
STATES OF JERSEY



FAMILY FRIENDLY POST- IMPLEMENTATION REVIEW: REPORT AND MINISTERIAL CONCLUSIONS

Presented to the States on 26th April 2024
by the Minister for Social Security

STATES GREFFE

REPORT

Introduction

The Post-Implementation Review (PIR) survey in respect of the final tranche of family friendly employment rights took place between 15th November 2023 and 22nd December 2023. Details of the survey were distributed widely via a SmartSurvey link. Recipients included employee and employer groups, who were asked to cascade to their membership:

- Chamber of Commerce
- Jersey Hospitality Association
- Institute of Directors
- Unite the Union

as well as those organisations with an interest in and concern for the promotion of family-friendly policies, and advice groups, including:

- Jersey Childcare Trust
- Best Start Partnership (consisting of voluntary, government and private sector organisations)
- Citizens Advice
- Salvation Army
- The Children's Workforce

In cooperation with Corporate Communications colleagues, the full range of GoJ social media platforms was also used.

The survey took the form of a simple set of questions, one for working parents and one for employers, designed to elicit relevant responses.

The new legislation

In August 2017, the then Minister for Social Security directed the Employment Forum to consult on extending family friendly employment rights and to make a recommendation to her. The Minister specifically directed the Forum to consider a number of improvements, including longer periods of maternity, parental and adoption leave, paid periods of leave, removing the qualifying period for the right to leave, right to attend antenatal appointments for the father/partner and to remove the qualifying period for the right to request flexible working.

“Family-friendly” amendments to the Employment Law were made in two tranches in 2018 and in 2020. The 2018 amendments included:

- Increasing maternity, adoption and parental leave to 26 weeks
- Increasing paid maternity and adoption leave to 6 weeks
- Introducing 2 weeks of paid parental leave
- Introducing the right to attend antenatal appointments for the father/partner
- Extending the right to request flexible working to all employees

The 2020 amendments to the Law went further still. They included:

- Combining the existing periods of leave (maternity, adoption and parental) to create a new ‘parental leave’ to be available to all parents
- Increasing parental leave to 52 weeks per parent
- Providing equivalent leave for intended parents in a surrogacy situation
- Introducing antenatal appointments for adoptive parents/intended parents
- Introducing breastfeeding rights (breaks and workplace facilities)
- Introducing a right to paid absence on health and safety grounds

In parallel, the new contributory parental allowance created in 2020 also allows both parents to claim contributory benefits for up to a total of 32 weeks, which can be split between them. The current rate is £265.93 per week. The table below gives details of the 2020 as well as the previous family-friendly legislative rights:

	FAMILY-FRIENDLY RIGHTS PRE- JULY 2020		FAMILY-FRIENDLY RIGHTS INTRODUCED IN JULY 2020
Maternity leave	26 weeks of leave of which 6 weeks paid at 100% of pay by the employer. No qualifying period.	⇒	52 weeks of leave for both parents of which 6 weeks paid at 100% of pay by the employer, with no qualifying period.
Parental leave	26 weeks of leave of which 2 weeks paid at 100% of pay by the employer. Can be taken in up to 3 blocks of leave.	⇒	For the birth mother – 6 weeks paid leave must be taken immediately after birth. Can be taken in up to 3 blocks of leave during a 2-year period, with a minimum period of two weeks for each block.
Adoption leave	Paid and unpaid leave equivalent to maternity leave and parental leave.	⇒	New parental leave provisions are also available to adoptive and intended surrogate parents.
Surrogacy leave	No right to leave for the intended surrogate parents.		
Ante-natal care for birth and surrogate parents	No right to time off to attend appointments.	⇒	Unlimited attendance at appointments - up to 10 hours paid, the rest unpaid.
Adoptive parents – appointments	No right to time off to attend adoption appointments.	⇒	Unlimited attendance at appointments - up to 10 hours paid, the rest unpaid.
Breastfeeding breaks	No rights	⇒	Right to request temporary variation to terms and conditions.
Breastfeeding facilities	No rights	⇒	Employers must take reasonable steps to provide facilities in the workplace.
Paid absence on health and safety grounds	No rights	⇒	Right to paid absence where a risk assessment prevents a pregnant or breastfeeding woman from carrying out her normal job and she cannot be allocated to other duties.

The survey

The aim of the PIR was to invite views about the operation of the new family-friendly parental rights contained in Article 55 of the Employment (Jersey) Law 2003.¹ This report contains an analysis of comments received in that respect.

Some respondents also took the opportunity of the survey to make comments about the Social Security benefits available to new parents, as well as other more general contractual employment rights and other non-benefit issues. Some respondents contributed views as self-employed parents.

While not specifically relevant to the subject matter of the survey, the Minister for Social Security has noted all these comments, which are discussed in a separate section towards the end of this report. The comments are listed below by question, with the individual themes explored separately in the analysis section.

ANALYSIS OF EMPLOYEE RESPONSES

Questions for working parents:

1. If you are a working parent, and have had a baby or adopted a child since July 2020, have you used your new parental rights?

Of 135 responses, 6 respondents said “no” and 129 said “yes”.

Of those who replied “Yes”, typical comments included satisfaction at being able to spend more time with the child and the ability of partners to make use of the new rights as well. One parent wrote in response: *“Compared to my first-born in 2015, the new rights were so welcome and made the process of taking leave and discussions with my employer much easier.”*

Another wrote: *“With my second, I took 10 months maternity [leave]. My husband took 6 months in two blocks. Again, I negotiated to ensure I had appropriate breastfeeding breaks when I went back to work, and my work were good with this.”*

2. If you have a partner, have they also used their parental rights?

Of 134 responses, 18 said “no” and 116 said “yes” (either using full or partial entitlement).

One respondent wrote: *“We used the full paternity [partner parental leave] leave in blocks which was so helpful, particularly as I had a C-Section for both children.”*

Other respondents wrote: *“My partner took 6 weeks paid, but was not allowed to take it at once, according to [the decision of] his employer.”*

¹¹Articles 55A to 55Z of the Employment (Jersey) Law 2003:
www.jerseylaw.je/laws/current/Pages/05.255.aspx

“My partner used his paid 6 weeks. However, we couldn’t afford for him to use the rest of the unpaid time”

3. Have the new parental rights been useful to your family?

Of 134 responses, 11 said “no” and 123 said “yes (to a greater or lesser extent). Some comments included:

“Yes, far more time to settle into parenting and resulted in a totally different birth story from my first child to my second.”

“Very useful. With my first child I went back to work when he was 13 weeks old, and I found this very difficult.”

“Before them [the new provisions] I would have had to ask work permission to take longer than six weeks off work. Now they have no choice and I’ve taken full advantage of that with my second baby.”

Several respondents made the point that they would have liked to take more time off with parental leave, but the length of the contributory parental allowance period was too short for them to be able to do so financially (see also responses to Q.5 below). Respondents said that a longer period of benefit entitlement should be considered.

One said: *“Would be nice for the benefit to parents to be more and more time with the baby.”*

4. Have you experienced any problems with using your new parental rights?

Of 134 responses, some 20 reported specific issues with using the new rights. One clear issue appears to be the lack of knowledge or misinterpretation among employers and new parents about the new provisions. Comments included:

“My current employer wasn’t aware of the new rules.”

“I didn’t know about them.”

“I was told to take all my antenatal appointments as lunch breaks, but per legislation you should be given leave for these.”

“When the new rights came about, both myself and my partner were not communicated effectively with through our companies when preparing our maternity and paternity leaves.”

Other issues included what one respondent described as “discrimination” by an employer or an adverse culture in the workplace:

“Some derogatory comments from colleagues in response to my husband’s ‘6 months off on holiday’. Cultural change will take time....might be worth some training for managers about broadening the idea of parental leave.”

“Allowing to take the 6 weeks has had many comments made about his extra ‘holiday’ and how it didn’t happen in their day....”

“Yes. Partner was told he may be demoted if he took parental leave, so he negotiated a period of part time work instead, which was not ideal.”

Some respondents remarked that the requirement to take parental leave in three blocks of a minimum of two weeks each was a barrier, when greater flexibility was needed. Other respondents raised what was described as a need for greater flexibility in the allocation of parental leave as between partners.

Comments included:

“There should be the possibility for the mother to use the allowance of the partner if [he/she] is not able to use it and then it is lost.”

“We did not share the parental leave as my husband earns significantly more than me. More work needed here on supporting women’s equality....both parents are not considered equally in the workplace.”

5. Are there any changes you would like to see in the new parental rights?

126 responses were received.

Many respondents said they would like to see more flexibility in the structure of the new rights and suggested that a longer period of contributory parental allowance is needed to enable new parents to take full advantage of their employment rights and to be able to stay at home. Various scenarios were suggested, including raising the limit for the fully paid element to 26 or even 52 weeks (or a combination of full pay and extended parental allowance). Responses also included a wish for the current two-year window to take the statutory parental leave to be increased to three years.

One respondent also suggested:

“There should be longer time off. At least 12 weeks’ subsidised pay [in steps] so – 6-8 weeks at 75% [of statutory pay]; 8-12 weeks at 50% [of statutory pay].” Another said:

More [of the] paid element would be helpful to the less well off.”

These particular sentiments are echoed throughout the responses to this question.

Flexibility around the ability to transfer parental leave between partners was another common suggestion.

Respondents said there should be more focus on expanding peripheral rights to include not only time off for ante-natal and pre-adoption appointments but for issues such as pregnancy-related sickness.

An issue was raised about employers not being flexible enough with mothers in particular returning to work (notwithstanding the fact that the new rights include the ability to request amendments to the working pattern and to enable new mothers to breastfeed or to be able to make alternative arrangements). One respondent said:

“...upon wanting to return to work my wife’s employer offered absolutely zero flexibility with regards to working hours/pattern. She was faced with two choices: either return on full-time hours or resign. The former was not practical, so she had to resign.”

Some respondents made a point about the discrepancy about the amount of parental leave that could be taken by those in the public and the private sector; the contractual rights in place for the public sector being more generous than the statutory rights introduced by the new legislation.

Respondents said that the Government should be much better at communicating new initiatives like this to employers, some of whom appeared to be unaware of the new rights or were reluctant to make suitable arrangements for parental leave and changes in working patterns. A concern was also expressed that some employers were taking advantage of the new rights to row back on rights previously available to male staff. In respect of contractual rights provided, one respondent wrote:

“It feels [as if] some employers have taken advantage of the new legislation being perceived to be too generous, to scale back on rights previously given to staff.....I’m aware of several employers that have reduced their male staff rights since the legislation was introduced, thus increasing the inequality between male and female employees. If the Government could encourage private sector firms to offer the rights in a gender-neutral way, that would go a long way in shifting cultural mindsets.”

The questions to new parents concluded with:

6. Do you have any other comments about the new parental rights?

To a greater extent, the responses to this question mirrored those set out above in the previous question.

In summary, the overwhelming majority of respondent parents told us they had made use of the new parental employment rights, to a greater or lesser extent. The new rights are supportive and forward-thinking and should be welcomed.

At the same time, some respondents considered that individual elements needed further consideration, including a potential increase in the minimum statutory parental paid leave period; better communication of the new rights; a requirement for employers to offer more flexible working rights for new mothers in particular, so that they are not forced to choose between having children and pursuing a career; consideration of the way other countries structure family-friendly rights, especially those that offer longer periods of paid leave.

ANALYSIS OF EMPLOYER RESPONSES

7. Have your employees used their new parental rights?

Of those that gave positive or negative answers, 30 respondents said “yes”, and 5 respondents said “no”.

8. Have you made any changes to your business because of the new parental rights?

Of those expressing an answer, 7 said “yes” and 18 said “no”.

Of those that replied “yes”, the changes were mainly around revising staff handbooks to reflect the new rights and ensure that the initial six-week payment from the employer was factored in. One employer had increased their parental leave offering but had balanced that with an updated policy which deducted the parental allowance from both parents after six weeks.

9. Have you experienced any problems with administering the new parental rights?

Of those expressing an answer, 5 said “yes” and 26 said “no”.

Of those replying “yes” and offering a reason, one response complained of the lack of qualified staff to cover the parental leave of another employee.

8 others responded “no” to this question.

10. Have you seen an increase or decrease in the number of employees returning to work following the birth or adoption of a child?

Of those offering a view, 4 said they had fewer employees returning and others moving to part-time working because of the lack of affordable nursery/childcare facilities.

One said they had lost three members of staff after parental leave because of their inability to afford nursery fees. Another employer had seen a decrease because an employee had to stay at home for their child’s first three years, for the same reason. A third repeated the fact that an employee had to take longer unpaid leave because they couldn’t find a nursery place, and this was having a financial impact on their new family.

11. Have you experienced any other problems with the new parental rights?

22 respondents said “no” and 1 offered substantive comments:

“...as a small business with specialist staff (specific training and skills not replicated on Island), any employee seeking to take the full time off could cause us significant issues in terms of business continuity/financial viability. This is not an issue for larger employers who may be able to shuffle staff around to cover. Greater assistance should be made available to employers where needed.”

12. Are there any changes you would like to see made to the new parental rights?

15 respondents said “no”.

Of those that said “yes” (16 responses), in general, they focused on the length of parental leave currently available, and the financial support offered by way of the parental allowance.

Comments included:

“Flexibility during the return-to-work period is needed.”

“The blocks system”

“Should the paid in full leave period be extended then government support/part funding would be essential to small commercial businesses.”

“Government funding for employers to replace staff in the short term whilst people take the leave. Government funding for payment of salary whilst parent is on leave.”

13. Do you have any other comments?

Six respondents offered substantive comments. Almost all were concerned with the provision of affordable nursery places and childcare. Comment was also made that if the length of paid parental leave were to be extended, then government support or part-funding would be essential for small businesses to remain viable.

The view of the Jersey Advisory and Conciliation Service (JACS)

JACS has a significant role to play and a statutory responsibility to advise on all aspects of the Employment Law, including queries relating to the family-friendly rights.

In its response to the survey, JACS noted that the advice being offered to clients (both employees and employers) would appear to indicate that some parties are struggling with understanding the new parental rights. In most cases the requests to JACS from both employees and employers have been for clarification of the family-friendly rights. There have been very few claims lodged, and those that have been lodged have been resolved before action.

Some of the issues that have been raised in client contacts include:

For employers:

- Misunderstandings about the fact that the new family-friendly rights are a Day 1 right and concerns that they should apply to those who have just started employment, and including those who are employed on a zero hour contract
- Concerns that they cannot claw back statutory payments if an employee chooses not to return to work following parental leave
- How to calculate annual leave if an employee does leave during the parental leave period

For employees:

- Not being able to negotiate workload around parental leave

- Entitlements to bonuses and accrued pension rights during parental leave
- The loss of accrued annual leave where an employer has a policy of leave being used by year end

JACS has also provided a breakdown of the number of contacts they have received about breastfeeding and parental rights since their introduction:

2021 contacts	Breastfeeding: 5	Parental Rights: 504 of 8430 total client
2022 contacts	Breastfeeding: 3	Parental Rights: 442 of 8788 total client
2023 contacts	Breastfeeding: 6	Parental Rights: 477 of 9446 total client

ISSUES OUTSIDE THE AMBIT OF THE EMPLOYMENT LAW

Social Security Law - provision of parental allowance

Comments made by respondents on the issue of the length and monetary value of the parental allowance period include:

“My partner was told he could not have 6 weeks paid by employer but have [social security] benefits instead.”

In this context, one respondent also wrote:

“It was useful in a way that I was able to take a year this time to be with my second child. Frantically trying to save wages so that I could still pay half the mortgage and bills when I wasn’t getting my usual wage wasn’t fun and we ended up having to borrow money to get through the year.”

Another said:

“The payment from the Government does not last for the 52-week period of potential parental leave.”

In addition to concerns about the overall amount of paid parental leave allowed by the statutory scheme (or the lack of it), in relation to the requirement that there be sufficient social security contributions to enable the parental allowance to be claimed, some respondents were critical. One respondent said:

“My partner hadn’t paid his social security contributions so was unable to claim his six weeks’ parental allowance, but I wasn’t able to claim it instead, even though I had never missed a social security payment. This wouldn’t have happened if I was a single parent or hadn’t put him on the original claim.”

Another said: *We are looking to have another baby; however, if they are born during a period when I'm on unpaid maternity leave the year before (i.e. not paid social security contributions for those months) I won't be entitled to the parental leave support, even though I will have returned to work in between and been paying contributions for almost 25 years. Makes no sense.*"

An employer was critical of the way the parental allowance scheme appeared to work, saying:

"After employing a new staff member, he advised that his partner had become pregnant and that he would be exercising his entitlement to parental leave. It was only when he got closer to taking this that we discovered he did not have a complete contributions record and did not qualify for any payment from Social Security, leaving the full financial burden on us as his employer. We questioned this at the time and were told it was correct and nothing could be done about it, a result which seems grossly unfair on unsuspecting employers."

OTHER ISSUES IDENTIFIED

The position of self-employed new parents

Self-employed islanders are not covered by the provisions of the Employment Law. The review received a few responses from self-employed islanders, all of which were negative. Scepticism was expressed generally about the situation regarding self-employed parents and the new parental rights.

The law, they said, should be more supportive of self-employed parents, who deserve more help with the costs of childcare or nursery provision, and who feel neglected in terms of the benefits available, even though they pay double social security contributions.

One self-employed respondent commented (in respect of suggestions for changes to the current scheme):

"Support for people who own their own business who cannot take time off because there is no-one else to take over the role."

The provision of affordable childcare and nursery places

Respondents to this issue indicated a clear wish that the provision of affordable childcare and nursery places be increased. This is linked to the inability of some respondents to utilise all of their parental leave entitlement, because of the costs and availability of nursery and childcare provision.

Several respondents said that the Government should be subsidising childcare allowance/nursery provision to a far greater extent and for a longer period of time.

One respondent wrote:

“It would be great if we could have some help with nursery. Neither me nor my partner can afford to stay on parental leave until our baby is at the age for free pre-school provision. Cost of living in Jersey is too high for that. But at the same time there is no help from Government. Nurseries are too expensive and too full. There should be more help with this, like it is....in the UK.”

In this respect, **Question 10 for employers** (see above) elicited responses solely connected with affordable childcare and nursery provision.

Question 13 for employers (see above) also drew responses on this issue. Typically:

“Improved nursery options are vital to enable families [to have] the option of returning to work after a new baby. At the moment, nursery places are sparse and difficult to secure even once the child has turned one and you’ve exceeded the 52 weeks off. More needs to be done to make this more affordable and easier to access.”

OVERALL ANALYSIS OF THE SURVEY RESULTS

In October 2019 the States Assembly agreed Proposition P.54/2019, as amended.² The Proposition’s scope has been reflected in the analysis of the responses, including those areas which lie outside the ambit of the Employment Law. Overall reflections include:

Employment Law

- There appears to be a clear communications gap about the rights and responsibilities of employers and employees which needs to be tackled
- Many respondents expressed a desire for one parent to take over the unused parental leave rights of the other parent
- There was some dissatisfaction expressed that taking leave in up to 3 blocks over 2 years was not sufficiently flexible, for employees in particular, and especially during the return-to-work phase
- Some respondents were keen that the fully-paid 6-week period should be increased

Social Security Law

- Some respondents referred to the fact that their partner was not able to take more unpaid time off because of the financial position this would put the new family in. This led on to a concern that partners would not be able to exercise their right to their full parental leave allowance of 52 weeks because of the strain on family finances. Some respondents were keen that the number of weeks paid at the parental allowance rate should be increased

² [Employment \(Jersey\) Law 2003: review of parental leave rights amendments \(P.54/2019\) – amendment \(gov.je\)](#)

- The issue of the existence of a contributions record to enable new parents to benefit from the parental allowance has been raised. A criticism is that the need for a contributions record to be able to claim the allowance penalises some parents who do not have the necessary qualifying record
- The view was also expressed that it was unfair to place the full financial burden for the six weeks of parental leave on an employer who cannot make deductions if their employee hasn't made sufficient contributions to qualify for parental allowance

MINISTERIAL CONCLUSIONS FOR FURTHER ACTION

Bearing in mind this analysis of responses, the Minister has concluded the following actions:

1. Employment Law

- Action to increase awareness of the family-friendly rights by developing an effective communications strategy. This can be achieved without major resource implications in terms of cost and time. The specific strategy can be developed with colleagues across government and external bodies, along the lines of the work done to produce the employment rights leaflet for temporary incoming employees
- The Minister considers that caution should be exercised in considering amending the Employment Law to provide for a more flexible division of parental leave between parents, to enable one or the other to use more than one year, or to consider amending the Employment Law to create more flexibility for taking parental leave in terms of blocks, minimum periods of leave and length of entitlement to take leave. The indications from the survey are that the scheme is working well and has been welcomed by most respondents. It would not be possible to respond positively to all the views expressed, in terms of amending the Law. An effective communications strategy, as outlined above, will help employees and employers to better understand the new regime and to be able to seek appropriate advice and assistance
- The Minister is also conscious that increasing the flexibility in the Law to allow parents more options to split the leave entitlement between them, might undermine a fundamental aspect of the 2020 family-friendly changes, which is to give each partner the same rights in respect of parental leave. In that respect the changes in the law are a progressive step
- By the same token, in relation to the parental leave-taking structure, the Employment Law requires significant lead time notice to be given by an intending parent to take parental leave. The Law also gives an employer the right to refuse subsequent requests by an employee to vary the periods of leave

originally requested, in certain circumstances. These two provisions are designed to maintain a proper balance between the responsibilities and rights of the employee and employer

- The options relating to amending the Employment Law would require further detailed consideration. The Minister will consider commissioning a specific consultation exercise, but is not currently persuaded that, in terms of the overall reaction to the use of the new rights, this is a priority
- Increasing the paid leave period would increase the financial burden on an employer. The Minister considers no action should be taken on this option at this time

2. Social Security Law

- Commission a piece of work looking at the current rules relating to the parental allowance in the context of the work currently being undertaken at the possibility of credits for parents who claim Home Responsibility Protection. This currently protects someone's entitlement to a State Pension and Survivor's Benefit while they are not working, but not parental benefits. The Minister is, however, conscious that any changes to benefit rules would have cost implications for the Social Security Fund
- As part of the work outlined above, the Minister will consider the option of leaving the existing qualifying rules and requirements for an appropriate contributions record in place

3. Self-employed Islanders

- The Minister has considered the comments provided in the survey but notes that the family-friendly provisions are designed for those who are employees, covered by the provisions and the entitlements under the Employment and Social Security Laws. Islanders paying Class 2 contributions have full access to all social security benefits in the same way as employed Islanders

4. The provision of affordable childcare and nursery places

- The Minister has no responsibility for this aspect but will share the results of this part of the survey with ministerial colleagues with relevant interests in this issue