

WORK AND FAMILIES

Choice and Flexibility

ADDITIONAL PATERNITY LEAVE AND PAY

MARCH 2006

Additional Paternity Leave and Pay

The Government is publishing this consultation on the detail of the Additional Paternity Leave and Pay scheme, following commitments made in the Government's Response to the Work and Families Consultation in October 2005. The Government's intention is that employed fathers will be able to take up to 26 weeks Additional Paternity Leave, some of which could be paid if the mother of the child has returned to work. This new provision will be able to be taken within the child's first year and in normal circumstances during the second six months of the child's life. The purpose of this consultation is to invite comments on the detailed aspects of the scheme to ensure that the scheme is developed effectively, minimising burdens on business, whilst providing more choice for parents in who is caring for their child and allowing fathers a greater opportunity to be involved in raising their child.

Issued	8 March 2006
Respond by	31 May 2006
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CHAPTER 1

EXECUTIVE SUMMARY

- 1.1 In February 2005 the Secretary of State for Trade and Industry consulted through the *Work and Families: Choice and Flexibility* Consultation on the Government's proposals to provide more choice for families in how they balance work and caring responsibilities. The consultation included commitments on extending maternity and adoption pay; improving communications between employers and their employees during maternity leave; and increasing the scope of flexible working. The consultation also proposed a possible new law to enable fathers and partners of adopters to be more involved in caring for their child during the first year of the child's life.
- 1.2 In October 2005, the Government published its response to the consultation. This set out its proposals, including its intention to allow fathers to take an additional period of paternity leave, some of which could be paid if certain criteria were met. Alongside this, the Work and Families Bill was introduced in Parliament. At the time of publication, the Bill has passed through the House of Commons and has had its 2nd Reading in the House of Lords. The Bill and the Government Response can be found at www.dti.gov.uk/er/workandfamilies.htm.
- 1.3 Among other things the Work and Families Bill takes powers to introduce a new entitlement to Additional Paternity Leave and Additional Statutory Paternity Pay, with the detail of the scheme to be set out in the secondary legislation. The Work and Families Bill provides for an employed father or partner of a mother or adopter to be absent from work for a maximum of 26 weeks to care for a

child. This leave (known as Additional Paternity Leave) must be taken before the child's first birthday. This leave is in addition to the current paternity leave entitlement that a father or partner has, that is two weeks within the eight weeks following the birth of the child or the child's placement for adoption.

- 1.4 The Bill also provides for an employed father or partner of an adopter to be able to receive Additional Statutory Paternity Pay. In order for the father to qualify for this, the mother or adopter must have returned to work and have some of her entitlement to Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay left at the time of her return to work. The flowchart at Annex A shows how a father might qualify for Additional Paternity Leave and Additional Statutory Paternity Pay. The mother still has the choice as to whether she takes up all her leave and pay entitlement. The change will enhance the choice available to families, in effect enabling leave and pay to be taken up by the father or partner to care for the child instead, if the mother chooses to return to work. Additional Statutory Paternity Pay is in addition to the current Statutory Paternity Pay entitlement, that is two weeks Statutory Paternity Pay received whilst on Paternity Leave as set out above.

- 1.5 In this consultation document we have set out how we see Additional Paternity Leave and Pay working in practice and we are asking for your views on key aspects. It is the Government's intention to keep the Additional Paternity Leave and Pay scheme as straightforward as possible for employees and employers and to consult widely with stakeholders and members of the public to ensure we do this.

- 1.6 The 2004 Pre-Budget Report included a commitment to extend paid maternity and adoption leave to 12 months by the end of this Parliament. We intend to introduce the Additional Paternity Leave and Pay scheme alongside this extension.
- 1.7 Bringing in the scheme alongside the extension of maternity pay and adoption pay to 52 weeks will provide an opportunity for an equal division of **paid** leave for mothers and fathers and provide an opportunity for them to have equal caring responsibilities for their child during the first year of its life. This would mean that (depending on when a mother began her maternity leave) a mother and father could each take 6 months paid leave to care for their child in it's first year of life, if the parents choose to do so.
- 1.8 We are aware that businesses require sufficient time to prepare for the introduction of this scheme and develop their own HR strategies. This in turn would benefit families who could be confident in taking advantage of the new provision. We also recognise that this is a new proposal and will require appropriate supporting guidance. We will work with stakeholders on developing the scheme and the guidance to support it to further enable its smooth implementation.
- 1.9 This consultation will allow us to seek views on the detailed aspects of the scheme and provide us with valuable information in preparation for drafting the secondary legislation. There will be a further consultation on the draft regulations before they are laid in Parliament and come into force.
- 1.10 A full list of the questions that we would ask you to consider can be found at Annex B. The questions are intended to obtain your views on a number of key areas including;

Who is eligible for Additional Paternity Leave and Pay?

1.11 In aiming to keep the scheme as straightforward as possible we intend, where possible, to mirror existing maternity and paternity arrangements, for example we intend the definition of a father (that is, his relationship to the child and the child's mother or adopter) eligible for Additional Paternity Leave and Pay to be the same as that for current paternity leave. We seek your views on the minimum length of time a father should have worked for his employer before he can qualify for Additional Paternity Leave and ask for comments on how the calculation of Additional Statutory Paternity Pay should be made and over what period. One important element of the scheme is the requirement for a mother to have returned to work for a father to be able to take Additional Paternity Leave and Pay. The Bill specifically requires this in relation to Additional Statutory Paternity Pay and we intend in the regulations to make a provision requiring a mother to have returned to work for a father to qualify for Additional Paternity Leave. We will need to consider what constitutes a mother returning to work and we seek your views on this.

When Additional Paternity Leave and Pay can be taken?

1.12 Following responses to the Work and Families: Choice and Flexibility consultation, fathers will not be able to start their Additional Paternity Leave and Pay until after approximately the first six months of a mother's maternity leave. We propose to allow this to be taken after the child has reached 20 weeks old, as this is the closest proxy to the mother having six months' leave, we ask for your views on this. We recognise that there may be instances where a gap between a mother returning to work and a

father taking up his entitlement would be of benefit, but also recognise that this could make the scheme more complex. We seek your views on the possibility of gaps and whether or not to allow them. In situations where a mother dies before the child's first birthday, special provisions will be made to allow fathers to be able to take extended Additional Paternity Leave and Pay, but we are aware of better regulation principles and want to strike the right balance, therefore we seek your views on what extent we regulate for the various possibilities outlined in the consultation document.

Additional details of the additional Paternity Leave and Pay scheme.

1.13 The consultation document sets out that we will be introducing a minimum period of leave that could be taken and we also set out that leave must be taken in one continuous block. We also set out a provision to improve communication between employers: that a father or partner of an adopter will be able to work for a number of days during their pay period without losing statutory payments or bringing their leave to an end. We propose to make the number of days that are to be allowed to be the same as a mother taking maternity leave and pay, and we ask for your thoughts on this. In this section we also seek your views on what terms and conditions and rights of return a father should benefit from whilst on or returning from Additional Paternity Leave. We intend to adopt either the equivalent rights of a mother on Ordinary Maternity Leave or the equivalent rights of a mother on Additional Maternity Leave.

Administration of the scheme

- 1.14 It is important that the administration of Additional Paternity Leave and Pay is kept as straightforward as possible. In this section of the consultation document we probe a number of questions that will help to develop how the scheme might work. In particular, we ask for views on how much notice a father should be required to give his employer of his intention to take Additional Paternity Leave and Pay and, given that certain information about the mother's circumstances will be required for the father's employer to administer the father's leave and pay, (mother being entitled to Statutory Pay, date the entitlement ends, intended date of return to work), whether all this information should be provided at the same time.
- 1.15 We want to ensure we get the balance right between ensuring the scheme is straightforward, and that it is robust and therefore we seek views on the sanctions that should be imposed for failure to provide information and comply with notice periods and we seek views on how the information is presented to the father's employer along with who has responsibility for passing information to employers.
- 1.16 We would also welcome comments on any other aspect of this consultation that you may have.
- 1.17 The closing date for this consultation by which all responses should be submitted is **31 May 2006**. We would welcome as many comments as possible, so please feel free to pass to others if you think they might be interested.

How to respond

The closing date for this consultation, by which all responses should be submitted, is **31 May 2006**.

When responding please state whether you are responding as an individual (and in what capacity – e.g. employee, parent, carer, employer, etc) or representing the views of an organisation. If responding on behalf of an organisation, please make clear whom the organisation represents and, where applicable, how the views of members were assembled.

Responses should be submitted to:

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www.dti.gov.uk/publications

An electronic version of the document and a Welsh version can be found at <http://www.dti.gov.uk/er/workandfamilies.htm>

Other versions of the document in braille, other languages or audio-cassette are available on request.

Regulatory Impact Assessment

We have produced a partial Regulatory Impact Assessment (RIA) setting out estimates of the costs and benefits of the proposals and options within this consultation. This can be found at Annex D.

Confidentiality

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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A copy of the Code of Practice on Consultation is at Annex C

CHAPTER 2

WHO IS ELIGIBLE FOR ADDITIONAL PATERNITY LEAVE AND PAY?

- 2.1 Additional Paternity Leave and Pay are specifically intended to allow a father or the partner of a mother or adopter to be absent from work for the purpose of caring for the child, once the child's mother or adopter has returned to work. Like the existing paternity pay and leave entitlements, Additional Paternity Leave and Additional Statutory Paternity Pay will be available to employed fathers or partners of adopters, although employed earners other than employees, such as agency workers and office holders, may be eligible for Additional Statutory Paternity Pay whilst not being eligible for Additional Paternity Leave. This also mirrors how existing maternity leave and pay arrangements work.

Relationship with child and child's mother/adopter (qualification for Additional Paternity Leave and Additional Statutory Paternity Pay)

- 2.2 Current paternity provisions require that, in order for a father or partner to qualify for Paternity Leave and Statutory Paternity Pay (which will now be known as Ordinary Paternity Leave and Ordinary Statutory Paternity Pay respectively) he must in the case of the birth of a child be either the father of the child, or married to, or the partner (including civil partner) of the child's mother, and be responsible for the upbringing of the child. If the child is adopted, the father must be married to or be the partner of the adopter, or must be the member of a couple who have adopted jointly who has chosen not to take adoption leave and Statutory Adoption Pay or must be married to or the partner (including civil partner) of the adopter. For simplicity both these groups are referred to as the partner of the adopter throughout this

consultation document. This reflects the terminology in the existing paternity and adoption leave and pay legislation where the individual taking adoption leave and pay is referred to as “the adopter” .

- 2.3 We intend to use the same eligibility requirements regarding relationship for Additional Paternity Leave and Additional Statutory Paternity Pay.

Length of service with employer (qualification for Additional Paternity Leave and Additional Statutory Paternity Pay)

- 2.4 Current paternity provisions state that in order to qualify for two weeks’ Ordinary Paternity Leave and Ordinary Statutory Paternity Pay a father or partner must have completed 26 weeks service with their employer at the 15th week before the baby is due (which equates to at least 40 weeks, by the time he can start the leave). For the new provisions there will also be a requirement for a father or a partner to have completed a certain length of service with their employer to be eligible for Additional Paternity Leave and Pay.
- 2.5 A woman on maternity leave has to take her leave in one continuous block. Fathers or partners will be able to take Ordinary Paternity Leave and then, later, a continuous block of Additional Paternity Leave. The most straightforward approach would be to require fathers or partners to have been eligible to take Ordinary Paternity Leave and/or Pay and to continue in employment with the same employer up to the intended date of taking Additional Paternity Leave and/or Pay. This would make the administration of the scheme easier for employers as they would know if their employee had taken or was eligible to take Ordinary Paternity

Leave at the time of the child's birth or placement for adoption. They could start a conversation then about the possibility of Additional Paternity Leave and Pay later.

- 2.6 In practice, this would mean a requirement for the father to have completed at least 60 weeks service with his employer, if he were to take Additional Paternity Leave and Pay when the baby was 20 weeks old. **(In paragraph 3.4 we explore how we define the earliest point a father could take Additional Paternity Leave and Pay and suggest setting this at 20 weeks from the date of birth of the child).** If Additional Paternity Leave and Pay was taken in the later months of the child's first year, say for the last three months, this would mean the father would have had to have completed about a year and a half of service with his employer to qualify.
- 2.7 A second option could be to require an employee to have completed one year's service with his employer before the earliest date on which he could take Additional Paternity Leave and Pay. That would mirror current provisions to qualify for parental leave.
- 2.8 A third option could be a requirement for a father to have completed 26 weeks service with his employer before the earliest date on which he could take Additional Paternity Leave and Pay. However, this would mean a length of service requirement that is shorter than the current requirement in respect of Ordinary Paternity Leave. Both this option and the one above would necessitate a check by the employer to ascertain whether an employee qualified or not, if they had not been eligible for Ordinary Paternity Leave.

Question – What is the minimum length of time a father should have worked for his employer before he can qualify for Additional Paternity Leave?

Option 1 - Qualified for Ordinary Paternity Leave and continued in employment with the same employer up to the intended date of taking Additional Paternity Leave and Pay – minimum of 60 weeks in normal cases?

or

Option 2 - One year's service before the intended date of taking Additional Paternity Leave and Pay?

or

Option 3 - 26 weeks' service before the intended date of taking Additional Paternity Leave and Pay?

or

any other alternative

Additional conditions relating to Additional Statutory Paternity Pay

Calculation period and rate of pay (qualification for Additional Statutory Paternity Pay only)

- 2.9 It is intended that Additional Statutory Paternity Pay will be paid at the same rate as Ordinary Statutory Paternity Pay – that is, at a flat rate (currently £106 per week, rising to £108.85 from April 2006), or 90 per cent of the father's average weekly earnings if that is less

than the flat rate. As with Ordinary Statutory Paternity Pay, this will be paid by the employer, with the employer being able to recover 92 per cent of the Additional Statutory Paternity Pay they pay by deducting it from their next payment of National Insurance contributions, PAYE and other payments to the Her Majesty's Revenue and Customs. Small employers (those whose total National Insurance liability is £45,000 or less in the previous tax year) may recover 104.5 per cent (April 2004) of the Additional Statutory Paternity Pay they pay. Employers may also claim money in advance to help with their cash flow.

How the calculation is made

- 2.10 To qualify for Ordinary Statutory Paternity Pay a father's average weekly earnings in the eight weeks up to and including the qualifying week (the week immediately preceding the 14th week before the expected week of the child's birth) must be at or above the lower earnings limit for the payment of National Insurance contributions. The lower earnings limit is £82 a week from April 2005, rising to £84 a week from April 2006.
- 2.11 Similarly, it is our intention that for a father or partner to be able to receive Additional Statutory Paternity Pay he will also be required to have average earnings at or above the lower earnings limit. It is estimated that most fathers do qualify for the full flat rate for Ordinary Statutory Paternity Pay and therefore, most fathers would qualify for the full flat rate for Additional Statutory Paternity Pay.
- 2.12 Given this is a new payment, we want to take the opportunity to consider how the calculation of average weekly earnings is made. It may be considered to be more straightforward to mirror existing

Ordinary Statutory Paternity Pay arrangements by averaging over an 8 week period. This would also mirror the provisions set out for calculating Statutory Maternity Pay and Statutory Adoption Pay, which could mean less confusion for employers and their employees.

2.13 As it is estimated that most fathers do qualify for the full flat rate for Ordinary Statutory Paternity Pay and therefore, most fathers would qualify for the full flat rate for Additional Statutory Paternity Pay, it could be suggested that there is a better way than averaging over an 8 week period. Is an average period required, given that most fathers earn above the flat rate? We could base the calculation on actual earnings at one point (i.e. a week) rather than an average over 8 weeks. Would this simplify the process of calculation for employers?

2.14 If an average were to be used, it could be taken over a different length of time than 8 weeks.

Question – How do you think the weekly rate should be calculated for Additional Statutory Paternity Pay?

If an average is used, over what pay period is the calculation made

2.15 The length of service criteria adopted (see paragraphs 2.4-2.8 above), will influence what options are available. One option is for the calculation to be made the same time as existing Ordinary Statutory Paternity Pay (i.e. basing the level of pay on the employee's average earnings in the 8 weeks up to and including the week immediately preceding the 14th week before the expected week of the child's birth), which would mean that employers would not have to carry out a further calculation. Once they have

administered payment for a father taking Ordinary Paternity Leave, they would simply refer back to existing records. This is on the presumption that an 8 week average is adopted and based on a length of service criteria as set out in paragraph 2.5.

- 2.16 An alternative option could be to make a calculation closer to the intended date of starting Additional Paternity Leave and Pay. There may be employees whose circumstances have changed since taking Ordinary Paternity Leave and Pay and their intended start date for Additional Paternity Leave and Pay. The average earnings may have increased, but unless this takes the father to the flat rate, it makes no difference, however, if a father earns between the flat rate and 90% he would get 90% of his average weekly earnings. We estimate these numbers to be very few, as most fathers will have qualified for the full flat rate anyway, as stated earlier.

Question - What period should be used as the basis for the calculation of average weekly earnings?

Should the period be linked to the expected week of childbirth (as used for Ordinary Statutory Paternity Pay)?

or

Should the period be linked to the date the father intends to start his Additional Paternity Leave and Pay?

or

Should the period be linked to the actual date of the child's birth?

Conditions dependent upon the child's mother

Returned to work

- 2.17 As mentioned earlier, for a father or partner to receive Additional Statutory Paternity Pay, the Bill provides that the mother, or adopter, must have been entitled to Maternity Allowance, Statutory Maternity Pay or Statutory Adoption Pay, must have some of that entitlement remaining and must have returned to work.
- 2.18 There is no specific requirement in the Bill for a mother/adopter to have returned to work for a father or partner to be able to take Additional Paternity Leave; however, we intend to make this a requirement in the regulations, as the intention behind the Additional Paternity Leave and Pay scheme is to allow a mother to return to work early, if she so chooses, and provide a mechanism for a father to take time off instead to care for the child. It is not the intention to encourage both parents to be out of the labour market at the same time for a long period of time.
- 2.19 We will need to consider what circumstances constitute a mother having returned to work. One approach could be to require the mother to have actually recommenced work with her employer. There may be circumstances where a mother has ended her statutory entitlements, but not recommenced work with her employer. For example, a mother may wish to take parental leave or another form of leave when she ends her maternity entitlements. If she still had some of her entitlement remaining at this point in time, should a father be able to take up Additional Paternity Leave and Additional Statutory Paternity Pay? This would mean both parents would be out of the workplace even

though only one parent is receiving statutory pay. (This is subject to the views on gaps, see paragraph 3.8)

Question – What circumstances do you think should constitute a mother returning to work?

CHAPTER 3

WHEN ADDITIONAL PATERNITY LEAVE AND ADDITIONAL STATUTORY PATERNITY PAY CAN BE TAKEN

- 3.1 The two weeks of Ordinary Paternity Leave and Ordinary Statutory Paternity Pay must be taken consecutively within eight weeks of the date of birth of the child. In order to be consistent and to assist in keeping the administration of the scheme straightforward for fathers and employers, the earliest point at which Additional Paternity Leave and Pay could be taken will also be calculated from the date of birth of the child or placement for adoption.
- 3.2 In line with responses to the *Work and Families: Choice and Flexibility* consultation fathers will not be able to start their Additional Paternity Leave and Pay until after approximately the first six months of a mother's maternity leave.
- 3.3 It is rare for a mother to begin her maternity leave at the time of the birth of her child. It is more common for a mother to take time off leading up to the birth of the child, usually in the region of 3 – 7 weeks before the birth of the child.¹
- 3.4 We propose to allow Additional Paternity Leave and Pay to be taken after the child has reached 20 weeks old. This provides a reasonable proxy for reserving the first six months of leave for the mother. We also propose for consistency that an equivalent start date of 20 weeks from the date of placement for adoption is introduced in respect of an employee taking Additional Paternity Leave and Pay where a child is placed for adoption. An eligible

¹ Based on preliminary analysis of the Maternity and Paternity Rights Survey 2005

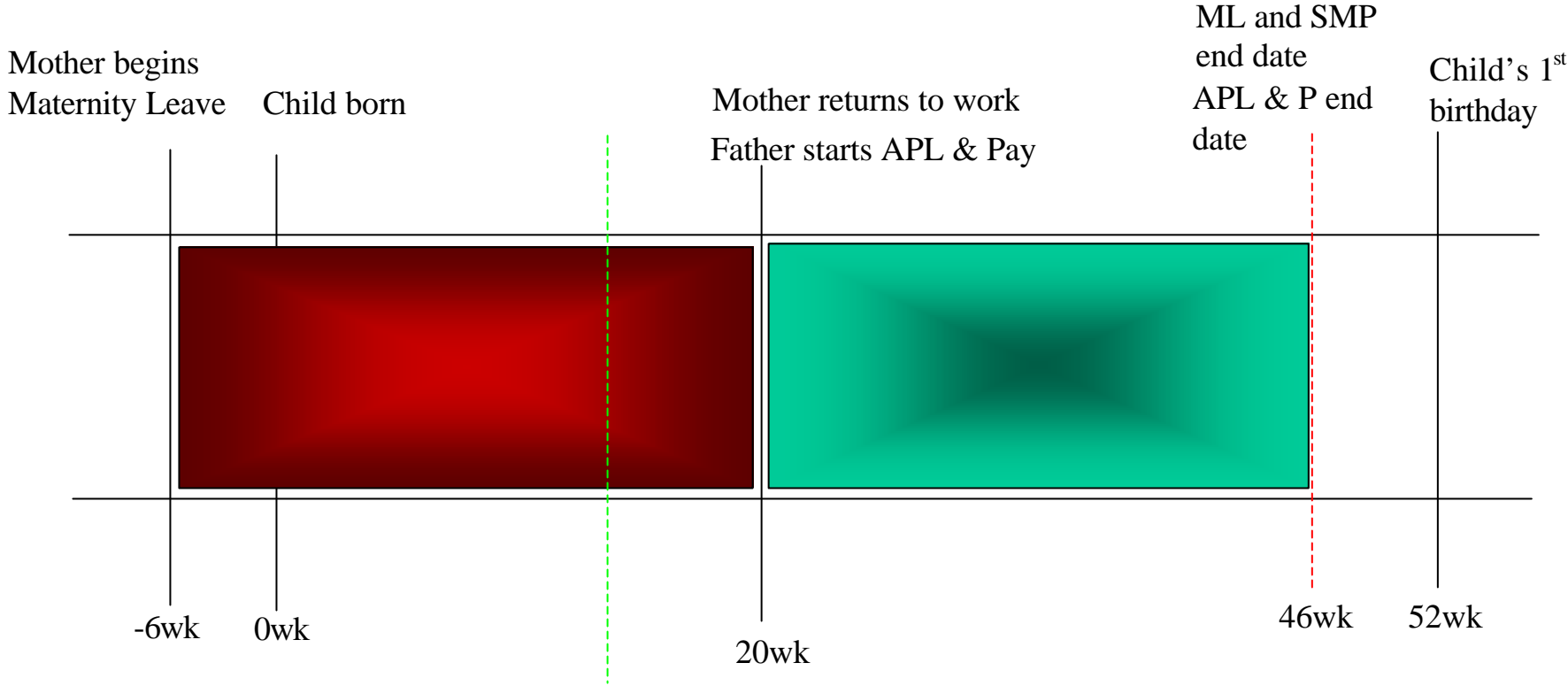
father will only be able to take Additional Paternity Leave and Pay after this point.

- 3.5 We intend to allow a father to take a maximum period of 26 weeks Additional Statutory Paternity Pay to correspond with the maximum period of Additional Paternity Leave.

Question – Do you agree that setting the earliest point at which Additional Paternity Leave and Pay can be taken at 20 weeks from the date of birth of the child or in the case of adoption, 20 weeks from the date on which the child was placed for adoption, is the most appropriate way of reserving the period after the child’s birth for the mother?

- 3.6 The diagram below shows how a mother and father may both care for their child in its first year by taking advantage of the Additional Paternity Leave and Pay scheme. This is based on a mother beginning her maternity leave and pay 6 weeks before the birth of the child and returning to work at the earliest point (20 weeks after the birth). Under this scenario both the mother and father would be able to take 26 weeks of paid leave.

An example showing how Additional Paternity Leave and Pay might be taken



Possible notification period (8wk before 20 wk point)

Overlaps with mother's leave and pay

- 3.7 The Work and Families Bill makes clear the mother has to have returned to work before a father can take up Additional Statutory Paternity Pay, thus preventing any overlap with the mother's Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay. In respect of Additional Paternity Leave, regulations will include a requirement for a mother to have returned to work for a father to be able to take Additional Paternity Leave.

Gaps between mother ending her entitlement and father commencing Additional Paternity Leave and Pay

- 3.8 The Bill does not include a requirement that fathers have to take up their Additional Paternity Leave and Pay immediately after the mother's maternity leave or, where she does not have leave, her pay ends.
- 3.9 We recognise that there may be certain circumstances where parents want a gap between a mother returning to work and a father or partner taking up Additional Paternity Leave and Pay.
- 3.10 For example, a mother who has accrued annual leave during her maternity leave may wish to take this leave immediately after the maternity leave. This might be regarded as a return to work, in which case there would be a gap between the mother's return to work (at the end of her maternity leave) and the father starting his additional paternity leave (at the end of the mother's annual leave).
- 3.11 There may be a circumstance where a mother wishes to return to work before the child reaches its 20th week (the earliest point at

which Additional Paternity Leave can be taken). In this circumstance, we intend that the father or partner would be eligible to take Additional Paternity Leave and Pay, **only** at the 20 week point or any point thereafter before the child's first birthday.

Question – Do you agree the rules should allow for the possibility of a gap between the end of maternity or adoption leave and the beginning of Additional Paternity Leave and Pay?

Question - Are there any circumstances where you think a gap in (i) leave, or (ii) pay should not be allowed?

Situations where a mother dies before the child's first birthday

3.12 During the *Work and Families: Choice and Flexibility* consultation several stakeholders called for the Government to make a provision for fathers in the circumstances when a mother dies during childbirth or soon after the child is born. We set out in the Government response to the consultation that we intend to take a power in the Bill to enable us to create special provisions for fathers in these difficult circumstances to be able to take extended Additional Paternity Leave and Additional Statutory Paternity Pay. It should be borne in mind that there are existing benefits that are can be claimed in bereavement situations. These are Bereavement Payment, Widowed Parent's Allowance, Bereavement Allowance and Income Support.

3.13 The basic principle would be to allow a father to start his Additional Paternity Leave from the date the mother died or a suitable date thereafter, if the father so chooses. We propose to allow a father to be able to take Additional Paternity Leave up until the child's first birthday and if necessary for longer than the 26

weeks maximum period prescribed under normal circumstances. A father would be able to begin this leave earlier than the earliest usual start point (20 weeks after the birth) in these circumstances.

- 3.14 We could allow partners of mothers who do not qualify for maternity leave or pay or do not work to also be able to take Additional Statutory Paternity Leave (unpaid) in the circumstance where the mother dies during the child's first year, as the requirement for care for the child still remains.
- 3.15 We could also provide that if a mother has returned to work (this may be full time or part-time) and dies, that a father will be entitled to take Additional Paternity Leave (unpaid), until the child's first birthday.
- 3.16 If a father had already begun, but not finished, a period of Additional Paternity Leave and Pay when the mother died, we could allow this leave to be converted to the entitlement that the father would get under emergency Additional Paternity Leave and Pay, i.e. he can take a longer period of unpaid leave up until the child's first birthday. If a father has already taken Additional Paternity Leave and Pay and returned to work we could allow a father to be able to take a further period of Additional Paternity Leave (unpaid), up until the child's first birthday.
- 3.17 It is intended that a father would be able to receive Additional Statutory Paternity Pay for the remaining length of time that the mother would have been entitled to Statutory Maternity Pay or Maternity Allowance. Again this could be beyond the maximum 26 weeks Additional Statutory Paternity Pay that would be allowed in normal circumstances for taking Additional Paternity Leave and Pay.

3.18 We intend to mirror the same provisions in respect of partners of adopters who have died, with appropriate modifications to take account of disrupted placements.

3.19 Whilst we could allow these possibilities, we need to consider carefully whether there is a good case to regulate. There is a question of whether we need to include all these in regulations or whether better regulation principles would lend themselves to most of these situations (where pay is not involved) being left to the discretion of an employer who we would envisage being sympathetic in these circumstances.

Question – Should all the situations outlined above in relation to the situation where a mother dies be included in the regulations?

CHAPTER 4

ADDITIONAL DETAILS OF THE ADDITIONAL PATERNITY LEAVE AND PAY SCHEME

Multiple births/more than one child placed for adoption

4.1 Current provisions for maternity and paternity leave and pay provide that where a mother has given birth to more than one child as a result of the same pregnancy, she only qualifies for one period of leave and pay. The same rule applies where more than one child is placed for adoption as part of the same arrangement. It is intended that a father would only be able to qualify for one period of Additional Paternity Leave and Pay in this circumstance as well. In this scenario, any calculations would be taken from the date of birth of the first child born from that pregnancy or in the case of adoption, the date on which the first child was placed for adoption.

Minimum period

4.2 The *Work and Families: Choice and Flexibility* consultation indicated that we would introduce a minimum period of leave that could be taken to help make it easier for employers to plan and provide cover for fathers or partners of adopters taking leave. We indicated then that we intended to introduce a minimum period of two weeks' leave and this is still our intention.

Continuous leave

4.3 Current maternity leave provisions require a mother to take her maternity leave in one continuous block. To keep the Additional

Paternity Leave scheme straightforward we intend to require that Additional Paternity Leave be taken in one continuous block. This will assist the employer in planning for the absence of an employee.

Keeping in Touch days

4.4 The *Work and Families: Choice and Flexibility* Government response indicated that to support more effective communication between employers and their employees during maternity leave we will introduce 'keeping in touch days' to enable mothers and adopters to work for a limited number of days during their pay period without losing statutory payments for that week or bringing their leave to an end.

4.5 As a father may be taking Additional Paternity Leave for up to 26 weeks, we intend to include an equivalent provision to allow a father or partner of an adopter to work for a limited number of days during the Additional Paternity Leave period without losing his entitlement to Additional Statutory Paternity Pay or bringing his leave to an end. We propose that the number of days will be the same as a mother taking maternity leave and pay. The number of days that is to be allowed under this provision is yet to be determined and is subject to a separate consultation. If you wish to view this consultation, a copy can be found at <http://www.dti.gov.uk/er/workandfamilies.htm>

Question – Do you agree with the principle that the number of Keeping In Touch days for a father on Additional Paternity Leave should be the same as those for a woman taking maternity leave and pay?

Terms and conditions whilst on leave and rights of return to employment following leave

4.6 In line with current maternity leave, paternity leave and adoption leave provisions a father or partner of an adopter taking Additional Paternity Leave will have certain rights whilst taking his entitlement and will have security about his return to employment with his employer. To keep this straightforward for employers and employees, we propose that the rights of an employee whilst taking Additional Paternity Leave and Pay and the rights to return will be equivalent to the rights enjoyed by women taking either Ordinary Maternity Leave or Additional Maternity Leave.

Terms and conditions during leave

4.7 During Ordinary Maternity Leave (the first six months of leave), women are entitled to benefit from their normal terms and conditions of employment (except for terms relating to remuneration). For example, they continue to be entitled to a company car, contractual holiday pay, mobile phone, or childcare vouchers, if they would have benefited from these if they were working normally.

4.8 During Additional Maternity Leave (the second six months of leave), a woman's entitlements change. She is no longer entitled to all the benefits she would normally receive under her contract (such as those set out above). Her contract of employment continues but (unless the contract specifies otherwise) only certain elements apply. These are set out below.

The woman is entitled to benefit from her employer's implied obligation to her of trust and confidence and any terms and conditions relating to:

- notice if the employer terminates the contract;
- compensation in the event of redundancy; and
- disciplinary or grievance procedures

The woman is bound by her implied obligation to her employer of good faith and any terms and conditions relating to:

- notice she must give if she terminates her employment;
- disclosure of confidential information;
- acceptance of gifts or other benefits; and
- her participation in any other business

4.9 It could be argued that a father will be taking Additional Paternity Leave and Pay in what would be the second six months of the mother's maternity leave period and therefore that he should be entitled to the same benefits as a mother who would have been on Additional Maternity Leave.

4.10 Alternatively it could be argued that this is the first period of significant leave that a father is entitled to take and that he should therefore be eligible for the same benefits as a mother who would be on Ordinary Maternity Leave (i.e. In her first six months of maternity leave).

Question - Should a father taking Additional Paternity Leave and Pay be entitled to the benefit of his terms and conditions to the same extent as a mother who is on Ordinary Maternity Leave, or as a mother who is on Additional Maternity Leave?

Right to return

- 4.11 After Ordinary Maternity Leave (after 6 months or less) a woman has a right to return to the same job on the same terms and conditions as before her leave began.
- 4.12 After Additional Maternity Leave a woman also has the right to return to the same job on the same terms and conditions as before her leave began unless it is not reasonably practicable for the employer to allow her to return to her original job. If this is the case she must be offered a suitable and appropriate alternative job with terms and conditions which are no less favourable than those of her previous position.

Question - Should a father taking Additional Paternity Leave and Pay be entitled to the same right of return as a mother returning after Ordinary Maternity Leave, or a mother returning after Additional Maternity Leave?

- 4.13 The same arguments as those set out in paragraph 4.9 and 4.10 above apply to the question of what the rights of return should be. In addition, it is worth noting that how long a person is out of work will relate to the likelihood of it being reasonably practicable for the employer to keep his job open. The less time an employee is out of work, the harder it would be for an employer to justify it not being reasonably practicable. Under the Additional Paternity Leave and Pay scheme, the maximum amount of time a person would be

out of the work place would be 26 weeks (unless there are special circumstances when a mother dies).

CHAPTER 5

ADMINISTRATION

- 5.1 In the new Additional Paternity Leave and Pay scheme, the Government will seek to balance the needs of children, mothers, fathers and employers.
- 5.2 Our aim is to give parents more flexibility and choice about who takes leave and pay to care for the child. At the same time the new law must be designed in such a way as to make its administration as straightforward as possible for employers. Employers need to be able to plan and manage their workforce effectively when their employees are on leave. Taxpayers also need to have confidence in the integrity of the system. The Government has a responsibility to ensure that appropriate checks are put in place so that taxpayers' confidence in the system is assured.
- 5.3 The new system of Additional Paternity Leave and Pay will be based on a clear framework of rights and responsibilities. This will give families more choice about how best to care for their children during the first year of life. Both parents will have to give sufficient notice of their intentions to enable their employers to plan and manage their business. Parents and their employers will want and need to understand this framework of rights and responsibilities and we will ensure that we work with stakeholders to provide appropriate guidance and support.
- 5.4 We would envisage the administration building on existing administration in place for employees who take up maternity, paternity and adoption leave and pay entitlements under current arrangements. The father's employer must have access to

sufficient information to check the father's eligibility, determine the period of Additional Paternity Leave and Pay and calculate the amounts payable. Such information will include how long the father has worked for that employer, together with a record of earnings; evidence of the existence of the child (but see paragraph 5.18 below) and the date of birth or placement for adoption; the mother's or adopter's entitlement to Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay; her intended return to work date and how much of her entitlement remains unused, as discussed earlier in this document. Such information could come from a variety of sources. Some of it will come from the father's employer's own records, e.g. the father's employment history; some from the mother's employer's records, e.g. her entitlement to maternity leave and pay; and some from the parents, e.g. the baby's birth certificate or evidence of adoption, if required, but this is all information that should be readily available.

5.5 The *Work and Families: Choice and Flexibility* consultation considered this issue in the context of the administration of transferable maternity leave and pay. Although that system was different from Additional Paternity Leave and Pay, the essential issues are the same.

Three options were identified –

- Option 1 - self-certification by the parents;
- Option 2 - self-certification by parents combined with confirmation by mother's employer;
- Option 3 - compliance checks by Her Majesty's Revenue and Customs (HMRC).

- 5.6 Responses indicated that Option 2 would be the preferred option. The underlying rationale was that the first option could be more open to abuse and would carry a greater risk for employers. It was felt that someone needed to certify the mother's Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Pay position. The third option was not favoured because it would require the creation of an extra loop in the process on top of the parents and their employers, which would involve HMRC in every case (currently, HMRC's compliance involvement with other Statutory Payments is confined to sample checking after the event), add time for background checks to be conducted and occasionally risk running out of time.

Outline procedure

- 5.7 If we adopt the preferred Option 2 above the administration of Additional Paternity Leave and Pay could be along these broad lines.
- 5.8 The main participants are the father and the father's employer; there is also a role for the mother and her employer. The procedure could provide for the following information to reach the father's employer. This, plus the father's employer's own records, could be used (with the help of HMRC guidance material) for checking eligibility and entitlement, without relying on the parents' statements alone, and without involving HMRC in every case:
- i. Father's notification to his employer that he intends to take his entitlement to Additional Paternity Leave and Pay, from date A to date B
 - ii. Baby's birth-certificate, or evidence of child being placed for adoption; (but see paragraph 5.18 below)

- iii. Statement that mother is entitled to Statutory Maternity Pay or Statutory Adoption Pay and the date that entitlement ends, certified by her employer; or mother's statement she is entitled to Maternity Allowance and the date that entitlement ends, accompanied by DWP evidence; evidence of the mother's leave entitlement may also be required;
- iv. Details of when the mother intends to return to work, certified by her employer;

There are a number of issues with this information discussed below.

Notice periods

5.9 It is important for employers to have sufficient notice of the intentions of their employees and we are inclined to suggest the same time-limit as applies for a mother to notify her employer that she intends to return to work early, **i.e. eight weeks**. But we welcome views on this.

5.10 We also welcome views on whether the same time-limit must apply for all the information mentioned above to be provided to the father's employer. There are two main options here:

- Option 1 – apply the same time-limit for all supporting information?
- Option 2 – apply a different time-limit for (a) father's notification of his intention to take leave and pay and (b) the mother's supporting evidence as mentioned above?

- 5.11 If the same time-limit applies (Option 1), then the mother will have to have notified and secured certified information from her employer before the father notifies his employer – i.e. more than eight weeks before she intends to return to work, and before she is obliged to notify her employer of her return. By this option the employers get the most advance notice to enable them to prepare for the father’s absence on leave and the mother’s return to work.
- 5.12 If different time-limits apply (Option 2), then what should those time-limits be? In principle they should be reasonable for both the parents and the employers. One possible scheme could require the father’s notification and if applicable, the baby’s birth-certificate to arrive with the employer by the eight-week time-limit. This could be used by the employer as the basis for initial planning purposes. The mother’s supporting evidence (iii. & iv. above) would be required to reach the father’s employer by the second time-limit (6 weeks? 4 weeks?), and it would only be at this stage that the employer could finally authorise the father’s leave and pay. In particular without this supporting evidence the employer should not pay Additional Statutory Paternity Pay and should not make any recoveries or advance funding claims from HMRC.

Question – Should all the information required for administration purposes be provided before the 8 week notification point?

- 5.13 In our guidance material that will accompany this new provision we will be recommending that a mother and father notify their respective employers of their intention to return to work early / take up Additional Paternity Leave and Pay at the earliest opportunity to allow employers to prepare accordingly.

5.14 Consideration needs to be given to the consequences if a father's employer does not receive notification of a father's intention to take Additional Paternity Leave and Additional Statutory Paternity Pay, along with the consequences of not receiving the supporting evidence in time. Under current paternity arrangements a father could be refused his entitlement to Ordinary Paternity Leave and Ordinary Statutory Paternity Pay unless it was not reasonably practicable for him to provide notification and evidence at the required time.

Question – Should the same sanctions apply to a father wishing to take Additional Paternity Leave and Pay as current paternity arrangements? – i.e. if the supporting evidence does not arrive on time the father's employer could refuse to pay Additional Statutory Paternity Pay and refuse to grant Additional Paternity Leave.

Question – If a mother's employer is required to check and certify a statement completed by the mother or to provide information, should any sanctions be in place if they do not comply? If yes, what should these sanctions be?

Format

5.15 HMRC would normally adapt or design a form / forms for the purpose of administering a new pay provision and in this case, provide a vehicle for recording the information needed by the father's employer. Given that information already held by the mother's employer is required under this scheme, there may be a more viable alternative to a new form. One option could be to use the existing notification a mother's employer provides to their employee to confirm her entitlement to maternity leave and/or pay and start / end dates. If there is a viable alternative we would

welcome details, recognising this information will need to be kept as evidence by the father's employer for a number of years, and will have to constitute sufficient evidence to justify the father's employer paying Additional Statutory Paternity Pay and making recoveries or advance funding claims from the State.

Question - In what format should the father's notification and the information about the mother's pay entitlement etc be presented to the father's employer?

Routing

5.16 As it is clear a father's employer requires information to be able to administer Additional Paternity Leave and Pay, it is important the method adopted to gather and certify this information is simple but effective, and minimises the chance of fraud or abuse. Two options are outlined below:

Option 1

- Mother's employer could be responsible for passing information on to father's employer by a deadline;

Option 2

- Mother could have the information certified by the employer, and she could be responsible for giving it to the father to pass on to his employer by a deadline.

5.17 Option 1 would impose an extra burden on the mother's employer; but would reduce the opportunities for form alteration after it had left the employer. Option 2 would appear to minimise

the burden placed on the mother's employer, placing the responsibility on the parents who are seeking to ensure the father qualifies, but the father's employer might want the certainty provided by information coming direct from the mother's employer.

Question – How should the information be routed from the mother's employer to the father's employer in a way that recognises employers' burdens and potential for abuse?

Evidence required as proof of eligibility

5.18 Currently for the existing two weeks Paternity Leave and Pay arrangements a father is only required to self-certify that they have a child to qualify for the leave and pay entitlement. An employer may ask for evidence if they feel there are grounds to do so. In these circumstances a father would normally be required to produce a copy of the birth certificate or in the case of adoption a matching certificate through an adoption agency.

Question – Is there a case for it to be mandatory for a father or partner to provide evidence to his employer of the baby or child, prior to Additional Paternity Leave and Pay being taken?

Evidence required to prove mother has returned to work

5.19 The outline procedure and subsequent discussion has been based on the father's and the mother's intentions to start Additional Paternity Leave and Pay and return to work respectively; and considers the information that the father's employer requires to be able to administer payment.

5.20 Should a father's employer be notified that a mother has actually returned to work to ensure that Additional Statutory Paternity Pay is being paid correctly? This would add an extra level of burden on the mother's employer, in having to provide confirmation of the return to work, however, it may limit the possibility of overlaps and double claims. It would provide employers with greater assurance. We would welcome views on this issue.

Responding to changes

5.21 As with any form of leave, there is always a possibility that someone may change their mind from their original intentions. It is therefore feasible that a mother could change her mind about her return to work date (she might return to work early with her employer's permission, at less than the required 8 weeks' notice; or she might return to work later than she originally intended); and a father may want to change the start date of Additional Paternity Leave and Pay because of the mother's altered return to work date, or may want to change the end date, or may want to cancel the Additional Paternity Leave and Pay altogether. It is important that a balance is struck between allowing a mother and father sufficient flexibility whilst ensuring employers have reasonable time to prepare for the absent person from their workforce.

5.22 One approach would be to prevent any change of start date, end date or both dates for Additional Paternity Leave and Pay. The father would have to abide by the dates as originally notified or lose the Additional Paternity Leave and Pay entirely. There may however, be a very good reason for the change and it would be inconsistent with the maternity leave regime where a mother may change her intended date of return so long as she gives adequate notice.

- 5.23 An alternative would be to allow notification of revised start date, end date or both dates in reasonable but clearly stated conditions, requiring a new notification as with maternity leave and pay arrangements.

Question – What conditions should apply for fathers wanting to change their Additional Paternity Leave and Pay dates, either in moving them backwards or forwards?

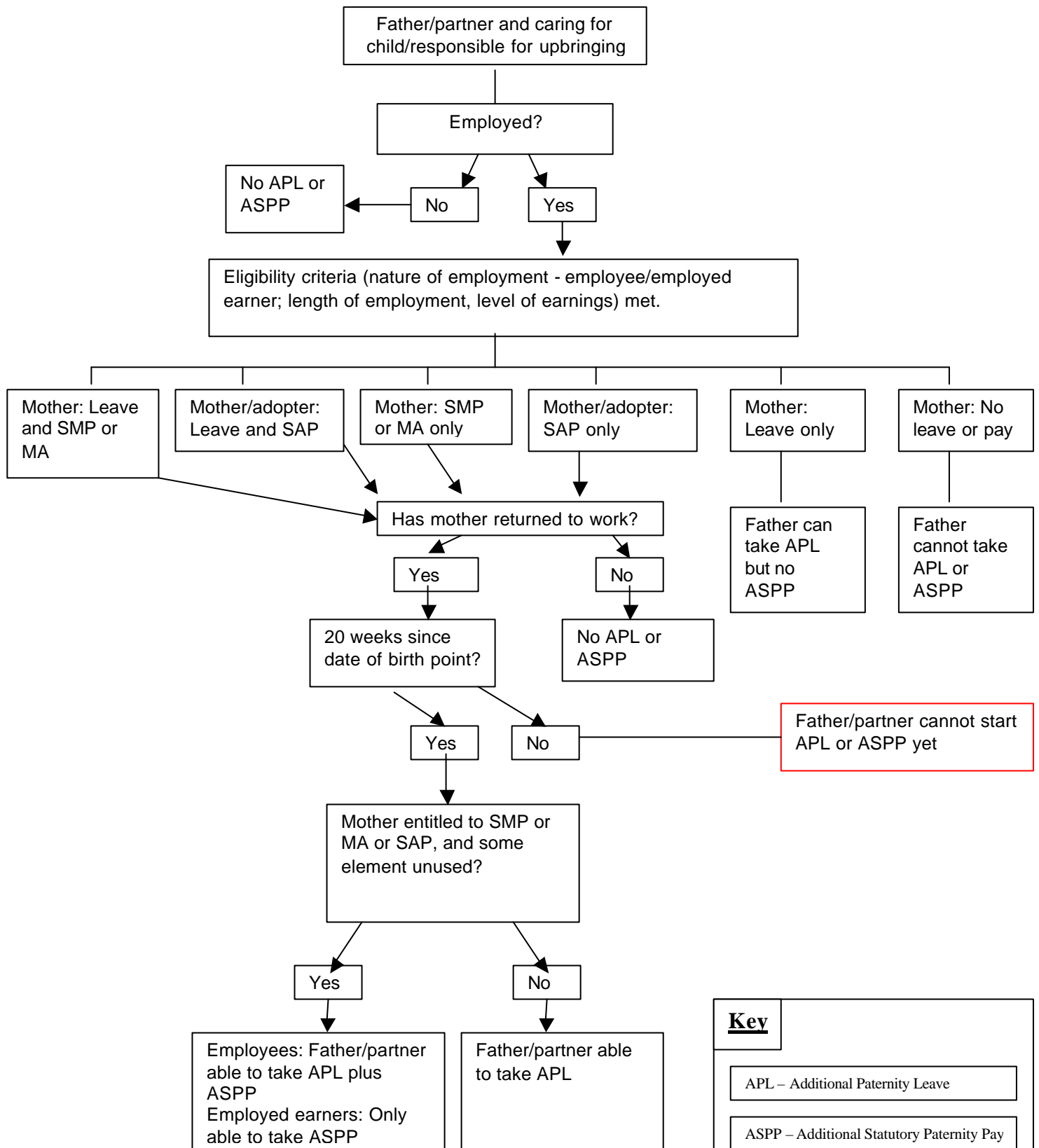
What happens if a father does not qualify?

- 5.24 Where a father notifies an intention to take Additional Paternity Leave and Pay it will be the employer's responsibility to determine if the father does in fact qualify. If the qualifying conditions are not met, then the father's employer should explain why and give the father a note recording the reason. This is a requirement within the Statutory Maternity Pay regime and we propose to impose the same requirement for Additional Paternity Leave and Pay.

Sanctions

- 5.25 The Government recognises the need for a balance here. It is committed to ensuring the administration of Additional Paternity Leave and Pay is straightforward and has the fewest possible requirements on employers. Parents and their employers will want and need to understand their rights and responsibilities under the law. Taxpayers will want to be assured that the potential for pay being claimed in error, or at worst, fraudulently is minimised. If the scheme is introduced with a 'light touch' there will need to be clear sanctions deterring abuse by any party.

ANNEX A – How a father/partner may qualify for Additional Paternity Leave and Pay



Footnote

Father/partner can take up to 26 weeks APL leave, providing child is under 1yr old. ASPP can be taken up until mother's end date for her original entitlement to SMP or MA.

Key

APL – Additional Paternity Leave

ASPP – Additional Statutory Paternity Pay

SMP – Statutory Maternity Pay

MA – Maternity Allowance

SAP – Statutory Adoption Pay

ANNEX B

Summary of questions

Q1 What is the minimum length of time a father should have worked for his employer before he can qualify for Additional Paternity Leave?

Option 1 - Qualified for Ordinary Paternity Leave and continued in employment with the same employer up to the intended date of taking Additional Paternity Leave and Pay – minimum of 60 weeks in normal cases?

or

Option 2 - One year's service before the intended date of taking Additional Paternity Leave and Pay?

or

Option 3 - 26 weeks' service before the intended date of taking Additional Paternity Leave and Pay?

or

any other alternative

Q2 How do you think the weekly rate should be calculated for Additional Statutory Paternity Pay?

Q3 What period should be used as the basis for the calculation of average weekly earnings?

Should the period be linked to the expected week of childbirth (as used for Ordinary Statutory Paternity Pay)?

or

Should the period be linked to the date the father intends to start his Additional Paternity Leave and Pay?

or

Should the period be linked to the actual date of the child's birth?

Q4 What circumstances do you think should constitute a mother returning to work?

Q5 Do you agree that setting the earliest point at which Additional Paternity Leave and Pay can be taken at 20 weeks from the date of birth of the child or in the case of adoption, 20 weeks from the date on which the child was placed for adoption, is the most appropriate way of reserving the period after the child's birth for the mother?

Q6 Do you agree the rules should allow for the possibility of a gap between the end of maternity or adoption leave and the beginning of Additional Paternity Leave and Pay?

Q7 Are there any circumstances where you think a gap in (i) leave, or (ii) pay should not be allowed?

- Q8 Should all the situations outlined above in relation to the situation where a mother dies be included in the regulations?
- Q9 Do you agree with the principle that the number of Keeping In Touch days for a father on Additional Paternity Leave should be the same as those for a woman taking maternity leave and pay?
- Q10 Should a father taking Additional Paternity Leave and Pay be entitled to the benefit of his terms and conditions to the same extent as a mother who is on Ordinary Maternity Leave, or as a mother who is on Additional Maternity Leave?
- Q11 Should a father taking Additional Paternity Leave and Pay be entitled to the same right of return as a mother returning after Ordinary Maternity Leave, or a mother returning after Additional Maternity Leave?
- Q12 Should all the information required for administration purposes be provided before the 8 week notification point?
- Q13 Should the same sanctions apply to a father wishing to take Additional Paternity Leave and Pay as current paternity arrangements? – i.e. if the supporting evidence does not arrive on time the father's employer could refuse to pay Additional Statutory Paternity Pay and refuse to grant Additional Paternity Leave.
- Q14 If a mother's employer is required to check and certify a statement completed by the mother or to provide information, should any sanctions be in place if they do not comply? If yes, what should these sanctions be?

- Q15 In what format should the father's notification and the information about the mother's pay entitlement etc be presented to the father's employer?
- Q16 How should the information be routed from the mother's employer to the father's employer in a way that recognises employers' burdens and potential for abuse?
- Q17 Is there a case for it to be mandatory for a father or partner to provide evidence to his employer of the baby or child, prior to Additional Paternity Leave and Pay being taken?
- Q18 What conditions should apply for fathers wanting to change their Additional Paternity Leave and Pay dates, either in moving them backwards or forwards?

ANNEX C

The consultation code of practice criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address:

<http://www.cabinetoffice.gov.uk/regulation/consultation/documents/pdf/code.pdf>

Additional Paternity Leave and Pay

March 2006

Purpose and Intended Effect

Objective

Introducing Additional Paternity Leave and Pay (APL&P) is part of the Work and Families package which aims to give families more choice about their caring arrangements. It seeks to facilitate greater equality at home and at work for men and women by allowing the mother to return to work and the father to take on the lead childcare responsibilities in the first year of the child's life. The package will respond to the growing number of fathers who want greater opportunities to care for their child.

Background

In the Work and Families Bill the Government has proposed a package of measures to give families more choice about their caring arrangements. The Bill includes powers to increase fathers' entitlements to paternity leave and pay by providing Additional Paternity Leave and Additional Statutory Paternity Pay. Secondary regulations will set out the details of this scheme; policy proposals for these regulations are set out in the consultation document that this RIA accompanies. The discussion of costs and benefits here therefore draw upon an earlier assessment of the overall costs and benefits of the Work and Families Bill.²

Since April 2003, working fathers of new-born children have been entitled to Statutory Paternity Pay and Statutory Paternity Leave (SPP and SPL). The introduction of Additional Paternity Leave and Pay will not affect these entitlements. The aim of APL&P is to provide *additional* opportunities for fathers to spend time with their children.

The APL&P proposal discussed here amends the Transferred Maternity Leave and Pay (TML&P) proposal presented in the consultation

² "Work and Families: Choice and Flexibility", DTI Final Regulatory Impact Assessment, October 2005. Available here: <http://www.dti.gov.uk/er/riaOct2005final.pdf>

document *Work and Families: Choice and Flexibility* (February 2005). The general aims of the proposal remain unchanged, and the provisions follow closely those suggested under TML&P

It should be noted that the proposals for APL&P concern *statutory* schemes only. If employers offer more generous occupational paternity leave or pay schemes these will not be affected by these proposals.

Consultation

In its response to the feedback from the 2005 Work and Families consultation, the Government proposed to give fathers an opportunity to take a further six months' paternity leave in addition to their existing Statutory Paternity Leave entitlements, some of which could be paid if the mother returned to work before taking her full entitlement to Statutory Maternity Pay (SMP) and Maternity Allowance (MA).³ This RIA accompanies a new consultation that addresses the implementation details for this policy.

It should be noted that, although the proposals in this part of the Work and Families package will introduce new regulations for businesses, other measures in the Bill (for example to encourage communication and contact during maternity and paternity leave) should reduce the administrative and policy costs to employers of the overall package.

The DTI is strongly committed to better regulation and to ensuring reforms deliver whilst minimising burdens. The consultation document sets out how our proposals have developed in response to stakeholder views. Feedback is encouraged from stakeholders to help us develop our wider simplification programme in this and other policy areas, through <http://www.dti.gov.uk/ewt/simplifya.htm>.

Options

Summary of options

A summary of proposed options can be found below. The Government has proposed to take powers in the Work and Families Bill and is now carrying out further consultation on the details of the scheme which will assist in drafting the secondary regulations.

(1) Timing of start of leave

Leave is taken from a set time (20 weeks) after the birth of a child.

³ The full response can be read at "Work and Families: Choice and Flexibility: Government Response to Public Consultation" (DTI, October 2005). See <http://www.dti.gov.uk/er/consultationchoiceflexibility2005final1.pdf>

There was a strong consensus from the responses to the Work and Families consultation that around the first six months of a mother's statutory maternity leave should be reserved for the mother. The Government proposes to adopt this approach to keep the scheme straightforward and minimise any potential for pressure on a mother to return to work earlier than she may wish. However, the consultation document that accompanies this RIA does ask for opinions on the exact point at which Additional Paternity Leave (APL) should be taken, as this has not been finally decided.

(2) Eligibility for leave and pay

- The three options considered here are:(2.1): leave is conditional upon a father having been in continuous employment with his employer for the 26 weeks prior to the start of Additional Paternity Leave. There is no requirement for a father to have been eligible for Statutory Paternity Leave (SPL).
- (2.2): leave is conditional upon a father having been in continuous employment with his employer for one year, equivalent to the current conditions required for parental leave.
- (2.3): leave is conditional upon a father having been eligible for Statutory Paternity Leave⁴ and also having been in continuous employment with his employer up to the start of APL.

ASPP will be conditional upon the mother being entitled to SMP or MA and having some of the entitlement remaining prior to the start of ASPP. In the case of adoption, the mother would have to have been entitled to receive Statutory Adoption Pay. The number of weeks for which ASPP will be payable will depend upon the number of weeks the mother had left of her entitlement to SMP, MA or SAP. The Government has proposed powers in the Work and Families Bill to implement this.

Discussion of options

Eligibility for leave and pay

This RIA compares options 2.1 and 2.3, as these estimate respectively the minimum and maximum expected impacts of the proposal. Essentially, the difference is that option 2.1 requires a father to have worked for 26 weeks prior to starting APL and option 2.3 requires a father to have worked for around 60 weeks prior to starting APL. It is clear that the shorter qualification period will result in more fathers being eligible for leave and pay.

⁴ To be eligible for Statutory Paternity Leave, a father must be employed and have completed six months' service with their employer into the 15th week before the week the baby is due.

The consultation document sets out how entitlement to APL&P is dependent on both the mother's return to work and the requirement to take additional paternity leave in one continuous block. However it also seeks the views of stakeholders as to the method of the calculation for ASPP, for instance whether it should mirror the existing requirements for Ordinary Statutory Paternity Pay, where the calculation is based on average earnings taken over an 8-week period. For this RIA it is assumed in the estimates that follow that this will not have an impact on costs.

Costs and Benefits⁵

Number of beneficiaries

Estimates for the number of fathers eligible for Additional Paternity Leave and Pay are approximate as no survey or administrative data exists on current eligibility for SPL. Table 1 below provides estimates of the maximum number of fathers potentially affected by the proposals. It should be noted that the eligibility criteria for APL&P are subject to ongoing consultation, so these figures may be subject to revision at a later date.

Table 1: Estimated eligibility for Additional Paternity Leave and Pay (projection for 2007-2008)

	Number of fathers	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
Eligible for leave and pay	277,000	238,000

Source: DTI analysis of the Labour Force Survey, Millennium Cohort Survey and DWP estimates of SMP / MA claims

Estimates of the projected take up of APL&P are approximate due to the difficult nature of predicting accurately how families would respond to the proposals. The DTI Maternity and Paternity Rights 2005 Survey provides some data which can be used to predict take up. This takes into consideration two factors:

- (i) an estimate of mothers whose current behaviour indicates that they wish to return to work at the earliest opportunity; and
- (ii) an estimate of fathers whose current behaviour indicates they have a strong desire to take part in the upbringing of their child in its first year.

⁵ The costs and benefits in this section have been calculated on the basis of the regulations coming into effect in 2007, the earliest date that it would be possible to introduce these measures. A precise date for introduction is yet to be determined, but the figures presented here will be updated accordingly once this is known.

The proportion of partnerships where both these behaviours occur has been calculated, and this is used to estimate the number of fathers who are likely to take advantage of the proposed APL&P entitlements.

The number of fathers expected to take up the proposed entitlement is given in table 2. While the initial take-up is predicted to be modest, it may increase over time if this policy encourages a culture more favourable to fathers' involvement with children in their first year.

Table 2: Estimated take up of Additional Paternity Leave and Pay (projection for 2007/8)⁶

	Number of fathers	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
All fathers who take up Additional Paternity Leave and Pay	10,000 to 16,000	9,000 – 13,000

Source: DTI analysis of the Maternity and Paternity Rights 2005 Survey

In addition, the Government also intends to allow fathers to take an extended period of APL and ASPP in the event of the mother's death during the first year of the child's life⁷. It is estimated that between 150 and 200 fathers would be eligible for leave and pay under these circumstances. The take up and overall cost of this proposal is expected to be negligible due to the small number of instances; the presumption is that under these circumstances most fathers would stop working for some time even without this provision. Many fathers would also benefit from compassionate leave and pay from their employer in the event of their partner's death and would therefore not claim this entitlement. However, for fathers where this is not the case, this proposal provides an important safety net at a highly difficult time.

Employers may face an additional impact in making arrangements for the employees' absence in these specific circumstances as they may take longer periods of Additional Paternity Leave than would otherwise be available to them. However as the aggregate impact of this policy will be negligible due to the few cases, these costs are not quantified.

⁶ NB: These figures are rounded to the nearest thousand for ease of reference, but cost calculations in this RIA use the precise underlying figures.

⁷ At present, fathers are not able to extend their paternity leave or pay in the event of the mother's death during this period. The Government is making a provision to enable this.

Costs

The aggregate cost of this policy to the economy as a whole is expected to be small. However there are costs both to the Exchequer and employers which should be considered.

The potential impact on small business

Small businesses in particular may experience a disproportionate impact when an individual takes leave, compared to larger businesses. This is both because the absence of an employee would represent a larger proportion of their workforce, and also because as small businesses they are less likely to have dedicated human resources personnel to process the administration. Hence, in the event of a male employee taking Additional Paternity Leave, the proposal could have a *disproportionate impact on any individual small business*.

However, given the estimated level of take-up of Additional Paternity Leave, the likelihood of any individual small business being affected by these proposals is very low. Averaging across all small businesses, the costs will remain low.⁸

The estimated costs associated with the original proposals for TML&P were presented in the RIA which accompanied the consultation document *Work and Families: Choice and Flexibility*. It should be noted that in light of new evidence (such as the Maternity and Paternity Rights 2005 Survey) changes have been made to some of the assumptions underpinning the estimated cost of these proposals. Therefore the costs associated with the new APL&P proposals presented here should not be compared against the costs associated with the original TML&P proposals.

Assumptions

It is assumed for the purpose of calculations that fathers who take advantage of their entitlement to APL&P will take 13 weeks of Additional Statutory Paternity Pay. This is based upon the assumption that mothers begin their SMP / MA six weeks before the birth of their child, and that the mother returns to work and the father begins his claim for pay 20

⁸ According to data from the Small Business Service (www.sbs.gov.uk) in 2004 there were around 1.235 million business in the UK employing 24.3 million employees. Around 97% (around 1.198 million) of all businesses employ fewer than 50 employees. Data for Spring 2005 from the Labour Force Survey show that 44% of all male employees work in firms of this size. Assuming a similar distribution of male employees opting to exercise an entitlement to additional paternity leave, even based on the maximum level of take-up estimated in this RIA this would amount to 7,080 male employees working in small business. On average therefore in any given year the APL&P entitlement is estimated to affect just 0.6%, or 1 in every 169, of all small businesses.

weeks after the birth⁹. It is also assumed that fathers will only take leave whilst in receipt of pay, so it is assumed that fathers take 13 weeks of APL&P. The prevailing flat rate of pay is estimated to be around £111.28 per week by 2007/8.¹⁰

It should be noted that these assumptions about length of leave and pay were made on the basis of the proposal in the Work and Families Bill to extend paid maternity leave to 39 weeks. However, the Government now proposes to introduce the APL&P scheme at the same time as the extension of maternity and adoption pay to 52 weeks, which will be made by the end of this Parliament. Under these circumstances fathers would be able to take up to 26 weeks of paid leave.

The estimates of take-up would not be affected by this change, as they are based on mothers' indications that they wish to return to work early (i.e. mothers who currently take less than 26 weeks; these women are unlikely to behave significantly differently under the 52 week scheme). However the length of paternity leave and pay taken by fathers could increase beyond the 13 weeks assumed here. Following responses to the consultation about likely take-up, a full costing based on 26 weeks will be presented in the final RIA.

When calculating the cost of take-up it has been assumed that the father's decision to take advantage of APL&P will not affect the mother's decision about how much leave to take. This is a simplifying assumption. In reality the policy is likely to impact on mothers' choices:

- Some mothers would have taken their full entitlement to SMP or MA in the absence of the proposed fathers' leave and pay entitlements, whereas the opportunity to share childcare with the father will give them the opportunity to return to work earlier than otherwise. This would **reduce** the leave taken by mothers;
- Some mothers may extend the amount of leave they take, in order to meet the (proposed) qualification requirement that mothers must take at least 26 weeks maternity leave before a father can

⁹ The consultation document seeks stakeholder views on the possibility of a gap between the end of maternity or adoption leave and the beginning of APL&P. For the purpose of this RIA it is assumed the periods of maternity/adoption leave and APL are concurrent. Clearly, should there be a gap, this would entail the parents/adopters making their own childcare arrangements. The consultation also sets out the Government's intention to introduce a minimum period of two weeks' of APL to make it easier for employers to plan and provide cover for fathers or adopters taking leave. Costs estimated below though are on the basis of maximum take-up of 13 weeks leave.

¹⁰ This is the estimated uprating from the current £106/week (the rate for Additional Statutory Paternity Pay will be the same as the rates for Statutory Maternity Pay and Statutory Paternity Pay, currently £106/week). As stated above 2007/08 would be the earliest possible date for introduction of these measures: a precise date for introduction has still to be set.

take over the childcare. This would **increase** the leave taken by mothers.

The simplifying assumption that mothers' behaviour is unchanged is based on the idea that these two effects will balance each other out. It may be that the first effect dominates, in which case the costs detailed in this RIA will over-estimate the costs of the policy.

Whilst ideally it would be possible to estimate the extent of these behavioural responses, in practice it is very difficult to predict exactly how mothers and fathers will respond to the proposals. Given this uncertainty, any added complexity in predicting take up and associated costs would not necessarily lead to estimates which are more accurate or robust. It is important, however, that the above assumptions are borne in mind when considering the cost analysis of the proposals.

It is also assumed that employers with occupational maternity provisions will not provide such rights to fathers receiving APL&P as there will be no legal requirement for them to do so. Employers may choose to offer occupational paternity schemes above the statutory requirements, but as this will not be imposed by the regulations, the costs are not considered here.

It should be noted that the cost calculations are made on an aggregate basis, not disaggregating by sector. This assumption is made for simplicity. However, in reality, in industries and occupations where there are both men and women employed, employers will be experienced with handling mother's leave arrangements. Therefore, the introduction of an entitlement to leave for fathers may have less of an impact on these employers compared to employers whose workforce is predominately male. Such employers may have less experience of handling periods of extended leave and may have additional costs associated with complying with regulations which, for the first time, allow their employees a significant period of leave from work to care for their child. Further analysis will be carried out on the sectoral impact and presented in the final version of this RIA.

Direct policy costs

Table 2 provided estimates of the number of fathers who will take advantage of the proposed entitlement. The associated policy costs based on this level of take-up are presented in table 3. These reflect the weekly payments made to fathers who take Additional Statutory Paternity Pay.

Table 3: Estimated policy cost of proposal to introduce Additional Paternity Leave and Pay (projection for 2007/8)

	£ (millions)	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
Total cost	15.1 – 22.5	13.0 – 19.4
Of which exchequer cost	14.1 – 21.0	12.1 – 18.0
Of which employer cost	1.0 – 1.5	0.9 – 1.3

Source: DTI estimates

Cost of absence

Employers also face an additional direct cost due to having to cover the absence of those fathers who take up the new right. In calculating these costs, we assume that some employers reorganise existing employees to cover the absence while others hire temporary agency workers.¹¹ This additional cost depends on the number of fathers who take advantage of the APL&P entitlements, and is based on the range presented in table 2. Table 4 shows the cost of absence borne by employers due to fathers taking 13 weeks of leave.

Table 4: Estimated cost of absence due to proposal to introduce Additional Paternity Leave and Pay (projection for 2007/8)

	£ (millions)	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
Total cost of absence	9.7 – 24.0	8.3 – 20.7

Source: DTI estimates

The range for the estimated cost of absence presented in table 4 is wide as it incorporates both uncertainty about the number of fathers who will take up their entitlement to APL&P as well as uncertainty about the degree of costs that employers are likely to face.

Administrative costs to employers

Table 5 shows the estimated cost of administration borne by employers of mothers and fathers who make use of the APL&P entitlements. As the estimate of the numbers of men who take up their entitlement is low (in terms of the proportion of the male working population) it is assumed that many employers (and in particular small employers) will not adjust their systems immediately once the legislation is passed. Rather, it is assumed that individual employers would amend their HR practices gradually as cases appear, on a "needs basis". Furthermore clear and

¹¹ See *Work and Families: Choice and Flexibility*, Final Regulatory Impact Assessment on the Work and Families Bill, DTI (October 2005) for a full explanation of the methodology employed here.

extensive guidance will be made available to employers through a variety of channels, to ease the implementation as much as possible.

As a result, the aggregate cost of implementation is both small and ongoing as large employers taken together as a group make the necessary one-off changes over a period of years. There are no one-off costs for smaller employers, since it is assumed that smaller employers operate more informal payroll practices. Recurring costs, both for individual employers and in aggregate are assumed to be the cost of administering fathers' take up of APL&P, which will include calculating leave payments for fathers.

Table 5: Estimated administrative costs to employers due to proposal to introduce Additional Paternity Leave and Pay (projection for 2007/8)

	Cost (£ millions)	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
One-off changes to systems and HR practices (larger employers only)	1.2 – 4.6	1.0 – 3.9
Recurring cost due to administering the father's pay and leave arrangements (both small and large employers)	0.4 – 1.3	0.3 – 1.1

Source: DTI estimates

Explanation of recurring costs

Once any initial changes to administrative systems have been made, it is assumed that a large firm will use at least one hour of an administrator's time, and possibly as much as two hours of an administrator's time and one hour of a personnel manager's time, to process each paternity case. For a small firm it is estimated that this would account for around half a day of a personnel or senior manager's time.¹²

Although administrative costs in aggregate are small (as would be expected due to the small number of cases per year), for an individual employer the administrative costs might represent a significant burden. For example, some small businesses may have little experience in handling cases of employees taking leave to have a child, and have little resource allocated to such tasks. In order to process a father's claim for ASPP, the task may fall to a Director who may have little experience of

¹² It should be noted that recent case-study research by HMRC finds that shorter times than these are needed for processing each Statutory *Maternity* Payment. (See "The Costs and Benefits of Direct Payment of Statutory Maternity Pay", HMRC 2005). The administrative costs of paternity payments may be somewhat higher, as both mothers' and fathers' firms will be involved in the transfer of leave and pay, and fathers' firms may be less accustomed to making the payments. Nonetheless, the HMRC findings suggest that costs in this RIA represent a maximum administrative cost for employers.

handling such claims, whereas for a larger employer, experienced Human Resource professionals would handle this.

Other measures in the Work and Families Bill to encourage communication and contact during parental leave should also reduce the administrative and policy costs to employers of APL&P, though these benefits have not been quantified.¹³

Administrative cost to the Exchequer

There are likely to be administrative costs borne by HM Revenue and Customs (HMRC). HMRC will be responsible for employer support and guidance; for any forms development including impacts on systems for processing employers' end of year return data; and for processing employers' claims for advance funding of ASPP. The associated Exchequer costs associated with administration are presented in table 6. It is estimated that the costs to set up the necessary IT solution will be £5 million in the first year with on-going IT costs of £0.5 million annually. Other administrative costs are expected to be £2 million manpower start-up costs in the first year, and £2.5 million manpower costs each year thereafter. In addition the Department of Work and Pensions may have some involvement where mothers are in receipt of MA as they may be required to provide information to the father's employer.

Table 6: Estimated administrative costs to HMRC due to proposal to introduce Additional Paternity Leave and Pay (projection for 2007/8)

	Cost (£ millions)
One-off administrative setup cost	2.0
One-off IT cost	5.0
Recurring administrative cost	2.5
Recurring IT cost	0.5
Total cost (first year)	7.0
Recurring cost (after first year)	3.0

Source: HMRC estimates

Administration costs subject to consultation

The administration costs for both employers and the Exchequer set out above are initial, broad estimates. The current consultation is seeking feedback on the details of the system, namely in relation to:

- *Outline procedure*: to determine how the system will work in practice by making clear the respective roles of the father and the

¹³ See *Work and Families: Choice and Flexibility*, Final Regulatory Impact Assessment on the Work and Families Bill, DTI (October 2005) for details of the proposed measures and a discussion of their likely impact.

father's employer, as well as the role of the mother and her employer

- *Notice periods*: setting a minimum time limit for either the provision of supporting administrative information or the father's intention to take leave and pay or both.
- *Format*: determining in what format the father's notification and the information about the mother's pay entitlement should be presented to the father's employer.
- *Routing*: establishing how the information should be routed from the mother's employer to the father's employer in a way that recognises employers' burdens and potential for abuses
- *Evidence of eligibility*: establishing whether or not there is need for a father or partner to provide evidence to his employer of the baby or child prior to APL&P being taken.
- *Evidence of mother's return to work*: to establish whether a father's employer should be notified that a mother has actually returned to work to ensure that ASPP is being paid correctly.
- *Responding to changes*: to establish whether and how best to accommodate fathers wishing to change their APL&P dates.
- *Sanctions*: to ensure that a light touch approach is adopted but that there are clear sanctions deterring abuse by either employer or employee.

Following the responses to the consultation on the options set out above, the final RIA will aim to quantify as far as possible the proposals to be taken forward.

Benefits

The introduction of Additional Paternity Leave and Pay (APL&P) is expected to have significant economic and non-economic benefits. These include:

- Providing an opportunity for fathers to take time off work to care for their baby, responding to growing numbers of fathers who want greater opportunities to care for their child;
- Providing both parents with more flexibility over their childcare arrangements;
- Allowing mothers to return to work earlier than would otherwise have been possible, if they want to;

- Supporting women's connection to the workforce, thereby maintaining the relatively high employment rates among women in the UK and meeting the Lisbon objectives¹⁴.
- Reducing the risks of a gender gap in skills, experience and pay which can impact disproportionately on women following maternity leave;
- Introducing *keeping in touch days*, leading to better communication between employers and fathers/adopters and have a positive impact on skills and staff retention.

As far as it is possible to do so, quantification of these benefits will be developed in further versions of this RIA and presented in the final RIA following the consultation period. Feedback from stakeholders during the consultation process could be particularly useful here.

Small firms' impact test

As mentioned above, small businesses may experience a disproportionate impact on the running of their business when an individual takes leave, compared to larger businesses, particularly where small businesses do not have a dedicated HR function. As a group, small businesses are as likely to encounter requests for APL&P as larger businesses, though individual small businesses will be less likely to be affected by the new entitlements, as they have fewer employees per business.

The DTI, in consultation with the Small Business Service, will examine further the impact of the new proposals on businesses in sectors and occupations where there is marked gender segregation, for example in the construction sector and the motor trade, and present these findings in the final RIA. Implementation costs of dealing with APL&P are likely to be higher in male dominated sectors or occupations, where there is less experience of handling similar entitlements, for instance in the case of maternity leave, although they can be expected to be familiar with existing paternity pay and leave procedures which are not dissimilar.

However, it should also be noted that smaller employers would receive a 104.5% reimbursement for any ASPP payments they make, compared to a 92% reimbursement for larger firms. To some extent, this will offset the disproportionate impact on small firms.

Furthermore the DTI will consider what guidance is necessary for all businesses to ensure that communication between the mother's and

¹⁴ In 2004, the UK female employment rate was 65.6%, already exceeding the Lisbon target of 60% to be achieved by 2010. Source: Table 5, *Employment in Europe 2005*, DG Employment and Social Affairs, European Commission

father's respective employers is simple and effective, which will also limit the impact and costs of administering the leave and pay. Small businesses and their representative organisations will be encouraged in particular to work with government on this and ensure that the guidance and advice produced is clear, relevant and comprehensive.

Competition assessment

The proposed changes would apply to all firms. It is unlikely to affect the competitiveness of any particular sector, although for occupations that are traditionally male-dominated these proposals could have a greater impact. While such employers may have experience in administering paternity leave and pay, they are less likely to have managed longer absences as in maternity leave. In terms of absences, the costs and difficulties could be greater if the employer operates in a skilled area where there is a shortage of temporary workers.

The results of the competition filter test showed that there is no need to do a detailed assessment of the impact of APL&P on competition. In the filter test, the issue of market share is not relevant because the proposals apply to all sectors of the economy; and yet, at the same time, with the total number of paternity cases per year expected to be low, the likelihood of any particular employer being affected by a case is low.

The proposed policies will not affect market structure or the potential of new firms to enter markets nor are the proposals expected to have an impact on firms' production decisions.

Summary of costs and benefits

Table 7: Summary of costs and benefits for introducing Additional Paternity Leave and Pay (projections for 2007 / 08)

	Estimated additional costs and benefits (£ millions)	
	Option 2.1 (26 weeks' service)	Option 2.3 (60 weeks' service)
<u>COSTS</u>		
Exchequer policy cost	14.1 – 21.0	12.1 – 18.0
Exchequer admin cost (year 1)	7.0	7.0
Employer cost	12.2 – 31.4	10.5 – 27.0
of which direct policy cost	1.0 – 1.5	0.9 – 1.3
of which cost of absence	9.7 – 24.0	8.3 – 20.7
of which administration cost	1.5 – 5.9	1.3 – 5.0
Total quantifiable costs	33.3 – 59.4	29.6 – 52.1
<u>BENEFITS</u>		
Total benefits	Positive (more flexibility over childcare arrangements, opportunity for fathers to spend more time with their children; greater connection of women to workplace; reduced gender gap in employment)	

Source: DTI / HMRC

Enforcement, sanctions and monitoring

Enforcement

In putting enforcement mechanisms in place, the Government is aware of the need to strike a balance between avoiding placing undue burdens on business and ensuring that employees receive their rights. Where statutory payments are concerned we also need to consider the balance between these interests and protecting the tax payer from payments made or claimed either in genuine error or fraudulently. We expect the compliance risks for the new scheme to be low and the steps taken to ensure compliance will be proportionate.

Advice for employers and employees about laws for working parents is available from Acas. The HMRC Employers' Helpline provides advice to employers about statutory payments.

Under existing maternity, paternity and adoption leave legislation employees who believe their rights have been infringed may seek redress through a statutory dispute resolution mechanism and ultimately

through an employment tribunal. Employees who believe an employer's decision about a statutory payment is wrong are able to appeal to HMRC.

We do not anticipate a significant change in the number of enquiries to Acas or in the number of employment tribunal applications as a result of the APL&P proposals.

Sanctions

A tribunal will be able to award an employee compensation if the employer does not comply with the legislation, or if the employee suffers a detriment or is dismissed for taking paternity leave.

Contact

Any comments on this regulatory impact assessment should be addressed to:

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