

dti

WORK AND FAMILIES

Choice and Flexibility

**ADDITIONAL PATERNITY LEAVE AND
PAY**

**GOVERNMENT RESPONSE TO
CONSULTATION**

NOVEMBER 2006

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Work and Families – Additional Paternity Leave and Pay

Government Response to Consultation

1. INTRODUCTION AND BACKGROUND

1.1 On 9 March 2006 the Government published a consultation document seeking views on the detailed aspects of the Additional Paternity Leave and Pay scheme¹. The consultation closed on 31 May 2006. This consultation followed publication of the Work and Families Bill (now the Work and Families Act 2006), which contained powers to increase entitlements to paternity leave and pay by providing Additional Paternity Leave and Additional Statutory Paternity Pay. Secondary regulations will set out the detail of the scheme; the consultation document setting out the policy proposals for these regulations. Throughout this response, the term “father” includes adopters, partners of birth mothers and partners of adopters’.

1.2 Additional Paternity Leave and Pay will provide more choice for parents in caring for their child, giving fathers more opportunity to be involved in the upbringing of their child. The consultation sought views on a number of aspects of Additional Paternity Leave and Pay, asking 18 questions in total. The broad areas that the consultation covered included: who is eligible for Additional Paternity Leave and Pay; when Additional Paternity Leave and Pay can be taken; and the administration of the scheme and is the first step towards developing regulations. 76 responses were received, of which 36 were from employers, self employed or Small Medium Enterprises (SMEs), 29 from employees, trade unions, Non Departmental Public Bodies (NDPBs) or parent groups and 11 from other groups including consultants, academics, legal advisers and professional bodies. A number of face-to-face meetings were also held with trades unions, parents groups and employers’ organisations to discuss their responses to the consultation in more detail.

Timing of introduction of Additional Paternity Leave and Pay

1.3 As stated in the consultation document, the Government’s intention is to bring in Additional Paternity Leave and Pay alongside the extension of Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance to 52 weeks. It is an aim of the Government to do so by the end of this Parliament. Some responses (mainly parent groups) to the consultation were keen for Additional Paternity Leave and Pay to be introduced as soon as possible ahead of the extension of maternity and adoption pay to 52 weeks. Others (mainly employers) welcomed the fact that the Additional Paternity Leave and Pay would not be introduced

¹ “Work and Families – Choice and Flexibility. Additional Paternity Leave and Pay.” March 2006; URN 06/639. www.dti.gov.uk/files/file25024.pdf

in April 2007 and welcomed the intended introduction alongside the extension of maternity and adoption pay to 52 weeks, as this would allow employers time to plan for the change.

1.4 In general, the responses to the consultation supported the Government's intention to provide Additional Paternity Leave and Additional Statutory Paternity Pay and requested, where possible, the scheme be kept consistent with existing maternity, paternity and adoption provisions to keep it straightforward for both employers and their employees.

1.5 The specific questions explored by this consultation and the Government's initial responses to them are set out below.

2. WHO IS ELIGIBLE FOR ADDITIONAL PATERNITY LEAVE AND PAY

2.1 As set out in the consultation, the Government will mirror existing paternity leave and pay provisions (referred to here as Ordinary Paternity Leave (OPL) and Ordinary Statutory Paternity Pay (OSPP)), making Additional Paternity Leave and Pay available to employed fathers, adopters, partner of the child's mother or partners of adopter's. In order to qualify for Additional Paternity Leave and Additional Statutory Paternity Pay he must in the case of the birth of the child be either the father of the child, the spouse or civil partner or the partner of the child's mother, and be responsible for the upbringing of the child. If the child is adopted he must be the member of a jointly adopting couple who has chosen not to take adoption leave and Statutory Adoption Pay or the spouse or civil partner or partner of the adopter.²

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

Question 1

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?

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

² As set out in paragraph 1.1, the term 'father' is used throughout this document but includes all the groups set out above.

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

or any other alternative.

2.2 In response to this question, 43 per cent of respondents were in favour of Option 1. It was thought that this option would be the simplest to administer and the least disruptive to employers. As an employer will have checked employment history around the time of a father taking Ordinary Paternity Leave, they could avoid carrying out a second qualification check in the majority of cases where employees take both Ordinary and Additional Paternity Leave if Option 1 were adopted. This option would also allow employers more time to find temporary cover if necessary and it would ensure that new employees did not take Additional Paternity Leave until they were properly established in their jobs. Whilst this will have some impact on the number of fathers eligible to take Additional Paternity Leave and Pay, we do not envisage a large impact on the take up figures. The accompanying Regulatory Impact Assessment (RIA) estimates that the number of fathers eligible under option 1 is 239,000 compared to 278,000 under Option 3. Although the number of fathers eligible is reduced, the impact on the estimated take up of Additional Paternity Leave and Pay is not significantly affected by the options. Under Option 1 it is estimated that between 10,000 and 19,000 fathers would take up Additional Paternity Leave and Pay, compared to between 11,000 and 22,000 under Option 3.

"This meets the criteria of simplicity for employers and employees – in that if the employee qualifies for Ordinary Paternity Leave, he also qualifies for Additional Paternity Leave – so there will be little room for confusion on either side. No further calculations need to be made, and both employers and employees will know that if the employee qualified for OPL, he automatically qualified for APL."

Fathers Direct

"Ensuring that length of service eligibility for APL mirrors that of the current two weeks' paternity leave – which employers are familiar with – will ensure this element of the scheme is administratively simple. It is likely that those father wanting to take APL would also take the initial two weeks' statutory leave, so employers would only need to check eligibility once."

CBI

"This option, we believe, would ensure that an employer would not have to carry out two qualifying checks and will also assist the employee with understanding the qualifying rules as they would mirror the current SPP rules."

Although shorter than the requirement for OPL, this seems to be the most simple and straightforward option for employers to administer. It is also the option that will be easier for fathers to understand and will mean that fathers who do not qualify for OPL will be able to qualify for APL.

Mothers Union

2.3 Option 2 received some support as it was thought that a year was an easy period to remember and it would result in more fathers being eligible to take up the provision compared to Option 1. It was however recognised that this period would require a further eligibility check by the employer. Although this option would make slightly more fathers eligible for this provision, the difference in length of service compared to Option 1 is small (eight weeks less). This does not outweigh the simplicity of administering eligibility and payment calculations offered by Option 1.

2.4 Whilst there was some support for Option 3, it was recognised that this requirement for length of service with an employer was shorter than the length of service required for a father to qualify for the existing two weeks' Ordinary Paternity Leave and Ordinary Statutory Paternity Pay.

In order to provide a balanced package:

- **We intend for a father to be eligible to take Additional Paternity Leave he will have to have been eligible for Ordinary Paternity Leave with the same employer and still be in employment with that employer.**

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

2.5 Additional Statutory Paternity Pay will be paid at the same rate as Ordinary Statutory Paternity Pay i.e. either at a flat rate (at present, the statutory level is £108.85 per week) or 90 per cent of the father's average weekly earnings if that is less than the flat rate. It will be paid by the employer with the employer being able to make recoveries as with existing provisions.

Question 2

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

2.6 Sixty responses were received on this particular question and respondents gave a consistent view that the calculation should be based on average earnings over an eight week period to keep calculations consistent with existing maternity, adoption and paternity provisions.

“BT believes the most equal and simple solution would be to mirror maternity leave provisions and use an average of current earnings over a two month period. This will therefore take into account fluctuations in pay often created by different shift patterns and overtime.”

BT

- **The overwhelming response to the consultation on this question suggested that the Government keep the scheme consistent with the maternity, paternity and adoption payment provisions, as it would be confusing to have different calculation methods. We therefore intend to mirror existing maternity, paternity and adoption arrangements and qualification for Additional Statutory Paternity Pay will be calculated by averaging over an eight week period.**

Question 3

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?

2.7 The majority of respondents (64 per cent) suggested that it should be linked to the expected week of childbirth (EWC) and fixed at the same point as for Ordinary Statutory Paternity Pay as this would be consistent with Ordinary Statutory Paternity Pay and mean that only one calculation would be necessary for employers to make. Others (26 per cent) 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. A further ten per cent of respondents opted for the period being linked with the actual date of the child's birth, as this was a fixed date.

"The period should be linked to the expected week of childbirth (as used for Ordinary Statutory Paternity Pay) as this would mean no further calculations are required by the employer. The father's average earnings may have increased in the meantime though, but unless this takes the father to the flat rate, it makes no difference. Since most fathers would have qualified for the full rate anyway this shouldn't be an issue for them."

Centrica

- In order to keep the scheme straightforward and consistent with other provisions, we will link the period to the EWC, i.e. base the level of pay on the employee's average weekly earnings in the eight weeks up to and including the week immediately preceding the 14th week before the EWC, as is the case for the current two weeks Ordinary Statutory Paternity Pay calculation period. In cases of adoption, the period will be linked to the week of notification of matching for adoption, as is currently the case. Whilst a small proportion of fathers' or partners' circumstances may have changed during the time between receiving OSPP and ASPP, we do not think the numbers are significant enough to require all employers to make a second calculation.

Conditions dependent upon the child's mother

Question 4

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

2.8 It is a fundamental principle 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. The majority of responders (67 per cent) thought that when a mother/adopter was no longer on maternity leave/adoption leave or receiving Statutory Maternity Pay/Statutory Adoption Pay, she should be deemed as having returned to work.

A mother should be treated as though she has returned to work once she has agreed to continue her employment and her maternity leave has officially ended. This would mean that even if the mother takes parental

leave, sick leave or any other type of authorised absence the father may begin his Additional Paternity Leave..... If other leave were to be built into the process so as to prohibit the father from taking his leave, this would be more complicated to administer and would present a greater burden on the mother's employer to establish whether she has truly returned to work.

Tesco

"The Mothers' Union recommends that a mother should be seen as 'returned to work' as soon as her Statutory Maternity Pay (SMP) claim ends. This makes it simple and easy to administer for employers and employees alike."

The Mothers' Union

2.9 To require a mother to have actually physically returned to work, before a father or partner could take Additional Paternity Leave and Pay, could cause complications in the administration of the scheme and would impact on the flexibility of taking the leave and pay.

- **We therefore intend that a mother or adopter will be deemed to have 'returned to work' for the purposes of Additional Paternity Leave and Additional Statutory Paternity Pay if she has ended her maternity or adoption leave and has stopped receiving maternity or adoption pay.**

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

3.1 The consultation indicated that we intended to allow a father or partner to be able to start their Additional Paternity Leave and Pay after approximately six months of a mother's maternity leave (or an adopter's adoption leave). A point 20 weeks from the date of birth of the child, or in the case of adoption, 20 weeks from the date of placement for adoption, was put forward as the most appropriate way of enabling this provision. This would reserve, in most cases, the first six months of a mother's maternity leave for the mother.

Question 5

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?

3.2 In response to this question there was overwhelming support for applying this rationale in setting the earliest point at which Additional

Paternity Leave and Pay could be taken. A few responses indicated a preference for linking the earliest point at which Additional Paternity Leave and Pay could be taken to the expected week of childbirth (EWC) as employers are used to dealing with this reference period. However it was recognised that linking the point to the date of birth of the child or the date of the child's placement for adoption would be simple for employers to administer as when Ordinary Paternity Leave can be taken is linked to the date of birth of the child. An eligible father can take this Ordinary Paternity Leave within 56 days of the date of birth of the child. A point 20 weeks from the date of birth of the child or the child's placement for adoption was seen as a reasonable proxy for reserving a significant period of the mother's, or adopter's leave after the birth or the child's placement for adoption.

- **We will therefore enable a father or partner to start Additional Paternity Leave and Pay at the earliest 20 weeks from the date of birth of the child, or in the case of adoption, 20 weeks from the date of placement for adoption.**

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

3.3 The consultation outlined that there may be circumstances where parents may wish there to be a gap between a mother or adopter 'returning to work' (i.e. ceasing statutory maternity leave and pay or statutory adoption leave and pay) and a father or partner taking up Additional Paternity Leave and Pay. For example, a mother may wish after 'returning to work' to take annual leave that has been accrued during her maternity leave. It sought views on whether gaps should be allowed or not.

Questions 6 and 7

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?

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

3.4 Most respondents (83 per cent) thought that the Government should allow for the possibility of a gap between the end of maternity leave or adoption leave and the beginning of Additional Paternity Leave and Pay, as it would allow parents more flexibility without making the scheme more complicated.

“The TUC strongly supports the possibility of a gap between the end of maternity and adoption leave and the start of APL&P. The birth of a new child brings many changes to family circumstances, many of them unexpected. The TUC is of the view that maternity and paternity leave should be as flexible as possible to enable parents to use it in a way that most suits their circumstances.”

TUC

“The regulations should not prohibit gaps between the end of statutory maternity leave and the start of APL. As long as the mother and father follow the other conditions they should be permitted as much choice and flexibility as to how they manage their statutory leave entitlements.”

CBI

3.5 Similarly, the view from respondents was that they could not think of reasons for not allowing gaps in leave and pay (77 per cent of those who responded). In particular, it was recognised that a mother may wish to return to work earlier than the 20 weeks’ point after the birth of the child (earliest point at which Additional Paternity Leave and Pay could be taken) and that a mother may wish to take some other form of leave at the end of her maternity leave.

3.6 Alternatively, another circumstance where a gap might be likely is if the father does not wish to begin Additional Paternity Leave and Pay at the exact point that a mother ends her maternity entitlement.

“Cannot envisage any such circumstances”

British Nuclear Group

“It is important that flexibility is built into the scheme at the very start if it is to adequately reflect the reality of modern day life.”

Usdaw

- **We will allow gaps between the end of maternity leave or adoption leave and the beginning of Additional Paternity Leave and Pay. We do not think this will have any negative impact on the administration of the scheme and will not make it more complicated. We are not aware of any circumstances where gaps should not be allowed and we will not prohibit gaps, to enable families to have greater choice and flexibility.**

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

3.7 The consultation indicated that regulations would allow fathers to take extended Additional Paternity Leave and Pay in the situation where a mother dies during childbirth or soon afterwards. The basic principle would be to allow a father or partner to start leave from the date the mother died, or a suitable date thereafter (even if before the 20 week point), if the father chooses, and that leave could be taken for longer than the maximum 26 weeks prescribed under normal circumstances. This leave could be paid for the remaining length of time that the mother would have been entitled to Statutory Maternity Pay or Maternity Allowance.

3.8 The consultation also outlined other possibilities that could arise and sought views on whether these should be included in the regulations or not.

Question 8

Should all the situations outlined above (in the consultation document) in relation to the situation where a mother dies be included in the regulations?

3.9 Although the majority of respondents agreed that when a mother dies during childbirth or soon afterwards a special provision should be included in regulations to help the partner, there were mixed views on whether the regulations should cover all the circumstances in relation to where a mother dies outlined in the consultation at paragraphs 3.14 – 3.17. Some responses suggested that these should instead be written in clear guidance. Some responses also urged the Government to consider other circumstances not specific to when a mother dies, such as if a mother was chronically ill.

3.10 Having considered these alternative situations, many of which would rarely occur, we believe that it would be clearer to set out best practice in the supporting guidance rather than encompassing all in the regulations. This would be in line with our Better Regulation principles.

- **The basic principle set out in paragraph 3.7 will be included in regulations to enable a father or partner of a mother or partner of an adopter to be able to take Additional Paternity Leave and Pay at an earlier point than 20 weeks from the date of birth of the child or placement for adoption and for a longer period of time in the situation where a mother dies during or shortly after childbirth or shortly after a child's placement for adoption.**

4. ADDITIONAL DETAILS OF THE ADDITIONAL PATERNITY LEAVE AND PAY SCHEME

4.1 The consultation confirmed that the minimum period of leave that could be taken would be two weeks and that any period of Additional Paternity Leave taken must be taken in one continuous block. In addition we sought views on the following:

Keeping In Touch days

4.2 The maternity and adoption leave and pay regulations will enable a mother or an adopter to take up to 10 Keeping in Touch (KIT) days during her maternity leave or adoption leave period. This will enable her to carry out some work, for example, attending an important training day, without losing her entitlement to a week's maternity or adoption pay or bringing her maternity or adoption leave to an end. The Government intends to allow a father to use KIT days whilst taking Additional Paternity Leave and Pay.

Question 9

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?

4.3 Ninety per cent of respondents thought that fathers on Additional Paternity Leave should be able to take KIT days and that the number of days should be the same as those for women taking maternity leave and pay.

4.4 Some respondents raised concerns about the purpose of KIT days and asked for clarity over the distinction between KIT days and the right to make reasonable contact between employer and employee during leave. Since then, the full response³ to the consultation on the Maternity Leave and Pay Regulations, which includes KIT days set out the recommendations made in response to these concerns. The full response can be found at www.dti.gov.uk/files/file31572.pdf. Information and guidance on KIT days is also now available as the regulations including KIT days for women came into force on October 1st 2006. This guidance explains how KIT days work in more detail for women on maternity leave. The guidance can be found at www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html

³ Work and Families: Choice and Flexibility. Maternity and adoption leave and pay regulations. Summary of responses and Government Response to consultation <http://www.dti.gov.uk/employment/workandfamilies/>

4.5 Others suggested that KIT days should be proportionate to the length of leave taken, especially as fathers would be likely to take less leave than mothers on maternity leave. We considered the feasibility of legislating for a proportionate number of KIT days and we concluded that to do so would add a layer of unnecessary complexity to the way the measure will operate, and could lead to practical problems. Whilst it may appear disproportionate for a mother to be able to take 10 KIT days over a period of 12 months and a father the same number of KIT days over a period of 26 weeks, a father will only be able to take Additional Paternity Leave and Pay if the mother has returned to work. Therefore, a mother will, if she so chooses, be able to take 10 KIT days in the first six months of her maternity leave and then return to work, allowing a father to take leave and pay.

“Yes, this would ensure equal access to Keeping in Touch days and, by reflecting existing requirements, also make regulation easier to adopt for employers.”

Scottish Low Pay Unit

“PCS agrees this in principle as it contributes to consistency between the various entitlements.”

PCS

“The Company agrees both maternity leave and paternity leave should be the same including the number of Keeping in Touch days.”

Ford

4.6 The majority of those responding have agreed that we should mirror the provisions for a mother and avoid complexity.

- **We intend that a father taking Additional Paternity Leave should be entitled to 10 Keeping In Touch days, to be taken under the same terms and conditions as a mother on maternity leave.**

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

4.7 A father will be entitled to certain terms and conditions whilst taking Additional Paternity Leave as this will be consistent with existing provisions and will encourage fathers to take their entitlement. To keep it straightforward we proposed that a father be entitled to the terms and conditions equivalent to those of a mother on either Ordinary Maternity Leave or Additional Maternity Leave.

4.8 In addition, a father will be entitled to certain rights of return to employment after taking Additional Paternity Leave. Again, to keep it straightforward we proposed that a father be entitled to the equivalent

right of return to a mother returning from either Ordinary Maternity Leave or Additional Maternity Leave.

Questions 10 and 11

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?

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?

4.9 During the first 6 months of maternity leave, known as Ordinary Maternity Leave (OML), women are entitled to benefit from their normal terms and conditions of employment (except for terms relating to remuneration), so they continue to be entitled to benefits such as a company car, holiday entitlements and mobile phone etc. During the second 6 months of the mother's leave, known as Additional Maternity Leave (AML), her entitlements change and she is no longer entitled to receive all the benefits of her contract, but instead only certain terms apply.

4.10 Sixty-six responses were received in answer to this question. Views on this issue were mixed with 50 per cent in favour of OML equivalent terms and conditions, whilst 43 per cent were in favour of AML equivalent conditions. The remaining respondents (seven per cent) did not express a preference.

"It is important that men are not just enabled but encouraged to take APL. To do this men need the strongest protection offered by OML, i.e. that the employee benefits from all their terms and conditions other than the right to remuneration."

Women's Budget Group

"In these circumstances we believe that a father should have the same benefit of his terms and conditions as a mother on Ordinary Maternity Leave. This is the first period of absence that the father will be taking and we cannot see any difference in principle between the father and the mother in these circumstances as to what would be acceptable."

Birmingham Law Society

4.11 After OML a woman has a right to return to the same job on the same terms and conditions as before her leave began, whereas with

AML, she 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. In those circumstances she must be offered a suitable and appropriate alternative position on no less favourable terms.

4.12 The responses that were in favour of OML equivalent rights of return (52 per cent) suggested that it would be vital to guarantee a father's job particularly as he would be less likely to take his full entitlement (26 weeks) and unless his right to return to his job was guaranteed the scheme would be undermined. It was also thought that employers should not find it more problematic to keep open a job for a father than keeping a job open for a mother on OML.

4.13 Those responses that favoured AML equivalent rights of return (37 per cent) thought that as a father taking Additional Paternity Leave and Pay would do so in the second 6 months of the mothers maternity leave the equivalent right of return, i.e. AML equivalent rights should apply.

4.14 The remaining respondents did not give a preference.

"Fathers contemplating taking APL need to know for certain, before taking APL, that they will be returning to the same job at the end of their leave period. If they are not given the right to return to the same job after APL, many will not risk exercising this proposed statutory entitlement. Hence the importance of OML equivalent rights."

Equal Opportunities Commission

"We consider that a father will be taking APL and ASPP in what would be the second six months of the mother's maternity leave. It is also quite likely to be the second paternity period of leave that the father takes. Given that the father's rights during OPL are equivalent to the mother's during ordinary maternity leave (OML), our members believe that it is appropriate for a father on APL to be entitled to the same benefits and entitled to the same right of return as the mother who would have been on additional maternity leave (AML)."

CBI

"Daycare Trust urges the DTI to make clear that fathers' rights will be protected if they choose to take APL. If a father has the right to return to the same job and doesn't lose employee benefits, he will be reassured that in taking APL he will not be put at a disadvantage on returning to work."

Daycare Trust

4.15 We recognise that this is the first step towards enabling men and women to determine how they organise the distribution of work and care

between themselves. We want to encourage fathers to take advantage of Additional Paternity Leave and Pay and from the consultation responses it was clear that providing a father with the equivalent terms and conditions as a mother taking OML and ensuring a father could return to the same job would be a significant factor in a father's consideration of whether or not to take the leave. Whilst this would mean less flexibility for an employer, we do not believe that this would create a significantly greater burden on business than applying AML equivalent terms and conditions.

4.16 Although this could potentially require an employer to keep a job open for his employee for 6 months, as a father will be required to work with an employer for over a year to be eligible for Additional Paternity Leave and Pay, we consider it reasonable for a father to be guaranteed the same job on his return and still have the same terms and conditions during that leave period.

- **In light of the evidence submitted we intend that a father taking Additional Paternity Leave and Pay will be entitled to the benefit of his terms and conditions equivalent to a mother on Ordinary Maternity Leave and will be entitled to the same right of return as a mother returning after Ordinary Maternity Leave to ensure that fathers exercising this entitlement are comfortable in doing so and that a balanced package is delivered for employers and their employees.**

5. ADMINISTRATION

5.1 The consultation posed a number of questions on various aspects of the administration of the scheme including, length of notice periods, format of application, routing of information, sanctions, evidence of eligibility and what to do if an applicant changes their mind. In response to these questions there was a range of views on some of the issues. A consistent message received in the consultation responses urged the administration to be kept straightforward and where possible consistent with existing arrangements for other statutory payments. We will continue to explore the practicalities and detail of the administration, working closely with Her Majesty's Revenue and Customs (HMRC) and Department for Work and Pensions (DWP) who have an interest in this area.

5.2 In doing so we will also continue to engage further with employers, employees, their representative groups and others with an interest to establish a preferred way forward. We aim to keep the administration 'light touch' where possible, whilst maintaining a robust mechanism that works for all concerned. Through this further consultation we can ensure that this occurs.

6. CONCLUSION AND NEXT STEPS

6.1 The Government is grateful to all those who took the time to respond to the consultation and to meet with officials. The package as a whole has received a good degree of support from a wide range of individuals and organisations.

6.2 The Government's intention is to work with interested parties to develop those aspects of the scheme that are still outstanding and following completion of this there will be a consultation on the draft regulations.

DTI
November 2006



Additional Paternity Leave and Pay

November 2006

Purpose and Intended Effect

Objective

1. 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. The package will respond to the growing number of fathers who want greater opportunities to care for their child.

Background

2. In the Work and Families Act 2006 the Government introduced a package of measures to give families more choice about their caring arrangements. The Act included powers to increase fathers' entitlements to paternity leave and pay by providing Additional Paternity Leave (APL) and Additional Statutory Paternity Pay (ASPP). Secondary regulations will set out the details of this scheme; policy proposals for these regulations were set out in the consultation document published on 9 March 2006 and in the Government Response to the consultation, which 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.⁴

3. Since April 2003, working fathers of newborn children have been entitled to Statutory Paternity Pay and Statutory Paternity Leave (SPP and SPL). The introduction of Additional Paternity Leave and Pay (APL&P) will not affect these entitlements⁵. The aim of APL&P is to provide additional opportunities for fathers to spend time with their children.

⁴ "Work and Families: Choice and Flexibility, DTI Final Regulatory Impact Assessment, October 2005". Available here: <http://www.dti.gov.uk/files/file19314.pdf>

⁵ Though they will be renamed as Ordinary Statutory Paternity Pay and Ordinary Paternity Leave, respectively.

4. 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

5. On 9 March 2006 the Government published a consultation document seeking views on the detailed aspects of the APL&P scheme.⁶ The consultation closed on 31 May 2006. This consultation followed publication of the Work and Families Bill, introduced in Parliament in October 2005, and publication of the Government's Response⁷ to an earlier, wide-ranging consultation in spring 2005.⁸

6. The latest consultation sought views on a number of aspects of the scheme. These included eligibility for APL&P, when APL&P could be taken and the administration of the scheme. 76 responses were received, of which 36 were from employers, self employed or Small Medium Enterprises (SMEs), 29 from employees, trade unions, Non Departmental Public Bodies (NDPBs) or parent groups and 11 from other groups including consultants, academics, legal advisers and professional bodies. A number of face-to-face meetings were also held with trade unions, parents groups and employers' organisations to discuss their responses to the consultation in more detail.

7. It should be noted that, although the proposals in this part of the Work and Families Act will introduce new regulations for businesses, other measures in the Act (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.

8. The DTI is strongly committed to better regulation and to ensuring reforms deliver whilst minimising burdens. The Government Response 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 www.dti.gov.uk/bbf/better-regulation/challenge-red-tape/views/page24687.html

⁶ "Work and Families – Choice and Flexibility. Additional Paternity Leave and Pay." March 2006; URN 06/639. www.dti.gov.uk/files/file25024.pdf

⁷ "Work and Families: Choice and Flexibility – Government Response to public consultation" October 2005; URN 05/1298. www.dti.gov.uk/files/file16317.pdf

⁸ "Work and Families: Choice and Flexibility. A Consultation Document" February 2005; URN 05/847. www.dti.gov.uk/files/file11517.pdf

Options

Summary of options

9. A summary of proposed options can be found below.

(1) Timing of start of leave

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

11. There was a strong consensus from the responses to the Work and Families consultation in February 2005 that around the first six months of a mother's statutory maternity leave should be reserved for the mother. The Government concluded that this would be the approach adopted and the consultation in March 2006 asked for opinions on how exactly this period should be defined. The Government Response that accompanies this RIA sets out that the earliest date at which a father will be able to take leave will be 20 weeks from the birth of the child, or, in the case of adoption, 20 weeks from the date of placement of the child for adoption.

(2) Eligibility for leave and pay

12. Three options are considered in this RIA:

1. Leave conditional upon a father having been eligible for Statutory Paternity Leave⁹ and also having been in continuous employment with his employer up to the start of APL;
2. Leave conditional upon a father having been in continuous employment with his employer for one year, equivalent to the current conditions required for parental leave;
3. Leave conditional upon a father having been in continuous employment with his employer for the 26 weeks prior to the start of Additional Paternity Leave. No requirement for a father to have been eligible for Statutory Paternity Leave (SPL).

13. ASPP will be conditional upon the mother being entitled to Statutory Maternity Pay (SMP) or Maternity Allowance (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 (SAP). The number of weeks for which ASPP will

⁹ 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.

be payable will depend upon the number of weeks the mother had left of her entitlement to SMP, MA or SAP. The Government took powers in the Work and Families Act to implement this.

Discussion of options

Eligibility for leave and pay

14. This RIA compares options 1 and 3, as these estimate respectively the minimum and maximum expected impacts of the proposal. Essentially, the difference is that option 1 requires a father to have worked for at least 60 weeks prior to starting APL and option 3 requires a father to have worked for 26 weeks prior to starting APL. It is clear that the shorter qualification period would result in more fathers being eligible for leave and pay.

15. The consultation document set out how entitlement to APL&P is dependent on both the mother's return to work and the requirement to take APL in one continuous block. However it also sought 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 (OSPP), where the calculation is based on average earnings taken over an eight-week period.

Costs and Benefits¹⁰

Number of beneficiaries

16. Estimates for the number of fathers eligible for APL&P 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.

	Number of fathers	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
Eligible for leave and pay	239,000	278,000

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

¹⁰ The costs and benefits in this section have been calculated on the basis of the regulations coming into effect in 2008, 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.

17. 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 Survey¹¹ provides some data which can be used to predict take up. This takes into consideration two factors:

- (i) an estimate of mothers who indicate that they are interested in making use of the new APL&P rights; and
- (ii) an estimate of fathers who indicate they are interested in making use of the new APL&P rights, or already demonstrate a strong commitment to the upbringing of their child in its first year.

18. 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. Full details of the calculations are given in Appendix A. The methodology for these calculations has been amended slightly since the previous version of the RIA, in order to take into account more of the information available in the 2005 Maternity and Paternity Rights Survey.

19. The number of fathers expected to take up the proposed entitlement is given in Table 2. These figures may be considered low. However, evidence from other countries with similar systems suggests that they are of the right order of magnitude.¹² Furthermore, 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 2008/9)¹³

	Number of fathers	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
All fathers who take up Additional Paternity Leave and Pay	10,000 – 19,000	11,000 to 22,000

Source: DTI analysis of the Maternity and Paternity Rights 2005 Survey. See Appendix A for details.

¹¹ Maternity and Paternity Rights and Benefits: Survey of Parents 2005, D. Smeaton and A. Marsh, DTI Employment Relations Research Series No.50, URN 08/836. www.dti.gov.uk/files/file27446.pdf

¹² These predictions represent 4-8% of eligible fathers in the UK. Figures from Scandinavian countries indicate that where parents can share leave, the proportion of fathers taking leave is fairly low, ranging from 3% in Finland to 16% in Iceland. Appendix B provides further information from countries with comparable policies, and data on take-up. Peter Moss and Margaret O'Brien (eds.), " *International Review of Leave Policies and Related Research 2006*", DTI Employment Relations Research Series No. 57.

¹³ NB: These figures are rounded to the nearest thousand for ease of reference, but cost calculations in this RIA use the precise underlying figures.

20. A small number of fathers will be eligible for APL but not ASPP, as they earn less than what would amount to the flat rate payment for ASPP (currently equivalent to £108.85 a week). According to the Annual Survey of Hours and Earnings, around 5½% of male employees earned less than this limit in 2004/05¹⁴. However, it is hard to estimate what proportion of those actually taking APL would earn less than the limit. On the one hand, low earners might be less likely to take leave, if they need the income from work to support their families and would not receive any ASPP. On the other hand, their fall in weekly income from taking leave could still be less than the fall for higher earners, making them more likely to take leave. Overall, this limit is likely to exclude at most a few hundred fathers. The calculations in the RIA do not quantify the exclusion of fathers due to the flat rate cut-off. The numbers of fathers eligible for ASPP might vary slightly, depending on the timing of the pay calculation - for example if a father was earning less than the flat rate before the birth of the child, but more than the flat rate by the time he wanted to take APL - but these variations are likely to be very small and are not quantified here.

21. 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 life¹⁵. 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 may also benefit from compassionate leave and pay from their employer in the event of their partner's death and so this entitlement would have no impact on them. However, for fathers where this is not the case, this proposal provides an important safety net at a highly difficult time.

22. Employers may face an additional impact in making arrangements for the employees' absence in these specific circumstances as they may take longer periods of APL 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.

Costs

23. 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 to employers, which should be considered.

¹⁴ In fact the cut-off is equivalent to £120.94 a week, as the flat rate represents 90% of the earnings level.

¹⁵ 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.

The potential impact on small business

24. 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 APL, the proposal could have a disproportionate impact on any individual small business.

25. However, given the estimated level of take-up of APL&P, 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.¹⁶

26. The estimated costs associated with the original proposals for the transfer of maternity leave and pay 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 proposals.

Assumptions

27. The figures quoted in this RIA are based on the scheme being introduced in 2008. This is the earliest point at which the scheme could be introduced although no decision has been taken on the exact time for introduction.

28. It is assumed for the purpose of calculations that fathers who take advantage of their entitlement to APL&P will take between 10 and 15 weeks of ASPP. This is based upon evidence from the *Maternity and Paternity Rights Survey 2005*, where mothers who expressed willingness to transfer leave to their partner were asked how much leave they would transfer. The average response was 11 weeks. However, as this response was given in the context of existing maternity leave entitlements, it is possible that the actual figure under a 52-week maternity leave

¹⁶ According to data from the Small Business Service (www.sbs.gov.uk) in 2005 there were around 1.254 million business in the UK employing 24.7 million employees. Around 97% (around 1.216 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 9,688 male employees working in small business. Therefore in any given year the APL&P entitlement is estimated to affect at most 0.8%, or 1 in every 126, of all small businesses.

entitlement would be higher. We therefore use a range of 10 to 15 weeks.

29. Previous versions of these calculations assumed that the father's decision to take advantage of APL&P would not affect the mother's decision about how much leave to take. This was a simplifying assumption. In reality the policy is likely to impact on mothers' choices, as the opportunity to share childcare with the father will enable some mothers to return to work earlier than they would otherwise have done. The calculations in this RIA are now based on the more realistic assumption that one-third to two-thirds of the leave taken by the father will replace time that would otherwise have been taken by the mother.¹⁷

30. The prevailing flat rate of pay is estimated to be around £115.03 per week by 2008/9.¹⁸

31. 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.

32. It should be noted that the cost calculations are made on an aggregate basis, not disaggregating by sector. This is done for simplicity. However, in reality, employers in some industries and occupations will have more experience of handling mother's leave arrangements. Therefore, the introduction of an entitlement to APL&P may have less of an impact on these employers than on employers whose workforce is predominately male. Table 3, below, shows that inexperience in dealing with maternity leave is particularly likely in the construction sector, as this has the lowest share of women workers. Agriculture, energy, manufacturing and transport and communications may also be disproportionately affected. However, given the fairly low number of fathers expected to take advantage of APL&P, the overall impact on these sectors will remain small.

¹⁷ This is also based on information from the Maternity and Paternity Rights Survey of Parents 2005, where mothers who indicated willingness to transfer leave to their partner were asked whether this would affect how much leave they would themselves take. Around half of respondents said that it would.

¹⁸ This is the estimated uprating from the current £108.85 per week (the rate for Additional Statutory Paternity Pay will be the same as the rates for Statutory Maternity Pay and Statutory Paternity Pay, currently £108.85 per week). As stated above, 2008/09 would be the earliest possible date for introduction of these measures: a precise date for introduction has still to be set.

Table 3: Sectoral employment by gender (2006)

Sector	Employment (thousands)	Men as proportion of all employed in this sector
Agriculture and fishing	428	75%
Energy and water	173	77%
Manufacturing	3,330	75%
Construction	2,133	89%
Distribution, hotels & restaurants	7,040	49%
Transport & communications	1,860	76%
Finance and business services	6,167	56%
Education, health and public administration	7,910	31%
Other services	1,937	50%
All	30,979	53%

Source: Office of National Statistics, figures for March 2006

Direct policy costs

33. 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 4. These reflect the weekly payments made to fathers who receive ASPP¹⁹.

Table 4: Estimated policy cost of proposal to introduce Additional Paternity Leave and Pay (projection for 2008/9)

	£ (millions)	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
Total cost	£3.7m-£21.8m	£4.3m-£25.3m
Of which exchequer cost	£3.5m-£20.3m	£4.0m-£23.6m
Of which employer cost	£0.3m-£1.5m	£0.3m-1.7m

Source: DTI estimates

Cost of absence

34. 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

¹⁹ It should be noted that these are net costs to the Exchequer, as it is assumed that any costs directly associated with provision of APL&P will be offset to some extent by the reduction in total Exchequer expenditure on Statutory Maternity Pay as some mothers will be returning to work early.

agency workers.²⁰ 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 5 shows the cost of absence borne by employers due to fathers taking 13 weeks of leave.

35. However, it should be borne in mind that across employers as a whole the costs of absence of fathers will be offset by the mother's early return to work thereby reducing absence costs for the mother's employer. This offsetting saving has not been quantified here, but will be presented in the final RIA.

36. The effect of absence on employer costs should be further mitigated by the introduction of 'keeping in touch' days, which allow better communication between employers and fathers/adopters and have a positive impact on skills and staff retention²¹.

Table 5: Estimated cost of absence due to proposal to introduce Additional Paternity Leave and Pay (projection for 2008/9)

	£ (millions)	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
Total cost of absence	£4.0m-£26.2m	£4.6m-£30.5m

Source: DTI estimates

37. The range for the estimated cost of absence presented in Table 5 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

38. Table 6 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 extensive guidance will be made available to employers through a variety of channels, to ease the implementation as much as possible.

²⁰ 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.

²¹ Further information on 'keeping in touch' days is provided in the final RIA for the Maternity and Parental Leave (Amendment) Regulations 2006 and the Paternity and Adoption Leave (Amendment) Regulations 2006, published in June 2006; www.dti.gov.uk/files/file31573.pdf

39. 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 6: Estimated administrative costs to employers due to proposal to introduce Additional Paternity Leave and Pay (projection for 2008/9)

	Cost (£ millions)	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
One-off changes to systems and HR practices (larger employers only)	£1.6m-£4.6m	£1.8m-£5.3m
Recurring cost due to administering the father's pay and leave arrangements (both small and large employers)	£0.3m-£1.4m	£0.3m-£1.6m

Source: DTI estimates

Explanation of recurring costs

40. Once any initial changes to administrative systems have been made, it is assumed that a large firm will use between one and 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.²²

41. 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 greater burden, but we are aiming to keep the administration similar to existing maternity and paternity provisions, which should assist an employer. 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 handling such claims, whereas for a larger employer, experienced Human Resource professionals would handle this. However, the likelihood of a case

²² 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, www.hmrc.gov.uk/pbr2005/smp.pdf). The administrative costs of paternity payments may be somewhat higher, if both mothers' and fathers' firms are involved in the process. Fathers' firms may also be less accustomed to making such payments. Nonetheless, the HMRC findings suggest that costs in this RIA represent a maximum administrative cost for employers.

arising is very small. Alongside this, the guidance has been improved to further assist small businesses in handling cases.

42. 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.²³

Administrative cost to the Exchequer

43. 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 7. 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 for Work and Pensions may have some involvement where mothers are in receipt of MA as they may be required to provide information for the father's employer.

Table 7: Estimated administrative costs to HMRC due to proposal to introduce Additional Paternity Leave and Pay (projection for 2008/9)

	Cost (£ millions)
One-off administrative set-up 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

44. The administration costs for both employers and the Exchequer set out above are initial, broad estimates. Ongoing consultation is exploring views on the details of the system;

²³ 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.

- *Outline procedure*: to determine how the system will work in practice by making clear the respective roles of the father and the father's employer, as well as the role of the mother and her employer, and the role of HMRC.
- *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 about the mother should be routed to the father's employer in a way that recognises the need for administrative simplicity while minimising potential for abuse.
- *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.

45. The Government Response has set out that more work will be carried out on this aspect of the policy.

Benefits

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

47. These include:

- Enhancing child welfare;
- 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;
- Enabling mothers to return to work earlier where their preferred option is for the father or partner to take over responsibility for caring for the child;
- By providing mothers with a real choice over their timing of return to the labour market, this not only supports their connection to the workforce and hence their future career development, but also helps maintain an important source of labour supply, thereby helping the UK meet the Lisbon objectives²⁴.

48. In general, evidence shows that greater parental leave (whether taken by the mother or father) has benefits for the child's welfare. For example, infant mortality is significantly reduced when parents spend more time with their children, particularly at the post neo-natal stage of 28 days to 1 year old. This is particularly true when the leave is taken in a job-secure context.²⁵ To the extent that APL & P increases the total length of time that parents spend with their new children (see earlier discussions on how fathers' leave-taking affects mothers' leave-taking), it will contribute to such improvements in child welfare.

49. Evidence on the specific impact of take-up of paternity leave on child welfare is scarce. One of the few studies to deal directly with this issue suggests that greater involvement of fathers in childcare during the first eighteen months of their child's life can have strongly beneficial effects on children's cognitive development if the mother is working full time, countering the negative (though small) effects of a mother returning early to full time employment.²⁶

50. Studies on the impact of maternity leave and pay on women's connection to the labour force and the gender pay gap produce somewhat mixed results. On the one hand, it is widely thought that the right to leave and pay, combined with job security, enhances women's participation in the labour force. It may also help women to maintain the pay levels they had before the birth of the child.²⁷ On the other hand, there is some evidence to suggest that longer periods of leave may have detrimental effects on women's pay and how they are perceived in the

²⁴ 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

²⁵ Ruhm (2000) and Tanaka (2005), cited in Moss and O'Brien (2006).

²⁶ "The Effects of Early Maternal Employment on Child Development in the UK", Paul Gregg, Elizabeth Washbrook and the ALSPAC Study team, May 2003 Bristol CMPO Working Paper Series No. 03/070. URL: www.bris.ac.uk/Depts/CMPO/workingpapers/wp70.pdf

²⁷ See for example Waldfogel (1998), "The Family Gap for Young Women in the United States and Britain: Can Maternity Leave Make a Difference?" *Journal of Labor Economics*, 16 (3).

workplace.²⁸ A more equitable sharing of childcare responsibilities among couples after the first six months' of a child's life may help to reduce any such risks for mothers.

Small firms' impact test

51. 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.

52. However, it should also be noted that smaller employers are entitled to recover 100% of any ASPP payments they make (plus 4.5% compensation for the extra National Insurance Contributions payable), compared to a 92% recovery entitlement for larger firms. To some extent, this will offset the disproportionate impact on small firms, although other costs such as the cost of covering for absence will still remain.

53. Furthermore the DTI will consider what guidance is necessary for all businesses to ensure that any communication, whether involving the mother's and father's employers or HMRC 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.

Race equality impact assessment

54. It is important that the proposals outlined above do not have a disproportionate effect on any one ethnic group. A preliminary race equality impact assessment was conducted alongside an earlier version of this RIA as part of the Work and Families Bill RIA in October 2005²⁹.

²⁸ Ruhm finds that short periods of leave (three months) have no effect on wages, but longer periods (nine months) are associated with a 2-3% fall in women's relative wages. Moss and Deven also find that longer periods of leave are associated with stereotypical roles for women. Ruhm (1998), "The economic consequences of parental leave mandates: Lessons from Europe", *The Quarterly Journal of Economics*, 113, 285-317; Moss and Deven (1999) "Parental leave policies: Progress or pitfall?" The Hauge/Brussels: NIDI/CBGS Publications.

²⁹ www.dti.gov.uk/files/file26943.pdf

That initial assessment concluded that overall the proposals contained in the Work and Families package of measures would apply equally to all groups. However, a full race equality impact assessment will be conducted for the final APL&P RIA.

Competition assessment

55. 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.

56. 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 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.

57. 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 8: Summary of costs and benefits for introducing Additional Paternity Leave and Pay (projections for 2008 / 09)

	Estimated additional costs and benefits (£ millions)	
	Option 1 (60 weeks' service)	Option 3 (26 weeks' service)
COSTS		
Exchequer policy cost	£3.5m-£20.3m	£4.0m-£23.6m
Exchequer admin cost (year 1)	£7.0m	£7.0m
Employer cost	£6.1m-£33.7m	£7.1m-£39.2m
of which direct policy cost	£0.3m-£1.5m	£0.3m-£1.7m
of which cost of absence	£4.0m-£26.2m	£4.6m-£30.5m
of which administration cost	£1.8m-£6.0m	£2.1m-£6.9m
Total quantifiable costs (yr 1)	£16.5m-£61.0m	£18.1m-£69.8m
BENEFITS		
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

58. 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.

59. 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.

60. 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.

61. 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

62. 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

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

Tim Harrison
Employment Relations Directorate
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET
020 7215 5799

Appendix A: Calculation of take-up figures

Calculations draw on the Maternity and Paternity Rights Survey of Parents 2005.

The proportion of eligible couples that would make use of APL&P opportunities was estimated as follows:

- The mother must have said that she would have transferred some of her entitlement to statutory maternity leave to her partner, when asked;
- and
- The father must have indicated by his behaviour that he was strongly committed to caring for his children, or (higher estimates) said he would have wanted to stay at home to care for his child using maternity leave and pay transferred from the mother, when asked.

A father was considered to show strong commitment if he had:

- Taken parental leave to help out at home / look after his baby / child / partner;
- Left paid work since the birth of his child, as he preferred to look after the child(ren);
- Used a career break for family reasons;
- Changed his job arrangements or hours, or employer, since the birth of his child, in order to spend more time with his child or partner.

Couples where fathers had not taken at least 5 days' leave at the time of the birth of their child were excluded, regardless of their other answers, as it was considered that this indicated a lack of serious intent to participate in childcare.

The calculations also took into account the relative incomes of both partners before the birth of their child, and the combined household income. Couples were excluded if the father earned £1,000 a month more than the mother, on the basis that the fathers' lost earnings would be too much of a sacrifice to make APL&P a realistic choice for the family. For lower-earning couples (where the combined income was less than £40,000 a year), the exclusion was made if the father earned £500 a month more than the mother.

Where the mother earned significantly more than the father, measured as £1,000 a month more (or £500 where the couple's combined income

was less than £40,000), it was assumed that this would constitute a strong incentive for the family to use APL&P. Therefore, even if only one member of a couple expressed interest in using APL&P, it was assumed that there was still a 50% chance that the couple would take it up.

Table A.1 shows the numbers involved at each stage:

Table A.1: Figures used to generate take-up estimates	
Fathers	
- Behaviour indicates significant commitment to spending time with the child	14%
- Behaviour indicates commitment or say they would use transferred leave (In both cases the father must have used at least a week of paternity leave)	38%
Mothers	
- Say they would transfer their leave	26%
Couples (before income adjustment)	
- Father's behaviour indicates commitment and mother says she would transfer leave	5%
- Father's behaviour indicates commitment or father says he would use transferred leave, and mother says she would transfer leave	13%
Couples (after income adjustment)	
- Father's behaviour indicates commitment and mother says she would transfer leave	4% LOW ESTIMATE
- Father's behaviour indicates commitment or father says he would use transferred leave, and mother says she would transfer leave; OR one partner indicates interest in leave and mother earns significantly more (50% of these couples included)	8% HIGH ESTIMATE
Source: DTI calculations based on the Maternity and Paternity Rights Survey of Parents 2005	

Appendix B: International evidence on the use of shared paternal leave: Countries with policies comparable to APLP

Summarised from Peter Moss & Margaret O'Brien, "International Review of Leave Policies & Related Research", DTI Employment Relations Research Series No. 57, June 2006. www.dti.gov.uk/files/file31948.pdf

Country	Length of shared leave	Payment	Father's take-up	Factors affecting take-up
Canada	Up to 35 weeks between the two parents, following immediately after maternity leave. [Legislation in 2000 extended parental leave from 10 weeks to 35 weeks and removed a two week unpaid waiting period for fathers to share leave with their partner]	55% of average earnings up to a maximum €300 week.	Has increased from 3% of all fathers in 2000 to 10% in 2001, 11% in 2002 and 2003 and 9.5% in 2004. Women still take more leave, an average of 30 weeks compared to men (13.8 weeks).	Mothers' desire to stay with their child is the most common reason men didn't take parental leave, followed by financial reasons, and it being easier for women to take time off work.
Denmark	32 weeks split between parents. This can be spread over a longer period by the parents returning to work part-time.	100% of earnings up to a maximum €431/week.	In 2002/03 fathers took an average 25 days leave. Statistics do not distinguish whether this is comprised of paternity leave (2 weeks), annual leave and/or shared parental leave. Mothers took on average 351 days (maternity leave = 18 weeks).	

Finland	<p>158 working days per family.</p> <p>A new arrangement was introduced in 2003: if fathers take the last two weeks of parental leave, they get an extra "bonus" 12 days of leave.</p>	<p>66% of earnings. Those not employed get a flat rate €76 a week.</p>	<p>Parental leave is mostly taken by mothers. Only 2-3% of fathers have taken leave over the years it has been available. However, under the new arrangement the number of men taking parental leave has tripled.</p> <p>The average length of parental leave taken by fathers was 29 days in 2004.</p>	<p>Parental leave is taken more often by men with good employment and a high level of education, also men over 30, and those working in the public sector in scientific work or social/health care.</p> <p>Men with a high level of education, in skilled jobs or in superior positions took shorter periods of leave.</p> <p>A spouse in a blue-collar job implies that men are less likely to take up longer parental leave; a partner with university education and/or high income implies that men are more likely to take up leave.</p>
Iceland	<p>3 months per mother, 3 per father, and 3 extra between parents.</p>	<p>80% of earnings up to max €6,000 / month.</p>	<p>In 2003, 16% of fathers took some of the parents' joint rights. 91% of mothers took some of them.</p> <p>20% took less than their 3 months paternity leave.</p>	
Norway	<p>39 weeks shared between parents (mothers' quota 9 weeks, fathers' quota 6 weeks, on top of the 39).</p> <p>This can be prolonged by the parents working part-time.</p>	<p>100% of earnings up to a ceiling.</p>	<p>Prior to the fathers' quota only 4% of fathers took some parental leave.</p> <p>89% now take some kind of leave. But most don't take more than their quota: only 15% take any part of the parental leave.</p>	<p>Fathers' use of leave is dependent on mothers and their willingness to share. If mothers have invested in education and have strong ties to working life (i.e. work full time / have higher status work) they are more likely to share.</p> <p>The higher the father's level of education, the more</p>

				likely he is to use the quota and parental leave. Fathers least likely to use the quota are those with long working hours, in managerial positions or with a partner who works part time.
Slovenia	37 weeks. Each parent entitled to half the total, but this is transferable between parents.	100% earnings for the insured. No maximum ceiling, minimum is 55% of minimum wage.	All mothers take parental leave. In 2003, 2.2% of fathers took a part of it. Though low, this is more than the 0.6% in 1999.	Low participation of fathers due to traditional division of tasks within the family, social attitudes, the absence of a positive image of fathers with family responsibilities, and employers' expectations of their male employees.
Sweden	480 days leave. 60 days reserved for mother, 60 days for father, the rest shared (default is half/half, if days transferred the parent giving up days must sign a consent form). Can be spread out by working part-time.	80% of earnings up to ceiling of €32,000 / year.	90% of fathers born in 1998 have taken some parental leave, mainly when their children were 13-15 months old. 19.5% of parental leave is taken by fathers – this has been influenced considerably by the fathers' quota (introduced in 1995, doubled in 2002).	Fathers with more education take more parental leave, as do those whose partners have higher levels of education and higher income. Those who work in the public sector are more likely to take leave.

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