

EXPLANATORY MEMORANDUM TO
THE CARER’S LEAVE REGULATIONS 2024
2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision to implement a new statutory entitlement to Carer’s Leave for employees from 6th April 2024. The instrument ensures that this leave will be available to employees for the purpose of caring for a dependant with a long-term care need.

2.2 The instrument:

- creates an entitlement for employees to be absent from work on leave in order to provide or arrange care for a dependant with a long-term care need.
- entitles all employees who meet the eligibility conditions to take carer’s leave, regardless of how long they have worked for their employer.
- ensures the leave will be available to take in increments of half-days or individual days, up to a week, to be taken over a 12-month period.
- does not require employees to provide evidence in relation to a request for Carer’s Leave.

2.3 Employees taking Carer’s Leave will have the same employment protections as associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption, Parental Bereavement, Shared Parental and Parental Leave). This includes protection from dismissal or detriment as a result of having taken the leave. Furthermore, an employee who takes carer’s leave, during any period of leave is bound by any obligations arising under those terms and conditions of employment which would have applied, subject to the exception in section 80K(1)(b) of the Employment Rights Act 1996.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland. Employment law is reserved for Scotland and Wales but devolved to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain, but the Carer’s Leave Act itself extends to the whole of the UK owing to one of its consequential amendments.

5. European Convention on Human Rights

5.1 The Minister for Markets, Enterprise and Small Business, Kevin Hollinrake MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Carer’s Leave Regulations 2024 are compatible with the Convention rights”.

6. Legislative Context

6.1 These Regulations are being made under new powers inserted into the Employment Rights Act 1996 by the Carer’s Leave Act 2023. The Regulations entitle an employee to be absent from work on Carer’s Leave and make provision for how the leave can be taken.

6.2 There is currently no specific statutory right for carers to take time off work, although there are several other rights to leave on which a carer might rely (provided they meet the eligibility criteria):

- Time Off for Dependants;
- Unpaid Parental Leave; and
- Annual Leave

6.3 An employee with caring responsibilities may also make a request for flexible working under section 80F of the Employment Rights Act 1996.

6.4 The purpose of Carer’s Leave differs from when an employee may take Time Off for Dependants or Unpaid Parental Leave.

6.5 In contrast to Time Off for Dependants, Carer’s Leave will be available to eligible employees for planned and foreseen caring commitments rather than for emergency caring situations.

6.6 In contrast to Unpaid Parental Leave, which is limited to parents of children under 18, Carer’s Leave will be available for a wider range of caring situations excluding general childcare, except where the child meets the definition of a dependant with a long-term care need.

7. Policy background

What is being done and why?

7.1 There are approximately 4.2 million people across the UK who are providing unpaid care by looking after an elderly or disabled family member or other dependant. The majority of unpaid carers are women, aged over 50. Over half of those providing unpaid care are thought to be balancing work alongside their caring responsibilities.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 There is currently no dedicated statutory leave entitlement for unpaid carers who have to rely on other forms of leave (e.g. Annual Leave) to take time out of work to care.

This entitlement will recognise the needs of such carers by providing them with a specific right to be absent from work for the purpose of caring.

Why is it being changed?

- 7.3 The Conservative Party manifesto in 2019 stated: “We will also extend the entitlement to leave for unpaid carers, the majority of whom are women, to one week”.
- 7.4 The Queen’s Speech in December 2019 committed to bringing forward measures “to introduce the entitlement to leave for unpaid carers”.
- 7.5 The Government launched a public stakeholder consultation on proposals for an entitlement to Carer’s Leave on 16 March 2020. The Government response to this consultation was published on 23 September 2021.
- 7.6 The Carer’s Leave Act 2023 gives eligible employees an additional right to time off work on leave to provide or arrange care for a dependant with a long-term care need. This leave entitlement will be unpaid.
- 7.7 The regulations give eligible employees a ‘day one’ right to Carer’s Leave, subject to certain criteria being met. This means that an employee would be eligible regardless of their length of service with their employer.
- 7.8 It also requires regulations to provide for at least one week’s leave in any 12-month period. Regulations may enable eligible employees to take Carer’s Leave flexibly, in individual or half-days, as well as set rules around notice and postponement for Carer’s Leave.
- 7.9 The Care’s Leave Regulations 2024 fulfil the requirements set out above.

What will it now do?

- 7.10 By providing a new, flexible entitlement to leave this measure will enable unpaid carers who are also employees to better balance their caring alongside remaining in employment, improving their work life balance. This will also help to create a minimum standard of support for unpaid carers in work, which employers may go beyond in terms of pay and/or duration – as many already do.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument won’t amend another instrument therefore, no consolidation is necessary as this will be the first exercise of the powers under the Carer’s Leave Act 2023.

10. Consultation outcome

- 10.1 To fulfil the Government’s 2019 manifesto commitment, the Government launched a consultation on carer’s leave in March 2020, which recognised that unpaid carers face particular challenges in balancing work and caring responsibilities that may warrant a specific new employment right to time off from work.

- 10.2 On Friday 21 October 2022, the Government confirmed its support for Wendy Chamberlain MP's Private Members' Bill to introduce a new entitlement to one week of Carer's Leave as a day 1 right.
- 10.3 The Government received over 800 responses to the consultation from a range of stakeholders and individuals. The response is available to view on https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019841/carers-leave-consultation-government-response.pdf.
- 10.4 Furthermore, consultations have been run with Carer's UK and Government has met with a range of businesses to discuss how the Carer's Leave Act and associated secondary legislation will impact them. Businesses were largely content with the secondary legislation we are putting forward.

11. Guidance

- 11.1 Guidance will be available on gov.uk in advance of the legislation coming into force on 6 April 2024.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is that they will need to understand the new Regulations and put processes in place to allow employees to take Carer's Leave if they need to.
- 12.2 The impact on the public sector is that they will need to understand the new Regulations and put processes in place to allow employees to take Carer's Leave if they need to.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No special measures apply to small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to determine whether the policy has met its objectives, we will be monitoring its impacts as well as undertaking a non-statutory Post-Implementation Review (PIR) of this policy after, at least, 5 years following introduction.
- 14.2 The instrument does not include a statutory review clause. Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31(3) of that Act, the Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement:
- “I have decided that to make provision for a statutory review in this instrument would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate”.

15. Contact

- 15.1 Leona Hoxha-Kartallozi at the Department for Business and Trade, email: labourmarketparticipation@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jayne McCann, Deputy Director for Participation and Individual Rights at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.