

**Scottish Women's Convention response to:
The UK Government Consultation: Carer's Leave
July 2020**

Premise:

The UK Government is seeking views on a proposal to give employees a week of unpaid leave each year to provide care. Issues for consideration include:

- how carers use existing employment rights
- who should be eligible to take the leave
- what the leave can be taken for
- how the leave would be available to take and the process for taking the leave
- the costs and benefits to employers and employees

The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to women's equality.

Whilst we commend the UK Government for recognising the toll that caring takes on individuals and notes the need to provide some form of entitlement to them, there are a number of relevant issues the SWC believe should be further considered attached at the end of this consultation.

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

The definition provided is broadly agreeable in terms of outlining the relationship between the carer and cared for person in most cases where such a relationship exists. For the purpose of ensuring certain individuals are not overlooked, however, guidance should be produced as to how exactly the term "reasonably relies" is to be understood by both employers and workers.

Additionally, a restrictive definition may allow certain employers to disregard the needs of some individuals by arguing they do not fall within the category. Or, alternatively, recriminations may be put in place if an employer ultimately decided after the subsequent leave was taken that the relationship did not fall within what they would consider reasonable.

Many of the issues set out here raise the acute need for sensitivity when approaching matters related to the health and personal relationships of both the carer and cared for person. Organisations should always strive to ensure the utmost privacy for carers in respect of their situation. In this area, designated persons such as trade union representatives or equality representatives should be on hand to administer and take charge of such procedures where staff may feel uncomfortable going to management.

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

The majority of women are of the opinion that no one would willingly misuse such an entitlement, particularly when it is unpaid, and thus such a sensitive issue as this should not be subject to strict definitions. Whilst we commend the Government for noting the flexibility of familial bonds, a looser definition is to be preferred over one that may restrict carers to only those that they are related to. There may also be issues with a closed definition where an individual has suddenly become a carer and may not be able to provide proof of close bonds at such an early stage in the caring process.

Other issues must also be examined in order to recognise the burden that unpaid caring has on women. Given the toll that health inequalities play on carer's themselves, it is wholly appropriate to allow such leave to be taken as a temporary reprieve for the carer from work. Instances where an individual should also be covered in order to step in as a temporary carer for a certain period whilst the permanent carer is otherwise occupied due to ill health or other issues should also be looked at.

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.

The severe toll that juggling both work and caring responsibilities plays on women should not be underestimated. For this reason, carers should be allowed to make use of such a policy to take time for their own wellbeing if they think it is best. If they do not wish to disclose to employers these reasons but feel pressured into providing evidence, this may lead to further ethical issues and place undue stress on the individual.

As reiterated above, this is a highly sensitive issue where carers may not wish to disclose medical or other confidential records. Women are of the agreement that as this form of unpaid leave is highly unlikely to be misused, restricting the particular conditions it can be used for may be inappropriate. Additional problems may also be encountered where a restrictive definition is placed on the conditions under which care leave can be taken. Employees may find themselves being asked difficult and intimate questions regarding the nature of the condition and be pressured to provide evidence.

Which qualifying period do you believe is appropriate for Carer's Leave.

The SWC has continuously vocalised the opinion that all statutory rights and protections should be available to women from day one, regardless of their status as worker or employee. Policies which seek to alleviate some of the responsibilities that women are forced to juggle including caring and employment is no different. It should also be noted that becoming a carer is often a responsibility that happens quickly with little notice. It is under these circumstances in which women operate that employers and government policy must consider how they will impose notice periods for taking such entitlements as Carer's Leave. The stress that such impositions may cause when done in negative ways should be looked at to consider whether this is really appropriate.

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

A broad definition which does not impose restrictions on individual carers for using entitlements is needed to ensure maximum take up. If guidance distributed to employers lists only selected issues for uptake of leave, this risks individual's being unable to take advantage of such a policy in their best interests. Accompanying information should also lay out forms of best practice to organisations such as when other modes of working may be more suited. For instance, making use of flexible working to accompany cared for persons to hospital appointments rather than using the proposed Carer's Leave where appropriate.

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?

It should be recognised the restrictions that the unequal distribution of caring at any level, including childcare, places on women. Whilst entitlements such as Carer's Leave is not the correct format within which to place childcare policy, more flexible and succinct arrangements must be looked at alongside employment for working mothers.

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

Whilst caring responsibilities for those with short-term care needs may well fall out with the scope of this particular proposal, guidance must clearly articulate how exactly this will work in practice. For instance, employers must be aware of the blurring between short- and long-term care needs for individuals and the effect that this has on employees. If those with short term needs fall out with this policy, guidance should note the utmost importance of regularly checking in on worker's health and wellbeing.

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

Strongly Agree.

How often do you think an employee should self-certify their eligibility for Carer's Leave?

As laid out previously, entitlements such as the proposal for Carer's Leave should place a level of trust on the employee to act in their own and the cared for person's best interest. Such policies should be rolled out as a form of allowing women to retain their employment alongside their caring responsibilities and as such should not place undue pressure on them to produce evidence to back up their need for time off.

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

There are a number of delicate issues which may arise if the trust in an employee is called into question under the proposed Scheme. It is hoped that the vast majority of employers would not seek to put their own workers in a position where they have to provide documentation of a cared for person's health.

Guidance should be produced in conjunction with the third sector and health and social care as to how to approach such issues. As stressed previously, this form of leave being unpaid would more than likely not be open to such misuse. There are also numerous

issues around what form of guidance an employer may request, including confidential medical information.

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

Employers should provide guidance as to where employees should reasonably give notice in relation to the proposed entitlement. However, given the unpredictability of the health situation of a cared for person, this may not always be possible and therefore we would recommend that some form of leeway is provided in this respect.

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

There are a host of opportunities for employers when allowing for policies and guidance which permit additional flexibility for carers. Not only does this illustrate the workplace recognises the responsibilities that carers have but shows they are appreciated members of the wider workforce including:

- Allows open dialogue between employee and employer about caring responsibilities. This in turn can lead to codifying best practice for the future.
- Allows employers to identify the best opportunities for providing employees with support and additional guidance.
- May be used as an opportunity to provide a dialogue in the wider workplace about caring responsibilities.

Whilst we commend the UK Government for recognising the toll that caring takes on individuals and notes the need to provide some form of entitlement to them, there are a number of relevant issues the SWC believe should be further considered:

- Employers whilst being mindful of the need to provide accommodating options for staff should also note the benefits that many unpaid carers take from being an active participant within the workforce. The current COVID-19 pandemic has provided numerous opportunities for organisations to expand their use of homeworking. In regard to carers, many employers may assume it is in the individual's best interest to continue to work from home. This may not always be the case and actually be a detriment to carer's wellbeing. In this respect, guidance should be implemented at a national level to illustrate the need for sensitivity and dialogue in such subject matters and taking these on a case by case basis.
- Additional guidance and accessible information are needed which notes information about other entitlements including the right to request flexible working for carers.
- Whilst we commend the tacit acknowledgement that additional entitlements should be in place for unpaid carers, it must be clear that any new policies do not cross out other statutory entitlements. For instance, by taking carer's leave it must be stressed that the right to request flexible working cannot be undeterred or used against the individual.
- The Government should consult on covering the cost of such unpaid leave by a Government funded grant which covers one week of the employee's salary to ensure wages are not detrimentally hit. This is of particular importance given that the vast majority of carers tend to be sequestered into low paying jobs where taking unpaid leave may not be a viable option. A grant would have the additional benefit of not imposing restrictions on an individual's social security allowances, as well as allowing this to be paid directly through the current social security system.
- As with the majority of employment legislation, any proposed policy will divide jobs into two categories of employees and workers - those with rights and those without. Given the high proportion of women that lack statutory provision under employment law due to the nature of much of their work, more must be done to ensure they are also afforded the same protections and do not miss out financially.
- Whilst we recognise the advantages that a policy such as this has for some carers in allowing an extra proportion of leave per year, other developments are still needed to offset the unequal impact of caring on women. This would include proposals such as further time off and funding for respite care and additional training and return to work programmes for women with caring responsibilities.

Conclusion

The SWC is grateful for the opportunity to respond to the UK Government's consultation on Carer's Leave to ensure women play a vital role in the decision-making process. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to employment and equality for women.

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