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GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Eighteenth Sitting

Tuesday 23 April 2013

(Afternoon)

CONTENTS

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Saturday 27 April 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Christopher Chope, † Mr Dai Havard

† Barwell, Gavin *(Croydon Central)* (Con)
† Brooke, Annette *(Mid Dorset and North Poole)* (LD)
† Buckland, Mr Robert *(South Swindon)* (Con)
† Elphicke, Charlie *(Dover)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
Glass, Pat *(North West Durham)* (Lab)
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
† Jones, Graham *(Hyndburn)* (Lab)
† Leadsom, Andrea *(South Northamptonshire)* (Con)
† Lee, Jessica *(Erewash)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Nandy, Lisa *(Wigan)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Powell, Lucy *(Manchester Central)* (Lab/Co-op)
† Reed, Mr Steve *(Croydon North)* (Lab)
† Sawford, Andy *(Corby)* (Lab/Co-op)
† Simpson, David *(Upper Bann)* (DUP)
† Skidmore, Chris *(Kingswood)* (Con)
† Swinson, Jo *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Timpson, Mr Edward *(Parliamentary Under-Secretary of State for Education)*
Whittaker, Craig *(Calder Valley)* (Con)

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 April 2013

(Afternoon)

[Mr Dai Havard *in the Chair*]

Children and Families Bill

2 pm

Sitting suspended.

2.42 pm

On resuming—

Clause 87

Shared parental leave

Amendment proposed (this day): 325, in clause 87, page 55, leave out line 12.—*(Lucy Powell.)*

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 326, in clause 87, page 56, leave out line 3.

Amendment 327, in clause 87, page 59, leave out line 11.

Amendment 328, in clause 87, page 59, leave out line 46.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jo Swinson): It is great to be back in Committee this afternoon. I appreciate the flexibility that you, Mr Havard, and Members have shown by allowing us to start this sitting a little later to enable me to deal with business on the Floor of the House regarding the Enterprise and Regulatory Reform Bill, which happily has concluded slightly earlier than we had expected.

I was responding to the hon. Member for Manchester Central on amendments 325 to 328 and the range of issues that she raised. One of those was that of single mothers, who will of course be entitled to 52 weeks of maternity leave and 39 weeks of pay and allowances, as they are now. However, she was right to say that maternity leave needs to be continuous and so cannot be split into chunks. The situation that the Government are in is that parental leave and pay must be equal between mothers and fathers to comply with equality law, whereas maternity leave is obviously specific to the needs of a mother having given birth. The flexibility of being able to apply parental leave to single parents would radically increase the overall cost of the policy, because it would have to apply to all men as well. At this time, it is obviously not easy to find the resources for that, as was the case with the daddy month that was proposed initially and to which we may come later on, in terms of taking a power to do it in the Bill. However, the current economic circumstances do not enable us to find the additional money to do that immediately.

In a general sense, given that we already had additional paternity leave and are now going to the next stage of shared parental leave, which is much more flexible, it is important to note that over the coming years this issue will change. What we are trying to see is a cultural change; instead of it being the standard default option that mothers stay at home and look after children and fathers go out and be the breadwinners, this is about families working out what works best for them and breaking down some of those old stereotypes. There is no reason why fathers cannot be the main care-giver, if that is what works for a particular family. I believe there will be tweaks and changes in years to come; that will become more possible as the economy improves.

The amendments aim effectively to make parental leave a day one right for all employees, provided other conditions of employment are met. I totally understand the motivation behind the amendment. I think I explained this morning why we had the slight change to the "Modern Workplaces" consultation; that was about concerns that mothers would feel compelled to take less maternity leave. That is why we had the differences and did not have a day one right for parental leave under the new system. What we will have is a radical new system of leave that will enable working couples to take leave together and better manage their caring responsibilities with work commitments.

Importantly, this new system will also encourage more dialogue between employees and their employer. In some circumstances, that works swimmingly. No doubt the hon. Member for Manchester Central has had excellent conversations with the Whips on this, but it is not always that straightforward. Some women feel very nervous about those conversations with their employer and some employers do not know how to respond and the best way to manage that situation. Requiring parents who want to use shared parental leave to think about this in advance, to state when they would like the maternity leave to end and then what they would like to do in terms of sharing the parental leave is a trigger for a conversation with the employer. We need to ensure that that is properly supported through good guidance and information that is made available so that employers can also get the benefits of flexibility from managing their staff better. Parents will also get the advantage of that flexibility.

There is a balance between that flexibility for families and the certainty for employers. That is where the issue of the day one right comes in. The duration of service qualifying condition gives employers a greater degree of certainty that any new employee they take on will not immediately be absent from the workplace on shared parental leave. Obviously the details of how this duration of employment condition will work will be set out in secondary legislation, but I envisage that it will be similar to the current requirements around additional paternity leave, which would be that the employee must have worked for the same employer for 26 weeks by the 15th week before the baby is due. That always sounds a bit of a mouthful, but when I started looking at this, I realised that it basically means the employee was working there when the pregnancy began. That is the rationale for that.

Maternity leave is a day one right, as I think I mentioned a little earlier, for health and safety reasons, protecting the health of both the mother and the baby. The hon. Lady was right to say that adoption leave is also becoming a day one right, and we are making that specific change. That has been done very deliberately. For all of the reasons that were outlined in the earlier discussions on the Bill around adoption, we need to

make sure that prospective adopters are not prevented from adopting because they have not met the duration of service qualifying criteria. Unlike birth parents, at the moment, either parent could be prevented from taking any leave, and we could end up in a situation where no one was available to look after the child after adoption. The consequence could be that the child is either not adopted at all or remains in care for longer than is necessary. Earlier discussions referred to how even a few months longer in care, rather than moving into an adoptive home, can make a significant difference in a child's life. That is the reason for the different treatment there. I hope that explanation helps the Committee.

The new shared parental leave system brings real benefits to working families. I want to ensure that these benefits can be enjoyed by the largest group of parents. But we need that balance to ensure that employers are confident to take on new employees. That is particularly relevant in the current circumstances, where unemployment concerns all hon. Members. I believe the duration of employment condition therefore achieves the appropriate balance between those objectives. I hope the hon. Lady will be reassured and withdraw her amendment.

Lucy Powell (Manchester Central) (Lab/Co-op): I thank the Minister for some of the reassurances she gave. As she said earlier, this is potentially an exciting piece of legislation in relation to shared parental leave. I hope that that excitement is matched by reality as we start to see the take-up of this option. The idea of my amendment is to enable as many parents as possible to take up parental leave, so on the basis that once this measure comes into effect—we might have all swapped sides by then, but let us not go down that road again—we can keep an eye on the uptake while being mindful of the Minister's target of at least 8% take-up, which would be good. I welcome her view that this is the first of many steps to enable many more parents to take up this option.

I am also reassured by what the Minister said about self-employed fathers and I take on board her comments about single mothers. On the basis that we all want to see the culture change develop over the next few years, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lisa Nandy (Wigan) (Lab): I beg to move amendment 338, in clause 87, page 56, line 37, at end insert—

'(7) Entitlements provided by regulations made under this section may be transferred to another family member or other related party in the following exceptional circumstances—

(a) where a mother is incapacitated;

(b) where a medical practitioner prescribes that the mother is unable to look after the child; or

(c) where the mother dies in childbirth.'.

We very much welcome the clause; my hon. Friend the Member for Manchester Central made a strong case for why it matters. The amendment would ensure that there is flexibility in the legislation for "exceptional circumstances". It does not define those circumstances—the Government could set those out in regulations—but the purpose is to ensure that if children need to be looked after in exceptional circumstances, the parental leave enabled by the clause can be allocated to someone else, such as a grandparent, an aunt, an uncle, or even the father if he would not ordinarily qualify.

Those exceptional circumstances could be that the mother becomes incapacitated, very ill, or even dies in childbirth, or there is some other complication that requires urgent and immediate assistance but also longer-term assistance over the period of the parameters of shared parental leave. The amendment is supported by Working Families; it says:

"There may be occasions when it would be appropriate for another family member to be able to access shared parental leave and pay. For example, if a single mother is incapacitated and cannot care for her new child, it may be helpful if a grandparent or kinship carer to be entitled to leave and pay. At present they would only be able to take a limited amount of unpaid 'time off for dependants'.

Similarly, there may be circumstances in couple families where the mother is unwell but the father does not qualify for shared leave to care for the baby. The Bill should make provision for exceptional circumstances when shared parental leave and pay could be transferred."

In the examples Working Families gives, which are based on real cases that it has come across, it talks about families at a time when they are under pressure not just because of a new child, but because of other factors. We ought to be doing everything that we can to support families in those circumstances.

Lucy Powell: I wanted to add in another exceptional circumstance for my hon. Friend and the Minister to consider. In the horrible event of a late pregnancy stillbirth, I know that even though many families may qualify for compassionate leave, they still struggle to get the necessary time off work.

Lisa Nandy: I am grateful to my hon. Friend for raising that. From constituents who have raised several unfortunate cases such as that, and the charity Sands, to whom I pay tribute for its important work in this area, I know that we have one of the worst records in Europe for stillbirths; far too many families are still affected. In those circumstances, working commitments can make life even more difficult at a time of real tragedy; she is absolutely right to draw our attention to that.

Given the amount of concern outside this place about the flexibility that exists, the fact that the Minister is clearly keen to ensure that there is greater flexibility for families, and the fact that she has just poured water all over her Whip's notebook, perhaps she would like to distract the Committee by giving us a firm commitment that she will take these commitments seriously and set out what she intends to do.

The Chair: The tide is in, Minister. It is your turn.

Jo Swinson: I am sure that that is not the best way to curry favour with the Whips. The amendment has been outlined by the hon. Member for Wigan. It is just Wigan, isn't it?

Lisa Nandy *indicated assent.*

Jo Swinson: As a result of the many hours I have spent on the west coast main line, whenever I hear "Wigan", I always think of Wigan North Western.

The amendment would enable a mother's entitlement to shared parental leave to be transferred to someone else in the event of the mother dying in childbirth, being incapacitated or being medically unfit. The reason why we shall not accept the amendment and the key principle

[Jo Swinson]

of our argument concerns the meaning of shared parental leave. The clue is in the name: parental leave is about sharing leave between working parents—the mother and the father—or, in some circumstances, the mother and her partner.

If the mother dies in childbirth, there are already provisions in the Bill that will enable us to draw up exceptions. Such circumstances are horrendous for us to contemplate; none the less they need to be considered, and it might make sense for the leave to be transferred to the father. New sections 75K(1)(g) and 75F(16) of the Employment Rights Act 1996 will vary the conditions in circumstances that involve death or incapacity, when a mother and her partner have become entitled to shared parental leave or, in some cases, under new section 75F(16), which covers the entitlement of the mother's partner to shared parental leave in cases when the mother dies, but shared parental leave has not yet been triggered. We obviously envisage using such powers to deal with a range of different circumstances that will be set out in regulations.

In cases of stillbirth—no one could help but feel anything but utmost sympathy for those who go through such an appalling experience—women will remain entitled to their 52 weeks of maternity leave, although there is not the trigger for the shared parental leave in respect of a child who has to be looked after. However, in circumstances when shared parental leave has already been triggered and, unfortunately, the child dies, that parental leave can continue.

We do not expect entitling parties who are not parents to share parental leave. Although we have provision under the new sections to make regulations for extenuating circumstances, we expect that that would involve the transfer of leave between parents in a way that was not envisaged, because of death or incapacity. I am sure that we would want to look at the circumstances if the parent were sectioned, for example.

I accept the important role that grandparents, uncles, aunts and family friends play in a child's life—indeed, I should declare an interest as a dedicated Aunty Jo—but shared parental leave is conceived as being shareable between the parents or the mother and her partner. In addition to creating choice in families, the issue is also about facilitating greater involvement of the father, in particular. To pick up on the culture change argument that we discussed when debating the previous set of amendments, we favour encouraging the father or other parent to be really involved in the early stages. As members of the Committee will be aware, there is strong evidence that the early engagement of fathers in caring for their children leads to positive outcomes for children, including enhanced educational attainment, higher occupational ability, lower criminality, improved self-esteem, improved behaviour and better child relationships. It is for those reasons why we want to encourage, in particular, the input of the other parent.

It is worth bearing in mind that an adult with parental responsibility for a child under the age of five or a disabled child up to 18 years will also be entitled to take up to 18 weeks' unpaid parental leave to care for the child. In the case of grandparents and other family members, there is time off to care for dependants and, in particular, under later changes in the Bill, the extension of the right to request flexible working to everyone should also help to deal with such circumstances. It is right that such a provision should no longer apply just to parents and people who fit specific criteria, because there are a range of reasons why people want such a right. One of those reasons is grandparent responsibilities. On that basis, I hope the hon. Member for Wigan withdraws her amendment. No doubt she will send a well-argued contribution to the ongoing consultation.

3 pm

Lisa Nandy: I am grateful to the Minister for taking those concerns on board. I welcome what she said about the flexibility that will be built into the forthcoming regulations and that shared parental leave will continue in the awful event of a baby dying. Notwithstanding that, she is aware, as I am, that we need to do much more to support grandparents and other kinship carers. We have already debated that in Committee, and I expect it will receive more attention as the Bill progresses through Parliament. I, like others, will want to return to the issues. Notwithstanding that, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Jo Swinson: I beg to move amendment 275, in clause 87, page 57, line 15, leave out 'made by the Secretary of State' and insert 'under section 75E'.

The Chair: With this it will be convenient to discuss Government amendments 276 to 278.

Jo Swinson: We are in for a treat with this group of amendments, which refine the drafting of the legislation and the cross-referencing between different sections. I was not joking about the treat. Amendments 275 and 276 ensure that the powers to make regulations specifying the meaning of "relevant amount of time" relate to the sections that confer the entitlement to shared parental leave for birth and adoption. As the Bill is currently drafted, those powers relate to a specific subsection. In light of those changes, amendments 277 and 278 amend the cross-referencing to the powers. I hope that hon. Members will agree that the amendments are necessary, if not the most exciting thing that we will discuss, and will support them.

Lisa Nandy: I am grateful to be able to join in the excitement of these Government amendments. I want to put a concern to the Minister on what she intends to do in relation to "relevant amount of time". I have no argument with giving the Secretary of State the power to specify that when determining how much shared parental leave is available, but could she tell us, before we agree to support the amendments, whether she intends to reduce the amount of time that is considered relevant, or what analysis they have done? How do they intend to bring it forward?

Jo Swinson: I cannot believe that no one else wants to speak on this group of amendments.

The Chair: They are not queuing.

Jo Swinson: Indeed. The amendments, as I have explained, are important for a technical reason and refine the drafting. They amend new sections 75F and 75H in clause 87, which set out the regulations that will be made and, in particular, the exceptions and details within them. The amendments relate to the 52 weeks that will be taken as maternity leave, which is not being changed. We are keen to ensure that women do not lose their entitlement to maternity leave.

We have an ongoing consultation to look at the administration of shared parental leave and, in particular, the time periods allowed for mothers and fathers to give notice of when they will take shared parental leave—it is currently suggested that that period will be eight weeks—and how long that will need to be discussed with the employer. We think a two-week negotiation period for that would make sense. That is still being discussed, so I say that for the benefit of the Committee; it is not set in stone.

We are looking carefully at all the issues to ensure that there is enough notice for employers and that a genuine discussion can take place. A pattern of leave may be proposed that could be tweaked to help the employer, and the parents may be happy with that. Alternatively, a pattern of leave might not be accepted and that may have a knock-on effect on the other parent. We need to ensure that all the time limits are properly set out in regulations, and we will do that. I therefore hope that the amendments will be added to the Bill.

Amendment 275 agreed to.

The Chair: Having disappointed a load of lawyers because of a load of work that they will not now get, we come to amendment 331. I call Lisa Nandy.

Lisa Nandy: I beg to move amendment 331, in clause 87, page 57, leave out lines 35 and 36 and insert—

'(8) Regulations under section 75E may provide for the taking of leave under section 75E in a single period, in non-conclusive periods, or in periods shorter than the period which constitutes, for the employee, a week's leave.'.

Amendment 331 would allow shared parental leave to be taken on a part-time basis rather than, as is currently proposed, in blocks of only a week. The original "Modern Workplaces" consultation proposed that parents might take the new form of leave in

"smaller chunks or on a part-time basis"

if their employer agreed. However, the Bill currently provides only that shared parental leave must be taken in blocks of at least a week at a time, which reduces the flexibility available to parents and may reduce the likely take-up of more flexible arrangements.

As the Fatherhood Institute has rightly pointed out, that rules out the possibility of a phased return to work for mothers. In order for both parents to take their shared parental leave in blocks, they will need to seek the agreement of both their employers. Many employers may find it difficult to agree to a week-on, week-off type of arrangement as providing cover will be difficult. Even if one employer agreed, the other might not, or might propose a different pattern. As the institute has pointed out, childcare arrangements do not easily lend themselves to weekly leave patterns.

However, part-time leave and part-time pay may have significant benefits for families, particularly those on low incomes who would like to extend the time that they can spend at home, but cannot afford to have no income. As the Minister will know, maternity leave is currently 52 weeks long, but only 39 weeks are paid. Allowing part-time leave to be topped up by wages might allow low-income parents to transition gradually back to work.

As we heard from Working Families during the oral evidence sessions, some of the high street employers it has spoken to have said that one of the effects of the recession has been that low-paid women are taking much shorter maternity leave, which has an impact on their ability to stay in work in a healthy way and not take time off with illness, as well as on their long-term retention. It also must surely have an effect on the child. Many good employers already allow employees to come back to work after maternity leave on a gradual basis, which helps with handover periods from the locum cover. It may also be beneficial in settling children into new childcare arrangements on a gradual basis.

The original consultation suggested that part-time leave

"could provide parents with helpful flexibility in their time off to care for their children and also reduce the impact of leave on businesses by allowing their employees to return to work for busy periods without forfeiting leave entitlement. This could be particularly helpful where employers have not secured cover or to ease the parent back into work towards the end of their leave."

It also stated:

"We believe that greater flexibility will be a significant step in promoting genuinely shared parenting. It will also help to strengthen new parents' attachment to the labour market, as giving them more choices over how they organise their time will widen the employment opportunities available to them. This would help low income parents with a phased return to work."

We are disappointed that the final proposals have not been able to deliver such flexibility. The amendment would allow future regulations to introduce part-time leave, which would be preferable to amending primary legislation.

Jo Swinson: As the hon. Lady has set out, amendment 331 intends to enable shared parental leave to be taken on a part-time basis. I share her belief that, when they return to work after having a child, many parents find it helpful to do so on a part-time basis. At such an early stage, that can be pretty important in juggling new responsibilities with work responsibilities. She also made the financial point that many families find it difficult to take off as long under maternity leave as they perhaps would like because of financial pressures. I would like to set out what is already in place that helps to deal with some of those issues and then return to a potential way forward.

We want a system where if both parents want to work part time and their employers agree, they can do so, and that will be manageable for employers to operate. One way that parents will be able to come back to work will be by putting in a request to work flexibly; not only are we making that possible for more people—it was already available for parents—we are making the system simpler, so that requests for flexible working will be dealt with more swiftly, rather than requiring many weeks. That should mean it is easier for parents to use.

[Jo Swinson]

In the consultation, we also propose extending keeping-in-touch days to shared parental leave. Those days can also be used to assist in part-time working and to help parents keep in touch with their employer while on leave without sacrificing their shared parental pay. In case Members are not familiar with keeping-in-touch days—KIT days, as they are often known—they already exist in maternity leave provisions and allow employees to come back for up to 10 days during maternity leave without ending that leave. They enable people to keep their hand in in the workplace and understand what is going on. It is also recognised that returning to work after having children can often be a point when people feel a lack of confidence, as they have been out of the labour market for a while; it can be somewhat daunting for new mothers, and KIP days help ease the transition.

We propose extending the concept to parental leave; the proposal in the consultation is for 10 days for each parent. Those days can effectively be used to work part time on return to work, over a period of a few weeks. Shared parental leave and statutory shared parental pay could still be used in a one-week block, but parents could agree to work for a couple of days in that week. That could be used to test a new working pattern that parents might want to adopt when they return to work; it would also mean that they would receive statutory shared parental pay for that week. In addition, some employers will make sure that they can pay for keeping-in-touch days. Keeping-in-touch days therefore deal with some of the challenges that have been outlined.

It will of course be up to an employer and employee to decide whether they want to use keeping-in-touch days, and whether the employee will be paid for working those days above the statutory pay level. However, the option is open to employers, and enables them to reach agreement about the best way forward. I mentioned that 10 keeping-in-touch days have been proposed in the consultation in addition to the existing 10 days during maternity leave. It is open to hon. Members to send in their views on whether that would be helpful.

Solutions already exist, then, for parents who want to work part time while on shared parental leave. Also, when returning to work properly, parents often use holiday they have accrued while on maternity leave to work part time but be paid for more than the part-time hours they are working, by taking that holiday on a weekly basis. There are different ways of dealing with the situation. I say that because the issue is not as straightforward and simple as saying that we should make it possible to take shared parental leave in any kind of blocks. Payroll systems operate on that kind of weekly basis, and so we would be asking for significant change in terms of administration. Our aim is to keep things as simple as possible.

The key question in my mind is what the system proposed in the amendment would offer that keeping-in-touch days and the other solutions I have outlined do not. I am sympathetic to looking at the issue with an open mind; we are consulting on the administration of the scheme and I am happy to hold further discussions with hon. Members on this issue. However, for me, the key ask is what would be gained from that extra complexity that is not currently possible through the extra use of keeping-in-touch days—indeed, if hon. Members felt that we should include more keeping-in-touch days, that option is open to the Government through the consultation. I am keen to explore such issues, although I do not think that primary legislation would be the best way to do so. I welcome the opportunity to debate the best solutions to enable parents to go back to work in the way that suits them best.

Lisa Nandy: I found the Minister's response incredibly helpful. I am grateful to her for taking this issue so seriously, and for drawing the Committee's attention to some of the support that already exists. She will probably know that a wide alliance of organisations has expressed concern to Committee members on this matter, including Maternity Action, the Fatherhood Institute, Working Families and the TUC. I very much welcome the way in which the Minister is approaching this issue and her willingness, through the consultation, to look at a number of different options for addressing the concerns that those organisations have raised. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.15 pm

Amendment made: 276, in clause 87, page 61, line 24, leave out

'made by the Secretary of State'

and insert 'under section 75G'.—*(Jo Swinson.)*

Lisa Nandy: I beg to move amendment 329, in clause 87, page 64, line 17, leave out 'may' and insert 'shall'.

The Chair: With this it will be convenient to discuss the following:

Amendment 330, in clause 87, page 64, line 21, leave out 'may' and insert 'shall'.

New clause 50—*Right to return to the same job after shared parental leave—*

'(1) An employee who returns to work after any period of—

(a) ordinary maternity leave;

(b) ordinary adoption leave;

(c) paternity leave;

(d) shared parental leave of 26 weeks or less; or

(e) parental leave of four weeks or less, which was a period of isolated leave, or a consecutive period of any statutory leave of 26 weeks or less is entitled to return from leave to the job in which the employee was employed before the employee's absence.

(2) An employee who returns to work after any period of—

(a) additional maternity leave;

(b) additional adoption leave;

(c) parental leave of more than four weeks; or

(d) a consecutive period of any statutory leave of more than 26 weeks

is entitled to return from leave to the job in which the employee was employed before the employee's absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable for the employee and appropriate for the employee to do in the circumstances.

(3) The reference in subsections (1) and (2) to the job in which an employee was employed before the employee's absence is a reference to the job in which the employee was employed—

(a) if the employee's return is from an isolated period of statutory leave, immediately before that period began,

(b) if the employee's return is from consecutive periods of statutory leave, immediately before the first such period.'.

Lisa Nandy: The purpose of the amendments is to ensure that we replicate in the new shared leave measures the current employment protections afforded to women on maternity leave, adoption leave or additional maternity leave.

It is important to set the context. We are concerned about the high levels of discrimination against women who are pregnant or on maternity leave, so we believe it is vital to replicate in the Bill the current protections available to women in respect of both the right to return after leave and protection in redundancy situations. The Government should send a strong message to employers that maternity discrimination is illegal and will not be tolerated.

The right to return after a period of ordinary maternity leave or additional maternity leave is a right to return to the same job on the same terms and conditions as before leave was taken. The right to return after a period of additional maternity leave is the right to return to the same job on the same terms and conditions unless that is not reasonably practicable, in which case the employer must offer the employee a suitable alternative job on similar terms and conditions—bear with me, Mr Havard; it does get a bit better. It is unusual for it not to be reasonably practicable to give women their job back, unless the post is made redundant. Failure to allow a right of return may give rise to a claim for automatic unfair dismissal and sex discrimination. In redundancy situations, regulation 10 of the Maternity and Parental Leave etc. Regulations 1999 says that women on maternity leave must be offered any suitable alternative vacancy. Women do not have to apply or be interviewed for any such vacancy, but should be offered it over their colleagues. If a suitable vacancy exists, but is not offered to a woman on maternity leave, she may have a claim for automatic unfair dismissal and sex discrimination.

Maternity rights and employment regulations that allow families and parents to balance work and family responsibilities have been key drivers in giving women greater access to work and an independent income. Over the past few decades, thanks in no small part to changes to workplace protections, women have entered and stayed in the labour market in unprecedented numbers, but there is still far to go. Our workplaces have not yet adapted to meet the needs of this changing and much more diverse work force.

Lucy Powell: I do not know whether my hon. Friend saw a poll that came out in March which showed that, despite all the legislation that already exists, four in 10 women lose their job or have their job changed while they are on maternity leave.

Lisa Nandy: I am grateful to my hon. Friend for drawing the Committee's attention to that. Returning to work can be extremely difficult for women, for some of the reasons the Minister outlined. They may have been away from the workplace for some time and things may have moved on, or, having been completely absorbed in something else, they have to come back and find their feet and perhaps their confidence again. Returning to work can be extremely difficult for a number of reasons, but it can be particularly hard if women have to argue the case for fair treatment.

Women pay a penalty in the workplace as a result of spending time away from the labour market to have and care for children. That time away often negatively affects their career prospects and earnings. That motherhood penalty helps to keep the glass ceiling intact. It reproduces gender stereotypes about women as the so-called caring sex that fuel occupational segregation, so jobs end up being characterised as men's or women's work, to the detriment all of us in society. For too many women, it still culminates in pregnancy discrimination in the workplace. One of the cumulative impacts of the motherhood penalty is ultimately a lack of women in positions of power in all quarters of political, public and professional life. I am pleased to note, however, that in a recent "Woman's Hour" poll the Minister was noted as one of those in a position of power. As such, I hope that she will use that power to help to break the glass ceiling for other women—I am sure she will.

In 2005, even before the recession began, the Equal Opportunities Commission estimated that up to 30,000 women lost their jobs owing to pregnancy discrimination each year. There has been no similar research into the incidence of pregnancy discrimination following the economic downturn, but all indicators suggest that it has increased significantly. At times of austerity when employers cannot afford to take perceived risks to making profits and growing their businesses, I and many of the organisations who work in this field think that discrimination against women is likely to rise as women of child-bearing age appear—I say appear, because I simply do not think that this is the reality—to employers as the riskier, less affordable choice.

We have evidence that many women are subject to discrimination while pregnant or on maternity leave. The Working Families helpline 2012 report provides evidence of a hardening of attitudes among employers and more blatant discrimination taking place. That includes women being sidelined or left out when promotions are being considered, being demoted on return from maternity leave, and in some cases suffering harassment, and pregnant workers being sacked.

Working Families gave me a couple of examples. The first was a caller with four years' service as a cleaner who called the helpline when she was seven months pregnant. She had been off sick with a pregnancy-related illness and had planned to go on maternity leave in two weeks' time. She was surprised to find that her name was not on the rota for the week and that no shifts had been assigned to her. When she rang her employer about that, they said that she had to agree to take three months of maternity leave, or they would send her a P45. Similarly, a caller who had been in an acting-up position before she went on maternity leave was told that that position was no longer available to her on return and she should return to the lower level post. The decision had been taken months ago but had not been relayed to her at the time, nor was she involved in any consultation. She also told the helpline that the need for work at that acting-up level was ongoing, so it was simply a decision about her that had not been relayed to her.

[Lisa Nandy]

Those cases illustrate the points that the Minister and my hon. Friend the Member for Manchester Central have alluded to. A recent survey commissioned by a law firm, Slater and Gordon, found that one in seven of the women surveyed had lost their job while on maternity leave, 40% said that their jobs had changed by the time they returned and half reported a cut in hours or demotion. More than a tenth had been replaced in their jobs by the person who covered their maternity leave.

The current context of austerity and deregulation also matters. Recent Government announcements threaten to impact on the rights of pregnant women and new parents in the workplace: for example, from 2013, women who take 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, and the Government's employee shareholder proposals could result in the reduction or removal of historical protections for women in the workplace. That cannot be right.

I ask that the Minister, alongside implementing the shared parental leave system, agrees at least to undertake an inquiry into pregnancy discrimination and systematically to collect and monitor relevant data to identify patterns and frequency of discrimination against women in the workplace, so that we can understand the situation and determine how we can move forward. A wealth of anecdotal evidence illustrates that that situation is ongoing and I am sure that the Minister agrees that that is simply not acceptable in this day and age.

The Chair: Having spent 25 years as a trade union official, not only did I follow every word that you said, but I understood it all as well.

Jo Swinson: I will speak first to the amendments and then deal with the wider problem of pregnancy discrimination, which the hon. Lady is right to raise. First, I hope to reassure the Committee about amendments 329 and 330, which relate to the Secretary of State making regulations to deal with redundancy and dismissal in relation to shared parental leave. This is one of those great Committee occasions in Committee when we discuss a single word and whether we should use "may" or "shall". Of course changing a single word can often result in a very different meaning, and I suspect these amendments were tabled to ensure that the Government bring forward regulations on what the rights and provisions should be for people returning from shared parental leave. I assure the Committee that the Government do intend to make those regulations. The wording in the Bill mirrors the wording in existing maternity legislation, and given that the Government laid regulations on those issues, there is no reason to think there would be any difference here.

New clause 50 is designed to introduce into primary legislation a model to determine the terms and conditions of an employee returning from shared parental leave. I understand the issues around discrimination against parents taking leave and the desire to have proper protection in place. It is true that employment protections for women on or returning from maternity leave have been extremely important in giving women the confidence to take off the time that they need after having their baby. I want to ensure that any parent who wants to take shared parental leave has the confidence to do so.

I think everyone in the Committee will agree that we need to get the protections right, and I will set out how the provisions on redundancy and dismissal, and the right to return to the same or similar job on return from shared parental leave, will work in secondary legislation. That is the way that it is dealt with currently and so I can give the Committee a firm reassurance today that we will make those regulations. The shared parental leave administration consultation is ongoing. It is more appropriate that the details of the system are dealt with in secondary legislation but I will talk a little about how we may approach this.

Dealing first with redundancy and dismissal, under the current arrangements for fathers on additional paternity leave, if a redundancy situation arises while a father or partner is on additional paternity leave and it is not practicable for the employee to return to their old job, they must be offered a suitable vacancy in the organisation if there is one available. I anticipate making similar provision for parents on shared parental leave. The right to return to the same or similar job in the new system is more challenging. Currently, women returning from ordinary maternity leave or men returning from additional paternity leave generally have the right to return to the same job. Women returning from additional maternity leave have the right to return to the same job or, if that is not reasonably practicable, a similar job. So provided that the duration of the leave is less than six months, employees have the right to return to the same job. In practice, 84% of women who return to work from maternity leave come back to the same job with the same employer. It is important that we get the protections on the type of job to which an employee is entitled to return absolutely right. That can have a significant impact on their decisions.

The main difference between the current system and the new system is that it will be possible to take the leave in chunks rather than in one continuous block. We need to design a system that gives employees an appropriate level of protection in that new model. This has been discussed at length with stakeholders and we are consulting on the specifics within the consultation, because obviously there are different options such as doing it on a time-elapsed basis or putting different chunks of maternity and parental leave together. We want to seek views on the options before deciding what to put in secondary legislation. I hope that I have convinced the hon. Lady that primary legislation is not the best place for this provision.

3.30 pm

The hon. Lady raised the wider issue of pregnancy and maternity discrimination. She is quite right that this is unacceptable; there is just no excuse for it. If our society is to use the talents of all our potential work force properly, that means using the talents of both men and women. We must not hark back to a century ago, when as soon as woman married and could potentially have children, her contribution to the labour market was over. As a country, we cannot afford to be in such a position. We cannot deal with the economic challenges we face without properly using the talents of women in the workplace, which means that we must deal sensibly with maternity. We must think about the future of the

human race and make sure we have people working to pay pensions for older generations when they retire. We need to make sure that people will continue to have babies. We need sensible regulations that give employers a degree of certainty in the workplace and enable mothers and fathers to discharge their duties as parents while still playing a role in the workplace. Discrimination plays no role in that whatever. It is bad for the economy because of the impact on the labour force and on the confidence of individuals and their ability to carry out their full role in the labour market.

A significant amount of research was carried out by the Equal Opportunities Commission in 2005, and the Department was behind various surveys that dealt with such issues in 2006 and 2008, but with the current information available to us, it is a fair challenge to know the full extent of the problem. Anecdotally, we know that it is a problem. The report from the Working Families helpline outlines cases where there is clearly a problem. What is less certain is the extent of the problem.

Thankfully, the majority of women on maternity leave are not experiencing these problems and having to call the helpline. The challenge is in understanding the scale of the problem when there is a lack of research and evidence. I have listened carefully to what has been said and the points made in discussions in which I have been involved in my role in the past months. There is a gap in information and I am happy to consider how we can go about trying to see whether we can fill that gap, because only with good information can good policy be made. With those reassurances, I hope that the hon. Lady will be happy to withdraw the amendment.

Lisa Nandy: I am grateful to the Minister for explaining how she will address our concerns through the ongoing consultation and secondary legislation. I was pleased to hear her strong statement that there is no excuse for pregnancy discrimination. Like the good Liberal she is, she echoed the sentiments of John Stuart Mill and argued that we need to use the talents of the entire population, not just half. I wholeheartedly agree with her.

As well as the strong message from the Government, we need real protections in law to make sure that women in this situation know that they have rights and the full force of the law behind them. The Minister was absolutely right to say that we do not know the full extent of the problem. In my experience of people who are discriminated against, harassed, bullied or unfairly treated, it is unusual for them to complain. What worries me about the Working Families report is that we may be seeing only the tip of the iceberg. We see the people who have the confidence, the know-how and the wherewithal to ask for help and to take on the system, but we do not see those in more difficult circumstances and who may be facing worse discrimination. I am grateful to the Minister for taking the information gap seriously and for considering what we might be able to do. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments made: 277, in clause 87, page 65, line 20, leave out '75F(3) or (16)' and insert '75F(16)'.

Amendment 278, in clause 87, page 65, line 20, leave out '75H(3), (16)' and insert '75H(16)'.*—(Jo Swinson.)*

Clause 87, as amended, ordered to stand part of the Bill.

Clause 88

EXCLUSION OR CURTAILMENT OF OTHER STATUTORY RIGHTS TO LEAVE

Lucy Powell: I beg to move amendment 332, in clause 88, page 65, line 23, at end insert—

'(za) in subsection (2) at the end there is inserted "for each child born as a result of the pregnancy in addition to her entitlement to additional maternity leave under section 73;"'.

The Chair: With this it will be convenient to discuss new clause 53—*Statutory maternity pay for multiple births*—

'(1) The Social Security Contributions and Benefits Act 1992 is amended as follows.

(2) In section 164 (Statutory Maternity Pay—entitlement and liability to pay) in subsection (9) (power to make regulations) there is inserted—

"(b) specify circumstances in which there is a liability to make additional statutory maternity payments to a woman who has given birth to more than one child as a result of a single pregnancy.'.

Lucy Powell: Amendment 332 and new clause 53 deal with giving mothers of multiple births—twins, triplets or more—additional pay and leave in proportion to the number of babies that they have. I would like to declare at this point that I do not have an interest in these amendments. Despite my size, I am expecting only one baby—touch wood, that will remain the case when I get to hospital.

The reason for these probing amendments is that in the UK, one in 32 children is born as a multiple, which equates to just over 11,000 births a year. Parents of multiples currently receive the same amount of maternity and paternity leave and pay as families having only one baby, which fails to take into account the increased risk of maternal ill health during pregnancy, premature birth and the need for care in neonatal units and the additional care demands of looking after more than one baby at a time. Expectant multiple-birth mothers are nearly six times more likely to be hospitalised during pregnancy and more than twice as likely to be admitted to intensive care than expectant mothers of singletons.

Maternal stays during birth admission are 60% to 70% longer for multiple births than singleton births. The average length of a singleton pregnancy is 40 weeks, and the average birth weight is 3.5 kg, compared with twin pregnancies, which average 37 weeks, and triplets, which average 34 weeks. As a result, twins are four times more likely to die during pregnancy than singletons, seven times more likely to die shortly after pregnancy, 10 times more likely to be admitted to neonatal special care units, and they have six times the risk of cerebral palsy. Some 44% of twins and 91% of triplets are born prematurely and spend time in neonatal care, and 42% of all multiple-birth families have at least one baby requiring neonatal care for more than a week.

As a result of all those factors, many mothers and partners spend a considerable portion of their maternity and paternity leave in a neonatal unit wondering whether their babies will survive or be left with long-term disability.

[Lucy Powell]

That often leaves them little time to settle in when they return home, a problem that is especially acute when they are trying to bond with, develop a routine for and care for more than one baby. A considerable proportion of mothers are very isolated on return from hospital. A combination of those factors, coupled with the increased demands of caring for more than one baby, appears to result in almost 20% of multiple-birth mothers suffering from post-natal depression, compared with about half that proportion of singleton mothers.

There are compassionate reasons why we should consider extending the leave rights for multiple-birth parents, but there is also an economic benefit. A pure economist would consider parents of multiple births to be more efficient than those of us who have children separately, because the cost to society, business and the state is less. Simply from an economist's point of view, it is an effective way of having children.

Andy Sawford (Corby) (Lab/Co-op) *rose—*

The Chair: I wonder where this is going.

Andy Sawford: On the point about the costs, although there might be a saving to society from having two children at the same time, there are clearly huge additional costs for the parents. As we all know and my hon. Friend, twice a parent, is about to find out again, the cost of cots, pushchairs, high chairs, bottles, baby clothes and so on mount up enormously. If there are multiple children, the costs are that much greater. I am grateful for the studies and briefings provided to us by organisations such as the Twins and Multiple Births Association showing that nought to 12 months is the period of greatest financial strain for parents of multiple births. I support my hon. Friend's amendment.

Lucy Powell: My hon. Friend is absolutely right. The pressures on parents during that time, not just emotionally but economically, are considerable. That is why I tabled the amendments.

In addition, families with multiple births tend to have much more to contend with during pregnancy, birth and the first 18 months of life than those who have one baby at a time. They are much more likely to experience financial hardship, as my hon. Friend says. The current level of maternity and paternity leave, and financial support provided by the state, which is the same as for other families having only one baby at a time, does not meet many of the needs of families with multiple births. As it stands, the Bill will not do anything to address those needs, so I hope that the Minister will take this opportunity to look at the issues.

I have a couple of simple asks for the Minister. Will she look into the particular problems facing families with multiple births? If she is unable to accept the amendments, will she focus her attention and support on allowing mothers of multiple births who have premature babies in neonatal care units to have a little more leave, or look at which options may be available in the future?

The Chair: Having set out Mr Williamson's parental care tasks this morning, I am sure that he will be relieved that only one is coming his way a little later.

Jo Swinson: I welcome the remarks of the hon. Member for Manchester Central. Her article in *The Economist* was particularly interesting, and although I am sure that she is right to say that multiple births are efficient, I suspect it probably does not feel like that to the parents at the time.

I have in mind a particularly vivid image from one of my surgeries in the café area of a local supermarket. A couple came to see me about the challenges they were facing with their triplets, who were toddlers. Two of them were in one of the double buggies with little seats that they have in supermarkets, and they had to have two trolleys so that they could all fit in. When the mother tried to leave at the end of her surgery appointment, she was trying to push two double trolleys at once. For all that the hon. Lady's amendments might help, what most parents of triplets really want is an extra pair of arms. I do not think that is in the gift of any of us in the Committee, but I put on record my admiration for parents dealing with the challenges of multiple births. The Twins and Multiple Births Association campaign was particularly well run, and I congratulate Tamba on the campaign.

Turning to the amendment, I may have to disappoint the hon. Lady somewhat with what I am able to offer. As a solution to the challenges faced by parents of twins, triplets or even more, amendment 332 proposes longer periods of maternity leave and pay. As the Committee will know, maternity leave is provided for a maximum set period per pregnancy, irrespective of whether the mother gives birth to one child or two or more. Although I understand the sentiment behind the amendment, it would get us into slightly difficult territory by saying that maternity leave and pay entitlements for mothers of multiple births would be advanced, while other mothers who are also dealing with very difficult circumstances—the horrific situation of spending the early months of their child's life in neonatal units, and so on—would not get that support. Drawing that distinction is quite challenging and problematic.

The purpose of maternity leave is to help a pregnant woman to prepare for and recover from childbirth. While recognising that coping with multiple birth is particularly challenging, we also have to put it in context, because maternity leave in the UK is generous compared with international standards. In countries where maternity leave is much shorter, they often make longer provision for multiple births. However, when we already have a year of maternity leave available, the arguments for the UK doing so are not so well made.

We already have strong and effective maternity provisions. All employed women have a day-one entitlement to up to a year's maternity leave. As I said, that long period of dedicated maternity leave is longer than in any other EU member state. Expectant mothers can take the time off that they need to prepare for and recover from childbirth, and if they want, mothers can of course return to work early from their leave. In fact, the average period of maternity leave is 39 weeks, so many mothers are back in the workplace before the full year has passed.

For those who may find it more difficult, whatever the circumstances—a multiple birth, illness, emotional issues, post-natal depression or health issues—there is additional time beyond what most women feel they need. The 52-week period is long enough to cope with

most unexpected eventualities, but in circumstances when a mother wants to take more than 52 weeks leave, she is entitled, along with any other parent of a child under five, to 18 weeks per child of unpaid parental leave. That is per child, so there is a multiple effect in the case of a multiple birth, which provides a bit of the flexibility sought by the amendment. The leave that we already have is proportionate and gives enough options to address the range of circumstances that may present themselves.

3.45 pm

Although I absolutely recognise that it is more expensive to buy duplicate equipment and so on, that is not the purpose of maternity pay. Maternity pay is there to provide a measure of earnings replacement to allow a woman to take time out of the workplace during the later stages of pregnancy and soon after childbirth; it is not about meeting additional expenses, which, as I understand from friends with children, are significant when children come along. That is not what statutory maternity pay is for, so an increased rate for multiple births does not seem to fit with the overall principle.

Given that the proposals would place a significant extra burden on employers and the state when it is not affordable, I hope that the hon. Member for Manchester Central will withdraw her amendment. I recognise that such parents experience significant difficulties, but maternity pay and leave requirements are not the solution. Although she is fairly new to the House, she is no doubt learning quickly that there is a range of different ways for her to pursue the issue on behalf of those that she and others represent who are concerned about the experiences of such parents and their struggle with what I accept is a very difficult job.

Lucy Powell: I thank the Minister for her contribution. I, too, accept that there would be cost implications if the amendments were accepted. Given the times we are in, and given that the costs have not been determined appropriately, I am happy to withdraw the amendment.

My understanding of the reasons for maternity pay and leave is that they are not only for recovering from childbirth—an ordeal I am about to go through, as others have before me—but to allow crucial time for bonding, attachment and all that is important in those very early weeks. For parents who spend a lot of that time going to and from hospital, and who are not able to make those bonds with their child, I hope that, in due course, the Minister's party and my party might consider the issues, should the financial and economic circumstances change.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 88 ordered to stand part of the Bill.

Clauses 89 and 90 ordered to stand part of the Bill.

Clause 91

STATUTORY RIGHTS TO LEAVE AND PAY OF PROSPECTIVE ADOPTERS WITH WHOM LOOKED AFTER CHILDREN ARE PLACED

Lucy Powell: I beg to move amendment 297, in clause 91, page 83, line 44, at end insert—

'(d) becoming a special guardian under section 14A of the Children Act 1989,

(e) becoming a family and friends (kinship) carer in prescribed circumstances.

'(1B) In section 75B of the Employment Rights Act 1996 (additional adoption leave), after subsection (1) there is inserted—

"(1A) The conditions that may be prescribed under subsection (1) include conditions as to—

(a) becoming a special guardian under section 14A of the Children Act 1989,

(b) becoming a family and friends carer in prescribed circumstances.".'.

The Chair: With this it will be convenient to discuss the following:

Amendment 298, in clause 91, page 84, line 14, at end insert

'for whom a special guardian has been appointed under section 14A of the Children Act 1989 or placed in a family and friends (kinship) care arrangement in prescribed circumstances.'.

Amendment 299, in clause 91, page 84, line 20, at end insert

': or to being placed with a special guardian under section 14A of the Children Act 1989 or to being placed in a family and friends (kinship) care arrangement in prescribed circumstances;'.

Amendment 300, in clause 91, page 84, line 22, leave out 'with such a person' and insert

'or section 14A with such a person or to placement with a family and friends (kinship) carer in prescribed circumstances;'.

Amendment 301, in clause 91, page 84, line 30, after 'adopter', insert

'or placed with a special guardian under section 14A of the Children Act 1989 or placed in a family and friends (kinship) care arrangement in prescribed circumstances'.

Amendment 302, in clause 91, page 84, line 34, at end insert

'or to being placed with a special guardian under section 14A or to being placed in a family and friends (kinship) care arrangement in prescribed circumstances;'.

Amendment 303, in clause 91, page 84, line 40, at end insert

'or the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends (kinship) care arrangement in prescribed circumstances;'.

Amendment 304, in clause 91, page 84, line 42, at end insert

'or section 14A or to placement with a family and friends carer in prescribed circumstances'.

Amendment 305, in clause 91, page 84, line 44, at end insert

'or "special guardian" or "family and friends (kinship) carer in prescribed circumstances"'.

Amendment 306, in clause 91, page 84, line 47, after 'section' insert '14A or'.

Amendment 307, in clause 91, page 84, line 47, after '1989', insert

'or placement with a family and friends carer in prescribed circumstances'.

Amendment 308, in clause 91, page 85, line 6, after 'section', insert '14A or'.

Amendment 309, in clause 91, page 85, line 7, at end insert

[The Chair]

'or placement with a family and friends (kinship) carer in prescribed circumstances;'.

Amendment 310, in clause 91, page 85, line 9, leave out '22C' and insert

'14A or 22C or to being placed with a family and friends carer (kinship) in prescribed circumstances'.

Amendment 311, in clause 91, page 85, line 15, after 'adopter' insert

'or placed with a special guardian under section 14A of the Children Act 1989 or placed in a family and friends (kinship) care arrangement in prescribed circumstances'.

Amendment 312, in clause 91, page 85, line 19, at end insert

'or to being placed with a special guardian under section 14A or to being placed in a family and friends (kinship) care arrangement in prescribed circumstances;'.

Amendment 313, in clause 91, page 85, line 24, at end insert

'or, the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends (kinship) care arrangement in prescribed circumstances;'.

Amendment 314, in clause 91, page 85, line 26, leave out '22C' and insert

'14A or 22C or placement with a family and friends (kinship) carer in prescribed circumstances.'.

Amendment 315, in clause 91, page 85, line 29, leave out '22C' and insert

'14A or 22C or placement with a family and friends (kinship) carer in prescribed circumstances.'

Amendment 316, in clause 91, page 85, line 32, after 'section', insert '14A or'.

Amendment 317, in clause 91, page 85, line 32, after '1989', insert

'or placement with a family and friends (kinship) carer in prescribed circumstances'.

Amendment 318, in clause 91, page 85, line 43, at end insert

'or the week the special guardian is expected to be appointed or the week the child is expected to be placed in a family and friends (kinship) care arrangement in prescribed circumstances.'.

Lucy Powell: Apologies, it is me again. Amendments 297 to 318 are designed to provide kinship carers with similar employment protection to adopters, with the aim of reducing the high proportion of kinship carers who leave employment. This discussion is an extension of one that we had earlier in our consideration of the Bill and during our oral evidence sessions about the vital role played by kinship carers in relation to children in the care system.

Clause 91 proposes extending ordinary adoptive leave, ordinary paternity leave, statutory paternity pay and statutory adoption pay. I want to extend those measures to kinship carers, to give the same employment rights to family and friends carers who have or are applying for a special guardianship order, or family and friends carers who take on the care of a child in certain defined circumstances where the alternative might be state care. Those circumstances could include situations where the child has come to live with the employee, or it is proposed that they do so, as a result of plans made within a child protection inquiry or following an investigation under section 37 of the Children Act 1989, and situations where the employee has or is applying for a residence order arising from care proceedings, or following the accommodation of the child under section 20 of the Act, or as an alternative to the child becoming looked after under section 22 of the Act, and there is professional evidence that the parents are unable to care for the child. The amendments would not define such circumstances, but would give the Secretary of State the power to define them. The amendments would also extend the right to additional adoptive leave to family and friends carers in those categories.

Adoptive parents have the right to take ordinary adoptive leave and additional adoptive leave totalling 12 months. By contrast, the vast majority of kinship carers who are raising children outside the looked-after system are not currently entitled even to one day of statutory paid leave from employment when they take on the indefinite care of a child.

Bill Esterson (Sefton Central) (Lab): I offer my support for what my hon. Friend is saying. Certainly, in my experience as an adoptive parent, it was incredibly important to be able to spend time building a relationship and to go through introductions over a period of weeks. The situation will be the same for kinship carers. It is essential to make sure a strong attachment is developed in the early period, before the child comes to live with a carer and immediately afterwards. I fully support what she is trying to achieve.

Lucy Powell: I very much agree. In addition, kinship carers often have to deal with complex family circumstances; there is also a lot of administration, and many other issues that mean that during the difficult transition period for them and for the child, they need the ability not to have to work full-time.

Children who come to live with family and friends carers often have complex needs, and many carers have no option but to give up work in order to settle them in and to attend required meetings with statutory agencies. According to a recent survey, 38% of family and friends carers had to leave their job, lost their job or took early retirement when they took on the care of a child. Grandparents Plus research shows that almost half of kinship carers who were previously in work leave their jobs when children move in. At least 88% of kinship carers are under the age of 65, and 73% were working before the children moved in, compared with 36% currently; 83% of those who gave up work said they would have liked to remain in work. We need to do more to enable kinship carers to remain in work.

Lisa Nandy: I am grateful to my hon. Friend for bringing this important issue to the Committee's attention. She is making a strong case about the economic impact, for all of us but particularly for the families and children involved. It seems to me that we simply do not know enough. We know a lot anecdotally, and thanks to the charities that my hon. Friend mentioned. When the Minister concludes, I hope she will share my desire that the Government undertake a report to discover the extent of the economic impact.

Lucy Powell: I agree with my hon. Friend's request for an impact report. I am sure that the Government will not agree to the amendments because of the cost

implications, but perhaps they can gather some evidence about why kinship carers are leaving work and look into the measures we can take.

Andrea Leadsom (South Northamptonshire) (Con): I reinforce the fact that there is lack of understanding of the impact, particularly among kinship carers. If the carers happen to be the grandparents, they often carry an enormous burden of guilt over why the natural, parental relationship broke down in the first place. The extra burden that is often overlooked is the extent to which kinship carers wonder what went wrong with their own parenting that has left them having to raise their grandchildren.

Lucy Powell: I thank the hon. Lady for her intervention. I absolutely agree that circumstances are complex. I am sure that paid leave is a small part of the reasons why many kinship carers leave the workplace when they take on a caring role. I urge the Government to take on board the points raised and look at the reasons why that happens.

An estimated 60,000 kinship carers have dropped out of the labour market to bring up children. There are many reasons for that, as we have discussed, including the high needs of many of the children, but the fact that, unlike other parents, the carers are not legally entitled to any time off to accommodate the needs of the children is critical. Most kinship carers have no entitlement to leave from work, beyond a few days' emergency leave when they take on the care of a child. A consequence of so many carers giving up work is that a high proportion of kinship carers live in poverty, with 65% of kinship carers reporting in 2010 that they lived on incomes below £300 a week. Family Rights Group research found that a third of kinship families live on incomes below £350 a week. Analysis of census micro-data indicates that 70% of children in kinship care experience two or more deprivations, compared with 36% of children who live with parents.

We have discussed the many emotional needs of the children as a reason why it is important to consider the measure at this time. We have also looked at economic reasons. It is economically inefficient for kinship carers to be kept out of the work force and dependent on benefits when they could be in work. There is also an economic argument for supporting kinship carers to avoid children being taken into care unnecessarily. Keeping a child in independent foster care costs local authorities at least £40,000 a year. If kinship care is an option, it must be in the best interests of the child to choose it. I urge the Government to consider the issues, and although I expect that they will not accept the amendment, I hope that they will gather evidence about this complex matter.

Jo Swinson: The amendment would provide adoption leave and pay and paternity leave and pay to special guardians and the family and friends of children cared for by them in certain circumstances. I agree with the hon. Lady that relatives and friends play an extremely important and valuable role in looking after children in circumstances when their parents cannot. Those circumstances are often very difficult, as she outlined, and it must be much easier for the child to be with someone they, hopefully, already know and love.

Clause 91 supports the changes, discussed earlier, being made in part 1, which aim to increase the number of adoptive parents, as well as speed up the process of placing looked-after children in stable and loving homes. I fully appreciate that relatives and friends looking after children reduce the burden on the state, and that can impose unexpected pressure on the families of those friends and relatives. The state however has to focus on children who have no one there for them: those in the care system, who cannot benefit from relatives and friends taking on caring responsibility for them.

4 pm

As the hon. Lady outlined, the alternative is state care. Some kinship carers could be eligible for adoption leave and pay, but that depends on registering formally to adopt the children. Of course that avenue is open if, otherwise, the children would be in care, or would be adopted or fostered with a view to adoption from care, although I recognise that that would not be the case in all circumstances.

We need to give full recognition and thanks to relatives and friends who look after children, but financial support is already available to low-income families through child tax credits and other parts of the system, and to all but the highest-income families through child benefit. Our focus must be on supporting the people who take on the care of children from the care system.

I share the hon. Lady's concern about kinship carers who feel that they must leave employment when they take up their new responsibilities, and I agree that the numbers are worrying. I understand that some social workers have encouraged family and friend carers, and foster carers, to leave employment. Certainly, the needs of some children might be such that they need someone to give them full-time care, but I do not think that that should necessarily generally be asked of carers. Requiring a carer to give up work solely as a sign of commitment to the child is not acceptable or necessary, and I would hate kinship or foster carers to feel pressured into doing that. In most cases, they should be able to continue in employment.

Lisa Nandy: I do not want to interrupt the Minister's flow, but perhaps the issue shows that we do not know enough about what happens. Perhaps it also backs up the point that hon. Members and I have made: it would be extremely helpful if the Department made a commitment to commissioning research on the full extent of the situation, to identify the pressures and the economic impact.

Jo Swinson: I thank the hon. Lady for her intervention. This is an issue that my colleagues in the Department for Education look at closely, and they will hear her comments. The Under-Secretary of State for Education, the hon. Member for South West Norfolk (Elizabeth Truss), will be keen to engage with her on the issue.

It is worth remembering that many kinship carers and special guardians would qualify for unpaid parental leave of up to 18 weeks per child, so there is some provision for bonding time, if that is necessary.

I hope that the hon. Member for Manchester Central is prepared to withdraw the amendment, but I welcome the fact that she has raised the issue and highlighted the valuable role played by kinship and other carers.

Lucy Powell: I thank the Minister for her response, and will not press the amendment to a Division, but I reiterate the point made by my hon. Friend the Member for Wigan and others, and ask the Department to examine the wider issues, so that we can gather evidence about why kinship carers leave the work force. They are a vital part of the looked-after children agenda, and we should do everything possible to encourage them to remain economically active in the labour market, so that they can support the children they look after. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 91 ordered to stand part of the Bill.

Clause 92 ordered to stand part of the Bill.

Clause 93

STATUTORY PATERNITY PAY: NOTICE REQUIREMENT AND PERIOD OF PAYMENT

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

New clause 51—*Extension of other statutory rights to leave and pay—*

'(1) In section 80A of the Employment Rights Act 1996 (Entitlement to ordinary paternity leave: birth) subsection (1)(b) is repealed.

(2) Section 171ZA of the Social Security Contributions and Benefits Act 1992 (Entitlement: birth) subsection (2)(b) is repealed.'.

New clause 52—*Father quota entitlement—*

'(1) In Part 8 of the Employment Rights Act 1996 after section 80E there is inserted—

"80F Entitlement to father quota

(1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions as to the relationship with a child or expected child or with the child's mother to be absent from work on leave under this section for the purpose of caring for the child.

(2) Regulations under subsection (1) shall provide that such leave shall be taken before the end of the period of 56 weeks beginning with the date of the child's birth.

(3) Provision under subsection (1) shall secure that where an employee is entitled to leave under this section in respect of a child he is entitled to at least four weeks' leave."

(2) In the Social Security Contributions and Benefits Act 1992 after section 171ZT there is inserted—

"171ZTT father quota entitlement

(1) Regulations shall provide that where an employee is entitled to a father quota of leave under Section 80F of the Employment Rights Act 1996, the employee is to be entitled to payments known as "father quota pay".

(2) Father quota pay under subsection (1) shall be at the earnings-related weekly rate of 90 per cent of the employee's average earnings for the first six weeks in respect of which it is payable, followed by a fixed weekly rate thereafter which shall not be less than the weekly rate of the full time national minimum wage in respect of the remaining portion of the father quota pay period".'.

I am not sure who is to speak to the new clauses.

Lucy Powell: I am.

The Chair: Ms Powell—there is a surprise. You are giving a stalwart performance this afternoon. You can sit down if you wish.

Lucy Powell: Thank you for the offer, Mr Havard, but I shall stand if I may. I am just trying to get all my speaking commitments done before I go on maternity leave, so that my "They Work For You" performance indicator does not drop. I am only joking; these issues are important.

The Committee will be relieved to know that I do not intend to speak for long, because we covered some of the issues earlier. I tabled new clauses 51 and 52 in the hope that we could develop the conversation about how we can encourage more fathers to take up paternity leave and shared parental leave. New clause 51, which I am sure the Government will feel unable to accept because it has cost implications, would allow all fathers the right to take time off as a day one right; they would not have to earn that right by having 26 weeks' continuous service with an employer by the 15th week before the baby is due. I want to put that on the record, even though we discussed some of the issues earlier.

New clause 52 aims to explore the proposal in "Modern Workplaces" that there be a period of what has been called "daddy leave" when, or soon after, the child is born. It would give the father some time of his own with the child—time that does not have to be granted to him by the mother, who is sharing the leave. As we discussed earlier, there are many important reasons why we want to encourage fathers to spend time with their child in the early months of its life. We will look at these issues in the coming months and years as we see the uptake. The idea was to enhance the uptake of paternity and shared parental leave, so that it is taken up by more than the small percentage that the Government hope will take it up.

Jo Swinson: I am delighted to speak to new clauses 51 and 52. I hope that clause 93 will stand part of the Bill.

New clause 51 seeks to remove the requirement on those seeking to qualify for paternity leave and paternity pay for a certain period of continuous employment. New clause 52 is about providing a dedicated period of at least four weeks' leave for fathers, and paying that leave at 90% of their average salary. We dealt with the issue of certainty for business earlier; the arguments are the same, whether we are talking about paternity or parental leave. I would dearly love to accept new clause 52, but economic circumstances do not make that possible. However, we absolutely agree that it is important to encourage more fathers to take more leave to help care for their children.

As I mentioned, the early involvement of fathers in their children's lives has many positive effects, including on educational attainment and social mobility. It is important to make sure that parents are aware of that. Getting that information out there is very important, because I am not sure that the research and evidence is understood by all prospective parents, despite the lengths that many will go to, with Baby Mozart and suchlike, to ensure that educational output is as good as possible from the earliest possible stage. Getting the information across about the involvement of fathers in the early stages is key and needs to be done.

We consulted on the concept of a "daddy month" as part of "Modern Workplaces", but having seen the responses, we felt that creating another type of leave would not be helpful, and that it would be better to do this through paternity leave, and to make sure that fathers can take more if they wish. As my right hon. Friend the Deputy Prime Minister has made clear, it would be wonderful to be able to extend paternity leave now. Unfortunately, the costs are prohibitive for business. The cost of extending paternity leave by two weeks to create a month would be almost £10 million a year. In addition, the cost of a two-week extension to paternity pay would be £16.4 million, and that does not even go as far as the amendment, which would increase that pay to 90% of the father's earnings. I understand that that is important, in that it encourages fathers to take the leave, but the downside of the extra cost is that the lion's share ends up going to the highest earners. That is not so progressive, so there is a trade-off there.

I want to put two points on the record about how we ensure the involvement of fathers. If we are to achieve the culture change that will make the policy the success that I think we all want it to be, we absolutely need as many couples as possible taking up the parental leave. The Government have a role to play in that, as have businesses and the media. MPs of all parties can play a role in raising awareness. The policy is due to come in during 2015, so parents of babies born from that date—and perhaps thought about as soon as next year—will be able to benefit from it. It is therefore important that as the Bill progresses through Parliament, and in the months after that, we take every opportunity to raise awareness of the new policy and the benefits to couples, so that they can both play a full role in caring for their babies. I am determined to see that happen and, under the current system, get as much take-up as possible.

I hope that the powers in the Bill will enable us to increase the number of weeks of paid paternity leave when the economy is in better shape and it is more affordable to do so. I absolutely hope that the powers will be used, because they will boost all the stuff that we are doing to raise awareness, and will get as many people as possible—fathers in particular—taking the leave. That will be a catalyst for progress, but this will, of course, be a decision for a future Government. We do not know what colour that Government will be, but importantly, the powers will mean that introducing an increase is straightforward and will not require further primary legislation.

The decision on whether to extend paternity leave and pay will be reviewed using information on the uptake of shared parental leave and on pay in the maternity and paternity rights and work-life balance series of surveys that the Department carries out. I hope that the flexibility and choice in the new system will enable fathers to take more time off to be with their children, which I am sure we all want.

Question put and agreed to.

Clause 93 accordingly ordered to stand part of the Bill.

Clauses 94 to 96 ordered to stand part of the Bill.

Schedule 7

STATUTORY RIGHTS TO LEAVE AND PAY: FURTHER AMENDMENTS

Jo Swinson: I beg to move amendment 280, in schedule 7, page 171, line 22, leave out paragraph (a) and insert—

( ) in paragraph (a), after "(6), (7)" there is inserted ", (7A) or (7B)";

( ) in paragraph (a), the words "or (8)" are repealed.'.

The Chair: With this it will be convenient to discuss Government amendments 281 to 283.

Jo Swinson: We come to another exciting group of Government amendments, which are required to ensure that protections for employees against unfair paternity leave provisions apply in a similar way to unfair shared parental leave provisions. The amendments also ensure that adopters, including those in fostering for adoption arrangements, and intended parents in surrogacy arrangements have the protections.

The protections in question apply if an employee is treated unfairly when absent from work in certain situations when receiving statutory paternity, adoption or shared parental pay, or contractual pay in relation to their accrual of rights under the employer's benefit scheme or the amount of entitlement under the scheme. The provisions ensure that a person who is in such a situation is in the same position in relation to the scheme as they would have been had they been working and being paid as normal. The provisions ensure that similar protections to those that apply to individuals who are absent in certain paternity leave situations apply to individuals who are absent in certain parental leave situations. Given that the amendments are clear, and just copy paternity leave protections across to the new forms of leave created in the Bill, I hope that hon. Members will support these necessary and desirable changes.

Amendment 280 agreed to.

4.15 pm

Amendments made: 281, in schedule 7, page 171, line 28, at end insert—

'( ) After sub-paragraph (7) there is inserted—

(7A) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement or expected placement of a child under section 22C of the Children Act 1989, and

(b) in relation to that child, the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZB(8) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter).

(7B) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth or expected birth of a child, and

(b) in relation to that child, the member satisfies the conditions prescribed under section 171ZB(2)(a)(i) and (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZK(2) of that Act (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008).'.

Amendment 282, in schedule 7, page 171, line 31, at end insert—

2A (1) Paragraph 5B (schemes that contain unfair adoption leave provisions) is amended as follows.

(2) In sub-paragraph (4) (definitions), in the definition of "period of paid adoption leave", in paragraph (a), for "or (6)" there is substituted ", (6), (7) or (8)".

(3) After sub-paragraph (6) there is inserted—

(7) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement or expected placement of a child under section 22C of the Children Act 1989, and

(b) in relation to that child, the member satisfies the condition in section 171ZL(2)(a) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZL(9) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter).

(8) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth or expected birth of a child, and

(b) in relation to that child, the member satisfies the condition in section 171ZL(2)(a) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZT(2) of that Act (cases involving applicants for parental orders under section 54 of the Human Fertilisation and Embryology Act 2008)." '.

Amendment 283, in schedule 7, page 171, line 31, at end insert—

'2B After paragraph 5B there is inserted—

"Unfair shared parental leave provisions

5C (1) Where an employment-related benefit scheme includes any unfair shared parental leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—

(a) the scheme shall be regarded to that extent as not complying with the principle of equal treatment; and

(b) subject to sub-paragraph (3), this Schedule shall apply accordingly.

(2) In this paragraph "unfair shared parental leave provisions", in relation to an employment-related benefit scheme, means any provision—

(a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid shared parental leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or

(b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid shared parental leave, to be determined otherwise than in accordance with the normal employment requirement.

(3) In the case of any unfair shared parental leave provision—

(a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and

(b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

but, in respect of any period of paid shared parental leave, a member shall only be required to pay contributions on the amount of contractual remuneration or statutory shared parental pay actually paid to or for the member in respect of that period.

(4) In this paragraph—

"the normal employment requirement" is the requirement that any period of paid shared parental leave shall be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;

"period of paid adoption leave" has the same meaning as in paragraph 5B;

"period of paid paternity leave" has the same meaning as in paragraph 5A;

"period of paid shared parental leave", in the case of a member, means a period—

(a) throughout which the member is absent from work in circumstances where sub-paragraph (5), (6), (7), (8), (9) or (10) applies, and

(b) for which the employer (or if the member is no longer in that person's employment, his former employer) pays the member any contractual remuneration or statutory shared parental pay.

(5) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth of a child,

(b) the member is the mother of the child, and

(c) the absence from work is not absence on maternity leave (within the meaning of the Equality Act 2010).

(6) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth of a child,

(b) the member is a person who satisfies the conditions prescribed under section 171ZU(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and

(c) the member's absence from work is not absence during a period of paid paternity leave.

(7) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement of a child for adoption under the law of any part of the United Kingdom,

(b) the member is—

(i) a person with whom a child is placed for adoption under the law of any part of the United Kingdom, or

(ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992 in relation to the child, and

(c) the member's absence from work is not absence during—

(i) a period of paid paternity leave, or

(ii) a period of paid adoption leave.

(8) This sub-paragraph applies if—

(a) the member's absence from work is due to the placement of a child under section 22C of the Children Act 1989 by a local authority in England with a local authority foster parent who has been approved as a prospective adopter,

(b) the member is—

(i) the local authority foster parent with whom the child in question is placed under section 22C of the Children Act 1989, or

(ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as modified by section 171ZV(18) of that Act (cases involving the placing of a child by a local authority in England with a local authority foster parent who has been approved as a prospective adopter), in relation to the child, and

(c) the member's absence from work is not absence during—

(i) a period of paid paternity leave, or

(ii) a period of paid adoption leave.

(9) This sub-paragraph applies if—

(a) the member's absence from work is due to the adoption or expected adoption of a child who has entered the United Kingdom in connection with or for the purposes of adoption which does not involve placement of the child for adoption under the law of any part of the United Kingdom,

(b) the member is—

(i) the person who has adopted or expects to adopt the child in question, or

(ii) a person who satisfies the conditions prescribed under section 171ZV(4)(b)(i) or (ii) of the Social Security Contributions and Benefits Act 1992, as applied by virtue of section 171ZZ5(1) of that Act (adoption cases not involving placement under the law of the United Kingdom), in relation to the child, and

(c) the member's absence from work is not absence during—

(i) a period of paid paternity leave, or

(ii) a period of paid adoption leave.

(10) This sub-paragraph applies if—

(a) the member's absence from work is due to the birth of a child,

(b) the member is a person who has applied, or intends to apply, for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in relation to the child, and

(c) the member's absence from work is not absence during—

(i) a period of paid paternity leave, or

(ii) a period of paid adoption leave." '.—*(Jo Swinson.)*

Schedule 7, as amended, agreed to.

Clause 97

Time off work to accompany to ante-natal appointments

Lisa Nandy: I beg to move amendment 321, in clause 97, page 89, line 26, after 'take', insert 'reasonable'.

The Chair: With this it will be convenient to discuss the following:

Amendment 323, in clause 97, page 89, leave out lines 29 to 31.

Amendment 319, in clause 97, page 89, leave out lines 29 to 33.

Amendment 322, in clause 97, page 92, line 21, after 'take', insert 'reasonable'.

Amendment 324, in clause 97, page 92, leave out lines 25 to 27 and insert—

'(2) In relation to a singleton pregnancy, an employee is not entitled to take time off for the purpose specified in subsection (1) on more than two occasions and in relation to a multiple pregnancy, an employee is not entitled to take time off for the purpose specified in subsection (1) on more than six occasions.'.

Amendment 320, in clause 97, page 92, leave out lines 25 to 29.

Lisa Nandy: The amendments are in my name and that of my hon. Friend the Member for Washington and Sunderland West. We support the principle behind clause 97, as we do so many of the other provisions in this part of the Bill, because it is essential for the child, the mother and the father that we do everything we can to support fathers and partners being part of the child's life right from the word go. The amendments would allow fathers and adoptive parents reasonable, rather than prescribed, time off to attend antenatal appointments.

The provisions in part 7, which are welcome, introduce the new right for fathers and partners—including intended partners in surrogacy cases—to take leave to attend antenatal appointments with their pregnant partner. We also welcome the provisions for adoptive parents to take time off to meet the child before placement. As it stands, fathers are restricted to two antenatal appointments, irrespective of the complexity of the pregnancy, and those appointments must not exceed six and a half hours in length.

We would prefer a provision allowing reasonable time off, rather than the restrictions in the Bill. In some cases, it would be unreasonable to take six and a half hours' leave—for example, when it is a short appointment that is close to home and scheduled for first thing in the morning. As we heard from Working Families during the oral evidence sessions, employers have noted that

"everyone will take the maximum".

In other cases, however, a father may need much more than six hours to be with his pregnant partner. Working Families gave two examples from its helpline. The first concerned

"a caller…from the highlands. She had several hours' travel time between her appointments, because she lived somewhere remote and had a complicated pregnancy, and she had to have hospital appointments, rather than home appointments."

The second caller

"went in for an emergency appointment, and the doctor decided to keep her in overnight for tests."—[*Official Report, Children and Families Public Bill Committee,* 7 March 2013; c. 124-125, Q256.]

While good employers may exercise discretion in such cases, placing a legal restriction on the time available for appointments may put fathers under pressure to return to work or face disciplinary action. It would be preferable for these issues to be left to secondary legislation, rather than having such detailed restrictions in the Bill. Similar issues apply to adoptive and surrogate parents, who may need to travel across the country to meet and bond with a child, or to visit a surrogate mother.

Amendments 319 and 320 would remove the limit on fathers being able to take only two occasions off to attend antenatal appointments and would remove the notion of a maximum of six and a half hours. The Twins and Multiple Births Association carried out an online survey of more than 1,000 multiple birth families in March 2013 and looked at their experience of maternity and paternity leave and pay. In the report, "Multiple births parents' experience of maternity and paternity", several respondents said they needed weekly or fortnightly scans. More than half of partners took additional time off during pregnancy to attend antenatal appointments or scans, and of these, a third took more than five days' unpaid leave.

The Equality and Human Rights Commission says that its analysis shows that it would be appropriate for fathers to have time off to attend whatever number of

[Lisa Nandy]

antenatal appointments is necessary, particularly where there are concerns for the health and well-being of mother and/or baby. A high number of premature and special care babies are twins and multiples births. We have already heard from my hon. Friend the Member for Manchester Central about some additional challenges faced by the families involved. Complex pregnancies and multiple births often require additional antenatal appointments, with an average of eight for women who are expecting twins. Some, particularly in rural areas, have to travel large distances for antenatal appointments, and the six and a half hour limit for each test may be a challenge, as was illustrated by the caller to the Working Families helpline.

Both mothers and fathers should be allowed to attend the minimum number of scans that they should receive; the National Institute for Health and Clinical Excellence says that means six appointments. Those appointments are vital for the health of mother and child. In the case of complex pregnancies, it is vital that parents are able to attend appointments as needed. There are clear benefits for the mother, in terms of the support that she gets, but also for the father, and therefore for the child, in our sending a strong message to fathers, saying that we are glad that they want to be involved in the life of the child from day one.

Amendments 323 and 324, tabled in my name and that of my hon. Friend the Member for Washington and Sunderland West, would permit multiple birth partners to take six days' unpaid leave to accompany their partner to scans. Although we welcome the proposal to allow partners to attend up to two scans, the reality is that many partners already have to request much more unpaid leave to find out how their partner's high-risk pregnancy is progressing.

I have drawn attention to the fact that mothers expecting twins have, on average, eight scans. Those expecting triplets have nine. That compares to an average of three for mothers with a singleton pregnancy. It is therefore appropriate that the Bill is amended to reflect that. The case of Miranda Williams, who recently had twins, provides a good example for the Committee. She says:

> "I had a 9 week scan (hadn't been well) 12 week scan, 13 weeks, 16 week, 20 week, 24 weeks, 28 weeks, 30 weeks, 32 weeks, 34 weeks and 36 weeks. Plus 3 midwife appointments and 2 appointments for glucose tolerance. Of those appointments, my partner came to all the scans and took all but 2 as holiday."

Obviously—this is relevant to our conversations on this part of the Bill—that may have repercussions for the partner's ability to take time off once the baby is born. It also puts significant strain on families and, of course, it is not the purpose of holiday, which is to take time to rest and switch off, not discuss difficult issues.

Lucy Powell: I strongly support what my hon. Friend says. If we get the balance right and do not put in the Bill a limit of six and a half hours per appointment, this is a cost-neutral proposal; in many cases, and certainly in mine, scan appointments take less than an hour, freeing up more time for further scan appointments, should they be necessary.

Lisa Nandy: I am grateful to my hon. Friend for making that point. I agree.

Tamba's recent research found that some employers are unwilling to allow partners time off for such appointments. It also found that many partners use their full allocation of unpaid leave, which is often, as I said, needed for the post-natal period, especially given that in some of the more complicated cases that I have outlined babies may be born prematurely or underweight and require time in neonatal care. It is essential that fathers and partners are able to spend time there then. Furthermore, many partners may have to use their leave, either paid or unpaid, to care for their other children, should the mother be hospitalised during pregnancy.

In summary, we support the views of a range of organisations—Bliss, Unison, Working Families, the Fatherhood Institute, Family Lives and the Lullaby Trust—that a better balance could be struck. Although we very much support what the Minister is trying to do, we think that our amendments would be a sensible way to progress.

Jo Swinson: I welcome the opportunity to debate the important and welcome new right that we are conferring on fathers and on partners of pregnant women to take time off to attend antenatal appointments, because we believe that shared parenting is important. We should recognise that although, as the hon. Lady's anecdotes have shown, many employers will enable people to do take time off, there is currently no right, so it is important to have one. The Government have a responsibility to ensure that the new right is introduced in the right way, so we undertook the "Modern Workplaces" consultation and recognise that it is important to pitch it at the right level.

On the two antenatal appointments of up to six and a half hours each, the suggestion that prescribed time limits could be replaced by the concept of reasonable time off is less helpful than it is in the context of the maternity provision. As we have discussed in Committee, it is so important that fathers are involved, which is one reason why we have introduced the clause. In fact, research shows that a third of fathers still do not take time off work to attend antenatal appointments currently, so the provision is important. At the same time, business is concerned about the costs that will be incurred, which is why we have restricted the entitlement to two appointments that are capped at six and a half hours each. It is fair to business to set some limitations.

The reason why the arrangement for partners or fathers is different from that for pregnant women who are entitled to take reasonable time off for antenatal care is that it would simply be impractical to specify the appropriate number of hours, because that depends on the individual pregnancy and the health requirements of mother and baby. Antenatal care is of course for mothers' and babies' health, while for fathers and partners it has more to do with issues of support and bonding. That is why it is useful to introduce the arrangement, but it is not as necessary that they attend every single appointment, so it is reasonable to limit the number of appointments.

Responses to our consultation showed that two occasions will provide the right amount of time. We expect fathers to want to attend scans and other tests or routine appointments, and it will be up to them, as it is now, to negotiate about that with their employer if they want to attend anything outwith the entitlement under the new

rule. On the six-and-a-half-hour cap, which was scrutinised by the hon. Member for Wigan, it was put in because it represents half a day under the Working Time Regulations 1998, which specify that a working day should not generally be more than 13 hours. In most cases, half a day is a reasonable period for absence from work to cover travel, waiting time and attendance at an antenatal appointment.

Employers, agencies and anyone hiring people would obviously be free to offer more time, and extra time can be taken from annual leave, as shown by the example outlined earlier. On the suggestion that everybody will automatically take the maximum—the hon. Lady mentioned some of the evidence from witnesses in Committee—that leave is unpaid. There is no incentive for people to take longer than they need, because they will not be paid for the time that they take, so that is not a particular concern.

On additional provision for twins or other multiple pregnancies compared with a singleton pregnancy, I accept that more scans will often be needed. At the same time, pregnant women carrying a single child may, for various reasons, need significantly more antenatal care than those with more straightforward pregnancies. I am sure that the hon. Lady, like me, knows of friends and others who have had pregnancies with certain complications requiring many appointments. That is as it should be, but singling out multiple births would create a distinction when there is another group of people who do not have the same right but arguably have as much need for it.

4.30 pm

Of course, in those circumstances, it is open to employers to be more flexible. I think that many employers would recognise the benefits that they would reap from taking a positive approach to the issue with their staff, but we do not want to get into a situation in which a woman who is pregnant must discuss it with her employer if she requires a significantly larger number of scans, for example. The reasonableness test runs a risk. In order to prove what is reasonable, medical records might have to be shared with a partner's employer to prove that leave was necessary. That is a situation that we do not want, which is another reason to specify in legislation a right that everybody has without needing to justify it further.

In conclusion, I am not persuaded that the amendments would result in a better system. The reasonableness test has its drawbacks, and it would be an extra burden on employers. We are putting in place an important new right. Obviously we will see how it works, but it is an important step forward that we should welcome.

Lucy Powell: I wanted to pick up on one point about putting 6.5 hours per antenatal appointment on the face of the Bill. Is the Minister concerned that some people will take advantage of that and take the full time, even though the appointment might take only half an hour or an hour?

Jo Swinson: As I mentioned, because it will be unpaid, there is no incentive for an employee to do so. I recognise the point made by the hon. Lady, but I do not think that the incentives will work to create that situation. We want to achieve a generally positive working relationship between a father-to-be and an employer, as between a mother-to-be and her employer. Perhaps we will discuss later how to ensure that guidance is available to support employers in navigating issues with their employees, so that everybody can know where they stand. I appreciate that it might not happen frequently in the work force of many small employers, so ensuring that they have guidance and support is important.

Lisa Nandy: I am a little disappointed by the Minister's response, although I appreciate that she has taken time to set it out and provide the Committee with some reassurances. She is right that it is only fair to businesses to set limits and give clarity about what they can expect. Nevertheless, the current system is problematic, and the measures are potentially problematic to businesses. I take what she says about the 6.5 hours not being paid and constituting half a working day. I appreciate that, but given the level of concern outside the House as well as some of the situations that I have described, I am a little disappointed.

The Minister is right to say that it is a slightly different situation for mothers than for fathers and that, for obvious reasons, it is impractical to set out what limits might apply to mothers. I accept to a certain extent that fathers are different, but the thrust of the Bill and the messages that all parties are sending out is that we support fathers. We expect and celebrate that they want to be involved in their children's lives from the word go. Working Families gave examples. It makes it almost impossible for the father to be involved, unless he has the most understanding employer in the world. I say that as a Member of Parliament, thinking about what it would be like for a male Member of Parliament—some members of the Committee might have had such an experience—to negotiate time off in the case of problematic pregnancies and multiple births, as I have described. We ought to do better by fathers than we currently do, notwithstanding the fact, as the Minister said, that we are seeing a real step forward. I am sure that we shall return to such issues in the future.

I also accept some of the Minister's argument about the circumstances that I outlined in which parents expecting twins or triplets, in particular, might not be the only cases when matters might be exceptional and that we do not want to create a better situation for such parents than for other parents with similar difficulties. While she was speaking, I was prompted to reflect on the contribution of my hon. Friend the Member for Manchester Central, who spoke about parents whose children were tragically stillborn. I am aware of such cases in my constituency. When it has happened, there might be particular anxiety on both their parts and the father might consider that he needs to support the mother and to reassure himself that everything is fine.

I accept the fact that there will be other cases, and the one to which I have referred is probably one such case when exceptions can apply. That is another reason why we should bear in mind such exceptions. I was encouraged by what the Minister said about the potential for guidance to make sure that employers know how to approach the issue, and in what circumstances it might be in order for them to take on an exceptional case and recognise the pressures on families.

[Lisa Nandy]

I am not completely persuaded by the hon. Lady's argument that the position under the Bill is better than the alternative under the amendment, but I am grateful to her for taking the matter seriously and for agreeing to continue to discuss it with us. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 97 ordered to stand part of the Bill.

Clauses 98 to 100 ordered to stand part of the Bill.

Clause 101

Removal of requirement to be a carer

Lucy Powell: I beg to move amendment 333, in clause 101, page 108, line 41, at end insert—

'(ca) subsection (8) is repealed.'.

I am sure that members of the Committee will all be delighted to know that the amendment is the last substantive amendment that I have drafted, although the odd new clause is in my name, so the Committee has not seen the last of me yet.

The amendment would remove the employment service requirement for a right to flexible working. In essence, as with some of my other amendments, it is about extending day one rights. The proposal would cover people other than just parents because it would apply to carers and those who find it particularly difficult to have employment that meets the hours they can work. Few jobs are advertised on a part-time or flexible basis from day one, and those that do have such requirements tend to have much poorer terms and conditions and, according to the TUC, only 5% of part-time jobs in London and the south-east were advertised on a full-time equivalent salary of more than £20,000.

Regulations currently prescribe that only employees with 26 weeks' continuous service with an employer have a right to request flexible working, and that acts as a barrier to flexible job entry that has a cost both to the individual and to the economy. Given the current changes to welfare, many more people need to fit work around caring responsibilities. That is being made difficult by the fact that so few jobs are advertised on that basis. Women are more likely than men to need to work flexibly as a tool to combine work and their caring responsibilities.

Without a right to request from day one of employment, individuals looking for flexible employment currently have to rely on vacancies advertised as flexible. Evidence has shown that such vacancies are less available and where they exist tend to be lower skilled and more poorly paid. A study by Gingerbread found that 83% of jobs advertised in London papers offered no flexibility at all and only 11% were advertised as part time. Another recent study found that, although a quarter of jobs were advertised as part-time roles, they were much less likely than full-time jobs to pay at a reasonable level or have a higher status. The study found that for every one part-time vacancy paying £20,000 a year full-time equivalent, there were 18 full-time vacancies at the same level.

Andy Sawford: I support the amendment. I wonder whether the experience of my hon. Friend in Manchester Central has been similar to mine in Corby in East Northamptonshire where, although we do of course have some excellent employers, far from there being increased flexibility for many local people in the labour market, there is in fact more flexibility for the employers themselves. They are increasingly using employment agencies and things such as zero-hours contracts that mean that people who are looking for work and are in desperate need of hours—such as those people who have to increase their work from 16 to 24 hours a week to get their tax credits—are being made to attend for work even when there is no work available for them. The flexibility is going the wrong way in some cases.

Lucy Powell: I strongly agree with my hon. Friend. The nature of work is increasingly insecure. I hope we would all agree that returning mothers, carers and others should be enabled to go back to work or to find new work that is part time and flexible but that has status and pay equivalent to other jobs, rather than the insecure, low-paid and low-skilled jobs we see being advertised. Indeed, a Resolution Foundation study found that nearly half the women surveyed had taken a lower skilled job because they were working part time. That is just one example.

International comparisons show that Britain is falling behind in making the most of the skills of workers who need to work flexibly. In the Netherlands, it is assumed that nearly every job can be done part time and 46% of the population therefore work part time. The German Government agreed targets for increasing the number of jobs available on flexible and part-time hours through employment laws, which has significantly increased the proportion of managers who work part time, from 3.7% to 9.8%. In Britain, the estimated costs of under-utilising women's skills is estimated to be between £15 billion and £23 billion a year, or the equivalent of about 2% of GDP. There is strong economic evidence for enabling this measure. As I have already said, welfare reforms mean that more people are expected to seek more work to receive benefits and tax credits; many of them will need to work flexibly. We should be doing more to enable them to do so as well.

There are also individuals, such as carers of disabled children, who want to work but a lack of flexible employment prevents them from doing so. The charity Working Families found that in about 500,000 cases a child's disability has a significant effect on a parent's ability to do paid work and is more likely to be a key cause of family poverty. In Working Families' study of those not in work, 91% wanted to do paid work, but they commonly said that they were not in work because of the difficulty of getting jobs with appropriate hours; again, we have another section of society, currently in receipt of state benefit and support, that wants to work. We should enable those people to do so.

A right to request on day one of employment could open up significant opportunities for people entering the work force. It would start the conversation about how a job might be undertaken by a suitable candidate in a different way and would contain a protection, in that employers would still have the right to turn down a request, subject to the code of practice. This could be good for the business, employing staff to help to secure

the best person for the job, and good for the business of Government, to make the most of their resources and the skills of their workforce.

There appears to be little indication that the removal of this qualifying period would hold any significant costs for business. Indeed, the impact assessment accompanying the Government response to the consultation identifies an overall benefit of nearly £120 million from the extension of the right to request on day one. That is why I have tabled this probing amendment today.

4.45 pm

Jo Swinson: As the hon. Member for Manchester Central has set out, we are talking about whether the right to request flexible working should be a day-one right, or whether there should be this 26-week qualifying period. It is important to remember that employees can of course approach their employer at any time about flexible working, including immediately upon starting a new job if they choose to do so. The absence of a formal statutory right does not prevent them from doing that.

We consulted on whether to remove the 26-week qualifying period and we have decided to retain it. There were significant concerns raised by employers and business groups about this issue, particularly around their having some certainty over the terms and conditions they offer when recruiting employees to fill new positions, and that certainty would be challenged by making the right a day-one right.

It is also worth noting that we should not encourage employees, for example, to accept a full-time job in the hope that they can then amend terms and conditions to work only mornings when they start the job. That would be disruptive to both business and employees. We could end up with a scenario where employees take a job in the expectation that they can magically vary the hours to suit their needs immediately after they have started, and if that is refused we could end up with a situation where they drop back out of the labour market, the employer has to go through the recruitment process again and both sides end up having had a rather unhelpful experience. We want to avoid such situations.

Of course, the hon. Lady is right to point out that the changes that we are making bring benefits both to new employees and to business. Extending the right to request flexible working is also about driving a culture change around working patterns in the UK to encourage both employers and employees to think differently about flexible working and making it much more a matter of course rather than an exception that is only for people who have children or caring responsibilities.

In the context of the 21st century workplace, it is bizarre that the time that people tend to associate with what are normal working hours is something that, frankly, is stuck in the 1950s, a time when people had to be physically in the office to get office work done and when people might have had a telephone but it certainly was not a mobile device let alone a device that allowed the checking of e-mails, which had not yet been invented, on the move.

The world of work today is very different from how it was then, and I do not believe that working practices have caught up sufficiently in all circumstances, although many employers have made great strides in recognising the benefit of flexible working, not only in terms of staff morale, staff loyalty and lower turnover costs but in terms of acknowledging that in a globalised world, within which employers want to work flexibly, there will be a greater number of hours that they are able to provide a service. When different parts of the world and different customers are awake at different times of the day, that can be immensely valuable.

That is the culture change that we are trying to achieve. I recognise that there is a significant job still to be done. I cannot remember the specific statistic that the hon. Lady cited, but she cited statistics about senior part-time roles, which is a big challenge. The organisation Women Like Us has done wonderful work on highlighting how possible it is for people to work in very senior roles in organisations either on a part-time basis or on a job share basis. It can be done—all the naysayers who argue that it is impossible do not need to be listened to, because we can find ways to make things work and there is example after example of very significant jobs where that happens.

There is an ongoing challenge as to how we can ensure that more employers recognise that from the outset and do not automatically think that they have to advertise a job as a full-time job; they can be more open-minded at that point. The day-one right does not address that issue, because that issue is about changing the mindset of employers at the very beginning, when they start to recruit or even when they are thinking about the vacancy that they are creating, so that they think creatively about how that could be done. That means that we must work alongside employers at that early stage, before they are even advertising jobs, so that through the recruitment process, the interview stage, for example, can be used to discuss some of these issues, rather than there being a nasty surprise on day one when somebody arrives at the workplace.

There is a private sector working group, instigated by the Government but working with private sector employers, which has developed a strapline that employers can use when advertising new jobs: "Happy to talk about flexible working." In the same way that many employers will put logos of particular organisations on their adverts to show, for example, that they are keen to be an equal opportunities employer, that is a way that employers can compete to attract the best and most talented staff. It will help employers to attract a wider pool of candidates to their vacancies and also make it really clear to prospective employees that they can discuss their flexible working needs at that early stage, before they even start work.

It is also worth noting that the right to request flexible working has been a huge success. It is not a massive burden on business, because it is a right to request, but it has none the less driven a huge amount of change. Around 90% of requests are accepted by employers, and an estimated 2 million or more requests are made each year. The changes that we are making to provide a statutory right to request flexible working to all employees who have been in a job for at least 26 weeks are sensible. For the reasons I have outlined, I do not think that it is currently justifiable to make that a day-one right, but it is vital that we continue to work with employers to encourage them to consider this issue at the recruitment stage so that we can achieve a much more flexible working culture that gives us a global competitive advantage and ensures that we can properly

[Jo Swinson]

harness the talents of everybody in society who wishes to work. I therefore urge the hon. Lady to withdraw her amendment.

Lucy Powell: I thank the Minister for her comments, which I find very reassuring indeed. I agree with her about the success of flexible working so far and applaud the measures in the Bill to further extend that. I am particularly reassured that she is alive to the cultural change that is necessary, and I agree that commitment to work with business to continue to push the envelope in such a way is critical. I only ask her and her Department to continue to look at these issues and see whether the uptake of the measures she describes is sufficient and whether they do in fact bring about the change that we want to see. I am sure she shares my view that we must enable as many people as possible to work flexibly in senior positions, with the status and salary that they deserve, and not just give them the option of working part time in a supermarket. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 101 ordered to stand part of the Bill.

Clause 102

Dealing with applications

Lisa Nandy: I beg to move amendment 334, in clause 102, page 109, line 10, leave out

'If an employer allows an employee to appeal'

and insert 'Where an employee appeals'.

The Chair: With this it will be convenient to discuss amendment 335, in clause 102, page 109, line 34, leave out

'where the employer allows the employee to appeal'

and insert 'where an employee appeals'.

Lisa Nandy: The amendments would remove the employer's discretion to allow an appeal against refusal of a flexible working request. The purpose behind that is that the Bill removes the current statutory process by which an employer must respond to an employee's flexible working request and replaces it with a requirement to respond "in a reasonable manner" and within a time frame of three months. The current process includes provision for an appeal by an employee, which provides a useful opportunity to discuss why an employer has not been able to accept the request and for the employee to propose possible compromises.

The ACAS draft code of practice for the extended right to request flexible working, which is currently out to consultation, recognises that an appeal is important and states:

> "If you reject the request you should allow your employee to appeal the decision. It can be helpful to allow an employee to speak with you about your decision as this may reveal new information or an omission in following a reasonable procedure when considering the application".

It is important that the Bill and code are consistent in order to provide clarity to employers and certainty to employees that appeals are to be allowed. The amendment would make it clear in the Bill that appeals remain an important part of the process of considering flexible working requests. I urge the Minister to accept it.

Jo Swinson: I am happy to discuss the issues around flexible working and the way in which such requests are handled. It might be useful to remind colleagues about the flow charts that had to be followed in the pursuit of flexible working. ACAS has been consulting on more straightforward guidance, as the hon. Lady said, which is much simpler and we welcome that.

The effect of the amendments would be to remove the employer's discretion to allow an appeal against the refusal of a flexible working request with the consequence that an employee would always have a right to appeal. Clause 102 introduces a duty on employers to consider requests in a reasonable manner. This approach ensures that the valuable conversations around flexible working will still take place, but without the distracting and costly process imposed by the current regulations—the flow chart I mentioned.

The legislation aims to get the employer and employee to have a proper conversation and to get employers to focus on that conversation without getting bogged down in the process and the number of weeks between the different steps. That is why we did not want to have a statutory right for the employee to appeal. We did not want to simply replicate the features of the current statutory procedure, but to enable employers to have the arrangements that suit them in place.

The ACAS code of practice explains the minimum expectations on employers to act reasonably. It has been drafted in collaboration with employer groups and unions and was published for consultation at the end of February. It gives employers guidance on how to deal with requests. The hon. Lady queried whether the Bill was consistent with the code. The code states that an employer must discuss the request with the employee; the employer should start from the presumption that they will grant it, unless there is a business reason for not doing so. It states that it is good practice to allow an employee to appeal a decision to reject the request. That is about good practice; it is not about a statutory right. They are consistent to the extent that they both co-exist. It will not be against the law if the employer does not allow an appeal. There might be circumstances in which that is a sensible approach. The guidance recommends good practice, but it gives discretion to the employer, which the amendments would unfortunately remove.

The process at the moment is a bit tick-box and we are trying to get away from that. I can give an example of where a formal appeal might not be appropriate. In a small company with two individuals working closely with each other every day, the discussions about the request are likely to have been full, exhaustive and detailed. To have an automatic appeal process on top of that would be rather burdensome and bureaucratic. We have no plans to change the reasons for refusing a request and no plans to weaken the protections for employees. It is important that employees will still be able to bring a tribunal claim if they do not believe their employer has considered the request in a reasonable manner.

The clause as drafted maintains the existing protections for employees, but does not add additional burdens on businesses. The feedback from employers and to some

extent from employees was that the process had got too bureaucratic. That is why we are streamlining it and making sure that there is some discretion. Good practice can recommend an appeal process, and that strikes the right balance. I urge the hon. Lady to withdraw her amendment.

Lisa Nandy: I remain concerned about the message the clause sends. I was also troubled by the example that the hon. Lady gave of a small company. I accept that there will be instances such as she described where there might be a couple of people who know each other and work together well. They will have had the conversation and for them an informal process will be perfectly reasonable. It is often in the small companies where this is problematic. While the Minister was speaking, I was prompted to think about the situation in many MPs' offices. They are effectively small businesses, with an employer and perhaps one, two or three employees. We know, thanks to the sterling work over the years of the staff branch of Unite, that far too often people, particularly young people, are sadly exploited in such situations. I am concerned not only about the messages we send, but that such situations can be difficult for employees to resolve, especially where things can become personal or difficult to challenge because there is not a big personnel department.

I accept that there will still be a right to go to a tribunal, but we have already discussed the additional barriers to accessing them, so I remain concerned about the measure. I want to put on the record, for the benefit of the Committee, that we have considerable concerns. I intend to return to the subject shortly, so at this stage I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Lisa Nandy: I am grateful to be able to speak on whether the clause should stand part of the Bill. Extending the right to request flexible working to all employees, as set out in clause 101, is extremely welcome. Many employers already offer flexible working to all their employees and reap the business benefits of increased productivity, talent retention and reduced absenteeism and sickness rates, as the Minister said. Research suggests that parents would benefit if flexible working became culturally acceptable, rather than being seen as a concession for particular groups, most notably mothers of young children. The impact assessment accompanying the Government's "Modern Workplaces" consultation response quantifies the net benefit as £116.66 million to employers over a 10-year period.

The Bill will however remove from primary legislation the procedure by which an employer should respond to such a request. A code of practice drawn up by ACAS will determine what is "reasonable", but there is no reference to the code in the Bill. The current system works well and provides a clear and simple timetable that helps both employees and employers. It is not clear that the introduction of a code will be beneficial to either party. As the TUC warns, there is a danger that the replacement of the statutory procedure with an ACAS code of practice will send the signal to employers that accommodating flexible working requests is less important. We must also consider the Equality and Human Rights Commission's point that the proposal to respond reasonably to requests "within three months" may be too long a period for someone for whom circumstances beyond their control suddenly change—for example, they are required to look after an elderly parent.

The right to request is largely a procedural right. An employee who makes an informal approach often does not have the request to change their hours or time of work seriously considered, and they may meet with a simple refusal. In such cases, using the statutory right can be valuable, because it places a requirement on an employer to give written reasons for a refusal, to adhere to a set timetable and to hold a series of meetings to discuss the matter with the employee. The meeting in particular can reveal the employee's needs for flexibility—childcare, for example—and help the employee to understand the business constraints on the employer. The current procedures encourage a constructive dialogue and may facilitate compromise. A set process that kicks in, taking the matter away from the field of personal relationships, that the employer and employee can follow, would be especially helpful in the example the Minister gave of a small business.

Failure to follow the statutory process may give rise to a claim in an employment tribunal. Such claims, on their own, are rare—flexible working claims accounted for fewer than 0.1% of all employment tribunal claims since the right was introduced in 2003—but the potential to bring a claim may prevent prevarication by the employer. Some employers have raised concerns about whether "reasonable" behaviour will be more contestable at tribunal and whether it will introduce ambiguity and subjectivity into the process. It may not be "reasonable" to treat all requests in the same manner, for example. In future, an employee may bring a claim that an employer has failed to act in a reasonable manner, rather than that they have failed to respond in the required time frame, which is largely a question of fact. If the code of practice is to be introduced, we would like assurances from the Minister that the draft ACAS code of practice to guide employers will be a statutory code and that an employment tribunal may penalise an employer who fails to take it into account.

Jo Swinson: I recognise the concerns expressed by the hon. Member for Wigan about the changes that we are making to ensure that flexible working and the right to request it can be handled in a much more streamlined and less bureaucratic way. It is to be welcomed, but I recognise the concerns that she outlined. I agree wholeheartedly with the points that she made about a cultural change to seeing flexible working as something general and normal rather than a special concession to particular groups of people, but on whether the code of practice is mentioned in the Bill, the duty to act reasonably is on the face of the Bill, which introduces the code. That obviously needs to be defined, but it is clear that in assessing whether anything an employer has done has complied or otherwise with the duty to act reasonably, the code will be the key document considered. The tribunal will have to take it into account as a statutory code.

The suggestion that employers will see the change as anything but helpful in reducing bureaucracy is unfounded. I do not think that the claim that they will suddenly see flexible working as less important stacks up, not least

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because flexible working is good for employers. We know that 70% of respondents to a British Chambers of Commerce survey noted some or significant improvement in employee relations when they ensured that flexible working was properly implemented. The vast majority of requests are agreed in any event, and there are significant benefits to business. I do not think that employers will downgrade flexible working, and I do think that they will welcome the fact that it is less bureaucratic. I understand the hon. Lady's point that it is not always easy for small businesses, but I was just using a small employer as an example of where a lengthy process might not be sensible. That is why having some discretion, rather than a rigid process, is important.

The hon. Lady said that taking up to three months to deal with a request might not be appropriate in an emergency. I agree, but that is what happens now: if we follow that flowchart all the way through, it takes up to three months. That is one of the problems that we are trying to solve. Of course, most requests ought to be accommodated, or at least a decision ought to be made, much more quickly than that. That is what we are encouraging, so that employers can have basic discussions rather than having to keep referring back to what happens—"Now we need to wait four weeks. Now we need to do this bit and that bit, and jump through that hoop." That is what we want to change. I suspect that the hon. Lady and I both want the same kind of relationship between employers and employees.

I am convinced that this statutory code of practice will give employees protection. Ultimately, we have the tribunal system, but we hope that people will not end up having to go to tribunals, because they are stressful and costly for everybody involved. None the less, that ultimate protection is still there.

Question put and agreed to.

Clause 102 accordingly ordered to stand part of the Bill.

Clause 103

Complaints to employment tribunals

Lisa Nandy: I beg to move amendment 337, in clause 103, page 110, line 10, at end insert 'or

(d) that the grounds for the employer's refusal under 80G(1)(b) was not applicable.'.

The amendment would allow an additional challenge for an employee whose flexible working request is refused by allowing an employment tribunal to consider the business case given by the employer. At present, employees can challenge a flexible working refusal at an employment tribunal only on the grounds that the employer has relied on incorrect facts to explain why the application has been refused, that the employer has failed to follow the correct procedure, including failing to give one of the eight reasons set out in the Employment Rights Act 1996, or that the employer failed to allow the employee to be accompanied at meetings to discuss the request. In practical terms, that means that employment tribunals can consider only the procedural issues of how the request was presented and dealt with, not the business case behind the refusal. As we have discussed, under the Bill the current procedure will be replaced by a code of practice, so that in future employers will only have to respond to requests in a reasonable manner and within three months.

Employers will still be required to give one of the eight grounds for refusing a request that are set out in the 1996 Act: the burden of additional costs; detrimental effect on ability to meet customer demand; inability to reorganise work among existing staff; inability to recruit additional staff; detrimental impact on quality; detrimental impact on performance; insufficiency of work during the periods the employee proposes to work; and planned structural changes. However, when a flexible working claim is considered at an employment tribunal, the employee cannot challenge whether the business ground given by the employer is reasonable. An employer can assert that one of the reasons set out in section 80G of the 1996 Act applies, but the tribunal is not able to inquire into the business grounds.

When making a statutory request for contract variation, an employee is expected to explain what effect they think the change will have on the employer and how such an effect might be dealt with, yet there is no onus on the employer to demonstrate the business case for refusing a request. We believe that employment tribunals should be able to look into the business case given by employers and make a judgment based on it.

The lack of teeth for employment tribunals leads many employees who want to request flexible working to make dual claims under right-to-request legislation and equality legislation. Women who want to work flexibly may be able to bring a claim of indirect sex discrimination against their employer under the Equality Act 2010. It has been successfully argued that because women tend to have more child care responsibilities than men—something I very much hope will change as a result of the Bill and other measures—insisting that women work longer, inflexible hours may be indirect sex discrimination. Tribunals considering sex discrimination cases are able to look into the business case and award much higher compensation.

Although the current provisions may bring beneficial outcomes to some women, bringing two claims under two separate Acts is complex and confusing for both employers and employees. The amendment would allow employees to bring a claim that the employer's given reason did not apply in their case. It would strengthen employees' rights at tribunal and encourage employers to consider carefully the business case before turning down a request. I hope that the Minister gives the amendment her full consideration.

Jo Swinson: As the hon. Lady says, we are talking about whether the substance of an employer's decision to refuse a flexible working request can be challenged at an employment tribunal. As she set out, there are eight statutory grounds on which an employer can refuse a flexible working request, and we do not propose to change them. For the benefit of members of the Committee who are not familiar with the grounds, I will set out again what they are: the burden of additional costs; detrimental effect on ability to meet customer demand; inability to reorganise work among existing staff; inability to recruit additional staff; detrimental impact on quality;

detrimental impact on performance; insufficiency of work during the periods the employee proposes to work; and planned structural changes.

The clause proposes that an employee can, if necessary, challenge in an employment tribunal whether an employer has considered their flexible working application in a reasonable manner, but we do not propose that an employee should be able to challenge the substance of an employer's decision. An employee can, however, challenge the substance of their employer's decision if the employer has refused a request for a reason other than one of the eight set out in legislation, or if the decision was based on incorrect facts.

The amendment would allow the employment tribunal to consider whether an employer's refusal of a request for contract variation based on an inability to reorganise the work among existing staff, for example, was reasonable, but it does not seem particularly reasonable to me that an employment tribunal should be able to probe an employer's decision-making process, arrive at a different conclusion from that reached by the employer and then make an award against the employer on that basis. The tribunal will not be in as good a position as the employer is to judge many of those issues. Employers need to have control over how they run their businesses. An employee's request to work flexibly, important though that is, should not supersede an employer's ability to run their business in the way they want. One reason employers as well as employees have given such significant support to the measure is that the previous Government and this one have got the balance right by ensuring that it is fairly light touch and encourages, rather than becomes a burden on, employers and how they have to operate under the right to request.

The hon. Lady also mentioned the potential to bring discrimination claims at the same time. If any employer acts in a discriminatory manner in considering a request, that claim should be brought, because we do not want any discrimination and the Equality Act should be upheld. I understand that she wants to short-circuit the process so that only one claim is brought, rather than two, but where discrimination has taken place, it is absolutely right to take a claim to an employment tribunal.

I believe that we have the right balance. There is no general right to challenge the substance of an employer's decision to refuse, but that is different from cases in which the employer has failed to identify a business reason that complies with one of the eight acceptable reasons, or in which they have based their decision on incorrect facts; the employee retains scope to challenge in those circumstances. I simply do not think that a tribunal is better placed than an employer to second-guess some business decisions—for example, about the allocation of work load—and make a judgment based on that consideration. I therefore hope that the hon. Lady will withdraw her amendment.

Lisa Nandy: I agree with the Minister that the right to request should not supersede the ability of an employer to run their business. She and I are probably trying to achieve similar things, albeit in slightly different ways. I am still a little concerned about the complexity of the system and about the support and safeguards available for people in this situation, but I am somewhat reassured by her response. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 103 ordered to stand part of the Bill.

Clause 104 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Anne Milton.)*

5.18 pm

Adjourned till Thursday 25 April at half-past Eleven o'clock.