



Law Society
of Scotland

Consultation Response

Carer's Leave

August 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Employment Law and Equalities Law sub-committees welcome the opportunity to consider and respond to the Department for Business, Energy and Industrial Strategy consultation: Carer's Leave.¹ We have the following comments to put forward for consideration.

General Comments

We welcome the proposal to create a new entitlement to one week of additional leave for unpaid carers. Our specific comments in response to the consultation questions are set out below.

¹ <https://www.gov.uk/government/consultations/carers-leave>

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 (such as an afternoon or morning off or occasional homeworking)
- Yes, other (such as special/compassionate leave granted by the employer)
- No

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.

We do not seek to answer this question in respect of our own employees. However, we have carried out regular research with our members on a variety of matters related to equality and diversity. We carry out a survey across our membership- [Profile of the Profession](#)- every 3 to 5 years, to establish the demographics of our membership and to monitor changes and trends in diversity. In the 2018 survey we asked about availability and use of flexi-time, amended hours and parental leave. Of those who responded:²

- 35% had access to flexi-time. Of those 17% would be unable to stay in their role without having access to flexi-time.
- 21% worked amended hours. Of those almost 66% did so because of care responsibilities.
- Use of Parental Leave depended upon the age of the respondent's children. A higher proportion of respondents with children aged seven years and over had taken no time off, or had taken up to 2 weeks off, compared with those who had younger children and were more likely to have taken longer durations of parental leave (seven to nine months, ten to 12 months or over one year).

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

Strongly agree

² Law Society of Scotland/Rocket Science, Profile of the Profession 2018, December 2018: <https://www.lawscot.org.uk/media/361498/lss-pop-report-final-december-2018.pdf>

It is important to recognise the wide range of caring situations which may arise. The suggested definition would appear to be sufficiently flexible to accommodate this.

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

No. See above.

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

- Length of condition- more than 6 months and resulting in substantial impact on ability to complete day to day tasks.
- Conditions which automatically qualify as a disability under the Equality Act 2010 (Cancer, HIV and MS)
- Terminal illness- where there is a diagnosis of terminal illness, from the point of that diagnosis.

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.

Not applicable.

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)

Imposing a qualifying period will make it extremely difficult for individuals to provide care in many circumstances where they will wish to do so.

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

Agree

The definition of caring should be sufficiently broad to encompass a wide range of caring situations. It is important that carers from all communities are able to access carer's leave.

If the intention is to enable those with caring responsibilities to discharge those responsibilities, there is no reason why accompanying someone to appointments should not be included.

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

We have no comments to make.

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?

Agree

We have no further comments to make.

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

Disagree

Attempting to distinguish between long-term and short-term care needs will introduce a degree of complexity for both employers and employees which will make the proposed scheme more difficult to operate.

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

No.

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

Agree

As leave is unpaid and notice will have to be given, there is a much lower risk of abuse than would be the case with paid leave or leave where no notice requires to be given. Self-certification in the first instance is appropriate.

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

Each time they request the leave

If an employer has reason to believe an employee is abusing the system of carer's leave, they will still be able to investigate any possible improper use of the scheme.

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

Agree

An employer should be able to request further evidence if they are not satisfied with the self-certification. However, they should only be permitted to do so if they have reasonable grounds for suspecting the scheme is being abused. It is also important that there is a clear and accessible mechanism for resolving disputes between employees and employers regarding carer's leave.

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?**

A letter confirming any appointment being attended or a letter from the person/organisation that normally provides care, explaining why they cannot do so.

16. Please comment on the key difficulties or challenges associated with providing and appropriately handling evidence, including data protection issues related to information about a person's health.

If the system is complex and bureaucratic, it will impose additional burdens on employers and act as a disincentive to employees to use it.

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?**

Allowing employees the choice to take carer's leave either as individual days/half-days or as a single block of one week will enable them to respond most appropriately to the range of care responsibilities that are likely to arise. It is appropriate that carer's leave be made available to part-time workers, as well as full-time workers, on a pro-rata basis.

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

Agree

An employee should be required to give notice to their employer, if they will be absent from work, but given the very wide range of circumstances in which the need to provide care will arise, imposing an obligation to give a long period of notice will prevent employees from providing care in circumstances where the need to provide that care arises at short notice.

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- minimum of 48 hours' notice.

We refer to our answer to question 18.

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- minimum of 48 hours' notice

We have no further comments to make.

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?**

We expect that employers would manage the process in much the same way as they currently manage requests for holidays and unpaid parental leave.

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

Introducing a right to unpaid carer's leave may reduce the number of unauthorised absences and help employers to improve staff retention and boost morale.

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.

Whilst we do not have any evidence on this point, we would expect the most significant costs for employers would be as follows:

1. 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)
2. Familiarisation costs (costs associated with understanding any new legislation)
3. Re-organisation process/costs (reallocating work, costs of an absent employee etc.)
4. The costs of employers voluntarily opting to pay for the leave

There will undoubtedly be costs involved in establishing the scheme and ensuring employees and employers understand their rights and obligations. Once this process of familiarisation with the new scheme has been completed, the ongoing costs are unlikely to be substantial.

For further information, please contact:

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