

CONSULTATION PAPER

Maternity, Paternity and Family Friendly Working

Issued by the Employment Forum on Friday 15 June

DEADLINE FOR RESPONSES - Friday 10 August

PURPOSE OF CONSULTATION

This consultation is the second to be undertaken by the Employment Forum in Phase 2 of the employment legislation programme, which was approved by the States in 2000 (P.99/2000).

The purpose of the consultation is to seek comments from the public about the proposal to introduce legislation in Jersey relating to maternity and paternity leave, and family friendly, flexible working polices.

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Please respond by Friday 10 August, either by email, post or fax to;

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To ensure that your comments are clear, the Forum would prefer to receive typed responses. If you wish to receive an electronic copy of this paper, please contact the Secretary, or download it from the States website -

www.gov.je/ChiefMinister/PublicConsultations

The Employment Forum is grateful for your comments

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SECTION 1 - Introduction

In 2000, the States approved the former Employment and Social Security Committee's Proposition for "Employment Legislation". Of the two laws that formed Phase 1 of the programme, the Employment (Jersey) Law 2003 came into force on 1st July 2005 and the Employment Relations (Jersey) Law 2007 is expected to come into force this year.

The Social Security Minister asked the Employment Forum to begin consulting on Phase 2 of the employment legislation programme and, following consultation during 2006, the Forum issued its recommendation on redundancy and business transfers in February 2007.

This consultation paper seeks your comments on further Phase 2 issues, maternity paternity and family friendly working. The following report provides background information that you may wish to consider in forming your response to the attached questionnaire, including provisions in other jurisdictions, previous consultation undertaken on these issues and related concepts already included in Jersey's employment legislation.

Many parents do want to work, but find it difficult to balance this with their caring responsibilities and the Forum is concerned that both the economy as a whole and individual organisations are losing the skills and experience of these individuals.

While once it was usual for a woman to take a career gap of some years in order to bring up a family, it is now common for women to take a break of only a few months before returning to work after having a baby, and for men to want to take a more active role in early years child care.

The economy is likely to benefit from measures that allow working mothers to combine parenting responsibilities with remaining in employment. Any statutory proposals that are recommended will be designed both to widen the pool of labour available to employers and to protect the welfare of parents and their children. Many parents want to be able to spend more time with their new baby and a longer period of leave will help them to be better prepared when they do come back to work. They will also have more time to make satisfactory childcare provision.

Some employers in Jersey have examined the way they operate and attempted to make family leave provisions and working practices more flexible due to pressures such as intensive competition and the need to exploit new opportunities.

The Forum is aware that combining working and family life is increasingly becoming an issue for employers and employees and seeks views on how this may be managed. The proposals put forward in this paper are intended to provide a basis for discussion.

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SECTION 2 - Background

Local Statistics

The **2001 Census** showed that part time workers accounted for 11% of the economically active people of working age, with women accounting for 90% of such part time employees.

The 1961 census showed a 37% female economic activity rate and 86% for males. The 2001 census showed a 60% female economic activity rate and 76% for males.

The **2002 Income Distribution Survey** showed that in Jersey there are 29% more full time workers per household in Jersey than Great Britain as a result of;

- greater economic activity rates – more men and women of working age are either in work or looking for work (87% of men and 76% of women in Jersey, and 83% of men and 73% of women in the UK)
- different household structures – Jersey has a lower proportion of children under age 16 than the UK (according to the 2001 census).
- the ratio of full time to part time workers is higher in Jersey than the UK - 7:1 in Jersey, 3:1 in UK.

The **2006 Jersey Annual Social Survey** (JASS) showed that 71% of all males in Jersey and 65% of all females are working. The overall economic activity rate for working age adults, i.e. the proportion of females aged 16 to 59 and males aged 16 to 64, is slightly greater than the 2001 census, mainly due to a rise in the female activity rate from 76% in 2001, 78% in 2005 and 80% in 2006. Future rounds of JASS will indicate whether this change is sustained.

Social Security Benefits

Family Allowance is currently the main benefit for supporting low income families with children regardless of whether one or two parents are working. It can be paid to an adult member of any family in which there is at least one child, but is normally paid to the mother. There are income and residence conditions to qualify.

Child Care Allowance can be paid if a family is using child care at a registered nursery, playgroup or childminder if a family does not pay tax. The allowance paid will depend on the family's yearly income. There is a tax allowance for families using registered child care who are working and paying tax.

Both Family Allowance and Child Care Allowance will be subsumed into the new Income Support System, which will be introduced in January 2008 to reform the way that benefits

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are paid in Jersey, creating a less fragmented system by centralising all benefit payments from the Social Security Department. The intention is to introduce more fairness and equity and to ensure that the funds available are given to those who need help most. The new system will provide more flexible childcare support, enabling parents to decide whether they wish to stay at home with a young child or to remain in the workplace and to pay for childcare.

Home Responsibility Protection is available for people staying at home to look after a child under the age of five who is living with them. Protection is in the form of contribution credits which protect pension entitlement, but do not protect entitlement to incapacity or maternity benefits. A maximum of ten years HRP can be awarded during working life.

Two benefits may be paid before or soon after the birth of a child, Maternity Grant and Maternity Allowance.

Maternity Grant is a lump sum which may be paid either before or after the birth to help with the cost of necessary items for the baby. The rate effective from October 2006 is £474.78. A grant may be paid for each baby (including multiple births) and to qualify, either the mother or her husband must have paid enough contributions for at least three months at any time before a set date, based on earnings above the lower threshold level (£685 per month from October 2006). Unmarried women may only claim on their own contribution record. The grant can be claimed at any time from the ninth week before the baby is due, up to three months after the birth.

Maternity Allowance is a weekly benefit, currently £158.27 per week, which can be paid for a maximum of 18 weeks as compensation for loss of earnings. It is paid on the mother's own contributions and can start between 11 and 6 weeks before the baby is due. The woman can choose when the benefit starts, but benefit cannot be paid whilst the mother is working and the claim must be made between the 14th and 7th week before the baby is due. The allowance starts the day after the woman's last day of work. To receive the full 18 weeks, the benefit must start at least 6 weeks before the date when the baby is due, otherwise the allowance is lost for each day worked.

It has been suggested that this criterion could be more flexible so that women do not lose the right to 6 weeks maternity allowance if they chose to work up until the birth, however this criterion was based on medical opinion in the mid 1990's as a reasonable time for a woman to cease work. Recent medical opinion suggests that, provided there are no occupational hazards which could put the health of the mother or baby at risk, women should be able to continue working as they chose and that healthy women, without pregnancy complications, who chose to continue working late into their pregnancy, should be supported in this.

A maternity allowance claimant will need a date of confinement slip from the doctor or midwife which will be given to them no earlier than 14 weeks before the baby is due.

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The allowance is not paid if the pregnancy lasts less than 24 weeks, unless a living child is born, but is not affected if the baby is born during the 11 weeks before the expected week of birth. If a baby is born late, the allowance may be extended.

There are contribution conditions that must be met in order to qualify for the full allowance, although a lower rate may be paid if some of the conditions are met, however the allowance can only be paid on the woman's own contribution record, not her husband's. There are therefore fewer claimants for the allowance than for the grant. Women still have liability to pay social security contributions during pregnancy, however contribution credits are allocated for each day that the allowance is paid.

Births and Maternity Benefits

	2005	2006
Births in Jersey	969	950
Maternity Allowance (MA) awards	774	821
Maternity Grant (MG) awards	924	910
MA total number of days paid	89352	92360
Average weeks MA paid per claimant	16.5	16.1

In 2006, there were 89 more claims for MG than MA, which suggests that the woman's own contribution record did not allow her to claim MA because she had not worked in the relevant period, but she could claim MG based on her husband's contribution record.

In 2006, there were fewer births than in 2005, but more claims for MA allowance, which may indicate that more women were working and therefore able to claim MA based on their own contribution record.

Only 40 mothers in 2006 did not claim MG. Some of these women may not have been aware of their entitlement, and others may not have been entitled for various reasons, such as; the mother does not work and does not have a husband whose contribution record can be used to give entitlement; neither parent meets the contribution criteria; or the mother may have opted out of paying contributions (which is possible for marriages that occurred before April 2001).

There are approximately four adoptions per year in Jersey which go through court, which may be local or inter-country adoptions.

Health and Safety

There is no specific reference in Jersey's health and safety legislation relating to pregnancy or maternity, other than a requirement under the 'Work with Ionising Radiation Accredited Code of Practice' for an employer to;

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a) inform all female employees working with ionising radiation (IR) of the possible risks to the foetus from IR, and the importance of informing the employer they are pregnant and/or breast feeding as soon as possible, and

b) ensure that a pregnant women is not exposed to a level of radiation above a specific level.

In more general terms, every employer has a duty under the Health and Safety at Work (Jersey) Law 1989 to ensure, so far as is reasonably practicable, the health, safety and welfare of employees. This should take into account factors such as pregnancy, and consider any increased risks associated with the work, to either the pregnant employee or the foetus. This is particularly important in occupations where there are recognised risks, such as where toxic or infectious substances are handled.

Although Jersey refers to standards in the UK for guidance on good practice, there is no equivalent in jersey to the UK Regulations which make it a criminal offence to allow an employee to work during the two weeks after childbirth (or 4 weeks for factory workers), which were introduced to implement the European Directive on Pregnant Workers.

The extended period relating to factory workers was taken directly from the European Directive and it is likely that there are other occupations where there could be an equivalent risk to the woman or her foetus, and would be more relevant locally, such as, agricultural work with heavy machinery or chemicals.

Health Promotion Unit Policies

Jersey's Health Promotion Unit is currently developing policies relating to the well being of parents and children and it would be helpful to coordinate policy objectives to some extent, so that any resulting legislation does not conflict with what is being proposed as appropriate for the health and well-being of parents and children. This includes a policy to encourage women to breastfeed for longer in the interest of the health benefits for the baby, however women often cite the need to return to work as a reason for not breastfeeding, or for giving up breastfeeding early.

Early Childhood Education and Care

A recent progress report on a review of early childhood education and care (presented to the States in December 2006¹) assumed that policies in respect of early years should encourage parents to remain in the workforce and ease their return at an appropriate time which accords with their parental preferences. In this context, remaining in the workforce would include policies relating to a parent's right to return to their previous employment after an appropriate period of leave.

¹ P.100/2006 www.statesassembly.gov.je/documents/reports/30093-32852-22122006.htm

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One of the policy objectives of the review is to give parents greater choice in the way their children are cared for in their early years. The report states that many families would like one parent to stay at home to care for their children when they are babies, which can be a difficult choice, especially when two incomes are necessary to maintain a standard of living.

The report noted that policies on parental leave differ across European countries and are driven by different priorities, including:

- the promotion of gender equality and equity in the workplace;
- facilitating mothers remaining in the labour force;
- reducing employment by encouraging parents to exit the labour force;
- increasing employment by retaining parents in the labour force after the birth of a child;
- the well being of children;
- women's financial independence;
- the greater involvement of fathers in home and family life.

It is clear that some of these policy priorities conflict with each other, which must be taken into account when assessing what is right for Jersey, ensuring that the needs of families are balanced against the needs of the economy.

States Strategic Plan 2006 - 2011

The States Strategic plan includes various commitments, some of which relate directly to family related legislation and others indirectly.

- The commitment to promote a safe, just and equitable society; establishing basic rights and equal opportunities for all sectors of society by putting legislation in place that gives rights to employees and employers in line with best practice worldwide. This commitment specifically includes the development of the policies discussed in this consultation; maternity and paternity rights, flexible working and family friendly policies.
- The commitment to maintain and enhance a strong, successful and environmentally sustainable economy; maximising the potential of the Island's workforce by increasing participation rates in the workforce for local people by improving incentives and removing disincentives to work, and addressing barriers to work. Obvious disincentives and barriers are the desire to look after a child in the early years and child care availability and cost. Incentives might include the right to return to work and more opportunities for flexible working and parental leave.
- The commitment to create an environment in which everyone in Jersey has the opportunity to enjoy a good quality of life by increasing the percentage of the

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workforce with appropriate qualifications and skills to match what is needed. The retention of such skills could be achieved indirectly by giving parents the right to return to work and increasing opportunities for flexible working and parental leave, thereby retaining parents' skills in the workforce.

- The commitment to provide an integrated system of benefits which helps residents to achieve and maintain financial independence, indicated by a reduction in the proportion of working age residents needing income support during each stage of the economic cycle. By giving parents the right to return to work and increasing opportunities for flexible working and parental leave, some parents may be encouraged to return work, rather than continue to rely on benefits.

Small Businesses

The Forum is aware that small businesses in particular are likely to have concerns about increased statutory provisions, and it wishes to ensure that the needs of small businesses are taken into consideration, particularly given that three quarters of local businesses employ less than 6 employees.

Jersey Child Care Trust (JCCT)

In April 2007, the JCCT released its annual survey to find out the levels and requirements of childcare in the Island, which included questions about family friendly Employers, such as those who offer maternity and paternity leave, flexible hours and job sharing.

The JCCT survey asks parents about their employment status, whether they have sole or shared responsibility for a child, and personal priorities and preferences relating to the cost and availability of child care, or more opportunities and support for parental leave and flexible working. Results are anticipated to be available towards the end of 2007, which may be useful in the formulation of the Forum's recommendations, if available at that time.

Jersey Annual Social Survey 2007

The 2007 JASS will include some questions of parents with children under 16, including their current employment status, whether they are looking after children, whether they plan to return to work and what might encourage or prevent a return to work, including questions about flexibility of working hours. It is anticipated that results will be available in the Spring of 2008, which may prove useful in the Social Security Minister's consideration of the Forum's recommendations.

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Sex Discrimination Legislation

A new Discrimination (Jersey) Law has recently been consulted on and the first phase is expected to be introduced by the end of 2007. Provisions relating to discrimination on the grounds of sex are expected to be included in the second phase of discrimination legislation.

Discrimination on the grounds of sex has strong links with maternity and family related employment rights and the concepts for the two pieces of legislation must tie in appropriately. If Jersey introduced sex discrimination legislation without any additional provisions regarding maternity rights, any less favourable treatment which has its root cause in pregnancy would be likely to be seen by a tribunal as direct sex discrimination, as pregnancy is a gender-specific condition. If maternity rights are introduced before sex discrimination legislation is in place, then employers could choose not to employ women of child bearing age.

Funding and Administration

The issue of who will fund and administer any parental leave is of obvious interest to employers and the States of Jersey, however it must be noted that the issue has not yet been addressed by the Employment Forum, the Social Security Minister or the States of Jersey. It is not within the Forum's remit to make a decision on funding or administration, however comments are welcomed and any recommendations will be passed on to the Social Security Minister for consideration in the development of the legislation.

The system of funding statutory maternity pay in the UK is unique in that it originates from an historic Maternity Fund, which was funded through increases in employer's contributions. Employers are able to recover most of the statutory maternity pay by deducting it from their national insurance contributions.

In the Isle of Man, there is no obligation (unless contractual) to pay an employee who is on statutory parental leave, although most employees are eligible to claim maternity, paternity or adoption allowance from the Social Security Department on a similar basis to the maternity benefit provided by Jersey's Social Security Department.

SECTION 3 - OTHER JURISDICTIONS

A brief overview of relevant legislation in the UK, Isle of Man and Guernsey is provided below, followed by an outline of European principles, recent policies and developments.

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The UK

a) Maternity Leave

Pregnant employees have the right to a reasonable amount of time off for antenatal care. In addition, all employees are entitled to 52 weeks maternity leave and those who have worked for their employer for 26 weeks or more, who also satisfy earnings and eligibility tests, are entitled to pay at 90% of previous earnings for 6 of those weeks and 33 weeks at statutory maternity pay (approx £113 per week).

b) Paternity Leave

Subject to a 26 week qualifying period, leave is available to the partner (male or female) of the child's mother for the purpose of caring for the child or supporting the child's mother. Either one week, or 2 weeks consecutive leave, may be taken within 56 days of the child's birth. Leave is payable at the same rate as the basic statutory maternity pay. A new right (which is expected to be implemented in 2009) will give fathers or partners the right to an additional 26 weeks paternity leave, provided the other parent has returned to work and has outstanding paid maternity or adoption leave.

c) Adoptive Leave

An employee who has adopted a child, or who is one of a couple who have jointly adopted a child (via an approved adoption agency) has the right to 52 weeks leave, subject to a 26 week qualifying period. Only one of the couple may take the leave and it is for the couple to decide. Leave is payable at the basic statutory maternity rate for 39 weeks. The partner is entitled to paternity leave.

d) Parental Leave

Employees with one year's service who have responsibility for a child under 5 (either natural or adopted) are entitled to unpaid parental leave up to a total of 13 weeks per parent, per child. Parents of disabled children may take 18 weeks unpaid parental leave until the child is 18. Collective or workforce agreements may be reached about the taking of parental leave, however the default situation is that leave must be taken in blocks or multiples of one week (except where the child is disabled) and a maximum of 4 weeks can be taken per child, per year.

e) Time off for dependants

Employees are entitled to reasonable time off to take action that is "necessary" to deal with a particular unexpected situation in relation to dependants (the employee's wife, husband, child, parent, or someone who lives in the same household but is not an employee, tenant or lodger). It includes, for example, when a dependant falls ill, dies, or gives birth, and is to allow time to make necessary arrangements; it is not compassionate leave or to care for a sick dependant.

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f) Right to request flexible hours of work

Employees may make a request if they have a child under 6 (or 18 if a disabled child), 26 weeks service, responsibility for the child's upbringing, and have not made another flexible work application in the past year. The request may cover changes to times, duration or location of work. Employers are not obliged to grant requests, but must follow a detailed procedure. The employer can only refuse on specific grounds, although a tribunal complaint may only be made on grounds of an employer's failure to follow the procedure.

g) Health and Safety in Maternity

Specific health and safety rights apply, irrespective of length service, where an employee is pregnant, has recently given birth, or is breastfeeding. Where such an employee must be suspended on health and safety grounds, she must be either paid or offered suitable alternative work.

Isle of Man

A number of new rights have arisen from the Employment Act 2006 and regulations made under that Act, coming into force from 30 September 2007 (and for babies born or placed for adoption after that date).

a) Maternity Leave

All female employees will be entitled to take unpaid Ordinary Maternity Leave of 26 weeks. Maternity Allowance, a Social Security benefit, is available for the 26 weeks at a flat rate which is currently £174.65 per week for employed earners. Employers will not be obliged to pay women who are on maternity leave. Additional unpaid Maternity Leave of 26 weeks will be available for women with 26 weeks qualifying service at the 14th week before the expected week of childbirth.

b) Paternity Leave

Where employees have 26 weeks qualifying service, 1 or 2 weeks' unpaid paternity leave may be taken within the first 8 weeks of the baby's birth. Paternity Allowance is available from Social Security to qualifying employees, at the same rate as Maternity Allowance.

c) Adoptive Leave

Adoptive leave equivalent to maternity and paternity leave is available to people who newly adopt a child, including a social security benefit equivalent to the maternity

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allowance. A couple who are adopting may choose which of them will take the longer “maternity” equivalent leave.

d) Right to request to work flexible hours

A right to request to vary working hours in order to accommodate caring responsibilities will be available to employees with 26 weeks’ qualifying service who are parents of children under 6 years old; parents of disabled children under 18 years old; and/or those who have defined caring responsibilities. Employers may justify a refusal to adjust hours.

e) Parental Leave

Employees with one year’s qualifying service who are parents of disabled children under 18 years old will have a right to take up to a maximum of 18 weeks’ unpaid leave before their child is 18.

f) Health and Safety

New, expectant or breastfeeding mothers who cannot work due to health and safety reasons, and cannot be found alternative work, must be suspended on full pay until they are able to return to work.

Guernsey

At present there is no law in Guernsey requiring employers to provide paid maternity leave. Employers who choose to do so provide such benefits through a contractual agreement and this must be included in the statement of the main terms and conditions of employment.

Under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, which came into force on the 1st March 2006, employers are required to specify in an employee’s written terms and conditions of employment what the maternity provisions are, regardless of whether the employer has chosen to provide any **paid** maternity benefits or otherwise.

A dismissal is automatically unfair if the reason for dismissal was that the employee was pregnant, or for any other reason connected with her pregnancy. Failure to allow a pregnant woman a reasonable period of time off (even if this is unpaid) is likely to lead to a constructive unfair dismissal claim. Selection of a woman for redundancy as a result of her pregnancy, or for any other reason connected with it, is also automatically unfair.

Under the Sex Discrimination Ordinance, it is likely that any less favourable treatment which has its root cause in pregnancy will be seen by the Employment and Discrimination Tribunal (the body who hear sex discrimination complaints) as direct sex discrimination because pregnancy is a gender-specific condition. For example, a woman might claim sex

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discrimination if she has been turned down for a job or promotion, has been refused time off to deal with child care problem, or has not been properly consulted about a potential redundancy situation due to being absent from the workplace on maternity leave.

Other countries

Other countries offer rights to parental leave and family friendly work opportunities which vary greatly. For example, Belgium, France and Spain offer additional weeks of maternity leave for multiple births, and Poland and France offer additional weeks maternity leave for a second or third child.

In most countries, pay during statutory maternity leave is funded by the States or health and social insurance schemes, although some countries supplement that by requiring additional payments from the employer. In some countries, parental leave is paid at basic benefit rates and others at a percentage of the employees full pay; some have agreed provisions collectively, and others have enforced rights through legislation.

Two examples of parental leave provisions are set out below, from Ireland and Sweden;

Ireland has statutory provision for 26 weeks maternity leave, 18 weeks of which are paid at 70% of earnings (with a minimum and maximum amount) funded by the States. There is no statutory paternity leave, but 14 weeks of unpaid parental leave which must be taken in one block (unless the employer agrees otherwise).

In Sweden, there is no specific maternity and paternity leave, but statutory parental leave of 480 days (approx. 16 months) may be taken, with 60 days that are reserved for each parent. Leave is fully flexible and may be split into single days (or even half days) as the parents wish. Leave is paid at 80% earnings for the first 390 days (with a minimum and maximum amount) and 90 days at a much lower rate, funded by the State.

International Standards

The European Union Pregnant Workers Directive (92/85/EEC) came into force on 19 October 1994 and was reviewed in 1999. It states that *“Employees are entitled to 14 weeks continuous maternity leave before and/or after delivery...The employment rights relating to the employment contract must be ensured, including the entitlement to an adequate allowance.”*

The International Labour Organisation Maternity Protection Convention, 2000 (183), which came into force on the 7th February 2002, recommends in Article 4 that, *“a woman ... shall be entitled to a period of maternity leave of not less than 14 weeks.”* It also states in Article 6 that *“Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”*

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Parental leave differs from maternity leave in that it is primarily about the care and upbringing of young children rather than being intended to protect the health of the mother. Either parent may therefore be eligible for it. The European Commission's 1983 Directive on parental leave defined it as:

'leave granted to fathers and mothers during a period after the termination of maternity leave to enable parents in employment to look after their newborn child for a certain time, whilst giving them some degree of security in respect of employment, social security and remuneration ... Parental leave is also granted to adoptive parents.'

As a result of this directive, nearly all countries have some form of regulation on parental leave; some through legislation and others through collective bargaining. Security in respect of remuneration does not necessarily have to be interpreted as paid leave and may be interpreted as security of pay on return to work after any period of parental leave.

Failure to give adoptive parents statutory rights to leave equivalent to natural parents may potentially be unlawful under the Human Rights Act 2000. Article 14 of the Human Rights Act prohibits discrimination on grounds not only of sex, race and social origin but also of birth. If an adopted child is deprived of the time with parents that a child raised by natural parents would have had, this may lead to a breach of the Act. There have been some cases instigated in the UK on these grounds, which have been settled amicably out of court.

The reconciliation of work and family life has become increasingly important in recent years across the European Union, due to many changes; in demographics, the pattern and demands of work, the composition of the labour force, in family structure and the distribution of caring work between women and men. In the 1980's the reconciliation initially focussed on how women could combine a career and family life, however has become wider recognising that this is important for both male and female employees at different stages of family life.

SECTION 4 – PREVIOUS STATES PROPOSITIONS AND CONSULTATION

Introduction

Although there is currently no legislation relating to maternity leave in Jersey, the States agreed via an amendment to the 1997 Strategic Policy Review and Action Plan, that a maternity policy should be introduced throughout the Island to match that offered by the States of Jersey to its employees. The specifics of the proposal were not defined as the various public sector schemes differed at that time, however have since been consolidated, so that permanent contract employees with at least 1 year's continuous service have the right:

- not to be unreasonably refused time off for ante-natal care and to be paid for such absences

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- to a minimum of 18 weeks' maternity leave (an exact match with the States employees policy would give the right to 12 weeks at 90% of salary)
- to receive all their contractual benefits except wages during the period of maternity leave
- not to be dismissed because of pregnancy or childbirth
- to be offered alternative suitable work if they would otherwise have to be suspended on certain health and safety grounds
- to receive their normal remuneration during suspension for health and safety reasons if alternative suitable work is not available.

In 1996, the States approved a report from the former Employment and Social Security Committee which included a policy on Social Security maternity benefits (P132/1996). The report noted the success of the current maternity allowance and grant, which is paid in respect of most births in Jersey, and which women thought were reasonable and a great help with the early expenses of having a baby.

As maternity benefits are paid at the same rate as the other benefits and pensions that are paid at a rate based on the person's contribution record, the former Committee was of the view that it would not be equitable to raise the level of maternity allowance to include an earnings related component, if it could not be done for those other benefits. The former Committee stated that it believed that Jersey was unlikely to be able to afford an earnings related scheme, so the maternity benefits should continue to be made on the same basis as other benefits in the scheme; to act as a platform on which people can build.

In November 1998, the former Committee issued a consultation paper covering a range of employment legislation issues entitled "Fair Play in the Workplace", which was widely circulated and debated publicly and included questions on maternity, and family-friendly and flexible working policies.

Maternity

Responses to the maternity related questions in the "Fair Play" consultation were as follows;

72% of the respondents overall supported a legal right to time off work for antenatal care (79% of employees compared with 57% of employers).

67% of the respondents overall supported a legal right to maternity leave and return to the same or equivalent job (76% of employees compared with 47% of employers).

64% of the respondents overall supported a legal right to maternity pay during part of the maternity leave (72% of employees compared with 47% of employers).

79% of the respondents overall supported legal protection against unfair dismissal on maternity grounds (85% of employees compared with 64% of employers).

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The outcomes of that consultation resulted in a Report and Proposition to the States proposing the two Phased approach to employment legislation, which was debated in December 2000 (P.99/2000). On the question of statutory maternity pay, small businesses in particular were concerned that they would not be able to afford to pay an employee during maternity leave, as well as pay for a replacement employee. There was also concern about the lack of discrimination legislation; whereby if there is no specific protection, some employers may stop employing women of childbearing age, or dismiss on an employees announcement of pregnancy.

The former Employment and Social Security Committee recommended that any maternity policy should be introduced gradually to allow business time to adapt, however stated that priority should be given to protecting employees against unfair dismissal on grounds relating to maternity.

Family-friendly and flexible working policies

The former Committee's Proposition also recognised that flexible approaches to working are commonly used around the world and such opportunities should not be limited where they are to the benefit of employers and employees. It noted that with a thriving economy and manpower numbers being restricted by Regulation of Undertakings, the business community needs to seek out means by which it can most effectively use the Island's available manpower and that "family friendly" policies might encourage women with family commitments back into the work place and help employees to balance work and family commitments.

Legislation was being created in the UK at that time to put into effect new social policies contained in directives issued by the European Union. The former Committee proposed that, since so many women are included in the workforce in Jersey, similar legislation for additional unpaid leave and leave for family emergencies, should be introduced to suit changing working trends.

Flexible working practices are only likely to be successful if measures are taken to gain the commitment of all those affected. There should be a joint approach between managers, employees and employee representatives and a continuing programme of communications and involvement. Sympathetic consideration to requests for a flexible working pattern can assist such employees greatly and help improve productivity.

According to the Jersey Advisory and Conciliation Service's A to Z of work, flexibility can be introduced in a number of ways including:

- increasing/decreasing the size of the workforce in line with seasonal or other fluctuation in demand, e.g. use of part-timers, job sharers, temporary workers, sub-contractors, employees on fixed term contracts and homeworkers.

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- reducing demarcations to increase functional flexibility, e.g. between craftsmen and production workers and between white collar and blue collar workers
- arranging hours to make optimum use of capital equipment and to cater for seasonal pressures or other variations in customer demand, which may involve new shift working arrangements or annualised hours.
- relating pay more directly to organisational goals, for example by rewarding increased flexibility in the range of tasks carried out by employees, or the acquisition of new skills.

SECTION 5 – RELEVANT CONCEPTS IN EXISTING LEGISLATION

This section sets out definitions and concepts that are provided in the Employment (Jersey) Law 2003, that are relevant to maternity and family related policies.

Terms and conditions

Part 2 of the Employment Law requires that employers must state in writing at the start of employment, or within 4 weeks of the start, whether or not there are terms relating to maternity, and if so, what those terms are. The development of maternity, paternity and family friendly legislation will mean that either the minimum statutory conditions apply, or the employer will state if there are more favourable contractual terms.

Automatically Unfair Dismissal

When an employer terminates an employees' contract, this is classed as a dismissal under the Employment Law. The Employment Law provides a number of "automatically" unfair reasons, which means that the normal upper age limit and length of service requirements do not apply.

One of these is Article 67; "Dismissal for family or other reasons" which enables Regulations to be made prescribing reasons for dismissal relating to pregnancy, childbirth or maternity, and also relating to redundancy or other factors. Until Regulations have been made under this article, dismissal for any of these reasons will not be automatically unfair, but may still be found to be unfair by the Employment Tribunal if the employee has worked for their employer for 26 weeks or more. Such Regulations will be included when the policies relating to maternity and other family issues have been developed.

The Employment Law also provides that to dismiss an employee for asserting a statutory right is automatically unfair, and the same will apply to any new parental leave and family related statutory rights that may be created as a result of this consultation.

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Continuity of Employment

Article 57(3)(c) of the Employment Law provides that any week (or part of a week) in which an employee is absent from work in circumstances such that, by arrangement or custom, the employee is regarded as continuing in the employment of his or her employer for all or any purposes, shall count as a period of employment.

Such weeks therefore would count towards an employees period of continuous service, which is relevant for the notice period (or pay in lieu) that an employer is required to give an employee on termination of employment; for the purposes of calculating whether an employee has the relevant length of service to qualify for protection against unfair dismissal (and the award that may be paid to an employee if that claim is successful), and will also be relevant in the calculation of the employee's holiday entitlement.

Some countries provide that an employee's continuity of employment is not broken by some or all of their statutory maternity or parental leave. It will be necessary to determine whether any statutory maternity or other parental leave in Jersey should be protected in this way.

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SECTION 6 – QUESTIONNAIRE

1. Please tick which of the following you are responding as, or on behalf of;

- Employer
- Business/trade representative body or employers' association
- Trade union or staff association
- Individual employee
- Other (please describe)

2. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

This response is submitted by the Unite Amicus Section. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors.

3. Please indicate your business type, sector or industry

Trade Union

4. Your name and contact details (optional)

Siobhan Endean, Unite Amicus Section Head of Equality, 35 King Street, Covent Garden, London, WWC2E 8JG

siobhan.endean@unitetheunion.com

Tel: 020 7420 8907

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Cross used in box to indicate answer;

In the reporting of the results of this consultation, I am willing to allow the Employment Forum to quote my comments;

Anonymously Or attributed to the union

I am willing for my responses to this consultation, to be made available in full to the public.

I am willing for my consultation responses to this consultation, to be made available in full to the Scrutiny Office, if requested by them. For more information about the role of Scrutiny, see the website www.statesassembly.gov.ie/scrutiny/frame.asp

I am willing to discuss my responses further with the Forum, if necessary. If so, please write your telephone number or email address below

siobhan.endean@unitetheunion.com

I would prefer to receive all Forum consultation papers via email in future, instead of paper copy - please write your email address below

siobhan.endean@unitetheunion.com, roger.jeary@unitetheunion.com

I am willing for my name and address to be included on a consultation database to be held by the **Social Security Department**, so that I am included in any future consultation on employment legislation carried out by that Department, as well as by the Employment Forum.

I do not wish to receive consultation documents issued by the Forum in future.

I wish to amend or add recipient details for all future consultation papers. If so, please write the new recipient name and address below.

Thank you for taking the time to complete this consultation.

CONSULTATION QUESTIONS

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The following questionnaire has been divided into eight parts;

- PART 1 – Employer Questions
- PART 2 – Maternity Rights
- PART 3 – Paternity Rights
- PART 4 – Adoption Rights
- PART 5 – Parental Leave
- PART 6 – Flexible Working
- PART 7 – Time off for Dependents
- PART 8 – Alternative Leave Provisions

In answer to the following questions, please give as much detail as possible, using the comment boxes or extra pages to provide any additional comments and including examples where appropriate.

Please leave blank any questions that you feel do not apply to you.

If you are not sending a typed response, please write as clearly as possible.

PART 1 - EMPLOYER QUESTIONS

As we are responding as a trade union and not an employer we have not answered questions 1 & 2.

1. Please estimate as closely as possible how many employees you employ in the following age groups?

	Male	Female
Up to age 40		
Over age 40		

2. Do you give your employees a contractual or non-contractual right to any of the following?

	<u>Contractual right</u>		<u>Non-Contractual right</u>	
(a) Time off for antenatal care	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(b) Unpaid maternity leave	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(c) Paid maternity leave	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	<u>Contractual right</u>		<u>Non-Contractual right</u>	

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- (d) Unpaid paternity leave Yes No Yes No
- (e) Paid paternity leave Yes No Yes No
- (f) Unpaid adoption leave Yes No Yes No
- (g) Paid adoption leave Yes No Yes No
- (h) Flexible work opportunities Yes No Yes No
- (i) Time off for family emergencies Yes No Yes No

(j) Please specify below any other family related leave, benefits or flexibility that you offer.

(k) If you have indicated that you provide any contractual or non-contractual rights in the questions above, please provide further details, including whether there is a qualifying period for any of those rights, how much leave may be taken, if periods of leave are paid or unpaid, etc.

3. Should small business in Jersey be exempt from any legislative provisions regarding maternity, paternity and family friendly working policies?

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Yes No Undecided

(a) If you have answered yes to the previous question, please indicate what size of business should be exempt?

- Less than 5 employees
 Less than 10 employees
 Less than 20 employees
 Other size, please specify _____

Please give a reason for your response

Unite Amicus does not support the exclusion of small businesses from the legislation. Small businesses (those which employ for 10 or fewer people) account for 80% of businesses on Jersey and any exemption would result in a large number of workers being denied the proposed new maternity, paternity and family friendly rights. Smaller businesses would need support to understand and implement the new rights so clear guidance and advice should be available which should be specific to their needs.

PART 2 - MATERNITY RIGHTS

Question 1 – Ante-natal Care

(a) Should women be entitled to paid time off work for ante-natal care, for example, examinations and classes?

Yes No Undecided

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(b) Should there be a qualifying length of service to entitle women to this right?

Yes No Undecided

If you have answered yes, please specify what qualifying period should apply

It is important for the health of both the mother and the baby that the mother attends ante-natal appointments. If the mother does not receive full pay because of this there is a danger that some mothers may not attend. All women regardless of length of service should be entitled to paid time off.

(c) Should women have to seek their employer's agreement to the length of time needed off work for ante-natal care?

Yes No Undecided

(d) Should women have to give their employer notice that they intend to take time off for ante-natal care, where possible?

Yes No Undecided

(e) Should women be required to organise ante-natal care outside of work hours, as far as possible?

Yes No Undecided

Please give reasons for your responses to any of the questions above.

The length of time required for ante-natal care will reflect the length of the appointment and travel time to and from work from the location of the appointment. This can be discussed with the employer. It is not necessary to have a legal requirement to seek an employer's agreement to the length of time, but that the employee should be allowed reasonable time off to attend the appointment.

An employee should give reasonable notice where practicable, but this may not always be possible in the case of emergency ante-natal appointments.

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Question 2 - Health and Safety in Maternity

(a) Should women be required to take a period of compulsory maternity leave in accordance with European health and safety best practice? (See p.5 "Health and Safety").

Yes No Undecided

Please give reasons for your response.

This period is recommended for the health and safety of both the child and the mother and it should be legal requirement.

(b) If you have answered yes to the previous question, should the compulsory period be longer for women whose work which is likely to be dangerous for a new mother, for example, working with chemicals, radiation, or heavy machinery?

Yes No Undecided

Please give reasons for your response.

Yes it should be longer if there is a risk to the health of the mother.

(c) If the workplace is a potential danger to a woman who is a new, expectant or breastfeeding mother, should the employer be obliged to try to find her alternative duties within the company?

Yes No Undecided

Please give reasons for your response.

A pregnant woman should be protected legally in this respect as employers should not be able to put a pregnant woman's health and safety at risk.

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(d) If the employer is not able to offer alternative “safe” duties, should the employer be obliged to suspend the woman on full pay until she can safely resume her duties?

Yes No Undecided

Please give reasons for your response.

For the same reasons as given above.

(e) If an employer has been notified by an employee that she intends to breastfeed her baby, should there be a duty on the employer to provide any of the following? (*N.B. none of the following would entitle the woman to bring her baby into the workplace*).

Flexible working hours and conditions (unless there are genuine business reasons)

Yes No Undecided

Appropriate rest breaks and milk storage facilities

Yes No Undecided

Protection from health and safety risks

Yes No Undecided

Please give reasons for your responses.

It is important that mothers should be able to continue to breast feed if they choose to on returning to work. This is important for the protection of the baby’s health and well-being and a mother should be legally protected in this respect.

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(f) Should the employer's duty to provide any of the above apply only for a certain period of time after the birth?

Yes No Undecided

If yes, please specify what period would be appropriate

The duty should apply as long as the mother continues to breast feed.

Question 3 – Maternity Leave and Pay

(a) Should Maternity pay be -

Fully funded by the States? Yes No

Partially funded by the States? Yes No

(b) If Maternity pay is to be fully or partially funded by the States, how should the States achieve the additional funds required?

By increasing employer and employee contributions Yes No

Via additional taxes Yes No

Another method, please specify

(c) Assuming that maternity pay could be funded by the States, how long should an employee have worked for her employer in order to be eligible for paid maternity leave?

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NB In the UK, the calculation of length of service runs from the 15th week before the baby is due.

Nil 26 weeks 1 year 2 years

Other period (please specify) _____

Please give reasons for your response

All employees regardless of length of service should be entitled to maternity leave which is the legal requirement in the UK. This will ensure that all working women are able to take time off to care for their baby and have the choice to return to work.

(d) What period of maternity leave should a woman be entitled to by law, again assuming that maternity pay could be funded by the States?

No leave 18 weeks 21 weeks 26 weeks

Other period (please specify) 52_____

Please give reasons for your response

UK legislation currently provides 52 weeks maternity leave regardless of length of service. Research has shown that a baby's well-being and development are best served if the parent is able to care for the baby in their first year. Jersey legislation should reflect this in the provision of maternity leave.

(e) How much maternity leave should a woman be entitled to by law, assuming that neither the States nor the employer will be required to fund it?

No leave 18 weeks 21 weeks 26 weeks

Other period (please specify) 39_____

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Please give reasons for your response

The UK increased its maternity pay period to 39 weeks from 26 weeks in April 2007 with a commitment to increase it to 52 weeks within the period of this UK parliament. As stated previously this is because of research which shows that babies are best looked after by a parent in the first year. We would recommend that Jersey should consider introducing a maternity pay period of at least 39 weeks, but ideally 52 weeks.

(f) This time, assuming that the employer would be required to partially or fully fund a woman's paid maternity leave, what length of service should she have to be eligible? *NB In the UK, the calculation of length of service starts from 15 weeks before the baby is due*

Nil or 26 weeks 1 year 2 years

Other period (please specify) _____

Please give reasons for your response overleaf

Ideally, women should also be entitled to maternity pay from the first day of employment, but if this is not achievable then it should mirror the UK in the requirement of 26 weeks continuous length of service at the 15th week before the baby is due.

(g) Again, assuming that the employer would be required to partially or fully fund a woman's paid maternity leave, what period of maternity leave should she be entitled to by law?

No leave 18 weeks 21 weeks 26 weeks

Other period (please specify) 52

Please give reasons for your response

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Please see previous comments above.

Question 4 - Starting maternity leave

In the UK, the point at which an employee must tell her employer that she is pregnant and wishes to take maternity leave is 24 weeks into the pregnancy (which is 15 weeks before the baby is due). This is partially due to legal termination rights being available until the 24th week of pregnancy.

(a) Given that legal termination rights are the same in Jersey as in the UK, do you think that Jersey should adopt the same approach?

Yes No Undecided

(b) If you have responded to question (a) that our approach should not be the same as the UK, please indicate what alternative you would propose, and give your reasons.

(c) If an employee wishes to change the date on which she intends to start her maternity leave what length of notice should she have to give her employer?

1 week 2 weeks 3 weeks 4 weeks

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Other period (please specify) _____

Please give reasons for your response

4 weeks is a suitable period for the employer to make alternative arrangements that may be required with a change of commencement of an employee's maternity leave.

(d) If a woman is signed off work sick for a pregnancy related reason shortly prior to the birth, should her maternity leave period be forced to start from the date on which she falls sick, rather than the date that she had planned to start her maternity leave?

Tick any of the following that you agree with (you may tick more than one).

- No, maternity leave should start from the planned date (unless the birth is early)
- Only if the sickness period leads up to, or overlaps, the start of the maternity period.
- Only if the sickness falls within the last week of work
- Only if the medical certificate lasts more than 3 days

Please give reasons for your response overleaf

We would recommend that the legislation mirrors that in the UK that if you are off work sick for pregnancy related reasons in the four weeks before the expected week of childbirth, that maternity leave will start from the first date of that absence.

(e) Should a woman's terms and conditions of employment continue to apply during the period of maternity leave? *This would mean, for example, that holiday entitlement would continue to accrue and entitlement to other benefits would continue, such as a company car.*

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Yes No Undecided

Please give reasons for your response

A women should not face a penalty in their terms and conditions of employment and benefits because she is on maternity leave.

(f) Should any pension rights and employer pension contributions continue to accrue whilst a woman is on maternity leave?

Yes No Undecided

Please give reasons for your response

It is important that women's pension rights and employer pension contributions continue during maternity leave. This is necessary to protect a woman's future pension provision. A woman should not be penalised in this respect for time caring for children.

Question 5 - The right to return to work after maternity leave

(a) If an employee wishes to return to work before her intended return date, how much notice should she be required to give her employer?

2 weeks 4 weeks 8 weeks

Other period (please specify) _____

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Please give reasons for your response

4 weeks is sufficient time for an employer to make alternative arrangements because of a change in the planned return date.

(b) Should employees have the right to return to the same job after maternity leave, unless there has been a redundancy situation?

Yes No Undecided

Please give reasons for your response

This is vital for the protection of women workers in Jersey. There should be a right to return to the same job on the same terms and conditions of employment and if this is not possible to an alternative job on the same terms and conditions. A woman returning from maternity leave should also be given special protection if there is a redundancy situation as in UK maternity legislation.

(c) Do you think that employees should have the right to return to a job after maternity leave that is comparable and no less favourable in its terms and conditions, such as equivalent status and remuneration?

Yes No Undecided

Please give reasons for your response overleaf

See comments above.

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(d) If an employee does not return to work for her employer for a minimum period of time after her paid maternity leave has ended, should she be required to refund any part of the maternity pay that she has received?

Yes No Undecided

Please give reasons for your response

In the UK women are not required to refund statutory maternity pay if they do not return to work. Statutory maternity pay is a benefit to support mothers and their babies and it would not be acceptable to expect a mother to refund this benefit because she does not return to work.

Question 6 - Keeping in touch days

(a) Should employees be able to voluntarily offer to work (such as attending meetings, training or update sessions) without any remaining maternity leave being terminated?

Yes No Undecided

(b) If yes, should there be a maximum number of days in which they employee may chose to work without the paid maternity period ending? *(Please specify overleaf)*

None 5 days 10 days Unlimited

Other, please specify _____

Please give any reasons for your responses to questions (a) and (b).

Unite Amicus would support 10 Keeping in Touch Days as is provided under the UK maternity legislation. However, this must be under the strict proviso that this has to be mutually agreed between the employee and employer. The employee should not be required to attend work if she does not wish to do so. Additionally, the employee should not

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forfeit maternity pay and should receive full pay from her employer.

(c) Should an employer only be allowed to contact a woman who is on maternity leave on specific limited grounds?

Yes No Undecided

Please give reasons for your response

Unite Amicus would support an employer keeping in contact with a woman on maternity leave for the reasons below. However, the legislation needs to protect women from being bullied, harassed or encouraged to return to work early by their employer.

(d) Should the grounds on which an employer may (or must) contact an employee who is on maternity leave be agreed in writing before the maternity leave begins (e.g. training sessions, staff updates, job opportunities, changes to the workplace)?

Yes No Undecided

PART 3 - PATERNITY RIGHTS

Question 1 – Eligibility for Paternity Rights

(a) Should paternity leave be defined as a right for employees who have, or expect to have, responsibility for the up bringing of the child, in any of the following three circumstances?

- (i) the biological father of the child, or
- (ii) the husband of the child's mother, or

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(iii) the partner of the child's mother (not necessarily male)

Yes No Undecided

Please give reasons for your response

It is important that the appropriate parent has the opportunity to take paternity leave regardless of marital status or gender. Adoptive parents should also be included in this legislation.

Consideration should be given to the introduction of statutory adoption leave and pay as provided in the UK.

(b) What length of service should an employee have to be eligible for paternity leave? *NB In the UK, the calculation of length of service starts from 15 weeks before the baby is due.*

Nil or 26 weeks 1 year 2 years

Other period, please specify _____

Please give reasons for your response

Ideally all employees should be eligible for paternity leave, but if this not achievable the requirement should be 26 weeks service.

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(c) How much notice should an employee have to give their employer of their intention to take paternity leave? *(Not necessarily notice of the exact leave date, which the employee may wish to coincide with the birth)*

4 weeks 8 weeks 15 weeks

Other period, please specify _____

Please give reasons for your response

4 weeks is adequate notice for an employer to receive notice that an employee wishes to take paternity leave in most circumstances.

Question 2 - Funding Paternity Leave

(a) Should Paternity pay be -

Fully funded by the States? Yes No

Partially funded by the States? Yes No

(b) If Paternity pay is to be fully or partially funded by the States, how should the States achieve the additional funds required?

By increasing employer and employee contributions Yes No

Via additional taxes Yes No

Another method, please specify

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(c) Assuming that paternity pay is funded by the States, what maximum period of paternity leave should be provided?

- 1 week 2 weeks 4 weeks
- Other period, please specify _____

Please give reasons for your response

4 weeks paternity leave, available on a flexible basis, would provide fathers with the opportunity to both support the mother and care for the baby.

(d) Assuming that the employer would be expected to fully or partially fund an employee's paid paternity leave, what maximum period of paternity leave should apply?

- 1 week 2 weeks 4 weeks
- Other period, please specify _____

Please give reasons for your response

See above.

Question 3 – Taking Paternity Leave

(a) Should paternity leave have to be used within a certain time period after the birth?

- No, should be available at anytime
- Within 4 weeks after the baby is born
- Within 8 weeks after the baby is born
- Other time period, please specify 52

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Please give reasons for your response to question 3(a).

There should be more flexibility than being able to take leave within the first 8 weeks after the baby is born. A father should be able to take this leave within the first year of the baby's life and it should not be necessary to take the leave in one block.

(b) Should paternity leave have to be taken in blocks of one week, rather than individual days?

Blocks of one week only

May be split into a series of weeks or days

To be agreed between the employer and employee in an employment contract or collective agreement

Please give reasons for your response

See comments above.

PART 4 - ADOPTION RIGHTS

(a) Should adoptive parents have rights to paid maternity, paternity or parental leave that are equivalent to those for natural parents?

Yes

No

Undecided

Please give reasons for your response

Adoptive parents need to have a period of leave for both the child and the parents to adjust to their new circumstances.

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(b) If yes, should there be a qualifying period of employment?

Nil or 26 weeks 1 year 2 years

Other period, please specify _____

Please give reasons for your response

See comments above regarding maternity leave.

(c) If adoptive parents have equivalent rights to leave and pay, should either parent be able to take the longer period of “maternity” leave, rather than the mother only?

Yes No Undecided

(d) If yes, should the other adopting partner be eligible for the period of “paternity” leave?

Yes No Undecided

Please give reasons for your response

This would allow both adoptive parents more choice and flexibility.

(e) Should adoptive parents only have the right to an equivalent period of leave when children under a certain age have been placed for adoption?

Any age
 Under 1 year
 Under 3 years
 Under 5 years
 Other, please specify _____

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Please give reasons for your response to question 4(e)

Unite Amicus would not support the leave only being available up to a certain age. Regardless of the age of the child, parents should have the opportunity to have time off work to care for the child. As with children under 5, children over 5 will be settling into a new home life with new adoptive parents, in a new environment and may be changing schools. They are going to require just as much care as a child under 5 so we believe that there is no argument for restrictions on the child's age.

PART 5 - PARENTAL LEAVE

*This Part deals with the possibility of introducing a right to parental leave **in addition to** maternity and paternity leave, as it currently exists in the UK, where each parent has the right to 13 weeks leave per child, which cannot be shared between the two parents (see page 10 of this consultation for further details of this right in the UK).*

In some jurisdictions there is a right to parental leave, either instead of, or in addition to, maternity and paternity leave. Part 8 of this questionnaire deals with the option of giving parents the right to a total period of parental leave, which may be used by either parent in any proportion they wish, instead of specific rights to maternity and paternity leave.

(a) Should additional **unpaid** parental leave be available to each parent, for each child?

Yes No Undecided

Please give any reasons for your response.

Both parents should be given the opportunity to take parental leave for each child. Consideration should be given to paid parental leave. The experience in the UK is that as the leave is unpaid there has been a very small take-up as most parents cannot afford to take unpaid leave.

Parental leave should be available to all biological parents regardless of marital status and should also be available to adoptive parents and same sex parents.

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(b) If you have answered yes to the question above, how much leave should each parent, be entitled to per child?

4 weeks 8 weeks 13 weeks 26 weeks

Other, please specify _____

Please give any reasons for your response overleaf.

We would recommend 13 weeks for each child with a longer period of 18 weeks for parents of disabled children, as is provided under UK legislation.

(c) Should there be a qualifying period of employment for entitlement to parental leave?

Nil 26 weeks or 1 year 2 years

Other, please specify _____

Please give any reasons for your response

Unite Amicus would recommend 26 weeks qualifying period ideally, but if this is not achievable 1 year as is provided under UK legislation.

(d) Should parents have to use this right within a limited period of time after the child is born (or placed for adoption)?

No limit Up to 3 years after birth Up to 5 years after birth

Other, please specify 18 _____

Please give reasons for your response

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Unite Amicus recommends that parental leave should be available up to a child's 18th birthday, but if at the very least the regulations should mirror the UK and be available for parents of children up to age 5 and age 18 for disabled children.

(e) Should parental leave have to be taken in one week blocks, rather than individual days?

Yes No Undecided

Please give reasons for your response

Parental leave should be as flexible as possible and be available in individual days as well as blocks of one week. This would allow parents to be more flexible in when they take time off. For instance, a parent may only want to take one day off for a child's hospital appointment or their first day at a new school.

(f) Should there be a maximum number of weeks (or days) of the total that may be used per year?

Yes No Undecided

Please give reasons for your response

Ideally there should not be a maximum on the total that may be used per year. For instance a mother may wish to take all her parental leave straight after maternity leave to have an extended period with her baby in the first year.

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(g) How much notice should parents have to give their employer if they intend to use this right?

2 weeks 4 weeks 8 weeks

Other, please specify _____

(h) Should any leave periods have to be mutually agreed as convenient for both employer and employee?

Yes No Undecided

Please give reasons for your responses to questions (g) and (h) overleaf

But as per UK legislation if the employer cannot agree to a period of parental leave because of undue disruption then they must respond to the employee within 7 days with the reason and set out proposed new dates for parental leave for mutual agreement. The employer should also not be able to postpone the request for leave if the leave is immediately after the child is born or a child is placed for adoption.

(i) Should an employer have the right to postpone planned parental leave for a short period of time if it would be particularly disruptive to the business if taken at the time requested?

Yes No Undecided

Please give reasons for your response

See above.

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PART 6 - FLEXIBLE WORKING

Note that in the UK, the employer has an obligation to consider an employee's request for a change in working conditions, but does not necessarily have to grant the request if there are business grounds for refusing.

(a) Should employers have a duty to consider applications from employees for a change in working conditions (i.e. working hours, times or location)?

Yes No Undecided

Please give any reasons for your response

Long working hours and inflexibility at work are a cause of ill health and stress, impacting on the work-life balance of many employees. The average hours worked in Jersey are 40 hours per week, with men working 41 hours. This is high compared to other European countries. The introduction of the flexible working regulations in the UK has resulted in more employees asking to work flexibly using the regulations and this being accepted by their employer. If we are to close the gender pay gap and ensure that both parents are able to take a full role in parenting and caring, then it is vital that employees have a statutory right to request flexible working.

(b) Should there be a qualifying period of employment before employees have the right to apply to their employer for a change in working conditions?

Yes No Undecided

If yes, what period?

26 weeks 1 year 2 years

Other, please specify _____

Please give any reasons for your responses

We would recommend 26 weeks as per the UK legislation.

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(c) Should there be a limit as to how frequently such an application can be made?

Once in 6 months Once per year Once every 2 years

Other, please specify _____

Please give any reasons for your response.

Unite Amicus believes that it would be reasonable that a further request should not be made within one year. However, the employee should have the right to revert to their previous pattern of employment within that year.

(d) In making an application, should the employee have to explain to their employer what effect the employee believes that the proposed change could have on the business, and how that effect might be dealt with?

Yes No Undecided

Please give any reasons for your response to question 6(d).

No it should be up to the employer to investigate the feasibility of the flexible working application and if it is declined for the employer to give a full explanation of why the request is refused.

(e) Should an employer be obliged to hold a meeting with the employee about the application and inform them of the decision within a certain time period?

Yes No Undecided

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If yes, within what time period?

4 weeks 6 weeks 8 weeks

Other, please specify _____

Please give any reasons for your response.

It is important that there is a full meeting between the employee and employer to discuss the request verbally in detail. The employer should respond in 4 weeks which is more than sufficient time for the employer to consider the application and respond.

(f) Should the right to request a change to working conditions only apply to employees in certain circumstances?

Parents of children under 6 Yes No Undecided

Parents of children under 16 Yes No Undecided

Parents of disabled children under 18 Yes No Undecided

Carers of a partner or relative Yes No Undecided

All employees should have the right Yes No Undecided

Please give any reasons for your responses to question 6(f) and suggest any other groups of employees who you think should have the right to request flexible working.

Unite Amicus believes that all employees should have the right to work flexibly regardless of parental or caring responsibilities. This avoids tension in the workplace where one group of workers may be seen as having a perceived advantage at work over other colleagues. It also means that the employer will have more flexibility in hours covered at work. A parent may wish to work within school hours on certain days, but equally someone may wish to work flexibly who is not a parent and cover the hours when the parent is not there, by earlier starts or later finish times.

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(g) If you have indicated in question (f) that all employees should have the right to request a change in working conditions (e.g. for any lifestyle choices, not necessarily to fulfil caring responsibilities), should employers be obliged to give greater weight to applications from employees with child care responsibilities who might not be able to continue to work if the request is refused?

Yes No Undecided

Please give any reasons for your response.

If there is a good flexible working policy in the workplace and managers are trained on its implementation then this should not be necessary as most reasonable requests should be able to be accommodated.

However, Unite Amicus would recommend that further thought should be given to the interaction between the proposed flexible working regulations and sex discrimination legislation. In the UK it could be considered indirect sexual discrimination if a woman is refused flexible working on return from maternity leave. Clear guidance will need to be given to both employers and employees on these issues.

PART 7 - TIME OFF FOR DEPENDENTS

*The right to time off is intended to allow employees **unpaid** time off work to deal with unexpected and urgent, short term situations in relation to dependents, and to allow the employee time to find a longer term solution if necessary.*

(a) Please indicate which of the following should be included in the definition of a “dependent”.

- Husband, wife or partner (**this should include same sex partners**)
- Child (including partner’s child, adopted or fostered)
- Parent

Question continues overleaf....

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- Husband, wife or partner's parent
- Grandparent
- Someone living in the same house (not a lodger or domestic help)

Please give any reasons for your response.

At issue is whether the person is a dependent and it should not relate to the relationship between the two parties. We believe that the right to dependents' leave should be available to all those who have dependents, including all relatives, or a friend that requires care. Additionally, we feel that the time off should be paid to ensure that all employees can afford to take dependents leave if necessary.

(b) In the case of illness, injury or interruption of care, should the definition of a dependent also include someone who reasonably relies on the employee for assistance, but does not fall into the categories above?

- Yes No Undecided

Please give any reasons for your response.

Yes, see comments above.

(c) Please specify any other types of dependent who you think should be included in this right?

See comments above.

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(d) Please indicate if you think the right to a reasonable amount of unpaid time off when necessary, to sort out short term problems, should apply to any of the following situations;

- To provide assistance when dependent falls ill, gives birth, is injured or assaulted
- To make arrangements for the care of an ill or injured dependent
- In consequence of the death of a dependent
- Because of the unexpected disruption of care arrangements for the dependent
- To deal with an unexpected incident when a child is at school or in child care

Please give any reasons for your responses

All of these events cannot be planned for and may require an employee to be able to take time off of work to deal with the situation.

PART 8 - ALTERNATIVE LEAVE PROVISIONS

In many other jurisdictions, legislation relating to maternity, paternity and parental and other family related rights has been developed over decades, often having been driven by different European policies and initiatives. As Jersey has a blank slate, it is possible to develop a scheme that suits the Island's needs, legislating for a total leave entitlement which is not strictly defined, but could be flexible, to include a total number of weeks which may be used by either partner, as general unpaid leave for child care and family reasons. Such leave is usually future specific and can be planned in advance, but other aspects may be unplanned and would be more flexible. A brief example of something of this sort exists in Sweden (see page 13 of this consultation paper).

(a) Rather than devising compartmentalised types of leave for maternity, paternity, parental, adoption and family emergencies, do you think that Jersey should consider introducing a more flexible and extended statutory leave entitlement, which employees may take in varying proportions and which would cover all of the family related requirements for leave and flexibility in both work and family life?

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Yes No Undecided

Please give any reasons for your response overleaf.

Unite Amicus believes that it is vital that mothers have a defined period of maternity leave and pay in their own right of at least six months to protect the health and safety of both the mother and child. In the UK it is proposed that fathers will be able to take up to 26 weeks' additional paternity leave from April 2008 as mothers will be able to transfer their remaining entitlement to maternity leave and pay to the father if they have returned to work. We support that fathers should be able to play a greater role in childcare, but believe that fathers should have their own defined period of paternity leave and pay which would allow them to take time off regardless of whether the mother has returned to work, or indeed is entitled to maternity leave or pay. Research has revealed that if fathers have their own defined period paternity leave and pay then they are more likely to take advantage of this right. The introduction of a family right to leave is likely to result in more women than men taking advantage of this leave and will do nothing to change men's role in childcare or result in more men working flexibly.

(b) If you think that this option should be considered, and assuming that any leave would be **unpaid**, what should the maximum number of weeks flexible leave be in total, bearing in mind that the period may be split between two parents?

18 weeks 21 weeks 26 weeks 52weeks

Other, please specify _____

Please give reasons for your response

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(c) Assuming that part, or all, of the total number of weeks leave could be funded by the States, how many of the weeks leave should be paid?

18 weeks 21 weeks 26 weeks 52weeks

Other, please specify _____

Please give reasons for your response

(d) This time, assuming that part, or all, of the number of weeks leave would have to be funded by the employer, how many of the weeks leave should be paid?

18 weeks 21 weeks 26 weeks 52weeks

Other, please specify _____

Please give reasons for your response

(e) Should flexible parental leave only be available for parents to use within a limited period of time after a child is born (or placed for adoption)? *Please tick any that you agree with.*

- Up to age 3
- Up to age 5
- Up to age 16
- Up to age 18 if a disabled child

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Should apply to all employees with caring responsibilities, not just parents

Other, please specify _____

Please give reasons for your response

(f) Do you think that;

Parents should be able to take the total period of leave in any proportion they wish.

Each partner should have an assigned number of non-transferable weeks and the rest of the leave should be available to be taken by either partner.

Other method of splitting the leave, please specify.

Please give reasons for your response and any other comments on this suggestion

FINAL QUESTION

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Do you have any other comments, concerns or suggestions regarding the issues covered in this consultation that have not been covered by any of the previous questions?

Unite Amicus welcome that Jersey is intending to introduce maternity, paternity and flexible working rights. This is an important step forward in a state where there is scant legal protection and employment rights for workers.

It is vital that robust employment rights and legislation are implemented as soon as possible which adhere to the ILO convention and international standards.

Please refer to page 1 for details of how to submit your response.

Thank you once again, your comments are invaluable to the work of the Employment Forum.

The current members of the Employment Forum are:

Wendy Lambert
Sally Johnson
Melvin Le Feuvre
Tina Palmer
Brendan Renehan
Carol Le Cocq
David Robinson
Jan McCarthy
Rosemary Pestana.