



WORK AND FAMILIES

Choice and Flexibility

ADDITIONAL PATERNITY LEAVE AND PAY CONSULTATION

SUMMARY OF RESPONSES TO CONSULTATION

AUGUST 2006

ADDITIONAL PATERNITY LEAVE AND PAY CONSULTATION SUMMARY OF RESPONSES

1. On 8 March 2006 the Government published a consultation seeking views on the detailed aspects of the Additional Paternity Leave and Pay scheme. This consultation, which closed on 31 May 2006, followed the publication of the Work and Families Bill, introduced in Parliament on 18 October 2005. The Bill gained Royal Assent on 21 June 2006 and is now the Work and Families Act 2006, providing broad powers to introduce a new entitlement to Additional Paternity Leave and Additional Statutory Paternity Pay, with the details of the scheme to be set out in secondary legislation.
2. The consultation was the first step towards developing regulations. 76 responses were received (see Annex A for list of responders) from a wide range of organisations and individuals; 47% were from employers, self employed or Small or Medium Enterprises (SMEs); 38% were from employees, Non-Departmental Public Bodies (NDPBs) or parent groups and 15% responses were from other groups including academics and lawyers.
3. Many parents, employees, and their representatives, generally welcomed the proposals to allow fathers to take an active role in the care of their children. However, it was recognised by a number of responders that it is important at this stage to ensure that the scheme is kept as straightforward as possible, and is implemented with a 'light touch' approach.
4. Many responders were very positive and strongly supported protecting and supporting family life through legislation and regulation. They urged the Government to draft the regulations in such a way, as to encourage fathers to seriously consider playing a greater role in caring for their child than is currently the case.

"Working Families welcomes the proposed introduction of Additional Paternity Leave as allowing much greater choice for families to determine which parent is to be the main carer for the child."

Working Families

"Daycare Trust very much welcomes the consultation document on additional paternity leave and pay. This represents a real step

forward in enabling families to make a choice about which parent is the carer, as well as promoting gender equality and potentially closing the gender pay gap.”

Daycare Trust

“We welcome many of the proposals contained within the Work and Families Bill generally, which recognise that fathers wish to have more chance to be involved in family life.”

TGWU

“It will be in the practical implementation of this policy at employer level that the future success of the policy will be determined.”

Fathers Direct

5. Responses from employers were somewhat mixed, with concerns about how Additional Paternity Leave and Pay would work in practice, and the burdens that would be placed on employers. Others were more positive and recognised that for the first time the impact of maternity leave would be shared between employers. There were also requests that the scheme should mirror existing maternity and paternity arrangements where possible to simplify this new right.

“We support the government’s proposal for additional paternity leave and pay and hope that fathers and other carers will be encouraged to take this leave.”

Palmer Wade

“UCEA wishes to express its strong support for the declared intention of keeping the Additional Paternity Leave and Pay scheme (APLP) as straightforward as possible and, where possible, mirroring existing maternity and paternity arrangements. Member institutions have commented that greater harmonisation of provisions should lead to better understanding on the part of employers and employees.”

UCEA

“EEF welcomes the Government’s commitment to ensure that the administration of additional paternity leave (APL) and pay (ASPP) is straightforward and has the fewest possible requirements on employers. In general, we believe that the DTI’s proposals meet this stated objective. It is, however, essential that employers are given sufficient notice of the intended leave period and that the procedure for payment is clear and simple.”

“We recognise the Government’s commitment to addressing gender imbalance and facilitating means by which fathers can fulfil a greater role in their children’s lives. We therefore welcome these proposals as a step towards these goals.”

BT

6. The consultation sought views on a number of aspects of the scheme, including, eligibility; when the leave and pay could be taken; and the administration of the scheme. The following paragraphs outline the views received to the specific questions within these areas.

ELIGIBILITY FOR ADDITIONAL PATERNITY LEAVE AND PAY

Length of service

7. The consultation asked whether the father should have:–

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,

or

Whether the employee should have completed one year’s service before the intended date of taking Additional Paternity Leave and Pay,

or

Whether the employee should have completed 26 weeks’ service before the intended date of taking Additional Paternity Leave and Pay,

or

Any other alternative.

8. 67 responders in total answered this question. Of these, 43% (who were mainly employers), suggested that the longer length of service, which requires a father to have qualified for Ordinary Paternity Leave (OPL) and remained in employment with his employer would be the most appropriate option. It was suggested that this option would be the simplest to administer and would have the least impact on employers. Others highlighted that that

in most cases an employee would have passed any probationary period and therefore would be established in his employment with the employer. Also, if there were discussions between employer and employee around the time of taking Ordinary Paternity Leave, the employer would be aware of the possibility of the father taking Additional Paternity Leave and this would give early warning to the employer and enable them to make arrangements for the absence if necessary.

“Although 60 weeks seems an unusual timeframe it does make sense because in order to qualify for Ordinary Paternity Leave (OPL) they 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 OPL). The earliest point a father could then take Additional Paternity Leave is 20 weeks from the date of birth of the child, which equates to 60 weeks. This will also mean it is easier for employers to administer as they will not have to check that the father qualified for OPL.”

Centrica PLC

9. 30% of responders thought that 26 weeks' service was realistic because many fathers, particularly those who are interested in career progression, often move jobs and that men should not have a greater qualifying period than a women to qualify for maternity leave. It would also maximise fathers' take-up of APL and Pay.

“Whilst we agree that it would be unfair to impose unnecessary burdens on employers and we would not wish to implement measures which may discourage employers from hiring new parents, it is also important to provide entitlement for those whose employment has changed wherever possible.”

The Scottish Low Pay Unit

10. The one year's length of service (option 2) was preferred by 18% of responders, as they thought it would be easier for employers to remember, but overall this option had the least support.
11. Of the responders who opted for 26 weeks' service before taking leave and pay, some were campaigning for Day One rights because this would be the most inclusive and allow more fathers to care for their child in the first year.

Calculation and how the rate should be calculated

12. Responders were asked how they thought the weekly rate should be calculated and over what period this calculation should be made. In total, 60 responses gave a view on this issue and all were in favour of mirroring existing Statutory Maternity Pay (SMP) and Ordinary Statutory Paternity Pay (OSPP) provisions, i.e. a calculation based on average earnings over an 8 week period. This was thought to be easier for employers and keep calculation methods consistent with other payment provisions.
13. In terms of what period should be used as the basis for the weekly calculation of average weekly earnings, 64% of responders suggested that it should be linked to the expected week of childbirth (EWC) because then only one calculation would be necessary. 26% of responders suggested that it should be linked to the date the father intends to start his Additional Paternity Leave and Pay because for some fathers their circumstances may have changed since receiving OSPP, and 10% of responders opted for the period being linked with the actual date of the child's birth as this was a fixed date.
14. Although the question was not asked some responders suggested adopting a flat rate of Additional Statutory Paternity Pay, so no calculation would be needed as all fathers would qualify for a flat rate.

Conditions dependent on the mother

Return to work

15. It is a fundamental part of the scheme that a mother must return to work for a father to be able to take Additional Paternity Leave and receive Additional Statutory Paternity Pay. To receive pay, the mother must have been entitled to Maternity Allowance (MA) or Statutory Maternity Pay or Statutory Adoption Pay, and must have some of her entitlement remaining. The consultation asked what could constitute a mother returning to work. 52 responders answered the question and of these 19% thought that it should be the mother being physically back in the workplace and a father should not be able to take Additional Paternity Leave and Pay if the mother took another form of leave at the end of her maternity leave, e.g. annual leave.
16. The majority (67%) thought that this would be too complex to administer, and instead suggested that when a mother was no longer on maternity leave or was no longer receiving Statutory

Maternity Pay, she would be deemed as having returned to work because she would have resumed with her contract of employment. In general there were more respondents in favour of this approach.

“Intuitively it might have seemed preferable to link the father’s entitlement to APL to the mother’s actual physical return to the workplace, not least since this might tend to discourage a minority of cases in which the mother postponed her return on grounds of eg ill health or some other form of leave. But there are strong arguments for predictability so that the employer can be confident of the date when APL will begin and this suggests that the mother’s indicated return date should be accepted as constituting her return to work. There may also be some benefit for the employer if the mother is able to take annual leave before returning to work since this may reduce the need for subsequent cover. The alternative of requiring the mother to have physically returned would not in any case be fool-proof in discouraging possible abuse since a mother might turn up for a day or two and subsequently go absent from the workplace.”

CIPD

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

17. In terms of the earliest date the father would be able to take Additional Paternity Leave and Pay, nearly all responders (67%) agreed that setting the earliest point at 20 weeks after the birth of the child was the appropriate way of reserving the period after the child’s birth for the mother.

“The Mothers’ Union supports this proposal, particularly as the majority of its members expressed the wish for the first six months to be kept for the mother.”

Mothers Union

18. Those who disagreed (15%) did so because they wanted to allow more parental choice and to allow the mother to return to work at an earlier point, thus not reserving the first six months of maternity leave for the mother. A further 18% suggested that this was too prescriptive.

“This has to be personal choice and is often based on career aspirations, financial requirements or a personal desire to return to the workplace. It is not for the Government to stipulate, above the 2 weeks compulsory maternity leave. Once the period for enhanced payments has expired it may be more cost effective for

the father to take APL & APP rather than the mother and this is likely to fall before the child is 20 weeks old.”

Capgemini

Gaps with mother’s leave and pay

19. The consultation asked whether there are any circumstances where a gap in leave or pay should be allowed. Gaps were favoured by 83% of responders, because they would allow for mothers to take annual leave and not to preclude fathers from being able to take Additional Paternity Leave and Pay, if the mother chose to return to work earlier than the 20 weeks after the birth of the child.
20. Others (17%) who were not on favour of allowing any gaps thought gaps would encourage the mother to remain out of the workplace for longer and might mean that the father’s employer, would have to monitor that the child had not reached its first birthday.
21. Some responders commented that they did not consider that annual leave would constitute a gap, because the mother would have resumed her employment contract.

Situation where a mother dies before the child’s first birthday

22. The consultation set out the basic principle that a father would be able to take Additional Paternity Leave and receive Additional Statutory Paternity Pay from an earlier point than the 20 week point, set out above, in the situation where a mother died before the child’s first birthday. The consultation went on to ask whether all situations highlighted in the consultation document relating to where a mother dies should be included in regulations. In principle, many responders (72%) from both employer representatives and employee representatives agreed that all the circumstances should be included in regulations because although the vast majority of employers would be sympathetic, it would be clearer if minimum standards were set out in regulations. This would make it easier for employers to understand their responsibilities. However there were also views from these groups suggesting that the regulations did not need to accommodate all the circumstances, leaving it to employer discretion and well drafted guidance, as there would be only a small number of cases, it would be easier for employers to decide on a case by case basis.

23. Responders from employers and employee representatives identified that there were a range of other complexities, such as the mother was chronically ill and there were mixed views of whether these too should be included in regulations or whether they should be set out in guidance. Concerns were raised as whether the regulations would be able to include all circumstances. Some employers reported that they have existing policies to deal with such situations and there are existing state benefits that families can claim at this time.

ADDITIONAL DETAILS OF THE ADDITIONAL PATERNITY LEAVE AND PAY SCHEME

Keeping in touch days

24. Keeping in Touch (KIT) Days enable mothers and adopters to work for a limited number of days during their maternity pay period without losing statutory payments for that week or bring their leave to an end and the consultation asked whether in principle that the number of KIT days should be the same for a father on Additional Paternity Leave as for a mother on maternity leave. Nearly all responders (94%) agreed with the principle that the number of KIT days should be the same as for women taking maternity leave and pay. Concerns were expressed about the purpose of KIT days and they should be clearly defined.

“Yes for the sake of simplicity we believe that the number of Keeping in Touch days should be the same for maternity leave and Additional Paternity Leave.”

Eversheds

25. Within the group of responders who agreed with KIT days some thought they should be proportionate to the length of leave.

“CBI members have welcomed the Government’s intention to provide ‘Keeping in Touch days’ for fathers on APL and believe that fathers should be entitled to the same number of days, pro rata, as mothers.”

CBI

26. A very small minority (6%) did not agree with KIT days because they would be an administrative burden.

TERMS AND CONDITIONS WHILST ON LEAVE AND RIGHTS OF RETURN TO EMPLOYMENT FOLLOWING LEAVE

Terms and conditions during leave

27. During Ordinary Maternity Leave women are entitled to benefit from their normal terms and conditions of employment (except in remuneration) so they continue to be entitled to benefits such as a company car, holiday entitlements and mobile phone etc. During the second six months of the mother's leave (Additional Maternity Leave), her entitlements change and she is no longer entitled to receive all the benefits of her contract as outlined above. The consultation asked whether a father taking APL and Pay should be entitled to the benefit of his terms and conditions to the same extent as a mother on Ordinary Maternity Leave (OML) or a mother on Additional Maternity Leave (AML). This issue received a mixed response and 66 responders gave a view on this issue. 50% were in favour of OML equivalent terms and conditions, whilst 43% were in favour of AML equivalent conditions. The remaining responses (7%) did not give a preference. Employee representatives firmly favoured the equivalent terms and conditions as a mother on Ordinary Maternity Leave (OML), with the majority of employers favouring the equivalent terms and conditions as a mother on Additional Maternity Leave (AML). The reasons given by those in favour of OML equivalent terms and conditions were that it was the first significant opportunity that fathers had to care for their child and it was likely to maximise the take-up of APL and Pay. Also this was seen as the first significant period of leave and therefore should mirror the terms and conditions that apply to a mother on her first period of leave i.e. OML.

"A father or partner taking APL will not have a right to be away from the workplace for a longer period than a mother taking OML and employers should not therefore require more stringent restrictions to apply."

PCS

28. AML equivalent terms and conditions were preferred by some responders because the period of Additional Paternity Leave would, in most cases, be at the time as when originally when the mother would have been entitled to AML and therefore the father should be entitled to the same benefits as a mother who would have been on AML.

Right to return

29. Currently after OML a mother has a right of return to the same job on the same terms and conditions before her leave began. After AML a mother 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 practical for the employer to allow her to return to her original job. The consultation asked if fathers should be entitled to the same rights of return as a mother returning after OML or the same right of return as a mother returning after AML and there was a mixed response on this issue. Those in favour of OML rights of return (52%) thought that fathers would be deterred from taking leave if AML rights of return were offered, and it would be less favourable treatment as women were entitled to OML in the first significant period of leave. Others thought it was vital to guarantee the father's job and that employers should not find it more problematic than keeping a job open for mothers who take OML and that it would be inequitable to offer men less favourable treatment.

"For Fathers Direct, these are the highest priority issues within the consultation. It is essential, if this policy is to gain the confidence of fathers and their families, that fathers taking APL and APP should be entitled to the benefit of his terms and conditions AND the same right to return as a mother who is on Ordinary Maternity Leave."

Fathers Direct

"We would also support the proposal that the same contractual rights should accrue during APL as during OML. We cannot see any reason to distinguish between the rights women receive during the 6 months OML and rights during the 6 months APL."

Palmer Wade

30. Those who preferred AML rights of return (37%) thought that demand for Additional Paternity Leave and Pay was likely to be low, and would not be equivalent to a mother's need for post-natal leave to care for a new baby. Employers, particularly small employers, thought it would give them greater flexibility in running their business and clearer for employers to understand and apply. The remaining 11% of responders did not give a preference.

"The father or partner will be taking the second six months of the mother's maternity leave period and should therefore be entitled

to the same right of return as a mother returning from Additional Maternity Leave”

Ford

ADMINISTRATION

Notice periods

31. The consultation asked if all the information required for administration purposes should be provided before the proposed 8 weeks' notification point and many responders were in favour of the 8 weeks' notification of the intention to take Additional Paternity Leave and Pay, with a small minority (9%) suggesting that the notification period should be longer. Some responders (42.5%) thought the information required for administration purposes should be provided by the 8 week's point, whilst others (48.5%) suggested that the notification period should be sent 8 weeks before the intended date of leave, and the evidence should follow 4 weeks before the start of leave. The main reason given for the evidence to follow was that otherwise parents would need to give more notice. Those in favour of longer notice periods were concerned about the length of time it would take to recruit a temporary worker.

Sanctions

32. The consultation asked about whether there should be sanctions on the father such as with current paternity arrangements and many responders (73%) thought yes, there should be sanctions on the father if the mother failed to return to work and suggested a financial penalty. Others made it clear that a penalty should not be imposed, if it was through no fault of the father that the information had not been received, to allow his employer to start paying Additional Statutory Paternity Pay.

“We do not think there is a case for refusing to grant additional paternity leave and pay if supporting evidence does not arrive on time. There can be all kinds of delays in processing relevant documentation. It is also the case that new families facing new challenges might inadvertently overlook deadlines. To then prevent them from taking up their right to additional paternity leave and pay would be wholly inappropriate”

UNISON

33. The majority of responders (72%) thought that there should be serious sanctions on mother's employers if they failed to provide information and penalties should be imposed, in line with other

non-compliance such as for late tax returns. It was also mentioned that if employers made payments in good faith they should not be penalised if the payments were later found to be incorrect.

Format

34. The consultation asked 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 and most responders preferred that the information should be by way of an official form that would be instantly recognisable by employers. A small minority did not consider any kind of format and asked that the Additional Paternity Leave and Pay Scheme should be co-ordinated by a Government Department with the issue of start and stop payment notices.

Routing

35. The method of routing information from the mother's employer to the father's employer evoked a variety of opinions. Many responders (47%) were in favour of the mother of information being certified by the mother's employer and then she could be responsible for giving it to the father to pass to his employer which would reassure the parents that the father would be able to take Additional Paternity Leave and Pay at the intended date. Also the father's employer should also be able to check any information if there were any doubts about the authenticity of the request.

"We would favour an approach whereby the information from the mother's employer to the father's employer should be routed via the employees in question rather than placing an additional burden on the mother's employer. This may also have the benefit of ensuring that the information is provided more promptly to the father's employer and avoids arguments about information being lost in the post and / or concerns in relation to the Data Protection Act."

Eversheds

36. Other responders (36%) were in favour of the mother's employer passing the information directly to the father's employer providing this did not contravene the Data Protection Act. Reasons given were that it would minimise abuse and would be less onerous on the mother's employer.

37. Some responders (13%) made alternative proposals including that self-certification by the parents would be the easiest solution with no involvement of the mother's employer.

38. In the Government's Choice and Flexibility Consultation (February 2005) we asked whether a government department should be involved in the administration of the scheme, generally views were not in favour of this. It emerged during this consultation that involvement by a government department such as HMRC might be easier. In practice this would require the parents to both complete a joint application form stating the date of birth of the child, both employers details and the dates of the mother's intended return to work date and the father's intended date of taking Additional Paternity Leave and Pay. Along with this the parents would provide evidence of eligibility such as a copy of the child's birth certificate, which they would then submit to HMRC. HMRC would check the entitlement was correct and if satisfied that the application was in order, they would issue "Stop" notice of pay to a mother's employer and a "Start" notice of pay to the father's employer. This would avoid any non-compliance with the Data Protection Act and the employer would be assured that he was acting correctly.

"We strongly recommend and would support a Government department coordinated process. This would also support the Government drive for Better regulations in reducing the burden on employers."

Private Sector Payrolls Group

Evidence required as proof of eligibility

39. Responders (58%) agreed it should be mandatory for a father or partner to provide evidence to his employer of a child and the majority did think that fathers should provide evidence. Some firms already ask for proof of a child before the father takes the current paternity leave, which would then suffice for Additional Paternity Leave and Pay.

40. Others (30%) thought that asking for evidence was an additional complication and as now, employers should have the right to request the information if they choose to do so.

"Proof of evidence need not be mandatory, but it should be open to the father's employer to require information if he has concerns."

Small Business Council (SBC) Better Regulation Interest Group (BRIG)

41. Some thought that if the administration process involved a government department or the mother's employer, as mentioned above, this would avoid the need for employers to ask for evidence of the birth of the child.

Responses to change

42. In terms of father wanting to change their Additional Paternity Leave and Pay dates either backwards or forwards, nearly all responders thought that changes were sometimes inevitable and regulations should mirror existing maternity provisions where a mother wants to change her maternity dates. Some employers would prefer at least 8 weeks' notice of changes, but the consensus of opinion was that early warning of changes would be appreciated but 4 weeks' notice to revise the start or end date would be most appropriate.

ANNEX A

Alphabetical list of respondents who did not request confidentiality

Amicus
Bexley Council
Birmingham Law Society
Bishop Grosseteste College Lincoln
British Airways (Confidential)
British Nuclear Group
The British Psychological Society
BT
Bob Grayson
Borough of Poole
Canterbury Christ Church University
Capgemini UK Plc
Centrica Plc
Chartered Institute of Personnel and Development (CIPD)
Children in Scotland
Communication Workers Union (CWU)
Confederation of British Industry (CBI)
Day Care Trust
DLA Piper Rudnick Gray Cary
Doncaster Chamber of Commerce
Engineering Employers Federation (EEF)
Eversheds
Equal Opportunities Commission (EOC)
Fathers Direct
Federation of Small Businesses (FSB)
Ford Motor Company Limited
Friends Provident Plc
GMB
Gurmukh Bains
Heather Farley
Ian Penrose Architects
The Institute of Payroll and Pensions Management (IPPM)
Institute of Directors (IOD)
The Law Society
Leonard Yanovick
Mid Yorkshire Chamber of Commerce and Industry (MYCCI)
The Mothers' Union
National Farmers' Union
National Family and Parenting Institute (NFPI)
National Union of Teachers (NUT)
The Newspaper Society

NHS Employers
Nokia UK Organisation
Norman Scholes
North West Employers
Northumbria University
Palmer Wade Solicitors
PricewaterhouseCoopers
Private Sector Payrolls Group
Prospect
Prudential Plc
Public and Commercial Services Union (PCS)
Quanta Biotech Limited
Rebecca Allen
Rethink
Royal Mail Plc
Scottish Low Pay Unit
Small Business Council
Susan Singleton
Tesco
Transport and General Workers Union (TGWU)
Transport for London
Trades Union Congress (TUC)
Union of Shop, Distributive and Allied Workers (Usdaw)
UNISON
Universities and Colleges Employers Association (UCEA)
University of Hertfordshire
Women's Budget Group
Working Families