

**Department for Business, Energy and Industrial Strategy (BEIS)
Carer's Leave Consultation**

- 1.1 The NASUWT welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy (BEIS) consultation on carer's leave.
- 1.2 The NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.

GENERAL COMMENTS

- 1.3 The NASUWT welcomes the opportunity to respond to the BEIS consultation on proposals to support people to balance work commitments with responsibilities outside work, specifically unpaid carers.
- 1.4 The NASUWT recognises the need for good jobs that help hard-working carers and create a stronger economy. It is therefore welcome that the Government should look at how it can enhance the opportunity for people to find, advance and stay in work, including supporting those individuals with caring responsibilities.
- 1.5 The Union believes that employers have a duty to keep and retain staff in their employment, as well as seek to recruit those who wish to return to work after a break in employment.
- 1.6 The number of parents working in the labour market has increased significantly in the last 20 years. In April 2019, 75.1% of mothers with

dependent children were in work in the UK, compared to 92.6% of fathers with dependent children.¹

- 1.7 The NASUWT is aware that there has been a significant focus on workplace culture within the UK, particularly in respect of the impact this has on working families who are managing the demands of work with other responsibilities, such as caring for children or elderly relatives.
- 1.8 Carers might be struggling to balance the commitments they have with work with caring for children, grandchildren and/or elderly relatives. A consequence of this is that many workers are driven from the workplace or forced into intermittent, insecure and precarious low-paid work.
- 1.9 Data from the Office for National Statistics shows that the impact is felt disproportionately by women, who are less likely to be working as they are the main carers within households.²
- 1.10 This is compounded by research which suggests that a major impact on a woman's 'choice' to leave the workplace is their partner's working conditions and workplace culture, which prevents the woman's return to work.³
- 1.11 The interaction between work and care is at the root of much of the persistence of gender inequality in Britain today, with women having to manage the pressures of caring with participation in the workplace.
- 1.12 A workplace stuck in the past, where gender stereotypes are still rife, means that gender divides within the workplace are perpetuated, and women, who are disproportionately more likely to take up flexible working, are likely to be less visible, less well-paid and less likely to be promoted.⁴

¹<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/familiesandthelabourmarketengland/2019>

²<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/economicinactivity/datasets/economicinactivitybyreaseasonallyadjustedinac01sa>

³ http://eprints.lse.ac.uk/81486/1/Orgad_Heading%20home_2017_author.pdf

⁴ <http://www.acas.org.uk/media/pdf/o/7/Flexibility-in-the-Workplace.pdf>

- 1.13 However, gender stereotyping has been identified as a key problem, not just for women, but for men as well.⁵ For example, according to the 2017 Modern Families Index, fathers want to take an active part in childcare, yet their workplaces are failing to adapt and support this.⁶ Until this is addressed, there will continue to be stereotypical gender roles, and fathers will continue to voice concerns over work-life balance and the ability to fulfil their responsibilities for caring for their children.⁷
- 1.14 Worryingly, the Trades Union Congress (TUC) reports that more employers seem to think that employees have to manage their work and family responsibilities.⁸ According to the 2011 Workplace Employment Relations Study, this attitude has increased significantly over the period 2004 to 2011.⁹
- 1.15 This is compounded by the fact that almost a third of working carers have not discussed their caring role with their employer or anyone at their workplace because they believe that nothing would change as a result.¹⁰
- 1.16 Access to good, flexible employment practices is vital, as it enables employers to recruit workers from a wider talent pool, particularly women who are often forced to drop out of the labour market, or obtain low-paid, part-time and insecure work due to the difficulty experienced in combining work and care.
- 1.17 It should be noted that most workers will be affected by the need to provide some level of care at some point in their working lives. Data suggests that two thirds of adults have been the carer of someone who was sick or disabled, or who required support in old age.¹¹

⁵ <http://www.forbes.com/sites/dinamedland/2017/01/15/a-fatherhood-penalty-u-k-workplace-culture-reveals-its-lack-of-connection/#7b79d8025730>

⁶ https://www.workingfamilies.org.uk/wp-content/uploads/2017/01/Modern-Families-Index_Full-Report.pdf

⁷ Ibid.

⁸ <http://britainthinks.com/pdfs/BetterjobsformumsanddadsReport.pdf>

⁹ Ibid.

¹⁰ https://www.cjpd.co.uk/Images/carer-friendly-workplace-guidance_tcm18-80345.pdf

¹¹ http://www.carersuk.org/images/News_campaigns/CarersRightsDay_Nov19_FINAL.pdf

- 1.18 It is therefore imperative that the Government gets this right, so that those caring for older, disabled or seriously ill family or friends can better manage the demands of work and caring.
- 1.19 This situation has been brought into sharp focus by the COVID-19 pandemic which has seen significant growth in the number of unpaid carers in the UK. Research shows that approximately 4.5 million people in the UK have become unpaid carers as a result of the coronavirus crisis. This is in addition to the 9.1 million unpaid carers prior to the pandemic.¹² The same research indicates that 26% of all workers are trying to deal with the demands of work and unpaid care.¹³
- 1.20 The situation is ever changing and the Government has been too slow to respond to the needs of these individuals, for example, introducing measures to relax the rules on flexible working, so more than one request can be made.

SPECIFIC COMMENTS

A new entitlement to unpaid carer's leave

- 2.1 Whilst the NASUWT welcomes the intention of the Government to give carers the right to take one week of leave to provide care, the Union is disappointed that the scope of the questions in the consultation are predicated on the assumption that any period of carer's leave should be unpaid and only provided within a set of very specific circumstances (e.g. to provide care for a family member or other dependant who has a longer-term or otherwise significant care need).¹⁴
- 2.2 Limiting the scope and applicability of carer's leave in such a way suggests that a decision has already been made in respect of the best way to address carer's leave which fails to take account of the outcome of the

¹² https://www.carersuk.org/images/CarersWeek2020/CW_2020_Research_Report_WEB.pdf

¹³ Ibid.

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873787/carers-leave-consultation-document.pdf

consultation process and the evidence provided by consultees. As such, the consultation could be seen as tokenistic because it fails to deliver on the stated aim to ‘*support employees to balance work and care*’, or ‘*give individuals the flexibility to provide care during regular working hours*’ so that leave is widely available to those who need it.¹⁵

- 2.3 The NASUWT has previously stated that the poor uptake of other types of statutory leave (e.g. maternity leave, paternity leave and shared parental leave) is down to the fact that levels of statutory pay are at rates which have fallen well below average earnings, specifically those across the teaching profession.¹⁶
- 2.4 The suggestion of unpaid carer’s leave therefore represents a significant disadvantage to promoting carer’s leave across the teaching profession and the UK workforce in general. A loss of earnings such as this has been reported as the biggest barrier to young parents accessing their employment rights.¹⁷
- 2.5 Greater fairness should be applied to those with caring responsibilities by ensuring that there is adequate income protection to enable more carers to take sufficient periods of leave as and when appropriate. The Union remains concerned that a key determinant of the take-up of carer’s leave will be whether it is paid at reasonable-earnings replacement levels.
- 2.6 Research suggests that unpaid time off may put pressure on family finances, particularly if the working carer is the main earner.¹⁸ This is supported by the fact that taking on a caring role can result in a sharp reduction in income, with 43% of those caring for more than 35 hours a week reporting that they struggle to make ends meet.¹⁹
- 2.7 In addition, workers who are in receipt of generous paid-leave entitlements are more likely to return to work in their previous job, which suggests that

¹⁵ Ibid.

¹⁶ <https://www.nasuwt.org.uk/uploads/assets/uploaded/367365e0-5a56-462c-91dfb3e61453c76b.pdf>

¹⁷ <http://britainthinks.com/pdfs/BetterjobsformumsanddadsReport.pdf>

¹⁸ https://www.cipd.co.uk/Images/supporting-working-carers-1_tcm18-80339.pdf

¹⁹ http://www.carersuk.org/images/News_campaigns/CUK_State_of_Caring_2019_Report.pdf

better pay would encourage greater labour market participation, specifically of women. It would also boost the retention and utilisation of their knowledge and skills, whilst giving fathers the right to care for their children.

- 2.8 Research has shown that the public views the right to additional paid time off work to care for dependants for five to ten days as one of the key factors in making a difference.²⁰
- 2.9 With this in mind, the NASUWT believes that consideration should be given to implement a day-one right for at least ten days' paid carer's leave at full pay for all workers. This has the potential to increase the uptake of carer's leave significantly and have a transformative effect on the way workers manage the burden of work and caring.
- 2.10 This would move the UK to a position such as that in Australia, where all employees (except casuals) have access to ten days of paid personal/carer's leave per year of service,²¹ although it would still leave the UK lagging behind Nordic countries like Norway and Sweden.

Eligibility criteria for carer's leave and what carer's leave can be taken for

- 2.11 In order to maximise the impact of any reforms, carer's leave should be as flexible as possible and provide a number of options with regards to when and how the leave can be taken, and for what purpose.
- 2.12 The NASUWT therefore strongly disagrees with any attempt to restrict the eligibility criteria to those who are employees with long-term caring responsibilities, as this ignores a swathe of workers on atypical employment contracts (i.e. agency workers), as well as those who are categorised as self-employed. This is especially the case in situations of carer's leave where the employee makes no such distinction.?

²⁰ http://www.carersuk.org/images/News_and_campaigns/Juggling_work_and_unpaid_care_report_final_0119_WEB.pdf

²¹ <https://www.fairwork.gov.au/leave/sick-and-carers-leave/paid-sick-and-carers-leave>

- 2.13 A new entitlement to carer's leave should be available to *all* workers as a day-one right to address those on atypical employment contracts, such as supply teachers as agency workers.
- 2.14 The TUC estimates that there are almost 3.2 million young mothers and fathers who are employees in the UK.²² Young parents are more likely to be disproportionately represented in insecure work, such as agency work. As a consequence, they miss out on key rights and entitlements.
- 2.15 The new entitlement would achieve the aspiration outlined in the consultation of ensuring that carer's leave is targeted at those parents who are most in need.²³
- 2.16 Restricting carer's leave to those caring for individuals with physical or mental problems, or disabilities, or issues related to old age and where the need for care is likely to last for a longer period of time (i.e. six months or more) further limits the scope and applicability of carer's leave.
- 2.17 The NASUWT believes that this is disappointing and places a barrier to the increased uptake of carer's leave by workers, especially if the Government seriously wants to provide additional flexibility and choice in order to avoid skilled and experienced workers dropping out of the market.
- 2.18 For example, in Sweden, Temporary Parental Leave allows eligible workers to take 120 days per child, per year, for children under the age of 12. This is paid at 77.6% of earnings and can be offered to someone outside of the family who meets the eligibility criteria.²⁴
- 2.19 The Union welcomes the decision to utilise the broadest definition of the activities that carer's leave can be used for, including accompanying someone to appointments, childcare and supporting recovery, as this should ensure that no unreasonable request for carer's leave is refused

²² https://www.tuc.org.uk/sites/default/files/Better_Jobs_For_Mums_And_Dads_2017_AW_Digital_0.pdf

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873787/carers-leave-consultation-document.pdf

²⁴ https://www.leavenetwork.org/fileadmin/user_upload/k_leavenetwork/country_notes/2018/FINAL_Sweden2018.pdf

and those with genuine needs are not denied access to the leave they require.

Evidence requirements for accessing carer's leave

2.20 The NASUWT believes that those requesting carer's leave should be able to self-certify each time they make a request, in order to avoid a situation where the evidence expected is not so onerous or overly bureaucratic that the leave cannot be accessed by those who require it. This is prescient given the sensitive nature of the situation and the levels of stress and anxiety an individual may feel.

2.21 Research has suggested that 90% of carers experience increased stress and anxiety concerning the role, but this is significantly different when employers are sympathetic towards the caring responsibilities of employees.

2.22 Given the circumstances surrounding a request for carer's leave, self-certification enables an individual to submit evidence of eligibility that is minimal and as easy as possible to provide.

2.23 Any evidence provided should be treated sensitively, taking account of the circumstances an individual may face. It should not disclose or rely on personal information or request information which is difficult to obtain. Furthermore, it should also have the ability to be produced retrospectively.

How the leave would apply and how the leave can be taken

2.24 The NASUWT welcomes the suggestion in the consultation that the entitlement to carer's leave would not be capped at a maximum number of weeks over a specific number of years, as this should ensure that the appropriate level of support is provided, given that it is difficult to predict how long the type of caring needs are likely to last.

- 2.25 Imposing a cap could have an adverse impact on the ability of workers to provide support as carers, and, as stated in the consultation, to make the leave widely available to those who need it.²⁵
- 2.26 This is prescient given that lifetime patterns of caring, and the life stages at which they occur, can affect working carers at different points in their careers. For some, this can happen suddenly and unexpectedly, whereas for others, a caring responsibility can grow gradually over time.
- 2.27 Furthermore, capping the amount of leave could force some carers to take unpaid leave in order to extend the amount of time they have with the person they care for, thereby adding to what is already an anxious time.
- 2.28 The NASUWT strongly believes that if the Government seriously wants to provide additional flexibility and choice for carers to allow them access to carer's leave, then carers should have complete choice regarding the types of leave they take so that it produces the best outcomes.
- 2.29 A continuous block of one week, which reflects existing parental leave entitlements, will not provide carers with the ability to adapt effectively, so a system which permits individual days to be taken as and when required is preferable and would put the carer at the centre of the decision-making process.
- 2.30 The Union notes that the poor take-up of Shared Parental Leave (SPL) has been hindered by the process which parents have to go through. It is bureaucratic in terms of the notification required and the way in which periods of leave are booked.²⁶ The Government must therefore avoid such a complicated and convoluted process for carer's leave.

Requesting the leave

- 2.31 As stated previously, the Union believes that in order to best address the needs of carers and maximise the impact of any reforms, carer's leave

²⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873787/carers-leave-consultation-document.pdf

²⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/358/358.pdf>

should be as flexible as possible, including in respect of how the leave is requested.

- 2.32 Whilst appreciating the need for employers to manage staff absences effectively, it cannot go unnoticed that the aim of carer's leave is to provide the flexibility to respond to changing circumstances as and when appropriate.
- 2.33 It would therefore be inappropriate to put in place a system that is overly bureaucratic, complicated and not user-friendly. Furthermore, once leave has been booked, the employer should not be in a position to refuse a period of leave.
- 2.34 The Union believes that consideration should be given to a notice period proportionate to the amount of leave requested, with provision for there being no notice period for any request for carer's leave under three days.

Employment protections and the right to return to the same job

- 2.35 The Union cannot see any reason why carers who take carer's leave should not be entitled to the same employment protections as any other worker, including the right to return to the same job in which they were employed prior to their leave, irrespective of the length of time away from work.
- 2.36 Without this reassurance, it is unlikely that the provisions will be used, because the employer can offer suitable alternative work on their return, rather than the work they were doing prior to their leave. Furthermore, the NASUWT would argue that it does not make good business sense to risk losing skilled and experienced workers who would otherwise have returned to work.
- 2.37 Disappointingly, reports have indicated that women returning from maternity leave are now more likely to face discrimination. The Equality and Human Rights Commission (EHRC) reported that some women

returning from maternity were treated so poorly that they had to quit their job, whilst others reported being treated worse by their employer after returning to work.²⁷ Most worryingly, some reported that they were either dismissed or made compulsorily redundant.²⁸

2.38 The research shows that 77% of mothers reported a negative or possibly discriminatory experience at work during their pregnancy or maternity leave, and/or on their return to work.²⁹ This includes being dismissed, demoted, refused access to training or harassed by colleagues or managers.

2.39 In addition to this, research has shown that lower wages are associated with those returning to work following periods of absence, such as maternity leave. A study by the Institute for Fiscal Studies found that women earn around two per cent less on average for every year they spend out of paid work, rising to an average of four per cent less for those more highly educated.³⁰

2.40 Women are being forced out of work when they seek to return from periods of leave by the imposition of penalties such as diminished career opportunities and having to take on jobs below their level of skill and experience in order to get back into paid work.³¹

2.41 Given the evidence above, the Union is clear that the proposals to introduce carer's leave must ensure that employers who break the law can expect there to be significant consequences for their actions, yet at the same time provide carers with the comfort and knowledge that the system works in a fair and just manner.

²⁷ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

²⁸ Ibid.

²⁹ Ibid.

³⁰ <https://www.ifs.org.uk/uploads/publications/bns/bn186.pdf>

³¹ https://consult.education.gov.uk/government-equalities-office/returning-to-work-after-time-out-for-caring/supporting_documents/Returners%20Call%20for%20Evidence%20Document.pdf

- 2.42 It is worth noting that rights are only worthwhile if they can be enforced effectively, without carers living in fear of intimidation from their employer and the prospect of losing their job.
- 2.43 The NASUWT is clear that any recommendations must ensure that organisations who fail in their obligations can expect there to be significant consequences for their actions. Without the requisite enforcement, any proposals would constitute tokenism or window-dressing.
- 2.44 Any right to request must be supported by legislation and the statutory right of appeal. The Union is aware that a significant barrier to flexible working is that it is currently too easy for the employer to refuse a request for flexible working due to a 'good business reason'. For example, the right to request flexible working permits an employer to refuse on the basis of any one of seven reasons, including that the extra costs will damage the business and/or that flexible working will affect quality and performance.³²
- 2.45 This has resulted in a situation where employers can unilaterally decide whether or not to hear an appeal. In effect the right to request is no right at all.

The impact on employers

- 2.46 The NASUWT appreciates that any changes, such as those put forward in this consultation, will have a cost implication. However, given the current situation in regards to carer's leave, the Union believes it is not a question of whether the Government and businesses can afford to make them; rather it is a question of whether they can afford not to make them.
- 2.47 The Union believes that employers have a duty to keep and retain staff in their employment, as well as to seek to recruit those who wish to return to work after a break in employment. It does not make good business sense to risk losing skilled and experienced workers who would otherwise have returned to work.

³² <https://www.gov.uk/flexible-working/after-the-application>

2.48 Generous paid-leave entitlements encourage greater labour market participation, specifically of women, and boost the retention and utilisation of their knowledge and skills.

2.49 The Union believes that it would be inappropriate to exempt some employers from any of the provisions reached as a result of the consultation process. Employment rights should not depend on the size of the employer. If it is right for anyone to have an entitlement, then it is right for all. A two-tier system of employment rights would unfairly discriminate against employees due to the size of the employer they work for.

Dr Patrick Roach

General Secretary

For further information on the Union's response, contact Paul Watkins at paul.watkins@mail.nasuwt.org.uk, or:

NASUWT

Hillscourt Education Centre

Rose Hill

Rednal

Birmingham

B45 8RS

0121 453 6150

www.nasuwt.org.uk

nasuwt@mail.nasuwt.org.uk