

**CHOICE FOR FAMILIES:
ADDITIONAL PATERNITY LEAVE
AND PAY**

Consultation on draft
regulations

SEPTEMBER 2009

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Additional Paternity Leave and Pay

The Government is publishing this consultation on the legal and technical aspects of Additional Paternity Leave and Pay following commitments made in the January 2008 response to the consultation on the administration of Additional Paternity Leave and Pay in May 2007. The proposals were also consulted on in March 2006.

Additional Paternity Leave and Pay will enable eligible fathers to take up to 26 weeks Additional Paternity Leave. The leave may be paid if taken during the mother's maternity pay period. Leave taken after this period has ended would be unpaid. This new provision will be available during the second six months of the child's life, providing parents with more choice and flexibility in child care responsibilities and a more equitable sharing of leave entitlements. The scheme has been designed to minimise the administrative burdens on business whilst allowing fathers a greater opportunity to be involved in raising their child.

The purpose of this consultation is to give employers and parents a chance to view and comment on the draft regulations before legislation is brought before Parliament. This consultation document also provides information on the detail of the policy and interpretation of the regulations to aid understanding of how the scheme will work in practice. A partial impact assessment is included at Annex D.

Previous consultations can be found at:

www.berr.gov.uk/consultations/page39405.html

Issued: 25 September 2009

Respond by: 20 November 2009

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Employment Relations, Participation
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This consultation is relevant to: All employers and employees.

This consultation will run for eight weeks. Ministerial approval of this has been given.

Executive Summary

The Consultation process

1. The purpose of this consultation is to give employers and parents a chance to view and comment on whether the draft regulations meet the policy requirements to introduce Additional Paternity Leave (APL) and Additional Statutory Paternity Pay (ASPP), in advance of the legislation being before Parliament. It is the Government's intention that the legislation be in force from April 2010, with effect for parents of babies due from April 2011.
2. In order to meet this challenging Parliamentary timetable it is necessary to shorten the consultation period to eight weeks. This consultation, which focuses on the legal and technical aspects, is the third consultation on Additional Paternity Leave and Paternity (APL&P); therefore opportunity has been given previously for interested parties to comment on the proposals. To ensure that stakeholders are aware of the consultation and have opportunity to contribute we will be contacting interested parties directly and will be holding meetings with key stakeholders during the consultation period.
3. Responses received will be used to ensure that the policy and the law are fit for purpose. A summary of responses will be published when the legislation is laid in both Houses of Parliament.

Additional Paternity Leave and Pay

4. We propose to give choice and flexibility to parents in the second six months of the child's life. APL&P will enable eligible fathers to take up to 26 weeks Additional Paternity Leave. The leave may be paid if taken during the mother's statutory maternity pay, maternity allowance or statutory adoption pay period. Leave taken after this period has ended would be unpaid. This new provision will provide parents with more choice in child care responsibilities.
5. The scheme has been designed to minimise the administrative burdens on business whilst allowing fathers a greater opportunity to be involved in raising their child. Mothers will have the choice between taking their full maternity leave and returning to work early, allowing their partner to take leave instead.
6. The qualifying period for APL&P is based on entitlement to existing or 'Ordinary' Paternity Leave and Pay. Parents will also be required to self-certify their entitlement and to provide details which will allow employers to calculate entitlement and HMRC to carry out compliance checks to minimise the risk of fraudulent claims. In addition, employers will also be able to request additional information to carry out further checks if they are concerned about the validity of the employee's claim.

7. Pay and leave may only be taken once the mother has returned to work. The earliest start date is 20 weeks after the child's birth or placement for adoption, and leave must be completed by the child's first birthday or one year after placement for adoption. ASPP is only payable during the mother's statutory maternity, maternity allowance or adoption pay period.

Consultation questions

8. In this consultation, the Government invites responses to the following questions
 1. Do you consider the proposed administration of Additional Paternity Leave and Pay strikes the right balance between the need to keep administration simple and the need for certainty of entitlement?
 2. The Government estimates that 4-8% of eligible fathers will apply for APL&P, what is your assessment of this figure?
 3. Do you agree with the proposal to amend the definition of an adopter as described in paragraphs 29 -31 of the consultation document?
 4. What are your views on the draft regulations at Annex A?
 5. How well do you consider the draft regulations support the policy proposal including giving sufficient powers and protections to employers in managing this entitlement and to employees using this entitlement?
 6. How well do you consider the partial impact assessment captures the costs and benefits of this proposal? Please provide additional evidence where possible.

How to respond

9. When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.
10. It is recommended this response form is completed online through survey monkey: <http://tinyurl.com/lveo9s>
11. Alternatively, you can send a completed response form to:
working.families@bis.gsi.gov.uk

or:

Mark Norton
Department for Business, Innovation and Skills
1 -19 Victoria Street
London
SW1H 0ET
12. The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.
13. A list of those organisations and individuals consulted is in Annex C. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

14. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845-015 0010
Fax: 0845-015 0020
Minicom: 0845-015 0030
www.bis.gov.uk/publications
15. An electronic version can be found at
www.berr.gov.uk/files/file52940.pdf
16. Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

17. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
18. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

19. Questions about the policy issues raised in the document can be addressed to:

Karen Haseldine
Department for Business, Innovation and Skills
Employment Relations, Participation
1 -19 Victoria Street
London
SW1H 0ET
Tel no: 020 7215 5531
Email: working.families@bis.gsi.gov.uk

A copy of the Code of Practice on Consultation is in Annex B.

The proposals

20. We propose to give greater choice and flexibility for parents in how they divide childcare responsibilities between them by providing APL&P to fathers. It will enable employed fathers to have a greater involvement in raising their child in the first year of the child's life. Mothers will have the choice between taking their full maternity leave and returning to work early, allowing their partner to take leave instead.
21. We recognise that any new leave entitlement brings potential added pressures on business and we are keen to minimise these as much as possible. As set out in previous consultations, the Government is committed to keeping the administration of APL&P "light-touch" and as straight-forward as possible in order to reduce burdens on employers, whilst ensuring both employers and employees are clear on their respective rights and obligations under the scheme. Where statutory payments are concerned, the Government also needs to consider the balance between these interests and protecting the taxpayer from the consequences of payments made or claimed either in genuine error or fraudulently.
22. It is expected that an estimated 10,000 to 20,000 fathers will take up this right each year. This represents 4-8% of eligible fathers. This figure is based on survey evidence¹ and is comparable to take up in other European countries².
23. The regulations in Annex A set out the legal framework for Additional Paternity Leave, Additional Statutory Paternity Pay and for the administration of Additional Statutory Paternity Pay. The practical implications are set out below.

Who is eligible for Additional Paternity Leave and Pay?

24. Although the term 'father' is used throughout this document, the definition of father mirrors that for the current or 'ordinary' statutory paternity leave arrangements. Therefore APL&P will also be available to partners and civil partners of mothers and to adopters where there is an entitlement to Statutory Adoption Leave and Pay. Additional Paternity Leave and Pay will be available, in respect of couples, to the adopter who chooses not to receive Statutory Adoption Pay.

¹ Maternity and Paternity Rights and Benefits: Survey of parents 2005.
www.bis.gov.uk/files/file27446.pdf

² . Figures from Scandinavian countries, when operating similar systems indicate that where parents can share leave, the proportion of fathers taking leave was fairly low, ranging from 4% in Finland to 16% in Iceland. See IA Annex 4.

25. These regulations do not apply to parents adopting from overseas. It is the Government's intention to introduce regulations at a later point which will give partners of employees adopting from overseas the same right to take additional paternity leave and pay as for those adopting from within the UK.
26. The legislation requires that the father has responsibility for the upbringing of the child and is taking leave for the purpose of caring for the child.
27. In order to be eligible for APL&P a father must be continuously employed by the same employer for at least 26 weeks ending with the relevant week and remain in the same employment until he starts his period of additional paternity leave. In the case of birth, the relevant week is the 15th week before the baby is due and in adoption it is the week the adopter is matched with the child for adoption.
28. To be eligible for ASPP the father must have earnings on average at least equal to the Lower Earnings Limit (currently £95 per week) during the eight weeks prior to the relevant week. That is the eight weeks ending with the 15th week before the baby is due or the eight weeks ending with the week of matching for adoption. As the relevant week is the same one used to calculate the entitlement for ordinary statutory paternity leave and pay, if the father has taken OSPP, the employer will not be required to recalculate entitlement for ASPP. This reduces the administration burden for employers who have already calculated the fathers' entitlement to ordinary paternity leave and pay as well as giving those fathers more certainty over their entitlement.
29. The child's mother³ must have returned to work before the father can begin his period of additional paternity leave or receive Additional Statutory Paternity Pay. This gives mothers the choice to go back to work and for fathers to take leave instead.

Couples adopting together and partners of adopters

30. For the purposes of Statutory Paternity Pay the definition of adopter refers to the adopter and their partner. This wording was chosen when statutory paternity (adoption) leave was introduced to mirror the wording for biological parents. Following changes to adoption law in England, Wales and Scotland; it is now the case that a person in an enduring relationship with a person adopting a child would mostly likely also be matched for adoption with that child⁴.

³ The term Mother is used throughout this document to mean the person taking maternity or adoption leave, or in receipt of SMP, MA or SAP.

⁴ Adoption law has not been changed in Northern Ireland and it remains the case that unmarried couples are unable to jointly adopt a child.

31. We are therefore considering the need to change the legislative definition of an adopter and the eligibility for additional statutory paternity leave and pay to better reflect current adoption law. If amended, references to 'the child's adopter' would be changed to reflect the fact that both parties are the child's adopters and to differentiate between the adopter who is taking statutory adoption leave and the adopter who is taking paternity leave. We would also introduce a requirement that the individual taking paternity leave must have been matched for adoption with the child.⁵
32. As well as more accurately reflecting current adoption law, this would enable employers to be more certain of the employee's entitlement to paternity leave. Whilst there will be no significant change to the eligibility of adopting 'fathers' to take paternity leave as a result of this amendment, we would welcome your views on the proposal, particularly on whether this would exclude individuals who would otherwise have been eligible.

The right to Additional Paternity Leave (APL)

33. Additional Paternity Leave is the right to a maximum of 26 weeks leave which can be taken by fathers. The minimum duration of leave a father can apply for is two consecutive weeks and leave must be taken in periods of complete weeks and be a continuous block. In the case of birth the earliest this leave can start is 20 weeks after the child is born and the must end no later than the child's first birthday. In the case of adoption, the earliest this leave can start is 20 weeks after the child was placed for adoption and must end no later than one year after the placement began.
34. There is no requirement for the father's leave to begin directly after the mother returns to work, only that the mother has already returned to work before his leave begins. The regulations define a return to work as the mother having ended her period of maternity or adoption leave, or where Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) or Maternity Allowance (MA) are not payable to her because of her return to work.

The right to Additional Statutory Paternity Pay (ASPP)

35. ASPP is paid at the lesser of the standard SMP rate, which is currently £123.06 per week, or 90% of the father's average earnings. It is only payable during the period when the mother would be entitled to SMP, MA or SAP. The pay period for those payments is 39 weeks.

⁵ This would not apply in Northern Ireland.

36. The regulations require that the mother reports the start date of her SMP, MA or SAP pay period to the father's employer so that the period in which the father is able to claim ASPP can be calculated. As with the leave entitlement, the mother must have returned to work before the father is entitled to receive pay.

Administering Additional Paternity Leave and Pay

37. As set out above, the Government has designed the administration of the scheme to be straight forward and 'light touch'. Full guidance on how to calculate entitlement and for parents will be provided via www.businesslink.gov.uk; www.direct.gov.uk; and www.hmrc.gov.uk.
38. Both the mother and the father will be required to provide a signed declaration that the information they have provided is correct. Information to be provided for APL is:
- Declaration that the father is either the biological father of the child, or the husband, civil partner or partner of the mother; and that he is taking the leave for the purposes of caring for the child
 - Expected week of child birth
 - Child's date of birth
 - Date employee wishes to start APL
 - Date employee wishes to return from APL
 - Name and full address of the mother
 - Mother's National Insurance number
 - Date the mother intends to return to work
39. In addition the following information must be provided for the father to be eligible for ASPP:
- Date mother's statutory maternity, maternity allowance or adoption pay period began
 - Date ASPP is expected to begin
 - Date ASPP is expected to stop
40. This information will allow the employer to check the employee's eligibility for APL&P and to calculate any payment due. This information will also be used by HMRC to check that the claim was paid correctly and that the mother was entitled to maternity or adoption pay.
41. No decision has yet been taken on whether this information will be sought on an amended SC3 form, or if there will be a new form for APL&P, based on existing statutory payment forms. Employers will be allowed to produce their own substitute versions of this form, so long as it captures all the information on the standard HMRC form.
42. A checklist for employers will also be available which employers can use, if they wish, to guide them through the process of administering APL&P.

43. There is no requirement for the father's employer to check with the mother's employer that the mother is eligible for maternity or adoption pay, or that she has returned to work. However, in response to the consultation some employers requested that information on the mother's employer is provided, allowing checks to be made by the father's employer that the mother is entitled to maternity or adoption pay and that she has returned to work. Therefore the regulations provide that if employers request information on the mother's employer, the employee must provide it.
44. The father must also produce a copy of the child's birth or matching certificate should his employer request it. It should be noted that a father can be eligible for APL&P even if he is not named on the birth certificate if he is the mother's spouse, partner or civil partner.

Notice periods and changes of circumstances

45. Fathers seeking to take APL&P must inform their employer at least 8 weeks before they wish to start their leave. Employers must confirm entitlement within 4 weeks.
46. If a father wishes to change the date he starts his leave he must give notice at least 6 weeks before the earlier of the original start date and the new start date. If he gives less than 6 weeks notice and it is not reasonably practicable for the employer to accommodate the change, the employer can insist that the start of his leave is the previously notified start date or defer it until the six weeks notice is given. This mirrors the provisions for maternity and adoption leave. If the father attempts to postpone or withdraw from his leave period without due notice, the employer can, where he is unable to accommodate the change, enforce the previously notified leave period.
47. A father must give notice at least six weeks before his new return date if he wishes to return to work early. In the case of less than six weeks notice, an employer who is unable to accommodate the change can postpone the father's return to work until full notice is given.
48. It is the responsibility of the father to inform his employer if he is no longer eligible for APL&P due, for example, to a change in his or the family's circumstances or in the mother's eligibility for SMP, SAP or MA. If the father withdraws his notice for APL&P for this or any other reason and the employer is unable to accommodate the change, he can enforce the original leave until six weeks after notice was given. Entitlement to ASPP will stop immediately following notice that the father is not eligible.

Additional details of the Additional Paternity Leave and Pay scheme

49. In the event of the mother's death, the father becomes entitled to start his APL immediately, for a maximum period of 12 months, ending no later than the child's first birthday or one year after the adoption placement began. The notification and evidential requirements in this circumstance are eased to require only the father to provide information on the mother's entitlement to pay and leave. This must be provided as soon as reasonably practical after the date of the mother's death.
50. An employee returning from a single period of Additional Paternity Leave lasting 26 weeks or less will be entitled to return to the same job as he was employed in before his absence. Where the father takes a longer period of leave or two or more subsequent consecutive periods of statutory leave, he would be entitled to return to the same job unless this is not practicable, in which case he is entitled to return to a suitable alternative job. This mirrors the different rights to return that a mother has returning from ordinary and additional maternity leave.
51. To provide additional security of employment, fathers taking APL will also be protected from being singled out for redundancy. This is provided in the same way as for mothers on maternity or adoption leave. Employers seeking to make a father on APL redundant will be obliged to offer the employee any suitable available vacancies that exist with the employer, his successor or an associated employer.
52. During his leave period the father will be entitled to work or training on up to 10 days without loss of ASPP and without bringing his leave period to an end. This mirrors the Keeping in Touch provision during maternity and adoption leave.

Compliance check and fraudulent claims

53. In line with current procedure for other statutory payments, HMRC will carry out compliance checks on a sample of employers, looking at ASPP claims. Where evidence of fraudulent claims by the employer is found, the employer may be liable for penalties. However, where the employer has made payment in good faith but the employee has given false information, the employee can be penalised for that offence by HMRC

Consultation questions

54. In this Consultation, the Government invites responses to the following questions:

1. Do you consider the proposed administration of Additional Paternity Leave and Pay strikes the right balance between the need to keep administration simple and the need for certainty of entitlement?
2. The Government estimates that 4-8% of eligible fathers will apply for AP&P, what is your assessment of this figure?
3. Do you agree with the proposal to amend the definition of an adopter as described in paragraphs 29 -31 of the consultation document?
4. What are your views on the draft regulations at Annex A?
5. How well do you consider the draft regulations support the policy proposal including giving sufficient powers and protections to employers in managing this entitlement and to employees using this entitlement?
6. How well do you consider the partial impact assessment captures the costs and benefits of this proposal? Please provide additional evidence where possible.

What happens next?

55. The Government will take account of comments received when finalising the draft regulations and decisions taken in the light of the consultation will be published along with a summary of the responses received. This will be available from the BIS website.
56. It is the Government's intention that the legislation be in force from April 2010, with effect for parents of babies due from 3 April 2011.
57. Guidance will be published on www.businesslink.gov.uk; www.direct.gov.uk and www.hmrc.gov.uk at least three months prior to the law coming into effect in April 2011.

Annex A: Draft Statutory Instruments

Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

TERMS AND CONDITIONS OF EMPLOYMENT

The Additional Paternity Leave Regulations 2010

Made - - - - *****
Coming into force - - *****

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 47C(2), 80AA(1), (2), (3), (5), (6) and (7), 80BB(1), (2), (3), (5), (6) and (7), 80C, 80E and 99 of the Employment Rights Act 1996⁽⁶⁾.

In accordance with section 236(3)⁽⁷⁾ of the Employment Rights Act 1996, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1: GENERAL

Citation, commencement and extent

1. These Regulations may be cited as the Additional Paternity Leave Regulations 2010 and shall come into force on 6th April 2010.

Interpretation

2.—(1) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996;

⁽⁶⁾ 1996 c.18. Section 47C was inserted by the Employment Relations Act 1999 (c. 26) section 9 and Schedule 4, Part 3, paragraphs 5 and 8. Further relevant amendments were made by the Employment Act 2002 (c. 22), section 53 and Schedule 7, paragraphs 24 and 26 and by the Work and Families Act 2006 (c.18), section 11 and Schedule 1, paragraph 30. Section 80AA was inserted by the Work and Families Act 2006, section 3 and section 80BB was inserted by section 4 of that Act. Sections 80C and 80E were inserted by section 1 of the Employment Act 2002 and subsequently amended by the Work and Families Act 2006. Section 99 was substituted by the Employment Relations Act 1999, section 9 and Schedule 4, Part 3, paragraphs 5 and 16. Further relevant amendments were made by the Employment Act 2002, section 53 and Schedule 7, paragraphs 24 and 33(3) and by the Work and Families Act 2006, section 11 and Schedule 1, paragraph 41.

⁽⁷⁾ Section 236(3) of the Employment Rights Act 1996 was amended by paragraphs 5 and 42 of Part III of Schedule 4 to the Employment Relations Act 1999. A further relevant amendment was made by paragraph 43 of Schedule 1 to the Work and Families Act 2006.

“additional paternity leave” means leave under regulation 4 or regulation 12 of these Regulations

“adopter”, in relation to a child, means a person who has been matched with the child for adoption or, in a case where two people have been matched jointly, whichever of them has elected to be the child’s adopter for the purpose of these Regulations;

“adoption agency” has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002⁽⁸⁾, and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007⁽⁹⁾;

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment;

“employer” means the person by whom an employee is (or, where the employment has ceased, was) employed;

“expected week”, in relation to the birth of a child, means the week beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born;

“matching certificate” means a certificate confirming the date a child was matched for adoption;

“notified end date” means the date chosen by the employee as the date on which his additional paternity leave period should end and—

- (a) notified to the employer in accordance with regulation 6(1), 11(1), 14(1) or 19(1); or
- (b) last varied in accordance with regulation 26;

“parental leave” means leave under regulation 13(1) of the Maternity and Parental Leave etc Regulations 1999⁽¹⁰⁾;

“partner” in relation to a child’s mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter of a kind specified in paragraph (2);

“statutory leave” means leave provided for in Part 8 of the 1996 Act;

(2) The relatives of a child’s mother or adopter referred to in the definition of “partner” in paragraph (1) are the mother’s or adopter’s parent, grandparent, sister, brother, aunt or uncle.

(3) References to relationships in paragraph (2)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with his adoptive, or former adoptive parents,

but do not include any other adoptive relationships.

(4) For the purposes of these Regulations—

- (a) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person;
- (b) a person is notified of having been matched with a child on the date on which he receives notification of the agency’s decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005⁽¹¹⁾ or regulation 14(1) of the Adoption Agencies (Scotland) Regulations 2009⁽¹²⁾;

⁽⁸⁾ 2002 c.38.
⁽⁹⁾ 2007 asp. 4.
⁽¹⁰⁾ S.I. 1999/3312.
⁽¹¹⁾ S.I. 2005/389.
⁽¹²⁾ S.S.I. 2009/154.

- (c) a person elects to be a child's adopter, in a case where the child is matched with him and another person jointly, if he and the other person agree, at the time at which they are matched, that he and not the other person will be the adopter;

(5) A reference in any provision of these Regulations to a period of continuous employment is to a period computed in accordance with Chapter 1 of Part 14 of the 1996 Act, as if that provision were a part of that Act.

(6) For the purposes of these Regulations, any two employers shall be treated as associated if—

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;

and "associated employer" shall be construed accordingly.

Application

3.

(1) The provisions relating to additional paternity leave under regulation 4 below have effect only in relation to children whose expected week of birth begins on or after 3rd April 2011.

(2) The provisions relating to additional paternity leave under regulation 12 below have effect only in relation to children matched with a person who is notified of having been matched on or after 3rd April 2011.

(3) Regulation 29 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2010.

(4) For the purposes of paragraph (3)—

- (a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and
- (b) a failure to act is to be treated as done when it is decided upon.

(5) For the purposes of paragraph (4), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

- (a) when he does an act inconsistent with doing the failed act, or
- (b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(6) Regulation 30 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the 1996 Act) falls on or after 6th April 2010.

PART 2: ADDITIONAL PATERNITY LEAVE (BIRTH)

Entitlement to additional paternity leave: birth

4.—(1) An employee is entitled to be absent from work for the purpose of caring for a child if—

- (a) he satisfies the conditions specified in paragraph (2);
- (b) he has complied with the notice requirements in regulation 6 and, where applicable, the information and evidential requirements in that regulation; and
- (c) the child's mother satisfies the conditions specified in paragraph (5) and has signed the declaration referred to in regulation 6(3).

(2) The conditions referred to in paragraph (1)(a) are that the employee—

- (a) has been continuously employed with his employer for a period of not less than 26 weeks ending with the relevant week;
- (b) remains in continuous employment with that employer from the relevant week until the week before the first week of his additional paternity leave;

- (c) is either—
 - (i) the father of the child; or
 - (ii) married to or the partner or civil partner of the child’s mother, but is not the child’s father;
- (d) has, or expects to have—
 - (i) if he is the child’s father, responsibility for the upbringing of the child;
 - (ii) if he is the mother’s husband or partner or civil partner but not the child’s father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.

(3) The references in paragraph (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child’s birth.

(4) An employee shall be treated as having satisfied the condition in paragraph (2)(a) on the date of the child’s birth notwithstanding the fact that he has not then been continuously employed for the period referred to in that paragraph where—

- (a) the date on which the child is born is earlier than the 14th week before the expected week of the child’s birth, and
- (b) the employee would have been continuously employed for such a period if his employment had continued until the 14th week before the expected week of the child’s birth.

(5) The conditions referred to in paragraph (1)(c) are that the child’s mother—

- (a) is entitled by reference to becoming pregnant with the child to one or more of the following—
 - (i) maternity leave,
 - (ii) Statutory Maternity Pay, or
 - (iii) maternity allowance; and
- (b) has taken action constituting a return to work within the meaning of regulation 21.

(6) An employee’s entitlement to leave under this section shall not be affected by the birth, or expected birth, of more than one child as the result of the same pregnancy.

Options in respect of leave under regulation 4

5. -

(1) Subject to paragraphs (3) and (4), an employee may choose to take up to a maximum of 26 weeks’ leave in respect of a child under regulation 4.

(2) The minimum period of leave which may be taken is two consecutive weeks.

(3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

(4) The leave may only be taken during the period which begins twenty weeks after the date on which the child is born and ends 12 months after the date on which the child is born.

(5) This regulation is subject to regulation 20.

Notice and evidential requirements for leave under regulation 4

6.—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 4 specifying—

- (a) the expected week of the child’s birth;
- (b) the date of the child’s birth;
- (c) the date on which the employee has chosen that his period of leave should begin; and

(d) the date on which the employee has chosen that his period of leave should end, in accordance with regulation 5(1).

(2) The employee must also give his employer a declaration, signed by the employee, stating that the purpose of his absence from work will be to care for the child and that he satisfies the conditions of entitlement in regulation 4.

(3) The employee must also give his employer a declaration, signed by the child's mother to confirm that the information supplied is correct, specifying—

- (a) the name and address of the mother;
- (b) the date the mother intends to return to work (within the meaning of regulation 21); and
- (c) the mother's National Insurance number.

(4) The notice and declarations provided for in paragraphs (1), (2) and (3) must be in writing and must be given to the employee's employer not less than 8 weeks before the date the employee has chosen that the period of additional paternity leave will begin.

(5) The employee must also give his employer such of the following information and evidence as the employer may request—

- (a) a copy of the child's birth certificate;
- (b) the name and business address of the mother's employer (or, if the mother is self-employed, her business address).

(6) The employee must give the employer information or evidence requested under paragraph (5) within 28 days of the employer requesting it.

(7) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, or may withdraw that notice, provided that he gives his employer written notice of the variation—

- (a) where the notice is to vary a date, at least 6 weeks before the earlier of the original date and the varied date;
- (b) where the notice is to withdraw a notice given under paragraph (1), at least 6 weeks before the date which he had previously given notice that the period of leave would begin on; or
- (c) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable.

(8) An employee who has given notice under paragraph (1) must give his employer written notice as soon as reasonably practicable if at any time—

- (a) he no longer satisfies the conditions in regulation 4(2); or
- (b) the child's mother no longer satisfies the conditions in regulation 4(5).

(9) Where—

- (a) an employee has given notice under paragraph (8); and
- (b) has done so less than 6 weeks before the date he had previously notified as the date his period of leave would begin (but before that leave has begun); and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(10) Where—

- (a) an employee has given notice under paragraph (8); and
- (b) has done so after his period of additional paternity leave has begun; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may postpone the employee's return to work for a period of up to six weeks from the date on which notice was given under paragraph (8).

(11) Where—

- (a) an employee has given notice under paragraph (7) but
- (b) the notice does not comply with the requirement in either sub-paragraph (a) or (b) of that paragraph; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(12) Additional paternity leave which an employee is required to take under paragraph (9) or (11)-

- (a) shall start—
 - (i) on the date notified under paragraph (1)(c), or
 - (ii) if the employee has varied that date under paragraph (7), the date specified in the last notice given in accordance with that paragraph; and
- (b) shall end-
 - (i) no more than 6 weeks after the employee gave notice under paragraph (7) or, as the case may be, paragraph (8); and
 - (ii) no later than the date notified under paragraph (1)(d).

Employer's confirmation of entitlement and period of leave under regulation 4

7. An employer who is given notice under paragraph (1) or (7) of regulation 6 by an employee shall notify the employee, within 28 days of his receipt of the notice, of the start and end dates of the leave.

Commencement of leave under regulation 4

8. An employee's period of additional paternity leave under regulation 4 begins on the notified end date specified in his notice under regulation 6(1) or, where he has varied his choice of date under regulation 6(7), on the date specified in his notice under that provision (or the last such notice if he has varied his choice more than once).

Entitlement to additional paternity leave: birth where the mother has died

9.—

(1) In a case where the mother of the child has died before the end of the period of twelve months beginning with the child's birth, the provisions in regulations 4 to 8 shall apply with the following modifications.

(2) Regulation 4(1)(c) shall read—

“(c) the child's mother satisfied, before her death, one or more of the conditions specified in paragraph (5)(a) (or would have satisfied such conditions but for the fact that she has died).”

(3) The conditions in regulations 4(2)(c)(ii), and 4(2)(d)(ii), shall be taken to be satisfied if they would have been satisfied but for the fact that the mother has died.

(4) The requirement in regulation 4(5)(b) shall be omitted.

(5) Regulation 5 (options in respect of leave) shall be replaced by regulation 10.

(6) Regulation 6 (notice and evidential requirements for leave) shall be replaced by regulation 11.

(7) Regulations 7 and 8 shall apply as if the references in those regulations—

- (a) to regulation 6(1) are references to regulation 11(1); and
- (b) to regulation 6(7) are references to regulation 11(6).

Options in respect of leave under regulation 4 where the mother has died

10.—

(1) An employee may choose to take leave under regulation 4, as modified by regulation 9, at any time within the period beginning with the date of the mother's death and ending 12 months after the date of the child's birth.

(2) Subject to paragraph (1), the minimum period of leave which may be taken is two consecutive weeks and the maximum period is 12 months.

(3) The leave must be taken as one continuous period and must be taken in multiples of complete weeks.

(4) The employee shall not be entitled to leave in accordance with regulation 4, as modified by regulation 9, if he has already taken a period of additional paternity leave which has ended before the date of the child's mother's death.

(5) If the employee has already begun a period of additional paternity leave on the date of the mother's death which has not yet ended on that date, he shall be entitled to a further period of leave in accordance with regulation 4, as modified by regulation 9, provided—

- (a) he satisfies the conditions for eligibility set out in that regulation as so modified; and
- (b) that further period of leave immediately follows the first period of additional paternity leave.

(6) This regulation is subject to regulation 20.

Notice and evidential requirements for leave under regulation 4 where the mother has died

11.—(1) An employee taking leave under regulation 4, as modified by regulation 9, must give notice in writing to his employer of his intention to do so, specifying—

- (a) the expected week of the child's birth;
- (b) the date of the child's birth;
- (c) the date on which the employee has chosen that his period of leave should begin;
- (d) the date on which the employee has chosen that his period of leave should end, in accordance with regulation 10(1);
- (e) the name and last address of the mother;
- (f) the date of the mother's death; and
- (g) the mother's National Insurance number.

(2) The employee must also give his employer a declaration, signed by the employee, stating that the purpose of his absence from work will be to care for the child and that he satisfies the conditions of entitlement in regulation 4, as modified by regulation 9.

(3) The notice and declaration provided for in paragraphs (1) and (2) must be in writing and must be given to the employer as soon as reasonably practicable after the date of the mother's death.

(4) The employee must also give his employer such of the following information and evidence as the employer may request—

- (a) a copy of the child's birth certificate;
- (b) the name and business address of the mother's last employer (or, if the mother was self-employed, her business address).

(5) The employee must give the employer information or evidence requested under paragraph (4) within 28 days of the employer requesting it.

(6) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, or may withdraw that notice, provided that he gives his employer notice of the variation—

- (a) where the earlier of the original and the varied date is more than 8 weeks after the date of the mother's death, at least 6 weeks before the earlier of the original and the varied date;
- (b) where the notice is to withdraw a notice given under paragraph (1) and the varied date is more than 8 weeks after the date of the mother's death, at least 6 weeks before the date which he had previously given notice that the period of leave would begin on; or
- (c) in any other case, as soon as reasonably practicable.

(7) An employee who has given notice under paragraph (1) must give his employer written notice as soon as reasonably practicable if at any time he no longer satisfies the conditions in regulation 4(2), as modified by regulation 9.

(8) Where—

- (a) an employee has given notice under paragraph (7); and
- (b) has done so less than 6 weeks before the date he had previously notified as the date his period of leave would begin (but before that leave has begun); and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(9) Where—

- (a) an employee has given notice under paragraph (7); and
- (b) has done so after his period of additional paternity leave has begun; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may postpone the employee's return to work for a period of up to six weeks from the date on which notice was given under paragraph (7).

(10) Where—

- (a) an employee has given notice under paragraph (6); but
- (b) the notice does not comply with the requirements in either sub-paragraph (a) or (b) of that paragraph; and
- (c) it is not reasonably practicable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(11) Additional paternity leave which the employee is required to take under paragraph (8) or (10)-

(a) shall start—

- (i) on the date notified under paragraph (1)(c), or
- (ii) if the employee has varied that date under paragraph (6), the date specified in the last notice given in accordance with that paragraph; and

(b) shall end-

- (i) no more than 6 weeks after the employee gave notice under paragraph (6) or, as the case may be, paragraph (7); and
- (ii) no later than the date notified under paragraph (1)(d).

PART 3: ADDITIONAL PATERNITY LEAVE (ADOPTION)

Entitlement to additional paternity leave: adoption

12.—(1) An employee is entitled to be absent from work for the purpose of caring for a child if—

- (a) he satisfies the conditions specified in paragraph (2);
 - (b) he has complied with the notice requirements in regulation 14 and, where applicable, the information and evidential requirements in that regulation; and
 - (c) the child's adopter satisfies the conditions specified in paragraph (5) and has signed the declaration referred to in regulation 14(3).
- (2) The conditions referred to in paragraph (1)(a) are that the employee—
- (a) has been continuously employed for a period of not less than 26 weeks ending with the relevant week;
 - (b) remains in continuous employment with that employer from the relevant week until the week before the first week of his additional paternity leave;
 - (c) is either married to or the partner or civil partner of the child's adopter, and
 - (d) has, or expects to have, the main responsibility (apart from any responsibility of the adopter) for the upbringing of the child.
- (3) In paragraph (2)(a), "week" means the period of seven days beginning with Sunday.
- (4) The references in paragraph (2) above to the relevant week are to the week in which the child's adopter is notified of having been matched with the child.
- (5) The conditions referred to in paragraph (1)(c) are that the adopter—
- (a) is entitled by reference to the adoption of the child to one or both of—
 - (i) adoption leave, or
 - (ii) Statutory Adoption Pay;
 - (b) has taken action constituting a return to work within the meaning of regulation 21.
- (6) An employee's entitlement to leave under this regulation shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

Options in respect of leave under regulation 12

13.—

- (1) An employee may choose to take up to a maximum of 26 weeks' leave in respect of a child under regulation 12.
- (2) The minimum period of leave which may be taken is two consecutive weeks.
- (3) The leave must be taken in multiples of complete weeks and must be taken as one continuous period
- (4) The leave may only be taken during the period which begins twenty weeks after the date of placement for adoption and ends 12 months after the date on which the child is placed for adoption.
- (5) This regulation is subject to regulation 20.

Notice and evidential requirements for leave under regulation 12

14.—(1) An employee must give his employer notice of his intention to take leave in respect of a child under regulation 12 specifying—

- (a) the date on which the adopter was notified of having been matched with the child;
- (b) the date on which the child was placed with the adopter;
- (c) the date on which the employee has chosen that his period of leave should begin; and
- (d) the date on which the employee has chosen that his period of leave should end, in accordance with regulation 13(1).

(2) The employee must also give his employer a declaration, signed by the employee, stating that the purpose of his absence from work will be to care for the child and that he satisfies the conditions of entitlement in regulation 12.

(3) The employee must also give his employer a declaration, signed by the child's adopter to confirm that the information supplied is correct, specifying—

- (a) the name and address of the child's adopter;
- (b) the date the adopter intends to return to work (within the meaning of regulation 21); and
- (c) the adopter's National Insurance number.

(4) The notice and declarations provided for in paragraphs (1), (2) and (3) must be in writing and must be given to the employee's employer not less than 8 weeks before the date the employee intends the period of additional paternity leave to begin.

(5) The employee must also give his employer such of the following information and evidence as the employer may request—

- (a) a copy of the child's matching certificate;
- (b) the name and business address of the adopter's employer (or, if the adopter is self-employed, her business address).

(6) The employee must give the employer information or evidence requested under paragraph (5) within 28 days of the employer requesting it.

(7) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, or may withdraw that notice, provided that he gives his employer written notice of the variation—

- (a) where the notice is to vary a date, at least 6 weeks before the earlier of the original date and the varied date;
- (b) where the notice is to withdraw a notice given under paragraph (1), at least 6 weeks before the date which he had previously given notice that the period of leave would begin on; or
- (c) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable.

(8) An employee who has given notice under paragraph (1) must give his employer written notice as soon as reasonably practicable if at any time—

- (a) he no longer satisfies the conditions in regulation 12(2); or
- (b) the child's adopter no longer satisfies the conditions in regulation 12(5).

(9) Where—

- (a) an employee has given notice under paragraph (8); and
- (b) has done so less than 6 weeks before the date he had previously notified as the date his period of leave would begin (but before that leave has begun); and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of leave of the same length as the difference between the period of 6 weeks and the period of notice given by the employee.

(10) Where—

- (a) an employee has given notice under paragraph (8); and
- (b) has done so after his period of additional paternity leave has begun; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may postpone the employee's return to work for a period of up to six weeks from the date on which notice was given under paragraph (8).

(11) Where—

- (a) an employee has given notice under paragraph (7) but
- (b) the notice does not comply with the requirement in sub-paragraph (a) or (b) of that paragraph; and

- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(12) Additional paternity leave which an employee is required to take under paragraph (9) or (11)-

- (a) shall start—
 - (i) on the date notified under paragraph (1)(c); or
 - (ii) if the employee has varied that date under paragraph (7), the date specified in the last notice given in accordance with that paragraph and
- (b) shall end-
 - (i) no more than 6 weeks after the employee gave notice under paragraph (7) or, as the case may be, paragraph (8), and
 - (ii) no later than the date notified under paragraph (1)(d) .

Employer's confirmation of entitlement and period of leave

15. An employer who is given notice under paragraph (1) or (7) of regulation 14 by an employee shall notify the employee, within 28 days of his receipt of the notice, of the start and end dates of the leave.

Commencement of leave under regulation 12

16. An employee's period of additional paternity leave under regulation 12 begins on the date specified in his notice under regulation 14(1), or, where he has varied his choice of date under regulation 14(7), on the date specified in his notice under that provision (or the last such notice if he has varied his choice more than once).

Entitlement to additional paternity leave: adoption in the event of the death of the adopter

17.—

(1) In a case where the adopter of the child has died before the end of the period of twelve months beginning with the child's placement for adoption, the provisions in regulations 12 to 16 shall apply with the following modifications.

(2) Regulation 12(1)(c) shall read—

“the child's adopter satisfied, before her death, one or more of the conditions specified in paragraph (5)(a) (or would have satisfied such conditions but for the fact that she has died).”

(3) The condition in regulation 12(2)(c) shall be taken to be satisfied if it would have been satisfied but for the fact that the adopter has died.

(4) The requirement in regulation 12(5)(b) shall be omitted.

(5) Regulation 13 (options in respect of leave) shall be replaced by regulation 18.

(6) Regulation 14 (notice and evidential requirements for leave) shall be replaced by regulation 19.

(7) There shall be no entitlement to leave where the adopter has died if the child has been removed from the care of the employee and the employee has not yet begun a period of additional paternity leave.

(8) Regulations 15 and 16 shall apply as if the references in those regulations—

- (a) to regulation 14(1) are references to regulation 19(1); and
- (b) to regulation 14(7) are references to regulation 19(6).

Options in respect of leave under regulation 12 where the adopter has died

18.—

(1) Subject to paragraph (2), an employee may choose to take leave under regulation 12, as modified by regulation 17, at any time within the period beginning with the date of the adopter's death and ending 12 months after the date of the child's placement for adoption.

(2) The minimum period of leave which may be taken is two consecutive weeks.

(3) The leave must be taken as one continuous period and must be taken in multiples of complete weeks.

(4) The employee shall not be entitled to leave in accordance with regulation 12, as modified by regulation 17, if he has already taken a period of additional paternity leave which has ended before the date of the child's adopter's death.

(5) If the employee has already begun a period of additional paternity leave on the date of the adopter's death which has not yet ended on that date, he shall be entitled to a further period of leave in accordance with regulation 12, as modified by regulation 17, provided—

- (a) he satisfies the conditions for eligibility set out in that regulation as so modified; and
- (b) that further period of leave immediately follows the first period of additional paternity leave.

(6) This regulation is subject to regulation 20.

Notice and evidential requirements for leave under regulation 12 in the event of the death of the adopter

19.—(1) An employee taking leave under regulation 12, as modified by regulation 17, must give notice to his employer of his intention to do so, specifying—

- (a) the date on which the adopter was notified of having been matched with the child;
- (b) the date on which the child was placed with the adopter;
- (c) the dates on which the employee has chosen that his period of leave should begin; and
- (d) the date on which the employee has chosen that his period of leave should end, in accordance with regulation 18(1).
- (e) the name and last address of the adopter;
- (f) the date of the adopter's death; and
- (g) the adopter's National Insurance number

(2) The employee must also give his employer a declaration, signed by the employee, stating that the purpose of his absence from work will be to care for the child and that he satisfies the conditions of entitlement in regulation 12, as modified by regulation 17.

(3) The notice and declaration provided for in paragraphs (1) and (2) must be in writing and must be given to the employer as soon as reasonably practicable after the date of the adopter's death.

(4) The employee must also give his employer such of the following information and evidence as the employer may request—

- (a) a copy of the child's matching certificate;
- (b) the name and business address of the adopter's employer (or, if the adopter was self-employed, her business address).

(5) The employee must give the employer information or evidence requested under paragraph (4) within 28 days of the employer requesting it.

(6) An employee who has given notice under paragraph (1) may vary the date he has chosen as the date on which his period of leave will begin, or may withdraw that notice, provided that he gives his employer notice of the variation—

- (a) where the earlier of the original and the varied date is more than 8 weeks after the date of the adopter's death, at least 6 weeks before the earlier of the original and the varied date;
- (b) where the notice is to withdraw a notice given under paragraph (1), and the varied date is more than 8 weeks after the date of the adopter's death, at least 6 weeks before the date which he had previously given notice that the period of leave would begin on; or
- (c) in any other case, as soon as reasonably practicable.

(7) An employee who has given notice under paragraph (1) must give his employer written notice as soon as reasonably practicable if at any time he no longer satisfies the conditions in regulations 12(2), as modified by regulation 17.

(8) Where—

- (a) an employee has given notice under paragraph (7); and
- (b) has done so less than 6 weeks before the date he had previously notified as the date his period of leave would begin (but before that leave has begun); and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(9) Where—

- (a) an employee has given notice under paragraph (7); and
- (b) has done so after his period of additional paternity leave has begun; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may postpone the employee's return to work for a period of up to six weeks from the date on which notice was given under paragraph (7).

(10) Where—

- (a) an employee has given notice under paragraph (6) to withdraw a notice given under paragraph (1); but
- (b) the notice does not comply with the requirement in sub-paragraph (a) or (b) of that paragraph; and
- (c) it is not reasonable for the employer to accommodate the change in the employee's arrangements,

the employer may require that the employee take a period of additional paternity leave.

(11) Additional paternity leave which the employee is required to take under paragraph (8) or (10)-

(a) shall start—

- (i) on the date notified under paragraph (1)(c), or
- (ii) if the employee has varied that date under paragraph (6), the date specified in the last notice given in accordance with that paragraph; and

(b) shall end-

- (i) no more than 6 weeks after the employee gave notice under paragraph (6) or, as the case may be, paragraph (7), and
- (ii) no later than the date notified under paragraph (1)(d).

PART 4: PROVISIONS APPLICABLE TO BOTH TYPES OF ADDITIONAL PATERNITY LEAVE

Disrupted placement or death of a child in the course of additional paternity leave

20.—(1) This regulation applies where, during an employee's notice period or additional paternity leave period in respect of a child—

- (a) the child dies, or
- (b) where the child has been placed for adoption, the child is returned to the adoption agency under sections 32, 33 or 34(3) of the Adoption and Children Act 2002⁽¹³⁾ or section 25(6) of the Adoption and Children (Scotland) Act 2007⁽¹⁴⁾.

(2) Subject to regulation 25, in a case where this regulation applies—

- (a) where the notified end date occurs less than eight weeks after the relevant week, the employee's additional paternity leave period ends on the notified end date;
- (b) where the notified end date occurs eight or more weeks after the relevant week, the employee's additional paternity leave period ends eight weeks after the end of the relevant week;

(3) For the purposes of paragraph (2) the relevant week means the period of seven days beginning with Sunday, during which—

- (a) in a case falling within paragraph (1)(a), the child dies;
- (b) in a case falling within paragraph (1)(b), the child is returned to the adoption agency.

(4) In paragraph (1), an employee's notice period is the period starting on the day he notifies his employer in accordance with regulation 6, 11, 14 or 19 of his intention to take additional paternity leave and ending on the day before the day that leave begins.

Return to work

21. For the purposes of these Regulations, a mother or adopter is treated as returning to work if one of the following conditions is satisfied—

- (a) in a case where she is entitled to maternity or adoption leave in respect of the child, her maternity or adoption leave period has ended;
- (b) in a case where she is entitled to Maternity Allowance, Statutory Maternity Pay or Statutory Adoption Pay, that payment is not payable to her in accordance with section 35(3)(a)(i), 165(4), 165(5), 165(6), 171ZN(3), 171ZN(4) or 171ZN(5) of the Social Security Contributions and Benefits Act 1992⁽¹⁵⁾; or
- (c) in a case where both (a) and (b) apply, the conditions in both (a) and (b) are satisfied.

Work during an additional paternity leave period

22.—

(1) An employee may carry out up to 10 days' work for his employer during his additional paternity leave period without bringing his additional paternity leave to an end.

(2) For the purposes of this regulation, any work carried out on any day shall constitute a day's work.

(3) Subject to paragraph (4), for the purposes of this regulation, work means any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

⁽¹³⁾ 2002 c. 38.

⁽¹⁴⁾ 2007 asp. 4.

⁽¹⁵⁾ 1992 c.4. Sections 35(3)(a)(i), 165(4) and 171ZN(3) were amended by the Work and Families Act 2006 Schedule 1 paragraphs 6, 7(3) and 21(2).

(4) Reasonable contact from time to time between an employee and his employer which either party is entitled to make during an additional paternity leave period (for example to discuss an employee's return to work) shall not bring that period to an end.

(5) This regulation does not confer any right on an employer to require that any work be carried out during the additional paternity leave period, nor any right on an employee to work during the additional paternity leave period.

(6) Any days' work carried out under this regulation shall not have the effect of extending the total duration of the additional paternity leave period.

Application of terms and conditions during additional paternity leave

23.—(1) An employee who takes additional paternity leave—

- (a) is entitled, during the period of leave, to the benefit of all of the terms and conditions of employment which would have applied if he had not been absent, and
- (b) is bound, during that period, by any obligations arising under those terms and conditions, subject only to the exception in section 80C(1)(b) of the 1996 Act.

(2) In paragraph (1)(a), "terms and conditions of employment" has the meaning given by section 80C(5) of the 1996 Act, and accordingly does not include terms and conditions about remuneration.

(3) For the purposes of section 80C of the 1996 Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

(4) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) shall be taken to impose a requirement which exceeds the requirements of paragraph 5A of that Schedule.

Redundancy during additional paternity leave

24.—

(1) This regulation applies where, during an employee's additional paternity leave period, it is not practicable by reason of redundancy for his employer to continue to employ him under his existing contract of employment.

(2) Where there is a suitable alternative vacancy, the employee is entitled to be offered (before the end of his employment under his existing contract) alternative employment with his employer or his employer's successor, or an associated employer, under a new contract of employment which complies with paragraph (3) and takes effect immediately on the ending of his employment under the previous contract.

(3) The new contract of employment must be such that—

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for him to do in the circumstances; and
- (b) its provisions as to the capacity and place in which he is to be employed, and as to the other terms and conditions of his employment, are not substantially less favourable to him than if he had continued to be employed under the previous contract.

Dismissal during additional paternity leave

25. Where an employee is dismissed after an additional paternity leave period has begun but before the time when (apart from this regulation) that period would end, the period ends at the time of the dismissal.

Requirement to notify intention to return during additional paternity leave period

26.—

(1) An employee who intends to return to work earlier than the end of his additional paternity leave period must give his employer at least 6 weeks' notice of the date on which he intends to return.

(2) If an employee attempts to return to work earlier than the end of his additional paternity leave period without complying with paragraph (1), his employer is entitled to postpone his return to a date such as will secure, subject to paragraph (5), that he has 6 weeks' notice of his return.

(3) An employee who complies with his obligations in paragraph (1) or whose employer has postponed his return in the circumstances described in paragraph (2), and who then decides to return to work—

- (a) earlier than the original return date, must give his employer not less than 6 weeks' notice of the date on which he now intends to return;
- (b) later than the original return date, must give his employer not less than 6 weeks' notice ending with the original return date.

(4) In paragraph (3) the "original return date" means the date which the employee notified the employer as the date of his return to work under paragraph (1) or the date to which his return was postponed by his employer under paragraph (2).

(5) If an employee whose return to work has been postponed under paragraph (2)—

- (a) has been notified that he is not to return to work before the date to which his return was postponed, and
- (b) returns to work before that date,
the employer is under no contractual obligation to pay the employee's remuneration until the date to which his return was postponed.

(6) This regulation does not apply in a case where the employer did not notify the employee in accordance with—

- (a) regulation 7, if the employee is entitled to additional paternity leave by virtue of regulation 4; or
- (b) regulation 15, if the employee is entitled to additional paternity leave by virtue of regulation 12,

of the date on which his additional paternity leave period would end.

Right to return after additional paternity leave

27.—(1) An employee who returns to work after a period of additional paternity leave, lasting no longer than 26 weeks, which was—

- (a) an isolated period of leave, or
- (b) the last of two or more consecutive periods of statutory leave, which did not include any period of parental leave of more than four weeks;

is entitled to return from leave to the job in which he was employed before his absence.

(2) An employee who returns to work after a period of additional paternity leave not falling within the description in paragraph (1)(a) or (b) above is entitled to return from leave to the job in which he was employed before his absence, or, if it is not reasonably practicable for the employer to permit him to return to that job, to another job which is both suitable for him and appropriate for him to do in the circumstances.

(3) The reference in paragraphs (1) and (2) to the job in which an employee was employed before his absence is a reference to the job in which he was employed—

- (a) if his return is from an isolated period of additional paternity leave, immediately before that period began;
- (b) if his return is from consecutive periods of statutory leave, immediately before the first such period.

(4) This regulation does not apply where regulation 24 applies.

Incidents of the right to return after additional paternity leave

28.—(1) An employee's right to return under regulation 27 is a right to return—

- (a) with his seniority, pension rights and similar rights as they would have been if he had not been absent, and
- (b) on terms and conditions not less favourable than those which would have applied if he had not been absent.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) shall be taken to impose a requirement which exceeds the requirements of paragraphs 5 to 6 of that Schedule.

(3) The provisions in paragraph (1)(a) for an employee to be treated as if he had not been absent refer to his absence—

- (a) if his return is from an isolated period of additional paternity leave, since the beginning of that period;
- (b) if his return is from consecutive periods of statutory leave, since the beginning of the first such period.

Protection from detriment

29.—(1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer because—

- (a) the employee took, sought to take or availed himself of the benefits of additional paternity leave;
- (b) the employer believed that the employee was likely to take additional paternity leave;
- (c) the employee failed to return after a period of additional paternity leave in a case where—
 - (i) the employer did not notify him, in accordance with regulation 7 or 15 or otherwise, of the date on which that period ended, and he reasonably believed that the period had not ended, or
 - (ii) the employer gave him less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for him to return on that date;
- (d) the employee undertook, considered undertaking or refused to undertake work in accordance with regulation 22.

(2) For the purposes of paragraph (1)(a), an employee avails himself of the benefits of additional paternity leave if, during his additional paternity leave period, he avails himself of the benefit of any of the terms and conditions of his employment preserved by section 80C of the 1996 Act and regulation 23 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to dismissal within the meaning of Part 10 of the 1996 Act.

Unfair dismissal

30.—(1) An employee who is dismissed is entitled under section 99 of the 1996 Act to be regarded for the purpose of Part 10 of that Act as unfairly dismissed if—

- (a) the reason or principal reason for the dismissal is of a kind specified in paragraph (3), or
- (b) the reason or principal reason for the dismissal is that the employee is redundant and regulation 24 has not been complied with.

(2) An employee who is dismissed shall also be regarded for the purposes of Part 10 of the 1996 Act as unfairly dismissed if—

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant;

- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer, and
 - (c) it is shown that the reason (or if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).
- (3) The kinds of reason referred to in paragraph (1) and (2) are reasons connected with the fact that—
- (a) the employee took, sought to take or availed himself of the benefits of, additional paternity leave;
 - (b) the employer believed that the employee was likely to take additional paternity leave;
 - (c) the employee failed to return after a period of additional paternity leave in a case where—
 - (i) the employer did not notify him, in accordance with regulation 7 or 15 or otherwise, of the date on which that period ended, and he reasonably believed that the period had not ended, or
 - (ii) the employer gave him less than 28 days' notice of the date on which the period would end, and it was not reasonably practicable for him to return on that date;
 - (d) the employee undertook, considered undertaking or refused to undertake work in accordance with regulation 22.
- (4) For the purposes of paragraph (3)(a), an employee avails himself of the benefits of additional paternity leave if, during his additional paternity leave period, he avails himself of the benefit of any of the terms and conditions of his employment preserved by section 80C of the 1996 Act and regulation 23 during that period.
- (5) Paragraph (1) does not apply in relation to an employee if—
- (a) it is not reasonably practicable for a reason other than redundancy for the employer (who may be the same employer or a successor of his) to permit the employee to return to a job which is both suitable for the employee and appropriate for him to do in the circumstances;
 - (b) an associated employer offers the employee a job of that kind, and
 - (c) the employee accepts or unreasonably refuses that offer.
- (6) Where, on a complaint of unfair dismissal, any question arises as to whether the operation of paragraph (1) is excluded by the provisions of paragraph (5), it is for the employer to show that the provision in question was satisfied in relation to the complainant.

Contractual rights to additional paternity leave

31.—

- (1) This regulation applies where an employee is entitled to additional paternity leave (referred to in paragraph (2) as a “statutory right”) and also to a right which corresponds to that right and which arises under the employee’s contract of employment or otherwise.
- (2) In a case where this regulation applies—
- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
 - (b) the provisions of the 1996 Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in sub-paragraph (a) as they apply to the exercise of the statutory right.

Calculation of a week's pay

32. Where—

- (a) under Chapter 2 of Part 14 of the 1996 Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of twelve weeks ending on a particular date (referred to as "the calculation date");
- (b) during a week in that period, the employee was absent from work on additional paternity leave, and
- (c) remuneration is payable to the employee in respect of that week under his contract of employment, but the amount payable is less than the amount that would be payable if he were working,

that week shall be disregarded for the purpose of the calculation and account shall be taken of remuneration in earlier weeks so as to bring up to twelve the number of weeks of which account is taken.

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the powers in the Work and Families Act 2006 to introduce a new entitlement for employees who are fathers and partners of mothers or adopters to take additional paternity leave in the first year of their child's life or the first year after the child's placement for adoption. The relevant provisions are incorporated by that Act into the Employment Rights Act 1996 ("the 1996 Act").

The right to take additional paternity leave is conferred by regulation 4 in the case of the birth of a child, and by regulation 12 in the case of the adoption of a child. Those regulations set out conditions for entitlement that must be satisfied by the person claiming the entitlement, and also by the mother or adopter (or, in a case where there are two adopters, the other adopter who has chosen to take adoption leave rather than paternity leave) of the child. The conditions relate to requirements for continuous employment with the employer, relationship with the mother or adopter and with the child, and notice and evidential requirements to be provided to the employer.

Regulations 5 and 13 set out the options for when and how the leave may be taken (in respect of additional paternity leave: birth, and additional paternity leave: adoption respectively). In particular they indicate the maximum and minimum length of leave which may be taken (a maximum of 26 weeks and minimum of 2 weeks), the fact that it may only be taken in multiples of complete weeks and the period after the birth or adoption of the child within which the leave may be taken (the period beginning 26 weeks after the birth or placement for adoption and ending 12 months after the birth or placement for adoption).

Regulations 6 and 14 (in respect of additional paternity leave: birth, and additional paternity leave: adoption respectively) set out the notice and evidential requirements with which the employee must comply. These include information regarding both the employee and the mother or adopter, and declarations from both the employee and the mother or adopter.

Regulations 7 and 15 (in respect of additional paternity leave: birth, and additional paternity leave: adoption respectively) require that the employer must confirm the dates of the start and end of the leave within 28 days of receiving the employee's notice.

Regulations 8 and 16 (in respect of additional paternity leave: birth, and additional paternity leave: adoption respectively) set out when the leave commences in the event of a single notification or a subsequent notification of a change of date.

In circumstances where the mother or adopter of the child has died before the end of the period of 12 months after the date of the child's birth or placement for adoption, the provisions of the Regulations apply with various modifications. In such a case the employee's entitlement may be to a longer period of leave starting earlier than it would otherwise have done and with different notification requirements.

Regulations 9 and 17 (in respect of birth and adoption respectively) set out the provisions of the Regulations which are modified in the case of the death of the mother or adopter of the child. The requirements which must be satisfied by the child's mother or adopter under regulations 4 and 12 are modified to provide that she must have been entitled, before her death, to one or more of maternity leave, Statutory Maternity Pay or Maternity Allowance (or in the case of adoption, to adoption leave or Statutory Adoption Pay)(or would have been so entitled but for her death), and the requirement that she must have returned to work does not apply.

Regulation 20 deals with cases where the child dies (in respect of birth and adoption) or where a placement ends (in respect of adoption) during additional paternity leave. In such cases, the employee's entitlement comes to an end after a period of eight weeks, unless there are only eight week's leave remaining in which case the additional paternity leave period ends on the date notified by the employee.

Regulations 21 to 31 contain provisions applicable in relation to additional paternity leave (birth and adoption). Additional Paternity Leave is generally only available where the mother or adopter returns to work and regulation 21 sets out criteria for determining this date. If they were entitled to maternity or adoption leave, the relevant date is when this leave ends. If they were entitled to statutory pay (maternity allowance, Statutory Maternity Pay or Statutory Adoption Pay) the relevant date is when this is no longer payable. In cases where they were eligible for both leave and pay then the relevant date is when both the leave has ended and they no longer eligible for pay.

Regulations 24 and 25 deal with cases where an employee becomes redundant or is dismissed during an additional paternity leave period. Regulation 26 deals with cases where an employee intends to return to work before the end of additional paternity leave. Regulations 27 and 28 provide for an employee's right to return to work after taking leave, distinguishing the case where the leave was an isolated period of leave or taken with other types of statutory leave from other cases.

Regulations 29 and 30 provide that an employee entitled to additional paternity leave is protected against detriment or dismissal attributable to the fact they took or sought to take such leave. Regulation 31 governs the relationship between an employee's right to additional paternity leave under these Regulations and any corresponding leave rights arising from his employment contract. Regulation 32 deals with the calculation of a week's pay for an employee on additional paternity leave.

“adopter”, in relation to a child, means a person who has been matched with a child for adoption or, in a case where two people have been matched jointly, whichever of them has elected to be the child’s adopter for the purpose of these Regulations;

“adoption agency” has the meaning given, in relation to England and Wales, by section 2 of the Adoption and Children Act 2002⁽¹⁷⁾ and in relation to Scotland, by section 119(1) of the Adoption and Children (Scotland) Act 2007⁽¹⁸⁾;

“adoption pay period” has the meaning given by regulation 21 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002⁽¹⁹⁾

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001⁽²⁰⁾;

“expected week of childbirth”, in relation to a child, means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born;

“maternity allowance period” means the period for which maternity allowance is payable under section 35 of the Act;

“maternity pay period” has the meaning given by regulation 2 of the Statutory Maternity Pay (General) Regulations 1986⁽²¹⁾;

“partner”, in relation to a child’s mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter and the child in an enduring family relationship but is not a relative of the mother or adopter of a kind specified in paragraph (2);

“statutory maternity pay” has the meaning given in section 164(1) of the Act.

(2)The relatives of a child’s mother or adopter referred to in the definition of “partner” in paragraph (1) are the mother’s or adopter’s parent, grandparent, sister, brother, aunt or uncle.

(3)References to relationships in paragraph (2)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with his adoptive, or former adoptive parents,

but do not include any other adoptive relationships.

(4)For the purposes of these Regulations—

- (c) a person is matched with a child for adoption when an adoption agency decides that that person would be a suitable adoptive parent for the child, either individually or jointly with another person, and
- (d) a person is notified of having been matched with a child on the date on which he receives notification of the agency’s decision, under regulation 33(3)(a) of the Adoption Agencies Regulations 2005⁽²²⁾ or regulation 14(1) of the Adoption Agencies (Scotland) Regulations 2007⁽²³⁾.

Application

3. Subject to the provisions of Part 12ZA of the Act (additional statutory paternity pay) and of these Regulations, there is entitlement to—

- (a) additional statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 3rd April 2011;

⁽¹⁷⁾ 2002 c. 38.
⁽¹⁸⁾ 2007 a.s.p. 4.
⁽¹⁹⁾ S.I. 2002/2822.
⁽²⁰⁾
⁽²¹⁾ S.I. 1986/1960.
⁽²²⁾ S.I. 2005/389.
⁽²³⁾ S.S.I. 2009/154.

- (b) additional statutory paternity pay (adoption) in respect of children matched with a person who is notified of having been matched on or after 3rd April 2011

Entitlement to additional statutory paternity pay (birth)

- 4.—(1) A person (“P”) is entitled to additional statutory paternity pay (birth) if—
- (a) P satisfies the conditions—
 - (i) as to relationship with a child (“C”) and with C’s mother specified in paragraph (2); and
 - (ii) as to continuity of employment and normal weekly earnings specified in paragraph (3);
 - (b) C’s mother satisfies the conditions specified in regulation 6 and has signed the declaration referred to in regulation 8(1)(c); and
 - (c) P has complied with the requirements of regulation 8 including, where applicable, the requirements in regulation 8(3).
- (2) The conditions referred to in paragraph (1)(a)(i) are that—
- (a) P is either—
 - (i) C’s father; or
 - (ii) married to, the civil partner or the partner of C’s mother but not C’s father; and
 - (b) P has, or intends to have during the additional paternity pay period—
 - (i) if P is the child’s father, responsibility for the upbringing of C;
 - (ii) if P is C’s mother’s husband, civil partner or partner but not C’s father, the main responsibility (apart from any responsibility of the mother) for the upbringing of C.
- (3) The conditions referred to in paragraph (1)(a)(ii) are that—
- (a) P has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
 - (b) P’s normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) of the Act at the end of the relevant week; and
 - (c) P continues in employed earner’s employment with the employer by reference to whom the condition in sub-paragraph (a) is satisfied for a continuous period beginning with the relevant week and ending with the week before the first week of receiving additional statutory paternity pay.
- (4) The references in paragraph (3) to the relevant week are to the week immediately preceding the 14th week before the expected week of C’s birth.

Modification of entitlement conditions: early birth

5. Where P does not meet the conditions specified in regulation 4(3) because C’s birth occurred earlier than the 14th week before the expected week of childbirth, regulation 4(3) shall have effect as if, for the conditions set out there, there were substituted the conditions that—

- (a) P would, but for the date on which C’s birth occurred, have been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (b) P’s normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the actual week of C’s birth are not less than the lower earnings limit in force under section 5(1)(a) of the Act immediately before the commencement of C’s actual week of birth.

Conditions to be satisfied by the child's mother

6. The conditions referred to in regulation 4(1)(b) are that C's mother—
- (a) became entitled, by reference to becoming pregnant with C, to—
 - (i) a maternity allowance, or
 - (ii) statutory maternity pay;
 - (b) has taken action constituting a return to work within the meaning of regulation 19;
 - (c) has taken the action referred to in subparagraph (b) not less than two weeks after the birth of the child;
 - (d) has at least two weeks of her maternity allowance period or maternity pay period which remains unexpired.

Additional paternity pay period (birth)

7.—

- (1) For the purposes of section 171ZEE of the Act, additional statutory paternity pay (birth) shall be payable in respect of the period ("the additional paternity pay period (birth)") which meets the requirements of paragraphs (2) to (4).
- (2) The additional paternity pay period (birth) begins with—
- (a) the date specified by P in accordance with regulation 8(2)(d) or last varied in accordance with regulation 8(6); or
 - (b) (if later) the day on which C's mother has taken action constituting a return to work within the meaning of regulation 19.
- (3) Subject to paragraph (4), the additional paternity pay period (birth) ends with the date specified by P in accordance with regulation 8(2)(e).
- (4) The additional paternity pay period (birth) shall begin not less than 20 weeks after C's birth and shall not last longer than 26 weeks.

Evidence of entitlement to additional statutory paternity pay (birth)

8.—(1) P shall provide evidence of entitlement to additional statutory paternity pay (birth) by providing to the person ("E") who will be liable to pay P additional statutory paternity pay (birth)—

- (a) the information specified in paragraph (2);
 - (b) a declaration—
 - (i) that that information is correct; and
 - (ii) that P meets the conditions in regulation 4(2) and (3); and
 - (c) a declaration signed by C's mother –
 - (i) that she has given notice to her employer that she is returning to work;
 - (ii) that she satisfies the conditions in regulation 6(a), (c) and (d);
 - (iii) specifying her name, address and National Insurance number;
 - (iv) specifying the start date of the maternity pay period or maternity allowance period; and
 - (v) specifying the date on which she intends to return to work.
- (2) The information referred to in paragraph (1)(a) is as follows—
- (a) P's name;
 - (b) the expected week of C's birth;
 - (c) the date of C's birth;

- (d) the date on which it is expected that the liability to pay additional statutory paternity pay (birth) will begin; and
 - (e) the date on which it is expected that the liability to pay additional statutory paternity pay (birth) will end.
- (3) P shall also provide, if requested to do so by E,—
- (a) a copy of C's birth certificate;
 - (b) the name and business address of C's mother's employer (or, if C's mother is self-employed, her business address).
- (4) The information and declarations referred to in paragraph (1) must be in writing and shall be provided to E at least 8 weeks before the date mentioned in paragraph (2)(d) or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (5) P must give E information or evidence requested under paragraph (3) within 28 days of E requesting it.
- (6) P may, after providing the evidence referred to in paragraph (1), vary the date chosen as the date on which the liability to pay additional statutory paternity pay will begin or may withdraw the notice, provided that P gives E notice in writing of the variation—
- (a) if varying a notice, at least 6 weeks before the earlier of the original date and the varied date, or
 - (b) if withdrawing a notice, at least 6 weeks before the original date, or
 - (c) in a case where it was not reasonably practicable for P to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable.
- (7) When P has provided evidence under paragraph (1), P must give E written notice as soon as reasonably practicable if at any time—
- (a) P no longer satisfies the conditions in regulation 4(2) or (3); or
 - (b) C's mother no longer satisfies the conditions in regulation 6.
- (8) When E is provided the information required by this regulation, E must notify P within 28 days of receiving the information of the start and end dates of E's liability to pay P additional statutory paternity pay.

Entitlement to additional statutory paternity pay (birth) in the event of the death of the mother

9.—

- (1) In a case where C's mother has died before the end of her maternity pay period or maternity allowance period, the provisions in regulations 4 to 8 shall apply with the following modifications
- (2) Regulation 4(1)(c) shall apply as if the references to regulation 8 were references to regulation 10.
- (3) The conditions in regulations 4(2)(a)(ii) and 4(2)(b)(ii) shall be taken to be satisfied if they would be satisfied but for the fact that C's mother has died.
- (4) The condition in regulation 6(a) shall be taken to be satisfied if the mother of the child would have satisfied it but for the fact she has died.
- (5) Regulation 6(b), (c) and (d) shall not apply.
- (6) Regulation 7 shall not apply and for the purposes of section 171ZEE of the Act, additional statutory paternity pay (birth) shall be payable in respect of the period which meets the requirements of paragraphs (7) and (8).
- (7) The additional paternity pay period (birth) shall begin with—
- (a) the day on which C's mother dies; or

(b) (if later) the date specified by P in accordance with regulation 10(2)(d) or last varied in accordance with regulation 10(6).

(8) The additional paternity pay period (birth) shall end with—

(a) the day on which the maternity pay period or maternity allowance period, which would have applied but for C's mother's death, would have ended; or

(b) (if earlier) the date specified by P in accordance with regulation 10(2)(e).

(9) Regulation 8 shall be replaced by regulation 10.

(10) P shall not be entitled to pay under this regulation if he has already taken a period of additional statutory paternity pay which has ended before the date on which C's the mother dies.

(11) If an additional paternity pay period has already begun on the date on which C's mother dies but has not yet ended on that date, P will from that date immediately be entitled to pay under this regulation provided the maternity pay period or maternity allowance period of C's mother would not yet have ended, but for the fact that she has died.

Evidence of entitlement to additional statutory paternity pay (birth) in the event of the death of the mother

10.—(1) P shall provide evidence of entitlement to additional statutory paternity pay (birth) under regulation 4, as modified by regulation 9 by providing to E—

(a) the information specified in paragraph (2);

(b) a declaration—

(i) that that information is correct; and

(ii) that he meets the conditions in regulation 4(2) (as modified by regulation 10(3)) and 4(3).

(2) The information referred to in paragraph (1)(a) is as follows—

(a) P's name;

(b) the expected week of C's birth;

(c) the date of C's birth;

(d) the date on which it is expected that the liability to pay additional statutory paternity pay (birth) will begin;

(e) the date on which it is expected that the liability to pay additional statutory paternity pay (birth) will end;

(f) C's mother's name, address, and national insurance number;

(g) the start date of the maternity pay period or maternity allowance period, or, in a case where C's mother's death occurred before maternity pay period or maternity allowance period started, the date that period would have started but for the fact she has died; and

(h) the date of C's mother's death.

(3) P shall also provide, if requested to do so by E,—

(a) a copy of C's birth certificate;

(b) the name and business address of C's mother's employer (or, if C's mother was self-employed, her business address).

(4) The evidence referred to in paragraph (1) must be in writing and must be given to E as soon as reasonably practicable after the date of C's mother's death.

(5) P must give E information or evidence requested under paragraph (3) within 28 days of E requesting it.

(6) P may, after providing the evidence referred to in paragraph (1), vary the date he has chosen as the date on which the liability to pay additional statutory paternity pay will begin or end, or may withdraw the notice, provided that P gives E notice in writing of the variation—

- (a) if varying the notice, at least 6 weeks before the earlier of the original date and the varied date, or
- (b) if withdrawing the notice, at least 6 weeks before the original date, or
- (c) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable.

(7) When E is provided the information required by this regulation, E must notify P within 28 days of receiving the information of the start and end dates of E's liability to pay P additional statutory paternity pay.

Entitlement to additional statutory paternity pay (birth) where there is more than one employer

11.—(1) Additional statutory paternity pay (birth) shall be payable to P in respect of a statutory pay week during any part of which he works only for an employer—

- (a) who is not liable to pay P additional statutory paternity pay (birth); and
- (b) for whom P was employed in the week immediately preceding the 14th week before the expected week of C's birth.

(2) In this regulation, "statutory pay week" means a week P has chosen as a week in respect of which additional statutory paternity pay (birth) shall be payable.

Entitlement to additional statutory paternity pay (adoption)

12.—(1) P is entitled to additional statutory paternity pay (adoption) if—

- (a) P satisfies the conditions—
 - (i) as to relationship with a child ("C") and the child's adopter specified in paragraph (2), and
 - (ii) as to continuity of employment and normal weekly earnings specified in paragraph (3);
- (b) C's adopter satisfies the conditions specified in regulation 13 and has signed the declaration referred to in regulation 15(1)(c); and
- (c) P has complied with the requirements in regulation 15, including, where applicable, the requirements in regulation 15(3).

(2) The conditions referred to in paragraph (1)(a)(i) are that—

- (a) P is married to, the civil partner or the partner of C's adopter; and
- (b) P has, or intends during the additional paternity pay period to have the main responsibility (apart from any responsibility of C's adopter) for the upbringing of C.

(3) The conditions referred to in paragraph (1)(a)(ii) are that—

- (a) P has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (b) P's normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) of the Act at the end of the relevant week; and
- (c) P continues in employed earner's employment with the employer by reference to whom the condition in sub-paragraph (a) above is satisfied for a continuous period beginning with the relevant week and ending with the week before the first week of receiving additional statutory paternity pay.

(4) The references in paragraph (3) to the relevant week are to the week in which C's adopter is notified of having been matched with C.

Conditions to be satisfied by the child's adopter

- 13.** The conditions referred to in regulation 12(1)(b) are that C's adopter—
- (a) became entitled, by reference to the adoption of C, to statutory adoption pay;
 - (b) has taken action constituting a return to work within the meaning of regulation 19;
 - (c) has taken the action referred to in subparagraph (b) after a period of at least two weeks after the date the child was placed for adoption with the adopter; and
 - (d) has at least two weeks of her adoption pay period which remain unexpired.

Additional paternity pay period (adoption)

14.—

(1) For the purposes of section 171ZEE of the Act, additional statutory paternity pay (adoption) shall be payable in respect of the period ("the additional paternity pay period (adoption)") which meets the requirements of paragraphs (2) to (4).

(2) The additional paternity pay period (adoption) begins with—

- (a) the date specified by P in accordance with regulation 15(2)(d) or last varied in accordance with regulation 15(6); or
- (b) (if later) the day on which C's adopter has taken action constituting a return to work within the meaning of regulation 19.

(3) Subject to paragraph (4), the additional paternity pay period (adoption) ends with the date specified by P in accordance with regulation 15(2)(e).

(4) The additional paternity pay period (adoption) shall begin not less than 20 weeks after the date C was placed for adoption and shall not last longer than 26 weeks.

Evidence of entitlement to additional statutory paternity pay (adoption)

15.—(1) P shall provide evidence of entitlement to additional statutory paternity pay (adoption) by providing to the person ("E") who will be liable to pay P additional statutory paternity pay (adoption)—

- (a) the information specified in paragraph (2);
- (b) a declaration—
 - (i) that that information is correct; and
 - (ii) that P meets the conditions in regulation 12(2) and (3);
- (c) a declaration signed by C's adopter—
 - (i) that she has given notice to her employer that she is returning to work;
 - (ii) that she satisfies the conditions in regulation 13(a), (c) and (d);
 - (iii) specifying her name, address and National Insurance Number;
 - (iv) specifying the start date of the adoption pay period; and
 - (v) specifying the date on which C's adopter intends to return to work.
- (2) The information referred to in paragraph (1)(a) is as follows—
 - (a) P's name ;
 - (b) the expected date of C's placement for adoption;
 - (c) the actual date of C's placement for adoption;
 - (d) the date on which it is expected that the liability to pay additional statutory paternity pay (adoption) will begin; and
 - (e) the date on which it is expected that the liability to pay additional statutory paternity pay (adoption) will end.
- (3) P shall also provide, if requested to do so by E,—

- (a) a copy of C's matching certificate; and
 - (b) the name and business address of C's adopter's employer (or, if C's adopter is self-employed, the adopter's business address).
- (4) The evidence referred to in paragraph (1) must be in writing and shall be provided to E at least 8 weeks before the date mentioned in paragraph (2)(d) or, if that is not reasonably practicable, as soon as is reasonably practicable.
- (5) P must give E information or evidence requested under paragraph (3) within 28 days of E requesting it.
- (6) P may, after providing the evidence referred to in paragraph (1), vary the date P has chosen as the date on which the liability to pay additional statutory paternity pay will begin, or may withdraw the notice, provided that P gives E notice of the variation—
- (a) if varying the notice, at least 6 weeks before the earlier of the original date and the varied date, or
 - (b) if withdrawing the notice, at least 6 weeks before the original date, or
 - (c) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable.
- (7) When P has provided evidence under paragraph (1), P must give E written notice as soon as reasonably practicable if at any time—
- (a) P no longer satisfies the conditions in regulation 12(2) or (3); or
 - (b) C's adopter no longer satisfies the conditions in regulation 13.
- (8) When E is provided the information required by this regulation, E must notify P within 28 days of receiving the information of the start and end dates of E's liability to pay P additional statutory paternity pay.

Entitlement to additional statutory paternity pay (adoption) in the event of the death of the adopter

16.—

- (1) In a case where C's adopter has died before the end of her adoption pay period, the provisions in regulations 12 to 16 shall apply with the following modifications.
- (2) Regulation 12(1)(c) shall apply as if the references to regulation 15 were references to regulation 17.
- (3) The conditions in regulations 12(2)(a) and 12(2)(b) shall be taken to be satisfied if they would be satisfied but for the fact that C's adopter has died.
- (4) The condition in regulation 13(a) shall be taken to be satisfied if C's adopter would have satisfied it but for the fact she has died.
- (5) Regulation 13(b), (c) and (d) shall not apply.
- (6) Regulation 14 shall not apply and for the purposes of section 171ZEE of the Act, additional statutory paternity pay (adoption) shall be payable in respect of the period which meets the requirements of paragraphs (7) and (8).
- (7) The additional paternity pay period (adoption) shall begin with—
- (a) the day on which C's adopter dies; or
 - (b) (if later) the date specified by P in accordance with regulation 17(2)(c) or last varied in accordance with regulation 17(6).
- (8) The additional paternity pay period (adoption) shall end with—
- (a) the day on which the adoption pay period, which would have applied but for C's adopter's death, would have ended; or
 - (b) (if earlier) the date specified by P in accordance with regulation 17(2)(d).
- (9) Regulation 15 shall be replaced by regulation 17.

(10) The employee shall not be entitled to pay under this regulation if he has already taken a period of additional statutory paternity pay which has ended before the date on which the adopter dies.

(11) If an additional paternity pay period has already begun on the date when the adopter dies but has not yet ended on that date, the employee will from that date be entitled to pay under this regulation provided the adoption pay period of C's adopter would not yet have ended, but for the fact that she has died.

Evidence of entitlement to additional statutory paternity pay (adoption) in the event of the death of the adopter

17.—(1) P shall provide evidence of his entitlement to additional statutory paternity pay under regulation 16 by providing to E—

- (a) the information specified in paragraph (2);
- (b) a declaration—
 - (i) that that information is correct; and
 - (ii) that P meets the conditions in regulation 12(2) (as modified by regulation 16(3)) and (3).

(2) The information referred to in paragraph (1)(a) is as follows—

- (a) P's name;
- (b) the date of C's placement for adoption;
- (c) the date on which it is expected that the liability to pay additional statutory paternity pay (adoption) will begin;
- (d) the date on which it is expected that the liability to pay additional statutory paternity pay (adoption) will end;
- (e) C's adopter's name, address, and National Insurance number;
- (f) the start date of the adoption pay period or, in a case where C's adopter's death occurred before the adoption pay period started, the date that period would have started but for the fact C's adopter has died; and
- (g) the date of C's adopter's death.

(3) P shall also provide, if requested to do so by E, —

- (a) a copy of C's matching certificate; and
- (b) the name and business address of C's adopter's employer (or, if C's adopter was self-employed, the adopter's business address).

(4) The evidence provided for in paragraph (1) shall be in writing and must be given to the employer as soon as reasonably practicable after the date of the adopter's death.

(5) P must give E information or evidence requested under paragraph (3) within 28 days of E requesting it.

(6) P may, after providing evidence referred to in paragraph (1), vary the date P has chosen as the date on which the liability to pay additional statutory paternity pay will begin, or may withdraw the notice, provided that P gives E notice of the variation—

- (a) if varying the notice, at least 6 weeks before the earlier of the original date and the varied date, or
- (b) if withdrawing the notice, at least 6 weeks before the original date, or
- (c) in a case where it was not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a) or (b), as soon as is reasonably practicable..

(7) When E is provided the information required by this regulation, E must notify P within 28 days of receiving the information of the start and end dates of E's liability to pay P additional statutory paternity pay.

Entitlement to additional statutory paternity pay (adoption) where there is more than one employer

18.-(1) Additional statutory paternity pay (adoption) shall be payable to a person in respect of a statutory pay week during any part of which he works only for an employer—

- (a) who is not liable to pay him additional statutory paternity pay (adoption); and
- (b) for whom he was employed in the week immediately preceding the 14th week before the expected week of the child's placement for adoption.

(2) In this regulation "statutory pay week" means a week P has chosen in respect of which additional statutory paternity pay (adoption) shall be payable.

Return to work

19. For the purposes of these Regulations, a mother or adopter is treated as returning to work if one of the following situations applies—

- (a) in a case where she is entitled to maternity allowance, that payment is not payable to her in accordance with section 35(3)(a)(i) of the Social Security Contributions and Benefits Act 1992⁽²⁴⁾;
- (b) in a case where she is entitled to statutory adoption pay, that payment is not payable to her in accordance with section 171ZN(3) or (5) of the Social Security Contributions and Benefits Act 1992⁽²⁵⁾;
- (c) in a case where she is entitled to statutory maternity pay, that payment is not payable to her in accordance with section 165(4) or (6) of the Social Security Contributions and Benefits Act 1992⁽²⁶⁾.

Work during an additional paternity pay period

20.—

(1) Notwithstanding paragraph (4), in a case where additional statutory paternity pay is being paid to a person who works during the additional paternity pay period for an employer who is not liable to pay him additional statutory paternity pay and who does not fall within regulation 11(1)(b) or, as the case may be, regulation 18(1)(b), there shall be no liability to pay additional statutory paternity pay in respect of the week in which the person does that work.

(2) In a case falling within paragraph (1), the person shall notify the person liable to pay additional statutory paternity pay within 7] days of the first day during which he works during the statutory pay period.

(3) The notification mentioned in paragraph (2) shall be in writing, if the person who has been liable to pay additional statutory paternity pay so requests.

(4) In a case where an employee does any work on any day, under a contract of service with an employer who is liable to pay him additional statutory paternity pay, for not more than 10 such days during his additional statutory paternity leave period, whether consecutive or not, additional statutory paternity pay shall continue to be payable to the employee by the employer.

⁽²⁴⁾ 1992 c.4. Sections 35(3)(a)(i), was amended by the Work and Families Act 2006 Schedule 1 paragraph 6.

⁽²⁵⁾ Section 171ZN(3) was amended by the Work and Families Act 2006 Schedule 1 paragraph 21(2).

⁽²⁶⁾ Section 165(4) was amended by the Work and Families Act 2006 Schedule 1 paragraph 7(3).

Cases where there is no liability to pay additional statutory paternity pay

21.—(1) There shall be no liability to pay additional statutory paternity pay in respect of any week—

- (a) during any part of which the person entitled to it is entitled to statutory sick pay under Part II of the Act;
- (b) following that in which the person claiming it has died; or
- (c) subject to paragraph (2), during any part of which the person entitled to it is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended).

(2) There shall be liability to pay additional statutory paternity pay in respect of any week during any part of which the person entitled to it is detained in legal custody where that person—

- (a) is released subsequently without charge;
- (b) is subsequently found not guilty of any offence and is released; or
- (c) is convicted of an offence but does not receive a custodial sentence.

Additional statutory paternity pay and contractual remuneration

22. For the purposes of section 171ZG(1) and (2) of the Act, the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

- (a) by way of remuneration;
- (b) for incapacity for work due to sickness or injury;
- (c) by reason of the birth or adoption of a child.

Avoidance of liability for additional statutory paternity pay

23.—

(1) A former employer shall be liable to make payments of additional statutory paternity pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and his contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for additional statutory paternity pay.

(2) In a case falling within paragraph (1)—

- (a) the employee shall be treated as if he had been employed for a continuous period ending with the earliest date that he could have been entitled to additional statutory paternity pay; and
- (b) his normal weekly earnings shall be calculated by reference to his normal weekly earnings for the period of 8 weeks ending with the last day in respect of which he was paid under his former contract of service.

General provisions applicable to additional statutory paternity pay

24.—

(1) The provisions of Part 6 of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (Statutory Paternity Pay and Statutory Adoption Pay: Provisions applicable to both statutory paternity pay and statutory adoption pay) shall apply to additional statutory paternity pay as they apply to ordinary statutory paternity pay⁽²⁷⁾, subject to paragraphs (2) to (6) below.

⁽²⁷⁾ The Work and Families Act 2006 (c.18) section 11(2) provides that any reference to statutory paternity pay in an instrument made before the commencement of the relevant parts

(2) References in regulations 31(1), 39(3)(f), 41 and 42(2), 43(1)(a) of those Regulations to statutory paternity pay shall be taken to include references to additional statutory paternity pay.

(3) References in regulation 40(2) of those Regulations to statutory paternity pay (birth) and statutory paternity pay (adoption) shall be taken to include references to additional statutory paternity pay (birth) and additional statutory paternity pay (adoption).

(4) The references in regulation 33(1) of those Regulations to sections 171ZA, 171ZB and 171ZL of the Act shall be taken to include references to sections 171ZEA and 171ZEB of the Act.

(5) The reference in regulation 43(2) of those Regulations to sections 171ZD of the Act shall be taken to include reference to section 171ZED.

(6) The reference in regulation 43(2) of those Regulations to the paternity pay period shall be taken to include reference to the additional paternity pay period.

(7) Regulation 44 of those regulations (liability of the Board to pay statutory adoption pay in cases of legal custody or imprisonment) shall be replaced by regulation 25.

Liability of the Board to pay additional statutory paternity pay in cases of legal custody or imprisonment

25. Where—

- (a) there is liability to pay additional statutory paternity pay in respect of a period which is subsequent to the last week falling within paragraph 1(c) of regulation 23], or
- (b) there is liability to pay additional statutory paternity pay during a period of detention in legal custody by virtue of the provisions of paragraph (2) of that regulation,

that liability shall, notwithstanding section 171ZED of the Act, be that of the Board and not the employer.

Date _____
Parliamentary Under Secretary of State
Department _____
Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the powers in the Work and Families Act (“the Act”) to introduce a new entitlement for employees who are fathers and partners of mothers or adopters to receive a new statutory payment of additional statutory paternity pay, in certain circumstances when they are taking up the new entitlement to additional paternity leave also introduced by the Act. The relevant provisions are incorporated by the Act into the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”).

The entitlement to payment of additional statutory paternity leave, and the conditions for such an entitlement to arise, are set out in regulation 4 in the case of the birth of a child and in regulation 11 in the case of the adoption of a child.

Those regulations set out conditions for entitlement that must be satisfied by the person claiming the entitlement, and also by the mother or adopter (or, in a case where there are two adopters, the other adopter who has chosen to be the adopter and would be the person claiming statutory adoption pay rather than paternity pay) of the child. The conditions relate to requirements for continuous employment with the employer, relationship with the mother or adopter and with the child, and notice and evidential requirements to be provided to the employer.

of that Act is to be read in relation to any time thereafter as a reference to ordinary statutory paternity pay.

Application of the Administration Regulations

3. The Administration Regulations shall apply to additional statutory paternity pay as they apply to ordinary statutory paternity pay⁽³²⁾ and references in those regulations to ordinary statutory paternity pay shall be read as including references to additional statutory paternity pay, save that for the purposes of their application to additional statutory paternity pay those regulations shall be read with the following modifications.

4. In regulation 2(1) (interpretation)—

(1) in the definition of “paternity leave”, “section 80A or section 80B” shall be read as “section 80AA or 80BB”;

(2) in the definition of “paternity pay period”, “section 171ZE(2)” shall be read as “section 171ZEE(2)”;

(3) in the definition of “statutory paternity pay”, “section 171ZA or section 171ZB” shall be read as “section 171ZEA or section 171ZEB”.

5. In regulation 9 (records to be maintained by employers), “section 171ZC(3)(c)” shall be read as “section 171ZEC(3)(c)”.

6. In regulation 11 (provision of information relating to entitlement to statutory paternity pay or statutory adoption pay)—

(1) in paragraph (1) “section 171ZC(3)(c)” shall be read as “section 171ZEC(3)(c)”;

(2) in paragraph (3)(b)(i) “section 171ZA(1)” shall be read as “section 171ZEA(1)”;

(3) in paragraph (3)(b)(ii) “section 171ZB(1)” shall be read as “section 171ZEB(1)”;

7. In regulation 14 (provision of information), paragraph (2) shall be read as including after paragraph (b)—

“(bb) any person who is the mother or adopter of a child in respect of whom any person is claiming to be entitled to additional statutory paternity pay”.

Application of the Weekly Rates Regulations

8. The Weekly Rates Regulations shall apply to additional statutory paternity pay as they apply to ordinary statutory paternity pay⁽³³⁾.

Date

Name
Parliamentary Under Secretary of State
Department

⁽³²⁾ Section 11(2) of the 2006 Act provides that any reference to statutory paternity pay in any instrument or document made before the commencement of the relevant provisions of that Act is to be read as a reference to ordinary statutory paternity pay.

⁽³³⁾ Section 11(2) of the 2006 Act provides that any reference to statutory paternity pay in any instrument or document made before the commencement of the relevant provisions of that Act is to be read as a reference to ordinary statutory paternity pay.

Annex B: The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone: 020 7215 0412
Email: Babatunde.Idowu@BIS.gsi.gov.uk

Annex C: List of Individuals/Organisations consulted

4children
11million (Children's Commissioner)
Advisory, Conciliation and Arbitration Service
Association of Colleges
Association of Train Operating Companies
British Chambers of Commerce
British Retail Consortium
BLISS
Chartered Institute of Personnel and Development
Chartered Management Institute
Chemical Industries Association
Daycare Trust
Engineering Employers Federation
Employment Lawyers Association
Equality and Human Rights Commission
Equality Commission for Northern Ireland
Fatherhood Institute
Families need Fathers
Family and Parenting Institute
FEB (Families, Education and Business) Committee
Federation of Small Businesses
Fostering Network
Grandparents Plus
Gingerbread
Horticultural Trades Association
Institute of Directors
Institute of Employment Studies
Law Society
Local Government Employers
Maternity Action
NASUWT
One Parent Families
One plus One
PriceWaterHouse Coopers
Relate
The Confederation of British Industry (CBI)
The Institute of Payroll Professionals
The Mothers Union
The Public and Commercial Services Union
Trades Union Congress
Twins and Multiple Births Association (Tamba)
UK Resource Centre for Women in Science, Engineering and Technology
Union of Shop, Distribution and Allied Workers
UNISON
UNITE
Universities and Colleges Employers Association
Working Families

Annex D: Partial Impact Assessment

Summary: intervention and options		
Department/agency: Business, Innovation and Skills	Title: Impact Assessment of Additional Paternity Leave and Pay	
Stage: Consultation	Version: Draft 1	Date: 20 September 2009
Related publications:		

Available to view or download at:

<http://www.berr.gov.uk/files/file52940.pdf>

Contact for enquiries: Karen Haseldine /Sheila Honey Telephone: 020 7215 5531/6984

What is the problem under consideration? Why is government intervention necessary?

The Government recognises that families have diverse needs, and want more choice in how they balance work and caring responsibilities. In addition, there is a growing body of evidence that fathers can play an important part in their child's development from birth through to adolescence.

Fathers now contribute around a third of all time spent by parents in caring for their children. Recent survey evidence suggests that fathers would like to be even more involved. Many fathers want to be able to spend more time helping to bring up their children and have greater choices about balancing their work and caring responsibilities.

What are the policy objectives and the intended effects?

The Government has already taken significant steps to enable fathers to play a bigger role in bringing up their children with parental leave, two weeks paid paternity leave and the right to request flexible working hours. Introducing Additional Paternity Leave and Pay (APL&P) aims to give families more choice about their caring arrangements during the first year of life and so increase fairness. This will respond to the growing number of fathers who want greater opportunities to care for their child.

What policy objectives have been considered? Please justify any preferred option

Consultations were carried out in March 2006 which considered three options for eligibility for leave and pay: leave conditional upon a father having been eligible for Statutory Paternity Leave, in other words, will have been with his employer for the 60 weeks prior to the start of APL; leave conditional upon a father having been in continuous employment with his employer for one year, and leave conditional upon a father having been in continuous employment with his employer for the 26 weeks prior to the start of APL.

It has been decided that the eligibility for leave and pay should follow the first option. This option is felt to impose minimal additional burdens on businesses and will keep the administration as straightforward as possible since it will build on existing arrangements for employees who take up paternity and adoption leave and pay entitlements.

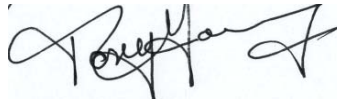
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

BIS regularly undertakes evaluations of maternity and paternity rights in conjunction with the Department for Work and Pensions (DWP). A survey of fathers will be undertaken once Additional Paternity Leave has been implemented in April 2011.

Ministerial sign-off for consultation stage Impact Assessment

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by:



Date: 25-09-2009

Summary: analysis & evidence

Policy option	Description Additional Paternity Leave and Pay
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Costs		
ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'	
One-off (transition)	Yrs	Cost to the Exchequer in implementing systems to manage APL&P (£8m) Costs to employers for covering absence (£0.5 to £10.3m) Employers' staff time spent on setting up administration systems for APL&P (£1.7m to £5m) Employers' staff time spent on administration of APL&P (£0.14m to £0.5m)
£8.6m – £11.9m	1	
Average annual cost (excluding one-off)		
£1.95m-£14.6m	Total cost (PV)	£163 – £301mm
Other key non monetised costs by 'main affected groups'		
Costs to the Exchequer and employers should fathers' leave not offset that which would have been taken by the mother; costs for DWP for mothers in receipt of Maternity Allowance.		

Benefits		
ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
One-off	Yr	No evidence is available to quantify benefits.
£		
Average annual cost (excluding one-off)		
£	Total Benefit (PV)	£
Other key non monetised benefits by 'main affected groups'		
More flexibility over childcare arrangements, increased opportunity for fathers to spend more time with their children so increasing fairness; greater connection of women to workplace; reduced gender gap in employment.		

Key assumptions/sensitivities/risks:

Estimated take-up of Additional Paternity Leave will be between 4% and 8% of eligible fathers. Amount of time take is unlikely to be greater than 13 weeks but could be considerably less.

Price base year: 2009	Time period (years) 10	Net benefit range (NPV) £	Net Benefit (NPV best estimate) £
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What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	April 2011
Which organisation(s) will enforce the policy?	Tribunals Service
What is the total annual cost of enforcement for these	£ N/A
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Yes

What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro £1.71	Small £10.60	Med £55.69	Large £1,052.41
Are any of these organisations exempt?	No	No	N/A	N/A

Key	Annual costs and benefits: constant prices	(Net) Present Value
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Evidence Base (for summary sheets)

A: Strategic Overview

1. The Government has set out clear commitments to ensure every child gets the best start in life and to give parents more choice about how to balance their work and family responsibilities. There is a growing body of evidence that fathers can play an important part in their child's development from birth through to adolescence.
2. Since the 1970s fathers have been spending increasing amounts of time with their children. Fathers now contribute around a third of all time spend by parents in caring for their children. Recent survey evidence suggests that fathers would like to be even more involved.
3. The Government has already taken significant steps to enable fathers to play a bigger role in bringing up their children with parental leave, two weeks paid paternity leave and the right to request flexible working hours. However many fathers want to be able to spend more time helping to bring up their children and have greater choices about balancing their work and caring responsibilities.

B: The Issue

4. In the Work and Families Act 2006 the Government introduced a package of measures to give families more choice and flexibility in caring for their children during the first year of life. This was in response to a growing demand for fathers to have greater opportunities to care for their child and be the primary carer.
5. 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). It has now been agreed that BIS will now implement APL to be in place for parents of babies due on or after 3 April 2011.
6. The new system will give fathers a right to a maximum of six months additional paternity leave, which can be accessed once the mother has returned to work. Mothers are entitled to 52 weeks maternity leave, of which 39 weeks are paid (either Statutory Maternity Pay (SMP) or Maternity Allowance (MA)). The first 26 weeks of this leave will be reserved for mothers. If the father takes leave during the mother's Maternity pay period he will receive ASPP at a flat rate that is equivalent to SMP (currently £123.06).

Consultation

7. On 9 March 2006 the Government published a consultation document seeking views on the detailed aspects of the APL&P scheme.³⁴ The consultation closed on 31 May 2006. This consultation followed publication of the Work and Families Bill, introduced in Parliament in October 2005, and

³⁴ "Work and Families – Choice and Flexibility. Additional Paternity Leave and Pay." March 2006; URN 06/639. www.berr.gov.uk/files/file25024.pdf

publication of the Government's Response³⁵ to an earlier, wide-ranging consultation in spring 2005.³⁶

8. The response acknowledged that there were still aspects of the administration of APL&P that needed further work. A second consultation was published in May 2007³⁷ and 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. The options considered are set out in Section D below.

Procedural Issues

9. Secondary regulations will set out the details of this scheme; policy proposals for these regulations were set out in the 2006 consultation document published and in the Government Response to the consultation. 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.³⁸
10. 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 APL&P will not affect these entitlements³⁹.
11. 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.
12. 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) reduced the administrative and policy costs to employers of the overall package.
13. BIS is strongly committed to better regulation and to ensuring reforms deliver whilst minimising burdens. The Government Response set 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.bis.gov.uk/bbf/better-regulation/challenge-red-tape/views/page24687.html

C. Objectives

14. 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.

³⁵ "Work and Families: Choice and Flexibility – Government Response to public consultation" October 2005; URN 05/1298. www.berr.gov.uk/files/file16317.pdf

³⁶ "Work and Families: Choice and Flexibility. A Consultation Document" February 2005; URN 05/847. www.berr.gov.uk/files/file11517.pdf

³⁷ "Work and Families: Additional Paternity Leave and Pay Administration Consultation" May 2007; URN 07/788. www.berr.gov.uk/files/file39396.pdf

³⁸ "Work and Families: Choice and Flexibility, DTI Final Regulatory Impact Assessment, October 2005". Available here: <http://www.berr.gov.uk/files/file19314.pdf>

³⁹ Though they will be renamed as Ordinary Statutory Paternity Pay and Ordinary Paternity Leave, respectively.

15. It is difficult to estimate the take-up by fathers initially, but the aim is to build a modern system of statutory payments that is flexible enough to accommodate parents' reasonable expectations of choice in how their care for their children.

D: Options Identification

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

(1) Timing of start of leave

17. Leave can be taken from a set time (20 weeks) after the birth of a child.
18. 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 set 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

19. Three options were considered in this 2006 consultation:
- I. Leave conditional upon a father having been eligible for Statutory Paternity Leave⁴⁰ and also having been in continuous employment with his employer up to the start of APL. In other words, will have been with his employer for the 60 weeks prior to the start of APL;
 - II. 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;
 - III. Leave conditional upon a father having been in continuous employment with his employer for the 26 weeks prior to the start of APL. No requirement for a father to have been eligible for Statutory Paternity Leave (SPL).
20. It has been decided that the eligibility for leave and pay should follow option 1, which is that leave is conditional upon a father having been eligible for Statutory Paternity Leave. This option is felt to impose minimal additional burdens on businesses and will keep the administration as straightforward as possible since it will build on existing arrangements for employees who take up paternity and adoption leave and pay entitlements.

(3) Eligibility for and level of Additional Statutory Paternity Pay

21. 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 be payable will depend upon the

⁴⁰ 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.

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.

22. The consultation document set out the requirement for APL to be taken in one continuous block. 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. It was decided that ASPP should be paid on the flat rate equivalent to SMP.

(4) Administration of Additional Paternity Leave

23. The consultation to date with stakeholders has highlighted the preference for an administration system that is ‘light touch’, resulting in a simple and straightforward yet robust process. With this in mind we believe that the administration should build on existing arrangements for employees who take up maternity, paternity and adoption leave and pay entitlements.
24. It is proposed that the father and mother self-certify to the father’s employer key personal facts affecting the father’s eligibility. The onus would therefore be on the parents to provide the necessary information within the set timescales⁴¹

E: Analysis of Options

Number of beneficiaries

25. 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.

Table 1: Estimated eligibility for Additional Paternity Leave and Pay (projection for 2011-2012)

	Number of fathers
	Option.1 (based on 60 weeks’ service)
Eligible for leave and pay	258,632

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

26. 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 BIS Maternity and Paternity Rights 2005 Survey⁴² provides

⁴¹ The Government has proposed that an employee will be required to give a minimum of 8 weeks’ notice of his intention to take APL&P. This will mirror the minimum notice period required by a mother to indicate that she wishes to return to work early from her maternity leave. See the consultation document for more information on the proposed process and timelines.

⁴² 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.berr.gov.uk/files/file27446.pdf

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.
27. 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 2.
28. 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.⁴³ Furthermore, while the initial take-up is predicted to be modest, it may increase marginally over time if this policy encourages a culture more favourable to fathers' involvement with children in their first year.
29. It should also be noted that in the first year, because APP&L will be implemented for babies due on or after April 2011 and because fathers can only take leave once the baby is 20 weeks old (effectively half way through the financial year), uptake in the first year is only 50% as fathers eligible would not be able to take leave until the 2nd half of the first year.

Table 2: Estimated take up of Additional Paternity Leave and Pay (projection for 2011/12)⁴⁴

	Number of fathers Option 1 (60 weeks' service)
All fathers who take up Additional Paternity Leave and Pay	10,000 – 20,000

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

30. A small number of fathers will be eligible for APL but not ASPP, as they earn less than what would amount to the Lower Earnings Limit (currently £95 per week) and are therefore not eligible for statutory payments. Analysis of data from the Annual Survey of Hours and Earnings, around 4.5% of male

⁴³ These predictions represent 4-8% of eligible fathers in the UK. Figures from Scandinavian countries, when operating similar systems indicate that where parents can share leave, the proportion of fathers taking leave was fairly low, ranging from 4% in Finland to 16% in Iceland. It is only when quotas are introduced, does take up increase. Recent figures from Denmark (Statistical Yearbook) show that even with generous funding, only 8% of all leave is taken by fathers and mostly in the earlier periods. 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 2009*", (Awaiting publication) BIS Employment Relations Research Series No. 102.

⁴⁴ NB: These figures are rounded to the nearest thousand for ease of reference, but cost calculations in this RIA use the precise underlying figures.

employees earned less than this limit in 2008/09⁴⁵ 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 IA 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 LEL before the birth of the child, but more than the LEL by the time he wanted to take APL - but these variations are likely to be very small and are not quantified here.

31. 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 life⁴⁶. 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.
32. Employers may face an additional impact in making arrangements for the employees' absence in these specific circumstances as they may take longer periods of Additional Paternity Leave than would otherwise be available to them. However as the aggregate impact of this policy will be negligible due to the few cases, these costs are not quantified.

Timing and Duration of ALP

33. Analysis of take-up and cost of APL&L carried out in 2005-2007 was based on an assumption that paid maternity leave would be extended from 39 to 52 weeks and that fathers could 'step in' and takeover the mother's paid leave from week 27 onwards. In that situation the mother could return to work and the father would be entitled to claim ASPP⁴⁷ between weeks 27 and 52, whereas currently fathers would only be entitled to ASPP between weeks 27 and 39.
34. On this basis it was estimated that between 4% and 8% of eligible fathers would take up APL giving overall numbers affected of between 10,000 and 19,000. It was assumed on average fathers would take 13 of the 26 weeks available to them. 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

⁴⁵ In fact the cut-off is equivalent to £120.94 a week, as the flat rate represents 90% of the earnings level.

⁴⁶ 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.

⁴⁷ It is estimated that in 2011/2012, SMP will be £125.30 per week.

transfer. The average response was 11 weeks. However, as this response was given in the context of existing maternity leave entitlements (26 weeks), it is possible that the actual figure under a 39 week and 52-week maternity leave entitlement would be higher.

35. Maternity leave lasts for a maximum of 52 weeks. 39 weeks are covered by either Statutory Maternity Pay or Maternity allowance, with weeks 40 to 52 remaining unpaid. Under the current proposal where the mother returns to work, the father can take leave in either paid or unpaid periods or both. This is likely to affect the take-up, timing and duration of additional leave taken by fathers.
36. At this stage it is not possible to conduct detailed analysis of what the effects will be on the number of fathers taking APL&P and what the costs may be. Costs have therefore been provided based on a range of durations of two weeks, six weeks and 13 weeks to cover the likely durations under both 39 and 52 weeks paid maternity leave.

Replacement

37. 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.
38. The calculations in this IA are based on the assumption that leave taken by the father offsets that which would have been taken by the mother. However, there is the possibility that only part of the leave taken by the father will replace time that would otherwise have been taken by the mother. At this stage we do not have the evidence to assess the extent of replacement but will be monitored in further research.⁴⁸
39. There will however be some Exchequer costs relating to the small proportion of fathers whose leave will clearly be additional to that of the mother. Recent DWP research⁴⁹ found that 84% of mothers take all their entitlement to paid leave. A small proportion therefore, always planned to return to work early irrespective of whether APL is available. In those cases, if the father takes APL there will be a small additional cost since the costs of paying ASPP will not be directly offset by the savings in SMP. It is not possible to assess what proportion of the partners of those who go back early would actually take APL. Some of those who go back early will be lone parents and some will have gone back early because they need two incomes.

Costs

40. 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.

⁴⁸ 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.

⁴⁹ Maternity rights and mothers employment decisions, DWP Research Report No 496, 2008) <http://research.dwp.gov.uk/asd/asd5/rports2007-2008/rrep496.pdf>

To Employers

- Covering the cost of absence where the net additional cost was calculated.
- Direct policy cost due to differential in reclaim rates.
- Admin cost of implementing APL/ASPP.

To the Exchequer:

- Admin cost of implementing and running the system.
- Direct policy cost of paying ASPP.

41. The prevailing flat rate of pay is estimated to be £125.30 per week for the year 2011/12.⁵⁰
42. 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.

Direct policy costs to Employers

43. The direct policy costs of APL&P reflect the weekly payments made to fathers who receive ASPP. Since the calculations in this IA are based on the assumption that leave taken by the father offsets that which would have been taken by the mother, and policy costs will be offset to by the reduction in total expenditure on Statutory Maternity Pay as mothers will be returning to work early. There are therefore, no direct policy costs.
44. As mentioned in paragraph 38 above, there will be a small proportion of fathers whose leave is clearly additional to that of the mother. However, given that the numbers are likely to be very small and will only affect larger businesses, it has been assumed that these costs will be negligible.

Cost of absence

45. Employers also face an additional direct cost due to having to cover the absence of those fathers who take up the new right. In calculating these costs, we assume that some employers reorganise existing employees to cover the absence while others hire temporary agency workers.⁵¹ This additional cost depends on the number of fathers who take advantage of the APL&P entitlements, and is based on the range presented in Table 2. Table 4 shows the cost of absence borne by employers due to fathers taking 2, 6 and 13 weeks of leave.
46. 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.)

⁵⁰ The rate for Additional Statutory Paternity Pay will be the same as the rates for Statutory Maternity Pay and Statutory Paternity Pay, currently £123.06 per week. Due to a forecast negative RPI in 2009, it is unlikely that the rate of SMP will change significantly. As stated above, October 2011 is the proposed timing for introduction of these measures: a precise date for introduction has still to be set.

⁵¹ 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.

Table 4: Estimated cost of absence due to proposal to introduce Additional Paternity Leave and Pay (projection for 2011/12)

	£ (millions)		
	2 weeks	6 weeks	13 weeks
Total cost of absence	£0.5m-£1.6m	£1.4m-£4.7m	£3.2m-£10.3m

Source: BIS estimates

47. 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 – One-off costs

48. Table 5 shows the estimated cost of administration borne by employers of mothers and fathers who make use of the APL&P entitlements. As the estimate of the numbers of men who take up their entitlement is low (in terms of the proportion of the male working population) it is assumed that many employers (and in particular small employers) will not adjust their systems immediately once the legislation is passed. Rather, it is assumed that individual employers would amend their HR practices gradually as cases appear, on a 'needs basis'. Furthermore clear and extensive guidance will be made available to employers through a variety of channels, to ease the implementation as much as possible.
49. 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.

Table 5: Estimated administrative costs to employers due to proposal to introduce Additional Paternity Leave and Pay (projection for 2011/12)

	Cost (£ millions)
One-off changes to systems and HR practices (larger employers only)	£1.7 - £5.0

Source: BIS estimates

Administrative costs to employers – Recurring costs

50. Recurring costs, both for individual employers and in aggregate are assumed to be the cost of administering fathers' take up of APL&P.
51. 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 arising is very small. Alongside this, the guidance has been improved to further assist small businesses in handling cases.

52. 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.⁵²

The administrative burden

53. The costs that are presented in the following section mirror those presented in the 2007 Impact Assessment on Administration of APL&P⁵³. These reflect changes to the employer administrative burden baseline as measured by HMRC's standard cost model (SCM).
54. There are several areas of employer compliance for statutory payments that are not covered by the SCM. Although these obligations are not legislative requirements they still form part of the employer compliance regime and as such require costing as part of the wider employer compliance burden:
55. The full costing methodology and key assumptions used for each of these elements is presented in Annex 4.
56. Table 6 below provides a summary of all the additional costs of introducing ASPP. The costs have been estimated as ranging between £0.15 million and £0.46 million based on self-certification. These costings would of course be subject to change should the estimated number of employees claiming ASPP increase significantly above the initial estimates set out in Table 1 above.

Table 6: Summary of Estimated Recurring Costs to Employers under Self Certification

	10,000 recipients		20,000 recipients	
	Main estimate	Upper Limit	Main estimate	Upper Limit
Changes to the P11	£17,200	n.a.	£34,400	n.a.
Changes to the P14&P35	£40,600	n.a.	£81,000	n.a.
Recovery of ASPP	£17,200	n.a.	£34,500	n.a.
Advance funding of ASPP	£600	n.a.	£1,200	n.a.
Partial advance funding of ASPP	£5,200	n.a.	£10,400	n.a.
Payments Deductions records - P30BC/P32 Forms	£2,500 to £12,300	n.a.	£5,110 to £24,700	n.a.
Employee application for ASPP	£9,700	n.a.	£19,200	n.a.
ASPP2 record sheet	£38,200	£95,200	£76,600	£191,400
Changes to current compliance and audit checks	£5,400	£27,000	£10,800	£54,000
Total Costs (2 and 13 week durations)	£137,000 - £145,000	£215,000 - £225,000	£273,000 - £292,800	£431,000 - £458,800

Source: HMRC; * These costs form part of the wider compliance effect and as such are not calculated using only SCM evidence and data

⁵² 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.

⁵³ See Partial Regulatory Impact Assessment – Additional Paternity Leave and Pay – Administration of Additional Statutory Paternity Pay, (May 2007)

Direct policy costs to the Exchequer

57. As indicated in paragraph 38 above, there will be some Exchequer costs relating to the small proportion of fathers whose leave will clearly be additional to that of the mother. HMRC have estimated that this is likely to be in the in the region of £1m for 10,000 recipients and £2.6m for 20,000.

Table 4: Estimated Direct Policy costs to the Exchequer due to proposal to introduce Additional Paternity Leave and Pay

	£ (millions)		
	2 weeks	6 weeks	13 weeks
Cost of ASPP – 10,000 recipients	£0.2m	£0.6m	£1.3m
Cost of ASPP – 20,000 recipients	£0.4m	£1.2m	£2.6m

Source: HMRC estimates

Administrative cost to the Exchequer

58. Administrative costs to the Exchequer were set out in the May 2007 Impact Assessment on administration of ASPP. HM Revenue and Customs (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 £5.5 million by the first year with on-going IT costs of £0.6 million annually. Other administrative costs are expected to be £1.4 million manpower start-up and first year costs, and £0.5 million manpower costs each year thereafter.

Table 7: Estimated administrative costs to HMRC due to proposal to introduce Additional Paternity Leave and Pay

	Cost (£ millions)
One-off administrative set-up and first year cost s	1.4
One-off IT cost	5.5
Recurring administrative cost	0.5
Recurring IT cost	0.6
Total cost (first year)	6.9
Recurring cost (after first year)	1.1

Source: HMRC estimates

Benefits

59. The introduction of Additional Paternity Leave and Pay (APL&P) is expected to have significant economic and non-economic benefits.
60. 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 objectives⁵⁴.
61. 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.⁵⁵ To the extent that Additional Paternity Leave 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.
62. 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.⁵⁶
63. 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

⁵⁴ 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

⁵⁵ Ruhm (2000) and Tanaka (2005), cited in Moss and O'Brien (2006).

⁵⁶ "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

birth of the child.⁵⁷ 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 workplace.⁵⁸ 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.

F: Risks

64. There may be a risk of fraud and obviously the aim will be to minimise this as far as possible. Although checks with third parties may prove useful, the financial and time costs of involving in every case either HMRC and/or the mother's employer in the verification process would be significant and are likely to outweigh the benefit derived.
65. Instead HMRC will introduce a combination of random and risk-based checks on employers and employees. The costs of this have been estimated separately below.

G: Enforcement

66. 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.
67. Full guidance is available at www.direct.gov.uk and www.businesslink.gov.uk. Advice for employers and employees about laws for working parents is also available from Acas. The HMRC Employers' Helpline provides advice to employers about statutory payments in addition to the Employers Handbooks on how to administrate statutory payments which are available on-line.
68. 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.

⁵⁷ 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).

⁵⁸ 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.

69. 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.
70. 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.

H: Summary Table of Costs and Benefits

Table 8: Summary of costs and benefits for introducing Additional Paternity Leave and Pay (projections for 2011/12)

	Estimated costs and benefits (£ millions)		
	2 weeks	6 weeks	13 weeks
<u>COSTS</u>			
Exchequer policy cost	£0.2-£0.4m	£0.6-£1.2m	£1.3-£2.7m
Exchequer admin one off costs	£6.9m	£6.9m	£6.9m
Exchequer admin recurring costs	£1.1m	£1.1m	£1.1m
Employer cost	£2.3m-£7.1m	£3.2m-£10.1m	£5.1m-£15.8m
of which direct policy cost	-	-	-
of which cost of absence	£0.5m-£1.6m	£1.4-£4.7m	£3.2m-£10.3m
of which administration cost – one off	£1.7m-£5.0m	£1.7m-£5.0m	£1.7m-£5.0m
of which administration cost – recurring	£0.14m-£0.43m	£0.14m-£0.4m	£0.15m-£0.5m
Total quantifiable costs	£10.6m-£15.4m	£11.9m-£19.4m	£14.4m-£26.5m
<u>BENEFITS</u>			
Total benefits	Positive (more flexibility over childcare arrangements, opportunity for fathers to spend more time with their children; greater connection of women to workplace; reduced gender gap in employment)		

Source: BIS / HMRC

J: Monitoring and evaluation

BIS conducts a number of key benchmark surveys across the diverse set of policy areas within Employment Relations to identify specific issues for both policy development and for monitoring and evaluation following implementation.

BIS regularly undertakes evaluations of maternity and paternity rights with in conjunction with the Department for Work and Pensions (DWP). The current project includes a survey of fathers to provide information on take up, experiences and views on paternity rights and benefits. The main aim of this survey is to identify the impact of the 2007 legislative changes and to provide a baseline against which the impact can be measured. Evaluation will be undertaken once Additional Paternity Leave has been implemented.

Specific Impact Tests: checklist

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annex 1:

Specific impact tests

Small Firms Impact Test

71. 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.
72. 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.
73. Furthermore the BIS 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.⁵⁹

Race equality impact assessment

74. 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 IA in October 2005⁶⁰. 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.

Gender Equality

75. This proposal concerns gender equality in that it is providing fathers more opportunity to look after their children in the first year of life. Fathers now

⁵⁹ According to data from Enterprise Directorate in BIS in 2007 there were around 1.298 million business in the UK employing 25.9 million employees. Around 97% (around 1.259 million) of all businesses employ fewer than 50 employees. Data for spring 2009 from the Labour Force Survey show that 45% 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 9,206 male employees working in small business. Therefore in any given year the APL&P entitlement is estimated to affect at most 0.73%, or 1 in every 137, of all small businesses.

⁶⁰ www.berr.gov.uk/files/file26943.pdf

contribute around a third of all time spend by parents in caring for their children and evidence suggests that fathers would like to be even more involved.

76. The Government has already taken significant steps to enable fathers to play a bigger role in bringing up their children with parental leave, two weeks paid paternity leave and the right to request flexible working hours. APL will add to these provisions giving fathers further time off to bring up their children and provide greater choices about balancing their work and caring responsibilities.
77. APL and ASPP will contribute to building a modern system of statutory payments that is fair and flexible enough to accommodate parents' reasonable expectations of choice in how they care for their children.

Competition Assessment

78. The proposed changes would apply to all firms and 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. Therefore, the introduction of an entitlement to APL&P may have more of an impact on these employers than on employers whose workforce is predominately female.
79. 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.
80. Table 8, 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, and in any case these sectors would be familiar with Statutory Paternity leave and pay, on which much of the administration for this scheme is based.

Table 8: Sectoral employment by gender (2006)

Sector	Employment (thousands)	Men as proportion of all employed in this sector
Agriculture and fishing	792	51%
Energy and water	197	74%
Manufacturing	2,942	75%
Construction	2,246	88%
Distribution, hotels & restaurants	6,857	49%
Transport & communications	1,845	75%
Finance and business services	6,483	56%
Education, health and public administration	8,145	30%
Other services	1,981	50%
All	31,188	53%

Source: Labour Force Survey Q1 (Jan to Mar) 2009

81. 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.
82. 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.

Annex 2:

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	38%
(In both cases the father must have used at least a week of paternity leave)	
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: BIS calculations based on the Maternity and Paternity Rights Survey of Parents 2005	

Annex 3:

Additional Statutory Paternity Pay

A. Introduction

1. Statutory Paternity Pay is **currently** paid to eligible fathers for one or two weeks when their wife, partner or civil partner gives birth to or adopts a child. In order to qualify for SPP four criteria must be satisfied:
 - That the claimant is the biological father or adopter of the child or is the mother's husband, partner or civil partner or have responsibility for the child's upbringing.
 - That the claimant has had continued work with the same employer without a break for at least 26 weeks by the 15th week before the baby's due date.
 - That the claimant continues to work for that employer without a break up to the date that the child is born.
 - That they are earning an average of at least £95 (the lower earnings limit) per week (before tax).
2. If these four criteria are satisfied then the father will be entitled to **one to two** consecutive weeks SPP which amounts to £123.06 per week or 90% of earnings (whichever is less).
3. Although the father is entitled to up to two weeks of statutory leave and pay when their child is born, they are not entitled to any pay over and above this. Statutory Maternity Pay (SMP) however, may be paid to the mother of the child for up to 39 weeks (for babies due on or after the 1st April 2007). At present, the parents do not have discretion over whether the mother or the father of the child is the main carer in terms of the Statutory Payments made, with the exception of parents who are adopting a child together as they are able to choose which partner is entitled to SAP and SPP (adoption).
4. Additional Statutory Paternity Pay is a significant part of the Government's Work and Families agenda. It is designed to provide greater choice and flexibility to parents in how they combine work with their caring responsibilities particularly in the first year of the baby's life.
5. ASPP will allow qualifying fathers to take up to 13 weeks off work with pay and a further 13 weeks off without pay in order to care for their new born child (or newly adopted child). The amount that will be payable is likely to be a flat rate of £123.06 per week or 90% of the father's average weekly earnings (AWE), whichever is the lesser number. The leave is not likely to begin until the child is 20 weeks old and cannot be taken after the child's first birthday. Qualifying conditions for ASPP will include: the baby's birthday, the father's employment history and how long they have worked for their current employer, the father's earnings record, the mother's entitlement to statutory maternity pay (SMP), statutory adoption pay (SAP) or maternity allowance (MA), the mother returning to work, and the mother having unused SMP, SAP or MA when returning to work.
6. This document summarises the additional administrative and compliance burden of a possible option for administering Additional Statutory Paternity Pay (ASPP): This option would require self certification by the parents.
7. In practice, this change to current Statutory Payments policy is likely to have a significant impact on the overall compliance burden of employers who have workers that choose to take-up ASPP as a number of additional obligations will be imposed.
8. The compliance costs that are set out in the following document focus on the areas that are likely to be the most significant in terms of additional employer burdens. To identify

the net cost likely to accrue to employers it is useful to set out the additional processes that employers will be required to meet if any of their employees 'take-up' ASPP.

Process for father's employer	Actions/Notes
1. Confirm employee's a) entitlement to Additional Paternity leave and ASPP, and b) timing / duration.	<ul style="list-style-type: none"> • Receive SC3 Form from employee • Establish whether the individual has worked enough to qualify and meets other eligibility criteria (new employer checklist) • Notification of employee eligibility • Notification of non-eligibility
2. Calculating ASPP entitlement	<ul style="list-style-type: none"> • Establish the average weekly earnings in the Set Period (i.e. Does the employee earn enough?) • This period ends with the last normal payday on or before, the end of the 15th week before the week baby due, and starts with the last normal payday at least eight weeks before that. In the eight weeks prior to the date of the end of the Set Period the employee's average earnings need to be at or above the Lower Earnings Limit (LEL).
3. Calculate the amount of ASPP due:	<ul style="list-style-type: none"> • The lesser of £108.85 per week or 90% of average earnings (whichever is less)
4. Calculate the amounts recoverable by deduction from monthly / quarterly PAYE and NICs	<ul style="list-style-type: none"> • Small employers (£45,000 or less in Class 1 NICs in previous year) – entitled to 100% recovery plus 4.5% compensation • Larger employers (over £45,000 in Class 1 NICs in previous year) – entitled to 92% recovery only.
5. Deduct amounts recoverable by deduction from monthly / quarterly PAYE and NICs	
6. Calculate the amounts recoverable by advance funding claim (where deduction from monthly / quarterly PAYE and NICs does not cover full amounts recoverable)	
7. Application for Advance funding	
8. Pay ASPP to the employee, net of payroll deductions:	<ul style="list-style-type: none"> • Make net payments to employees each pay period
9. Pay Income Tax and NICs and other payroll deductions and contributions	<ul style="list-style-type: none"> • Employee Income Tax and NICs etc deductions on the amount paid • Employer NICs to be paid (also employer pension contributions etc)
10. Keep and maintain in-year records:	<ul style="list-style-type: none"> • P11 deductions working sheet • P30(BC) payslip booklet • P32 employer's payment record • ASPP2 record sheet for recording payments of ASPP
11. End of Year Returns	<ul style="list-style-type: none"> • Employer to complete P14 and P35 forms

9. There are two main costings sections set out in the following document, those that are derived using HMRC's standard cost model (SCM) which are termed 'administrative burdens' and those that fall outside the scope of the SCM which we term the 'wider compliance costs'. The SCM only costs legislatively binding administrative burdens, which doesn't in reality cover the entire employer compliance regime. Where there is a clear burden to employers that isn't covered by the SCM we analyse the burden using all available data.

B. Framework for analysis

10. The basic data used to assess the additional administrative and compliance burden imposed on employers from the introduction of ASPP are set out in the following section.
11. Policy advisers from BIS have projected that between 10,000 and 20,000 fathers will become recipients of ASPP. HMRC estimate this will affect roughly 6,316 employers (for 20,000 recipients) which translates to 3158 employers for 10,000 recipients. Further, we assume a wide range of take up of 2 weeks, 6 weeks and the full 13 weeks with pay entitlement. Using the HMRC data on the distribution of SPP recipients and employers (the best proxy available) we assume that employer numbers (by size) that will be affected are as outlined in table 1 below⁶¹. The table further apportions the populations of employers by whether the employer 'insources' - in that they meet their payroll obligations 'in house' or whether they 'outsource' - they pay a payroll agent to meet their obligations on their behalf. These disaggregations are made using SCM standard distributions

Table 1: Distributions of affected employers and recipients

Employer size band	Number of employers affected			Number of ASPP recipients		
	LOWER LIMIT	UPPER LIMIT	%	LOWER LIMIT	UPPER LIMIT	%
B: Micro: 1-9 employees – Insourced	294	587	9.3%	342	683	3.4%
B: Micro: 1-9 employees – Outsourced	411	821	13.0%	477	955	4.8%
C: Small: 10-49 employees – Insourced	730	1,460	23.1%	979	1,959	9.8%
C: Small: 10-49 employees – Outsourced	405	811	12.8%	544	1,087	5.4%
D: Medium: 50-249 employees – Insourced	600	1,201	19.0%	1,230	2,461	12.3%
D: Medium: 50-249 employees – Outsourced	237	474	7.5%	486	971	4.9%
E: Large: 250+ employees – Insourced	407	814	12.9%	5,027	10,054	50.3%
E: Large: 250+ employees – Outsourced	74	148	2.4%	915	1,830	9.2%
Total	3,158	6,316	100.0%	10,000	20,000	100.0%

*Recipients data are derived from HMRC BROCS data matched to the IDBR. Employer data are also provided by BROCS but the distributions are taken directly from the SCM.

12. In order to assess the additional compliance cost to employers, it is also necessary to attach some monetary value to the time spent in compliance. The wage rates used for the costings in this paper for those who engage in compliance activities are set out in table 2 and are obtained from SCM estimates. The rates found in the SCM are wage rates as of May 2005. As such, the wage rates used for these costings have been updated to 2009 prices in accordance with ONS methodology. The wages given are noted as the 'blended wages' and are weighted averages of wage rates across activities in the SCM.

Table 2: Average hourly wage rates

Employer Size	Blended Wage Rates
Micro: 1-9 employees	£21.81
Small: 10-49 employees	£17.06
Medium: 50-249 employees	£17.06
Large: 250+ employees	£16.57

13. The standard cost model makes the assumption that a normally efficient business will complete payroll on a monthly basis. This is therefore the assumption used to assess the administrative costs to employers. However, when assessing the wider compliance cost the assumption that a normally efficient business will adopt a monthly payroll schedule is dropped and data from the Labour Force Survey (LFS) on employer pay period frequency is used as an alternative assumption. We drop this assumption in order to reflect the realistic compliance burden to employers as closely as possible. The pay period frequencies used are set out in the table below:

⁶¹ The insourcing/outourcing split is derived from the percentage split for each employer size in the SCM.

Table 3: Pay period Frequencies

Employer Size	Micro	Small	Medium	Large
Weekly	38%	29%	22%	15%
Fortnightly	2%	2%	2%	1%
Four weekly	5%	2%	9%	10%
Monthly	54%	66%	67%	74%
Total	100%	100%	100%	100%

Source: LFS employee pay period frequency data

14. Any further assumptions made in order to estimate additional burdens are obligation specific and will be outlined in each relevant section.

C. Calculation of the Potential Compliance Impact

15. The following section sets out the estimated increase in compliance burdens resulting from the core elements of this proposal, and also the key assumptions around each. The additional burden will be calculated using Standard Cost methodology, where possible, and as such will be reflected in an increase in the baseline estimates of HMRC's/BIS's⁶² employer administrative burden. There are also aspects of the costing that make up a wider compliance burden which have been costed separately. It is important for the distinction between these two sets of costs to be made clear at this stage.

Table 4: Summary Table

Option 1 Costs	Estimated costs			
	10,000 recipients		19,000 recipients	
	Main estimate	Upper Limit	Main estimate	Upper limit
Changes to the P11	£17,200	n.a.	£34,400	n.a.
Changes to the P14&P35	£40,600	n.a.	£81,000	n.a.
Recovery of ASPP	£17,200	n.a.	£34,500	n.a.
Advance funding of ASPP	£600	n.a.	£1,200	n.a.
Partial advance funding of ASPP	£5,200	n.a.	£10,400	n.a.
Payments Deductions records - P30BC/P32 Forms	£12,300	n.a.	£24,700	n.a.
Employee application for ASPP	£9,700	n.a.	£19,200	n.a.
ASPP2 record sheet	£38,200	£95,200	£76,600	£191,400
Changes to current compliance and audit checks	£5,400	£27,000	£10,800	£54,000
Total	£146,400	£225,000	£292,800	£450,800

* These costs form part of the wider compliance effect and as such are not calculated using only SCM evidence and data

16. The table above provides a summary of all the additional costs of introducing Additional Statutory Paternity Pay (option 1). The costs have been estimated as ranging between roughly £150,000 and £450,000 for option 1. These costings would be subject to a further increase if the number of employees claiming ASPP exceeded BIS's projections.

Option 1 – Self Certification:

The administrative burden

17. The costs that are presented in the following section reflect changes to the employer administrative burden baseline as measured by HMRC's standard cost model.

C1. Changes to the P11 form

⁶² Whether the burden should be added to HMRC's SCM or BIS's equivalent model has yet to be decided

18. At present, every employer is required to complete a P11 deductions workings sheet (or equivalent) in order to keep the necessary information on PAYE and NICS deductions, statutory payments, and student loans deductions. When ASPP is introduced changes will need to be made to the current P11 form in order to facilitate the recording of 'in-year' ASPP payments and deductions. This will require the addition of a new column on the P11 form in order to record the total amount of ASPP paid to the recipient each pay period.
19. It has been assumed that this change will incur a time cost of an additional 2 minutes per employee for employers each time they are required to complete the statutory payments information on the P11 and the deductions calculations that will need to be made on this pay. Taking these assumptions as the basis for the costing, the SCM yields an increase of between £17,000 and £35,000 in administrative costs.

Table 5: Estimated increase in P11 costs

Employer size band	Estimated cost to employers	
	10,000 recipients	20,000 recipients
B: Micro: 1-9 employees – Insourced	1,400	2,800
B: Micro: 1-9 employees – Outsourced	1,500	3,000
C: Small: 10-49 employees – Insourced	1,900	3,800
C: Small: 10-49 employees – Outsourced	1,000	2,100
D: Medium: 50-249 employees – Insourced	1,800	3,700
D: Medium: 50-249 employees – Outsourced	800	1,700
E: Large: 250+ employees – Insourced	7,500	15,000
E: Large: 250+ employees – Outsourced	1,200	2,300
Total	17,200	34,400

C2. Changes to the P14 and P35 forms

20. The P14s and P35s are the employer end of year return forms. Specifically, the employer is required to record: income tax and National insurance deducted from every employee the amount of Statutory Payments paid, received, compensated recovered, and funded in advance, and the amount of student loans deductions paid. With the introduction of ASPP, employers of recipients will be required to meet the reporting and recording obligations for an additional statutory payment. An extra box on the P14 form for reporting the amount of ASPP paid to the employee will be required and two extra boxes will be needed on the P35 form in order to record the amount of ASPP recovered and the amount of NICs compensation of ASPP. In addition, the total costs will also have to be up-rated to reflect the additional calculations and deductions to be made on the pay. The SCM assumes that micro employers (1-9) employees currently spend on average, 5 minutes to complete a P14 form for each of their employees and 5 minutes to complete a P35 form. We assume that by adding an extra box on the P14 form the time spent will increase by 1 minute and for two boxes on the P35 the time spent will be 2 additional minutes. Taking this assumption on board and up-rating for small medium and large employers we estimate the additional costs in the tables below:

Table 6: Estimated additional P14 costs

Employer size band	Total Additional cost	
	3,158 employers	6,316 employers
B: Micro: 1-9 employees – Insourced	£800	£1,500
B: Micro: 1-9 employees – Outsourced	£200	£400
C: Small: 10-49 employees – Insourced	£1,900	£3,800
C: Small: 10-49 employees – Outsourced	£900	£1,700
D: Medium: 50-249 employees – Insourced	£8,400	£16,800
D: Medium: 50-249 employees – Outsourced	£700	£1,400
E: Large: 250+ employees – Insourced	£5,700	£11,400
E: Large: 250+ employees – Outsourced	£200	£500
Total	£18,800	£37,500

Table 7: Estimated additional P35 costs

Employer size band	Total Additional cost	
	3,158 employers	6,316 employers
B: Micro: 1-9 employees – Insourced	£900	£1,800
B: Micro: 1-9 employees – Outsourced	£300	£500
C: Small: 10-49 employees – Insourced	£2,200	£4,400
C: Small: 10-49 employees – Outsourced	£1,000	£2,000
D: Medium: 50-249 employees – Insourced	£9,700	£19,400
D: Medium: 50-249 employees – Outsourced	£800	£1,700
E: Large: 250+ employees – Insourced	£6,600	£13,200
E: Large: 250+ employees – Outsourced	£300	£500
Total	£21,800	£43,500

C3. Recovery of ASPP from HMRC/NIF

21. Currently for Statutory Paternity Pay (SPP), the employer is able to recover 92% of the total paid out to the employee or 100% of SPP if the employer is a “small” business (i.e. the total NIC bill paid over the entire previous year is less than £45,000). The amounts to be recovered must be deducted from other payroll deductions such as PAYE, NIC and student loan repayments that the employer is collecting for the relevant month or quarter. The additional administrative burden has been calculated by up-rating the existing populations in the SCM and is estimated to be between roughly £17,000 and £35,000. No increase in time assumption is required to calculate the additional cost for this burden, as the costs represent a proportion of the internal costs from completing this obligation for other SPs.

Table 8: Recoveries

Employer size band	Estimated cost to employers	
	3158 employers	6316 employers
B: Micro: 1-9 employees – Insourced	£11,000	£22,000
B: Micro: 1-9 employees – Outsourced	£3,100	£6,100
C: Small: 10-49 employees – Insourced	£2,510	£5,020
C: Small: 10-49 employees – Outsourced	£300	£500
D: Medium: 50-249 employees – Insourced	£300	£600
D: Medium: 50-249 employees – Outsourced	£20	£30
E: Large: 250+ employees – Insourced	£100	£100
E: Large: 250+ employees – Outsourced	£0	£10
Total	£17,200	£34,500

C4. Advance Funding from HMRC

22. Where an employer is required to pay ASPP, in certain circumstances, the employer will be able apply to HMRC for advance funding from HMRC. The advance funding cannot be more than 92% of ASPP unless the business is a ‘small’ business. If the business is ‘small’ (i.e. its total NIC for the previous year is £45,000 or less) then the funding can be 100% of SPP plus an additional supplement (4.5%). The application for advance funding

can be made where the ASPP payments due in an income tax month or income tax quarter are greater than the total of the following items for that quarter:

- The PAYE deducted from all employees' emoluments
- The NIC deductions operated on all employees' emoluments
- The student loan deductions collected that month
- Any payments deducted for sub-contractors under the construction Industry scheme
- The Statutory payments the employer is required to pay to his employees.

23. Using information from HMRC's SCM it has been determined that roughly 350 employers (out of the total 6,000) may make an application for advance funding to HMRC. This is based on the data held in the model of proportions of employers that apply for advance funding of other Statutory Payments. As with the recoveries obligation set out above, no time increase assumption is required to calculate the additional cost for this burden, as the costs represent a proportion of the internal costs from completing this obligation for other SPs. Taking these assumptions into consideration it has been estimated that administrative burdens for advance funding will increase by between £600 and £1200.

Table 9: Advance funding

Employer size band	Estimated cost to employers	
	3158 employers	6316 employers
B: Micro: 1-9 employees - Insourced	£363	£726
B: Micro: 1-9 employees - Outsourced	£115	£231
C: Small: 10-49 employees - Insourced	£66	£132
C: Small: 10-49 employees - Outsourced	£10	£20
D: Medium: 50-249 employees - Insourced	£17	£35
D: Medium: 50-249 employees - Outsourced	£2	£4
E: Large: 250+ employees - Insourced	£4	£8
E: Large: 250+ employees - Outsourced	£0	£1
Total	£600	£1,200

24. An additional part of the advance funding procedure had been costed separately in table 10 below and refers to employers applying for partial advance funding to pay the ASPP to their employees: Currently, when an employer has made a payment of SPP he is entitled to recover some or all of the SPP from HMRC. This is usually done by deducting the recoverable amount from the other withholding payments that the employer is making to HMRC for the relevant income tax month or quarter (in the same way discussed above).

25. The other withholding payments include PAYE, NIC, student loan deductions, deductions from payments made to subcontractors under the Construction Industry Scheme.

26. Where these payments are not sufficient to cover the SPP due, the employer can make an application to HMRC for the **difference** to be paid to him. The option to do this will be extended to include ASPP payments with policy implementation.

Table 10: Partial advance funding

Employer size band	Estimated cost to employers	
	3158 employers	6316 employers
B: Micro: 1-9 employees - Insourced	3,270	6,540
B: Micro: 1-9 employees - Outsourced	1,039	2,079
C: Small: 10-49 employees - Insourced	592	1,184
C: Small: 10-49 employees - Outsourced	88	177
D: Medium: 50-249 employees - Insourced	161	322
D: Medium: 50-249 employees - Outsourced	17	35
E: Large: 250+ employees - Insourced	38	76
E: Large: 250+ employees - Outsourced	4	8
Total	£5,200	£10,400

C5. Changes to Current Compliance and Audit Checks

27. A combination of random and risk based checks on employers of ASPP recipients and the employers of the respective mothers will be imposed. For the purpose of these costings it has been assumed that between 1-5% of the 6316 employers will face a general audit per year. This in effect, will increase the auditing and inspection checks population of the SCM (currently 60,000) by between, 0.1% and 0.5% per year for 6,316 employers and between 0.053% and 0.027% for 3158 employers, which will increase costs as illustrated in the table below:

Table 11: Estimated costs from increasing the Audit and Inspection baseline

Segments	Increase in audit and compliance checks									
	3,158 employers					6,316 employers				
	1%	2%	3%	4%	5%	1%	2%	3%	4%	5%
B: Micro: 1-9 employees	£4,500	£8,900	£11,000	£17,800	£22,300	£8,900	£17,800	£22,000	£35,600	£44,600
C: Small: 10-49 employees	£700	£1,400	£1,400	£2,700	£3,400	£1,400	£2,700	£2,700	£5,500	£6,900
D: Medium: 50-249 employees	£200	£400	£400	£800	£1,000	£400	£800	£800	£1,600	£2,000
E: Large: 250+ employees	£100	£100	£100	£300	£300	£100	£300	£300	£500	£700
Total	£5,400	£10,800	£12,900	£21,600	£27,000	£10,800	£21,600	£25,800	£43,200	£54,000

28. It has also been assumed that only internal costs of Audit and Inspection will alter and those companies that outsource will not be affected by additional costs due to the small scale effects of this policy proposal.

The Wider Compliance Burden

29. There are several areas of employer compliance for Statutory Payments that are not covered by the standard cost model. Although these obligations are not legislative requirements they still form part of the employer compliance regime and as such require costing as part of the wider employer compliance burden.

C6. Payments Deductions records - P30BC/P32 Forms

30. The P32 and P30BC forms are designed to help the employer maintain records of when deductions payments have been made to HMRC and help the employer to complete the P35 form. If the employer does not keep detailed records of these payments, then HMRC may ask for payments to be made based on their own estimates. With the introduction of ASPP employers who have employees that are recipients of ASPP will be required to fill in additional information on one of these two forms. In practical terms, two new columns will be required so that the employer can detail the amount of ASPP recovered and the amount of NIC compensation on ASPP.

31. It has been assumed for the purpose of this costing that employers will take an additional 1 minute per pay period to report the recoveries and compensation on the P30BC/P32 form. Assuming that no additional cost will be met by employers that outsource their payroll, we find that the additional compliance burden to be borne by employers will be between £3,000 and £5,000 if the employees take only 2 weeks entitlement, between £6,000 and £12,000 if they take 6 weeks entitlement and between £12,000 and £25,000 if the employees take full 13 weeks entitlement.

Table 12: P30BC/P32 costs

Employer size band	2 weeks duration		6 weeks duration		13 weeks duration	
	Estimated Total Costs		Estimated Total Costs		Estimated Total Costs	
	10,000 recipients	19,000 recipients	10,000 recipients	19,000 recipients	10,000 recipients	19,000 recipients
B: Micro: 1-9 employees – Insourced	£170	£340	£440	£870	£900	£1,800
B: Micro: 1-9 employees – Outsourced	£0	£0	£0	£0	£0	£0
C: Small: 10-49 employees – Insourced	£360	£710	£880	£1,760	£1,800	£3,700
C: Small: 10-49 employees – Outsourced	£0	£0	£0	£0	£0	£0
D: Medium: 50-249 employees – Insourced	£430	£860	£1,020	£2,040	£2,100	£4,200
D: Medium: 50-249 employees – Outsourced	£0	£0	£0	£0	£0	£0
E: Large: 250+ employees – Insourced	£1,600	£3,200	£3,640	£7,270	£7,500	£15,000
E: Large: 250+ employees – Outsourced	£0	£0	£0	£0	£0	£0
Total	£2,550	£5,110	£5,970	£11,950	£12,300	£24,700

C7. Application for ASPP from employee to employer

32. A new form (or change to existing SC3 form <http://www.hmrc.gov.uk/forms/sc3.pdf>) will be required for the employee to make an application to their employer for ASPP. The employer will not be required to complete or amend the form but will be required to keep in on file for three years. The form will also be used by the employer to help assess the employee's entitlement to ASPP. The only real financially tangible burden for this form is the storage costs which would be imposed on large and medium sized employers. The SCM assumes that small and medium sized employers would not require additional storage space for an extra form.

Table 13: Estimated storage costs

Employer size band	Storage cost	
	3,158 employers	6,316 employers
B: Micro: 1-9 employees – Insourced	£0	£0
B: Micro: 1-9 employees – Outsourced	£0	£0
C: Small: 10-49 employees – Insourced	£0	£0
C: Small: 10-49 employees – Outsourced	£0	£0
D: Medium: 50-249 employees – Insourced	£3,200	£6,400
D: Medium: 50-249 employees – Outsourced	£1,300	£2,500
E: Large: 250+ employees – Insourced	£4,400	£8,700
E: Large: 250+ employees – Outsourced	£800	£1,600
Total	£9,700	£19,200

C9. ASPP2 Record Sheet

33. HMRC will provide an ASPP record sheet to all employers who wish to use it, in order for them to keep the necessary details on their employee's Additional Statutory Paternity Pay. This form details the minimum amount of information that the employer is required to keep on ASPP and the form must be kept for at least 3 years after the tax years to which it relates. The information that is required includes: Employee's details (Name, NINO, payroll number), the birth date of the child and entitlement, and information about payments of the Statutory Payment. Based on estimates from IPP, a conservative assumption of 10 minutes to complete this form has been used to calculate the cost to employers.

Table 20: Estimated costs from introducing the ASPP record sheet (10,000)

Employer size band	No of forms processed	Internal cost	Storage	
			cost	Total cost
Micro: 1-9 employees – Insourced	300	£1,200	£0	£1,200
Micro: 1-9 employees – Outsourced	500	£1,700	£0	£1,700
Small: 10-49 employees – Insourced	1,000	£2,800	£0	£2,800
Small: 10-49 employees – Outsourced	500	£1,500	£0	£1,500
Medium: 50-249 employees – Insourced	1,200	£3,500	£3,200	£6,700
Medium: 50-249 employees – Outsourced	500	£1,400	£1,300	£2,700
Large: 250+ employees – Insourced	5,000	£13,900	£4,400	£18,300
Large: 250+ employees – Outsourced	900	£2,500	£800	£3,300
Total	9,900	£28,500	£9,700	£38,200

Table 21: Estimated costs from introducing the ASPP record sheet (20,000 recipients)

Employer size band	No of forms processed	Internal cost	Storage	
			cost	Total cost
Micro: 1-9 employees – Insourced	700	£2,500	£0	£2,500
Micro: 1-9 employees – Outsourced	1,000	£3,500	£0	£3,500
Small: 10-49 employees – Insourced	2,000	£5,600	£0	£5,600
Small: 10-49 employees – Outsourced	1,100	£3,100	£0	£3,100
Medium: 50-249 employees – Insourced	2,500	£7,000	£6,400	£13,400
Medium: 50-249 employees – Outsourced	1,000	£2,800	£2,500	£5,300
Large: 250+ employees – Insourced	10,100	£27,800	£8,700	£36,500
Large: 250+ employees – Outsourced	1,800	£5,100	£1,600	£6,700
Total	20,200	£57,400	£19,200	£76,600

34. As previously, IPP provided a range of time estimates beginning at 10 minutes and increasing to 30 minutes. As such, sensitivity analysis using this range is outlined in the table below:

Table 22: Estimated costs from the ASPP record sheet 10,000 recipients (alternative time assumptions)

Employer size band	10 minutes	20 minutes	30 minutes
Micro: 1-9 employees – Insourced	£1,200	£2,400	£3,600
Micro: 1-9 employees – Outsourced	£1,700	£3,400	£5,100
Small: 10-49 employees – Insourced	£2,800	£5,600	£8,400
Small: 10-49 employees – Outsourced	£1,500	£3,000	£4,500
Medium: 50-249 employees – Insourced	£6,700	£10,200	£13,700
Medium: 50-249 employees – Outsourced	£2,700	£4,100	£5,500
Large: 250+ employees – Insourced	£18,300	£32,200	£46,100
Large: 250+ employees – Outsourced	£3,300	£5,800	£8,300
Total	£38,200	£66,700	£95,200

Table 23: Estimated costs from the ASPP record sheet 20,000 recipients (alternative time assumptions)

Employer size band	10 minutes	20 minutes	30 minutes
Micro: 1-9 employees – Insourced	£2,500	£5,000	£7,500
Micro: 1-9 employees – Outsourced	£3,500	£7,000	£10,500
Small: 10-49 employees – Insourced	£5,600	£11,200	£16,800
Small: 10-49 employees – Outsourced	£3,100	£6,200	£9,300
Medium: 50-249 employees – Insourced	£13,400	£20,400	£27,400
Medium: 50-249 employees – Outsourced	£5,300	£8,100	£10,900
Large: 250+ employees – Insourced	£36,500	£64,300	£92,100
Large: 250+ employees – Outsourced	£6,700	£11,800	£16,900
Total	£76,600	£134,000	£191,400

D. Conclusion

35. This analysis was intended to provide an outline of the potential additional employer compliance costs associated with the introduction of Additional Statutory Paternity Pay and Leave. As always, the costings are heavily reliant on the underlying assumptions. If the recipient populations (for example) were to exceed their estimates, then the resultant cost increases could be considerable.
36. However, if we take on board the assumptions outlined in this document then additional compliance costs of between £220,000 and £920,000 will be incurred for option 1.

Annex 4:

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", BIS Employment Relations Research Series No. 57, June 2006. www.bis.gov.uk/files/file31948.pdf

<i>Country</i>	<i>Length of shared leave</i>	<i>Payment</i>	<i>Father's take-up</i>	<i>Factors affecting take-up</i>
<i>Canada</i>	<p>Up to 35 weeks between the two parents, following immediately after maternity leave.</p> <p>Following an agreement reached in 2005, the Québec Parental Insurance Plan came into effect in January 2006, replacing the maternity and parental leave benefits through the federal Employment Insurance programme. This plan has a number of advantages in terms of the population covered, flexibility in taking the leave and the income replacement.</p>	<p>55 per cent of average insured earnings up to a maximum 'ceiling' of CAN\$435 (€271) per week, and maximum of \$41,000 (€25,576), for the year</p>	<p>Two-thirds (67 per cent) of Canadian men return to work less than one month after birth or adoption, compared to only two per cent of women; 17 per cent fathers take one to five months of leave and ten per cent six to 11 months compared to 12 and 33 per cent of women. While just over half of all mothers (51.5 per cent) take 12 months or more of leave, compared to only four per cent of fathers.</p>	

<i>Country</i>	<i>Length of shared leave</i>	<i>Payment</i>	<i>Father's take-up</i>	<i>Factors affecting take-up</i>
Denmark	<p>32 weeks split between parents. This can be spread over a longer period by the parents returning to work part-time.</p> <p>From 2007 the industrial sector has introduced a paid father's quota giving them three weeks with full earnings replacement as an individual right.</p>	<p>Ninety per cent of earnings up to a ceiling of DKK725 (€97) per working day before taxes for full-time employees, or DKK 3,515 (€470) weekly. Young people under 25 years who are not taking up education, only receive DKK363 (€49) or 50 per cent of the maximum daily sickness benefit rate (youth rate) in relation to taking up an offer of activation or traineeship in an enterprise as part of an employment programme.</p>	<p>Among parents of children born in 2005, 24 per cent of fathers took Parental leave and 94 per cent of mothers. On average, mothers took 28 weeks of leave, and fathers eight weeks.</p>	<p>It seems that the take-up of leave is related to the educational level of both the man and the woman. In those families where the woman takes the greatest part of the leave, the mother tends to have a low educational level and the father is unskilled, or the reverse; in these families, women typically take 99 per cent of total Parental leave weeks. Self-employed workers, both men and women, tend in general to take fewer weeks of leave.</p> <p>What seems to be important when men and women negotiate on who should take leave is wages, educational level, workplace culture and age and these seem be common factors for both the public and private sectors.</p>

<i>Country</i>	<i>Length of shared leave</i>	<i>Payment</i>	<i>Father's take-up</i>	<i>Factors affecting take-up</i>
Finland	<p>158 working days per family.</p> <p>A new term, 'father's month', has been introduced into the legislation; this consists of the two last Parental leave weeks and the 12 bonus days which the father gets if he takes the two last Parental leave weeks (2007). Taking advantage of the 'father's month' is more flexible than it used to be as it can be taken until the child is 16 months old.</p>	<p>During the first 30 days of leave, the payment is equal to 75 per cent of annual earnings up to €46,207, with a lower percentage for higher earnings. After this initial period of leave, the payment is 70 per cent of earnings up to €30,033, with a lower percentage for higher earnings. Minimum allowance as for Maternity leave.</p>	<p>Parental leave is mostly taken by mothers. Only 2% of fathers have taken leave over the years it has been available.</p> <p>Approximately 12% of fathers take the father's month.</p>	<p>Men with high education, employed in the public sector in middle-sized or big organisations, and whose partners also have high education, are more likely to take bonus leave – but the leave periods they take are shorter than those taken by men with less education.</p> <p>Overall, Parental leave is shared more often in families where both spouses have a high level of education and middle-sized or good income. Sharing is also more common among men over 30 years of age, and working in the public sector. Taking all factors into account, a father's take-up of Parental leave is most probable if he is over 30 years and does not consider himself to be the main provider of the family.</p>

<i>Country</i>	<i>Length of shared leave</i>	<i>Payment</i>	<i>Father's take-up</i>	<i>Factors affecting take-up</i>
Iceland	3 months per mother, 3 per father, and 3 extra between parents.	Eighty per cent of earnings up to a ceiling of ISK400,000 (€1,342 per month), for those who have been in the workforce during the preceding 12 months, ending six months prior to birth. The payment to a mother working shorter part-time hours, i.e. between 25 and 49 per cent of full-time hours, is at least ISK82,000 (€275) per month; and for a mother working longer hours, at least ISK114,000 (€383)..	<p>In 2006, 87.7 fathers took a period of leave (paternity and/or parents' joint rights) for every 100 mothers taking some leave, and fathers took about a third of all days of leave-taken by parents (an average of 100 days leave compared to 185 for mothers).</p> <p>Overall, 19.7 per cent of fathers took some of the parents' joint rights, and 18.5 per cent took less than their three months of designated Parental leave; 90.3 per cent of mothers took some period of parents' joint rights.</p>	
Norway	46 or 56 weeks, depending on payment level. Of these, nine weeks are for mothers and ten weeks are for fathers 'father's quota'. The remaining 27 or 37 weeks is a family entitlement and may be taken by either mother or father.	At 100 or 80 per cent of earnings, up to a ceiling of six times the basic national insurance benefit payment (NOK421, 336 a year, €48,640). If taken at 100 per cent of earnings, the length of leave is reduced by ten weeks. Non-employed women receive a flat payment (currently about €5,000).	<p>Prior to the fathers' quota only 4% of fathers took some parental leave.</p> <p>After the extension of the father's quota to six weeks in 2006, figures based on public records in 2007 show that 70 per cent of eligible fathers take more than five weeks; and that more and more fathers take six weeks. 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 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.</p>

Annex E: Choice for Families: Additional Paternity Leave and Pay response form

Additional Paternity Leave and Pay response form

It is recommended this response form is completed online through survey monkey: <http://tinyurl.com/lveo9s>

Alternatively, you can send a completed response form to working.families@bis.gsi.gov.uk

or

Mark Norton
Department for Business, Innovation and Skills
1 -19 Victoria Street
London
SW1H 0ET

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 20/11/2009

Your details

Name:

Organisation (if applicable):

Address:

Telephone:

Fax:

email:

Please state if you are responding as an individual or representing the views of an organisation, by selecting the appropriate group on the consultation response form. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the box below that best describes you as a respondent to this consultation:

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Family / Parent Representative Organisations
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

Question 1: Do you consider the proposed administration of Additional Paternity leave and pay strikes the right balance between the need to keep administration simple and the need for certainty of entitlement?

Yes [] No []

Please expand:

Questions 2: The Government estimates that 4-8% of eligible fathers will apply for AP&P, what is your assessment of this figure?

Comments:

Question 3: Do you agree with the proposal to amend the definition of an adopter as described in paragraph 29 -31 of the consultation document?

Yes [] No []

Please expand:

Question 4: What are your views on the draft regulations in Annex X?

Comments:

Question 5: How well do you consider the draft regulations support the policy proposal including giving sufficient powers and protections to employers in managing this entitlement and to employees using this entitlement?

Comments:

Question 6: How well do you consider the draft regulations support the costs and benefits of this entitlement?

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

We will publish all the responses received in this consultation unless you tick the box below.

Please treat my response as confidential