



## **Close the Gap response to BEIS consultation on Carer's Leave**

**August 2020**

### **1. INTRODUCTION**

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and employees since 2001 to influence and enable action that will address the causes of women's labour market inequality.

The COVID-19 crisis has resulted in a rapid, and unprecedented shift in the economic landscape across the UK. One of the early implications of the ongoing crisis has been to further highlight women's labour market inequality.

COVID-19 is likely to have long-term consequences for women's equality. Women and men are being impacted by the pandemic in different ways. For example, women make up the majority of key workers; COVID-19 job disruption will disproportionately impact women's employment; women's poverty rates, and subsequently child poverty rates, will rise as a result of low-paid women being particularly affected by job disruption; and women are facing increased childcare responsibilities as a result of school and nursery closures. All of this has consequences for their mental health and their financial security.

Close the Gap welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy's consultation on Carer's Leave.

### **2. GENDER AND CARE**

Care is profoundly gendered with women providing the bulk of unpaid and informal care. The unequal gender distribution in unpaid care is not new but arises from women's pre-existing inequality. It is difficult to overstate the importance of unpaid childcare and social care to women's labour market equality. A lack of access to childcare and care is the most immediate barrier to

women being able to work, study and train. Women's unpaid caring roles drive the high level of female part-time working.

### ***Unpaid care and women's employment***

Nearly half of carers are in work<sup>1</sup>. Women are four times as likely to give up paid work due to multiple caring responsibilities and are more likely to be in low-paid, part-time employment than male carers<sup>2</sup>. Women's greater propensity to have caring responsibilities is a key driver of the gender pay gap. A lack of flexible working which is responsive to the demands of unpaid care, particularly those instances where these are unpredictable or short notice, pushes women out of work or into jobs which can enable them to meet their caring responsibilities. The vast majority of these jobs are part-time, undervalued, underpaid and often below women's qualification, skill and capability level<sup>3</sup>.

This represents a loss to women, to employers and to the wider economy. It also widens the gender pay gap at both a UK and employer level by concentrating women into lower paid occupations and sectors<sup>4</sup>, exacerbating occupational segregation. Further, paid carer's leave would help to redistribute unpaid care from women to men by reducing the economic impact of caring responsibilities. Introducing adequate carer's leave will help organisations reduce their pay gap, and meet UK Government ambitions around pay gap reporting.

### ***Unpaid care and COVID-19***

Responses to the pandemic have driven an increase in unpaid childcare and other care arising from the pandemic, which has largely fallen on women's shoulders. The interruption to social care services during lockdown has forced women to fill the gap in provision, unpaid<sup>5</sup>. As many as 39% of unpaid carers are providing more care due to local services reducing or closing due to Covid-19<sup>6</sup>. This has created further pressure on women's ability to do paid work<sup>7</sup>. The increase in unpaid care demands could have long-term implications for

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<sup>1</sup> Department for Work and Pensions (2018) *Family Resources Survey, 2017/18*

<sup>2</sup> Engender (2017) *Gender Matters Roadmap*

<sup>3</sup> Close the Gap (2018) *The Gender Penalty: Exploring the causes and solutions to Scotland's gender pay gap*

<sup>4</sup> Ibid

<sup>5</sup> Engender (2020) *Gender and unpaid work: The impact of COVID-19 on women's caring roles*

<sup>6</sup> Carers UK (2020) *Carers Week 2020 Research Report*.

<sup>7</sup> Close the Gap (2020) *Disproportionate Disruption: The impact of COVID-19 on women's labour market equality*

women's employment, particularly in the face of uncertainty regarding further lockdown restrictions.

COVID-19 is therefore very likely to increase the female poverty rate<sup>8</sup>. This is particularly the case for women facing involuntary reduction of hours and redundancy due to caring responsibilities, who are forced to access social security which is not designed to meet the needs of women's lives and after a decade of austerity and welfare reform has proven to push women further into poverty<sup>9</sup>.

COVID-19 is unlikely to recede in the near future. It is critical that this context is recognised, particularly due to the disproportionate impact of the resulting economic crisis on women. As the UK Government has responded to the pandemic we have seen a deprioritisation of gender equality at a time when it should have been central to the development of its responses and recovery plans.

### ***Unpaid care and women's economic insecurity and poverty***

Gender is central to women's responsibility for unpaid care, the gender pay gap and wider gender inequality. Introducing Carer's Leave may work to tackle this, however its design must be gender-sensitive if it is to do so effectively. Therefore, the UK Government should introduce the new Carer's Leave on a paid basis. This will ensure that all women are able to access this leave without fear of the impact on their income and economic security. This is particularly important for low-paid women. Women's higher levels of precarious employment and low-paid employment already render them more vulnerable to fluctuations in income and economic insecurity, and drive women's higher rates of poverty<sup>10</sup>. The link between women's poverty and child poverty is well-established<sup>11</sup>. Paid leave would help to mitigate the economic impact of providing unpaid care.

### ***The business case for adequate carer's leave***

There is a clear business case to advance gender equality, including through such policies as paid Carer's Leave. Employers are able to recruit from a wider talent pool, address skills gaps, and see their businesses become more

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<sup>8</sup> Close the Gap (2020) *Women, work and COVID-19: The stark implications for women's poverty*

<sup>9</sup> Close the Gap (2018) *Women, work and poverty: What you need to know*

<sup>10</sup> Close the Gap (2020) *Women, work and COVID-19: The stark implications for women's poverty*

<sup>11</sup> Scottish Government (2018) *Every child, every chance: tackling child poverty delivery plan 2018-2022*

productive, more innovative, and more profitable. Our research shows that effective utilisation of women's skills and talents is also catalyst for economic growth, worth up to £17bn to Scotland's economy.<sup>12</sup> The value of unpaid care is indisputable. Around 6.5 million carers in the UK provide care worth an estimated £57 billion to £100 billion per year<sup>13</sup>. Enabling women to stay in work will also reduce unemployment. It therefore makes strong business sense to support employees to balance paid and unpaid work.

Close the Gap welcomes the opportunity to respond to the Department for Business, Energy and Industrial Strategy's consultation on Carer's Leave.

### **3. ANSWERS TO CONSULTATION QUESTIONS**

**1. Have you or your employees used any of the below options to take time out of work to fulfil caring responsibilities? Please select all that apply.**

- Yes, annual leave
- Yes, formal flexible working (meaning a change to contracted hours or location of work)
- Yes, time off for dependants (the statutory right to leave in emergencies)
- Yes, unpaid parental leave
- Yes, informal flexible working (an afternoon or morning off, TOIL, flexible working hours (including compressed and term-time), homeworking)
- Yes, other (such as special/compassionate leave granted by the employer)

**Please comment on your experience of these existing rights and practices in relation to care, including what specific caring needs the leave was used for.**

As an employer, Close the Gap offers all of these options to employees to enable them to fulfil caring responsibilities and to balance paid and unpaid work. Flexible working is afforded from day one and is considered a default option in the organisation. It is our experience that these policies facilitate a positive working environment for staff, help maintain employer-employee relations and improve staff wellbeing and productivity. Close the Gap is a small

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<sup>12</sup> Close the Gap (2016) *Gender Equality Pays: The economic case for addressing women's labour market inequality*

<sup>13</sup> HoP Parliamentary Office of Science and Technology (2018) *Unpaid care*

organisation and is still able to accommodate such arrangements with ease through effective work planning, appropriate levels of staff autonomy and good working relations. All employers should be able to support staff to meet their caring responsibilities, and indeed it is in their interests to do so.

**2. Do you agree that this provides an appropriate definition of caring relationships for the purpose of Carer's Leave?**

- Agree

**Please provide reasons for your answer**

The inclusion of 'someone else who reasonably relies on the employee for care' is important in ensuring the right to Carer's Leave is accessible in all appropriate circumstances. However, it must be clear that employers may not make unreasonable demands of proof of the caring relationship. The existence of a right to Carer's Leave does not mean that this right is accessible and, in order that the policy meets the needs of carers, it should be explicit that this leave is not only available at an employer's discretion. As women are more likely to require to access Carer's Leave, ensuring accessibility is essential to avoid exacerbating women's labour market inequalities.

**3. Are there other caring relationships that you think should be considered for inclusion within the scope of Carer's Leave?**

See above.

**4. Which conditions on care need do you believe are appropriate for Carer's Leave? Please select all which apply.**

- Length of the condition, please comment on what length might be appropriate
- Conditions which automatically qualify as a disability under the Equality Act 2010 (Cancer, HIV and MS), please comment
- Terminal illness, please comment

The proposal that Carer's Leave should be restricted to a limited list of conditions and which are likely to last for a longer period of time, such as six months, is likely to mean that many employees will be unable to access the leave to meet reasonable needs to deliver care. Unexpected or short-term caring responsibilities, where leave is not available or offered by an employer, can still have a significant impact on an employee's ability to combine paid work with care and result in them leaving their job.

Further, caring responsibilities have impacts beyond an employee's ability to stay in work, including on their health. Expecting such employees to use annual leave to meet caring responsibilities means those employees lose out on this leave as a means of rest from their job, which is likely to have a detrimental effect on their health and wellbeing. This impact will be more severe for employees with multiple caring roles. Further, if their annual leave entitlement runs out, they may have their hours cut or lose their job. Caring responsibilities are a key driver of women's ability to do paid work, participate in public and community life, and be well and healthy<sup>14</sup>. Depression is also higher among those with caring responsibilities<sup>15</sup>.

Employees are in the best position to identify if they have a need to use Carer's Leave and it is likely to constrain access to this leave to impose unnecessary restrictions, whether in relation to the length or nature of the health conditions, on when it may be accessed. Given that Carer's Leave is proposed to be unpaid it is unlikely that employees would seek to access this leave for circumstances unrelated to a genuine care need. Where employers ask for evidence of the care need this may impose onerous conditions on employees and lead to employee distress in already challenging circumstances. As with the definition of caring relationships, where employer discretion in assessing eligibility for Carer's Leave is implied or unclear it is possible this will result in such leave being unfairly denied.

The proposal to impose conditions on care is also at odds with the proposal to define 'caring' broadly for the purposes of Carer's Leave (see question 7).

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<sup>14</sup> Engender (2020) *Gender and unpaid work: The impact of COVID-19 on women's caring roles*

<sup>15</sup> H. Siddique (2020) *UK women bear emotional brunt of Covid-19 turmoil – poll*. The Guardian.

**5. If you do not believe that any conditions about care need are appropriate, please explain why and comment on any other conditions which might be appropriate.**

See above.

**6. Which qualifying period do you believe is appropriate for Carer's Leave. Please select one option.**

- A day one right (no qualifying period, but with appropriate notice period)

Close the Gap believes that access to Carer's Leave should be a day one right. The use of a qualifying period, such as that of the right to request flexible working, not only constrains the accessibility of the policy, but will create barriers to women's career progression by the imposition of a new qualifying period if they move to a new employer. The right to request flexible working was extended to all employees in 2014. However, research by Close the Gap has found that there is no early evidence that it has resulted in the normalisation of flexible working, as was envisaged.<sup>16</sup> The findings identified that one reason for this could be the 26 week qualifying period, which means employees are less likely to be made aware of their right to request at the outset of their employment, and therefore remain unaware of their right in the longer term. There is a similar risk that imposing a qualifying period of Carer's Leave could restrict access to the leave as less employees are aware of their rights.

**7. Do you agree with the proposed reasons for taking Carer's Leave?**

- Agree

The proposed reasons for taking Carer's Leave appear reasonable given their broad definition. However, the assumption that employees may use flexible working to accommodate accompanying someone to medical appointments, if such appointments are recurring and predictable, is unrealistic. The right to request flexible working has not resulted in an increase in its use, indicating ongoing cultural resistance from employers<sup>17</sup>. Further, the 26-week qualifying

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<sup>16</sup> Close the Gap (2019) *Flexible working for all? The impact of the right to request regulations in Scotland*

<sup>17</sup> Ibid

period means that this option may not be available for new employees. The existence of an employment right is not analogous to that right being equally accessible to all employees. As women are more likely to require to access Carer's Leave, ensuring accessibility is essential to avoid exacerbating women's labour market inequalities.

Close the Gap believes that employees should be able to use Carer's Leave to accompany someone to medical appointments.

#### **8. Are there any other reasons that you think should be included?**

See above.

#### **9. Do you agree that childcare (other than where the child has a disability or other longer-term caring need) should be out of scope for Carer's Leave?**

- Strongly disagree

It is Close the Gap's view that it is reasonable for Carer's Leave to be used for childcare related to genuine shorter-term caring needs. While parents have access to unpaid parental leave this is restricted to two weeks per year. If a parent uses this leave to meet care needs this period may be insufficient and it would be beneficial to be able to use Carer's Leave to meet any additional time needs. It also means unpaid parental leave would be unavailable to those parents for more positive uses including to spend more time with their children. Time off for dependents may not be used for time off if the employee knew about a situation beforehand, therefore allowing Carer's Leave to be used in such a circumstances which fall outside of unpaid parental leave and time off for dependents would better enable parents to balance paid work with caring responsibilities.

The pandemic has exposed the crisis in care in the UK, both paid and unpaid. Women remain the primary carers for children and for older and disabled relatives. The multiple caring demands on women combine to create untenable pressures which prevent them from accessing good quality work, and push them into low-paid, undervalued work or out of work altogether. Wherever possible parental and carer's leave policies should work together to enhance access to leave for those with caring responsibilities, not seek to impose restrictions.

**10. Do you agree that caring for a person with short-term care needs should be out of scope for Carer's Leave?**

- Strongly disagree

Close the Gap believes that it is reasonable for Carer's Leave to be used to support someone in recovery. Caring responsibilities have impacts beyond an employee's ability to stay in work, including on their health<sup>18</sup>. Expecting employees to use annual leave to support someone in recovery where there is a genuine care need means those employees lose out on this leave as a means of rest from their job. This is likely to have a detrimental effect on their health and wellbeing which will be more severe for employees with multiple caring roles, who are significantly more likely to be women. Caring responsibilities are a key driver of women's ability to do paid work, participate in public and community life, and be well and healthy<sup>19</sup>.

**11. Are there any other circumstances or activities which Carer's Leave should not be taken for?**

Only those unrelated to care.

**12. Do you agree that an employee should in the first instance be able to self-certify their eligibility for Carer's Leave?**

- Strongly agree

Close the Gap believes that employees should be able to self-certify their eligibility for Carer's Leave. Employees are in the best position to identify if they have a need to use Carer's Leave and it is likely to constrain access to this leave to impose unnecessary restrictions, whether in relation to the length or nature of the health conditions, on when it may be accessed. Given that Carer's Leave is proposed to be unpaid it is unlikely that employees would seek to access this leave for circumstances unrelated to a genuine care need. Where employers ask for evidence of the care need this may impose onerous conditions on employees and lead to employee distress in already challenging

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<sup>18</sup> Engender (2020) *Gender and unpaid work: The impact of COVID-19 on women's caring roles*

<sup>19</sup> Ibid

circumstances. As with the definition of caring relationships, where employer discretion in assessing eligibility for Carer's Leave is implied or unclear it is possible this will result in such leave being unfairly denied.

**13. If you strongly agree or agree, how often do you think an employee should self-certify their eligibility for Carer's Leave?**

- Once per year

**14. Do you agree that an employer should be able to request further evidence if they are not satisfied with the self-certification?**

- Disagree

Again, employees are in the best position to identify if they have a need to use Carer's Leave. Given that Carer's Leave is proposed to be unpaid it is unlikely that employees would seek to access this leave for circumstances unrelated to a genuine care need. If employers are able to request further evidence, it should be made explicit that this is not simply at the employer's discretion but should be the case only in exceptional circumstances and employers should be required to justify their decision.

**15. If agree or strongly agree, please describe what evidence could be provided to demonstrate:**

- The need for care (of the person being cared for)?
- What activities the leave is used for?

N/A

**17. Please comment on the pros and cons for employees and employers, if the leave was available to take as:**

- A week of unpaid leave, available to take as a single block?
- A week of unpaid leave, available to take as individual days?

Access to the leave should be as flexible as possible, with employees able to take it as a single block or over periods of 1-4 days. One week of carer's leave is unlikely to present a significant burden for an employer to accommodate through the use of proactive and well-managed work planning. The business benefits for employers in enabling their staff to balance their job with their caring responsibilities are clear, through increased staff retention, productivity and innovation<sup>20</sup>.

**18. Do you agree that an individual should be required to give their employer notice ahead of taking Carer's Leave?**

- Agree

It is reasonable that, where possible, employees should give an appropriate period of notice. However, if the purpose of Carer's Leave is to enable employees to respond to emergencies/unpredictable events notice is not always possible. Although time off for dependents may enable employees to respond to care emergencies, where these result in a requirement for a longer period of care it is at the discretion of the employer to grant this. In such cases imposing an inappropriate notice period may make this leave effectively unusable. Carer's Leave could provide a bulwark in this case to enable post-emergency care to be accommodated.

**19. If you strongly agree or agree, what do you think a reasonable notice period would be for a block of one week of Carer's Leave? Please select one:**

- Other, please specify

While the general notice period for taking leave is at least twice as long as the amount of leave a worker wants to take, in the case of Carer's Leave it is important the notice requirement accommodates the unpredictable nature of caring requirements and the short notice at which these may arise. Close the Gap is of the view that one week's notice is a reasonable minimum, with longer notice where possible.

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<sup>20</sup> Close the Gap (2017) *Gender Equality Pays*

**20. If you strongly agree or agree, what do you think a reasonable notice period would be for single day of Carer's Leave? Please select one:**

- Less than 1 week, please specify

Again, it is important the notice requirement accommodates the unpredictable nature of caring requirements and the short notice at which these may arise. In the case of a single day it is reasonable that two days' notice is required, with longer notice where possible.

**21. Please comment on how employers would manage the process for requesting and recording the leave, and any associated issues, if it was:**

- A week of unpaid leave, available to take as a single block?
- A week of unpaid leave, available to take as individual days?

Employers could use existing processes for managing other leave policies as a basis for managing Carer's Leave. The principles are largely the same and using existing policies as a basis would reduce any perceived administrative burden. Employers would benefit from having a comprehensive process to deal with care-related leave entitlements which is responsive to each different entitlement and sets out employee entitlements in a clear and accessible format. This could ensure consistency of approach and would facilitate the recording of leave. It is also essential that all people managers are fully trained in leave entitlements and supporting employees to use these and that a clear positive culture around leave is communicated by senior management.

It is important that employers integrate data gathering into their process for administering carer's leave so they can identify trends in its use, including the gender distribution of uptake. This will enable employers to understand how their processes are working and ensure they are supporting all employees are able to access carer's leave when needed.

**22. What benefits for employers would arise from introducing a right to unpaid Carer's Leave?**

A right to Carer's Leave will disproportionately benefit women, as the majority of those providing unpaid care, by better enabling them to balance paid and unpaid work. This has the potential to contribute to tackling women's labour

market inequality and help to realise the UK Government's ambition to close the gender pay gap. The business benefits of gender equality are well rehearsed<sup>21</sup>. Employers will benefit from greater staff retention and therefore lower costs associated with recruitment and training, lower absenteeism and improved productivity and innovation. Employers who voluntarily offer a week of paid carer's leave are likely to benefit even more through demonstrating that they value and support their female employees and enabling them to stay and progress in employment.

**23. What are the most significant costs for employers which would arise from a right to unpaid carer's leave? Please rank 1 – 4; with 1 as the most significant cost.**

- The costs of administering the process (for example employees submitting requests to line managers/HR, asking for additional information, HR recording details of leave taken)
- Re-organisation process/costs (reallocating work, costs of an absent employee etc.)
- Familiarisation costs (costs associated with understanding any new legislation)
- The costs of employers voluntarily opting to pay for the leave
- Other, please specify

**Please provide reasons for your answers and indicate if there are other significant costs.**

The level of these costs is likely to be variable by employer. However, any increase in costs associated with a right to unpaid carer's leave are likely to be significantly outweighed by the business benefits to employers and to the wider economy of supporting women to remain in work while meeting their caring responsibilities, for example through reduced recruitment and training costs for employers, and reduced costs of unemployment to the state<sup>22</sup>.

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<sup>21</sup> Close the Gap (2017) *Gender Equality Pays*

<sup>22</sup> Ibid

**Organisation information**

Name: Close the Gap

Respondent type: Charity

Employer classification: Charity