal care

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**

Employer should be kept informed on a weekly basis.

16. Do you agree that employers should be allowed to ask for evidence of entitlement to Neonatal Leave and Pay:

a) From fathers and partners taking Neonatal Leave and Pay at the end of Paternity Leave?

Agree.

b) From mothers taking Neonatal Leave and Pay at the end of Maternity Leave?

Agree

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

We would expect that some form of written evidence should or could be available from the hospital.



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

Agree.

From a policy perspective it is right that similar protections are available.

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

Agree.

From a policy perspective it is right that similar protections are available



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