

STATES OF JERSEY



FAMILY FRIENDLY POLICY: IMPLEMENTATION

Lodged au Greffe on 29th December 2017
by Deputy G.P. Southern of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Social Security –

- (a) to bring forward proposals to the States to implement the recommendations made by the Employment Forum in its report issued on 15th December 2017, ‘Review of Family Friendly Employment Rights’, in accordance with the timetable set out in Section 3, page 6, of that report;
- (b) to bring forward proposals to the States to extend the period covered by Maternity Allowance under the Social Security (Jersey) Law 1974 from 18 to 26 weeks, with effect from September 2018; and
- (c) to amend the Income Support (General Provisions) (Jersey) Order 2008 in order to introduce a 100% disregard for income from Maternity Allowance for mothers in receipt of an Income Support award.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

In [P.104/2014](#) lodged on 2nd June 2014, I brought a proposition to give employees the right to 26 weeks statutory maternity leave to be funded from Social Security contributory system by extending Maternity Allowance payments (currently £209.51 weekly) from 18 to 26 weeks. This was rejected by the States at that time, partly on the basis of the more limited scheme brought forward by the then Minister for Social Security, and partly pending the in-depth report on “[family friendly employment rights](#)” from the Employment Forum, recently presented, (part of the Forum’s report is attached at the **Appendix**).

The Forum’s commitment to maternity (and parental) leave as a right and not a privilege is revealed not only in its approach to breastfeeding –

“Longer maternity leave, post 18 weeks would allow a mother to breastfeed for the first 6 months.”

“WHO guidelines say a child should be breastfed for 6 months. Logic would dictate maternity leave ought to be 6 months.”

“Longer maternity leave would enable mother’s to fully breastfeed for longer, the reason our breastfeeding rates decline so much after 6 weeks is because mums are starting to think about going back to work and reducing the breast feeds and introducing formula.” (Employee, public sector).

But also, in its overall recommendations –

“In relation to a qualifying period for maternity leave, the Forum has recommended that periods of paid and unpaid statutory maternity leave should be available to an employee from day one of employment, with no minimum period of continuous employment.... the Forum’s intention, as with maternity leave, is to provide a social right to protect the family and provide more choices and flexibility. Any qualifying period would automatically exclude some employees from this right. Paid parental leave is not a reward, a bonus, an insurance scheme, a benefit or compensation for long service. The Forum considers that parents should not have to protect their employment entitlements when planning to have children to the potential detriment of their careers”.

The need for this proposition is highlighted by the Forum’s inability to deal with the wider context of Social Security legislation, as recorded on page 15 of the review –

“The Forum notes that the Social Security Department has recently consulted on changes to maternity benefits with a remit to make changes to bring parental benefits more in line with the needs of modern families.

The Forum has no remit to make recommendations on changes to Social Security legislation and so this recommendation is made on the basis of the current benefits system which provides up to 18 weeks of maternity allowance at a standard weekly rate (currently £209.51 per week).

Any recommendation to extend the period of paid statutory maternity leave from the current 2 weeks must be on the basis that any pay would be provided by the

employer, who may offset the value of the maternity allowance against the paid maternity leave.”

This may leave many employees under financial pressure, as witnessed here –

“A colleague of mine was only paid 2 weeks maternity. We work for a finance company, that could easily afford to pay more but took advantage of the legal minimum so just stuck to it. As a result she was forced to return to work after 4 months off because she needed the money.” (Employee, finance)

“Many mothers feel under pressure to return to work financially and because the law does not validate their choice to have children. Because of these some excellent employees leave the workforce or settle in jobs that are not suited to them in any other way than the hours. This is bad for the workforce and for family life.” (Employee, public sector)

“I think that the extra cost (a minimum income to sustain mother) should be shared by society through higher general taxation and/or higher contributions into the Social Security scheme. It should not be statutory for businesses to pay more than 2 weeks.” (Employee, public sector)

“Most people cannot afford to take time off work unpaid. If the employer had to pay even partially during this period then more people could afford to take additional time off.” (Employee, finance)

Implementation

Part (a) of this proposition is designed to reinforce the recommendation contained in Section 3 of the review to prevent any delay in implementing the proposals, whether caused by the final part of the review of the Social Security contributory benefit scheme, not due to be finalised until the end of 2018, or otherwise –

“A more significant step forward is therefore recommended for implementation in September 2019. The Forum recommends that if, for any reason, it is not possible to introduce the first phase of changes in September 2018, then it would be appropriate to skip the first phase of changes for maternity and parental leave and move directly to the second phase in September 2019 rather than maintaining a two phased approach. The Forum would be reluctant to see a delay in the implementation of any of its recommendations.”

Affordability – 1

There seems little point in extending the period of maternity leave to 26 or 52 weeks, as pointed out above, unless a sufficient level of funding is available to enable employees to have a real choice to take the period of leave that they consider appropriate for their circumstances. This is reflected in the comments of employee representatives, thus –

“The Union believes that a key determinant of the take-up of maternity leave is whether it is paid at reasonable-earnings replacement levels, and that better levels of pay, coupled with at least 52 weeks’ maternity leave, are needed to

ensure that low-income families have an equal opportunity to take time out to care for their children.” (NASUWT)

“If the argument is accepted that there are societal and economic benefits in extending maternity leave, economic reality will mean that unless the extended maternity leave is complimented by an improved maternity pay regime, only the more affluent will be able to afford to take the extended leave.” (Unite the union)

Part (b) of this proposition attempts to deal with that, within the context of the review, by extending the period covered by Maternity Allowance to 26 weeks. The cost of this adjustment to the Social Security Fund is estimated by the Minister in response to [written question 593](#) as £1.5 million, annually.

Affordability – 2

Low-income families are in a far worse position when it comes to affordability owing to the interaction of income support and maternity allowance benefits. The problem here is that in calculating the level of award required by a household, which consists of the sum of eligible IS components less income into the household, maternity allowance is not disregarded, so that each pound of maternity allowance is removed from the income support award, as is shown on the [Social Security website](#) –

Claiming Maternity Allowance and Income Support

If you are in receipt of Income Support and start claiming Maternity Allowance, your Income Support award will be reduced by the amount of your Maternity Allowance award. This is because Maternity Allowance is considered as income.

This effectively means that many employees in low-income households, who might benefit most from a proper period of maternity and/or parental leave, will be forced to return to work and not benefit.

Income support awards are based on a series of components calculated to meet household needs, thus a family with one child with both parents earning at or around minimum wage and renting a 2-bed flat might have the following award: (all figures are rounded to the nearest pound).

| | |
|------------|------|
| Adult (x2) | £180 |
| Child | £66 |
| Household | £53 |
| Rent | £250 |
| Total | £549 |

Less household income (earned) husband £300, wife £300 = £600, less disregard (31%) = £414.

Income support award = 549 - 414 = £135.

TOTAL HOUSEHOLD INCOME = £600 + 135 = £735. If mother returns to work after 6 weeks paid maternity leave.

If mother claims maternity allowance (£204) and stays at home to care for new baby, then earned income is reduced to £300, of which 69% is disregarded, = £207 and income support award = £549 - £411 = £138.

TOTAL HOUSEHOLD INCOME = £300 + 204 + 138 = £642.

For this exemplar household maternity allowance fails to fully compensate for the loss in earnings that results from the mother giving up work to care for the new baby, leaving the family almost £100 per week worse off.

The inclusion of a 25% disregard to match the treatment of other sources of income (pensions, earnings and maintenance) significantly reduces this loss of income –

Income Support = £549 - disregarded income - £153 - £207 = £199.

TOTAL HOUSEHOLD INCOME = (300 + 204 + 199) = £703.

This disregard however leaves the household with a £32 loss in earnings if maternity is extended. If we are genuinely to encourage greater take-up of maternity leave along with longer periods of leave, then we ought to ensure that low-income families are not penalised. Improving the disregard to 50% ensures this in the case of this example –

Income Support = £549 - disregarded income - £102 - £207 = £240.

TOTAL HOUSEHOLD INCOME = (300 + 204 + 240) = £744.

With only one example of a low paid family on which to assess the impact of the interaction between income support and maternity allowance, it is not possible to analyse what level of disregard would be most effective. Acceptance of the principle of a disregard would require the Social Security Department to establish the appropriate level to best deliver improved results for maternity leave rates for low-income households.

Financial and manpower implications

The extension of maternity allowance from 18 to 26 weeks contained in part (b) of the proposition would cost £1.5 million according to responses from the Minister for Social Security. This would be a cost to the Social Security Fund and would have no direct impact on tax revenues.

Since income support is paid from tax revenues there would be a cost to the taxpayer from the change disregard contained in part c) of this proposition. On the assumption that income support effectively delivers to the lowest quintile (20%) and that there are approximately 1,000 births annually, most of which take up maternity allowance, this results in some 200 births to low-income families also in receipt of income support. If the entire maternity allowance were to be disregarded, the annual bill would be some £2 million. At a 50% disregard this would cost some £1 million annually. If this change were successful in increasing the uptake or the duration of leave this might be increased to around £1.25 million.

Employment Forum – Review of Family Friendly Employment Rights

2. Maternity leave

2.1 Period of maternity leave

Recommendation 1 – The Forum recommends that the period of statutory maternity leave should be increased in two stages –

0 to 26 weeks from 1 September 2018

0 to 52 weeks from 1 September 2019

A longer lead-in time to reach 52 weeks was considered (e.g. September 2020). However the Forum is of the view that almost 3 years from the date of the recommendation is too long a delay for a right to 52 weeks' maternity leave. A shorter lead-in time to reach 52 weeks' leave was also considered (e.g. September 2018) with no interim step of 26 weeks' leave. However, it is likely to be too soon to introduce a 52 week leave period with only five months' notice, combined with the other changes to the Law that are proposed in this recommendation, as well as the fact that employees continue to be employed during the period of leave (accruing rights, such as holiday entitlement).

The Forum also recommends that an issue relating to business licenses and replacement employees providing maternity cover should be referred to the Minister with responsibility for the Control of Housing and Work (Exemptions) (Jersey) Order 2013.

2.2 Paid maternity leave

Recommendation 2 – The Forum recommends that, from 1 September 2018, 6 weeks of statutory maternity leave should be paid by the employer at 100 percent of pay.

The Forum would prefer to recommend a longer period of **paid** leave but recognises the financial burden on employers. Having taken into account the level of support in the consultation for a longer period of **paid** leave, the fact that the States of Jersey provides 12 weeks of **paid** maternity leave for its own employees and the recent Social Security consultation on improvements to maternity benefits, the Forum recommends that 12 weeks of **paid** leave should be available in total in September 2019, with 6 weeks continuing to be funded by the employer plus 6 weeks funded by the States at 100 percent of pay.

Having noted JACS concern that a longer period of paid maternity leave could lead to employees being dismissed if the potential unfair dismissal award would amount to less than any maternity pay (particularly where the employee's length of service means that the unfair dismissal award would be a maximum of 4 weeks' pay), the Forum recommends that the Employment Law should provide an additional penalty or compensation where the employer has dismissed an employee in order to avoid paying a period of maternity leave, over and above any unfair dismissal award and any award under the Discrimination (Jersey) Law 2013.

2.3 Qualifying period for maternity leave

Recommendation 3 – The Forum recommends that the proposed periods of **paid** and **unpaid** statutory maternity leave should be available to an employee from day one of employment.

2.4 Taking maternity leave

Recommendation 4 – The Forum recommends that in September 2018, the 26 weeks of maternity leave should be available to take in one block. As is currently provided in the Employment Law, the period of leave should start no earlier than the 11th week before the expected week of childbirth.

In 2019, the 52 weeks of maternity leave should be available to take in up to 4 blocks, of not less than 2 weeks each, within a period starting no earlier than the 11th week before the expected week of childbirth and ending when the child reaches age 3.

The requirement to give the employer notice of leave dates and of changes to leave dates should remain in accordance with the current law (i.e. the employee must notify the employer of leave dates no later than the end of the 15th week before the expected week of childbirth, and for any changes to the start date(s) notice must be given 28 days before the date on which leave was originally intended to start or 28 days before the new date, whichever is earlier).

2.5 Right to return to work after maternity leave

Recommendation 5 – The Forum recommends that an employee should continue to have the right to return to the same job (where that job still exists) after a period of statutory maternity leave, no matter how many weeks of leave are available (26 or 52 weeks).

3. Shared leave

3.1 Period of shared leave

Recommendation 6 – The Forum recommends that a shared leave system should not be introduced. The Forum is conscious that the law cannot cover every eventuality and family arrangement and so there may be scenarios where shared leave might have been the preferred option for some parents. However, the Forum considers that providing parity via a defined period of leave for each parent is likely to provide a more positive outcome for the majority of new parents in terms of flexibility and promoting gender balance (see the parental leave recommendation on page 27).

3.2 Leave shared with grandparents

Recommendation 7 – The Forum has recommended that a shared leave system should not be introduced. Defined periods of leave for each parent cannot be shared with another person. Given the consultation responses, if the Forum had recommended a shared leave system, it is unlikely that the Forum would have recommended including an option for leave to be shared with grandparents.

4. Parental leave

4.1 Period of parental leave

Recommendation 8 – For parity with maternity leave, the Forum recommends that the period of parental leave should be increased in two stages

0 to 26 weeks from 1 September 2018

0 to 52 weeks from 1 September 2019

The Forum also recommends that, in moving to a position where the periods of maternity leave and parental leave are comparable in 2019, the conditions for each period of leave should be aligned so that parents are simply entitled to 52 weeks of parental leave each. This would introduce a new more inclusive and straightforward system of parental leave which will be referred to in this recommendation as ‘2019 parental leave’.

4.2 Paid parental leave

Recommendation 9 – The Forum recommends that the period of parental leave that is **paid** by the employer should be increased in two stages –

0 to 2 weeks at 100 percent of pay from 1 September 2018

0 to 6 weeks at 100 percent of pay from 1 September 2019

The Forum also recommends that 12 weeks of **paid** leave should be available in total in September 2019, with 6 weeks continuing to be funded by the employer plus 6 weeks funded by the States at 100 percent of pay.

4.3 Qualifying period for parental leave

Recommendation 10 – The Forum recommends that, for parity with maternity leave, periods of **paid** and **unpaid** statutory parental leave should be available to an employee from day one of employment with no requirement for a minimum period of continuous employment.

4.4 Taking parental leave

Recommendation 11 – The Forum recommends that –

0 From 1 September 2018, 26 weeks of parental leave should be available to take in up to 3 blocks of not less than 2 weeks each, within a 52 week period starting from the date of birth (or placement for adoption).

0 From 1 September 2019, 52 weeks of ‘2019 parental leave’ should be available to take in up to 4 blocks of not less than 2 weeks each within a period starting no earlier than the 11th week before the expected week of childbirth and ending when the child reaches age 3 (or within 3 years of placement for adoption).

The requirement to give the employer notice of leave dates and of changes to leave dates should remain in accordance with the existing law (i.e. the employee must notify the employer of leave dates no later than the end of the 15th week before the expected week of childbirth, and for any changes to the start date(s) notice must be given 28 days before

the date on which leave was originally intended to start or 28 days before the new date, whichever is earlier).

4.5 Right to return to work after parental leave

Recommendation 12 – The Forum recommends that an employee should have the right to return to the same job (where that job still exists) after a period of statutory parental leave, no matter how many weeks of leave are available (26 or 52 weeks).

5. Adoption leave

5.1 Period of adoption leave

Recommendation 13 – The Forum recommends that adoptive parents should have the right to take periods of leave that are equivalent to maternity leave and parental leave.

The Forum has recommended a more inclusive and straightforward system of ‘2019 parental leave’ which the Forum recommends should equally be available to adopters from September 2019.

5.2 Paid adoption leave

Recommendation 14 – The Forum recommends that adoptive parents should have the right to take periods of **paid** leave that are equivalent to maternity leave and parental leave. Either parent may elect to take the more generous period of **paid** leave (until **paid** leave is equalised with the introduction of ‘2019 parental leave’).

The 52 weeks of ‘2019 parental leave’ recommended to be available for each parent in September 2019 should be available to take during a period starting no more than 14 days before the placement date (as provided in the current law) and ending up to 3 years after the adoption placement, in up to 4 blocks of not less than 2 weeks each.

The requirement to give the employer notice of leave dates and of changes to leave dates should remain in accordance with the current law (i.e. the employee must notify the employer of leave dates no later than 7 days after receiving official notification of being matched with a child (or the child entering Jersey), and for any changes to the start date(s) notice must be given 28 days before the date when the child is placed for adoption (or enters Jersey) or 28 days before the predetermined start date, whichever is earlier).

6. Surrogacy – leave for intended parents

Recommendation 15 – The Forum recommends that the intended parents in a surrogacy arrangement should have the right to take periods of **paid** and **unpaid** leave that are equivalent to adoption leave and parental leave. Either parent may elect to take the more generous period of **paid** leave (until **paid** leave is equalised with the introduction of ‘2019 parental leave’).

The Forum has recommended a more inclusive and straightforward system of ‘2019 parental leave’ which the Forum recommends should equally be available to the intended parents in a surrogacy arrangement from September 2019.

7. Antenatal appointments for the father/partner

Recommendation 16 – The Forum recommends that the father of the child or the husband, civil partner or partner of the mother should have the right to attend an unlimited number of antenatal appointments (where those appointments are held in Jersey) of which up to 10 hours of appointments are **paid** at the employee’s normal rate of pay and the rest are unpaid. The entitlement should be subject to the presentation of evidence, if requested by the employer, as with antenatal care for the birth mother. This right should be introduced from 1 September 2018.