

# CARER'S LEAVE BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Carer's Leave Bill as introduced in the House of Commons on 15 June 2022 (Bill 23).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) with the consent of Wendy Chamberlain MP, the Member in charge of the Private Member's Bill in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Bill amends or inserts new provisions into the Employment Rights Act 1996, providing powers to make regulations to create an entitlement to Carer's Leave for employees. This leave will be unpaid and available to employees for the purpose of caring for a dependant with a long-term care need.
- 2 The Bill's powers allow provisions to be made for the following:
  - Carer's Leave – to create an entitlement for employees to be absent from work on unpaid leave in order to provide or arrange care for a dependant with a long-term care need. All employees who meet the eligibility conditions will be entitled to this leave, regardless of how long they have worked for their employer. The leave will be available to take in increments of half-days or individual days, up to a week, to be taken over a 12-month period. Employees will not be required to provide evidence in relation to a request for Carer's Leave.
  - Employment protections – employees taking Carer's Leave will have the same employment protections as associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption, Parental Bereavement, Shared Parental and Parental Leave). This includes protection from dismissal or detriment as a result of having taken the leave.

## Policy background

- 3 There are approximately 4.2 million people across the UK who are providing unpaid care by looking after an elderly or disabled family member or other dependant. The majority of unpaid carers are women, aged over 50. Over half of those providing unpaid care are thought to be balancing work alongside their caring responsibilities.<sup>1</sup>
- 4 There is currently no dedicated statutory leave entitlement for informal carers who have to rely on other forms of leave (e.g. annual leave) to take time out of work to care. This entitlement will recognise the needs of unpaid carers in work by providing them with a specific right to be absent from work for caring.
- 5 The Conservative Party manifesto in 2019 stated: *“We will also extend the entitlement to leave for unpaid carers, the majority of whom are women, to one week”*.
- 6 The Queen’s Speech in December 2019 committed to bringing forward measures *“to introduce the entitlement to leave for unpaid carers”*.
- 7 The Government launched a public stakeholder consultation on proposals for an entitlement to Carer’s Leave on 16 March 2020. The Government response to this consultation was published on 23 September 2021.
- 8 The Bill will give eligible employees an additional right to time off work on leave to provide or arrange care for a dependant with a long-term care need. This leave entitlement will be unpaid.
- 9 It requires regulations to give eligible employees a ‘day one’ right to Carer’s Leave, subject to certain criteria being met. This means that an employee would be eligible regardless of their length of service with their employer.
- 10 It also requires regulations to provide for at least one week’s leave in any 12-month period. Regulations may enable eligible employees to take Carer’s Leave flexibly, in individual or half-days, as well as set rules around notice and postponement for Carer’s Leave.

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<sup>1</sup> Family Resources Survey 2020/21 – available at:

<https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2020-to-2021/family-resources-survey-financial-year-2020-to-2021#care-1>

## Legal background

- 11 There is currently no specific statutory right to take time off work for carers, although there are several other rights to leave on which a carer might rely (provided they meet the eligibility criteria):
  - Time Off for Dependants Leave;
  - Unpaid Parental Leave; and
  - Annual Leave
- 12 An employee with caring responsibilities may also be more likely to make a request for flexible working under section 80F of the Employment Rights Act 1996.
- 13 The purpose of Carer's Leave differs from when an employee may take Time Off for Dependants Leave or Unpaid Parental Leave.
- 14 Time Off for Dependants Leave is available for emergency caring situations and has no notice period requirement. The policy intention is that Carer's Leave would, in contrast to Time Off for Dependants Leave, have a minimum notice period requirement and as such would be available to eligible employees for planned and foreseen caring commitments.
- 15 In contrast to Unpaid Parental Leave, which is limited to parents of children under 18, Carer's Leave will be available for a wider range of caring situations excluding general childcare, except where the child meets the definition of a dependant with a long-term care need.

## Territorial extent and application

- 17 Employment law is reserved for Scotland and Wales but devolved to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.
- 18 The clauses relating to Carer's Leave will therefore extend and apply to Great Britain, but the Bill itself extends to the whole of the UK owing to one of its consequential amendments.
- 19 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

# Commentary on provisions of Bill

## Clause 1

- 20 Clause 1 introduces the Schedule which sets out that a new “Part 8B” to be inserted in the Employment Rights Act 1996 to establish an entitlement to Carer’s Leave.

## Clause 2

- 21 Clause 2 allows the Secretary of State to make regulations that make provision consequential on the Act. Those regulations will be subject to the negative procedure.

## Clause 3

- 22 Clause 3 sets out the extent and short title of the Bill and makes provision for commencement.

## Schedule

- 23 The Schedule consists of 2 Parts which are explained in more detail below:

- Part 1 creates a statutory entitlement to carer’s leave, and
- Part 2 contains related amendments.

## Part 1: Carer’s Leave

- 24 Part 1 of the Schedule amends the Employment Rights Act 1996 to insert “Part 8B” after Section 80I, consisting of sections 80J to 80N, to provide for an entitlement to Carer’s Leave.

### 80J: Carer’s leave

- 25 Section 80J requires the Secretary of State to make Regulations to entitle an employee to be absent from work in order to provide or arrange care for a dependant with a long-term care.
- 26 Section 80J(2) sets out the eligibility conditions for Carer’s Leave, defining who qualifies as a dependant person, and what qualifies as a ‘long-term care need’.
- 27 A person is a dependant of an employee if they:
- Are a spouse, civil partner, child or parent of the employee
  - Live in the same household as the employee, otherwise than by reason of being the employee’s boarder, employee, lodger or tenant, or
  - Reasonable rely on the employee to provide or arrange care
- 28 A ‘long-term care need’ is defined as:
- Illness or injury (physical or mental) that requires, or is likely to require, care for more than three months
  - A disability for the purposes of the Equality Act 2010
  - Requiring care for a reason connected with old age
- 29 The regulations must set the extent of an employee’s entitlement to Carer’s Leave. Eligible employees must be entitled to at least a week’s leave during any period of 12 months. The regulations must also determine when the leave may be taken.

- 30 In addition, regulations can make provision about how the leave can be taken (including to provide for it to be taken non-continuously) and what the leave can be used for.

### 80K: Rights during and after carer's leave

- 31 Section 80K requires the regulations made under Section 80J to set out:
- The employee's rights in relation to retaining their existing terms and conditions of employment, whilst taking Carer's Leave;
  - The employee's obligations in relation to those terms and conditions;
  - The employee's right to return to work once their leave period has concluded and the nature of the job to which they are entitled to return, as well as the terms and conditions applicable on return, and matters such as seniority, pension and similar rights.
- 32 The reference to 'terms and conditions' in this context is not limited to contractual terms and conditions but does not include remuneration. Regulations can specify what things should, or should not be, seen as 'remuneration' for this purpose.

### 80L: Special cases

- 33 Section 80L allows the Regulations to make special provision for the redundancy and dismissal of employees during or after a period of Carer's Leave, including the consequences of failing to comply with the regulations.

### 80M: Part 8B: Supplemental

- 34 Section 80M allows the Regulations made under 80J to set out what notices must be given by an employee to their employer, and what procedures are to be followed in order to take Carer's Leave (80M(1)(a)). This includes providing that an employer cannot require an employee to provide evidence regarding their request to take Carer's Leave (80M(2)). Regulations may also set out any requirements for record keeping and the consequences of not complying with any of these notices, requirements, or procedures (80M(1)(b), (c) and (d)).
- 35 Regulations can make provision for the employer to postpone a period of Carer's Leave (80M(1)(e)).
- 36 Regulations can also make provision for situations where an employee also has a non-statutory right to take Carer's Leave, for example, a right arising under their contract of employment (80M(1)(f)).
- 37 Regulations can also modify the way in which a week's pay is calculated in Chapter 2 of Part 14 of the Employment Rights Act 1996 to take account of periods of Carer's Leave (80M(1)(g)). The concept of 'a week's pay' is widely used in that Act, for example in section 119 which sets out how the basic Employment Tribunal award for unfair dismissal should be calculated.
- 38 Regulations can also set out special provision for difference cases or circumstances (80M(1)(i)), including:
- A 'week's leave' should be determined by the number of days normally worked (or required to be worked) by an employee in a particular period;
  - The extent of an employee's entitlement where they are responsible for the care of more than one dependant during any 12 month-period.

### 80N: Complaint to employment tribunal

- 39 Section 80N sets out that an employee may make a complaint to an employment tribunal that their employer has unreasonably postponed or prevented them from taking Carer's Leave. It also sets out the timeframe within which an employee must make a complaint.
- 40 The tribunal must declare that an employer has unreasonably postponed, or has prevented, or



attempted to prevent the employee from taking Carer's Leave if they are satisfied that the employer has done so. The tribunal may, if it considers it just and equitable to do so, award compensation to be paid by the employer to the employee, taking into account the employer's behaviour and any consequential loss sustained by the employee.

### Parliamentary procedure applying to regulations

- 41 Paragraph 3 of Part 1 of the Schedule adds section 80J to the list of powers in section 236 of the Employment Rights Act 1996 which are subject to the affirmative parliamentary procedure. That means that any Regulations made under these new powers would need to be debated and approved in both Houses of Parliament before becoming law.

## Part 2: Further Amendments to do with Carer's Leave

- 42 Part 2 makes consequential amendments to other legislation, including references to Carer's Leave where relevant.
- 43 It includes amendments to the following Acts:
  - Employment Rights Act 1996
  - Income Tax (Earnings and Pensions) Act 2003

## Commencement

- 44 If the Bill successfully completes all of its Parliamentary stages in 2023, regulations are expected to be laid (subject to Parliamentary time) and commenced in 2024. Given this is a measure that will impact business, we anticipate the Bill and regulations coming into effect on a Common Commencement date.

## Financial implications of the Bill

- 45 This Bill may create a small cost to the Exchequer resulting from employees taking unpaid leave becoming eligible for certain benefits, specifically Carers Allowance and/or increased amounts of Universal Credit.
- 46 The one-off cost to business of familiarising themselves with the new legislation, for example to amend their HR policies, is estimated at £4.7m. The annual cost to business resulting from greater staff absence, recurring administrative cost, recurring familiarisation cost is estimated at £40m.

## Parliamentary approval for financial costs or for charges imposed

- 47 A money resolution is required for the bill. A money resolution is required where a bill authorises new charges on the public revenue or otherwise increases existing charges – broadly speaking, new public expenditure.
- 48 There is a potential increase in expenditure as a result of clause 1 and Part 1 of the Schedule to the Bill. An unpaid entitlement to Carer’s Leave may mean that employees taking the leave become eligible for certain benefits as a result of their income decreasing whilst on unpaid leave. Therefore, a new statutory right to Carer’s Leave will create a small increase to public expenditure in the form of new claimants for Carers Allowance and/or increased amounts of Universal credit – both of which are benefit payments administered by the Department for Work and Pensions. This increase in expenditure will be covered by money provided by Parliament (by virtue of [Section 70 of the Social Security Contributions and Benefits Act 1992 and Part 1 of the Welfare Reform Act 2012]).

## Compatibility with the European Convention on Human Rights

- 49 This Bill makes provision as to which employees will be entitled to carer’s leave. This includes drawing distinctions between persons based on whether they are providing care or making arrangement for the provision or care, considered a dependant, and if they have a long-term care need as defined in the Bill. As this may draw distinctions on the basis of disability, age and other statuses, these decisions are therefore capable of engaging Article 14 of the ECHR, read with Article 8. However, the Department considers that decisions made in relation to entitlement have been taken compatibly with the Convention rights.

## Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd Cymru for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	No	No	Yes	No
Clause 2	Yes	Yes	Yes	Yes	No	No	Yes	No
Clause 3	Yes	Yes	Yes	Yes	No	No	Yes	No
Schedule								
Part 1	Yes	Yes	Yes	No	No	No	Yes	No
Part 2	Yes	Yes	Yes	Yes	No	No	Yes	No

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