



Fawcett Society Briefing: Second Reading of the Children and Families Bill in the House of Commons

Summary

Fawcett welcomes the aspiration of the parts of the Children and Families Bill which introduce a shared parental leave system and extend the right to request flexible working to all employees. We believe that these reforms could act as a driver for the culture change needed to afford women real choice about their work and caring arrangements, and to dismantle gendered attitudes and end discrimination against women in the workplace.

Fawcett supports **Part 6** of the Bill to introduce shared parental leave as these are measures that seek to afford much greater choice and flexibility in families' caring arrangements. Fawcett welcomes **Part 7** of the Bill which introduces paid time-off for fathers/partners to attend antenatal appointments. Fawcett also welcomes **Part 8** which extends the right to request flexible working to all employees, as we believe that this is a measure that will further support and enable women in the labour market.

In particular, Fawcett welcomes the following measures, as set out in Part 6 and 7 of the Children and Families Bill:

- Paid time off-for fathers/ partners to attend antenatal appointments;
- Potential for mother to transfer leave to father/partner soon after the birth of child, should she wish to; and,
- Potential for mother and fathers/partners to share leave more flexibly and to take leave concurrently.

However, we have concerns that the proposals in the Bill do not entirely reflect the original aspirations of *Modern Workplaces* proposals. Fawcett believes that the Bill could be strengthened in order to better provide the step change we so urgently need to better support and enable women in the workplace.

In particular, we have the following concerns about the Children and Families Bill:

- That ring fenced leave for fathers/partners has not been extended beyond the current provision of 2 weeks;
- That robust pay structures do not underpin the current or proposed leave system, which will in turn affect take up of leave by fathers/partners in particular;
- That restrictive eligibility criteria means that some groups miss out entirely on accessing the benefits of the shared parental leave system;
- That rights under the new parental leave system must replicate rights that currently exist to protect women's jobs when on maternity/parental leave;
- That flexible working should be a day one employment right in order to improve access to flexible jobs and enable more women into work;
- That in cases of family dispute/separation, shared parenting should not be the default presumption; the interest and welfare of the child must determine future caring arrangements.

Ring fenced paternity leave for fathers/partners

Fawcett is supportive of the original proposals as set out in Government's *Modern Workplaces* whitepaper to extend ring fenced leave for fathers /partners, known as 'paternity leave', up to 6 weeks.

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Fawcett has consistently recommended that where financial pressures are changing the shape of proposals, Government maintains at least 4 weeks ring-fenced leave for fathers/partners.

Fawcett's position is informed by international evidence that shows that fathers/partners are most likely to take up leave where it is exclusively earmarked for them and supported by robust pay structures. Fathers'/partners' involvement in the earliest stages of pregnancy has demonstrable improvements in bonding and a greater likelihood of fathers/partners being involved later on in childcare. However, families' choices are constrained by the current UK system, in particular the low levels of pay related to statutory paternity pay.

Fawcett is disappointed that the Children and Families Bill does not establish additional exclusive leave entitlements to fathers/partners by extending paternity leave to (a minimum of) 4 weeks.

Fawcett recommends that paternity leave should be a day one employment right and regulations to extend paternity leave should be enacted at the earliest opportunity.

Adequate statutory pay

There are benefits for women, families and the economy of enabling better rights for fathers/partners in terms of parental leave and pay. For example, a study published by the Swedish Institute of Labour Market Policy Evaluation in March 2010 showed that a mother's future earnings increase on average 7 per cent for every month the father/partner takes leave. This is compelling evidence that such a move might improve women's pay prospects in the UK.

Moreover, an increase in take up of paternity/shared parental leave by fathers has the potential to dismantle the '*motherhood penalty*' and to redress the high rates of pregnancy discrimination which force a significant number of women out of the workforce. Fawcett has concerns that the Children and Families Bill will not achieve its ambition of shifting the balance in caring roles without a significant increase in fathers'/partners' take up of paternity and parental leave.

International evidence shows that countries that have succeeded in achieving balanced numbers of mothers and fathers/partners taking up leave, have implemented a financial incentive for families alongside reform to their leave system. For example, when '*daddy leave*' was introduced in Sweden, families faced losing up to a month of Government subsidies if paternity leave was not used. Soon after this policy was enforced, more than 8 in 10 men took leave.

Financial factors above all else determine duration of maternity leave women choose to take, so any reduction in family incomes is likely to result in a shorter period of leave. Until leave is paid at adequate wage replacement levels, uptake by fathers will be low and mothers will return to work sooner than they may want.

The Government estimates that uptake of shared parental leave by fathers/partners will be around 8%, which is a very modest projected increase. Without increasing statutory paternity pay, it is unlikely there will be any change in uptake of leave by fathers/partners.

Further to this, we have concerns that changes announced in the Autumn Financial Statement will entrench low pay for families accessing statutory maternity/paternity leave and could detrimentally affect families' future uptake of leave.

Breaking the link between Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, and Statutory Adoption Pay and inflation is a dramatic change in public policy - in effect, it is a "pay cut" for parents. Maternity leave and pay were originally introduced as a health and safety measure in order that women were able to take time off to recover from the birth, and to breastfeed and bond with their babies. Presenting these payments as part of the benefits framework will be seen as a major shift in government policy on the role of these payments – and by extension the role of those caring for very young children.

Fawcett recommends that statutory paternity pay is paid at 90% of income for the first 6 weeks followed by the flat rate of statutory pay. This should be paid by employers and fully reimbursed by the Government in the same manner as statutory maternity pay.

Fawcett recommends that statutory maternity, paternity and parental leave should be underpinned by a system of robust pay and that statutory pay levels must match at least the National Minimum Wage

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Access to shared parental leave

In order for families to access the parental leave system, couples should be economically active and should each qualify in their own right for parental leave and pay. This means that many groups lose out, including single mothers, who will not be able to take their leave flexibly; self-employed fathers/partners, who will not be able to access any rights to leave or pay; couples where only one parent is economically active; and fathers/partners who have started their job in the last six months.

Analysis of pay trends reveals that overall self-employment is increasingly associated with poor pay. The vast majority of the self-employed earn less than the average wage, particularly in the first few years. The median income of self-employed workers has fallen from £11,300 in 2001 to just £10,300 in 2010, even before allowing for inflation whereas the average income for employees has risen over the same period and is now nearly twice as high (£18,900).

Denying access to shared parental leave as a day one employment right could further entrench poor pay and opportunities for low-income families.

Fawcett recommends that access to shared parental leave become a day one employment right.

Discrimination

Even before the recession began, it was estimated that up to 30,000 women had lost their jobs due to pregnancy discrimination. There has been no national research into the incidence of pregnancy discrimination following the economic downturn, but all the indications are that it has increased significantly. In times of austerity, when employers cannot afford to take any perceived risks to profits and growing business, discrimination against women in the workplace is likely to rise as women, particularly of child bearing age, appear to be the riskier and less affordable choice for employers. Robust regulation and legislation is needed to mitigate against discrimination in the workplace, which women routinely face. The current context of austerity and de-regulation matters. Recent government announcements threaten to impact on the rights of pregnant women and new parents in the workplace, for example:

- From 2013, women taking a pregnancy discrimination claim to an employment tribunal will face fees of £1,200, which will deter a large number of women from seeking to uphold their rights.
- Government's employee-shareholder proposals could see standard protections and policies that have historically enabled women into the workplace exchanged in favour of shares.

Fawcett recommends that alongside implementing the shared parental leave system, the Government undertakes an inquiry into pregnancy discrimination in order to systematically collect and monitor relevant data, and to identify patterns and frequency of discrimination against women in the workplace.

Under the current system, a mother returning from Ordinary Maternity Leave (OML covers the first 26 weeks of leave) has the right to return to the same job she had before her absence. When a mother returns from a period of Additional Maternity Leave (AML covers weeks 27 to 52 of maternity leave) she has the right to return to the same or similar job (employers must offer the mother the same job she had before her absence or, if it is not reasonably practicable, another job which is both suitable for her, or the same seniority and remuneration and appropriate for her to do in the circumstances). Mother's partners taking Additional Paternity Leave (APL) have the right to return to the same job. This ensures that mothers taking maternity leave and mother's partners taking additional paternity leave can be certain that they will return to the same job following a period of leave less than 26 weeks. Shared parental leave is a new entitlement, which can be taken in discontinuous blocks. The arrangements for the right to return to a same or similar job must be replicated under this new model of taking leave to ensure the same level of protection that currently exists.

Fawcett recommends that current protections for women on OML/AML and men/partners on APL are replicated under the new system of shared parental leave to ensure adequate protection for women and men taking new leave entitlements.

Right to request flexible working

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Fawcett welcomes the extension of the right to request flexible working to all employees as set out in Part 8 of the Bill. Flexible working practices – which include part-time working, compressed hours, job shares and working from home amongst a wide range of measures – have been vital in enabling women to combine paid work with their caring responsibilities where women still undertake the majority of unpaid care for children, the elderly and disabled people.

However, the Bill removes the procedures by which employers should respond to a request from primary legislation with a duty to respond “reasonably” to requests and within a three month timetable which will be supported by a statutory ‘Code of Practice’.

Fawcett has concerns that removing procedures by which employers should respond from the statute could see a weakening of instructions for employers.

Fawcett maintains that where a Code of Practice details how employers should have to ‘reasonably’ respond, guidance is clear to ensure that the quality and robustness of statutory instructions are replicated.

Fawcett is disappointed that the Bill does not improve access to flexible jobs. Flexible practices both enable women with caring responsibilities to access jobs more easily - where the Equality and Human Rights Commission report that mothers highlight the availability of flexible working as a key reason for being able or not able to work - and also lessen the likelihood that women will experience a knock to their position and pay when they have children – a significant factor in the gender pay gap. It is clear that action to increase the availability and take-up of flexible working opportunities, and to ensure that flexible work does not equate to lower status, lower paid work is imperative to ensure women’s successful participation in the labour market - including as part of the action needed to address the significant pay gap between men and women.

Fawcett is disappointed that the Bill does not remove the current 26-week qualifying period for requesting a right to flexible working as we see this as a barrier to women entering the labour market.

Cases of separation and family dispute

Fawcett is concerned that **Part 2, Clause 11** of the Children and Families Bill establishes an assumption of shared parenting following a separation, instead of making the welfare of the child the paramount concern. This may put women with abusive former partners and their children at risk. Fawcett maintains that the current law already contains sufficient provisions for contact with non-resident parents and that the assumption of shared parenting will dilute protections for women and their children.

Fawcett recommends that the welfare of the child remain the court’s paramount consideration, with no dilution of this made by an amendment to the Children Act 1989 on shared/cooperative parenting.

Fawcett supports the recommendations of Rights of Women and Women’s Aid as they relate to Part 2, Clause 11 of the Children and Families Bill.

About Fawcett

The Fawcett Society is the UK’s leading campaign for equality between women and men. Our vision is of a society where women and our rights and freedoms are equally valued and respected and where we have equal power and influence in shaping our own lives and our wider world. Fawcett is a member of the Working Parents Group. Other members include: Working Families (Chair), Maternity Action, TUC, The Fatherhood Institute, Mothers’ Union, Single Parent Action Network, CPAG, 4Children, Family and Parenting Institute, Family Lives, Grandparents Plus, Gingerbread.

Preethi Sundaram

Policy and Campaigns Manager

Preethi.sundaram@fawcettsociety.org.uk

