

# CONSULTATION PAPER

## REVIEW OF FAMILY FRIENDLY RIGHTS



Issued by the Employment Forum on 5 January 2017

Deadline for responses – 17 March 2017

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### SECTION 1 - Summary

The Minister for Social Security has directed the Employment Forum to review the existing family friendly employment rights with a view to extending them in a second stage of protection. This consultation paper seeks your comments. The following report provides background information that you may wish to consider in forming your response to the survey, including information relevant to Jersey and to other jurisdictions.

Any responses that are submitted will be combined with other relevant evidence to help the Forum to decide whether any changes should be recommended to the family friendly employment rights. The Forum has been directed to present its recommendation to the Minister for Social Security by the end of 2017<sup>1</sup> and the Minister will then decide whether to propose any changes to the legislation.

You can complete the survey online and find more information at [www.gov.je/consult](http://www.gov.je/consult)

***Please submit your comments no later than 17 March 2017:***

- Via the online survey at [www.gov.je/consult](http://www.gov.je/consult)
- By email to [E.Forum@gov.je](mailto:E.Forum@gov.je)
- By post to P.O. Box 55, La Motte St, St Helier, JE4 8PE.
- By requesting a meeting with the Forum; email [E.Forum@gov.je](mailto:E.Forum@gov.je) by 01/02/17
- By attending a public consultation meeting; email [E.Forum@gov.je](mailto:E.Forum@gov.je) for more information

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<sup>1</sup> This timescale takes into account the requirement for the Forum to also make a recommendation on the minimum wage by September 2017.

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### SECTION 2 – Background

The Employment Forum first consulted on family friendly rights in 2007 and presented its recommendation to the Minister in 2008<sup>2</sup>. Draft legislation was prepared on the basis of the Forum's recommendations which was adopted by the States in 2014. At that time, the former Minister for Social Security committed to review the rights one year after they came into force.

#### Existing Jersey legislation

The following new family friendly rights came into force on 1 September 2015 on the same date as protection against discrimination on grounds of sex and maternity/pregnancy:

- paid time off for the pregnant employee to attend antenatal care appointments
- 2 weeks' paid compulsory maternity leave and 6 weeks' unpaid maternity leave
- an extra 10 weeks' maternity leave for an employee with 15 months' service
- the right to return to work after statutory maternity leave
- 2 weeks' unpaid parental leave
- 8 weeks' adoption leave, or 18 weeks for an employee with 15 months' service
- the right to request flexible working for employees with caring responsibilities
- protection against detriment and dismissal for associated reasons

More information about these rights can be found in the report that accompanied the draft legislation to the States<sup>3</sup> and on the Jersey Advisory and Conciliation Service website<sup>4</sup>.

#### Local Statistics

##### Parental leave - Jersey Opinions and Lifestyle Survey 2016 (JOLS)<sup>5</sup>

- 87% of adults said that parents should be able to share parental leave (84% of men and 89% of women)
- Reasons for agreeing that leave should be shared were -
  - To allow both parents to be involved in childcare (65%)
  - To make it easier to fit childcare around work (17%)
  - More practical financially (13%)
- 59% of adults said that parents should not be able to share parental leave with the child's grandparents
- Of the parents who had taken a period of maternity, paternity or adoption leave in the last 5 years -
  - 18 weeks' leave was taken on average

<sup>2</sup>[www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20EmploymentForumsReccommendationMaternityPaternityFamilyFriendly%2020091211%20EV.pdf](http://www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20EmploymentForumsReccommendationMaternityPaternityFamilyFriendly%2020091211%20EV.pdf)

<sup>3</sup>[www.statesassembly.gov.je/AssemblyPropositions/2014/P.109-2014%20withCORRIGENDUM.pdf](http://www.statesassembly.gov.je/AssemblyPropositions/2014/P.109-2014%20withCORRIGENDUM.pdf)

<sup>4</sup>[www.jacs.org.je/](http://www.jacs.org.je/)

<sup>5</sup>[www.gov.je/Government/Pages/StatesReports.aspx?ReportID=2481](http://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=2481)

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- Women had taken an average of 29 weeks' leave (14 weeks' paid and 15 weeks' unpaid leave)
- Men had taken an average of 2 weeks' leave (2 weeks' paid leave and 1 week's unpaid leave).
- Around two-thirds of men had not taken any parental leave
- 8 out of 10 parents would have liked to have taken more leave (92% of men and 69% of women)
- 69% of men said they were prevented from taking more leave because the length of leave was limited by their employer
- 71% of women said financial reasons prevented them from taking a longer period of leave

### **Economic activity - Jersey Opinions and Lifestyle Survey 2016 (JOLS)**

- The economic activity rate for all working age adults is 86% (87% of men aged 16-64 and 85% of women aged 16-59)
- Men were contracted to work 2.5 hours per week longer than women (37.5 and 35.0 hours on average, respectively)

### **Economic activity - Census 2011<sup>6</sup>**

- For men, the rate of economic activity (either working or looking for work) decreased from 86% in 1961 to 74% in 2011
- The economic activity rate for women increased substantially over a 50 year period, from 37% in 1961 to 61% in 2011. (The economic activity rate for women in the UK in 2011 was 57%)
- Of the **working age** population in Jersey (age 16-64 for men and 16-59 for women) 82% were economically active
- Over three-quarters (77%) of working age women were economically active
- Of those who were of working age but economically inactive, 44% of the women and 3% of the men were looking after the home
- 20% of working women worked part-time compared to 4% of men

### **Sex discrimination – Jersey Annual Social Survey 2012 (JASS)<sup>7</sup>**

- A quarter of respondents said they had been discriminated against at least once in the previous 12 months. For one in 20 people, the discrimination was on grounds of gender (5%)
- Women were more likely to report having been discriminated against on grounds of gender (9%) than men (2%)
- The most frequently cited location of the discrimination was at work (36% of respondents) and 23% reported discrimination when applying for a job

<sup>6</sup> [www.gov.je/Government/Census/Census2011/Pages/2011CensusResults.aspx](http://www.gov.je/Government/Census/Census2011/Pages/2011CensusResults.aspx)

<sup>7</sup> [www.gov.je/Government/Pages/StatesReports.aspx?ReportID=859](http://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=859)

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### Social Security Benefits

**Maternity grant** is a lump sum payment which may be paid either before or following birth to help with the general cost of having a baby. The current rate is £612.57 which is payable for each baby (including multiple births). To qualify, the mother or her husband/civil partner must have paid enough contributions for at least three months before the expected or actual date of childbirth. An equivalent grant for adoptive parents is also available where a person has been granted an adoption order.

**Maternity allowance** is a weekly benefit paid to help a mother take time off work to give birth and look after her baby. The full rate per week is currently £204.19 (the amount paid is based on the mother's own contributions) and can be paid for a maximum of 18 weeks as compensation for loss of earnings while the woman is not working. Jersey's maternity allowance is more generous per week than the UK equivalent but is available for fewer weeks in total (the UK benefit is paid for 39 weeks at £139.58 per week). There is currently no weekly allowance in Jersey associated with periods of parental or adoption leave.

The majority of parents who had a baby in 2015 received a maternity grant in 2015. From 1 January 2015, women have had more flexibility in the timing of their maternity allowance claim. The Social Security Department's annual report for 2015<sup>8</sup> states that this is likely to explain the reduction in the number of claims made in the latter months of 2014. Between September and December 2014, claims for Maternity Allowance decreased by 15 percent on average each month, and claims for a Maternity Grant decreased by 28 percent on average each month. This was followed by a significant increase in the number of claims in January 2015 when the rule change was in force.

**Table 1 - Maternity indicators, 2011 to 2015**

Indicator	2011	2012	2013	2014	2015
No. of Maternity Allowance claims starting in the year	944	982	894	834	876
No. of Maternity Grant claims paid in the year	1,056	1,011	970	837	1,020
No of Births Recorded	1,102	1,123	1,017	985	997

A number of other benefits are available from the Social Security Department to support families including Income Support and Home Responsibility Protection. More information is available on the website<sup>9</sup>. It is not within the Forum's remit to consult on, or to recommend, changes to social security benefits.

<sup>8</sup> [www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Social%20Security%20Department%20Minister's%20Report%202015.pdf](http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/Social%20Security%20Department%20Minister's%20Report%202015.pdf)

<sup>9</sup> [www.gov.je/benefits/maternityfamilysupport/Pages/index.aspx](http://www.gov.je/benefits/maternityfamilysupport/Pages/index.aspx)

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### SECTION 3 – Other jurisdictions

This section provides a high level summary of the main provisions in some relevant jurisdictions that you may wish to consider when you respond to the survey. In presenting this information, the Forum is not advocating any particular system or approach.

#### Guernsey

From 1 April 2016, the Maternity Leave and Adoption Leave (Guernsey) Ordinance 2016 provides the following statutory rights:

- Paid time off for antenatal appointments during working hours
- Basic maternity leave of 12 weeks (includes 2 weeks' compulsory leave)
- Enhanced period of an additional 14 weeks' maternity leave for employees who have 15 months' service
- The right to return to the same job or a suitable alternative
- The partner of an employee who is entitled to basic maternity leave and has 15 months' service has a right to take two weeks' maternity support leave
- Maternity allowance at a rate of £150.43 per week for up to 18 weeks

Employers in Guernsey are not required to provide paid maternity leave, paternity or adoption leave. Employers who choose to do so provide such benefits through a discretionary or contractual agreement and reference to any such policy must be included in the statement of the main terms and conditions of employment.

#### Isle of Man

Family friendly rights are set out in the Employment Act 2006 and Regulations made under that Act, including the Maternity Leave Regulations 2007 and the Paternity Leave Regulations 2007. These include:

- Paid time off for antenatal appointments during working hours
- 26 weeks' Ordinary Maternity Leave (includes 2 weeks' compulsory leave)
- 26 weeks' Additional Maternity Leave for employees with 26 weeks' service
- The right to return to the same job
- Paternity leave of either one or two weeks
- Adoption leave matching maternity and paternity leave for birth parents
- A right to request flexible working for the parents of a child under 6 years old; the parents of a disabled child under 18 years old; and/or have defined caring responsibilities. Available to employees with 26 weeks' qualifying service
- Maternity allowance at a rate of £179.85 per week for up to 39 weeks

As in Guernsey, employers in the Isle of Man are not required to provide paid maternity leave, paternity or adoption leave.

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### UK

Family friendly rights are provided primarily in the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002, the Work and Families Act 2006 and the Children and Families Act 2014. These include:

- Paid time off for antenatal appointments during working hours
- Unpaid leave for fathers or partners to attend two antenatal appointments
- For adopters, 5 paid adoption appointments for the main adopter and 2 unpaid appointments for the other adopter.
- Statutory maternity leave of 52 weeks with no qualifying period of employment
  - Ordinary Maternity Leave - 26 weeks (includes 2 weeks' compulsory leave)
  - Additional Maternity Leave - 26 weeks
- Statutory Maternity Pay – depending on contributions for up to 39 weeks
  - 90% of average weekly earnings for the first 6 weeks
  - £139.58 (or 90% of average weekly earnings if lower) for 33 weeks
- The right to return to the same job or a suitable alternative
- Paternity leave of either 1 or 2 weeks with pay at £139.58 per week
- Adoption leave matching the periods of maternity and paternity leave
- A right to request flexible working for all employees with 26 weeks' service
- 50 weeks of shared parental leave at £139.58 per week or 90% of average weekly earnings, whichever is lower

Maternity rights have been available in the UK for many years. The system of funding statutory maternity pay in the UK originates from an historic Maternity Fund, which was funded through increases in employers' contributions. Most employers are able to recover 92% of the statutory maternity pay by deducting it from their national insurance contributions and small employers can reclaim 103% of payments. An employee who does not qualify to receive statutory maternity pay may be entitled to the social security maternity allowance at the standard rate of benefit (£139.58 per week). Other than six weeks' maternity leave at 90% of pay, the remaining weeks of statutory maternity pay are paid at the standard rate of benefit.

Other family-related rights are more recent. Shared Parental Leave (SPL) was introduced in April 2015. This allows eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed for adoption. Parents are still entitled to take maternity, paternity and adoption leave. However, an eligible mother or adopter may choose to end their maternity/adoption leave early and opt in to SPL (subject to the 2 weeks' compulsory leave period). SPL may be taken between the date the child is born or the date of the placement and ends 52 weeks after that date. This could involve the mother returning to work for part of the time while her partner takes leave and then resuming her leave at a later date, or a partner could begin to take SPL while the mother is still on maternity or adoption leave.

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### Other countries and international standards

Most jurisdictions in the world make provision for maternity leave. Different levels of protection are provided based on length of service and other qualifying conditions. Leave is often a combination of paid and unpaid periods; where paid leave is provided this is often subject to a cap, particularly when the pay is provided through a social security system. In most countries, pay during statutory maternity leave is funded by the State or health and social insurance schemes, although some countries supplement that by requiring additional payments from the employer.

The European Union Pregnant Workers Directive (92/85/EEC) came into force in 1994. It states that *“Employees are entitled to 14 weeks continuous maternity leave before and/or after delivery...The employment rights relating to the employment contract must be ensured, including the entitlement to an adequate allowance.”*

The International Labour Organisation (ILO) Maternity Protection Convention, 2000 (183), which came into force in 2002, recommends that a woman *“shall be entitled to a period of maternity leave of not less than 14 weeks.”* It also states that *“Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”*

According to the ILO<sup>10</sup>, there has been an improvement in maternity protection across the world with a gradual shift towards leave periods that meet or exceed the 14-week ILO standard. In 1994, 38 per cent of countries for which information was available provided at least 14 weeks of maternity leave. In 2013, 53 per cent provided at least 14 weeks of maternity leave and 23 percent provided at least 18 weeks' leave. Between 1994 and 2013 financing of cash benefits through employer liability fell from 33 to 25 per cent. Fifty-eight per cent of countries now finance maternity leave cash benefits through social security. In addition to maternity leave, many countries also support working fathers. Of the 141 countries for which data was available in 1994, the ILO found that only 3 percent made provision for paternity leave. By 2013, paternity leave was available in 47 percent of 167 countries.

Across OECD countries<sup>11</sup>, maternity leave is an average of around 18 weeks. Almost all OECD countries have public income support payments relating to the taking of maternity leave. In some countries (e.g. Australia, Iceland, New Zealand, Norway and Sweden), there is no separate provision for maternity leave but provision for a parental leave scheme instead. In some countries parental leave is a shared entitlement with specific periods reserved for use by the mother or father. In other countries (e.g. Austria and Germany) ‘bonus’ weeks of leave are offered as an incentive if both parents use a certain portion of the total entitlement.

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<sup>10</sup> Maternity and paternity at work: Law and practice across the world (May 2014)  
[www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_242325/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_242325/lang--en/index.htm)

<sup>11</sup> [www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](http://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf)

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### SECTION 4 – Scope of consultation

The Minister has directed the Forum to consult on the following areas -

1. Review the impact of the new legislation on employers and working parents.
2. Consider extending the rights to statutory leave to provide –
  - a. A longer period of unpaid maternity leave
  - b. A longer period of unpaid parental leave
  - c. A longer period of unpaid adoption leave
  - d. A longer period of paid maternity leave
  - e. A period of maternity leave paid at an enhanced rate
  - f. A period of paid parental leave
  - g. A period of paid adoption leave
3. Consider extending the statutory maternity leave so that there is no length of service requirement.
4. Consider extending the right to take time off work to attend antenatal care appointments to the partner/husband/father of the baby.
5. Consider extending the right to request flexible working so that –
  - a. It applies to all employees (not just those with caring responsibilities).
  - b. It applies irrespective of length of service (currently 15 months' service)
6. Bearing in mind the potential complexity of the administration of shared leave, consider providing a right for periods of maternity, parental or adoption leave to be shared -
  - a. By two parents
  - b. By grandparents
7. Consider introducing a right to paid time off work where an employee is suspended for pregnancy related reasons.
8. Consider introducing statutory provision for breastfeeding rights and/or facilities in the workplace.

With the agreement of the Minister, the Forum has included three additional issues within the scope of the consultation; to consider extending the rights to statutory adoption and parental leave to give surrogate parents equivalent rights, to give adoptive parents the right take time off work to attend adoption appointments and to give surrogate parents the right to take time off work to attend antenatal care appointments with the birth mother.

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### SECTION 5 – How to submit comments

The Forum would like to hear your views. You can complete the survey online and find further information about the review at [www.gov.je/consult](http://www.gov.je/consult).

Copies of the papers can be obtained from the Forum Secretary; [E.Forum@gov.je](mailto:E.Forum@gov.je), or T.447203.

In addition to completing the survey, you may attend a meeting with the Forum to discuss your views. The Forum will combine meetings with interested parties in the event that demand for meetings is high. The Forum also intends to arrange a public consultation meeting during the consultation period. If you would like to attend a meeting please contact the Forum Secretary by 1 February 2017.

***Please submit your comments no later than 17 March 2017:***

- Via the online survey at [www.gov.je/minimumwagereview](http://www.gov.je/minimumwagereview).
  - By email to [E.Forum@gov.je](mailto:E.Forum@gov.je)
  - By post to P.O. Box 55, La Motte St, St Helier, JE4 8PE
  - By requesting a meeting with the Forum ([E.Forum@gov.je](mailto:E.Forum@gov.je), or T. 447203) – please request by 1 February 2017
  - By attending a public consultation meeting; email [E.Forum@gov.je](mailto:E.Forum@gov.je) for more information
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