



BIRMINGHAM LAW SOCIETY

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**Response to the Department for Business, Energy &
Industrial Strategy Consultation on supporting
parents of babies requiring neonatal care**

September 2019

1. Proposals for New Employment Rights: supporting parents of babies requiring neonatal care

The consultation is available at: <https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families>

The closing date for responses is: 11 October 2019

Please return completed forms to:

Team: Family-related Leave and Pay Team
Department for Business, Energy and Industrial Strategy
Postal address: 1st Floor Spur, 1 Victoria Street, Westminster, London, SE24 0DN

Tel: 020 7215 5000

Email: supportingfamiliesconsultation@beis.gov.uk

Personal / Confidential information

Please be aware that we intend to publish a summary of all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall 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 department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

About You

Name:

Organisation (if applicable):

Address:

	Respondent type
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

	If you are an individual, are you:
<input type="checkbox"/>	Employed
<input type="checkbox"/>	Self-employed
<input type="checkbox"/>	Unemployed
<input type="checkbox"/>	Retired
<input type="checkbox"/>	Not looking for work
<input type="checkbox"/>	other

	If you are an employer, how would you classify your organisation?
<input type="checkbox"/>	Private sector
<input type="checkbox"/>	Public sector
<input type="checkbox"/>	Charity/Voluntary sector
<input type="checkbox"/>	Other (please specify)

Section 1: Eligibility for Neonatal Leave and Pay

Mothers, fathers and partners

We have concluded that it should be restricted to the individuals who would have had the main responsibility for caring for the child, had it not been admitted to neonatal care.

This means that the following groups of parents would potentially be eligible for Neonatal Leave and Pay:

- The mother of the baby or babies;
- The father of the baby or babies;
- The mother's spouse; civil partner or a partner who will be living with the mother and baby that is in neonatal care in an enduring family relationship;
- The intended parents in a surrogacy arrangement (where they are eligible for and intend to apply for a Parental Order);
- The intended parents in cases of adoption, where the intention was that the baby or babies would be placed with the individuals that they have been matched with at birth or shortly after birth.

Question 1:

Do you agree with the principle that entitlement to Neonatal Leave and Pay should be restricted to the individuals who would have had the main responsibility for caring for the child following birth, had it not been admitted to neonatal care (i.e. those listed above)?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

If you disagree or disagree strongly, please specify who else you think should be entitled.

Comments: [Click here to enter text.](#)

Ensuring that the new entitlement is targeted at those parents who are most in need

Question 2:

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

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

If you disagree or disagree strongly, please provide a reason for your answer.

Comments: [Click here to enter text.](#)

Question 3:

Do you agree that access to Neonatal Leave and Pay should be restricted to parents whose children have spent a minimum of two weeks in neonatal care, i.e. are seriously ill or likely to be in hospital for an extended period of time?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

If you disagree or disagree strongly, please specify who else you think should be entitled.

Comments: [Click here to enter text.](#)

Question 4:

If you agree that access to Neonatal Leave and Pay should be restricted to parents whose babies are most seriously ill, after what length of time in neonatal care should the parents' entitlement to Neonatal Leave and Pay crystallise?

After 2 weeks	<input checked="" type="checkbox"/>
4 weeks	<input type="checkbox"/>
Other	<input type="checkbox"/>

Please provide your reasons

- **A minimum threshold is required because it is not feasible to manage a system based on minimal hospital visits or short periods of admission**
- **Short periods of hospitalisation are much less likely to cause a significant impact.**
- **By the time of 2 weeks' hospitalisation, the situation is highly likely to be regarded as sufficiently serious to justify the subsidy by the state.**
- **Aligning with 2 weeks' paternity leave provisions also helps to ensure that there is no gap in benefit provision.**

Other circumstances

Our internal review identified areas where the current regime is not working for parents in circumstances where a baby is admitted to neonatal care for a prolonged, continuous period immediately following birth. However, we recognise that there may be other circumstances in which parents face significant barriers to returning to and staying in work once they have used up their existing statutory leave and pay entitlements.

Question 5:

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

Comments: Yes. Consideration could be given to periods of hospitalisation which are (a) not continuous, and/or (b) do not arise immediately following birth, such that any neo-natal hospitalisation (of more than 2 weeks) commencing within the first 28 days of the baby's life is covered.

Please provide a reason for your answer.

Comments: Neonatal needs are not predictable. It may be artificial and unwelcome to discriminate between different neonatal hospital admissions that commence within the recognised period of first 28 days of the baby's life

Qualifying Conditions for Neonatal Leave and Pay

Question 6:

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

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer.

Comments: For reasons of consistency with other benefits, it is important to provide a day one right to neonatal leave. It does raise a question about the reform of paternity leave but we acknowledge that the point is addressed in the consultation paper, at note 56.

Question 7:

Do you agree that the qualifying period of service for Statutory Neonatal Pay should mirror the qualifying period of Statutory Paternity and Shared Parental Pay?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>

Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide a reason for your answer.

Comments: Neonatal pay should mirror Paternity and Parental Pay. Consistency of entitlement is vital to a successful benefit system as it promotes understanding and access. We note however that there remains an inconsistency with regards to Maternity Allowance which does not have a qualifying service requirement and might lead to an unfairness in the case of a father needing to take neonatal leave but who may be required to take it as unpaid leave.

Section 2: The Leave and Pay

Length of entitlement to Neonatal Leave and Pay

Question 8

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

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer.

Comments: the Committee recognises that it is important to give business some certainty over when employees may be absent.

- a. If you agree that the number of weeks of Neonatal Leave that are available to parents should be capped, what is the optimal maximum number of weeks of Leave that should be available?

2 weeks	<input type="checkbox"/>
4 weeks	<input type="checkbox"/>
6 weeks	<input type="checkbox"/>
12 weeks	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

Please provide reasons for your answer

Comments: The best answer is one which is evidence-based. The consultation paper identifies that a small minority of babies need to spend more than four weeks in hospital. Arguably therefore a higher cap will have little impact on business but a higher cap will at the same time be a valuable benefit to those few who would genuinely need it. The consultation paper identifies that babies born at 24 weeks require on average 18 weeks in neonatal care. We consider that a sensible solution is a cap of 12 weeks.

Question 9

Do you agree that the maximum number of weeks of Neonatal Leave should be the same as the maximum number of Neonatal Pay in order to ensure eligible parents can receive pay throughout their leave period?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>

Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer.

Comments: Neonatal leave can be aligned with Neonatal pay because the period is question is capped, is likely to be relatively short and identifiable and highly likely to be objectively merited.

a. If you disagree with question 9A do you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped?

Strongly agree	<input type="checkbox"/>
Agree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer.

Comments: [Click here to enter text.](#)

Question 10:

If you agree that the number of weeks of Statutory Neonatal Pay that is available to parents should be capped, what is the optimal maximum number of weeks of Pay?

2 weeks	<input type="checkbox"/>
4 weeks	<input type="checkbox"/>
6 weeks	<input type="checkbox"/>
12 weeks	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

Please provide reasons for your answer.

Comments: Although this represents a potential burden for business, for reasons set out above, such entitlement is likely in the vast majority of cases to be relatively short and identifiable and highly likely to be objectively merited. The government might give consideration to a scheme for recoupment by small businesses just as with Statutory Maternity Pay

When Neonatal Leave and Pay can be taken

Question 11:

A. Do you agree that Neonatal Leave and Pay should be taken in a continuous period at the end of existing entitlements to family-related leave and pay, e.g. Maternity or Paternity Leave?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>

Don't know	<input type="checkbox"/>
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Please provide reasons for your answer

Comments: By taking leave at the end of existing entitlements, reinforces the existing entitlement. It also allows for greater certainty and the opportunity of planning for such leave.

Section 3: Notice and Evidence requirements

Question 12

Do you agree that a father/partner should be required to give notice in advance of the end of their other statutory leave entitlement to Paternity Leave in order to take Neonatal Leave?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide a reason for your answer.

Comments: Business needs require planning wherever possible; the requirement to give notice is a typical feature of leave entitlements.

Question 13:

Do you agree that a mother should be required to give notice in advance of the end of her other statutory leave entitlement to Maternity Leave in order to take Neonatal Leave?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please give a reason for your answer

Comments: Business needs require planning wherever possible; the requirement to give notice is a typical feature of leave entitlements

Question 14: What would be a reasonable notice period for Neonatal Leave:

A. For fathers/partners taking Neonatal Leave at the end of Paternity Leave?

2 weeks	<input type="checkbox"/>
1 week	<input checked="" type="checkbox"/>
Less than 1 week	<input type="checkbox"/>
Other	<input type="checkbox"/>

B. For mothers taking Neonatal Leave at the end of Maternity Leave?

Less than 4 weeks	<input type="checkbox"/>
4-8 Weeks	<input type="checkbox"/>
More than 8 weeks	<input checked="" type="checkbox"/>
Notice that should be given as soon as baby discharged from neonatal care	<input type="checkbox"/>
Notice should be given at point baby admitted to neonatal care	<input type="checkbox"/>

Please provide reasons for your answers.

Comments: The period in neonatal care is most likely to be historic by the time that maternity leave expires, and therefore a long notice period is no disadvantage to the mother but is likely to be of great benefit to the employer. There is a difference in respect of the father’s needs. We note that medical care of this type can be very “one day at a time” so that ongoing needs may be unpredictable. This may be problematic for the father who in some cases may not be able to give 1 weeks’ notice. Exceptionally, therefore, it should be possible to provide medical evidence which justifies lesser notice and/or the ability to retract a notice

Question 15: What level of communication could be expected between a father/partner wishing to take Neonatal Leave at the end of Paternity Leave on a week-to-week basis while the baby is in hospital and their employer?

Employer should be kept informed on a weekly basis	<input type="checkbox"/>
Communication should be light-touch, and only when new information is available	<input checked="" type="checkbox"/>
No requirement to communicate with employer	<input type="checkbox"/>

Section 4: Evidence of entitlement to Neonatal Leave and Pay

Evidence of entitlement to Neonatal Leave and Pay

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

A. From fathers and partners taking Neonatal Leave and Pay at the end of Paternity Leave?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

B. From mothers taking Neonatal Leave and Pay at the end of Maternity Leave?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>

Don't know	<input type="checkbox"/>
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C. If you agree or strongly agree, what evidence would it be reasonable for an employer to request?

Verifiable evidence of the period of hospitalisation, which should readily be available from discharge paperwork or from the GP or ante natal clinic who has overseen the pregnancy and birth of the baby.

Section 5: The right to return

Employment protections and the right to return

Question 17:

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

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer

There is self evidently a need to establish consistency and to avoid creating a two tier entitlement system

Question 18:

Do you agree that parents on Neonatal Leave should have the same right to return to work as employees on parental leave in respect of older children?

Strongly agree	<input type="checkbox"/>
Agree	<input checked="" type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Please provide reasons for your answer

Comments: There is self evidently a need to establish consistency and to avoid creating a two tier entitlement system

19 September 2019



Linden Thomas
President
Birmingham Law Society

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations, and your views are valuable to us. Would you be happy for us to contact you again from time to time either for research or about other consultations?

Yes **No**