

Autumn Budget 2021 Pre-Budget Briefings

# Maternity, paternity and parental leave

Scan to access online



## Maternity, paternity and parental leave

*A pre-budget briefing from the UK Women's Budget Group – October 2021*

### Key points

- *UK maternity, paternity and parental leave policy design is based on an out-of-date model that does not encourage sharing of care between parents.*
- *Maternity leave provision is up to 52 weeks of leave, 39 of which can be paid (6 at 90% of earnings and 33 at statutory rate of £151.97 per week). Statutory paternity leave, on the other hand, comprises a 2-week entitlement paid at statutory rate of £151.97 per week.*
- *The shared parental leave policy introduced by the government in 2015 is based on a transfer of maternity leave to the second parent. Transfer of leave models are known to have very limited impact on fathers' take up of parental leave. 'Default policy option' models that provide both partners with an equal share of leave, some of which is transferable, have been shown to be more effective at promoting more gender equal caring.*
- *Statutory maternity and paternity pay rates are, in relative terms, among the lowest in Europe.*
- *The low rate of replacement pay for paternity leave interacts with the gender pay gap, providing significant barriers to fathers using more leave.*
- *Coverage and eligibility for maternity and paternity leave is a key issue. 28% of women and men in employment do not have access to paid paternity or maternity leave due to either their employment status and/or length of service. With increasing casualisation of working arrangements, there are fears this number will rise and particularly impact some of the most vulnerable workers.*
- *In the context of the coronavirus pandemic, there is the potential for the disparity in leave entitlements between mothers and fathers to lead to discrimination against pregnant women when redundancy decisions are being taken.*

### The current system

Parental leave policies in the UK are complex and difficult to navigate for parents and employers alike. Leave entitlements remain structured upon a framework that privileges maternity and in doing so upholds stereotyped gender norms that lead to discrimination against women.

**Statutory maternity leave** comprises a 52-week entitlement, paid at 90% of earnings for the first 6 weeks, statutory rate of £151.97 per week for the following 33 weeks, and no replacement pay for the final 13 weeks. Maternity protection is a fundamental right at work, and pregnancy and maternity is a protected characteristic under the UK Equality Act 2010. Maternity leave can be

taken from 11 weeks prior to a baby's due date. It is obligatory for women to take leave for two weeks after childbirth, or 4 weeks if they work in a factory. Adoption leave provides the same entitlements as maternity leave for the primary adopting parent.

**Statutory paternity leave** is for fathers and partners of the mother or primary adopter and consists of two weeks of leave paid at statutory rate of £151.97 per week.

### Eligibility

Eligibility for maternity leave and maternity pay is based on employment status, since the person claiming maternity leave must be classed as an employee, rather than a worker or self-

employed. To be eligible for maternity pay, mothers must meet an earnings threshold of £120 per week before tax and have worked for their employer continuously for at least 26 weeks into the 'qualifying week', which is the 15th week before the expected week of childbirth. Some women not eligible for statutory maternity leave and pay are eligible for maternity allowance, which is paid at either £151.97 per week or 90% of average earnings for 39 weeks (whichever is less), or £27 a week for 39 weeks, or £27 a week for 14 weeks, dependant on the mother's circumstances. There is no six-week period paid at 90% of earnings for people eligible for maternity allowance.

To be eligible for paternity leave, fathers and partners must be classed as an employee and have worked for their employer continuously for at least 26 weeks up to the qualifying week. To be eligible for paternity pay, fathers and partners must also earn at least £120 per week before tax.

### **Shared Parental Leave and Pay**

The Government introduced Shared Parental Leave and Statutory Shared Parental Pay in April 2015, whereby the mother or primary adopter can end their maternity/adoption leave from any time after two weeks of leave and transfer the remainder to the other parent if they wish. Fathers and partners do not have an independent right to parental leave beyond the two weeks of low-paid paternity leave. Since Shared Parental Leave (SPL) is effectively a transfer of maternity leave to the mother's partner, eligibility for SPL is based on the mother's eligibility for maternity leave and pay. This means that if the mother or primary adopter does not qualify for either maternity pay or maternity allowance then their partner will not qualify for shared parental leave.

## **Problems with the current system**

### **Parental leave and gender inequality**

The birth of a first child is a pivotal moment in how couples organise responsibility for childcare throughout their lives and is foundational in forming and perpetuating gender inequality.<sup>1</sup> Use of parental leave in the UK, as in most other countries, is highly gendered. Time away from the labour market affects skills and experience which affect human capital, and when time away from the labour market is inequitably distributed, women bear the brunt of care penalties through discrimination, loss of human capital and the gender pay gap. Disparities in use of leave by women and men negatively impact on women's salaries and career progression across the board, not just mothers', because it leads to discrimination which affects all women.<sup>2</sup>

There are indications that discrimination against pregnant women has been heightened in the context of Covid. In a survey of 20,000 women, 11% of pregnant women said they 'had been made redundant or expected to be made redundant'.<sup>3</sup> Of these, 53% believed their pregnancy was a factor in their redundancy (a figure that rises to 67% of BAME pregnant women).

Parental leave policy design has the potential to recalibrate or reinforce patterns of gender inequality that become embedded as a result of gendered caring norms. EU legislation introduced in 2010 has informed a host of changes to leave configurations across Europe, aimed at increasing fathers' use and couples' sharing of leave, through the introduction of gender-neutral entitlements and father incentives ('daddy quotas') in several countries. The UK policy design lags behind these shifts.

### **Affordability and take up of Shared Parental Leave**

Take up of the Shared Parental Leave policy has been low, at less than 10% of eligible parents. Some estimates, derived from collating freedom

---

<sup>1</sup> Sundström, M. and Duvander, A. E. (2002) Gender division of childcare and the sharing of parental leave among new parents in Sweden, *European Sociological Review*, 18(4), 433-447.

<sup>2</sup> Castro-García, C. and Pazos-Moran, M. (2016) Parental leave policy and gender equality in Europe, *Feminist Economics*, 22(3), pp51-73

<sup>3</sup> Pregnant Then Screwed (2020) The true scale of the crisis facing working mums (<https://bit.ly/2M3gPW5>)

of information requests, suggest the rate could be as low as 1%.<sup>4</sup> Since the government doesn't routinely collect data on use of maternity or paternity leave entitlements, understanding the full extent of take-up is difficult at present. Research has found that take-up is highest among dual-earner professional couples, or where the mother earns more than her partner.<sup>5</sup>

The low rate of paternity and shared parental leave pay for UK fathers makes it unaffordable for many families. Some fathers take annual leave upon the birth of their child instead of, or in addition to, paternity leave.<sup>6</sup> A number of surveys have found that some employers top up statutory paternity pay (between 54% and 81%) but many do not.<sup>7</sup> In addition, mothers' existing statutory entitlements, and often enhanced entitlements, are significantly longer than fathers'.<sup>8</sup> These two factors work together to reinforce gendered caring norms.

The introduction of Shared Parental Leave intended to address this disparity. However, research shows that fathers tend to make use of well-paid, non-transferable parental leave entitlements,<sup>9</sup> while their use of shared or transferable entitlements is much more limited.<sup>10</sup> It is not surprising therefore that the new policy has seen low uptake, since transfer models do not lead to increases in fathers' uptake.

Some research has found that the shared policy in the UK has resulted in some couples regarding the transfer as a 'gift exchange' from one partner

to the other,<sup>11</sup> failing to meaningfully promote fathers' use of parental leave and doing little to tackle fixed gender roles that disadvantage women.<sup>12</sup> There is emerging evidence that some women are reluctant to relinquish their allocated time with the child in order for their partner to use it.<sup>13</sup>

### Parental leave policy and the gender pay gap

Parental leave policy design also interacts with the gender pay gap. Women in heterosexual partnerships often earn less than their male partners: for example, only one third of women in dual-earner households bring home at least half of the household income.<sup>14</sup> Finances are a central factor in couples' decision-making when it comes to planning family leave to care for a new baby and, due to the gender pay gap, on average, women are paid less than their male partners. Moreover, given government parental leave policies do not provide fathers with a well-paid portion of leave, the majority of heterosexual couples stand to lose a greater proportion of their household income if the father stays at home, acting as a further disincentive to fathers' use of leave.<sup>15</sup> This is supported by evidence from Sweden, which indicates that lack of economic constraint is associated with increases in the number of days leave that fathers use.<sup>16</sup>

### Coverage

Coverage is a key problem with parental leave policy. *Maternity leave* is a 'day one right' whereby women qualify for up to 52 weeks off no

<sup>4</sup> O'Brien, M., Atkinson J., and Koslowski, A. (2019) United Kingdom country note, in Koslowski, A., Blum, S., Dobrotić, I., Macht, A., and Moss, P. (eds) International review of leave policies and research 2019 (<http://bit.ly/2VZEYUG>)

<sup>5</sup> Birkett, H. & S. Forbes (2019): Where's dad? Exploring the low take-up of inclusive parenting policies in the UK (<https://bit.ly/37ow6ij>)

<sup>6</sup> O'Brien, M., Connolly, S. Speight, S., Aldrich, M. and Poole, E. (2015) 'Father involvement with young children in the contemporary United Kingdom', in Adler, M. A. and Lenz, K. (eds) Father involvement in the early years: an international comparison of policy and practice, Bristol: The Policy Press

<sup>7</sup> Burgess, A. and Davies, J. (2017). *Cash or carry: fathers combining work and childcare in the UK* (<https://bit.ly/2QKAnSG>)

<sup>8</sup> CIPD (2016). Labour market outlook: focus on working parents (<https://bit.ly/2QOoz1D>)

<sup>9</sup> Castro-García, C. and Pazos-Moran, M. (2016) Parental leave policy and gender equality in Europe, *Feminist Economics*, 22 (3), 51-73

<sup>10</sup> Haas, L. and Rostgaard, T. (2011) Fathers' rights to paid parental leave in the Nordic countries: consequences for the gendered division of leave, *Community, Work & Family*, 14(2), 177-195

<sup>11</sup> Moss, P., and Deven, F. (2006) Leave policies and research, *Marriage & Family Review*, 39 (3-4), 255-285

<sup>12</sup> O'Brien, M. and Twamley, K. (2016) Fathers taking leave alone in the UK – a gift exchange between mother and father? (<https://bit.ly/2yireJZ>)

<sup>13</sup> My Family Care (2017) Shared parental leave - where are we now? London: My Family Care; Ndzi, E. G. (2018). Report on the challenges of Shared Parental Leave: why mothers may or may not want to share their maternity leave, Hatfield: University of Hertfordshire; Birkett, H. & S. Forbes (2019) Where's dad? Exploring the low take-up of inclusive parenting policies in the UK (<https://bit.ly/37ow6ij>)

<sup>14</sup> Burgess, A. and Davies, J. (2017). *Cash or Carry: Fathers combining work and care in the UK*. London: Fatherhood Institute. (<https://bit.ly/2QKAnSG>)

<sup>15</sup> Batljan, I., Tillander, S., Ljungh, S., and Sjöström, M. (2004). Föräldrapenning, pappornas uttagav dagar, fakta och analys [Parental insurance, fathers' take up of days, facts and analysis], Stockholm: Regeringskansliet, Socialdepartementet; Brandth, Berit and Kvande, E. (2013) Free choice or gentle force? how can parental leave change gender practices, in Kjørholt, A. and Qvortrup, J. (eds) The modern child and the flexible labour market: early childhood education and care. pp56-71, Basingstoke: Palgrave Macmillan

<sup>16</sup> Haas, L., Allard, K. and Hwang, P. (2002) The impact of organizational culture on men's use of parental leave in Sweden, *Community, Work & Family*, 5(3), 319-342

matter how long they have worked for their employer prior to the baby's arrival. *Maternity pay* and *paternity leave* is a different matter with stricter eligibility criteria (see 'Eligibility' earlier in the briefing). Eligibility criteria based on employment contract type and length of service mean that a significant proportion of people in employment cannot access paid maternity/paternity benefits, with concerns rising about the impact of increasing precarity and casualisation on access to parental leave.<sup>17</sup>

Self-employed people and those working in casual, flexible or low-paid roles have reduced access to paid leave, with more than a quarter (28%) of men and women in employment lacking access to paid paternity or maternity leave.<sup>18</sup> Among new parents, 27% of employed fathers who had a child in the last year were not eligible for paid paternity leave due to their employment status, with 20% ineligible due to self-employment and 7% because they had been employed for under 6 months. For employed mothers, 16% of those who had a child in the last year were not eligible for paid maternity leave, either because their earnings fell below the economic activity test earnings threshold (7%), because they were self-employed (7%) or did not meet the continuous employment condition (2%). Furthermore, 4% of new mothers were not eligible for the maternity allowance payment.

Groups with the lowest eligibility for paid maternity and paternity include young employees, both men and women of Pakistani origin, people working in intermediate, semi-routine or routine occupations, and men working in male-dominated industries.<sup>19</sup>

## Awareness

Compounding these factors is the fact that there is low awareness of parental leave policy and significant complexity in administering it. The

policy is complicated for individuals, managers, and HR support professionals to navigate. The government's 'Share the Joy' campaign in early 2018 aimed to raise awareness of the shared parental leave policy two years after it was first introduced. However, the impact of this campaign is uncertain, and debate continues over the efficacy of the campaign, especially given the issues with the policy design.<sup>20</sup>

## Impact of Brexit

As yet, there have been no direct Brexit-related changes to the current policy framework, although such changes may take place in the future. However, the EU's Work-Life Balance directive, which came into effect in 2019, has led to other European nations making changes to their national laws regarding parental leave entitlements and flexible working. Specifically, the directive prohibits work-related conditions (such as the 26-week service requirement for UK paternity leave and pay) as qualification criteria for paternity leave, introduces a five-day annual carers leave, and mandates greater flexibility in use of parental leave entitlements. The UK's withdrawal from the EU thus constitutes further Brexit-related loss for working parents as well as those with caring responsibilities.<sup>21</sup>

## Impact of Covid-19

Covid-19 has not directly impacted upon the UK's parental leave framework. However, the delivery of the government's SEISS scheme held implications for self-employed mothers who had used maternity leave during the qualifying period. Although self-employed women do not qualify for maternity leave and pay, some self-employed women are eligible for maternity allowance, as detailed above. Periods of self-employed mothers' maternity-related income reduction were not excluded from the earnings calculations upon which SEISS payments were based. Therefore, women who had a baby and took maternity leave in the qualifying period

<sup>17</sup> McKay, L., Mathieu, S. and Doucet, A. (2016) Parental-leave rich and parental-leave poor: inequality in Canadian labour market based leave policies (<https://bit.ly/3b2ZIJ0>)

<sup>18</sup> Aldrich, R. et al. (2018) Inequalities in access to paid maternity & paternity leave & flexible work, London: UCL.

<sup>19</sup> O'Brien, M. et al., op. cit.

<sup>20</sup> O'Brien, M., Atkinson J., and Koslowski, A. (2019) United Kingdom country note, in Koslowski, A., Blum, S., Dobrotić, I., Macht, A., and Moss,

P. (eds) International review of leave policies and research 2019 (<http://bit.ly/2VZEYUG>)

<sup>21</sup> Atkinson J., O'Brien, M. and Koslowski, A. (2021) United Kingdom country note, in: Koslowski, A., Blum, S., Dobrotić, I., Kaufman, G. and Moss, P. (eds) International review of leave policies and research 2021 (<https://bit.ly/3b2ZIJ0>)

received reduced SEISS payments, effectively a form of discrimination. The NGO Pregnant Then Screwed made a legal challenge to the Treasury on grounds of indirect sex discrimination. The judgement, however, ruled in favour of the government department. The organisation is considering whether to appeal.<sup>22</sup>

## Reviews and changes to the system

### Women and Equalities Committee review

The Women and Equalities Committee published the 'Fathers and the workplace' report in 2018, which reviewed all government policy affecting fathers' ability to balance work and care responsibilities. The report made a series of recommendations for change, including:

1. the Government undertake an analysis of the costs and benefits of an alternative policy of 12 weeks paternal leave and pay to replace shared parental leave. This would be an individual, non-transferable entitlement reserved for fathers only—or a 'daddy quota'. This type of leave, when combined with adequate pay, is proven to increase fathers' take up of entitlements.
2. That two weeks' paternity leave should be paid at 90 per cent of earnings (capped), similar to maternity pay which is paid for six weeks at 90 per cent (uncapped).
3. That paternity leave should be a 'day one' right, in line with maternity leave.
4. That the Government brings forward legislation to achieve the Prime Minister's intention to ensure that all new jobs are available for flexible working.

The recommendations by the Women and Equalities Select Committee are welcome, but do not go far enough. Further action is required in a number of areas.

---

<sup>22</sup> Pregnant Then Screwed (2021). Taking the government to court for indirect sex discrimination (<https://bit.ly/3vAiUBQ>)

<sup>23</sup> BEIS (2020) Neonatal leave and pay: government response (<https://bit.ly/3vI6VT6>)

### Neonatal leave

Following a consultation by the Department of Business, Energy and Industrial Strategy (BEIS) in 2019 the Government has stated that it plans to introduce Neonatal Leave.<sup>23</sup> There is no existing right to leave to care for babies in neonatal care: present arrangements mean that parents must use their maternity or paternity leave if they need time off to care for an infant requiring neonatal care. Proposals include a 'day-one' right to a period of leave in addition to existing leave entitlements. This leave will be paid at the same statutory rate as other forms of leave and comprise a maximum of 12 weeks. Eligibility will be similar to existing leave entitlements: reliant on continuous service and minimum earnings. It is currently not clear whether all parents, including adoptive and those utilising surrogacy arrangements, will be eligible. Legislation has not yet been introduced Parliament.

### Ministerial and other Maternity Allowances Act 2021

This legislation was introduced in March 2021, rushed through parliament in response to the pregnancy of Suella Braverman, at the time serving as Attorney-General. The legislation allows for six months of maternity pay on full salary replacement and enables Parliament to appoint another MP to provide cover ministers on leave. The policy is thus paid at a far higher rate than statutory Maternity Pay. Moreover, while the policy encompasses cover of limited opposition minister posts, it fails to address the glaring concern that MPs, including many ministers, are ineligible for statutory Maternity, Paternity or Parental leave, since they are not employed and thus are not provided for within the current UK policy framework. It also failed to make any provision for MPs who become fathers.<sup>24</sup> The message sent by this short-sighted legislation continues to erase the role of fathers in caring for young infants as well as perpetuating the 'parental leave rich, parental leave poor' divide in the UK.<sup>25</sup>

<sup>24</sup> Atkinson J., O'Brien, M. and Koslowski, A. (2021) United Kingdom country note (<https://bit.ly/3b2ZIJ0>)

<sup>25</sup> McKay, L., Mathieu, S. and Doucet, A. (2016) Parental-leave rich and parental-leave poor: inequality in Canadian labour market based leave policies (<https://bit.ly/3b2ZIJ0>)

## BEIS consultation on Shared Parental Leave policy

The Shared Parental Leave (SHP) scheme introduced in 2015, the Government's flagship policy for driving a societal shift towards more equal parenting is not fit for purpose (see *Affordability and Take Up of Shared Parental Leave*)

The scheme is complex and poorly understood, has not transformed take up of parental leave by fathers, and has therefore had negligible if any impact on equal parenting and sex equality in the home and workplace.<sup>26</sup>

BEIS began an evaluation in July 2018, intended to review the current system of SHP, has still not been published.

## WBG recommendations

- Each parent should have an individual right to time off and pay, reserved just for them; this has been shown in other countries to reduce gender inequality.
- Maternity leave is important because mothers need to recover from childbirth and may breastfeed their new baby.
- Leave for fathers to care for their infant alone is important to lay the ground for fathers' role in caring for children.
- The system must be simple and easy to understand for both parents and employers while enabling flexibility for parents, including some time off together if that's what they want.
- At around 25 per cent of the median UK salary, current rates of maternity and paternity leave are among the lowest in the OECD.<sup>27</sup> The Government should consider increasing the statutory payment rate to ensure all families can afford to meaningfully share caring responsibility.

- All parents should be able to access the period of paternity leave no matter how long they have worked for their employer.
- In an age of increasing casualisation, this has significant implications for some of the most precarious workers and those with the lowest incomes. Self-employed mothers, who can be eligible for maternity allowance, are also disadvantaged. Maternity Allowance is paid up to the same rate of £151.97 per week but does not include entitlement to the first six weeks paid at 90% of earnings, meaning that self-employed mothers miss out on the well-paid part of the leave.
- To address these coverage problems, greater clarity is required over statutory definitions of, and protections linked to, employment status. In particular, information about the national insurance and tax contributions that self-employed and 'worker' status individuals need to make in order to secure access to paid family-friendly statutory support should be improved and made more accessible.<sup>28</sup>
- Furthermore, introducing an individual, non-transferable fathers' or partners' only portion of leave (as in the default option model), which is not based on the eligibility status of the mother would also ensure greater coverage and, if combined with a period of higher, earnings-related, pay, promote more gender equal caring.
- The system should ensure that parents have the right to return to the same job after taking leave and protected by law from losing their job during their leave or when they return to work, through discrimination or redundancy.
- Parental leave and pay policies should work alongside a flexible by default UK labour market and a more affordable childcare system that is available and ensures work

<sup>26</sup> Ibid

<sup>27</sup> Chzhen, Y., Gromada, A. and Rees, G. (2019). Are the world's richest countries family friendly? Policy in the OECD and EU, Florence: Unicef

<sup>28</sup> Aldrich, R. et al. (2018) Inequalities in access to paid maternity and paternity leave & flexible work, London: UCL.

pays from the day parents return to employment

- In addition, WBG would like to see the inclusion of an earnings-linked system that offers significant well-paid periods of leave (defined at 66% or above of earnings) for both mothers and fathers/partners.
- There are a number of proposed models for improving leave entitlements in the UK. One is based on systems implemented in Sweden and Iceland where the default model provides each parent with 50% of the total leave period, with a non-transferable portion of minimum four months and the option to shift the remainder to the other parent if desired.
- Maternity Action has proposed a slightly different model which would see mothers get 6 months of paid maternity leave, and 6 months of non-transferable (use it or lose it) *parental* leave; and fathers/second parents would get 2 weeks of paid paternity (or 'birth') leave (as now, but better paid), and 6 months of non-transferable *parental* leave.

**Written by:** Jules Allen, PhD Researcher at the University of Cambridge

**UK Women's Budget Group, October 2021.**

**Contact:** [georgia.sangster@wbg.org.uk](mailto:georgia.sangster@wbg.org.uk)

