

# Family Friendly Employment Rights: Follow up Report

Economic and International Affairs  
Scrutiny Panel

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States of Jersey  
States Assembly



États de Jersey  
Assemblée des États



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# 1. Executive Summary

The Panel has undertaken a short follow-up review on the proposals to extend family friendly employment rights. The Social Security Minister lodged [P.100/2019](#) on 10th September which are the revised proposals following the withdrawal of [P.17/2019](#). The Minister withdrew P.17/2019 due to a legislative issue around her proposal to equalise parental leave.

The Panel welcomes the Minister's revised proposals, and her acknowledgement of the areas of concern raised during its original [review](#). The Minister has incorporated most of the Panel's previous amendments to the draft Law which it had lodged before the original proposals were due to be debated.

The Panel believes that further legislative changes are required to ensure that the proposals will limit any unintended consequences for families, employers and employees. The Panel's [amendment](#) proposes:

- To increase the notice period from 28 days to 42 days.
- To amend the parental leave entitlement from 52 weeks to 26 weeks with all other parts of the draft Law remaining the same.
- To insert a new sub-paragraph to ensure due notice is taken of other employees within an organisation when an employer is taking all reasonable steps to accommodate an employee's intended second and third parental leave periods.

The Panel hopes that these changes will result in a draft Law which, having gone through a thorough evidence-based scrutiny process, brings greater balance and works well for all parties concerned.

## 2. Introduction

The Minister for Social Security lodged [P.100/2019](#) on 10th September 2019, which calls to amend the Employment (Jersey) Law 2003 to extend family friendly employment rights. These are the revised proposals following the withdrawal of [P.17/2019](#) which was lodged in February 2019 and later withdrawn in June, due to an issue which needed to be addressed in the legislation. The issue was around the Minister's proposal to equalise parental leave, which is explained in detail further on in the report.

The Panel reviewed the proposals contained in P.17/2019 and lodged a number of amendments to the legislation before it was withdrawn by the Minister. Since June, the Panel has been anticipating that the revised proposals would be lodged and is grateful for the opportunity to follow up on its original review. Whilst the Panel's comments relating to P.100 are set out in section 5 below, it is helpful to set out comments in relation to the superseded P.17 in order to better explain the Panel's conclusions.

### Scrutiny Review of P.17/2019

The Panel presented its [report](#) on family friendly employment rights (P.17/2019) on the 4th June after undertaking an in-depth review. The Panel's review assessed how stakeholders were consulted during the development of the proposals and how the proposals might impact businesses.

Some of the key features of the proposals contained in P.17/2019 were:

- 52 weeks of parental leave (combining maternity, adoption and parental leave) for all parents, including surrogate parents, which can be taken in up to 4 blocks over a three-year period;
- Time off work to attend appointments for adoptive and surrogate parents;
- Breastfeeding rights – breaks and workplace facilities;
- Paid leave where necessary on health and safety grounds for pregnant and breastfeeding women.

### Concerns raised by stakeholders

The Panel's review uncovered a significant number of [concerns](#) about the proposals from a wide variety of stakeholders, not just businesses. The Panel found that the proposals had the potential to cause financial hardship to employers; have a negative effect on other employees within an organisation and could create a two-tier society, with some parents able to take the full leave period and others unable to do so.

The Panel also identified that the government was not funding any element of the parental leave (other than 6 weeks), and so the opportunity to take an extended period of time off to care for young children was likely to be available only to those wealthy enough to afford it.

The Panel received many submissions during its review, some of which highlighted certain areas where the draft Law would benefit from changes. These were:

- Notice periods for any changes to pre-agreed leave periods
- Portability of parental leave between employers
- The new articles on parental leave, including concerns around the blocks of leave

Despite its best efforts, the Panel was unable to consider these, and other issues, in sufficient detail in the time provided and, after communications with the Minister, the debate was deferred until 18th June.

During that time, the Panel considered the seriousness of the concerns raised about the way in which the draft Law had been drafted and the impact the proposals would have. The Panel felt that this warranted the withdrawal of P.17/2019 so that a revised version could be lodged which would work well for all parties concerned. The Panel met the Minister on 9th April to explain its position and to formally request her to withdraw P.17/2019.

The Minister explained in her response that withdrawing the proposition would cause a significant delay which she could not support. The Minister did, however, acknowledge that certain themes and concerns had emerged from the Panel's review and, as a result, lodged a number of amendments to the legislation.

The Panel completed its review and presented its final report and amendments before the debate on the 18th June.

## Recommendations made by the Panel

As well as making a number of amendments to the draft Law, the Panel made 6 [recommendations](#), and 1 overarching recommendation in its final report, which asked for the withdrawal and review of Article 4 with a view to bringing it back in a more appropriate format.

Each of the recommendations are set out below as well as indicating whether they were accepted or rejected:

**OVERARCHING RECOMMENDATION:** In considering the significance of the various concerns surrounding the parental leave aspects of the draft Law and the difficulties this element of the proposals creates, the Minister should withdraw Article 4 from the legislation. Following the withdrawal of this Article, the Minister should then undertake an evidenced-based review to include:

- An examination of the best ways to ensure parents of all income brackets are able to afford to take a minimum of 6 months leave;
- An examination of the level of government funding needed for paid leave as there are many parents who will not be able to afford to take unpaid time off work;
- A review of the impact of the changes on the full range of employers in all sectors.

The outcome of a comprehensive review of this nature will result in clear, evidence-based policy aims that will guide the creation of a parental leave system that strikes the appropriate balance of responsibility between employers, employees and the government in order to truly put children first.

**✘** *The Minister rejected this recommendation*

**Recommendation 1:** The Customer and Local Services Department should use its own database, where practical, to support the promotion of consultations.

**✔** *The Minister accepted this recommendation*

**Recommendation 2:** The Government should significantly improve its consultation guidelines. This should include comprehensive guidance on how to engage with stakeholders in a meaningful way and also how to identify relevant stakeholders. The guidance should be revised and published before the end of 2019.

✓ *The Chief Minister “partially accepted” this recommendation*

**Recommendation 3:** If the proposals are adopted by the States Assembly, the Minister should lodge an amendment to clarify the position on transferability of leave within 6 months of its implementation.

✓ *The Minister accepted this recommendation*

**Recommendation 4:** The Government of Jersey should, in consultation with Parishes, create more child-friendly facilities for families, and in particular breastfeeding mothers, around the Island. This would allow the government to share some of the burden being placed on employers to create these types of facilities and would also support the ethos of “putting children first”. This work should be carried out by Q3 2019 with a view to providing more facilities by the end of 2019.

✓ *The Minister accepted this recommendation on behalf of the Government of Jersey*

**Recommendation 5:** If the proposals are adopted by the States Assembly, the Minister should bring forward proposals to align the contributory benefits for employees and financial support for employers. This would support the ethos that parental leave includes all parties and not only the mother or those with the financial means to take unpaid leave. Proposals should be brought forward before the end of 2019.

✓ *The Minister “partially accepted” this recommendation*

**Recommendation 6:** The Minister should lodge an amendment to the [Social Security \(Maternity Benefit\) \(Jersey\) Order 1975](#) to include all parents (non-mothers) so employers can claim the £216 from all parents taking leave and the period of maternity allowance should be extended from 18 weeks to 52 weeks.

✓ *The Minister “partially accepted” this recommendation*

### 3. Amendments to P.17/2019

P.17/2019 was lodged in February 2019. Following its publication, and the publication of the Panel's review [seeking views](#) on the proposals, a significant number of concerns were raised by stakeholders. The concerns came, not only from businesses, but also from the legal and childcare sectors.

This resulted in several amendments being lodged by the Minister, the Panel and the Connétable of St Mary.

#### The Minister for Social Security

The Minister acknowledged the number of concerns raised during the Panel's review and lodged an amendment which proposed a number of changes to try and address those concerns. The Minister's amendment included the following changes:

1. To increase from 14 days to 28 days, the notice periods that an employee must give to their employer to vary their parental leave dates.  
  
*✗ The Panel did not support this amendment and proposed an amendment to increase the notice period from 28 days to 90 days.*
2. To reduce the parental leave entitlement period by one year so that it may start no earlier than the 11th week before the expected week of childbirth or adoption and would end 2 years after the date of childbirth or adoption.  
  
*✓ The Panel supported this amendment*
3. To reduce the number of separate blocks in which parental leave may be taken from 4 blocks to 3 blocks.  
  
*✓ The Panel supported this amendment*
4. To amend the heading to Article 55F to clarify that the article applies to parental leave in relation to childbirth (i.e. all parents other than adoptive parents, not just mothers and surrogate parents).  
  
*✓ The Panel supported this amendment*
5. To provide that three categories of person may provide proof of pregnancy in relation to the right to paid time off work on health and safety grounds (a registered medical practitioner, a registered midwife or a registered nurse) for consistency in relation to parental leave.  
  
*✓ The Panel supported this amendment*

#### The Economic and International Affairs Panel

The Panel lodged a number of amendments to the draft Law, which were as follows:

- **To remove the proposed new Articles on parental leave:** The Panel considered the significance of the concerns raised around the parental leave aspects of the draft Law and

believed that further work needed to be carried out to ensure they were fit for purpose, and to ensure they worked well for families, employers and employees.

The Panel lodged this amendment to remove the new articles on parental leave. If this had been accepted by the States Assembly, it would have given the Minister the opportunity to revise the proposals in order to minimise any hardship to employers and also to explore the factors that create barriers to parents in Jersey. This would have informed a new set of proposals that worked for all parties concerned.

If the amendment to remove the parental leave articles had not been accepted by the Assembly, the Panel also proposed a further two changes in respect of the parental leave aspects of the draft Law:

- **Amending the article in respect of the blocks of leave to include an element of conversation for the second and third blocks of leave (as amended by the Minister).**
- **To increase the notice period from 28 days to 90 days:** The Panel lodged an amendment to the Minister's amendment: "*To increase from 14 days to 28 days the notice periods that an employee must give to their employer to vary their parental leave dates*".

The Panel lodged the following amendments as a result of its legislative scrutiny of the draft Law:

- **Amending the definition of surrogate parent:**
  - To include a reference to a person whose application under section 54A of the Human Fertilisation and Embryology Act 2008 has been granted or a potential applicant for an order under that section.
  - To say explicitly that the relevant child's home will be with the potential applicant(s) who is resident in Jersey.

During the legislative scrutiny exercise, the Panel also found that there were no safeguards in place if an employee provided false information to their employer. There may be some instances where an employee provides false information to their employer in order to gain the benefit of receiving 6 weeks paid leave. Therefore, the Panel also lodged an amendment to make it an offence to provide false statements in respect of pregnancy.

- **Amendment to include an offence of making false statements:** Due to the fact that parental leave entitlements would have been extended which provided 6 weeks full pay and which could be taken over a number of years, the Panel felt that safeguards should be put in place should a person provide false information.

### **The Connétable of St Mary**

The Connétable of St Mary also lodged an amendment which calls to exempt small businesses with five or fewer employees on a permanent, part-time or zero-hours contract. The Connétable's report stated that the exemption clause would also allow businesses employing five or fewer people to "opt out", providing that it is clearly stated within the contract of employment.

## 4. The withdrawal of P.17/2019

On the 14th June, just before the debate date, the Minister advised States Members that P.17/2019 had been withdrawn. In a media release the Minister said:

**Minister for Social Security:**

*"I'm disappointed not to be able to bring forward these proposals for debate next week but I remain committed to building on the existing employment rights of parents. However, an issue has recently been brought to my attention that I will need to address in the legislation. Having consulted with the Council of Ministers, withdrawal was the best option to ensure that any required amendment to the Law can be carefully considered.*

*I am particularly disappointed not to be introducing the new rights relating to breastfeeding breaks and facilities this year, but I want to reassure parents that I will return to the States with the revised draft Law as soon as I can, for debate in the Autumn States sitting."*

States Members were advised that the issue related to the Minister's proposal to remove the concept of 'compulsory maternity leave' which is an absolute right for mothers only. The proposals contained in P.17/2019 replaced compulsory maternity leave with equal rights to leave for all new parents which may have affected a small minority of cases where a pregnant woman failed to give her employer notice of her intention to take leave at the appropriate time.

The Panel was advised that the Minister withdrew the proposition because she wanted to ensure the continued protection for all mothers so that they cannot be required to work in the weeks immediately following childbirth.

The Panel understood that the issue with compulsory maternity leave needed to be rectified but questioned why the whole proposition needed to be withdrawn and not just the articles on parental leave, as per its own amendment to the legislation.

The Chairman of the Panel asked an urgent question during a States sitting in order to seek further clarification on why the proposition needed to be withdrawn.

**Deputy K.F. Morel**

*"Will the Minister provide an explanation of the reasons for withdrawing P.17/2019, that is the family friendly legislation and confirm why she has chosen to withdraw the whole law, rather than solely Article 4, as recommended by the Economic and International Affairs Scrutiny Panel?"*

**The Minister for Social Security:**

*"The reason is that I fundamentally disagree with the removal of Article 4 on the draft law, because I want to bring all the new family-friendly rights in together. These rights will be providing equality in parental leave for different types of parents, the legislation is intended to encourage gender balance in childcare roles, reducing discrimination against women, by encouraging a change in workplace attitudes and practices towards involvement of the father, or the partner, in childcare. Obviously, I am very disappointed at this stage that I have to withdraw, but I emphasise that it is temporary and this law will return in the next session".*

**Deputy K.F. Morel:**

*"Supplementary. I did ask, could she explain the reasons why it had been withdrawn; I do not believe that was done?"*

**The Minister for Social Security:**

*"Today we would have been debating either deleting Article 4, as recommended by the Scrutiny Panel, or not deleting Article 4. Politically, I then found out that I could not promote*

*Article 4, because there was a small issue about removing an absolute right for women. I decided that I would spend the summer going over the legislation and make sure that it absolutely works, it does not disadvantage anybody; that the fundamental of support in the family friendly law I still stand by every Article”.*

[....]

**Deputy K.F. Morel:**

*“My final question is, when did the Minister and the department receive this advice that highlighted the small minor legal inconsistency and, given that the panel’s report highlights several inconsistencies and problems with the way the law legally technically operates, could the Minister explain why this was not picked up in the previous 3 years of development of this piece of legislation?”*

**The Minister for Social Security:**

*“.....I was informed, I was called in to Legal Advice, the Attorney General met us at 8.30 a.m. on Wednesday morning, when I was going to Council to say: “Can we do this? Have I still got all their support?” Then the whole story changed, so that is where we are. Again, the Deputy talks about fundamental issues, there were a couple of issues that will now, can be, and will be, incorporated in the law, as drafted by the officers. Again, some of it, the fundamentals, are what you believe in politically and so that is always what you do when you have pieces of legislation scrutinised, there are always concerns raised. Again, at the end of the day, I will be bringing back the rights that I think are right for families in Jersey and then we will have the debate that is long overdue<sup>1</sup>.”*

At this point, the Panel accepted that the proposition had been withdrawn and agreed to follow-up on its review when the revised proposals were lodged.

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<sup>1</sup> [Hansard](#), 18th June 2018

## 5. The revised proposition (P.100/2019)

The Panel met the Minister, Assistant Minister (Deputy Maçon) and officers on 15th August to discuss the imminent lodging of a revised proposition. During the meeting, the Minister advised that the withdrawal of P.17/2019 had allowed her to incorporate her own amendments into the revised version and also to consider whether to incorporate any of the Panel's amendments.

### Overview of changes

An overview of the changes and insertions included in the revised proposition is provided in the table below:

	P.17/2019		P.100/2019	Additional information
<b>Compulsory Leave</b>	Replaced compulsory maternity leave with equal rights to leave for all new parents.	➔	Reinstates compulsory leave for birth mothers.	This change reflects the legal issue of removing compulsory maternity leave (which was why the proposition was withdrawn)
<b>Notice periods</b>	14-day notice period that an employee must give to their employers to vary parental leave dates.	➔	Increased to 28-day notice period.	This change reflects the concerns raised during the Panel's review. The Minister lodged an amendment to P.17/2019 to increase the notice period to 28 days and the Panel lodged an amendment to the Minister's amendment to increase it to 90 days.
<b>Changes to leave dates</b>		➔	Includes an element of reasonableness around changes to blocks 2 and 3 of parental leave.	This insertion reflects an amendment to P.17/2019 lodged by the Panel to include an element of conversation between the employee and employer for the second and third blocks of leave.
<b>Blocks of leave</b>	Parental leave was able to be take in 4 blocks over 3 years	➔	Reduction in the number of blocks to 3 over 2 years.	This change reflects concerns raised during the Panel's review that allowing up to 4 blocks within a 3-year period would impact on smaller businesses (Key Finding 16)
<b>Portability of leave</b>		➔	Includes clarity on portability of leave (leave is not portable)	This insertion reflects a finding by the Panel that the legislation was not clear on whether blocks of leave were transferable between employers (Key Finding 14)
<b>False statements</b>		➔	Creates an offence of making a false statement or	This insertion reflects an amendment to P.17/2019 lodged by the Panel to

			producing false information in connection with parental leave.	include an offence of making false statements in order to receive 6 weeks paid parental leave.
<b>Definition of surrogate parents</b>		➔	Aligns the definition of “surrogate parent” with the UK Human Fertilisation and Embryology Act 2008 and also clarifies who might legitimately claim to be a “potential applicant” for a parental order under the UK Act.	This insertion reflects an amendment to P.17/2019 lodged by the Panel to ensure that the draft Law is compatible with the European Convention on Human Rights, and that it is made clearer which of the criteria and conditions in the UK Act should be met before a person is treated as a surrogate parent.

The Panel is supportive of the number of changes and insertions included in the revised proposition. In relation to the Connétable of St Mary’s amendment to exempt small businesses, it is noted that the Minister does not support this amendment and, as such, has not included an exemption in the revised proposals.

### Other related developments

In the intervening period between the withdrawal of P.17/2019 and the lodging of the revised proposals contained in [P.100/2019](#), the Minister considered two related areas which were raised in the Panel’s review:

- **Aligning benefits**

Currently, two contributory benefits are paid to new mothers: a one-off maternity grant and a maternity allowance. The allowance is only available up to 18 weeks of maternity leave which corresponds with the first set of family friendly proposals implemented in 2015. If a female employee is in receipt of the maternity allowance, employers can offset the balance for the 6 weeks paid period of leave. Under the proposals contained in P.17/2019, employers were unable to claim back the allowance for anyone other than the mother giving birth.

The Panel raised this during its review and made two recommendations, which the Minister subsequently “partially accepted” in her [response](#) to the Panel’s report:

**Recommendation 5:** *If the proposals are adopted by the States Assembly, the Minister should bring forward proposals to align the contributory benefits for employees and financial support for employers. This would support the ethos that parental leave includes all parties and not only the mother or those with the financial means to take unpaid leave. Proposals should be brought forward before the end of 2019.*

**Minister’s response:** *The previous Minister made a commitment (see R.25/2018) to introduce equality in parental benefits as part of the ongoing review of the Social Security Scheme (the contributory benefit system). Other parts of the benefit system already provide equal rights to both parents. Any parent receiving income support is fully supported during a period of unpaid parental leave and any parent can receive Home Responsibility Credits which maintains their pension record whilst at home with a small child.*

The Minister is taking forward the commitment made by the previous Minister as part of the proposals put forward in the Government Plan. The existing contributory maternity allowance, paid from the Social Security Fund, will be replaced by a parental allowance, with both parents able to claim a contributory benefit. To support this additional cost, the liability of employers and class two contributors, paying contributions above the Standard Earnings Limit of £53,304 will be increased.

- the Upper Earnings Limit is the maximum level of earnings that is taken into account for contribution purposes. This will increase from £176,232 to £250,000.
- the percentage rate levied on earnings above the Standard Earnings Limit (£53,000-£250,000) will increase by 0.5% from 2% to 2.5%.

The overall impact of these two changes is additional contributions into the Social Security Fund of £3.35 million a year.

The legislation required to make the legal changes to the Social Security contribution rate and earnings cap will be debated after the main debate on the Government Plan itself. The legislation to provide for parental benefits will be lodged separately.

**Recommendation 6:** The Minister should lodge an amendment to the [Social Security \(Maternity Benefit\) \(Jersey\) Order 1975](#) to include all parents (non-mothers) so employers can claim the £216 from all parents taking leave and the period of maternity allowance should be extended from 18 weeks to 52 weeks.

**Minister's response:** The Social Security (Maternity Benefit) (Jersey) Order 1975 provides for a number of detailed rules around the entitlement to maternity benefits in respect of issues such as: the birth of twins, a baby being born more than a week late, a mother only partially satisfying the contribution conditions and the definition of "keeping in touch days".

The entitlement to maternity allowance is provided through Article 22 of the Social Security (Jersey) Law 1974 and it is this article that will be amended or replaced to provide for a parental allowance.

The right for employers to discount the value of maternity allowance is provided for in Article 55D of the Employment (Jersey) Law 2005. There is no automatic right for the employer to "claim £216 from all parents taking leave". The right is to reduce the value of the normal weekly wage by the amount of allowance, if any. If the employee is not entitled to a maternity/parental allowance or is only entitled to a partial allowance, it is only this lower amount that can be deducted.

The current funding within the Social Security scheme provides for 18 weeks of maternity allowance, paid for from contributions.

The Minister is taking forward the commitment made by the previous Minister as part of the proposals put forward in the Government Plan. The existing contributory maternity allowance, paid from the Social Security Fund, will be replaced by a parental allowance, with both parents able to claim a contributory benefit. To support this additional cost, the liability of employers and class two contributors, paying contributions above the Standard Earnings Limit of £53,304 will be increased.

- *the Upper Earnings Limit is the maximum level of earnings that is taken into account for contribution purposes. This will increase from £176,232 to £250,000*
- *the percentage rate levied on earnings above the Standard Earnings Limit (£53,000- £250,000) will increase by 0.5% from 2% to 2.5%.*

*The overall impact of these two changes is additional contributions into the Social Security Fund of £3.35 million a year.*

*This additional funding will support an increase in the allowance available to parents from 18 weeks to a total of 32 weeks.*

*An extension of maternity allowance to provide 52 weeks of allowance to 900 mothers at £216 per week would cost £6.6 million above the existing budget. Extending allowances to both parents for 52 weeks – an extra 86 weeks – for 900 babies would cost £16.7 million above the existing budget.*

*Employers will be entitled to reduce the paid element of leave by the value of the parental benefit.*

In her report to P.100/2019, the Minister explains that the maternity allowance will be replaced by a parental allowance which will enable both parents to be able to claim the contributory benefit. Once in place (expected to be debated in 2020) employers will be able to deduct the value of the benefit against the 6 weeks of paid parental leave for both parents.

- **Breastfeeding facilities**

During the Panel's review of P.17/2019 most stakeholders welcomed the breastfeeding elements of the proposals. Some stakeholders believed that breastfeeding facilities should already be available in public buildings in the community. The Panel recommended (Recommendation 4) that the Government should look at introducing more facilities in public buildings in St Helier, and around the island. This would not only create more opportunities for mothers to breastfeed but would also allow the government to share some of the burden which will be placed on employers to provide these types of facilities. The Minister accepted the recommendation on behalf of the Government of Jersey.

In her report to P.100/2019, the Minister strongly supports the provision of more breastfeeding facilities and has committed to working with government departments, parishes, businesses and other organisations to improve facilities. To help businesses prepare for the Law changes, the Minister issued a public appeal to local businesses, community organisations and parishes to share amenities where possible. The Minister also intends to collate a list of breastfeeding facilities that can be used by working mothers from nearby businesses. The Panel welcomes the Minister's proactive approach and looks forward to receiving an update on the progress of this campaign in due course.

## 6. Conclusion

The Panel welcomes the Minister's incorporation of most of its proposed changes into the revised proposals, and her acknowledgement of the areas of concern raised during the review which resulted in the Minister's own changes.

The Panel believes that further changes are required to P.100/2019 to ensure that the proposals will limit any unintended consequences for families, employers and employees. In that regard, the Panel has lodged an amendment which it hopes will result in a draft Law which, having gone through a thorough evidence-based scrutiny process, brings greater balance and works well for all parties concerned.

### Panel amendments

The Panel has lodged the following amendments to P.100/2019. Further justification can be found in the individual reports attached to each amendment:

- To increase the notice period from 28 days to 42 days.
- To amend the parental leave entitlement from 52 weeks to 26 weeks with all other parts of the draft Law remaining the same.
- To insert a new sub-paragraph to ensure due notice is taken of other employees within an organisation when an employer is taking all reasonable steps to accommodate an employee's intended second and third parental leave periods.

The Panel amendments can be read in full [here](#).

## 7. Appendix 1

### Panel Membership



### Terms of Reference

To follow up on the previous Panel's report in respect of the revised proposition to extend family friendly employment rights.





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