



Response to the UK Government's consultation on the *Good Work Plan: Proposals to support families*

Neonatal Leave and Pay

October 2019

INTRODUCTION

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and employees since 2001 to influence and enable action that will address the causes of women's labour market inequality.

We welcome the proposal to introduce Neonatal Pay and Neonatal Leave. Establishing these new entitlements is a pivotal development in creating family-friendly working practices, provision and regulation. These changes are vitally important as the Department for Business, Energy and Industrial Strategy (BEIS) internal review of provisions for parents of premature, sick and multiple babies concluded that parents face significant challenges. The review highlighted that current leave and pay requirements do not adequately support parents where the baby or babies need to spend a prolonged period in neonatal care.

Women's disproportionate responsibility for care and domestic labour significantly impacts their ability to enter and progress in the labour market on an equal basis with men. Women are twice as likely to give up paid work in order to care and provide 70% of unpaid care in Scotland.¹ Ensuring that neonatal entitlements encourage both parents to take leave is therefore an important factor in meeting the key policy objectives of parental leave and pay including giving families more choice and flexibility, enabling women to recover from birth and increasing paternal involvement in childcare. We note that consideration should be given to how these new regulations will impact gender roles, and therefore gender equality more widely.

¹ Engender (2015) *A Widening Gap: Women and Welfare Reform*

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

We **strongly agree** that parents should have extra leave and pay if their baby or babies are admitted to neonatal care. We also **strongly agree** that this leave must be paid so that there are no financial barriers to parents taking time from work. Parents who have a baby in neonatal care also face additional costs which means a paid entitlement is vitally important. Families face extra costs of around £2225 while their baby was in neonatal care, on top of their usual costs.²

It is unfair that fathers of new-born children have to return to work before their children have left hospital, as a result of using their full Paternity Leave entitlement while the baby is in hospital, or have to use sick leave or annual leave entitlements in order to stay off work. Fathers returning to work before children have left hospital, or immediately after their discharge, also places an additional burden of care onto mothers, thus further cementing traditional stereotypes and gender roles.

We **agree** with the principle that this entitlement should be restricted to those with the main responsibility for caring.

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?**

We **disagree** that only parents of babies receiving two or more weeks of neonatal care should be entitled to Neonatal Leave and Pay. Two weeks is unnecessarily restrictive, particularly in the context of current paternity entitlements. For example, under current entitlements, if a baby is in neonatal care for one week, fathers have only one week of paternity leave left to take following discharge from neonatal care. Setting eligibility at two weeks again

² Bliss (2014) *Parents face crippling costs* available at - <https://bliss.org.uk/news/2014/parents-of-premature-and-sick-babies-face-crippling-costs>

makes it more likely that women will assume the majority of care responsibilities.

It is also not the case that babies who have spent a minimum of two weeks in neonatal care will necessarily be the most seriously ill as a baby who was seriously ill on admission may still be discharged in less than two weeks. Additionally, it is worth noting that some babies may be discharged from neonatal care to a paediatric ward or hospice, rather than home. Under the proposed criteria, these families would be ineligible for support.

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?

Considering the duration of current paternity leave entitlements, we believe that entitlements to Neonatal Leave and Pay should crystallise at one week. A recent survey found that 66% of fathers and partners had returned to work while their baby was in neonatal care, and over a quarter of fathers were forced to choose between taking time off when their baby was in hospital, or when their baby is discharged home.³ New entitlements to Neonatal Leave and Pay should not replicate these pre-existing issues and it is therefore essential that entitlements crystallise at one week.

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

In line with the examples detailed in the consultation document, we believe that there should be other circumstances that make a family eligible for Neonatal Leave and Pay including:

- Circumstances where there is a break between the baby's birth and admission to hospital;
- Circumstances where a baby is receiving life-supporting treatment outside of a hospital; and
- Parents of babies born with a serious condition which means they will spend a limited time in a neonatal unit before being transferred to a specialist paediatric service.

³ Bliss (2019) *Responding to the Neonatal Leave and Pay Consultation*

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

We **strongly agree** that Neonatal Leave must be a ‘day one right’.

As highlighted in the consultation document, two particular challenges facing parents is that their employers do not take a compassionate approach to supporting parents to be with their baby in hospital, and fathers of babies in neonatal care do not qualify for Statutory Paternity Leave because they have not met the qualifying period. It is important that Neonatal Leave is a day one right, so that fathers are not reliant on the compassion of their employer, or are not forced to use other types of contractual leave or unpaid leave. Having a baby admitted to neonatal care is an anxious time for parents and it is therefore essential that every parent be automatically entitled to take time off to spend time with their baby, reducing the burden of stress.

Implementing a similar qualifying period as current Paternity Leave entitlements will lead to fathers and partners being unable to take leave, meaning that the burden of care will fall on the mother. The TUC have reported that around a quarter of working men in the UK do not qualify for Paternity Leave.⁴

A qualifying period will therefore reinforce stereotypical assumptions around women’s responsibility for care as fathers and partners will be unable to take time off, or will be forced to take other types of leave.

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?

Close the Gap **strongly disagrees** with this approach and believes that Neonatal Pay should also be a day one right for parents. Pay has been found to be a significant barrier to parents taking time off work and inserting a qualifying period for Neonatal Pay will create a barrier for parents, particularly for fathers in lower-paid or precarious work.

A 2019 survey highlighted that half of parents said they returned to work because they could not afford to take any longer off. This rose to 62% for

⁴ TUC (2019) *1 in 4 new dads missed out on paid paternity leave* <https://www.tuc.org.uk/news/1-4-new-dads-missed-out-paid-paternity-leave-last-year-says-tuc>

parents whose baby was in neonatal care for 10 weeks or more.⁵ Research by the TUC has also found that many low-paid fathers struggle to take the time off because Statutory Paternity Pay is so low.⁶ Pay is therefore a vital part of ensuring the right to Neonatal Leave can be utilised by all parents when their baby or babies are admitted to neonatal care. Requiring that employees need to have 26 weeks' continuous service will therefore have a detrimental impact on the uptake of Neonatal Leave, and create a particular barrier for low-income families.

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

We **strongly disagree** that the entitlement to Neonatal Leave should be capped. The BEIS review also highlighted that significant challenges are faced by parents of premature or sick babies, particular in cases where their baby needs neonatal care for a number of weeks or months following birth. It is therefore essential that there are no caps. While the consultation document details that only 13% of babies admitted to neonatal care spend more than four weeks in hospital, it is important that these parents and families are supported.

Evidence shows the impact on parents' mental health of having a baby in neonatal care and it is likely to cause unnecessary extra stress if Neonatal Leave is capped and parents have to return to work while their child is in hospital. The implication of capping Neonatal Leave may be that parents are forced to leave their job.

Additionally, capping the entitlement to Neonatal Leave will also ultimately put the emphasis on the mother to care for the child while fathers return to work. This is based on persistent stereotypical assumptions around the roles of women and men in the home and at work. As a result of the gender pay gap, women earn less than men.⁷ When making decisions as to which parent should return to work, it is highly likely that the higher earner will return to employment. As this is more likely to be the father, this further entrenches women's inequality and the gender pay gap. These assumptions dictate that women have a greater propensity for care, and that it is therefore a women's role to care for children. Ensuring that there is no cap, and that parents are

⁵ Bliss (2019) *Responding to the Neonatal Leave and Pay Consultation*

⁶ TUC (2019) *1 in 4 new dads missed out on paid paternity leave* <https://www.tuc.org.uk/news/1-4-new-dads-missed-out-paternity-pay-over-last-12-months-says-tuc>

⁷ Close the Gap (2019) *Gender Pay Gap Statistics*

paid for the duration of their Neonatal Leave, will have a positive impact on challenging gender stereotypes and the division of labour by gender.

However, if the consensus is that a cap should be introduced, we believe such a cap should be at least 12 weeks.

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?

We **strongly agree** that Neonatal Pay should be available for every week of Neonatal Leave, ensuring that parents are paid for the duration of their leave. This should mean that both parents should receive one paid week of leave for every week that their baby is admitted to neonatal care, encouraging fathers to take leave in order to be with the mother and baby.

Capping the number of paid weeks will make it particularly difficult for fathers on lower incomes to take Neonatal Leave. For example, TUC research highlighted that 75% of fathers on the lowest income did not take their full entitlement to two weeks statutory Paternity Leave.⁸ The House of Commons' Women and Equalities Committee heard evidence that the low level of Statutory Paternity Pay is a barrier to some fathers taking time off work to be at home when their child is born.⁹ It is important, therefore, that there is no cap on Neonatal Pay so that the barriers experienced within the context of Paternity Leave are not replicated here.

9a. 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?

No, **strongly disagree**. The capping of statutory Neonatal Pay will have a detrimental impact on the uptake of Neonatal Leave. It is likely that this will lead to fewer fathers using the benefit and a reaffirmation of traditional gender roles, with the mother assuming the role of main carer.

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?

⁸ TUC (2015) *Statistical briefing on fathers' leave and pay*

⁹ House of Commons Women and Equalities Committee (2018) *Fathers and the workplace*

This appears to be the most straightforward way of implementing this additional entitlement. Ensuring that the system is easy to understand and operate is a critical part of ensuring that parents utilise their entitlement.

However, the Government should be mindful that this method of implementation could potentially undermine the notion of Neonatal Leave and Pay as a 'day one right'. If the father or partner is not entitled to Paternity Leave and Pay under current arrangements, it is unclear how their entitlement to Neonatal Leave and Pay will be administered.

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?

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?

We agree that there should be an obligation to give notice to your employer, but the notice period and notice requirements should be sensitive to the needs of parents and conscious of the difficulties facing families with sick children.

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

Evidence of entitlement should echo the evidence requirements for maternity and Paternity Leave. It may be prudent to introduce a short form, similar to the MAT B1 certificate. This should not be an onerous requirement, requiring evidence from multiple sources which may prove time-consuming. Instead, may take the form of evidence of hospitalisation.

Any requirement to highlight evidence of entitlement should be handled sensitively, informed by an awareness that this is an extremely stressful time for parents. It will also not always be the case that babies will be admitted to a hospital close to employees home or workplace, which may make it more difficult to stay in regular contact.

Evidence of entitlement should echo the evidence requirements for Maternity and Paternity Leave. Any evidence requirements should not require disclosing sensitive information about the condition, require information from multiple sources or rely on photographic evidence.

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

We **strongly agree** that parents on Neonatal leave should have the same protections as parents on other types of leave. This is a necessary prerequisite for parents feeling comfortable to utilise their entitlements.

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?

We **strongly agree** that parents on Neonatal leave should have the same right to return. This is a necessary prerequisite for parents feeling comfortable to utilise their entitlements. We believe that parents on Neonatal Leave should be treated no less favourably than other employees on leave.

CONCLUSION

Close the Gap welcomes plans for the introduction of Neonatal Leave and Neonatal Pay as this is a further important step in ensuring that regulations enable family-friendly working practices. However, it is vitally important that these new entitlements do not further embed gender stereotypes around responsibility for care. Neonatal Leave and Pay must, therefore, be a day-one right, be uncapped and parents must be paid for the duration of their leave.