



Low Incomes
Tax Reform
Group

A voice for the unrepresented

Department for Business, Energy & Industrial Strategy (BEIS)
Consultation on Carer's Leave
Response from the Low Incomes Tax Reform Group (LITRG)

1. Executive Summary

- 1.1. We are pleased to have the opportunity to comment on issues raised by the consultation document.
- 1.2. LITRG is part of a professional body and we specialise in tax (in which term we include National Insurance contributions) and related benefits issues. We have highlighted, where appropriate, to which questions our comments relate.
- 1.3. Unpaid carers play an important role in society, potentially reducing the need for the cared-for person to be admitted to hospital or a care home and reducing the need for other social services. Overall, we support the proposal to give employees a week of unpaid leave each year to provide care and think it should have as much flexibility as possible built into the design so that it is easy to access. For example, we believe it should be a day one right and have as few conditions attached as possible (for example, with regard to what the leave can be taken for).
- 1.4. However, while welcome, we have concerns that carer's leave is not the complete solution. For example, the fact that it is unpaid may deter those least able to afford to take time off from claiming it. Also, carer's leave will not reach those workers (often low-paid) who do not have full employee status, some of whom might have been able to afford to take the leave.

- 1.5. The leave being unpaid may, however, help keep any misuse of the new regime in check. This would also support the idea that the system should be a 'self certification' one, rather than one requiring the employee to provide any evidence.
- 1.6. We note that the treatment of carer's leave for benefits purposes does not appear to have been considered in the consultation document. Interactions with state benefits that require a certain number of working hours, such as working tax credit should be considered at an early stage so that carers do not, unwittingly, jeopardise their finances. We therefore recommend working in close consultation with other government departments, including HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP).
- 1.7. Various forms of childcare support also require the claimant to meet work requirements, and therefore it seems to us that carer's leave might need to be added to the list of situations in which such requirements are deemed to be met, as otherwise parents could lose entitlement.

2. **About us**

- 2.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2. LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3. Introduction

3.1. Why this consultation falls within our sphere of interest

- 3.1.1. As tax specialists with a particular interest in matters affecting people on low incomes, we welcome the opportunity to respond to this consultation.
- 3.1.2. Our approach to this consultation is therefore twofold:
 - (a) to raise issues relating to some of the specific questions that we think are relevant to those we seek to represent (note that we have referenced the specific questions throughout, though have not formatted the response in order of the consultation questions); and
 - (b) to highlight some areas which we think need to be considered but which are not specifically covered in the consultation.
- 3.1.3. In particular, we are concerned about how carer's leave will interact with the benefits system and how it might affect the carer's state benefit entitlement. We examine this further in section 7 below.

3.2. General comments

- 3.2.1. Without proper guidance to both employers and employees, people may not realise that they could claim carer's leave. This can be the case where care needs are starting to become apparent, but the person may not identify themselves as a 'carer' at that point. Instead, they may feel they are dealing with a one-off difficult situation but, over time, the needs of the supported individual develop into a clearer need for care.
- 3.2.2. For those in this situation, we think that carer's leave should be able to be taken as individual days rather than a week as a single block (*question 17*). Many people with elderly or vulnerable relatives will understand that sometimes an unexpected phone call can be the first indication that the needs of those relatives are changing and so the employee may need to take leave, even if only for a short period of time.
- 3.2.3. Employees may be unwilling, without this statutory entitlement, to ask for time off for this important duty in case it might jeopardise their position (perhaps even more so in the present economic circumstances). Making carer's leave a right should minimise that worry, enabling the employee to fulfil caring duties that benefit the whole of society. We think it should be a day one right, and so would be consistent with entitlement to unpaid time off for dependants (*question 6*).

3.2.4. It seems likely that the number of carers may be increasing since the coronavirus pandemic – which might, for example, have made some families more cautious about admitting relatives to a care home. Carer's leave could provide those affected with some vital time off from their employment duties while reducing the need for intervention by the state on behalf of the person being cared for.

4. Who would be eligible to take carer's leave?

4.1. As it stands, carer's leave is proposed for employees but not for 'workers' – those for whom the Taylor Review¹ preferred the term 'dependent contractors'. These people have less autonomy than independent self-employed people and may feel unable to ask for time off. We therefore suggest that government consider how people who are not employees may be further supported in similar caring situations.

5. People for whom caring responsibilities might be included

5.1. We would suggest that grandparents and other direct family members might be included along with the others in the list. (*Question 3*)

6. Impact on employers

6.1. The impact on employers of the proposed new right is considered on page 20 of the consultation document. Given our focus on those on low incomes/the unrepresented, we would stress the importance of considering the effect on the small and micro employers who do not have an in-house HR department to deal with the associated administration and compliance.

6.2. Therefore, any new statutory right must be straightforward to understand and administer, and must be as similar as possible to existing regimes, so as not to cause too much confusion. So, for example, employers would need to be clear that this is not a 'right to request' but a 'right' in itself, meaning that they cannot refuse the request, even if there are good business reasons for doing so.

6.3. For consistency, it might also be sensible for the notice period required to take carer's leave to mirror the notice period required for annual leave – at least twice as long as the amount

¹ See 'Good Work' The Taylor Review of Modern Working Practices, July 2017:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf, page 35

of leave a worker wants to take. (*Question 18*)

- 6.4. If a worker needed to take a half day off for example, they would only need to tell their employer the previous day – someone's care needs can often be unpredictable and this means that they can be responsive to the person they are caring for. Allowing workers to take the leave in small chunks here and there is also likely to be less disruptive to employers. We think there will be precedent, and also a degree of understanding among some employers for this approach, as many workers will take a half day or day off here or there for medical appointments/sick leave etc.
- 6.5. An initial self certification process would also be sensible as it would be consistent with the self certification process for statutory sick pay and would minimise the administrative burden on employers. Given that carer's leave is to be unpaid, having a self-certification system is unlikely to open it up to widespread abuse. (*Question 12*)

7. **Carer's leave and its interaction with state benefits**

- 7.1. We are concerned that potential interactions with benefits are not covered in the consultation document. It is important that consideration is given to how carer's leave will be treated for tax credits and benefits and whether any consequential changes are needed to those benefits to ensure that people are not discouraged from taking up the leave. While we appreciate that BEIS do not have policy control over tax credits and benefits, we believe that close liaison is needed with HMRC (for example, for tax credits, national insurance and childcare scheme interaction) and DWP (for other welfare benefits such as universal credit).
- 7.2. In-work benefits supplement a person's income, but these benefits can depend on an individual working a pre-determined minimum number of hours (for example, in the case of working tax credit) or meeting certain conditionality requirements (for example in the case of universal credit). Before carer's leave is introduced, it needs to be clear (both in legislation, if necessary, and in guidance) as to whether taking it impacts the individual's ability to qualify for such in-work benefits without any detriment to their award. It may, of course, also be the case that unpaid leave, which reduces usual monthly earnings, leads to an increased award for some benefits.
- 7.3. We think the existing tax credit rules can accommodate a short period of unpaid leave without affecting a person's normal working hours. However, it is important that any guidance offers reassurance to people if this is the case. In this respect, GOV.UK is the source to which many people might turn for guidance. This website currently provides a list¹ of when working tax credit might continue to be paid during times of leave or gaps in

¹ <https://www.gov.uk/working-tax-credit/further-information>

employment. This guidance should make the impact of any carer's leave clear.

- 7.4. One other area that needs consideration is the potential impact of carer's leave on national insurance contributions/credits. What would be the situation for an employee whose income fell below the Lower Earnings Limit for a week due to taking some leave? Entitlement to the state pension is built up by accruing qualifying years. A qualifying year is gained, for example, where an individual's employed earnings for a year exceed 52 times the Lower Earnings Limit (currently £120 per week; £6,240 for a year), but ignoring any weeks where income fell below that level. For a low-income worker whose income is close to making a qualifying year, a period of unpaid leave might mean that a qualifying year is not attained. It would be unfair if someone ended up losing a qualifying year through taking unpaid carer's leave and this potential consequence should be explored further and steps taken to mitigate the impact.
- 7.5. Such interactions between carer's leave and state benefits might be most acutely felt by those who also take parental leave which may be similarly unpaid.
- 7.6. Interactions with childcare also need to be considered. Currently, the Universal Credit Regulations¹ and the Tax-free Childcare Regulations² ensure that childcare costs continue to qualify for support during various periods of statutory leave. In the event that carer's leave is introduced, we recommend that it is added as an additional qualifying category to those regulations.

LITRG
2 August 2020

¹ SI 2013/376 Reg 32(2)

² SI 2015/448 Reg 12