

FPI response to the Consultation on Modern Workplaces

August 2011

The Department for Business, Innovation and Skills is consulting on changes to employment law to encourage a more fair and flexible approach at work. The consultation seeks views on issues including a new system of flexible parental leave, to allow mothers and fathers to share leave and that aims to give parents and employers greater choice about how leave is taken, and how to extend the right to flexible working to all employees.

Introduction

1. The Family and Parenting Institute is an independent charity that exists to make the UK a better place for families and children. We work with charities, businesses and public services to offer practical help to families. We run campaigns to build a family friendly society. Our research offers insights into family life now and in the future. We work to inform policymakers and public debate and we develop practical resources for people working with families.
2. For the Family and Parenting Institute, there are four fundamental prerequisites of a family friendly society:
 - **A fairer society for families** . where economic conditions support family wellbeing, bringing up children and the reduction of poverty for families
 - **Family friendly business and working life** . where employers and work-life balance supports the wellbeing of families and parents
 - **Essential service provision for families and children** . where there are high-quality services to support families and children, particularly in the early years of childhood
 - **Family friendly infrastructure and living environment** . where communities and key services enhance the quality of life for families in their daily lives.
3. We believe that, if implemented, these proposals concerning flexible parental leave and flexible working will be a significant contribution to meeting the second prerequisite, namely **family friendly business and working life**.
4. Below is a summary of FPI's response, strongly welcoming the proposals overall but also noting the main reservations. The response then focuses on the specific consultation questions where FPI has evidence or a track record to contribute to the debate.
5. This consultation response has been coordinated by the FPI Research and Policy team. For more information please contact info@familyandparenting.org.

Building a family friendly society

Family and Parenting Institute, 430 Highgate Studios,
53-79 Highgate Road, London NW5 1TL
Tel 020 7424 3460 Fax 020 7485 3590
Email info@familyandparenting.org www.familyandparenting.org

Chief Executive: Dr Katherine Rake OBE Chair: Christine Farnish President: Dame Margaret Booth DBE



Summary of FPI response

6. The Family and Parenting Institute warmly welcomes the proposals in the Modern Workplaces consultation from the Department for Business, Innovation and Skills and the government's commitment to making employment practices more family friendly¹. The main policy objectives behind the proposals . of enhancing choice and flexibility for parents and aiming to increase the number of fathers who take up leave and flexible working . will help establish the building blocks for a fairer and more flexible system for parents over the long-term.
7. Evidence in this response demonstrates that by giving parents more flexibility to balance their care and by supporting shared parenting, a wide range of benefits will be realised . not just for children and parents but also for businesses. FPI particularly welcomes the objective of encouraging shared parenting from the earliest stages of pregnancy.
8. Notwithstanding our overall support for the consultation document, FPI wishes to highlight three main reservations that may counter the positive impact of the proposals.
 - a. Low rates of wage replacement can undermine access to leave arrangements. Unless leave pay rates increase, additional parental leave will continue to be an unaffordable option for many and the gap between the take up of leave among those on higher and lower incomes will widen the gap between families in different socio-economic groups.
 - b. This issue is particularly acute in relation to the proposed aim of encouraging more fathers to take a more active role in caring for children. International evidence² clearly shows that unless pay rates provide adequate wage replacement, fathers are unlikely to take additional leave in significant numbers even where the overall work culture is more supportive of them taking such leave.
 - c. Whilst the proposals are a welcome and significant step in the right direction, real progress on the uptake of leave and flexible working requires significant cultural change in the UK among employers and employees. On-going effort is needed by government, employers and voluntary sector partners to continue to change attitudes, reduce a persistent long-hours culture and to tackle the career penalty currently faced by women taking extended periods of leave from the workplace to care for their children.
9. While the tough economic circumstances limit options for increasing state spending to support greater uptake of leave, it is important to recognise the extent to which not doing so will potentially undermine the progress towards the consultation objectives over the long term. Improvements in this area in the years ahead will not only benefit parents and families but also business and the wider economy through enabling women to reach their full potential at work.

¹ The consultation opened on 16 May 2011 and closed on 8 August 2011. The consultation document can be downloaded here <http://www.bis.gov.uk/Consultations/modern-workplaces>

² See response to Q2 below - As set out in the impact assessment supporting the consultation, analysis of European paternity / parental leave programs shows that take-up rates are highest in the countries that have a high rate of income replacement. Those countries with low rates of income replacement tend to show much lower take-up rates by fathers even where generous amount of leave are available.

Responses to specific consultation questions

This response focuses on consultation questions dealing with a) flexible parental leave and b) flexible working.

A) Flexible parental leave

Question 1) Which aspects of the current system work well for parents and employers, and where could improvements be made?

10. There have been substantial improvements over the last decade in support for parents to reconcile work and family life commitments; in particular through the extension of maternity leave and pay; the introduction of statutory paternity leave and pay; parental leave and the right to request flexible working. The introduction of Additional Parental Leave in April 2011 provided extra flexibility for families and, in principle represented a significant boost to fathers' opportunities to take more time off during the first year of a child's life.
11. Giving parents more flexibility, choice and time to balance their care and working responsibilities and supporting shared parenting has a wide range of benefits for children, parents themselves and business. Research has demonstrated that these include:
 - **Improved outcomes for children and young people** . For instance, high levels of father involvement have been found to support a range of desirable outcomes including better peer relationships and fewer behavioural problems³
 - **Improved career prospects, health and wellbeing for mothers** . There is evidence that unequal sharing of caring work between the sexes may be the largest single driver of the gender pay gap⁴.
 - **Higher job performance, satisfaction and improved health and wellbeing amongst men**. This also includes an increased sense of commitment to their organisation, in particular from fathers and lower absenteeism⁵
 - **Improved relationship satisfaction and stability** . mothers and fathers who operate ~~at~~ traditional family roles around earning, caring and domestic work report experiencing more stress than those who share these more equally.⁶
12. However, whilst the current system has increased choice and flexibility for parents with the range of benefits outlined, there remain significant structural, financial and cultural barriers standing in the way of a step change in shared parenting. In particular:
 - The highly gendered form of the current maternity and paternity leave system helps to perpetuate the traditional cultural assumption that the mother will be the main carer for a child during the first year of its life. Women's career prospects, earnings and long term finances often suffer as a result of the way in which the current system tends to encourage

³ Sarkadi, A., Kristiansson, R., Oberklaid, F., & Bremberg, S. (2008). Fathers' involvement and children's developmental outcomes: a systematic review of longitudinal studies. *Acta Paediatrica* 97 (2), 153-158; Flouri, E. & Buchanan, A. (2003). What predicts fathers' involvement with their children? a prospective study of intact families. *British Journal of Developmental Psychology* 21, 81-97; Pleck, J.H., & Masciadrelli, B.P. (2004). Paternal Involvement by U.S. residential fathers: levels, sources and consequences. In Michael E. Lamb (ed.), *The Role of the Father in Child Development (4th ed.)*. Hoboken, NJ: John Wiley & Sons.

⁴ Olsen, W., & Walby S. (2004) . Modelling gender pay gaps. Equal Opportunities Commission (EOC) working paper. London: EOC

⁵ Lancaster University Management School/Working Families (2010)

⁶ Cowan, C.P., & Cowan, P.A. (2000). When partners become parents. Mahwah, NJ: Lawrence Erlbaum Assoc.



them towards prolonged absence from the workplace, with significant personal and wider economic costs.

- The current prohibitive financial cost, especially for lower income families, of men taking significant periods of leave. The result is that more men use (better paid) annual leave at the time of birth, rather than use their statutory paternity leave entitlement (paid at the flat rate) and 20% do not take leave any kind⁷.

13. Improvements to the system therefore need, in particular, to redress the current structural gender imbalance and address the issue of pay. The current proposals are a major contribution to the first of these issues but unfortunately do not resolve the question of pay. It is FPI's hope that when public spending constraints are reduced this issue will be considered.

Question 2) How can the Government best encourage a culture of shared parenting?

14. Social attitudes and aspirations around parenting roles have changed substantially in recent decades, with a shift towards a culture of shared parenting. The Government can support this by:

- ensuring that the right legal and policy framework is put in place
- helping to ensure that shared parenting is viable financially
- encouraging a shift in workplace culture
- facilitating access to parenting and relationship support services.

15. A revised leave framework in the form proposed, applicable across all employers, would be a major contribution to encouraging shared parenting. In particular, provision for a separate reserved leave entitlement for men and the opportunity to share a significant period of parental leave, with the possibility of concurrent leave are especially helpful. FPI strongly supports the introduction of an entitlement for fathers to have leave to attend some antenatal appointments, as another measure to help support shared parenting (see Q18 below).

16. However, if actual take up rates by fathers for extended leave are to significantly improve it will be necessary, as previously indicated, to address the issue of pay. Current low rates of wage replacement represents a significant practical barrier to improving uptake of parental leave amongst fathers. In a YouGov survey research for the Equality and Human Rights Commission⁸, whilst 55% of fathers had taken paternity leave, of those who did not 49% said that they could not afford it and 19% were too busy at work or thought their employer would not approve of them taking such leave. Of those who did take paternity leave, a quarter took better paid annual leave instead of statutory paternity leave. Take up rates for unpaid parental leave are significantly lower. Research in 2005⁹ found only 8% of fathers and 11% of mothers taking unpaid parental leave.

17. As long as this pay gap remains it is unlikely that leave uptake rates will increase beyond the low estimates in the impact assessment for this aspect of the proposals. As set out in the impact assessment supporting this section of the consultation, analysis of European paternity / parental leave programs shows that there are four main determinants of take-up rates by fathers . payment level, organisational and social culture, programme flexibility and the labour market. Take-up rates are highest in the countries that have a high rate of income replacement. Those

⁷ Dex, S. & Ward, H (2007). Parental care and employment in early childhood. Working paper 7. London: Equal Opportunities Commission.

⁸ EHRC . response to BIS consultation Choice for families: additional paternity leave and pay(2009)

⁹ Smeaton, D. & Marsh, A. . Maternity and paternity rights and benefits: survey of parents . dti Employment Relations Research Series 50, London: DWP (2005)



countries with low rates of income replacement tend to show much lower take-up rates by fathers even where generous amount of leave are available.

18. A cultural change within workplaces will also be needed, in particular to address the perception amongst some employers and line managers that seeking to take up leave entitlements and/or flexible show a lack of commitment to the organisation. Recent research¹⁰ suggests that further help and support for line managers may be particularly effective in establishing the right workplace culture, with many fathers feeling that their manager's attitude to working flexibility was a stronger enabler of or barrier to flexible working than organisational policy.
19. To support a family friendly environment, action is also needed to address a persistent long-hours culture in the UK. In 2010, 21.0 per cent (5.26 million) of employees in the UK worked an average of 7.2 hours unpaid overtime, up from 20.3 per cent in 2009. Public sector workers are the most likely to do unpaid overtime, with 26.3 per cent regularly working more than seven hours of unpaid overtime a week in 2010, compared to around 18.9 per cent of workers in the private sector.¹¹
20. Timely and effective couple advice and support can also help foster and sustain shared parenting, particularly when relationships encounter difficulties.

Question 4) Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers? If not, what proportion should be reserved?

21. Yes. FPI strongly supports the principle of reserving an element of specific leave for mothers. Evidence about what constitutes an appropriate amount of time seems inconclusive, but FPI would support the principle of a protected period of leave for mothers with the opportunity to make decisions tailored to the family's circumstances beyond that point.

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

22. Yes. A fully equitable parental leave and pay system provides the framework for families to make the right choice for their particular situation to enable an appropriate balance between their work and caring responsibilities. However, within this parental leave framework it is important to establish a reserved element of leave exclusively for women (see answer above) and for men (to help increase uptake rates - see answer to Q11).

Question 6) Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave?

23. Yes. The current regime is overly restrictive for both employers and employees. The proposed leave regime would allow parents the flexibility to make appropriate arrangements that suit their family situation both in terms of caring arrangements but also family finances. For lower income households it would help support greater levels of leave uptake by fathers, as leave taking could be planned so as to ensure continuity of family income.

¹⁰ Lancaster University Management School/Working Families (2010)

¹¹ ONS Annual Survey of Hours and Earnings 2010 and ONS Labour Force Survey Summer 2010



24. Businesses are likely to benefit from shorter absences and the earlier return of female staff. Shorter periods of maternity leave have the potential to strengthen women's attachment to the workplace and to mitigate the current negative consequences of extended absence for women's careers and longer term financial health.

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

25. No. In our experience of working with families, parents are rarely able to anticipate how parenthood will affect their lives and to plan every element of childcare at the earliest stage. Furthermore, unexpected issues may present themselves . such as post natal depression or health issues with the child . which cannot be anticipated before the birth. FPI would therefore favour separate notification in respect of each period.

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

26. Yes. From the perspective of families, the positive impacts of increased flexibility remain, regardless of the size of the organisation that the parent works for. Failure to adopt a consistent approach would, from FPI's perspective, counteract the potential benefits to be gained from these proposals in changing workplace culture. Exemptions would send a message that flexibility is only an issue in certain types of organisation. Also, as noted in the consultation document, running two systems of parental leave in parallel would leave to confusion and complexity.
27. The terms of debate need to shift to focus on the business benefits of flexible working. In this respect, FPI is currently developing, with the support of the Department for Education, a scheme called Family Friendly¹². The intention of Family Friendly is to encourage and support employers to understand their role in relation to the wellbeing of families and parents in addition to their legal responsibilities around parental leave and flexible working. The scheme will highlight good practice from a number of organisations and the practical amendments businesses can make in order to make life easier for families . as both employees and consumers . and give businesses the opportunity to demonstrate that they are improving their offer for children. The scheme should will be a critical part of building a family-friendly environment in the UK as the context for the success of other initiatives highlighted in the document.

Question 11) Should a portion of flexible parental pay be reserved for each parent? If so, is four weeks is the right period to be reserved for each parent?

28. Yes. Research shows that reserving a portion of leave for men on a use it or lose it basis increases uptake of leave. In particular, there is evidence from countries such as Iceland and Norway that a period of reserved leave, independent of and additional to the mother's, increases the uptake of parental leave¹³. In Norway, introduction of reserved parental leave for fathers (of 8 weeks on top of paternity leave) has resulted in a large increase in fathers taking time off to care for their children. By 2009, just under 90% of Norwegian fathers were using their

¹² The Family Friendly website can be viewed at www.wearefamilyfriendly.org

¹³ BIS, International Review of Leave Policies and Related Research 2010.



full quota of parental leave.¹⁴ However, again, the key role of leave pay levels must be recognised - Norwegian leave is paid at 80%.

Question 14) Is the child's first birthday the right cut-off point for parents to receive parental pay?

29. No. Given the increasing recognition of the importance of the foundation years (0-5 years-old) in other areas of policy, for example in health and education, the Government should be considering allowing pay in the first five years of the child's life.

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

30. FPI believe that unpaid parental leave should be available until a child is 18, in harmonisation with the international definition of 'child' used in UN Convention on Rights of the Child.

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

31. Yes, FPI supports this principle strongly. The presence of the father, where appropriate and desired by the mother, is important not only in increasing paternal engagement but also in supporting the couple relationship at this key stage. If fathers are enabled and encouraged to attend antenatal appointments in this way it will help develop their engagement with the unborn child, assisting in attachment and fostering shared parenting from the early stages of pregnancy. It would also be an important cultural signal on the important role of fathers. Expecting fathers to take the time off as part of their annual leave would significantly undermine this message. Two appointments should be regarded as a minimum entitlement and in time this could be reviewed with a view to increasing if the evidence points to a positive impact on families.

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

32. It will be important to ensure that any changes to the leave system are widely and effectively communicated. There are indications that even some of the longest established and straightforward elements of the current system are not universally known and understood. Recent polling by the Fatherhood Institute and Ocado found that 15% of respondents were unaware of their two week paternity leave entitlement. In relation to the much newer Additional Paternity Leave system, 54% of fathers did not know about their entitlement to take over part of their partner's maternity leave. The proposed system, whilst helpful in adding choice and flexibility is complex and will require careful communication if uptake levels are not to be affected.

33. If these proposals are implemented, it will also be important to have mechanisms in place to track changes in leave uptake and, if possible, to identify and evaluate any barriers to further increasing levels. It would be particularly important to gauge how parents were using different elements of the leave system in practice, and in particular how much leave fathers were taking and of which type. Further research would be helpful in identifying the reasoning behind these choices and in particular the impact of statutory pay rates on parents' decision making.

¹⁴ BIS, International Review of Leave Policies and Related Research 2010.

B) Flexible working

Question 22) Should the Government legislate to extend the right to request flexible working to all employees?

34. Yes. FPI strongly supports the proposal to extend the right to request to all employees. Doing so will provide the basis for a step change in working culture, in which the benefits for both employers and employees of flexible working are widely recognised and understood and stigma created by applying the right to only certain groups is removed. As noted in the report of the Family Friendly Working Hours Taskforce¹⁵ the evidence demonstrates that there is a strong and compelling business case for flexible working, in terms of:

- Falling absenteeism and higher retention leads to a reduction in recruitment, induction and training costs
- Increased productivity
- Increased ability to recruit from a wider talent pool and
- Greater loyalty and work satisfaction amongst staff.

Question 23) Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice?

35. No. The right to request flexible working is primarily a procedural right. The current process provides a valuable, best practice-based, structure for employers and employees to work to and can help to address inequalities of bargaining power. The process is well established and provides certainty for both sides. Introduction of a code of practice based scheme would lead to uncertainty for both sides and the potential for increased business costs where employers feel obliged to seek external professional advice as to the acceptability of their proposed process.

Question 28) Do you agree that the current 26-week qualifying period should be retained?

36. No. The current qualifying period can act as a key barrier to entering or re-entering the workforce for those needing flexibility in their working patterns to manage their caring responsibilities. FPI would suggest that the way forward is for the qualifying period to be removed but for employers to be supported in relation to job design and advertising and recruitment practices. Improved job design should ensure that options for flexibility within the role were identified at the outset and could become part of the recruitment discussion at interview. See also response to question 33 below on the importance of a supportive working culture in enabling open discussion of flexible working options at the recruitment interview stage.

Question 29) Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed?

37. Yes. FPI welcomes the recognition that employees may in some circumstances need a temporary change in working practices rather than a permanent change to terms and

¹⁵ Flexible Working: working for families, working for business - A report by the Family Friendly Working Hours Taskforce . BIS (2010)



conditions. The current proposal of allowing a second request provided that the original one stated that the change was expected to last less than a year, should adequately address the issues. If leave is needed due to the serious or terminal illness of a relative an employee is unlikely to be able to give the required notice.

Question 31) Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium?

38. No. As argued above, the proposed leave provisions should apply to all employers in order to build a family friendly society. The needs of parents and the potential for positive impacts for children and families from increased flexibility are the same regardless of the size of the organisation. Failure to adopt a level playing field approach would significantly undermine the potential benefits to be gained from these proposals, in particular in changing workplace culture. If a period of exemption for micro-businesses were to be implemented, FPI's view is that this should not extend beyond one calendar year.

Question 34) What support is required to help people to undertake varied-hours working?

39. Affordable, easily accessible and flexible childcare will be important in supporting wider use of varied hours working. Support for business is also required in relation to increasing the availability and effectiveness of varied hours roles. In this respect, as mentioned above, FPI is currently developing, a scheme called Family Friendly to encourage and support employers to understand share effective practice in relation to supporting families and parents and to understand their legal responsibilities around parental leave and flexible working.