

**CONSULTATION ON MODERN WORKPLACES**

- i) Flexible parental leave
- ii) Flexible working
- iii) Working time regulations
- iv) Equal pay

MAY 2011

# Foreword

We want to create a society where work and family complement one another. One where employers have the flexibility and certainty to recruit and retain the skilled labour they need to develop their businesses. And one where employees no longer have to choose between a rewarding career and a fulfilling home life.

Freedom, fairness, and responsibility are central to the Coalition Government's vision of modern workplaces. By applying these values through an effective, efficient labour-market framework, the Government will give businesses the confidence they need to grow, which in turn will help encourage growth in the wider economy.

The Government has recently published its proposals for the reform of employment tribunals and encouraging alternative means for the early resolution of workplace disputes. These changes will encourage employers and employees to resolve their differences in a responsible, fair and equitable manner. We want to build on this new approach to workplace relationships.

We are now consulting on our plans for a culture of flexible, family-friendly employment practices. There are four elements - a system of flexible parental leave; a right for all employees to request flexible working; changes to the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave; and measures to encourage equal pay for equal work between men and women. We recognise that in building our vision we will need to change the legislative framework - but we are also seeking to drive a cultural change in our society.

By increasing the flexibility of how parental leave can be taken, we will give parents the freedom to make arrangements that suit their families and allow a balance between work and family commitments, while also meeting their responsibilities to their employers. By enabling employers and employees to negotiate how leave is taken (e.g. part-time, full-time, discrete periods), we are also increasing flexibility for business and getting the state out of the way of deciding arrangements that best suit any particular employer and employee. Sharing parental leave in a balanced way between mothers and fathers will enable and encourage both parents to take control of their childcare responsibilities; and will give them greater choice over their family arrangements.

Through the right to request flexible working, many parents and carers have already benefited from flexibility in balancing their personal and working lives. Extending this right and encouraging flexible working generally will give all employees the opportunity to contribute more widely to society, whether as carers, disabled people, volunteers, or simply as citizens. It will also help employers to recruit, motivate and retain their workforces, and so build successful businesses as well as increasing productivity. By responsibly negotiating working patterns that suit the needs of both parties, businesses can access a labour pool of experienced and skilled staff, who in turn will be able to find work that fits around their other commitments.

Just as employees' pay should be fair, so too should their annual leave entitlement. Recent court cases have highlighted the interaction of annual leave with other forms of leave. In making the necessary changes to the law, we have the opportunity to treat parents fairly by ensuring that they do not lose out on annual leave by taking family-related leave. We need to clarify the law in this area to give employers legal certainty.

Equal pay for men and women doing the same work is a basic element of a fair workplace. Yet 36 years after equal pay laws were introduced a significant gender pay gap remains. There are many different causes of the pay gap, such as occupational segregation and the impact of taking time out of the labour market to have children. We are committed to addressing these underlying causes through our proposals on extending the right to request flexible working to all and introducing a new system of flexible parental leave. But where discrimination exists we will take action. We are therefore bringing forward changes to the powers of employment tribunals to allow them to tackle possible systemic unfairness brought to light by individual cases. Where a tribunal finds that an employer has breached equal pay law, that employer will be required by the tribunal to conduct a pay audit, unless they can show good reason why this should not happen, such as already having conducted one.

The changes to flexible parental leave will not be in place before 2015. Our challenge between then and now is to make a compelling case for the new culture of workplace flexibility that our proposals will facilitate. We will work with employers to promote the business benefits of change; and with employees to foster greater expectations of workplace flexibility.

And we will also work with business to make sure that these changes are undertaken in a way that minimise the costs and complexities for businesses. We want to reduce red tape and bureaucracy. We have kept this principle in mind throughout the development of our proposals. Some elements of our proposals will inevitably create costs. But we are confident that they will also bring wider benefits to businesses, not least from a happy, motivated workforce.

Taken together, these measures will deliver on several of the commitments that we made in the Coalition Agreement. More importantly, they allow us to move a significant way towards our vision of modern employment based on freedom, fairness, and responsibility for both employers and employees.



**Rt Hon Dr Vince Cable MP**

**Secretary of State for  
Business, Innovation and  
Skills and President of the  
Board of Trade**



**Rt Hon Theresa May MP**

**Home Secretary and  
Minister for Women and  
Equalities**



**Maria Miller MP**

**Minister for Disabled  
People**

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# 1. Executive summary

1. This consultation seeks views on proposals to make employment practices in the UK more flexible and family-friendly. The proposals will implement Coalition Agreement commitments on flexible parental leave and on the extension to all employees of the right to request flexible working; amend the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave in the light of EU court judgments; and take further steps to tackle the gender pay gap, consistent with the Coalition Agreement commitment to promote equal pay. The proposals in this consultation apply to Great Britain only, since employment is a transferred matter in Northern Ireland.
2. Our proposals in these areas are consistent with the Government's growth strategy, as set out in the 2011 Budget, including the ongoing review of employment laws. The proposals in this document will bring benefits for employers as well as employees, by increasing participation in the labour market while also helping people to balance work with their family and personal responsibilities.

## Flexible parental leave

3. The Government is committed to delivering a system of parental leave which is fit for modern workplaces and which addresses the key challenges of working parents – both for families and employers. This consultation seeks views on our proposals for a system of genuinely flexible parental leave that will give parents choice and facilitate truly shared parenting, helping both parents to retain their attachment to the workplace.
4. We recognise the particular requirements of women who are pregnant or who have recently given birth. We will therefore retain 18 weeks' maternity leave. This will be reserved exclusively for mothers, and will continue to be taken in a continuous block around the time of the baby's birth. We will also retain the current statutory maternity pay and maternity allowance arrangements during this period, as well as existing arrangements for two weeks' (ordinary) paternity leave and pay. Existing employment protections concerning maternity leave will be maintained.
5. That aside we propose that the remainder of existing maternity leave should be reclassified as parental leave, and that this should be available to either parent on an equal basis (similar provisions will apply for adopters and same-sex couples). We propose that each parent should have exclusive use of four paid weeks' leave, which will incentivise greater involvement by fathers in the early stages of a child's life. The remaining weeks would be available for either parent. Parents would be able to take this leave concurrently. In order that mothers could – if the parents so choose – take the same amount of leave as is currently possible, we will extend the number of paid weeks of leave by the four that will be reserved for the father. This policy will have expenditure implications. We aim, as a priority, to introduce the new system in April 2015, although this timescale is subject to affordability.
6. The new parental leave provisions will also incorporate the existing right to unpaid parental leave beyond the first year of the child's life, so parents will have a single right to parental leave which they can use from the end of maternity leave through their child's early years.

This will simplify the system for employers and employees, and mean that qualifying conditions will be the same for all parental leave. The new provisions will also supersede those for additional paternity leave and pay.

7. In addition to allowing parents the possibility of taking leave at the same time (thereby, for example, allowing fathers to take a longer period when their child is born), we are also seeking views on the desirability of allowing employers and employees to agree greater flexibility in when leave may be taken, such as allowing parents to take leave on a 'part-time' basis or allowing them to break leave into two or more periods. Alongside the proposed changes to leave, we are keen to seek views on the key challenges for employers in the proposals for a flexible system of parental leave and how the process can be improved.
8. Other issues considered in this consultation are extending the age limit for taking unpaid parental leave beyond the existing limit of the child's fifth birthday; and giving fathers the right to unpaid leave to attend antenatal appointments: either as a new entitlement or as part of a father's wider parental leave entitlement.

## Flexible working

9. The right to request flexible working gives employees the statutory right to request a contract variation, generally for a more flexible working arrangement, and places an obligation on employers to consider requests seriously. The right to request currently applies to parents of children under 17, of disabled children under 18, and to certain carers.
10. This consultation sets out the Government's proposals for extending the right to request flexible working to all employees. This will help employees to better balance their work, family and wider responsibilities; and help employers to retain experienced and skilled staff.
11. We want employers to be able to adopt flexible working, in their workplace, as easily as possible. To do this we propose to replace the existing statutory process for considering requests with a duty to consider requests 'reasonably' alongside a new Code of Practice to guide employers in considering requests. This will enable employers to use their own management systems to consider requests, so long as the request is considered within reasonable amounts of time, and conducted in a fair and reasonable manner. We do not intend to change the existing business reasons under which an employer may refuse a request.
12. We recognise that some employees may have a greater need for flexible working due to their own personal circumstances. However, we believe that formally prioritising certain groups would only reinforce the idea that flexible working is primarily for parents and carers when we aim to promote a culture where flexible working is a legitimate ambition for all employees. We propose instead to *allow* but not *require* employers to prioritise competing requests to take account of the employees' personal circumstances. Employers would nevertheless still have to show that all the competing requests could not be accommodated, in their entirety, on business grounds.
13. Employees must currently have been employed for 26 consecutive weeks to exercise the right to request. There have been calls to remove this condition on the basis that it fails to support people who would benefit from flexibility to help their entry into the labour market.

However, we recognise that employers need to have confidence in the conditions of appointment for a new employee. Removing the qualifying period for flexible working would reduce this confidence so we plan instead to work with employers to encourage them to consider flexible working before appointing staff, and discuss flexibility at interview.

14. The Government is also keen to provide some support to individuals who have a temporary need for flexibility, such as employees who are caring for someone with a short term but serious illness, or those who are adjusting to new caring responsibilities. Existing rules restrict employees to only one request for flexible working in any 12-month period. We are seeking views on whether amending this restriction would help to support those employees who need a temporary change to their working arrangements. We are considering amending the rules so that employees could make an additional request within the 12-month period if they state in their original request that they expect it only to be temporary.
15. In the context of the announcement in the 2011 Budget, we are also consulting on whether the extension to the right to request should apply to those employees working in a micro-business or start-up for the period of the moratorium.
16. We appreciate that stimulating culture change on flexible working across the labour market will require more than just regulatory change. We will therefore work with business leaders and employers to promote the business case for flexible working. We are also interested in the potential for varied-hours working to allow those with significant or irregular family and personal commitments to participate in the labour market. We recognise that Government needs to lead by example as a large employer. We also see scope to use Jobcentre Plus services to help influence the recruitment process. The Government's response to this consultation will provide more detail on the progress of these non-legislative approaches.

## Working Time Regulations

17. There have been a number of judgments in the Court of Justice of the EU (previously the European Court of Justice) relating to the interaction of annual leave with sick leave, maternity leave and parental leave in the context of the European Working Time Directive (WTD). The judgments established the principle that workers who have not had the opportunity to take their annual leave because of sickness absence, maternity or parental leave in the current leave year, must be able to carry it forward into the following leave year.
18. We need to amend the UK's Working Time Regulations (WTR) in order to ensure compliance with these rulings. The changes are consistent with our overall approach on parental leave, since they will ensure that parents do not lose out on annual leave entitlement as a consequence of exercising family-related leave rights. Where someone has been on sick leave, we propose to allow employers to limit the ability to carry over annual leave to the four weeks of leave required under the WTD (*i.e.* excluding the additional 1.6 weeks required by the WTR and any further contractual leave).
19. Our proposals will also mean that employers can if they wish insist that leave untaken due to sickness absence must be taken in the current leave year, where possible, rather than being carried forward. We also propose to provide additional flexibility to allow employers to defer that leave until the following year when this can be justified in terms of business need.

20. In the context of the Employment Law Review, we are also seeking views on further options for increasing the flexibility for employers around the operation of statutory annual leave. Employers could, for instance, be allowed to 'buy out' the additional 1.6 weeks or could be allowed to require employees to defer that leave until the first six months of the following leave year if this can be justified in terms of business need.

## **Equal pay**

21. Despite the legal framework around equal pay being in force since 1975, there is still a significant gender pay gap, and continuing evidence of non-compliance with the law. The gender pay gap has multiple and complex causes, and the Government is committed to working with business to address these, in particular through improving flexibility at work, encouraging greater transparency and ensuring effective enforcement of equal pay law.
22. As part of this approach, we are seeking views on a legislative proposal which aims to ensure that employers who have breached the law take appropriate action to rectify the problem. We propose to require employment tribunals which have found an employer to have discriminated in contractual or non-contractual pay matters to make that employer conduct a pay audit, unless the tribunal is satisfied it would not be productive to do so.
23. By focussing on employers who have been found to have failed to comply with the law, this proposal will not add burdens for good employers who have taken steps to ensure they do not discriminate against women.

## **Next steps**

24. This consultation aims to inform the development and implementation of these policies. We aim to legislate on flexible parental leave, flexible working and equal pay as soon as possible in this Parliament. We intend to introduce secondary legislation to amend the Working Time Regulations, with implementation likely to be in 2012.

## 2. How to respond

We invite views on all the policy issues discussed in this consultation document. We particularly welcome responses to the specific questions which are raised in each section. It is not necessary to respond to all the questions; you are welcome to provide answers only to those issues of most interest or relevance to you.

This consultation will run for 12 weeks and the closing date for responses is 8 August 2011. We value all responses, but completing the online surveys assists us in analysing responses more effectively:

Flexible parental leave: <https://www.surveymonkey.com/s/8BWB3XJ>  
Flexible working: <https://www.surveymonkey.com/s/83VC8K2>  
Working Time Regulations: <https://www.surveymonkey.com/s/8GRVHSG>  
Equal pay: <https://www.surveymonkey.com/s/modernworkplacesequalpay>

Alternatively, a response can be submitted by letter or email. Response forms are included as Annex D to this document.

Please send responses concerning flexible parental leave, flexible working or the Working Time Regulations to:

Sammy Harvey  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

Email: [modernworkplacesconsultation@bis.gsi.gov.uk](mailto:modernworkplacesconsultation@bis.gsi.gov.uk)

Please send responses concerning equal pay to:

David Ware  
Evidence and Equality at Work Team  
Home Office, Government Equalities Office  
1st floor, Fry (South-West Quarter)  
2 Marsham Street  
London  
SW1P 4DF

Email: [david.ware@geo.gsi.gov.uk](mailto:david.ware@geo.gsi.gov.uk)

When responding, please state whether you are responding as an individual, or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

### Queries

Queries on the issues raised in the consultation should be addressed to the appropriate team at the contact addresses above.

## Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, if you consider information you have provided to be confidential, it would be helpful if you could explain to us why this is the case. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Departments.

The Departments will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Complaints

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Tunde Idowu  
Consultation Coordinator  
Better Regulation Team  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

Tel: 020 7215 0412

Email: [Babtunde.Idowu@bis.gsi.gov.uk](mailto:Babtunde.Idowu@bis.gsi.gov.uk)

A copy of the Code of Practice on consultation is attached at Annex B.

## 3. Flexible parental leave

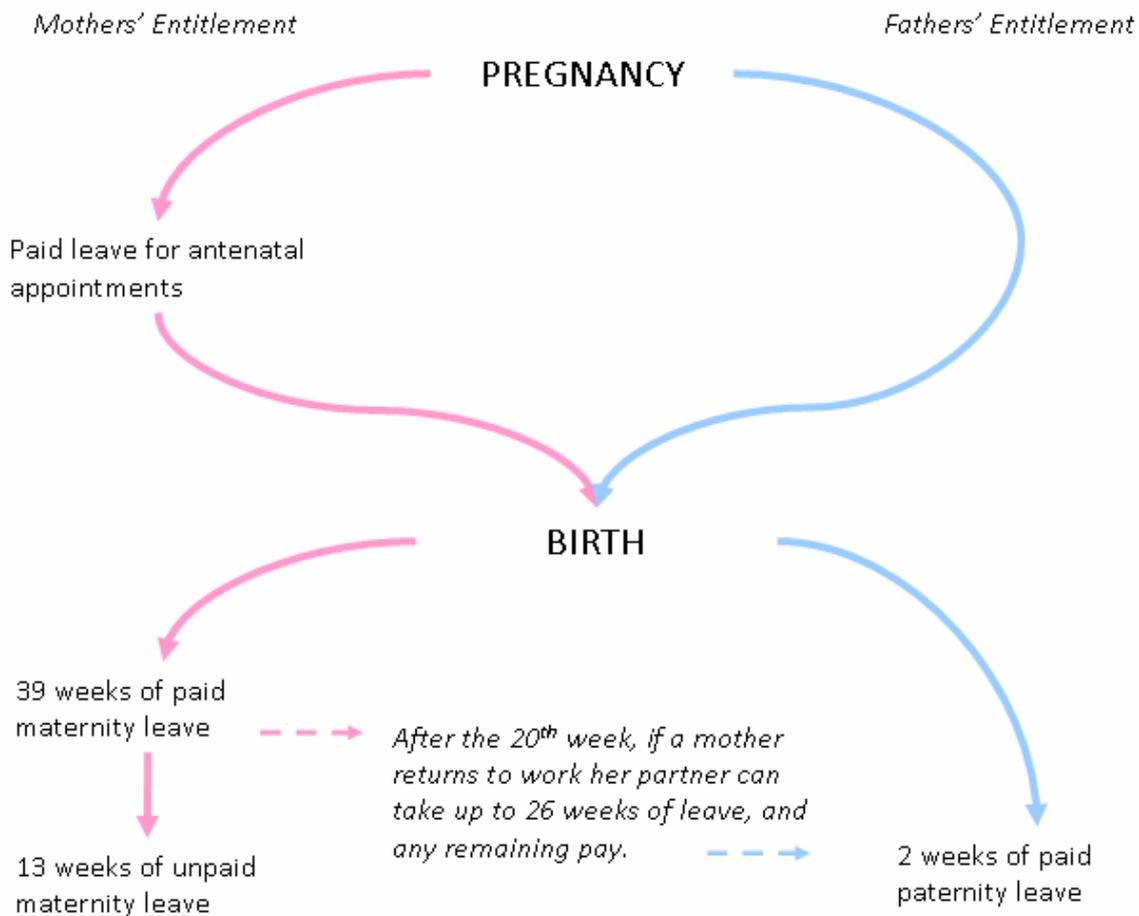
**This chapter sets out proposals to enable parents to have greater choice and flexibility in their parental leave arrangements. We propose that an entirely new system of parental leave and pay, available to mothers and fathers on an equal basis, should replace maternity leave and pay beyond the first 18 weeks of a child’s life. Existing rights to unpaid parental leave will be incorporated into the new system. We also seek views on how parents and employers might be given the ability to agree greater flexibility in taking leave, perhaps in one or two shorter periods of leave, between which they would return to work. Parents could also take leave concurrently, if they wish. We aim, as a priority, to introduce the new system in April 2015, although this timescale is subject to affordability.**

### Current situation

1. Shared parenting matters. The active involvement of both parents has benefits for families, for relationships, for children, for business and for wider society. Yet in Britain we retain a highly gendered, inflexible approach to parental leave rights, one that entrenches the assumption that the mother must be the primary carer in the early stages of a child’s life and prevents fathers from getting involved. This must change - Britain needs a new system of parental rights fit for the 21st century that provides families with as much support and flexibility as possible so they can choose how best to balance their employment and caring responsibilities.
2. The current system of parental employment rights in the United Kingdom has a number of elements: maternity and paternity leave and pay available in the first year; unpaid parental leave available in subsequent years; and paid leave for pregnant women to attend antenatal appointments. In addition, many employers provide contractual entitlements that go beyond these statutory minimums.

### *Maternity and paternity entitlements*

3. The existing system of leave and pay is illustrated in figure 1. Employed mothers are entitled to 52 weeks of statutory maternity leave. 39 weeks of this leave may be paid, and 13 weeks are unpaid.
4. Employed mothers who qualify for statutory maternity pay (SMP) receive 90 per cent of their average earnings for the first six weeks, and then the “flat rate” for the remaining 33 weeks of paid leave. Self-employed mothers and employed mothers who do not qualify for SMP may receive maternity allowance (MA) at the flat rate for the entire 39-week pay period.



**Figure 1: existing statutory maternity and paternity leave and pay provisions. In addition to these entitlements in the first year of the child’s life, each parent is entitled to 13 further weeks of unpaid parental leave per child, to be taken before the child’s fifth birthday, as described in paragraph 8.**

### The flat rate

The “flat rate” for statutory maternity pay (SMP), maternity allowance (MA), ordinary statutory paternity pay (OSPP), additional statutory paternity pay (ASPP), and statutory adoption pay (SAP) is currently 90 per cent of the employee’s average earnings capped at £128.73 per week in 2011/12.

5. Employed fathers who qualify are entitled to up to two weeks statutory paternity leave. Fathers are paid ordinary statutory paternity pay (OSPP) at the flat rate for the two weeks of leave.
6. Subject to qualifying criteria, parents of babies due on or after 3 April 2011 are eligible for additional paternity leave (APL). Once their baby is 20 weeks old, and providing that the mother has returned to work, fathers may take up to 26 weeks of additional paternity leave. Fathers are entitled to additional statutory paternity pay (ASPP) at the flat rate if they are on leave during the mother’s unclaimed paid weeks.

7. Employers are responsible for making these statutory payments. Small employers<sup>1</sup> can claim back 103 per cent (in 2011/12) of payments made from HM Revenue & Customs. Other employers can claim back 92 per cent. Maternity Allowance is paid by Jobcentre Plus.

### Adopters and same-sex partners

Under current arrangements employed adopters have similar entitlements and protections to birth parents. We would propose to maintain this parity within any new scheme proposed in this document. As with current arrangements, we propose that all entitlements for fathers will also be available to the spouses, civil partners or partners (including same-sex partners) of mothers.

### **Unpaid parental leave**

8. In addition to these special leave rights in the first year of a child's life, parents who have been with their employer for at least a year are currently entitled to 13 weeks of unpaid parental leave per parent per child. This can be taken from the time the child is born up until the child's fifth birthday. In the case of a child with a disability the period of leave is 18 weeks per parent, and it may be taken up until the child's 18th birthday.
9. Under the statutory parental leave scheme, a parent can take no more than four weeks of leave in any one year. Leave must be taken in blocks of a week, and three weeks' notice must be given before leave is taken. Employers and parents are, however, able to agree more flexible arrangements.
10. A revised European Parental Leave Directive<sup>2</sup> was agreed in March 2010, and will need to be implemented in the UK. This increased the minimum period of parental leave over the early years of a child's life from three to four months per parent. We will therefore bring the entitlement for all parents into line with the existing allowance of 18 weeks for parents of disabled children, and incorporate this within the proposed new scheme.

### **Other provisions**

11. Mothers are protected from detriment and dismissal wholly or mainly because of their pregnancy or because they took maternity leave, and are given special protections in the case of redundancy. Many of these protections are also extended to fathers on paternity leave and parents on parental leave.
12. Pregnant women are entitled to reasonable paid leave from the workplace to attend medical appointments recommended by their doctor or midwife. For an uncomplicated first pregnancy a pregnant woman would usually require around ten midwife appointments and two ultrasound scans. Uncomplicated subsequent pregnancies normally require around seven appointments and two scans.

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<sup>1</sup> For these purposes, small employers are defined as those paying not more than £45,000 per year in employers' National Insurance Contributions.

<sup>2</sup> Directive 2010/18/EU.

13. Fathers-to-be have no similar statutory entitlement. However, the Government encourages employers to give fathers time off,<sup>3</sup> and the NHS encourages mothers to invite their partner to attend appointments if they would like support.
14. As part of proposals for a more flexible system of parental leave, the Government is keen to address any problems in the current system. We are therefore seeking suggestions on what works well and should be retained, and on where improvements could be made.

### Consultation Question

- |           |   |
|-----------|---|
| <b>1.</b> | <b>Which aspects of the current system work well for parents and employers, and where could improvements be made? Please explain your response.</b> |
|-----------|---|

### The case for change

15. The current system therefore gives employed mothers a long period of maternity leave and pay, but employed fathers much less. Moreover, entitlements are quite rigid, with leave having to be taken in large blocks, and only limited opportunity for the sharing of entitlements between parents.
16. We want to change this so that there is greater equity. We want to create a culture where both parents can better balance working and home life, so as to share this crucial early parenting period. There is strong evidence of the benefits of shared parenting and in particular that fathers who are engaged in caring for their children early on are more likely to stay involved.<sup>4</sup> This involvement has been shown to have a range of positive effects, including better peer relationships, fewer behavioural problems, lower criminality, higher educational and occupational mobility, higher self-esteem<sup>5</sup> and higher educational outcomes at age 20.<sup>6</sup> A growing number of fathers say they want to spend more time with their children,<sup>7</sup> but that they are discouraged by the existing system.
17. The Government of course believes it is right to ensure that women, who need to take time away from the workplace because of pregnancy and childbirth, are adequately protected and provided for before the birth and for a suitable period afterwards. However, we also believe

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<sup>3</sup> Fathers-to-be and antenatal appointments: a good practice guide, DTI (2004).

<sup>4</sup> Bronte-Tinkew J. et al.: Resident fathers' pregnancy intentions, prenatal behaviours and links to involvement with infants, *Journal of Marriage and Family*, 69(4) pp. 977–990 (2007).

<sup>5</sup> Flouri E. & Buchanan A.: What predicts fathers' involvement with their children? A prospective study of intact families, *British Journal of Developmental Psychology*, 21 pp. 81–97 (2003).

<sup>6</sup> Flouri E. & Buchanan A.: Early father's and mother's involvement and child's later educational outcomes, *British Journal of Educational Psychology*, 74 pp.141–153 (2004).

<sup>7</sup> 44% of fathers say they do not spend enough time with their children [Working better, EHRC (2009)].

that it is important that mothers are able to return to work, if they so wish, without families losing out on time together.

18. Moreover, employers are increasingly concerned by the existing extended period of maternity leave. The Government recognises – but does not condone – that in a limited number of cases this may result in discrimination by employers against women, particularly during the recruitment process. The pay gap between men’s and women’s median earnings is 10.2 per cent,<sup>8</sup> and much of this is associated with women taking time out of the workplace to care for children. If childcare responsibility is shared more equally between mothers and fathers, maternal employment and earnings may therefore increase, enabling businesses to maximise the pool from which they recruit and to retain skilled employees.
19. Consistent with our commitment to better regulation, we have explored whether a non-regulatory approach to promoting flexible parental leave could deliver our policy objectives. However, the current law is a barrier to sharing leave: it sets out who can receive leave and pay and when. Unless it is amended, an employer that, say, introduced a contractual scheme allowing much greater flexibility would not be able to claim back many of the payments made. Delivering flexibility therefore requires amendment of the statutory provisions, and, moreover, a non-statutory scheme would not meet European requirements.
20. However, although the focus of this chapter is therefore on the necessary legislative changes to create a system of flexible parental leave, we recognise that this alone will not achieve shared parenting. We need to look more widely at how to create a culture which supports and encourages shared parenting, setting strong foundations from the earliest stages of pregnancy but also continuing throughout childhood.
21. Evidence shows that early engagement of fathers in caring for their children leads to positive outcomes including enhanced educational attainment, improved behaviour and better child relationships. Fathers today want to be more actively involved in bringing up their children. Research shows, however, that public health and family services need to go further in recognising the important role fathers play.
22. Our Social Mobility Strategy<sup>9</sup> sets out some of the ways Government can support stronger parenting. This includes focusing parenting advice and support for new mothers and fathers and those expecting children. Beginning to shape expectations about shared parenting early will help to provide a more supportive environment. Government is reviewing personal, social, health and economic (PSHE) education in schools and will consider how schools can most effectively support positive parenting to enable a child to reach his or her potential.
23. Most communication about parenting is still aimed at mothers. The Foundation Years Policy Statement, to be published this summer, will consider how we make information more accessible to both parents, so that, from pregnancy onwards, advice, support and encouragement reaches fathers as well as mothers. This could include encouraging fathers to attend parenting as well as ante-natal classes, and making these more welcoming and relevant for fathers.

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<sup>8</sup> 2010 Annual Survey of Hours and Earnings, ONS (2010).

<sup>9</sup> Opening Doors, Breaking Barriers: A Strategy for Social Mobility, HM Government (2011).

24. The interim report of the Family Justice Review<sup>10</sup> has also highlighted the importance of a child continuing to have a relationship with both parents in the event of the parents' relationship breaking down (while taking account of the need to protect a child from harm). Evidence suggests that where a father is more involved in the early stages of a child's life he is more likely to continue to be involved even where the family breaks up.
25. The culture within the workplace will continue to be one of the strongest influences on how parents use parental leave. Our aim is the development of a culture which is supportive of parents taking leave, but in which there is genuine discussion between employers and employees to ensure that arrangements work well for all concerned. This will involve the Government making sure that the nuts and bolts of the system are right (including ensuring that it encourages take-up by fathers, for example by reserving four weeks' leave for them), but we also recognise that there needs to be an ongoing discussion with employers. This can be about sharing best practice, for example through awards such as Working Families' "Top employers for working families", but we recognise it also needs to look at the bottom line: how more flexible arrangements will benefit businesses. We would welcome views on how we can encourage that discussion.
26. Contractual leave schemes also have the potential to encourage greater take up by families of parental leave provisions. Employers are most likely to respond to their competitors, either as a result of direct competition in recruitment or through demonstration of the productivity gains or recruitment savings. We are keen to hear from companies that have gone beyond the statutory minimum to find out the reasons and outcomes for business of more generous contractual arrangements.
27. We have also considered whether it might be appropriate to exempt micro-businesses or start-ups from any new leave system. However, an exemption may not be compatible with European law, and, in any case, running two systems of parental leave in parallel would lead to confusion and complexity and would be unworkable in practice. It would be hard to know which system would be applicable, for example, if the mother was working for a micro-business and the father for a larger employer.

Consultation Questions	
2.	<b>How can the Government best encourage a culture of shared parenting? Please explain your response.</b>
3.	<b>Are you aware of companies that have gone beyond the existing statutory requirements in encouraging shared parenting? Why have they done this and what have the outcomes been? How can the Government help to ensure that lessons are disseminated to other businesses?</b>

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<sup>10</sup> Family Justice Review: Interim Report, MoJ (2011).

## Our proposals

28. In designing a new scheme we have sought to embed the following values:
- **Protection:** to continue the long held principle of protection for pregnant women and mothers in the period immediately before and after childbirth;
  - **Flexibility:** to increase flexibility for both employers and employees while protecting fairness in order to give choice in how employment and caring is balanced;
  - **Simplicity:** to keep any system as straightforward as possible for both parents and employers to access and manage; and
  - **Responsibility and fairness:** to create a system that is more fairly balanced between men and women and that provides a basis for responsible negotiation of parental leave between employers and working parents.

### A new system of leave

#### *Retaining a period of maternity leave*

29. We recognise the particular needs of women who are pregnant or who have recently given birth. We will continue to protect this important time, and the health needs of new babies and their mothers, by retaining a period of maternity leave reserved exclusively for mothers which must be taken in a continuous block around the time of the baby's birth. We propose to retain the current statutory maternity pay and maternity allowance arrangements during this period.
30. In setting the duration of this leave, we must comply with the European Pregnant Workers Directive which requires at least 14 weeks of maternity leave to be provided.<sup>11</sup> The European Commission has proposed extending this period to 18 weeks in a revised Directive, bringing it into line with the recommendations of the International Labour Organisation.<sup>12</sup> Discussions about the proposal are ongoing, and the final design of the new system will obviously need to take account of this and any other EU developments.
31. However, we believe that beyond this reserved period of maternity leave, parents should be free to make the caring and working arrangements that best suit their family. EU law places rigid requirements on any system of *maternity* leave, but *parental* leave can be made available in a way that works better for employers and employees. For example, we could allow greater flexibility in when leave can be taken, or provide exemptions from some of the detailed provisions for small employers (although this would not remove parents' basic right to take leave).

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<sup>11</sup> Directive 92/85/EEC.

<sup>12</sup> Maternity protection recommendation, International Labour Organisation (2000).

32. We therefore propose that the period classified as maternity leave and pay becomes 18 weeks, and that the remaining weeks currently available to mothers be reclassified as parental leave shared between both parents. However, if parents so choose, mothers will be able to retain access to exactly the same amount of statutory leave as they have now by combining maternity and parental leave.

Consultation Question	
<b>4.</b>	<b>Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers? If not, what proportion should be reserved? Please explain your response.</b>

***Retaining paternity leave***

33. We believe that fathers benefit from the continuous block of leave that existing (ordinary) paternity leave provides around the time of their baby’s birth. Currently 50 per cent of fathers take two weeks of formal leave at this time.<sup>13</sup> We therefore propose that this period is also protected and retained.

***Introducing flexible parental leave and pay***

34. The introduction of additional paternity leave (APL) gives both parents access to an extended period of leave in the first year, which may be paid. We believe that APL, although it does not offer flexibility and is not available to many fathers, is a step in the right direction and will begin to remove the barriers preventing shared parenting.
35. But we believe that, even with APL, the system places too many restrictions on when and how leave can be taken, and prevents families from making their own choices about when and how to share leave. For example, it does not allow parents to take leave concurrently, preventing fathers from extending their paternity leave to help when their children are very small; and it prohibits parents from having a handover period when the mother returns to work.
36. We will therefore replace APL with a system of truly flexible parental leave, available to mothers and fathers on an equal basis. This will extend provisions to all working fathers, including those who are self-employed or change jobs during the pregnancy. This will allow parents greater flexibility to decide the best way for their family to balance work and caring responsibilities.
37. With the reduction in maternity leave to 18 weeks, there will be 34 weeks of leave currently available to mothers that will be unallocated. We propose that this becomes available to parents as flexible parental leave.
38. There will similarly be 21 weeks of maternity pay which we propose to reallocate as parental pay. We intend that the existing system of SMP and MA would be replicated with statutory shared parental pay and parental allowance, paid at 90 per cent of average

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<sup>13</sup> Maternity rights and mothers; employment decisions, DWP (2008).

earnings up to the existing flat rate (capped at £128.73 in 2011/12), and with similar eligibility criteria.<sup>14</sup>

Consultation Question	
5.	<b>Should parental leave and pay be available to mothers and fathers on an equal basis? What benefits do you foresee? What difficulties are likely to arise?</b>

## Increasing flexibility

### *Creating flexibility in taking leave and pay*

39. In order to reduce the constraints on when leave can be taken and to make leave more responsive to the needs of working parents and their workplaces, we propose to explore how the system could be made more flexible.
40. Moving to a system of parental leave provides the opportunity to remove the rigid, outmoded approach which dictates to employers and employees how leave and pay can be taken. Instead parents can agree between them how much leave they can each take, and – if their employer agrees – this could be taken in smaller chunks or on a part-time basis.
41. This could provide parents with helpful flexibility in their time off to care for their children and also reduce the impact of leave on businesses by allowing their employees to return to work for busy periods without forfeiting leave entitlement. This could be particularly helpful where employers have not secured cover or to ease the parent back into work towards the end of their leave. Employees would not have an absolute right to take leave flexibly, but nor would employers have a right to refuse an employee the opportunity to take their statutory leave entitlement. We expect that, in the great majority of cases, parents and their employers will agree that leave is taken in only one or two long blocks.
42. We believe that greater flexibility will be a significant step in promoting genuinely shared parenting. It will also help to strengthen new parents' attachment to the labour market, as giving them more choices over how they organise their time will widen the employment opportunities available to them.
43. **Concurrency:** we believe that there should be no restriction on parents choosing to take leave concurrently. Allowing only one parent to be out of the workplace at any one time would place unnecessary restraints on how leave may be taken, and interfere with the ability of parent and employer to agree how leave is taken.
44. We recognise that increased flexibility will require a new workplace approach to parental leave and will mean new administrative arrangements. However, we are keen that this is done in a way which works for employers. We are keen that administration is as light touch as possible, and that the process of agreeing when leave is taken is left up to the parties

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<sup>14</sup> We will also consider other payment routes, ensuring that all current recipients of SMP and MA are covered.

involved. Where they can not agree, the default position would be for parents to take leave in one continuous block.

45. We feel it is important to explore the scope for greater flexibility including:
- **Discontinuity:** leave might be taken in blocks of time between which the parent returns to work. For example, a father could take a period of leave when his baby was born, and a further period later on.
  - **Shorter periods of leave:** leave might be taken in blocks of days (rather than weeks as at present). For example, a mother may wish to return to work after 18 weeks of maternity leave, but use two days per week of parental leave to facilitate part-time working for the first year.

### Parental leave in action: examples from other countries

In Sweden, parental leave is provided in days, allowing parents to take their leave in smaller chunks as desired.

In Germany, parents are able to claim parental pay even if they are working for up to 30 hours per week. Income from any part-time work is taken into consideration when calculating parental benefits.

In the Netherlands, parental leave and pay are calculated on an hourly basis. With agreement of the employer, leave can be taken for more hours a week during a shorter period or for fewer hours a week over a longer period, and can also be taken in two or three blocks of time.

46. Future consultation will explore in more detail the process of agreeing how and when leave is taken. We propose to bear in mind the following principles:
- Flexible parental leave and pay, like existing maternity leave and pay, will be provided to the family on a per-pregnancy basis. Both parents will be eligible so long as they are working and meet individual qualifying conditions. As now, an additional period of unpaid parental leave would be available for multiple births.
  - Parents should have the right to choose between them how much of the shared portion of leave and pay they will each take. We are keen to ensure that the needs of lone parents are taken into account. Where parents are not living together, the default position could be that the parent with main responsibility for the child should be able to take all the unreserved period of leave and pay. We will consult on the detail of the scheme in due course but would be interested in views about the default position.
  - Where parents wish to take leave in several chunks or on a part-time basis, they should discuss their plans with their employers prior to giving notice. This will provide both parties with an informal opportunity to explore how leave can be taken, and to resolve any difficulties before a formal notice is given.
  - Employers will not have the right to reject parents' choices on how much leave they each take overall. However, employers' agreement will be required for parents to take

their paid leave in a flexible manner. Where agreement cannot be reached, each parent's paid leave will have to be taken in one continuous block.

- Parents will provide 'self-certified' notice of their leave plans to their employer in-line with specified notification requirements. We propose that this will build on the existing arrangements for APL, which require that parents give two months' notice. This notice is signed by both parents so that employers can have confidence that the request is genuine.
- As with APL this will be all the evidence that employers legally require and we do not anticipate that the parents' employers will need to talk to one another to check the validity of a claim. However, we will continue to facilitate employers' ability to request the necessary information to enable them to talk to the other parent's employer if they are concerned. As with all statutory payments, HMRC will have powers to investigate claims where there is concern. We will be evaluating how well the APL administration process works for employers, and this will feed into future consultations on the administration of parental leave.

47. In the context of the announcement at the 2011 Budget, we have also considered whether it would be both desirable and possible under EU law to exempt micro-employers and start-ups from these flexibility provisions. However, we believe that it would be perverse to deny these employers the flexibility to negotiate with their employees on when leave is taken. For instance, it may be particularly helpful for smaller businesses if a mother returns to work sooner, even if only on a part-time basis. As discussed above, all employers would in any case be able to reject an employee's request to take their leave flexibly.

<b>Consultation Questions</b>	
<b>6.</b>	<b>Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave? Please explain your response.</b>
<b>7.</b>	<b>If parents are not living together, should the default position be for the parent with main responsibility for the child to be able to take all the unreserved period of leave and pay? Please explain your response.</b>
<b>8.</b>	<b>On what principles should the notification process for parental leave be based? Do you have any comments on our proposal that the process be based on that for additional paternity leave?</b>
<b>9.</b>	<b>Should parents be expected to provide an indication of their full plans for taking the paid elements of parental leave prior to the child's expected date of birth (with the ability to changes these plans subject to notice); or should separate notification be allowed for each period of parental leave?</b>
<b>10.</b>	<b>Do you agree that it would be inappropriate to exempt small and medium-sized employers from the flexibility provisions? Are there any other special arrangements that would be helpful for such businesses?</b>

**Reserved leave for mothers and fathers**

- 48. International evidence suggests that fathers’ usage of parental leave is higher under schemes that offer them targeted or reserved leave as opposed to just making shared leave available to the father.<sup>15</sup> In the latter case the mother typically takes the full amount available to both parents. This may be because the father often earns more than the mother, and therefore it is more beneficial to the family to retain his wage; or simply because, as the mother has already had a period of maternity leave, she therefore takes the rest of the leave available by default. But there is also still a widespread cultural expectation that it should always be the mother who takes time out from work to care for children. We want this to change.
- 49. Encouraging shared parenting necessitates a system that supports both mothers and fathers in balancing their work responsibilities with active participation in their children’s upbringing. It also requires encouraging those parents who are currently perceived as secondary carers – typically fathers – to play a more active role.
- 50. We therefore propose that part of the paid period of flexible parental leave be reserved for the exclusive use of each parent. The Government considers that a period of four weeks per parent should be reserved to recognise the important role that each parent can play and to encourage a change in culture towards shared parenting.
- 51. We do not, however, intend that reserving a period of leave for fathers should reduce mothers’ overall leave rights: if a family still wishes the mother to take the full 52 weeks of leave currently available, she should be able to do so. An additional four weeks of paid leave will therefore be provided so that the period of paid leave available to the mother is not reduced.
- 52. Together with the fact that allowing flexibility will increase the overall number of families eligible for statutory payments, this means that the proposed policy will have expenditure implications. We aim, as a priority, to introduce the new system in April 2015, although this timescale is subject to affordability.

<b>Consultation Question</b>	
<b>11.</b>	<b>Should a portion of flexible parental pay be reserved for each parent? If so, is four weeks is the right period to be reserved for each parent? Please explain your response.</b>

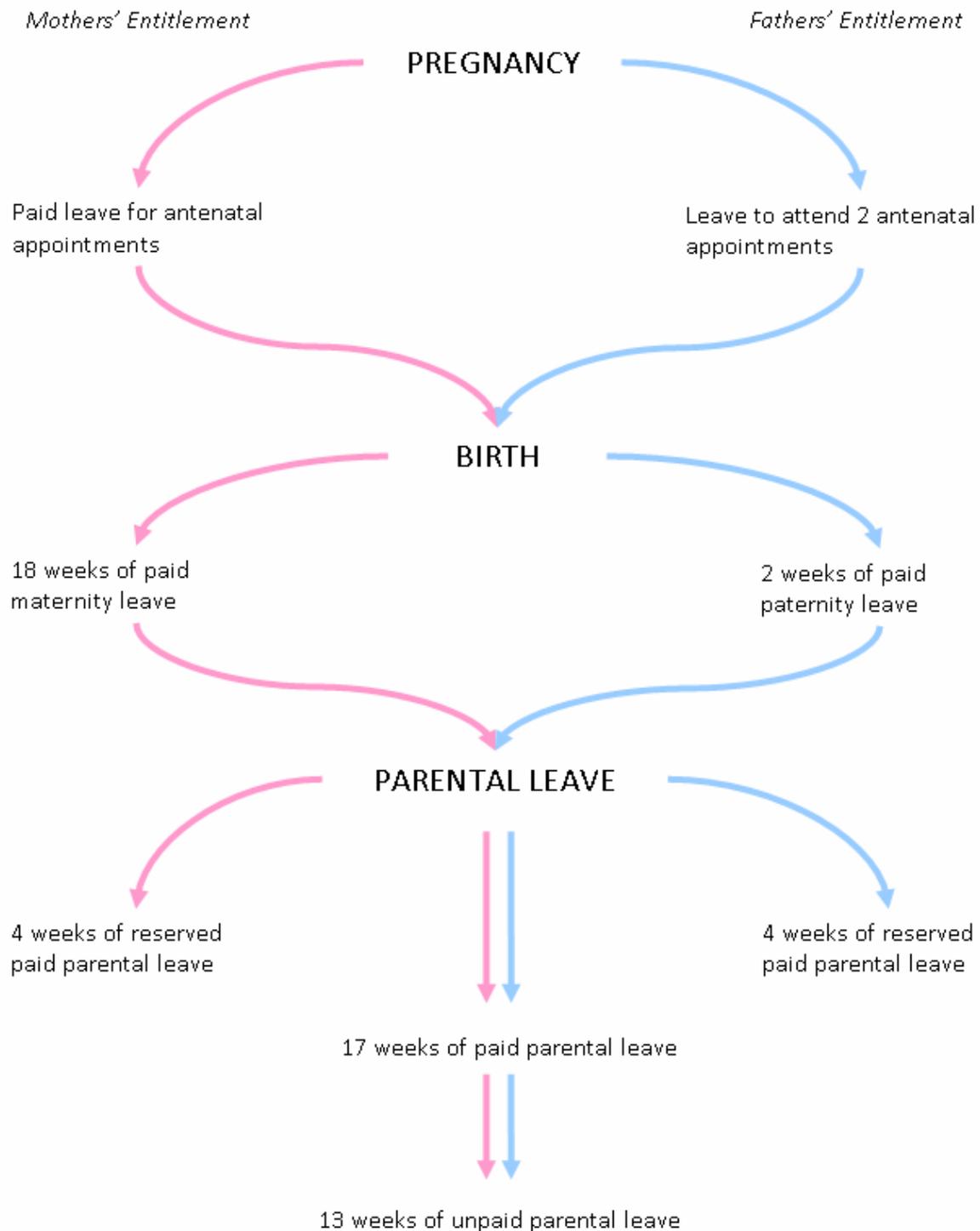
**Summary of the new system**

- 53. In summary, we propose to replace the existing system of maternity, paternity and parental leave that was illustrated in figure 1 with the one illustrated in figure 2. We have illustrated some possible scenarios for how parents may choose to use their new leave and pay entitlements in figures 3, 4 and 5. In these figures, maternity leave is shown in blue and

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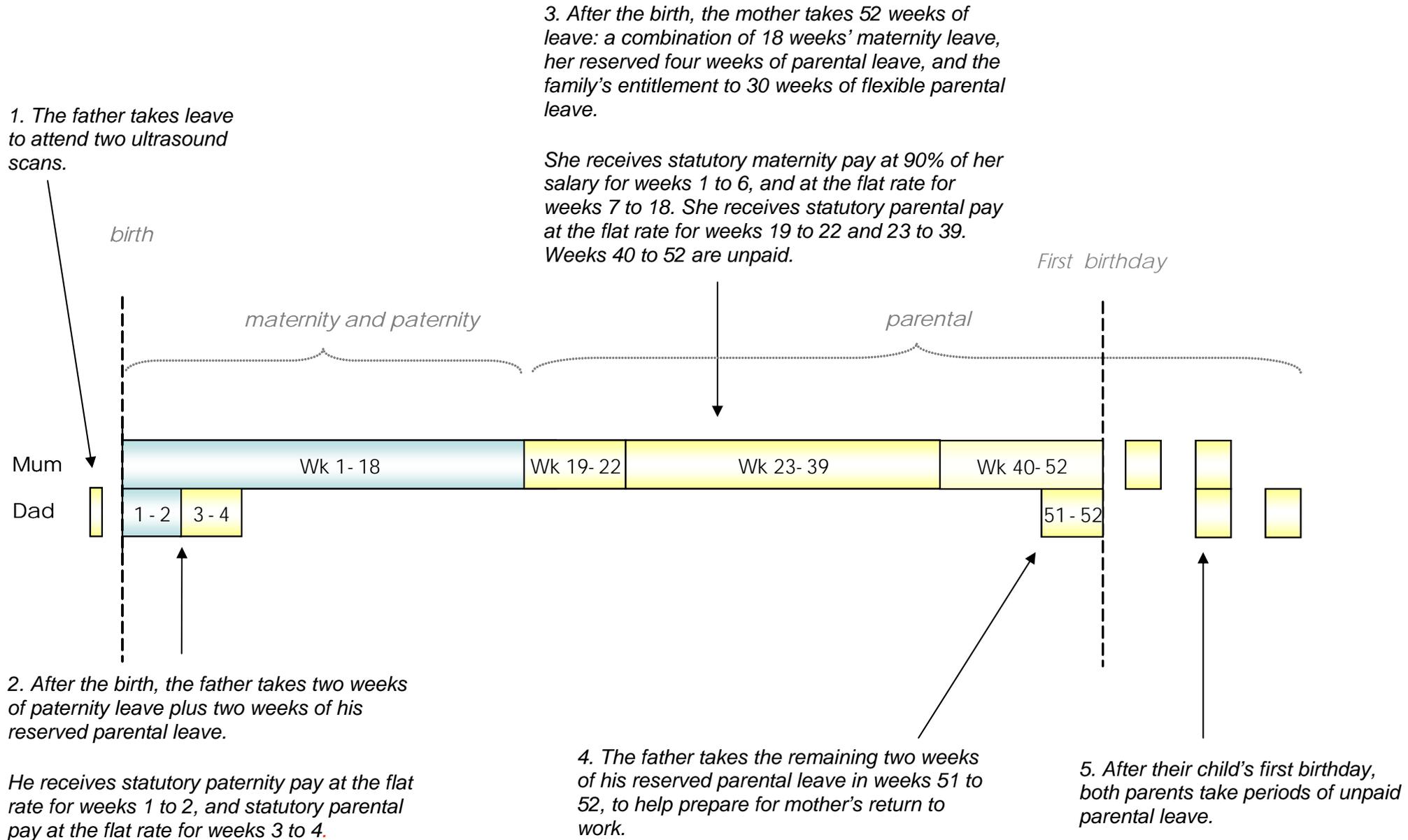
<sup>15</sup> O’Brien M.: Fathers, Parental Leave Policies, and Infant Quality of Life: International Perspectives and Policy Impact, *Annals of the American Academy of Political and Social Science*, 624 pp. 190–213 (2009).

parental leave in yellow; dark colours represent paid leave and light colours unpaid leave. For clarity, maternity leave and pay are shown as beginning with the birth of the child; in reality, it is usual for them to begin earlier and the new proposed system will not affect this.

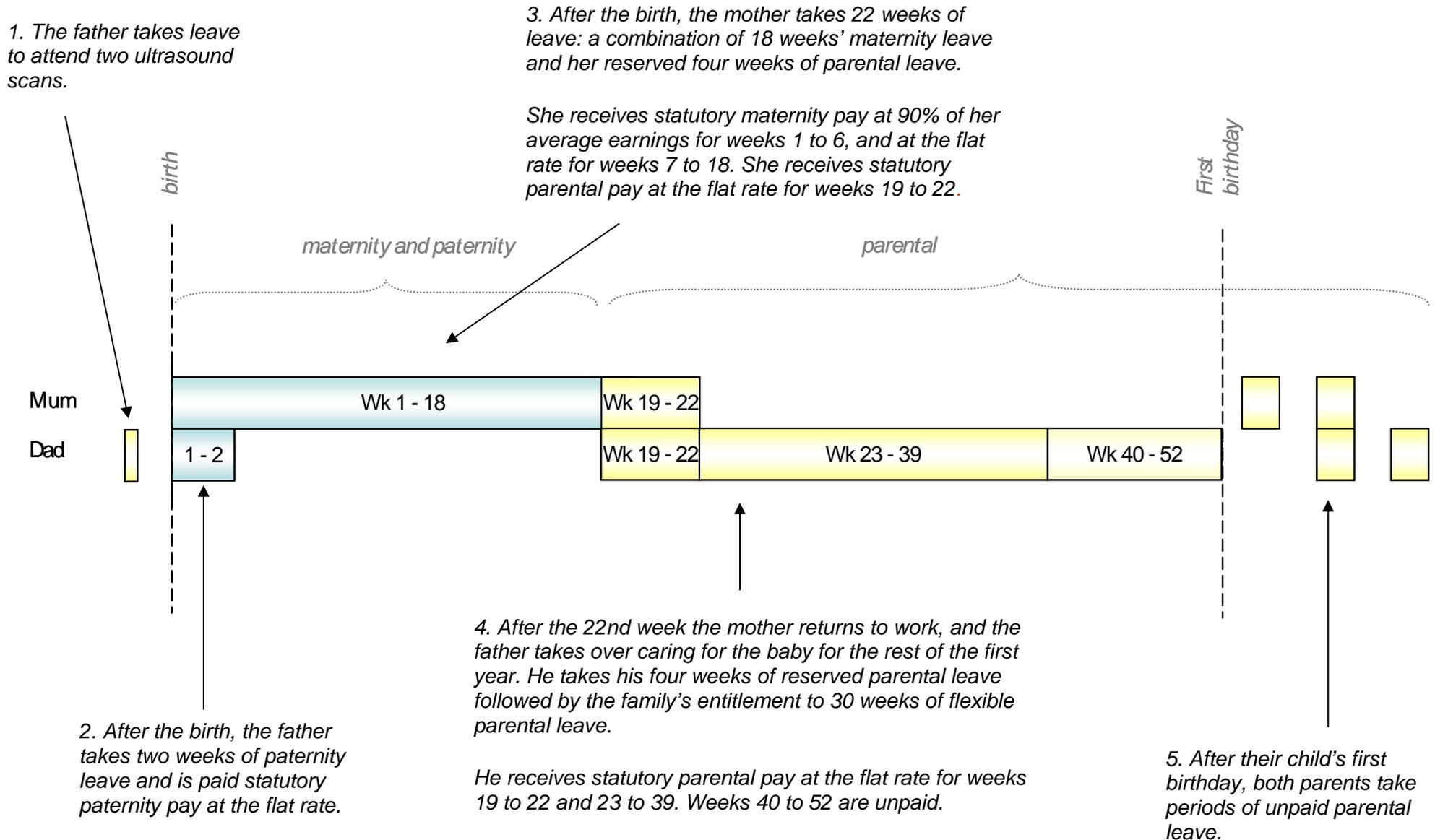


**Figure 2: proposed new statutory provisions for maternity, paternity and parental leave and pay. In addition to these entitlements in the first year of the child's life, each parent will be entitled to 18 further weeks of unpaid parental leave per child, as described in paragraph 10.**

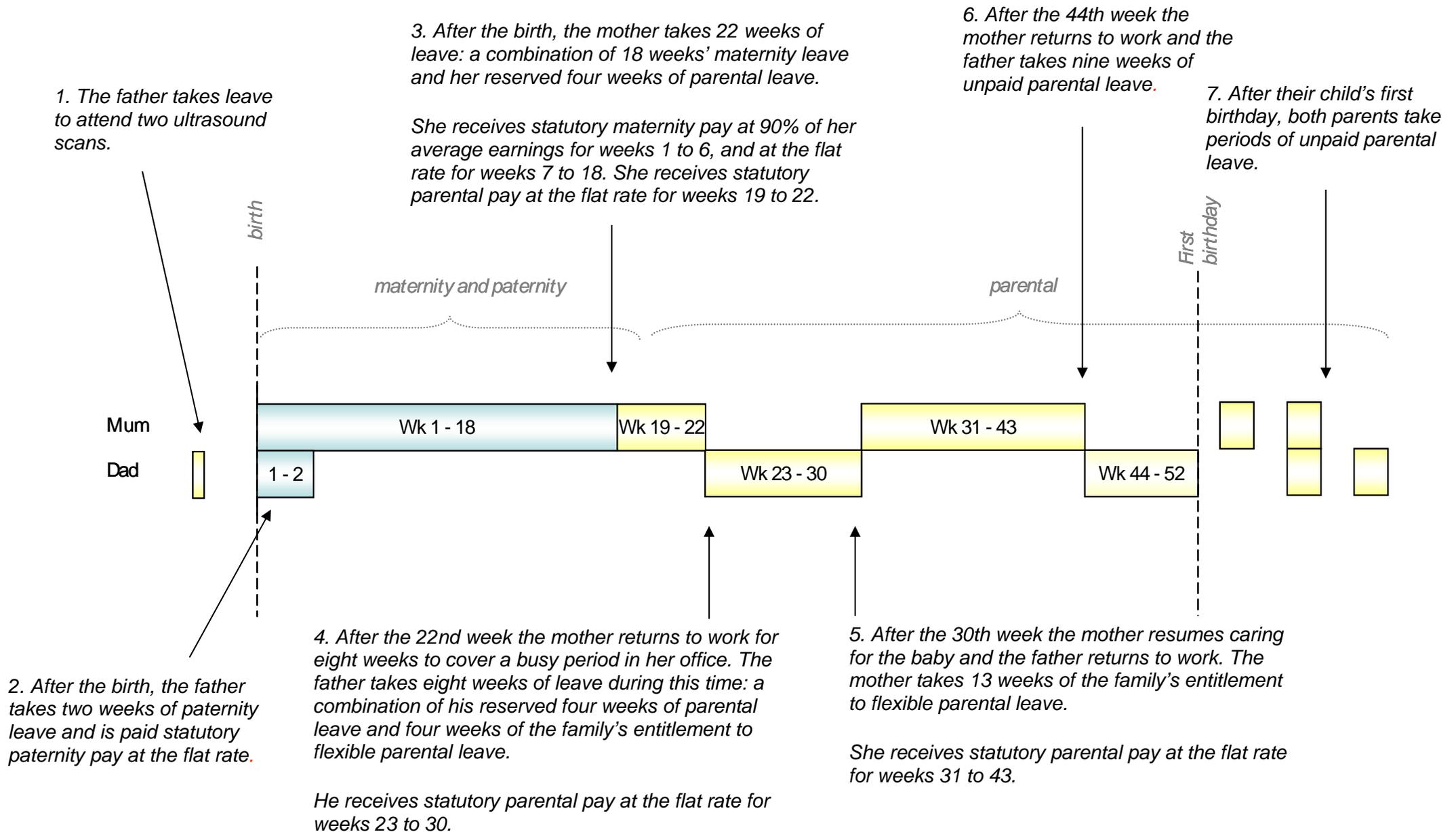
**Figure 3: scenario with mother taking primary caring responsibility for the first year.**



**Figure 4: scenario with father taking primary caring responsibility for the first year.**



**Figure 5: scenario with shared parenting.**



### ***Minimising administration***

54. We recognise that additional flexibility will require more administration by both employers and the state. Statutory payments are currently administered by employers who are (subject to certain conditions) able to recover some or all of the money from HM Revenue & Customs (HMRC).
55. In designing a system of flexible parental leave it is important to:
- make the administration of leave and pay as simple as possible; and
  - minimise the risk of fraudulent or negligent over-payments by making it easy to cross-refer payments made to each parent.
56. In this context, we will explore the extent to which HMRC's current proposals to reform the operation of the PAYE system through provision of real time payroll information can support any new system. We will also evaluate the administration of additional paternity leave and pay after it has been introduced, to learn from this experience.
57. As part of our work to further develop the proposed new system, we will seek further opportunities to simplify the administration of statutory payments. We will work with larger and smaller employers to help us to understand in detail the practical difficulties faced by business and to develop appropriate solutions. The Government response to this consultation will provide more details of our plans in this area.

#### **Consultation Question**

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| <b>12.</b> | <b>What do you see as the core challenges to administration? Do you support the initiatives described above as a means of addressing them? What other opportunities for improvement to administration can you identify?</b> |
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### ***Increasing age limits on leave entitlements***

58. We recognise that caring responsibilities do not end when children reach their first birthdays or even with the start of school. In addition to the first entitlements, parents have an existing entitlement under EU law to unpaid parental leave. This will shortly increase to 18 weeks' unpaid leave per parent per child over the early years of the child's life.
59. This entitlement will still remain available to parents beyond the first year, in addition to the flexible parental leave entitlement in the first year. Were we to retain two sets of 'parental leave' with different qualifying criteria it would risk confusion by both employers and parents as to who was entitled to take each type of leave and when. Therefore, in order to keep the system as simple as possible, we propose instead to have just one entitlement to parental leave incorporating both the EU allowance and the proposed new entitlements.
60. The single system of parental leave means that employees would have the same eligibility criteria for taking parental leave whether it is taken during or after the first year of a child's life. We therefore propose to remove the existing requirement that an employee must have been with their employer for at least a year to take unpaid parental leave. This will bring the rules in line with those currently in force for maternity leave.

61. Although parental leave will be available during and after the first year of the child's life, we propose that, to ease administration, pay will not be available beyond the child's first birthday.
62. However, there is currently a gap in provision to help parents of older children cope with non-emergency caring responsibilities, such as sickness or planned medical appointments. One method of meeting this need is to increase the upper age limit for parental leave.
63. Under existing arrangements, unpaid parental leave can be taken until the child is five years old. Although under our plans paid parental leave will be limited to the first year of a child's life, we are considering extending the point until which a parent can take unpaid leave to one of:
- **the child's eighth birthday:** the point at which childcare costs may reduce due to regulations on child: adult ratios being relaxed above this age;
  - **the child's twelfth birthday:** covering the transition from primary to secondary school, a period which some children and parents find difficult to manage;
  - **the child's sixteenth birthday:** covering the early teenage years, and preparation for GCSE or equivalent exams. It could also help with caring for children during school holidays since it can be harder to find appropriate care for older children; or
  - **the child's eighteenth birthday:** extending the right to all parents of children. This would be in-line with arrangements for parents of disabled children, thereby simplifying the system for parents and employers.

Consultation Questions	
13.	<b>Should the year's qualifying period for existing parental leave under the European Parental Leave Directive be retained, or should the two types of leave be consolidated to avoid confusion? Please explain your response.</b>
14.	<b>Is the child's first birthday the right cut-off point for parents to receive parental pay? Please explain your response.</b>
15.	<b>Up to what age of the child should unpaid parental leave be available? Five (as it is currently), eight, 12, 16 or 18? Please explain your response.</b>

## Further provisions of the new system

### ***Maintaining employment protections***

64. In moving to a system of flexible parental leave we aim to promote greater gender equality in the workplace, and reduce the jobs penalty and the discrimination that women experience as a result of taking time out to care for children.
65. We are keen that steps already taken to combat pregnancy discrimination are not lost as a result of reducing maternity leave. We therefore propose that the protections given to women

whilst on maternity leave should apply equally to all parents who are out of the workplace on maternity, paternity or parental leave in the first year of their child's life.

### Consultation Question

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| <b>16.</b> | <b>Do you agree with the proposed approach on employment protections? How can the protections given to employees on parental leave be made more effective?</b> |
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#### *Linking with occupational schemes*

66. We know that a significant number of employers offer occupational maternity and paternity schemes which are more generous than the statutory entitlements discussed in this document. It is our intention that employers who choose to do so should be able to continue to offer a longer period of paid leave, either as contractual maternity leave, or as a period of parental leave available to either parent.
67. The Government hopes that employers will increasingly look to introduce appropriate 'shared' elements in their occupational schemes to further encourage shared parenting.

### Consultation Question

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| <b>17.</b> | <b>Can you provide case studies on occupational paternity and maternity schemes and the benefits these bring to business and employees? We would also welcome thoughts on how the new system will affect those schemes.</b> |
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#### **Increasing fathers' involvement in antenatal care**

68. We believe that many fathers would like to be more involved in their partner's antenatal care, and that such involvement would have many benefits for children and for parents.
69. There is strong evidence that a father's attendance at ultrasound scans helps early bonding and increases his commitment to the pregnancy.<sup>16</sup> Research also suggests that encouraging fathers to actively be involved during the pregnancy may be beneficial to child well-being. In particular, a father's attendance at ultrasound scans and antenatal classes is strongly linked with positive engagement throughout childhood, including an increased likelihood to read to the child and to provide nurturing care.<sup>17</sup>
70. We are also mindful of the need to ensure that antenatal appointments remain a safe environment for women. Women need on occasions to be able to discuss privately with their midwife issues such as domestic violence or past sexual history.

<sup>16</sup> Draper J.: 'It was a real good show': the ultrasound scan, fathers and the power of visual knowledge, *Sociology of Health and Illness*, 24(6) pp. 771–795 (2002).

<sup>17</sup> Bronte-Tinkew J. et al.: Resident fathers' pregnancy intentions, prenatal behaviours and links to involvement with infants, *Journal of Marriage and Family*, 69(4) pp. 977–990 (2007).

71. We propose to make statutory provision for fathers to take time off to attend a limited number of significant antenatal appointments. There are two ways in which this right for fathers could be achieved. In either case the ultimate decision on whether a father is welcome at appointments would remain with the mother:
- a new statutory entitlement might be designed specifically to give fathers leave from the workplace to attend a specific number of antenatal appointments; or
  - the restrictions on parental leave (as described in paragraphs 8 and 9) might be relaxed, allowing fathers to use part of their allowance to attend antenatal appointments.
72. We expect that most parents would choose to prioritise the two major scans, and therefore we are proposing that in uncomplicated pregnancies fathers be entitled to time off to attend two appointments. We believe that this strikes the right balance: minimising the cost and disruption to employers, whilst supporting and encouraging fathers' involvement in antenatal care.

<b>Consultation Questions</b>	
<b>18.</b>	<b>Should fathers be entitled to time off to attend some antenatal appointments? If so, is two the right number?</b>
<b>19.</b>	<b>Do you have a preference between (a) giving fathers a new right to attend antenatal appointments, and (b) allowing fathers to use parental leave? Please explain your response.</b>
<b>20.</b>	<b>Are there any special circumstances in which parents will need additional support?</b>
<b>21.</b>	<b>Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible parental leave?</b>

## 4. Flexible working

This chapter sets out our proposals to implement the Coalition Agreement commitment to extend the right to request flexible working to all employees, enabling them to better balance their work, family and personal lives. We want to stimulate cultural change to make flexible working practices the norm, which we know will require more than just legislation. We will therefore also be developing non-legislative measures to promote flexible working opportunities both for those with a job and for those looking for one.

### Current situation

1. Flexible working is a label for a wide range of working practices and arrangements, examples of which are shown in the box below. Put simply, it is any agreement for an employee to work in a way that best fits their other responsibilities whilst also ensuring that the job gets done.

#### Types of flexible working

**Part-time:** employees are contracted to work less than normal full-time hours.

**Flexi-time:** employees work a standard core time, but can vary your start, finish and break times each day within agreed limits.

**Compressed hours:** employees work their total number of contracted weekly hours in fewer than the usual number of working days each week by working longer individual days.

**Homeworking:** employees work all or part of their contracted hours from home.

**Annualised hours:** employees average out working time across the year so they work a set number of hours per year rather than per week. Normally, they are split into core hours that are worked each week and unallocated hours that can be used for peaks in demand.

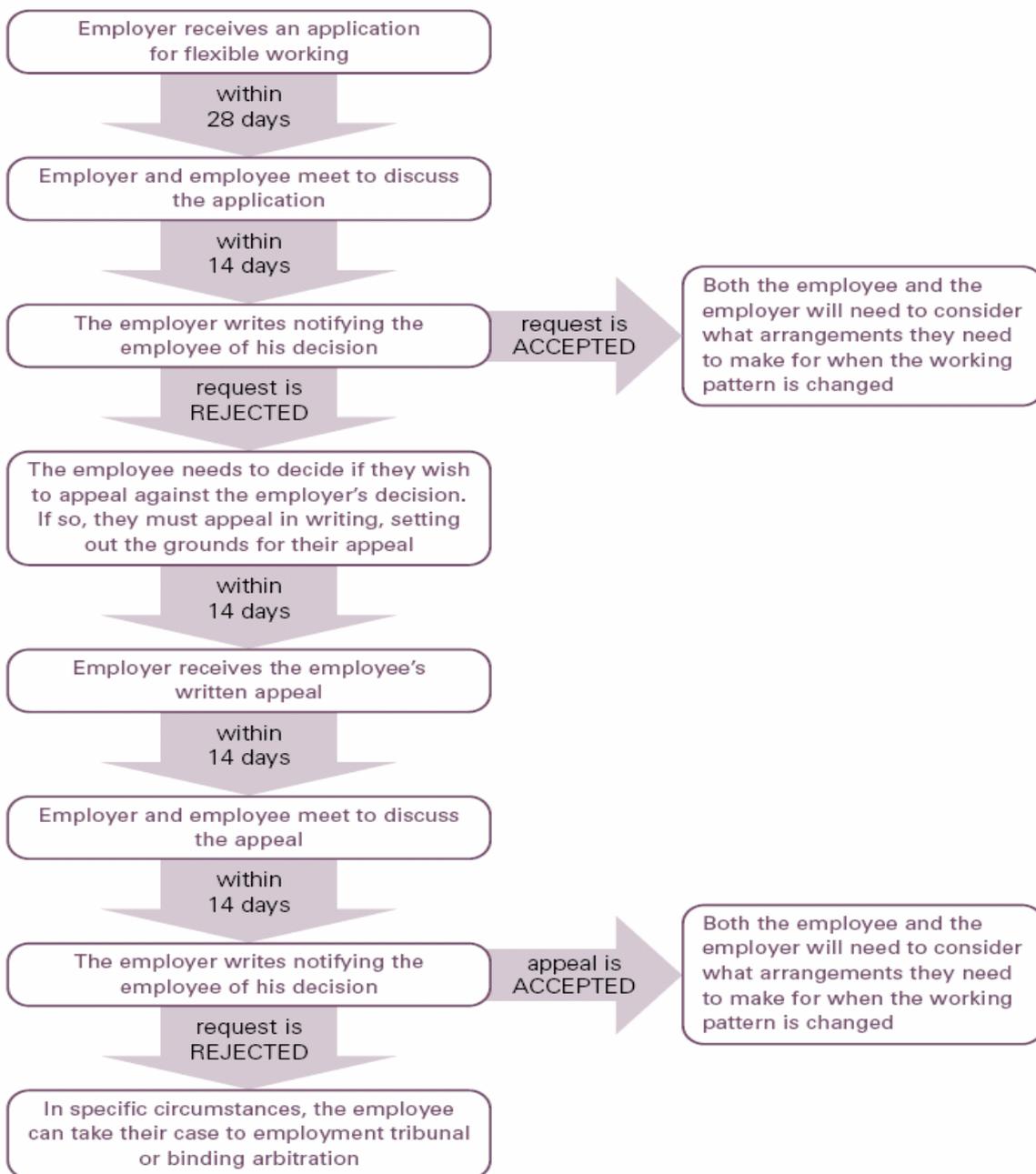
**Term-time working:** employees' work follows school term patterns. They work as normal during term-time. During school holidays they do not go to work but are still employed.

**Structured time off in lieu:** employees work longer hours during busy periods and take an equivalent amount of time off (with pay) at a less busy time. There may be limits on the number of hours individuals can build up and when they can take time off.

**Job-sharing:** employees work part-time (which could be part-day, part-week or part-year) and share the duties and responsibilities of a full-time position with another worker.

**Varied-hours working or time banking:** prospective employees advertise which hours they are available to work for the day and employers employ them for short periods of time to manage specific pieces of work, such as covering a telephone help-line. For example, an individual might be employed between 6pm and 9pm on a Tuesday evening.

2. The right to request flexible working gives employees the statutory right to request a contract variation, generally for more flexible working arrangements, and places an obligation on their employer to consider the request seriously. The right to request does not itself create flexible working: it simply facilitates the conversation between employer and employee.
3. The right to request was introduced in April 2003 for parents of children under six years old, or under 18 if the child has a disability. The right was extended to certain carers in 2007 and further extended to parents of all children under 17 in 2009. The statutory process for considering requests is shown in figure 6.



**Figure 6: existing statutory process that employers must follow when consider requests from employees for flexible working.**

## Case for change

4. The existing right to request has been a success. A recent survey of HR professionals agreed that the right should be extended to all employees.<sup>18</sup> Around 80-90 per cent of requests are accepted, helping parents and carers to stay in work and balance their work and caring responsibilities.<sup>19</sup> This benefits them, their families, their employers and the wider economy.
5. But we want to go further. We think that by extending the right to request flexible working to all employees, we can spread the benefits flexible working brings to all parts of society and the economy. For businesses, holding onto experienced and skilled staff is important in maintaining quality and containing costs. Offering flexible working can help retain staff and widen the talent pool, so employers are able to recruit people with more skills; it can also increase commitment and loyalty of staff members. This, in turn, translates into increased productivity and improved profitability, which we estimate will benefit business by an average of £52.4m per year.
6. For employees, flexible working allows them to better balance their work life with their family responsibilities. In today's society, both men and women want to find a balance between work, family and caring responsibilities. Flexible working therefore has the potential to increase overall levels of participation in the labour market, and so make a contribution to increasing employment and decreasing benefit dependency and thus ultimately to reducing the deficit and promoting growth.
7. Flexible working also supports a number of the Government's other key policies:
  - **Welfare reform:** major reforms to the welfare system mean that there will be more people seeking work, some of whom will not be able to work traditional full-time hours. In the short term, for example, lone parents who are capable of work are required to seek it when their youngest child is seven (due to go down to five after passage of the Welfare Reform Bill). The availability of flexible jobs – such as those requiring presence only during school hours – will be important to the success of this policy. Longer term changes such as Universal Credit will reduce barriers to work for those who can only do short or fluctuating amounts of work, for example due to caring responsibilities or disability.
  - **Child poverty:** an environment which supports mothers and fathers to find the most appropriate balance between their caring responsibilities and employment enables low income households to utilise the earning power of both parents more effectively (or in single parent households to increase sole earning capability), which can help lift families out of poverty.

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<sup>18</sup> 43% of the 162 respondents “strongly agree that the right to request flexible working should be extended to all, and 40% “agree”, leaving just 17% who disagree [IRS flexible working survey 2010: take-up and employee requests, IRS (2010)].

<sup>19</sup> The third work-life balance employer survey: main findings, BERR (2007).

- **Gender pay gap:** increasing the number and quality of jobs that are available on a flexible basis helps families to balance their caring and working commitments, increasing choice. Opening up the right to request flexible working to all employees also challenges the perception that flexible working is only for mothers.
- **Disabled people:** around half of working-age disabled people do not have a job. Many would like to work but currently experience considerable barriers to doing so. The most common enabler to employment among economically inactive adults with impairments is modified or reduced work hours or days.<sup>20</sup> Flexible working can enable disabled people to do what work they can do, and help employers make use of their skills.<sup>21</sup>
- **Carers:** flexible working can be vital for carers providing unpaid support to family or friends who are ill, frail, disabled or have mental health problems, and could not manage without this help. Flexible working can enable people to combine this vital work with paid employment, benefitting both the carer and the cared-for, and reducing dependency on benefits.
- **Older workers:** currently, many older workers face barriers to remaining in work or returning to work due to caring responsibilities, ill health or disability. In addition, evidence suggests that many of those approaching retirement would like to continue with some form of part-time or flexible working.<sup>22</sup> Flexible working can enable people to phase their retirement in a way they find helpful, and also help employers to manage the transition.
- **Shared parenting:** making flexible working a mainstream practice for men – and removing the fear that flexible working will harm their career prospects – will encourage more fathers to use it. Alongside the new system of flexible parental leave that we propose to introduce, this will enable a greater sharing of childcare responsibility to the benefit of both children and their parents.
- **Relationships:** flexible working can help people to juggle the demands of work and family life. Work stress and lack of work-life balance is the third most common reason why couples seek Relationship counselling.<sup>23</sup>
- **Big Society:** flexibility in their work helps people to integrate their work, family and community responsibilities. Flexible working can help individuals who want to take a more active role in their community; whether this is asking to leave early to attend a School Governors meeting, or engaging in local planning discussions.

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<sup>20</sup> Life Opportunities Survey, interim results, Office for Disability Issues (2010).

<sup>21</sup> Disabled workers have the right to a reasonable adjustment, which may include a flexible working pattern.

<sup>22</sup> Working better, EHRC (2009).

<sup>23</sup> Walker J. et al.: Relationships matter: understanding the needs of adults (particularly parents) regarding relationship support, DCSF (2010).

### Wider benefits of flexible working

Wiltshire County Council (2003) found that the majority of carers said that more flexible working patterns would be the most important help to enable them to continue working.<sup>24</sup>

Around 60 per cent of over 50s would like to continue working after state pension age, but on a part-time basis. Some 40 per cent would like to stay in their current jobs, but with greater flexibility in hours or days worked.<sup>25</sup>

Flexibility in working arrangements was the arrangement most commonly cited by employees (23 per cent) when asked how employers could support working parents.<sup>26</sup>

8. The existing legislation certainly makes an important contribution towards the pursuit of these objectives. But the full potential of flexible working in achieving these aims will only be realised if it becomes far more widespread, with decisive action to tackle the misconception that non-traditional working practices are only useful or justified for parents and carers, and for women in particular. It is in fact possible that the existing legislation may inadvertently have reinforced this misconception by restricting the right to request to these groups.
9. But, as noted above, we think that extending the right to request to all employees will bring benefits for their employers. Many employers already understand this. Indeed, in 2007 almost 95% of employers offered at least one flexible working practice. During the recent recession many employers have used alternative ways of working to save costs and reduce the need for redundancies. In difficult circumstances, many employers, who had previously thought that flexible working would not work for them, have seen the benefits at first hand.
10. However, availability of flexible working practices continues to vary significantly depending on the business sector and the employee's role and gender, with a bias towards women and those in more junior positions.<sup>27</sup> Moreover, some types of flexible working continue to be much more widely available than others. Part-time work is the most commonly available flexible working arrangement: 69 per cent of employees said that this would be available if they needed it. By contrast, just 23 per cent of employees said that regular home working would be available to them.<sup>28</sup> Additionally, while the vast majority of employees report access to at least one form of flexible working, less than half of employers say that flexible working is actively promoted by their managers.<sup>29</sup> Extending the statutory right to request to all employees will help to address all such issues.

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<sup>24</sup> Mooney A. et al.: The pivot generation: informal care and work after fifty, The Policy Press (2002).

<sup>25</sup> Working better, EHRC (2009).

<sup>26</sup> The third work-life balance employee survey: main findings, DTI (2007).

<sup>27</sup> 13% of employers reported that they would not consider a request from managers [The third work-life balance employer survey: main findings, BERR (2007)].

<sup>28</sup> The third work-life balance employee survey: main findings, DTI (2007).

<sup>29</sup> The third work-life balance employer survey: main findings, BERR (2007).

11. We are aware that some employers have concerns about the proposed extension, despite the benefits of flexible working. In particular, there is concern that the current process for considering flexible working requests is unduly prescriptive and inflexible. We agree: as employers have frequently said, legislation should tell them what Government wants them to do, and allow them to do it in the way that suits them best. So at the same time as we extend the right to request, we propose to improve the way it works, replacing the existing statutory process for the consideration of requests with a Code of Practice.
12. However, legislation can only go so far, and can only support individuals already in employment. Flexible working can only be considered to be fully integrated in workplaces that think about flexible working when they design new jobs, and recruit new employees.
13. Evidence on availability of flexible working for job-seekers is limited, but some research suggests that most jobs are not advertised as being flexible.<sup>30</sup> Many employers do not consider flexible working when advertising a job, and often the quality of those jobs that are advertised as available flexibly is poorer than the jobs that existing employees are able to do on a flexible basis.<sup>31</sup> Specialist recruitment agencies exist for part-time and varied-hours working, and we want to encourage more agencies or social enterprises to provide this kind of service and to encourage employers and potential candidates to tap into this market. If we are to meet our objectives around welfare reform it is essential that flexible working is available to those seeking work as well as those already in work. We are therefore also considering non-legislative ways to stimulate the flexible working recruitment market.

## Our proposals

### Extending the right to request

14. Our key proposal in this area is simple: that the statutory right to request flexible working should be extended to all employees. We consider that this will be the surest way of delivering the significant benefits that more widespread flexible working has the potential to bring.
15. Consistent with our commitment to better regulation, we have however also explored whether a non-regulatory approach to stimulating flexible working could deliver our policy objectives. This has included consideration of whether a non-statutory Code of Practice could be created to encourage employers to offer increased flexible working to their employees and to highlight good practice. It could be argued that this area of policy would lend itself to such an approach, given the benefits that flexible working brings for employers as well as employees. Such a Code would not be legally enforceable, but it would act as a good practice guide on the benefits and adoption of flexible working. Many similar good practice guides already exist, including on the Businesslink.gov website.

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<sup>30</sup> For example, research found that in 2008 only 29 per cent of Civil Service vacancies were advertised as available on a part-time or job-share basis. However, when followed up with a phone call, 24 per cent of those advertised as full-time *could* actually also be available on a part-time basis [We need to talk about hours: job advertising in the Civil Service, Working Families (2008)].

<sup>31</sup> Part-time work and social security: increasing the options?, DWP (2006).

16. Providing such guidance and encouraging employers to share best practice around flexible working will of course play a strong role in encouraging the spread of flexible working. However, we are concerned that simply adding further best practice guidance to that already in place is unlikely to be as effective in delivering real change. Despite existing guidance and evidence of benefits, barriers still remain to the adoption of flexible working practices, particularly for those employees who are not parents or carers. We find it difficult to see how an additional Code, even if backed up with a significant marketing campaign, would reach and convince those who have thus far been resistant to change.
17. As a result, such an approach would inevitably have less impact. We could not expect the uptake of flexible working to increase as substantially as if the right to request was extended to all. The Impact Assessment annexed to this consultation document shows that an approach based on a non-statutory Code of Practice is estimated to result in only half as many requests as the legislative approach.<sup>32</sup>
18. Furthermore, there would be the issue of how the existing statutory rights of those who are parents or carers interacted with the non-statutory Code covering those who are not. Given the benefits that the existing right for parents and carers has brought, it would not be the Government's intention to repeal that legislation and thus *reduce* their ability to request flexibility at work. But the combination of statutory and non-statutory requests would create significant additional complexity. Employers would need to identify under which procedure an employee was requesting flexible working before they processed the request. Maintaining the difference in status would also maintain the stigma which some claim is attached to requests from those who are parents or carers as well as the misconceptions attached to requests from those who are not.
19. For these reasons, the Government continues to consider that its objectives will best be achieved by legislation to extend the statutory right to request flexible working to all employees.

### Consultation Question

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| <b>22.</b> | <b>Should the Government legislate to extend the right to request flexible working to all employees? Please explain your response.</b> |
|------------|--|

## Modifying the right to request

### *Process for Considering Requests*

20. Flexible working is good for businesses as well as being good for employees. However, employers have often commented that considering requests is administratively burdensome. We want it to be as easy as possible for employers to adopt flexible working in their workplace.

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<sup>32</sup> New requests will fall from 119,000 under a legislative extension to 59,000 under a non-statutory Code of Practice.

21. To do this we propose to make the system for considering flexible working requests more adaptable, by replacing the statutory process for considering requests with a new duty on employers simply to consider requests 'reasonably'. We would then create a statutory Code of Practice purely to demonstrate a 'reasonable' process.
22. We appreciate that many employers find it helpful for Government to set out a clear process for the consideration of requests because it gives them structure and assurance, and we do not wish to remove that. But it is also true that many employers are concerned that the existing process is unduly rigid and prescriptive.
23. The Code would therefore give employers guidance on how to handle requests – using the current process as its basis – but there would be no requirement to follow the Code for requests made on the basis of the statutory right. Employers could instead use their own processes and systems, providing they met the basic requirement for 'reasonable' consideration. We will consult on the detail of a Code of Practice in due course.
24. The Code of Practice could either be a 'safe harbour' or principle-based. Under a 'safe harbour' approach, employers that follow the procedure laid out would have complete protection against claims of breach of process. Under a principle-based approach, the Code would effectively provide detailed guidance on the approach employers should take to ensure requests are considered in a reasonable manner and time.
25. It should be stressed in this context that we do not intend to amend the fundamental nature of the right to request. It will remain a right only to request as opposed to any kind of right to work flexibly; and it will remain the case that a request can be refused on the basis of business reasons, regardless of the reasons for which the employee has made the request. We propose also to leave unchanged the eight business reasons set out in legislation under which an employer may refuse a request:
  - the burden of additional costs;
  - detrimental effect on ability to meet customer demand;
  - inability to recruit additional staff;
  - inability to reorganise work among existing staff;
  - detrimental impact on quality;
  - detrimental impact on performance;
  - insufficiency of work during the periods the employee proposes to work; or
  - planned structural changes.

Consultation Questions	
23.	<b>Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice? Please explain your response.</b>
24.	<b>Should the Code of Practice detail the existing statutory procedure or is there a less burdensome procedure? Please explain your response.</b>
25.	<b>Should a Code of Practice be principle-based (i.e. requiring requests to be considered in a reasonable manner and time) or provide a 'safe harbour' (i.e. where employers following the process precisely get protection)? Please explain your response.</b>
26.	<b>If you do not agree that we should introduce a Code of Practice to govern flexible working requests, what alternative could be introduced to reduce the administrative burdens of considering requests, without diminishing employee rights? Please explain your response.</b>

### ***Prioritising requests***

26. The current right to request flexible working is targeted at parents and carers, for whom flexible working is of particular value in managing their work and family commitments. Under our proposals, however, employers will in future receive requests on the basis of the statutory right from both these groups and other employees. It has been suggested that an employer receiving multiple requests at the same time from different types of employee may not be able to accommodate them all, and may therefore value guidance on how to prioritise between them.
27. We believe that giving priority to certain groups has significant disadvantages. Our aim is a culture where flexible working is accepted in every workplace, for any legitimate reason. We want employees to feel they can ask for flexible working whatever their circumstances and without harming their career. A formal prioritisation list would risk creating a 'tiered' right reinforcing the idea that flexible working is primarily for parents and carers. It is also important to recall in this context that employers will continue to be able to decline requests on purely business grounds. On this basis, an employer could decide that only some requests can be accommodated and also decide which requests these would be.
28. We are, however, sensitive to concerns that some employers may wish to take other factors into account if they have to prioritise between genuinely competing requests. An employer may, for instance, want to prioritise a parent's request over one made by a worker for longer-term motivational or retention reasons, and some stakeholders have expressed doubts as to whether this would be possible within the current framework. The Government is very clear that it does not want the extension of the right to request to lead to employers feeling they face additional legal risks or to feel that they have to make a value judgement on the merits of one employee's case for flexible working over another. We simply want employers to be able to take the decision that makes overall sense for them.
29. We therefore propose not to *require* prioritisation of competing requests according to a particular hierarchy of concerns, but to *allow* employers to take account of any other factors

they consider relevant in the event that they have to choose between requests. This would only apply to the prioritisation of conflicting requests, and the employer would still have to show that they could not all be accommodated for purely business reasons. Wider principles of discrimination law would also obviously still need to be respected. It is important to stress that an employer who wishes to consider requests purely on business grounds (we imagine this to be the vast majority of businesses), will remain entirely free to do so.

**Consultation Question**

<b>27.</b>	<b>Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated? Please explain your response.</b>
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***26-week qualifying condition***

- 30. Agreeing a flexible working arrangement requires understanding and familiarity between employer and employee. A business needs to be certain that an individual is committed to the job before changing its structure to accommodate the employee’s needs; and an employee needs to be able to show how a request can be accommodated by the business. Reflecting this, employees may currently only exercise the statutory right to request after they have been employed for 26 consecutive weeks.
- 31. There have been many and regular calls to remove this condition. It has been argued in particular that it stops people who need flexibility from the start from entering the labour market. We have concluded, however, that the removal or reduction of this qualifying period would not be appropriate.
- 32. In addition to the considerations above, we believe that removing the condition could in fact create difficulties for individuals seeking employment. Someone who applies for a job on the expectation that they can change their working pattern on the first day of employment may be unable to continue in the job if the employer cannot accommodate the request. This could result in employees repeatedly entering and leaving the labour market in search of a flexible job, which would clearly be unsatisfactory. Amongst other things, it could cause disruption to childcare arrangements, create burdens for employers who will need to recruit again and complicate benefit payments. We are also mindful of the legitimate concerns of employers at the additional management burden that would arise from an employee accepting a post on one basis only to lodge a statutory request for a variance in working arrangements on arrival.
- 33. For these reasons we intend to keep the current 26-week qualifying period to give employers certainty about the terms and conditions on which they hire employees. However, we do believe it is important to encourage employers to consider flexible working opportunities at the point of recruitment. We are therefore planning a number of non-legislative measures in this area, as discussed further below.

**Consultation Question**

<b>28.</b>	<b>Do you agree that the current 26-week qualifying period should be retained? Please explain your response.</b>
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### ***Requests for temporary changes to terms and conditions***

34. The right to request flexible working is generally viewed as a right to request a permanent change to terms and conditions. The regulations do not actually prohibit requests for a temporary change, but employees do need to state the duration of the change when they make it, and individuals are only allowed to make one request in any 12-month period.
35. These restrictions protect employers from having to consider and respond to multiple requests from an employee. They also encourage employees to carefully consider their request. But they are also restrictive if the duration of the required period of flexible working is necessarily uncertain.
36. A temporary change to working practices can be important in a number of circumstances: from individuals who are undertaking a short-term community project, to those caring for someone with a serious or terminal illness. In cases where it is not clear how long the change will be needed, current legislation – with its requirement to state the duration in advance – is clearly deficient.
37. We are considering remedying this by allowing employees to make an additional request within any 12-month period, if they state in the original request that they expect the change to last for less than a year. This would allow employees flexibility to request temporary leave to help with complex family situations such as coping with bereavement; helping foster carers cope with disruptive children; and helping special guardians and other guardians such as grandparents who need to suddenly cope with parental responsibility.
38. Additionally, the proposed Code of Practice regarding the process for considering requests might reinforce best practice by recommending that employers consider immediate leave requests, for example to enable individuals to accompany friends or relatives to important medical appointments.
39. Best practice guidance might also recommend that the employer and employee should agree review points for the flexible working pattern at the outset, to encourage discussion about how well the arrangements are working and how long they will be needed.

<b>Consultation Questions</b>	
<b>29.</b>	<b>Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed? Please explain your response.</b>
<b>30.</b>	<b>Do you have an alternative proposal for promoting temporary changes to working patterns?</b>

### ***Exemptions for micro-business and start-ups***

40. The Government has announced that micro-businesses (i.e. those with fewer than ten employees) and new start-ups will be exempt from new domestic regulations for three years. This exemption is designed to promote growth in the economy. Depending on the point the regulations are brought forward, this moratorium may or may not automatically apply to the extension to the right to request flexible working to all employees.

- 41. The right to request provides a framework for employees to discuss changes to their working patterns with their employer. It could be argued that due to the size of micro-businesses, it is easier for these employees to hold informal discussions about ways of working with their employer. This would make the statutory right to make a request less necessary.
- 42. However, the extension to the right to request aims to remove the distinction of rights between parents, carers and other employees in order to ensure that all employees regardless of their circumstances have the opportunity to balance their work and personal responsibilities. Exempting micro-businesses from the need to consider requests from non-parents could reinforce this distinction.
- 43. We are seeking views as to whether micro-businesses and start-ups should be initially exempted from the extension to the right to request flexible working, as the Government favours, following the announcement in the 2011 Budget of the three-year moratorium on regulations for such firms.
- 44. The European Parental Leave Directive requires that parents returning from a period of parental leave must have the right to request flexible working. It applies to all businesses regardless of size. This will need to be taken into account when considering a micro-business exemption.

### Consultation Question

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| <b>31.</b> | <b>Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium? Please explain your response.</b> |
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### Approaches to support people into flexible working

- 45. Our objective is genuine culture change on flexible working. We want to see an end to any sense of a link between an employee's status or potential and his or her working pattern, and to promote a management culture where the benefits of flexible working for business are widely understood.
- 46. The Government understands that stimulating real culture change to make flexible working practices the norm across the whole labour market requires more than just regulatory change on the right to request. There also needs to be help for employers to operate in a more flexible way, and demonstration of the benefits it can bring to them and their employees.
- 47. The Government has a role in leading culture change but cannot compel it. We need to work collaboratively with business leaders and employers to promote the business case for flexible working and ensure that employers know where to go to find support to implement practices in their organisation.
- 48. A strong message from the Family Friendly Working Hours Taskforce was that "strategic direction and leadership is required from Government to help businesses to set about realising the substantial benefits of flexible working." But it was also clear that cultural

change can only occur if employers receive consistent messages and a coordinated approach from Government and from business- and employer-facing organisations.<sup>33</sup>

49. We have established a working group to promote the business benefits of flexible working. The group is chaired by Sarah Jackson, Chief Executive of Working Families, and members include the British Chambers of Commerce, the Chartered Institute of Personnel and Development, the Confederation of British Industry, Federation of Small Businesses, Trades Union Congress, and Women Like Us. The purpose of the group is to bring together a range of experts with insight into the private sector, in order to generate practical ideas and outputs to encourage greater availability of flexible working, based on improved understanding of the business benefits and of how flexible working can practically work. We will report on the progress of the working group in the Government's response to this consultation.
50. In addition, we also believe that Jobcentre Plus has a key role to play in promoting cultural change through its engagement both with employers and with people seeking work. Major reforms to welfare and employment services mean that Jobcentre Plus and employment programme providers will need to stimulate the creation of flexible jobs.
51. Jobcentre Plus intend to do this in the longer term by improving job brokering and matching services so that they are more responsive to the needs of both the jobseeker and employer. In addition, all advisor training is being enhanced to ensure that advisors have the skills needed to ensure that jobseekers receive personally tailored help and support to suit their needs, part of which will involve work targeted discussions about the customer's work capabilities and flexible working patterns. In the shorter term, Jobcentre Plus is improving familiarity with flexible working amongst (employer facing) Labour Market and Recruitment Advisors, and working with them to integrate the principles of flexible working into the services they offer.
52. The Federation of Small Businesses has previously called on Jobcentre Plus to help small businesses design suitable part-time and flexible jobs.<sup>34</sup> Advisors operating the small business recruitment helpline now talk to small businesses about the wide range of flexible working options and the benefits of offering such flexibilities when recruiting. Job vacancies notified through the small business recruitment helpline will reflect the extent to which the employer promotes flexible working and will ensure the vacancy details contain the flexible working pattern the employer has agreed to.
53. However, if we are to stimulate the whole labour market we also need to ensure that private sector recruitment agencies understand and promote the business benefits of flexible working. We intend to work closely with agencies to understand how best to stimulate the recruitment market for permanent and high quality flexible workers. The Government response to this consultation will provide more details of our plans in this area.
54. In addition, we recognise that for some people, committing to a set number of hours of work each week is not possible for caring or health reasons. For some people this may only be for a certain period in their lives, while for others this is a longer-term situation. We want

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<sup>33</sup> Flexible working: working for families, working for business, DWP (2010).

<sup>34</sup> Flexible working: small business solutions, Federation of Small Businesses (2010).

to help everyone who wants or is able to work to receive the right support to do so, even if this is only for a short number of hours or if the number of hours they are able to work varies from week to week. As well as making changes to the welfare system so that under Universal Credit people are financially rewarded for all hours of work (including varied-hours working), we acknowledge that more needs to be done to help people find this kind of work. Whilst some recruitment agencies specialise in part-time or varied-hours working, their share of the recruitment market is limited. We want to encourage more agencies or social enterprises to provide this kind of service, and encourage employers and potential candidates to tap into this market.

55. Finally, we also recognise that Government, as a large employer itself, needs to lead by example on flexible working. We are working towards achieving the Government’s aspirations for the civil service to be an exemplar in flexible working practices. Again, the Government response to this consultation will provide more details on how we will achieve this.

<b>Consultation Questions</b>	
<b>32.</b>	<b>What support do you think employers need to enable them to operate flexible working? Employers:</b> <ul style="list-style-type: none"> <li>• <b>What existing support and guidance have you used?</b></li> <li>• <b>Has this been helpful to you? Please explain your response.</b></li> </ul>
<b>33.</b>	<b>When looking for jobs, what could employers or recruitment agencies provide that would highlight that a job has flexible working opportunities?</b>
<b>34.</b>	<b>What support is required to help people to undertake varied-hours working?</b>
<b>35.</b>	<b>Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible working?</b>

# 5. Working Time Regulations

**This chapter sets out proposals on changes to the UK's Working Time Regulations. These concern the interaction of annual leave with sick, maternity, adoption, parental, and paternity leave. Changes are necessary to ensure that UK legislation is consistent with the Working Time Directive, as interpreted in a number of judgments of the Court of Justice of the European Union (CJEU).**

## The current system

1. The UK's Working Time Regulations (WTR)<sup>35</sup> give effect to the European Working Time Directive (WTD),<sup>36</sup> and aim to ensure workers' health and safety by giving adequate rest and annual leave periods, and setting limits on hours worked. The Directive created the right for EU workers to a minimum of four weeks' annual leave each year (set out in Regulation 13 of the WTR). In 2009, Regulation 13A of the WTR extended the entitlement by 1.6 weeks to 5.6 weeks (although it cannot exceed 28 days). This consultation seeks views on the proposals to alter UK law in light of recent judgments by the Court of Justice of the European Union (CJEU; previously the European Court of Justice (ECJ)).

### Statutory annual leave entitlement in the UK

Under the WTR workers are statutorily entitled to a total of 5.6 weeks' annual leave (limited to 28 days). Rights to further leave may arise from employment contracts. The rights conferred include:

- Regulation 13 leave (4 weeks), which gives effect to the Working Time Directive requirement.
- Regulation 13A leave (an additional 1.6 weeks), which is purely a matter of domestic law and represents the number of bank holidays in a year, but need not be used for them.
- Regulation 14, which gives workers an entitlement to payment in lieu of the untaken statutory entitlement for that leave year upon termination of employment.

2. It is important to emphasise that our proposals in this area are not directly related to the possibility of negotiations on a further revision of the WTD itself, on which the European Commission has begun consultations with the EU social partners. These discussions remain

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<sup>35</sup> <http://webarchive.nationalarchives.gov.uk/+/berr.gov.uk/whatwedo/employment/employment-legislation/working-time-regs/index.html>

<sup>36</sup> Directive 2003/88/EC.

at a very early stage, but should they develop further, the Government's key policy aims in any negotiations will be to maintain the individual opt-out from the 48-hour maximum working week, and to increase flexibility by finding a solution to the current problems caused by separate CJEU judgments on on-call time and compensatory rest. We will also continue to monitor and, where appropriate, take into account any further CJEU judgments or changes in EU policy in this area.

## The case for change

3. There have been a number of judgments in the CJEU relating to the interaction of the annual leave entitlement with other types of leave. *Stringer*<sup>37</sup> and *Pereda*<sup>38</sup> concern the interaction of sickness absence and annual leave; *Gomez*<sup>39</sup> covered maternity leave; and *Land Tirol*<sup>40</sup> parental leave. The principles established in respect of sickness and the annual leave entitlement under the Working Time Directive were:
  - i. Workers continue to accrue annual leave entitlement during sickness absence (*Stringer*);
  - ii. Workers can choose to take annual leave at the same time as being absent due to sickness (*Stringer*);
  - iii. Workers whose employment terminates in a year during which they have been away from work due to sickness are entitled to the same termination payment for untaken annual leave as any other worker (*Stringer*);
  - iv. Workers who fall sick during scheduled annual leave can reschedule the annual leave within the same leave year (*Pereda*); and
  - v. Workers who were unable to take annual leave due to sickness absence and who have not had the opportunity to take it again within the same leave year must be able to carry it forward into the next leave year (*Pereda*).
4. The *Gomez* and *Land Tirol* judgments mean that a worker cannot lose his right to annual leave because of maternity and parental leave.
5. Although the WTR are consistent with the first four points above, they currently prohibit the carry over of the Regulation 13 entitlement into another leave year. The Regulation 13A

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<sup>37</sup> *Stringer and Others v Her Majesty's Revenue and Customs*, CJEU case C-520/06, joined with *Schultz-Hoff v Deutsche Rentenversicherung Bund*, C-350/06.

<sup>38</sup> *Pereda v Madrid Movilidad SA*, ECJ case C-277/08.

<sup>39</sup> *Merino Gomez v Continental Industrias del Caucho SA*, CJEU case C-342/01.

<sup>40</sup> *Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol*, CJEU case C-486/08.

entitlement can only be carried forward into the next leave year where this is provided for in a relevant agreement.<sup>41</sup>

6. Member States are obliged to implement European Directives as interpreted by the CJEU. Where domestic law is incompatible with the meaning of a provision in light of a CJEU judgment, the UK is obliged to amend that law to achieve compatibility. In making amendments to address these judgments, however, the Government also intends to pursue three additional objectives:
- **Limiting the application of Working Time Directive:** in making changes to the WTR we propose to limit the impact on business of the CJEU rulings so that significant elements of the rulings on sick absence will be restricted to the EU leave entitlement and not the additional UK entitlement. We are also seeking views on making other changes to the WTR to introduce greater flexibility around the operation of statutory annual leave.
  - **Provide greater certainty:** until the regulations are amended there will remain an element of uncertainty for businesses.
  - **Support family friendly policies:** the proposed changes to the WTR will also support the other family-friendly proposals in this consultation, in particular by ensuring that parents taking family-related leave do not lose out on annual leave.

## Our proposals

### Sickness absence

#### *Carryover and rescheduling of annual leave*

7. We propose amending the WTR so that the current prohibition on carrying over leave will not apply in some circumstances. This deals with the key point of incompatibility between the *Pereda* judgment and the current WTR. Where a worker has been unable to take his annual leave due to sickness absence and it is not possible to schedule the leave in the current leave year, he will be able to carry over annual leave into the following leave year. Similarly, where a worker falls sick *during* scheduled annual leave he will be able to reschedule the annual leave at a later date, including carrying it over if it is not possible to reschedule in the current leave year.
8. However, we propose that the employer should nevertheless be able to insist that leave that is unused in such circumstances should be taken in the current leave year if there is still an opportunity to do so. Conversely, we also intend to allow employers to *require* leave that is untaken due to sickness to be carried forward to the following leave year if there are good business reasons for this. This is consistent with the observation in the *Pereda* judgment that overriding reasons relating to the interests of the employer's undertaking can be taken into account when scheduling leave.

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<sup>41</sup> This is laid out in regulations 13(9)(a) and 13A(7) respectively of the WTR.

9. We are also interested in hearing views on any other areas where greater flexibility could be introduced regarding the scheduling of annual leave (see paragraphs 28 to 31).

#### Example: situations in which leave could be carried over

A worker plans to use a fortnight of his leave entitlement by taking a holiday towards the end of the leave year, but falls ill and is off work for the whole of the last two months of that year. In such circumstances, the employee would be able to carry the untaken fortnight's leave forward to the next leave year.

A worker in a retail business – where the leave year runs from January to December – is off sick for all of September, October and November, leaving the worker with a week of unused leave entitlement. On returning to work in December the employer is concerned at the prospect of the employee taking the outstanding week's leave during the company's busiest trading time, since little cover will be available. The employer therefore requires the remaining week's leave to be carried forward to the next leave year.

#### *Limitation on statutory leave that can be carried over*

10. We propose to allow employers to limit the entitlement to carry leave forward to the four week leave entitlement under Regulation 13 (the EU leave entitlement). Employers would not be obliged to allow carryover in respect of the additional entitlement under Regulation 13A. For example, if a worker had only taken three weeks and was prevented from taking the remaining 2.6 weeks by sickness, then the employer would only be obliged to allow carryover of one week.
11. We also propose that a worker's entitlement on termination of employment to a payment in lieu of untaken leave under Regulation 14 will include payment in respect of any untaken carried over leave (although allowing employers to limit the carryover to the four-week entitlement will reduce the potential costs).

#### Example: payments on termination

Due to sickness a worker carries over 10 days of annual leave into the following leave year. He then has his employment terminated half-way through the year.

The worker's employer has to pay him for any untaken leave entitlement that he is due upon termination. The employer therefore has to calculate how much of the current year's pro-rated leave entitlement is untaken and pay the the worker for this. The employer must also pay him for any of the 10 days carried over that have not yet been taken.

12. We also propose to limit the ability to reschedule annual leave within the leave year where a worker has been sick whilst on scheduled annual leave (i.e. principle (iv) in paragraph 3 above) to the four weeks Regulation 13 leave. Employers would not be obliged to allow rescheduling in respect of the additional entitlement under Regulation 13A.
13. For this to work, employers and workers will need to know the consequences of sickness absence coinciding with scheduled annual leave. Both parties will need to know if the worker, when he falls sick, is taking Regulation 13 leave (which would give rise to a right to reschedule/carry forward) or other leave (which would not give such rights).

14. Which type of leave a worker is using at any particular time could be subject to a local agreement, be it a workplace or collective agreement or a contractual term. For example, a contract could provide that bank holidays will count as the Regulation 13A entitlement, with no right to reschedule if the worker falls ill on those days. The bank holiday would still count as paid annual leave. This may be helpful where the workplace shuts down for bank holidays or for some other period during the year, and it is particularly inconvenient to reschedule such leave.
15. In the absence of local agreements, we propose that the WTR should specify the order in which leave would be deemed to be taken. The most logical order would be that Regulation 13 leave is taken first during a leave year, followed by all other types of leave. This order could result in less leave being carried over as the four weeks leave would be taken first. It would not be possible to address the bank holiday issue through this default approach, as taking leave on bank holidays is not a statutory entitlement but a contractual one.

#### Example: carry-over and rescheduling of leave

A business only allows the rescheduling and carry-over of leave of the Regulation 13 entitlement, and allocates this to the first four weeks of leave taken by a worker.

A worker employed by this business, has already taken three weeks of leave in the current year and plans to take another break of 2.6 weeks (thus using up his full statutory leave entitlement). He then falls ill for the whole of this period of scheduled leave and takes the appropriate steps to notify his employer.

When he returns to work, the worker will now only be entitled to reschedule the first week of annual leave for which he was sick, losing the remaining 1.6 weeks of leave. If the timing of the illness is such that there is no opportunity for him to retake his leave before the end of the leave year, he could carry the week over into the following leave year.

16. It is important to stress that employers would still need to be aware of other contractual or statutory obligations such as the disability discrimination provisions of the Equality Act 2010. Where sickness absence may be attributable to disability, employers should consider whether limiting carryover or rescheduling of leave to the four-week entitlement would be consistent with their Equality Act obligations.

#### Consultation Questions

36.	<b>Do you agree with the proposal to allow employers to limit the carry over of leave in sickness cases to the four-week entitlement under Regulation 13? Please explain your response.</b>
37.	<b>Do you agree with the proposal to allow employers to limit the right to reschedule leave in the event of sickness to the four-week entitlement under Regulation 13? Please explain your response.</b>
38.	<b>Do you agree with the proposal that the Working Time Regulations be amended to specify the order in which leave is deemed to be taken, subject to contrary provision in a relevant agreement or contract? Please explain your response.</b>

**Accrual of annual leave during sickness absence**

- 17. The CJEU judgments make clear that statutory annual leave must continue to accrue during sickness absence. Although the WTR do not need to be amended on this point, we have considered whether also to limit accrual in such circumstances to Regulation 13 leave.
- 18. The arguments in favour of this are that it may in principle reduce costs for business, particularly where workers are on long periods of sickness absence. For example, if a worker was off sick for a full leave year and chose to take his annual leave simultaneously, the employer would only need to pay the worker’s full wage for four weeks and not 5.6 weeks.
- 19. However, our view is that such an approach may provide more complications than solutions. If applied to all periods of sickness absence, including short isolated periods of sickness, it would appear unworkable. For instance, if a worker was sick for a month, week or day, an employer would have to calculate the appropriate proportion of Regulation 13A not accrued. Record-keeping arrangements would need to be changed to keep track of such calculations. Furthermore, as an employer will inevitably never know how much sickness absence a worker will have until the end of the leave year, it would be impossible to calculate before then precisely how much leave a worker was due. By this time, of course, the worker may have taken all of his leave.
- 20. In light of this we do not consider this a viable option. We consider that the fairly small savings would be more than offset by the additional complexities and the administrative costs.

Consultation Question	
<b>39.</b>	<b>Do you agree that there is no merit in amending the Working Time Regulations to limit the accrual of annual leave during sickness absence to the four-week entitlement under Regulation 13? Please explain your response.</b>

**Family leave**

- 21. As noted in paragraph 4, there have been CJEU rulings that have similar implications for carry-over when annual leave cannot be taken due to absence on maternity and parental leave. In the context of the Government’s commitment to support family friendly policies, we propose to amend the WTR to allow carry-over of leave which is untaken due to absence on maternity, adoption, parental and paternity leave (including additional paternity leave). This would in due course also apply to the proposed new flexible parental leave rights. We do not think these measures will have a significant impact on employers or employees as in most cases there is sufficient notice to plan for these types of leave, reducing the need to carry over annual leave. We are not proposing to extend this to other types of leave beyond those listed above.
- 22. As with leave untaken due to sickness, we propose that employers would also be able to take into account business interests when rescheduling annual leave untaken due to family-related leave, giving them some scope to require leave to be carried over to the following leave year.

23. We consider that this will provide a further incentive for parents to make use of their family-related leave rights. In particular, it may help to encourage fathers to make use of their entitlements and thus play a more active role in the bringing up of their children.
24. Unlike the proposals around sick leave, the Government does not propose in these circumstances to limit the carry-over provision to Regulation 13 leave, as to do so would appear inconsistent with the relevant CJEU judgments.

### Consultation Question

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| <b>40.</b> | <b>Do you foresee any problems or difficulties with the approach proposed on the interaction of annual and family-related leave? Please explain your response.</b> |
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### Notification requirements

25. Subject to contrary provision in a relevant agreement, Regulation 15 of the WTR already sets out the notice period that a worker must give their employer for taking annual leave. This is generally twice the length of the intended leave period. An employer can specify periods when leave must or cannot be taken and can also cap the amount of leave taken at any one time. In light of these existing provisions we think that employers have sufficient scope to control and plan for their workers' annual leave even if this is rescheduled because of sickness absence. Our proposals will also mean that an employer can insist that leave which is untaken due to sickness absence must be taken in the current leave year, where possible, rather than being carried forward. There will also be the additional flexibility for the employer to defer leave until the following year when this can be justified in terms of business need.
26. As far as notification of sickness is concerned, workers will usually have to follow applicable sickness policies in order to count the leave as sickness absence and be able to reschedule untaken leave. These could include the process for workers to notify sickness, and any evidence required such as a fit note (formerly a sick note). Employers will need to ensure that their practices do not make it too difficult for workers to exercise their rights.
27. We are aware that businesses will have concerns around the abuse of these provisions. These abuses may arise where a worker on annual leave tries to claim falsely that he was sick so that he can take more annual leave at a later date. We believe this type of behaviour should be capable of being deterred in most cases by employers' notification procedures for sickness absence, either as they exist now or as they may be amended in light of these proposed changes. We would, however, be interested to hear proposals from employers concerned that this may not be the case.

### Consultation Questions

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| <b>41.</b> | <b>Do you agree that existing statutory notification provisions will be sufficient to enable employers to manage issues arising from the proposed changes to the Working Time Regulations? If not, what additional statutory requirements might be helpful in relation to rescheduling or carrying over leave?</b> |
| <b>42.</b> | <b>More generally, are there any additional issues that you would like to raise in relation to the proposed amendments around the interaction of annual leave with sick leave and family leave?</b>  |

### Further flexibility on annual leave

28. The proposals on annual leave in this consultation document respond to CJEU judgments regarding workers' entitlement to paid annual leave in certain circumstances. Our proposals have been framed with careful consideration of the impact on both employers and employees, and we are in particular seeking to maintain useful flexibility for both sides. However, we would also like to take this opportunity to seek views on the possibility of making other changes to the WTR which would introduce greater flexibility around the operation of statutory annual leave.
29. The extent to which flexibility can be increased is of course restricted by the provisions of the WTD, as interpreted by the CJEU. We have identified two areas in which changes might be possible in the interests of increasing flexibility:
- We could consider allowing employers to 'buy out' the additional leave entitlement under Regulation 13A (i.e. the additional entitlement of up to 1.6 weeks of leave which goes beyond the four-week EU entitlement). The basis on which this could occur could be a matter for agreement between an employee and his employer, or for negotiation between an employer and employees' representatives. The WTR would need to be amended to make this possible as currently they expressly prohibit all buying-out of statutory leave. The principle could not, however, be extended to the four weeks' Regulation 13 entitlement, since allowing 'buying out' of this would be inconsistent with the provisions of the WTD.
  - We could consider a provision to enable employers to require employees to carry over the additional leave entitlement under Regulation 13A (or part of it) in all cases of overriding business need. Under our other proposals in this consultation, employers would in any case be able to require leave to be carried over in the case of sickness (and employees would be allowed to carry it over in the case the family-friendly leave). But we could go further and allow this flexibility in all cases of overriding business need.
30. It is important to underline that the second possibility would require an employer to demonstrate that there was a genuinely overriding business need, so as to stop employees being deprived of annual leave within the leave year without real justification. Guidance would be provided on the question of what might or might not constitute circumstances meeting this test. It is also important to stress that the possibility of employers making changes to employees' entitlements following any amendment of the WTR may be constrained by contractual terms, which could not of course be altered without agreement.
31. This is preliminary thinking, and further analysis and an impact assessment would be necessary before taking these or any alternative or additional proposals forward. We would welcome views on these matters, together with any further proposals in this context that would be consistent with the legal constraints of the WTD.

<b>Consultation Questions</b>	
<b>43.</b>	<b>Would you support amendment of the Working Time Regulations to allow:</b> <ul style="list-style-type: none"><li>• 'buy out' by agreement of the additional 1.6 weeks leave entitlement under Regulation 13A; and</li><li>• employers to require the carry-over of the additional 1.6 weeks leave entitlement under Regulation 13A in cases of overriding business need?</li></ul>
<b>44.</b>	<b>Do you have any other proposals for ways in which the operation of the annual leave provisions could be made more flexible, consistent with the requirements of the Working Time Directive?</b>
<b>45.</b>	<b>Do you have any comments on the analysis contained within the Impact Assessment?</b>

## 6. Equal pay

**This chapter sets out proposals for further action to tackle the gender pay gap. We aim to ensure that employers who have breached the law on equal pay take appropriate action to rectify the problem. We therefore propose to require employment tribunals to make an employer, who is found to have discriminated on pay, conduct a pay audit (unless the tribunal feels this would not be productive). By focusing on those employers who have failed to comply with the law, this approach ensures we do not add burdens for employers that follow good practice on equal pay.**

### Current situation

1. The legal framework requiring equal pay for equal work between men and women has been in place since the Equal Pay Act 1970 came into force in 1975. Yet there is still a significant gender pay gap: women who work full time in the public sector are paid on average 10 per cent less than men and that figure rises to 19.8 per cent in the private sector.<sup>42</sup>
2. There are many different causes of the pay gap such as occupational segregation and the impact of taking time out of the labour market to have children. We are committed to addressing these underlying causes through our other proposals in this consultation on extending the right to request flexible working to all and introducing a new system of flexible parental leave. We will also work to improve careers advice to women and girls to ensure that they are aware of the options open to them and the consequences of career decisions.
3. To help drive change further we will promote transparency across the public and private sector. In October we brought into force legislation to make so-called ‘gagging clauses’ unenforceable to allow employees to discuss pay if they are concerned that they may be victims of discrimination. But we want to go even further, which is why we are asking private and voluntary sector employers to help tackle the gender pay gap through greater transparency on pay and other issues. We are working with the CBI, TUC and others to develop a framework for voluntary gender equality reporting.
4. At the same time, where an employer has been shown not to be complying with equal pay law, we need to ensure that any systemic discrimination underlying an individual case is identified and corrected. Currently, individually enforceable rights do not always enable challenge to wider or systemic unfairness in pay and reward, because the resolution of a

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<sup>42</sup> 2010 Annual Survey of Hours and Earnings, ONS (2010).

single case does not necessarily expose all the sex-related pay inequality within the workforce.

### Causes of the gender pay gap

The causes of the pay gap are complex. Research published by the Government Equalities Office (GEO) in February 2010 found the key causes of the pay gap were the impact on wages of having previously worked part-time or of having taken time out of the labour market to look after family, and the different industries and occupations in which men and women tend to work.<sup>43</sup>

Further studies have looked at why these issues still persist and have found that women's choices in the labour market are still constrained by a range of factors, notably the availability and affordability of childcare and the availability of family-friendly working. These constraints contribute to withdrawal from the labour market, occupational downgrading, reduced hourly pay and temporary working.<sup>44</sup>

However, there remains 36 per cent of the pay gap which cannot be explained by observable factors, so where discrimination has been shown to take place it is important to find out the reasons and take action to prevent further cases of discrimination occurring.

### The case for change

5. It is important that the employment tribunal process works to resolve equal pay disputes effectively. There is currently relatively little information available on the progress of equal pay cases from the initial dispute in the workplace to resolution at tribunal. We will address this by conducting research which will improve our understanding of how cases progress, in what circumstances parties settle claims and what happens following a finding by a tribunal that an equality clause has been breached.
6. Where employers have been found guilty of pay discrimination it is right that action can be taken to ensure maximum transparency and address any wider unfairness in the employers pay and reward structure, helping to avoid further cases of discrimination in future. So where there has been a breach of equality of terms, or discrimination because of sex in non-contractual pay matters, we believe that action is needed to ensure that other members of the employer's workforce are not being treated just as unfairly. Such an approach will supplement the voluntary approach we are taking to encourage companies to publish relevant pay data.
7. Together with our work to promote voluntary equality reporting, we believe this will lead to far greater transparency in pay matters, in turn giving employers and employees greater confidence that their pay systems are fair.

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<sup>43</sup> The gender pay gap in the UK 1995-2007, GEO (2010).

<sup>44</sup> Ibid.

## Our proposals

8. We are proposing new legislation that will require tribunals which have found an employer to have discriminated because of gender in relation to contractual terms or non-contractual pay matters to order that employer to conduct a pay audit.
9. However, we would also welcome views on our overall approach, and any evidence relating to the subject matter that can be provided with responses. In particular, we would welcome views and evidence on the barriers to improving transparency in pay matters and the business benefits which can be realised through greater transparency. We will use the responses to help us refine our proposals and to consider whether further steps are necessary.

### Pay audits

10. Equal pay audits involve comparing the pay of women and men doing equal work, investigating the causes of any potential discrepancies, and closing any gaps that cannot be satisfactorily explained on grounds other than sex. They are the most effective way of establishing whether an organisation is providing equal pay and rewarding employees fairly.

### ***Should the requirement apply to all employers?***

11. Whilst we believe that a tribunal should be able to require those who have broken the law on equal pay to conduct a pay audit as a matter of course, there may be some cases in which requiring a pay audit is less productive, for example where a pay audit has already been conducted recently or transparent pay practices are already in place. We are also concerned to ensure that these proposals do not hinder economic growth, particularly in the small business sector. A balance therefore needs to be struck to ensure conduct of an audit is required only where it will benefit either the employer or employees. There are a number of ways this balance might be achieved.
12. It might be possible to specify in legislation that the obligation to conduct an audit will apply to some employers but not others. For example, it could apply only to those with over 50 employees. However, it may be that in some cases an audit would be very useful to a smaller company with a complex workforce, but not to a larger company which has clear, transparent pay structures. Alternatively, we could allow the tribunal to impose an audit only where it considers it is useful to do so, or we could require the tribunal to impose an audit except where it would not be productive.
13. We consider the best approach is to limit the *circumstances* in which the audit requirement could be applied, but not to rule out entirely application of the requirement to any particular class of employer.
14. In setting out these circumstances, we have focussed on the key issue of whether or not the employer has already taken action appropriate to the nature of the enterprise to ensure his pay system is generally not discriminatory. We consider that a tribunal should not order that an audit be conducted where:
  - An audit has already been conducted in the last three years.

- The employer has in-place another means, appropriate in the circumstances, of ensuring that the pay structure is non-discriminatory. This would take into account, for example, clearly transparent pay structures.
  - The tribunal does not consider it would be productive to order an audit in the particular circumstances.
15. The last of these restrictions would give the tribunal discretion not to make an order in particular cases where it would serve no useful purpose, for example in the case of micro-employers or where the breach of the law is clearly not indicative of underlying structural pay inequality.
16. The tribunal might, of course, need guidance as to what to take into account when considering whether the last of these exceptions applies. We could set out in guidance, or in the legislation, a non-exhaustive list of the matters which a tribunal should bear in mind when deciding whether it is required to impose the audit requirement on an unsuccessful respondent in the particular circumstances of the case. We are also conscious of the need to ensure that the tribunal's discretion is structured in such a way as to minimise the risk of appeals against an order imposing an audit requirement, or refusal to make an order.
17. We consider that the tribunal should probably also consider matters such as the number of employees the respondent has, and whether the pay systems of the employer are already transparent to the employees, for example because relevant information is published. We would welcome views on this approach, and what other matters a tribunal should bear in mind when deciding whether the exception set out in the third bullet applies.

Consultation Questions	
<b>46.</b>	<b>Do you agree with the principle that greater transparency is required where an employer has been found to have breached the law? Please explain your response.</b>
<b>47.</b>	<b>Do you agree that where employers have breached the law, requiring employers to conduct equal pay audits is an effective way to increase transparency? Please explain your response.</b>
<b>48.</b>	<b>Do you agree the obligation to conduct an audit should apply to all employers found to have breached an equality clause except in specified circumstances? If you do not agree, to which employers should it apply? Please explain your response.</b>
<b>49.</b>	<b>Do you agree that audits should not be ordered if one has been conducted in the last three years; there is another means in place of ensuring the pay structure is non-discriminatory; or the tribunal does not consider it would be productive? Please explain your response.</b>
<b>50.</b>	<b>Do you think that the size of an employer is a factor that the tribunal should bear in mind when deciding whether it would be productive to order an audit? Please explain your response.</b>

51.	<b>Do you think there should be an exemption from the requirement to conduct an audit for micro-employers (fewer than 10 employees) and/or small employers (fewer than 50 employees)? Please explain your response.</b>
52.	<b>What factors do you think that the tribunal should bear in mind before deciding it would not be productive to order an employer to conduct an audit?</b>

***Which unlawful actions should give rise to the pay audit obligation?***

18. A claim relating to sex discrimination in pay can arise in two ways under the Equality Act 2010: by means of a discrimination claim if it relates to non-contractual pay, and by means of a claim relating to a breach of an equality clause (an equal pay claim) if it relates to contractual pay. On the whole, systemic disadvantage will lead to an equal pay claim, but discrimination in a non-contractual pay matter could also be a symptom of wider discrimination. Therefore we propose that a pay audit should be required following a finding that the employer has breached the Act in either of these ways.

**Consultation Question**

53.	<b>Do you agree with our proposal to impose pay audits following findings in claims relating to equality of terms and claims relating to non-contractual pay discrimination? If not, to which claims do you think the obligation should attach? Please explain your response.</b>
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***Publication of audits***

19. Where an employer is required to conduct a pay audit we propose that they should also be required to publish the results. This will make it easier for employees to tell whether the requirement has been complied with. It will also ensure that the employer takes any necessary corrective action, since publication will make it easier for other employees who are similarly being unfairly disadvantaged to bring claims of their own.
20. In order to conduct an audit properly, the employer will generally need to involve staff or staff representatives in the process. The audit will also involve proposing steps to correct any unjustified inequalities that are shown up. We consider that an overly rigid publication requirement might not take account of the need to give the process the best chance of reaching resolution without further litigation. For example, where negotiations with a staff association or trade union are ongoing, it seems sensible that the publication requirement should be flexible enough to ensure that publication takes place in a context where the results can be explained and next steps set out clearly, with a view to promoting negotiated settlement and avoiding litigation.
21. The extent of information to be published will clearly have to respect data protection principles. The details of the publication requirement will be the subject of further consultation.

Consultation Questions	
54.	<b>Do you agree with our proposal that these pay audits should be published? Please explain your response.</b>
55.	<b>Should publication requirements include a period of grace, within which pay changes could be agreed, before publication takes place? Please explain your response.</b>

### ***Sanctions for failing to comply with the requirement to complete and publish an audit***

22. So that the requirement cannot simply be ignored, we consider it necessary to set out the sanction that should be applied if the requirement is not met. There is a range of possible sanctions including:
- allowing a future tribunal to take the failure into account when considering a future claim (by drawing an inference as to the reason for that failure);
  - making the failure to comply itself an act of unlawful discrimination;
  - making the employer subject to a criminal fine; or
  - applying a civil financial penalty.
23. Allowing a tribunal to take failure into account at a later date would avoid the need for separate enforcement action. Making the failure a separate act of discrimination, which could be raised either by the original complainant or possibly by other employees, would provide a stronger remedy; however, there might be questions as to whether an individual who has not suffered personal disadvantage as a result of failure to complete an audit should be able to claim damages.
24. Allowing a criminal fine would be unusual but not unknown in areas generally dealt with under civil law. For example, fines at level 5 of the standard scale (up to £5000) already apply at summary conviction to an offence of knowingly or recklessly making a misleading statement under section 112 of the Equality Act 2010. Opting for a civil penalty would involve an authority monitoring performance of audits, pursuing employers who fail to do them, and taking the necessary enforcement action. Although there are attractions to a civil penalty of this kind, we will need to consider this in close conjunction with the separate consultation on modernising the employment tribunal system, which includes a proposal to introduce financial penalties.<sup>45</sup>

Consultation Question	
56.	<b>What do you think would be the most appropriate sanction for failure to comply with an audit requirement?</b>

<sup>45</sup> Resolving workplace disputes: a consultation, BIS (2011).

### **Content of the audit**

25. We must be clear about the required scope of a pay audit, for example, to which employees it is to apply, the timescale in which it is to be implemented, and whether it includes action to remedy any inequality. To help the employer avoid future breaches of the law, the audit must deal with those issues likely to arise in a future case, such as:
- which jobs are alike, rated as equivalent, or of equal value (requiring that a job evaluation be done);
  - whether justification of particular differences in pay or reward is required; and
  - whether there is gender imbalance in particular parts of the workforce.
26. The content of the required audit must provide the raw material to enable these issues to be explored. There are established models of pay audits on which to draw. For the purpose of this consultation, we propose the key elements of an audit would be:
- identifying jobs within that employment involving similar levels of skill, effort, decision-making, and knowledge (work of equal value);
  - comparing the terms of women and men doing like work, work rated as equivalent, and work of equal value;
  - determining the reasons for any inequalities in terms that are identified; and
  - deciding what action, if any, is needed.
27. There are several ways in which we could set out what is required from an employer directed to conduct a pay audit. We could set out a definitive list of what an audit should consist of in all cases, or alternatively set out a range of specific options which could be imposed by a tribunal to ensure the requirements are appropriate to the company's circumstances. We propose to set out what an audit should consist of in secondary legislation. This element of the proposal will be subject to further consultation, but nevertheless we would welcome early evidence to help develop options.

<b>Consultation Questions</b>	
<b>57.</b>	<b>Do you agree with the proposal that the detailed content of the proposed audit should be set out in secondary legislation following a further consultation? Please explain your response.</b>
<b>58.</b>	<b>Do you have any suggestions as to what should be included in the proposed audit?</b>
<b>59.</b>	<b>Do you have any suggestions as to the best way of ensuring the requirement is appropriate to the circumstances of the employer?</b>

### ***Unintended consequences***

28. As with all proposed new legislation there is a risk of unintended consequences. For example, a respondent could simply settle a case rather than run the risk of being made subject to an audit requirement which might result in further claims. If this were common, fewer opportunities might arise for potentially discriminatory practices or issues of law to be exposed through the tribunal process, even though cases would appear to be resolved more swiftly. There could also be a risk that unmeritorious claims would arise or be settled as a result. It is hard to predict accurately the likely scale of behavioural effects of this kind. Given the relatively concrete nature of the right to equality of terms, we think effects on initiation of claims and settlement behaviour are likely to be slight.

<b>Consultation Questions</b>	
<b>60.</b>	<b>Do you consider there to be a risk of unintended consequences? If so what do you think these could be and how do you think they could be mitigated?</b>
<b>61.</b>	<b>Do you have any further comments or suggestions relating to our proposals or impact assessment on equal pay?</b>

# Annex A: Glossary

**26-week qualifying period:** individuals must be employed by the same employer for 26 continuous weeks in order to qualify for the right to request flexible working.

**Additional paternity leave:** employed fathers will be able to take up to 26 weeks' APL to care for their child if the child's mother returns to work before the end of her maternity leave. The earliest APL can begin is 20 weeks after the child is born. It must end by 52 weeks after the baby is born. Fathers are entitled to APL if they have completed 26 weeks' continuous service with their employer by the 15th week before that in which the baby is due and continue working for the same employer until their leave starts; and if the mother has returned to work before the end of her maternity leave.

**Additional statutory paternity pay (ASPP):** ASPP may be paid to fathers taking time off work to care for their child, if the mother has returned to work before the end of her 39 week SMP or MA period. Fathers are entitled to ASPP if they have completed 26 weeks' continuous service with their employer by the 15th week before that in which the baby is due and continue working for the same employer until the date their ASPP starts; have earned at least, on average, the Lower Earnings Limit for National Insurance Contributions; and if the mother was entitled to SMP or MA and has returned to work with some of her MA or SMP period remaining. ASPP can be paid up to the time when the MA or SMP would have ended. ASPP is paid at a standard weekly rate of £128.73 in 2011/12 (up from £124.88 in 2010/11) or 90 per cent of their earnings if that is lower.

**Adoption leave:** employed adopters are entitled to 52 weeks' leave if they have completed 26 weeks' continuous service with their employer by the end of the week in which they are told that they have been matched with a child for adoption. Where a couple are adopting a child they can choose which of them will take adoption leave and receive SAP. The other adopter may take paternity leave and receive OSPP.

**Carer:** for the purposes of the right to request flexible working, a carer is defined as an individual who is or expects to be caring for a person who is in need of care who is either married to or the partner or the civil partner of the employee; a relative of the employee; or living at the same address as the employee.

**Disabled:** for the purposes of the right to request flexible working, a disabled child means someone entitled to a disability living allowance within the meaning of section 71 of the Social Security Contributions and Benefits Act 1992.

**Equality of terms:** equally favourable terms of employment as a person of the opposite sex doing like work, work rated the same or work of equal value for the same employer.

**Equality clause:** the mechanism provided by the Equality Act 2010, like the Equal Pay Act 1970 before it, to ensure that a person who does not have equality of terms is given it. It is a clause that is deemed to be included in their terms of employment that corrects any disadvantage between that person and their comparator (a person who that employer pays or rewards better, contractually, for like work, work rated the same, or work of equal value).

**Job evaluation:** a method of systematically considering and deciding on the relative importance and value of particular jobs to the employer.

**Like work:** work that is the same as that of the comparator, or not different in any significant way.

**Lower earnings limit (LEL):** the point at which a worker is treated as if he had paid National Insurance Contributions.

**Maternity allowance (MA):** women who do not qualify for SMP may be entitled to MA from the Department for Work and Pensions. MA is paid for up to 39 weeks at a standard weekly rate of £128.73 in 2011/12 (up from £124.88 in 2010/11) or 90 per cent of their earnings if that is lower. Women qualify if they have been an employed or self-employed earner in any 26 weeks in the 66-week period ending the week before that in which the baby is due. They must also have earned an average minimum of £30 over any 13 weeks in this period.

**Maternity leave:** all employed women are entitled to 52 weeks' leave regardless of length of service.

**Ordinary statutory paternity pay (OSPP):** OSPP is paid to support fathers in taking time off work around the time of the birth. It must usually be taken within 8 weeks of the child's birth. Fathers are entitled to OSPP if they have completed 26 weeks' continuous service with their employer by the 15th week before that in which the baby is due and have earned at least, on average, the lower earnings limit for National Insurance Contributions. OSPP is paid by employers who can reclaim some or all of the payment back from Government. They receive up to two weeks' pay at a standard weekly rate of £128.73 in 2011/12 (up from £124.88 in 2010/11) or 90 per cent of their earnings if that is lower.

**Parental leave:** each parent with one year's continuous service with their employer has the right to 13 weeks' unpaid leave per child which can be taken until their child's fifth birthday. Parents of disabled children can take 18 weeks' unpaid leave until their child's 18th birthday.

**Paternity leave:** employed fathers are entitled to two weeks' leave if they have completed 26 weeks' continuous service with their employer by the 15th week before that in which the baby is due.

**Regulation 13 leave:** the entitlement to four weeks' annual leave set out in Regulation 13 of the Working Time Regulations (which give effect to the provisions of the European Working Time Directive).

**Regulation 13A leave:** the entitlement to 1.6 weeks' annual leave set out in Regulation 13A of the Working Time Regulations. This gives a total statutory leave entitlement of 5.6 weeks, although this is limited to 28 days.

**Right to request flexible working:** the right to request flexible working currently enables employed parents of children under 17 (or under 18 where the child is disabled) or carers of relatives, or individuals within the carers household to request from their employer a change in their contractual terms and conditions, with respect to hours and location of work. The right places a duty on employers to consider the request seriously and respond within a set period of time. Employees need to have been continuously employed with the same employer for 26 weeks in order to qualify for the right to request flexible working.

**Statutory adoption pay (SAP):** SAP is paid to support adopters in taking time off work when a child is placed with them for adoption. Adopters are entitled to OSPP if they have completed 26 weeks' continuous service with their employer by the time they are notified of having been matched with a child for adoption, and have earned at least, on average, the lower earnings limit for National Insurance Contributions. SAP is paid by employers who can reclaim some or all of the payment back from Government. It is paid for up to 39 weeks at a standard weekly rate of £128.73 in 2011/12 (up from £124.88 in 2010/11) or 90 per cent of their earnings if that is lower.

**Statutory maternity pay (SMP):** SMP is paid to support women in taking time off in the later stages of pregnancy and after the birth of a child. Women are entitled to SMP if they have completed 26 weeks' continuous service with their employer by the 15th week before that in which the baby is due; and have earned at least, on average, the lower earnings limit for National Insurance Contributions. SMP is paid by employers who can reclaim some or all of the payment back from Government. Payment is for up to 39 weeks. Women receive 90 per cent of their earnings for the first six weeks, followed by 33 weeks at a standard weekly rate of £128.73 in 2011/12 (up from £124.88 in 2010/11) or 90 per cent of their earnings if that is lower.

**Time off for emergencies:** all employees are entitled to a reasonable amount of unpaid time off to deal with certain emergencies affecting a dependant. A dependant can be a child, partner, parent or someone who relies on them for care. They are entitled to a reasonable amount of time off to deal with the emergency and to put other care arrangements in place.

**Work rated the same:** work that has been given the same rating or grade in a pay structure by that employer using a job evaluation scheme.

**Work of equal value:** work that, while it is different from that of the chosen comparator and has not been rated the same by a job evaluation scheme, is nevertheless equivalent in terms of the demands placed on the worker, such as physical, mental, and environmental factors.

**Working Time Directive (WTD):** a 2003 European Directive intended to ensure workers' health and safety by giving adequate rest and annual leave periods, and setting limits on hours worked. Amongst other provisions, the Directive created the right to a minimum of four weeks annual leave each year (set out in Regulation 13 of the Working Time Regulations).

**Working Time Regulations (WTR):** UK regulations giving effect to the Working Time Directive and setting out further rights including those for additional annual leave set out in Regulation 13A.

# Annex B: The consultation code of practice criteria

- Formal consultation should take place at a stage when there is scope to influence policy outcome.
- Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

## Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu  
Consultation Co-ordinator  
Better Regulation Team  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

Tel: 020 7215 0412

Email: [Babatunde.Idowu@bis.gsi.gov.uk](mailto:Babatunde.Idowu@bis.gsi.gov.uk)

# Annex C: List of consultees

This consultation document has been sent to the following organisations:

- Acas
- Adoption UK
- The Age and Employment Network
- Age UK
- Association of Convenience Stores
- Association of Licensed Multiple Retailers
- Bliss
- Breastfeeding Manifesto Coalition
- British Association for Adoption & Fostering
- British Chambers of Commerce
- British Retail Consortium
- British Security Industry Association
- Carers UK
- Catholic Bishops' Conference of England
- The Chartered Institute of Personnel and Development
- Citizens Advice Bureau
- Confederation of British Industry
- Discrimination Law Association
- EEF – The Manufacturers Association
- Employers for Carers
- Employment Law Association
- Equality and Diversity Forum
- Equality and Human Rights Commission
- Equality Network (Scotland)
- Every Disabled Child Matters
- Family and Parenting Institute
- Fatherhood Institute
- Fawcett Society
- Forum of Private Business
- Federation of Small Business
- Financial Reporting Council
- Gingerbread
- GMB
- Institute of Directors
- Institute of Payroll Professionals
- Local Government Employers
- Local Government Improvement and Development & Local Government Association
- Maternity Action
- Mother's Union
- National Association of Schoolmasters / Union of Women Teachers
- National Childbirth Trust
- National Homeworking Group
- National Union of Teachers
- NHS Employers
- Older People's Commissioner for Wales
- Operation Black Vote
- Partnership of Public Employers
- Press for Change
- Prospect
- Public and Commercial Services Union
- Race on the Agenda
- RADAR
- The Recruitment and Employment Confederation
- Religion & Belief Consultative Group
- Royal College of Midwives
- Stonewall
- The Law Society
- Trades Union Congress
- Twins and Multiple Births Association
- UNITE
- Unison
- Universities and Colleges Employers Association
- USDAW
- The Whitehall and Industry Group
- Women Like Us
- Working Families

In addition to the organisations detailed above, we are seeking views from businesses and private individuals.

# Annex D: Consultation response forms

- i) Flexible parental leave
- ii) Flexible working
- iii) Working Time Regulations
- iv) Equal pay

## Consultation on Modern Workplaces - Flexible parental leave - Response form

You can complete your response online through Survey Monkey:

<http://www.surveymonkey.com>

We value all responses, but the online survey assists us in analysing responses more effectively.

Alternatively, you can email or post this completed response form to

Sammy Harvey  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

**Email:** [modernworkplacesconsultation@bis.gsi.gov.uk](mailto:modernworkplacesconsultation@bis.gsi.gov.uk)

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

**Name:**

**Organisation (if applicable):**

**Address:**

Please state if you are responding as an individual or representing the views of an organisation, by selecting the appropriate group. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the boxes below that best describes you as a respondent to this consultation:

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Public sector
<input type="checkbox"/>	Voluntary sector

	Individual
	Large business ( over 250 staff)
	Legal representative
	Local government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):
	Retail
	Construction
	Digital/creative industries
	Healthcare/life sciences
	Advanced Manufacturing
	Financial Services
	Business and professional services
	Tourism/hospitality
	Other (please describe):

**Modern Workplaces - Flexible parental leave**

**Q 1. Which aspects of the current system work well for parents and employers, and where could improvements be made? Please explain your response.**

**Q 2. How can the Government best encourage a culture of shared parenting?  
Please explain your response.**

**Q 3. Are you aware of companies that have gone beyond the existing statutory requirements in encouraging shared parenting? Why have they done this and what have the outcomes been? How can the Government help to ensure that lessons are disseminated to other businesses?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 4. Should 18 weeks of maternity leave, accompanied by either statutory maternity pay or maternity allowance, be reserved exclusively for mothers?**

Yes [     ]                      No [     ]

**If not, what proportion should be reserved? Please explain your response.**

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

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 6. Do you agree with our proposals to facilitate greater flexibility in the taking of parental leave?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 7. If parents are not living together, should the default position be for the parent with main responsibility for the child to be able to take all the unreserved period of leave and pay?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 8. On what principles should the notification process for parental leave be based? Do you have any comments on our proposal that the process be based on that for additional paternity leave?**

**Please explain your response.**

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

Yes [  ]                      No [  ]

**Please explain your response.**

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

Yes [  ]                      No [  ]

**Please explain your response.**

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

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 12. What do you see as the core challenges to administration? Do you support the initiatives described above as a means of addressing them? What other opportunities for improvement to administration can you identify?**

**Q 13. Should the year's qualifying period for existing parental leave under the European Parental Leave Directive be retained, or should the two types of leave be consolidated to avoid confusion? Please explain your response.**

**Q 14. Is the child's first birthday the right cut-off point for parents to receive parental pay? Please explain your response.**

**Q 15. Up to what age of the child should unpaid parental leave be available? (Five as it is currently) or:**

Five [  ]      Eight [  ]

12 [  ]      16 [  ]

18 [  ]

**Please explain your response.**

**Q 16. Do you agree with the proposed approach on employment protections? How can the protections given to employees on parental leave be made more effective?**

Yes [     ]                      No    [     ]

**Please explain your response.**

**Q 17. Can you provide case studies on occupational paternity and maternity schemes and the benefits these bring to business and employees? We would also welcome thoughts on how the new system will affect those schemes.**

**Q 18. Should fathers be entitled to time off to attend some antenatal appointments?**

Yes [     ]                      No    [     ]

**If so, is two the right number?**

**Q 19. Do you have a preference between :**

**(a) giving fathers a new right to attend antenatal appointments**

[       ]

**(b) allowing fathers to use existing parental leave to attend antenatal appointments**

[       ]

**Please explain your response.**

**Q 20. Are there any special circumstances in which parents will need additional support?**

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

## **Consultation on Modern Workplaces – Flexible working - Response form**

You can complete your response online through Survey Monkey:

<http://surveymonkey.com>

We value all responses, but the online survey assists us in analysing responses more effectively.

Alternatively, you can email or post this completed response form to

Sammy Harvey  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

**Email:** [modernworkplacesconsultation@bis.gsi.gov.uk](mailto:modernworkplacesconsultation@bis.gsi.gov.uk)

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

**Name:**

**Organisation (if applicable):**

**Address:**

Please state if you are responding as an individual or representing the views of an organisation, by selecting the appropriate group. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the boxes below that best describes you as a respondent to this consultation:

	Advanced Manufacturing
	Business and professional services
	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Construction
	Digital/creative industries
	Financial Services
	Healthcare/life sciences
	Individual
	Large business ( over 250 staff)
	Legal representative
	Local government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Other (please describe):
	Other (please describe):
	Public sector
	Retail
	Small business (10 to 49 staff)
	Tourism/hospitality
	Trade union or staff association
	Voluntary sector

**Modern Workplaces – The right to request flexible working**

**Q 1. Should the Government legislate to extend the right to request flexible working to all employees?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 2. Do you support the proposal to replace the statutory process for the consideration of requests with a Code of Practice?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 3. Should the Code of Practice detail the existing statutory procedure.**

Yes [     ]                      No [     ]

**Is there a less burdensome procedure? Please explain your response.**

**Q 4. Should a Code of Practice be principle-based (i.e. requiring requests to be considered in a reasonable manner and time) or provide a ‘safe harbour’ (i.e. where employers following the process precisely get protection)?**

**Please explain your response.**

**Q 5. If you do not agree that we should introduce a Code of Practice to govern flexible working requests, what alternative could be introduced to reduce the administrative burdens of considering requests, without diminishing employee rights?**

**Please explain your response.**

**Q 6. Do you agree with our proposals on prioritisation of multiple flexible working requests that cannot all be accommodated?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 7. Do you agree that the current 26-week qualifying period should be retained?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 8. Do you agree that the restriction on the number of requests allowed in any 12-month period should be changed?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 9. Do you have an alternative proposal for promoting temporary changes to working patterns?**

**Please explain your response.**

**Q 10. Do you agree with the Government that micro-businesses and start-ups should be exempted from the extension to the right to request flexible working for the three year moratorium?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 11. What support do you think employers need to enable them to operate flexible working? Employers:**

- What existing support and guidance have you used?
- Has this been helpful to you?

**Please explain your response.**

**Q 12. When looking for jobs, what could employers or recruitment agencies provide that would highlight that a job has flexible working opportunities?**

**Q 13. What support is required to help people to undertake varied-hours working?**

**Q 14. Do you have any further comments or suggestions relating to our proposals or impact assessment on flexible working?**

## Consultation on Modern Workplaces - Working Time Regulations - Response form

You can complete your response online through Survey Monkey:

<http://www.surveymonkey.com>

We value all responses, but the online survey assists us in analysing responses more effectively.

Alternatively, you can email or post this completed response form to

Sammy Harvey  
Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

**Email:** [modernworkplacesconsultation@bis.gsi.gov.uk](mailto:modernworkplacesconsultation@bis.gsi.gov.uk)

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

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**Address:**

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	Construction
	Digital/creative industries
	Financial Services
	Healthcare/life sciences
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	Legal representative
	Local government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Other (please describe):
	Other (please describe):
	Public sector
	Retail
	Small business (10 to 49 staff)
	Tourism/hospitality
	Trade union or staff association
	Voluntary sector

## Modern Workplaces – Working time regulations

**Q 1. Do you agree with the proposal to allow employers to limit the carryover of leave in sickness cases to the four week entitlement under Regulation 13?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 2. Do you agree with the proposal to allow employers to limit the right to reschedule leave in the event of sickness to the four week entitlement under Regulation 13?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 3. Do you agree with the proposal that the Working Time Regulations be amended to specify the order in which leave is deemed to be taken, subject to contrary provision in a relevant agreement or contract?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 4 Do you agree that there is no merit in amending the Working Time Regulations to limit the accrual of annual leave during sickness absence to the four-week entitlement under Regulation 13?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 5 Do you foresee any problems or difficulties with the approach proposed on the interaction of annual and family-related leave? Please explain your response.**

**Q 6 Do you agree that these existing statutory notification provisions will be sufficient to enable employers to manage issues arising from the proposed changes to the Working Time Regulations? If not, what additional statutory requirements might be helpful in relation to rescheduling or carrying over leave?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 7. More generally, are there any additional issues that you would like to raise in relation to the proposed amendments around the interaction of annual leave with sick leave and family leave?**

**Q 8. Would you support amendment of the Working Time Regulations to allow:**

- ‘buy out’ by agreement of the additional 1.6 weeks leave entitlement under Regulation 13A; and
- employers to require the carry-over of the additional 1.6 weeks leave entitlement under Regulation 13A in cases of overriding business need

**Please explain your response.**

**Q9. Do you have any other proposals for ways in which the operation of the annual leave provisions could be made more flexible, consistent with the requirements of the Working Time Directive?**

**Q 10. Do you have any comments on analysis contained within the Impact Assessment?**

# Consultation on Modern Workplaces – Equal Pay - Response form

You can complete your response online through Survey Monkey:

<http://www.surveymonkey.com>

We value all responses, but the online survey assists us in analysing responses more effectively.

Alternatively, you can email or post this completed response form to

David Ware  
Evidence and Equality at Work Division,  
Government Equalities Office, Home Office,  
1st floor, Fry (South-West Quarter),  
2 Marsham Street,  
London SW1P 4DF

Email: David.Ware@geo.gsi.gov.uk

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

**Name:**

**Organisation (if applicable):**

**Address:**

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<input type="checkbox"/>	Central government

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	Public sector
	Voluntary sector
	Individual
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	Legal representative
	Local government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):
	Retail
	Construction
	Digital/creative industries
	Healthcare/life sciences
	Advanced Manufacturing
	Financial Services
	Business and professional services
	Tourism/hospitality
	Other (please describe):

**Modern Workplaces – equal pay**

**Q 1. Do you agree with the principle that greater transparency is required where an employer has been found to have breached the law?**

Yes [            ]            No            [            ]

**Please explain your response.**

**Q 2. Do you agree that where employers have breached the law, requiring employers to conduct equal pay audits is an effective way to increase transparency?**

Yes [            ]            No            [            ]

**Please explain your response.**

**Q 3. Do you agree the obligation to conduct an audit should apply to all employers found to have breached an equality clause except in specified circumstances?**

Yes [    ]            No    [    ]

**If you do not agree, to which employers should it apply? Please explain your response.**

**Q 4. Do you agree that audits should not be ordered if one has been conducted in the last three years; there is another means in place of ensuring the pay structure is non-discriminatory; or the tribunal does not consider it would be productive?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 5. Do you think that the size of an employer is a factor that the tribunal should bear in mind when deciding whether it would be productive to order an audit.**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 6. Do you think there should be an exemption from the requirement to conduct an audit for micro-employers (fewer than 10 employees) and/or small employers (fewer than 50 employees)?**

Yes [     ]                      No [     ]

**Please explain your response.**

**Q 7. What factors do you think that the tribunal should bear in mind before deciding it would not be productive to order an employer to conduct an audit?**

**Please explain your response.**

**Q 8. Do you agree with our proposal to impose pay audits following findings in claims relating to equality of terms and claims relating to non-contractual pay discrimination?**

Yes [  ]                      No [  ]

**If no, to which claims do you think the obligation should attach? Please explain your response.**

**Q 9. Do you agree with our proposal that these pay audits should be published?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 10. Should publication requirements include a period of grace, within which pay changes could be agreed, before publication takes place?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 11. What do you think would be the most appropriate sanction for failure to comply with an audit requirement?**

**Please explain your response.**

**Q 12. Do you agree with the proposal that the detailed content of the proposed audit should be set out in secondary legislation following a further consultation?**

Yes [  ]                      No [  ]

**Please explain your response.**

**Q 13. Do you have any suggestions as to what should be included in the proposed audit?**

**Q 14. Do you have any suggestions as to the best way of ensuring the requirement is appropriate to the circumstances of the employer?**

**Q 15. Do you consider there to be a risk of unintended consequences? If so what do you think these could be and how do you think they could be mitigated?**

**Q 16. Do you have any further comments or suggestions relating to our proposals or impact assessment on equal pay?**

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**URN 11/699**