

POLICY BRIEF

Accessibility of Parental Leave for Workers

The issues and
discrepancies of
the current
legal framework

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EXECUTIVE SUMMARY

The current statute around maternal, paternal and adoption leave is discriminatory and inconsistent between groups of workers. The recommendations proposed in this policy brief seek to alleviate the burden on new parents when considering family finances and accessibility of time away from the workplace

To reach a coherent conclusion of sufficient recommendations, this briefing outlines the limits of the current law in this area and aims to compile arguments on the three primary issues affecting workers' access to parental leave.

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ISSUES

ISSUE 1 - Length of leave & discrepancies between the sexes

The current UK law on parental leave affords more generous parental rights to women than to men, enforcing a policy that indicates the mother as the primary caregiver. Maternity leave, spanning 52 weeks, with 39 paid, contrasts with the limited 2 weeks of paid paternal leave for fathers/partners. Shared Parental Leave attempts to address these issues but remains problematic.¹

Financial issues arise for 50% of families where fathers/partners take paternity leave, meaning 21% of families will opt-out of the scheme over concerns regarding income reduction.² Higher-income households exhibit higher rates of statutory paternity leave uptake (86% for incomes over £60,000 and 65% for incomes under £25,000).³

Further, the two week paternity leave period under-values the father's role. In many instances, the mother may be unable to take care of the child full-time when the father returns to work. For example, caesarean sections require a 6-week recovery period⁴ for the birthgiver (1 in 4 pregnancies).⁵ Yet, if the mother transfers her own maternity leave entitlement, 29% of parents experienced a new mental health issue within the two years with perinatal mental health problems costing the NHS £1.2bn a year.⁶

Recent Centre for Progressive Policy analysis finds that closing gender employment gaps in all UK local authorities would increase economic output by £23b (approximately 1% of GDP).⁷

Parental leave across Europe by weeks⁸

SPAIN (16)

NORWAY (15)

SWEDEN (13)

FRANCE (5)

UK (2)

ISSUE 2 - Diverse family Structures

The current legal framework is heavily influenced by heteronormative values, as indicated above. This is to the great disadvantage of the diverse range of family structures in the UK today. As a result, non-traditional families, such as same-sex couples, non-binary parents, surrogate families, and polyamorous relationships, are excluded from receiving sufficient parental leave.

Focusing specifically on homosexual couples, they typically have to use surrogacy or adoption to be able to have a child. Adoption leave is a period of 52 weeks divided into two parts for both parents to be able to enjoy specific amounts. However only one parent can take this time off at once.

¹ Employment Rights Act 1996, part 8 and Paternity and Adoption Leave Regulations 2002, part 2.

² Trade Union Congress, '1 in 2 families struggle financially when dads take paternity leave - TUC poll' (Trade Union Congress, 09 Jun 2023) [https://www.tuc.org.uk/news/1-2-families-struggle-financially-when-dads-take-paternity-leave-tuc-poll#:~:text=More%20than%20half%20\(53%25\),leave%20to%20support%20the%20families](https://www.tuc.org.uk/news/1-2-families-struggle-financially-when-dads-take-paternity-leave-tuc-poll#:~:text=More%20than%20half%20(53%25),leave%20to%20support%20the%20families) accessed 2 March 2024.

³ Ibid.

⁴ NHS, 'Recovery Caesarean Section' (NHS, 2023) <https://www.nhs.uk/conditions/caesarean-section/recovery/#:~:text=This%20may%20not%20be%20for,your%206%2Dweek%20postnatal%20check> accessed 2 March 2024.

⁵ NHS, 'Pregnancy Guide' (NHS, 2023) <https://111.wales.nhs.uk/livewell/pregnancy/caesarean/> accessed 2 March 2024.

⁶ Centre for Progressive Policy, 'Leave in the lurch: Paternity leave, gender equality and the UK economy' (Research report CPP, 2023), 4.

⁷ Ibid., 11.

⁸ OECD & BBC Research, 'Paternity Leave in Selected European Countries' (BBC News, 8 March 2024) <https://www.bbc.com/news/uk-68485122> accessed 9 March 2024.

⁹ HM Employing People, 'Statutory Adoption Pay and Leave: employer guide' (Gov.uk) [https://www.gov.uk/employers-adoption-pay-leave#:~:text=Employees%20can%20take%20up%20to,expected%20placement%20date%20\(UK%20adoptions\)](https://www.gov.uk/employers-adoption-pay-leave#:~:text=Employees%20can%20take%20up%20to,expected%20placement%20date%20(UK%20adoptions)) accessed 11 March 2024.

As a consequence, same-sex parents are frequently confronted with the choice of either losing money to spend time away from work by using leaves of absence or holiday time, or remaining at work and spending the start of their child's life on the sidelines.¹⁰ This is an undesirable choice to make and leaves no opportunity for both parents to spend time together at home with their new baby. Having only one parent at home at one time can be very difficult and stressful for new parents and disallows the capacity for bonding.

The current law on parental leave does not adequately reflect the Equality Act 2010, particularly, the provision against discrimination on the grounds of sexual orientation (s12).¹¹ Based on the issues mentioned, the current legislation seems to indirectly discriminate against male same-sex couples.

Problems also exist within the current framework for female same-sex parents. One female partner is given "paternity" leave unless they opt for the shared options.¹² This gender-binary role could feel demeaning to many women.¹³

ISSUE 3 - Exclusion of certain workers due to eligibility requirements

The current framework requires mothers to be classed as 'employees' and have continuously worked for their employer for at least 26 weeks which is the 15th week before the expected week of childbirth and earn a minimum of £120 weekly, in order to qualify for maternity leave.¹⁴ Fathers and partners face similar restrictions for paternity leave, requiring employee status, 26 weeks of continuous employment up to the qualifying week, and a minimum earnings threshold.¹⁵

In limiting access to parental leave only to those classified strictly as 'employees', the UK statutory framework excludes a broad segment of the workforce, such as part-time, flexible, or self-employed individuals, from essential parental leave and pay benefits. This may have detrimental consequences for women as they are more likely to undertake part-time or flexible work due to caregiving responsibilities.¹⁶

Additionally, in recognition of new forms of discontinuous employment, more flexibility about the timing of the 26 week qualifying period is required to extend the reach of family-friendly support.¹⁷



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¹⁰Luke Kitchen, 'Parental Leave in the UK: Are We Where We Should Be?' (*Aspiring to Include*, 31 October 2022) <https://www.aspiringtoinclude.com/parental-leave-in-the-u-k-are-we-where-we-should-be/> accessed 7 March 2024.

¹¹Equality Act 2010, section 12.

¹²Luke Kitchen, op. cit.

¹³Ibid.

¹⁴Womens Budget Group, 'Maternity, paternity, parental leave and gender', (2021) <https://wbg.org.uk/wp-content/uploads/2021/03/Maternity-paternity-and-parental-leave.pdf> accessed 12 March 2024, 2.

¹⁵Ibid., 2.

¹⁶Centre for Progressive Policy, Parental Leave Report (June 2023) https://www.progressive-policy.net/downloads/files/PPP_Parental-Leave-report_June-2023.pdf accessed 12 March 2024.

¹⁷Margaret O'Brien, et al., 'Inequalities in access to paid maternity and paternity leave & flexible work', (*Modern Fatherhood*, 2017) <https://www.ucl.ac.uk/ioe/sites/ioe/files/Inequalities-parental-leave-briefing.pdf> accessed 12 March 2024, 8.

¹⁸Remote, 'Inclusive Parental Leave Policies Report' (*Remote*, 20 December 2022) <https://remote.com/resources/research/best-inclusive-parental-leave-policies> accessed 9 March 2024.

RECOMMENDATIONS

01

Expanding 'employee' criteria

Eligibility for parental leave should not be limited to those on legal employment contracts, but should be extended to 'workers', 'self-employed,' and those in casual employment, ensuring recognition of diverse employment relationships.

02

Reducing 'continuous employment qualifying period'

Those with irregular employment patterns and short-term contracts would benefit from a reduction of the required 26 week continuous employment qualifying period to a lower threshold (e.g. 15 weeks), or the allowance of discontinuous employment. This would enable more workers to qualify for parental leave benefits.

03

Scrap and Replace Shared Parental Leave

Implement a model inspired by Sweden of 12 weeks paid paternity leave and 60 weeks of shared parental leave.¹⁹ This would share the childcare burden more fairly between parents. It could have positive knock-on effects, e.g., 83% of mothers believe that increased paternity leave would positively impact maternal mental health.²⁰

04

Gender Neutral Parental Leave

The above proposal of 12 weeks paternity leave and 60 weeks shared leave ought to be gender neutral in name and application. An inclusive parental leave would benefit all family structures.

05

Increase in Statutory Paternity Pay

Addressing the current £172.48 per week (90% of weekly earnings) for fathers, which is less than half the National Living Wage.²¹ Whilst this amount will be increasing to £185 per week²² from the 6th April 2024, this rise will fail to adequately match inflation.

¹⁹Maternity Action, 'Missing: reform of Shared Parental Leave' (*Maternity Action*, 2022) <https://maternityaction.org.uk/wp-content/uploads/Missing-reform-of-SPL-v2-23-08-22.pdf> accessed 3 March 2024.

²⁰Centre for Progressive Policy, 'Leave in the lurch: Paternity leave, gender equality and the UK economy' (*Research report CPP*, 2023), 4.

²¹Gov.UK, 'Paternity pay and leave' <https://www.gov.uk/paternity-pay-leave/pay> accessed 11 March 2024.

²²Kristian Johnson, 'Paternity leave: Call for more help as fathers cannot afford time off', (*BBC News*, 8 March 2024) <https://www.bbc.com/news/uk-68485122> accessed 11 March 2024.

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