



dti

WORK AND FAMILIES

Choice and Flexibility

A CONSULTATION DOCUMENT

FEBRUARY 2005



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Contents

| | |
|--|----|
| Foreword | 2 |
| Executive Summary | 3 |
| How to respond | 6 |
| 1 – Today’s families, today’s businesses | 8 |
| 2 – Extending maternity and adoption pay | 18 |
| 3 – Keeping in touch and planning ahead | 28 |
| 4 – Transferable maternity leave and pay | 38 |
| 5 – Flexible working | 52 |
| ANNEX A - Glossary of key terms | 62 |
| ANNEX B – Summary of current provisions | 63 |
| ANNEX C - The consultation code of practice criteria | 73 |
| ANNEX D - Summary of questions | 74 |
| ANNEX E - Partial Regulatory Impact Assessment | 76 |

Foreword



Patricia Hewitt,

*Secretary of State for Trade and Industry,
and Minister for Women and Equality*

The foundations of a successful modern economy are the talent, energy and creativity of the millions of women and men who work in it. To succeed, every organisation has to find, keep and develop the best possible people. As the best employers recognise, helping employees to balance work and family life directly contributes to higher productivity and better performance. This Government has already introduced the biggest ever package of measures to support working parents. We have introduced paid paternity leave, increased maternity pay, extended maternity leave to a year for most mothers, and created a new right to request flexible working for fathers and mothers of young and disabled children. Already, we've seen nearly a million parents change their working hours, not only improving their quality of family life, but also helping to maintain the pool of talent available to businesses too. So while we're helping people find better balances between home and work, these changes are good news for our economic growth and prosperity.

In the Pre-Budget Report (PBR) last December we promised to continue making changes to ensure that every child gets the best start in life and to give parents and carers more choice about how to balance work and family. This consultation paper looks at how the objectives outlined in the PBR can best be achieved and asks for your views – whether as an employer, employee, parent or carer – on how to do so, and for your help in getting the detail right for the benefit of everyone. This is your opportunity to contribute to the discussion. I very much hope you will be able to do so, and I look forward to reading your views.

A handwritten signature in blue ink, which appears to read 'Patricia Hewitt'. The signature is stylized and fluid.

Patricia Hewitt

Executive Summary

Today's families face huge challenges in balancing their home and work responsibilities. The need to ensure that all children have the best start in life and the demands of an increasingly competitive economy mean that many families often struggle to balance their caring and working commitments.

Parents are the best people to make decisions about the interests of their children. The Government's role is to support families and to ensure they have meaningful choices about how they live their lives.

The Government has already built a strong foundation of support for working families, including

- increasing statutory maternity pay from £55 a week in 1997 to £102.80 , and rising to £106 a week from April this year
- introducing two weeks' paid paternity leave for the first time
- giving all employees the right to take time off work to deal with family emergencies
- introducing a new right to request flexible working hours for parents with young or disabled children
- creating 1.2 million childcare places since 1997
- guaranteeing a free part-time nursery place for all three and four year olds
- giving parents help with the costs of childcare through the Childcare Tax Credit
- establishing 524 Sure Start Local Programmes providing a range of health, parenting and family support to over 400,000 children in disadvantaged areas

Employers also have an important role to play in supporting family friendly working. Many employers have already responded to changes in the labour market and family life by pursuing policies that better support their staff. These employers recognise that the success of their firm depends on being able to recruit and retain people from the widest possible pool of talent, and to develop the skills, creativity and imagination of all their staff.

Alongside the 2004 Pre Budget report (PBR) the Government published *Choice for parents, the best start for children: a ten year strategy for children*. This set out the Government's plans to make additional improvements to the availability, quality and affordability of childcare. It also outlined a series of new commitments and goals to further improve maternity leave and family friendly working. The key principles informing Government policy in this area are to ensure that every child gets the best start in life and to give families more choice about how to balance their work and caring responsibilities.

In this document we ask for views about how these commitments and goals should be delivered in ways that meet children's, families' and employers' needs.

Chapter 2 outlines the Government's commitment to extend maternity and adoption pay from six months to nine, as a step towards the goal of 12 months' paid leave by the end of the next Parliament, and sets out how current maternity leave entitlements could be changed to ensure all women who receive Maternity Allowance benefit from the extension of pay. It asks what measures the Government should take to make maternity leave and pay simpler to understand and administer for employers and employees as we extend pay to nine months. It also welcomes views on what the guiding principles should be for any future increase in the flat-rate of statutory maternity, paternity and adoption pay.

Chapter 3 outlines how the Government intends to support more effective communication between employers and their employees during maternity leave, in order to ease the return to work for mothers and enable employers to plan with confidence. Communication during leave should be based on a clear framework of rights and responsibilities. Employees have the right to take leave and the responsibility to inform their employers of their plans as soon as it is reasonably practicable. Employers have the right to receive proper notification of their employees' plans and the responsibility to ensure reasonable contact with staff whilst they are on maternity or adoption leave. This chapter includes proposals to extend the notice period mothers give

when preparing to return to work, measures to improve dialogue between employers and employees both before and during maternity leave, and steps that could be taken to help women returning to the labour market after a longer period of time out caring for their children.

Chapter 4 outlines the Government's commitment to introduce a new law to enable mothers to transfer a proportion of their maternity leave and pay to fathers, to give parents more choice about caring for their children during the first year of life and to respond to the growing number of fathers who want to take a more active role in bringing up their children. It sets out the principles on which transferable leave and pay will be based and explores options to ensure the new system is straightforward with the least possible administrative requirements on business. It also explores options for making the administration of leave and pay simpler, including the State taking over responsibility for payment from employers through a direct payments scheme administered by the Inland Revenue.

Chapter 5 sets out how flexible working is: good for children, enabling families to spend time with their children as well as work and contribute to the family income; good for parents, helping them to find working hours to match their caring responsibilities; and, good for businesses, enabling them to draw on a wider pool of skills and talents in the workforce, improve recruitment and retention rates and increase staff morale and productivity. It outlines the success of the new right for parents of young and disabled children to request flexible working, which was introduced in April 2003. It asks for views on the impact of the new law with a view to extending its scope to cover carers of adult relatives and/or parents of older children. It particularly welcomes comments about the types of caring that the new law should cover for individuals who care for other adults.

A full list of the questions asked is provided at Annex D of this consultation document. Estimates of the costs and benefits of the options are set out in the partial Regulatory Impact Assessment that accompanies this document and which is summarised at Annex E.

How to respond

The closing date for this consultation, by which all responses should be submitted, is 25 May 2005.

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

Responses should be submitted to:

Shirley Drake
Employment Relations Directorate
Department of Trade and Industry
Room 3125
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 5461
Fax: 020 7215 0168
Email: workandfamilies@dti.gsi.gov.uk

Additional copies

You may make copies of this document without seeking permission.

An electronic version of this consultation document, including a Welsh language version, can be found at **www.dti.gov.uk/workandfamilies**. This document is also available on request in Braille or on audio cassette.

Further printed copies of the consultation document can be obtained from:

DTI Publications Orderline:

ADMAIL 528

London

SW1W 8YT

Tel: 0845 015 0010

Fax: 0845 015 0020

Minicom: 0845 015 0030

www.dti.gov.uk/publications

Regulatory Impact Assessment

We have produced a partial Regulatory Impact Assessment (RIA) setting out estimates of the costs and benefits of the proposals and options within this consultation. The figures in many cases are provisional and we welcome comments on them. An executive summary of the partial RIA is at Annex E of this consultation document and the full text is available on the website at **www.dti.gov.uk/workandfamilies**.

Confidentiality

Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

We will handle appropriately any personal data you provide in accordance with the Data Protection Act 1998.

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

Nick Van Benschoten

Consultation Coordinator

Department of Trade and Industry

1 Victoria Street

London SW1H 0ET

nick.vanbenschoten@dti.gsi.gov.uk

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

1 Today's families, today's businesses



Today's families face huge challenges in balancing their home and work responsibilities. The need to ensure that all children have the best start in life and the demands of an increasingly competitive economy mean that many parents often struggle to balance their caring and working commitments.

- 1.1** Parents are the best people to make decisions about the interests of their children. The Government's role is to support families and to ensure they have meaningful choices about how they live their lives. This means enabling parents to spend time with their children, particularly during the first year of their child's life, encouraging flexible working, providing joined up support and advice, and increasing the availability of high quality childcare provision.
- 1.2** Alongside the 2004 Pre-Budget Report (PBR), the Government published *Choice for parents, the best start for children: a ten year strategy for childcare*. This set out the Government's plans to improve the availability, quality and affordability of childcare. It also included a number of commitments and goals to improve maternity leave and family friendly working about which this consultation paper is seeking further views.
- 1.3** The key principles informing Government policy in this area are to ensure that every child gets the best start in life and to give parents more choice about how to balance their work and family responsibilities. This chapter explores these principles in greater depth and considers their implications for policy.

Giving children the best start in life

- 1.4** Parents want to secure the best for their children and to see them fulfil their potential in later life. Parents and the home environment will always have the most important impact on a child's development. Children whose parents are actively engaged in activities with them demonstrate better intellectual, social and behavioural development. The quality of interactions between parents and their children is more significant for child outcomes than parental income or social background. However, parents living in poverty are likely to face risk factors that make their role as parents harder.¹
- 1.5** Ensuring that every child gets the best start in life is not just a matter of fairness but also the right foundation for continued economic prosperity. Evidence suggests that supporting healthy child development during the earliest years of life helps improve social and educational attainment levels in later childhood, the effects of which can last into adult life. This benefits not only the individual concerned but also society as a whole.

¹ Ghate and Hazel, "Parenting in poor environments: stress, support and coping", Jessica Kingsley Publishers, 2002

Today's families

- 1.6** There have been considerable changes in family structures and in household working patterns over recent years. In general work has become more polarised between households, with a growth in the proportion of 'work rich' households where all adults work mirroring a rise in the proportion of 'work poor' households where no one works. The number of households relying on a single breadwinner has fallen substantially over the same period. There has also been an increase in the number of lone parent families. Rates of worklessness among lone parent families are higher than for other families, although the proportion of lone parents in work has risen from 44 per cent to more than 54 per cent in the last decade.
- 1.7** Underlying these changes are broader shifts in the labour market. Male employment rates have fallen from around 91 per cent in 1971 to less than 80 per cent today. Over the same period the proportion of women working has increased from around 56 per cent to around 70 per cent. The proportion of women with children who work has also risen: from 57 per cent in 1994 to around 63 per cent in 2004. By 2004 over half (54 per cent) of mothers with children under six years of age were working, compared with only 46 per cent ten years earlier.
- 1.8** The decision of women with children to work is influenced by a number of factors, including previous work history, educational attainment and the experience of motherhood². Research has also shown that a lack of flexibility in the hours and types of work that are available to mothers who wish to return to work are significant barriers to finding employment³.
- 1.9** Female employment rates in the UK are now high relative to other comparable OECD countries. Women in the UK are also more likely to stop work after having children than women in other countries and more likely to work part-time.⁴
- 1.10** Women in the UK are more likely to work part-time than men. 44 per cent of women in the labour market work part-time compared to ten per cent of

2 Marks, G. and Houston, D., "Attitudes towards work and motherhood held by working and non-working mothers", 2002

3 "Parents' perceptions of and attitudes towards Government work-life balance initiatives – a survey of parents", Women and Equality Unit, 2001

4 OECD Employment Outlook, OECD, 2004

men. Whilst the proportion of women working part-time has fallen slightly since 1984, and the proportion of men working part-time has increased over the same period, the overall picture of male labour market participation dominated by full-time work with female participation more mixed, has remained unchanged over the last two decades.

- 1.11** The majority of women who work part-time choose to do so, because of their caring responsibilities. However, women working part-time earn 40 per cent less per hour than men working full-time. They are less likely to receive in-work training than full-time workers and less likely to have a good pension in retirement.⁵
- 1.12** There is also evidence that some women, particularly mothers, face discrimination in the workplace. For example, recent research suggests that many women who work while they are pregnant face some form of discrimination because of their pregnancy. This ranges from being denied promotions, bonuses or training opportunities to being sacked, made redundant or forced to leave their jobs.⁶
- 1.13** There are significant, measurable economic benefits to higher female employment, which extend beyond the private gain of higher incomes for the families involved. Higher female employment rates enlarge the economy, increase tax revenues and create a more dynamic economy by increasing the supply of skills in the labour market. It has been estimated that 30 per cent of the economic growth that took place in the UK between 1970 and 1990 was due to an increased contribution by women. Women set up and run 35 per cent of all new business start-ups and 26 per cent of all businesses⁷.
- 1.14** At the same time as maternal employment has increased, research suggests that fathers have been spending increasing amounts of time with their children. There has been a particularly sharp increase since 1985, especially in the case of those men with children under five years of age. In the late 1990s such fathers spent an average of two hours a day caring for their children, compared with less than a quarter of an hour a day in the

5 "Part-time is no crime – so why the penalty? The interim report of the Equal Opportunities Commission's (EOC) investigation into flexible and part-time working", EOC, 2005

6 "Tip of the Iceberg: Interim Report of the EOC's investigation into pregnancy discrimination against new and expectant mothers in the workplace," EOC, 2004

7 "Choice for Parents, the best start for children: a ten year childcare strategy", HM Treasury, December 2004

mid 1970s⁸. Fathers contribute around a third of all time spent by parents in caring for children⁹. Recent survey evidence suggests that fathers would like to be even more involved in caring for their children¹⁰.

- 1.15** It is not just the lives of families with children that have changed over recent decades. Many families now have responsibility for caring for elderly or vulnerable relatives. In 2000, one in six people aged 16 or over cared for a sick, disabled or elderly person and one in five households contained a carer.¹¹ An estimated 5.3 million carers are of working age (between 16 and 64 years old). Approximately 3.5 million of these are working either full or part-time.
- 1.16** A number of families have responsibility for caring for both children and an elderly or sick or disabled relative. Research suggests around a quarter of carers also have dependent children¹². This group is therefore 'sandwiched' between caring for different generations and may face particular difficulties in balancing their work and caring responsibilities.
- 1.17** Changes in family life and working patterns are set to continue. Women with higher qualifications are more likely to return to work after having a child than unskilled mothers, and women are now gaining qualifications at a faster rate than men. Changing demographics, an ageing population, smaller families and different family structures, mean that three in five people will end up caring for another adult at some point in their lives.¹³
- 1.18** Wider changes in society are also likely to have an impact on families' expectations about their work and caring responsibilities. An increasing number of services are being provided on a 24/7 basis. The global economy is producing an ever-expanding range of products. And information technology is opening up new forms of access and provision. As people experience greater choice and flexibility throughout their lives, they are likely to want more choice and control over their work and family lives.
- 1.19** In future, we are likely to see an increasing number of women and men working and taking time out of the labour market to care for children or

8 Fisher, McCulloch and Gershuny, "British Fathers with children. Working Paper", Essex Institute for Social and Economic Research, 1999

9 O'Brien and Shemilt, "Working Fathers: Earning and Caring", EOC, 2002

10 Guardian / ICM poll on family friendly policies, 2004

11 General Household Survey, ONS, 2000

12 General Household Survey, ONS 2000

13 "The Risk of Informal Care: An Incidence Study", Social Policy Research Unit, University of York, 1999

elderly relatives, and sometimes both. People will work different hours at different stages in their lives, agreeing different working arrangements to match their caring responsibilities. As we move towards this more flexible labour market, we need to ensure a framework is in place which supports families in the choices they make and ensures that mothers and fathers can fulfil their potential and achieve goals at home and at work.

Today's businesses

- 1.20** Many employers have already responded to these changes in the labour market and family life by pursuing working time policies that better support their staff. These employers recognise that the success of their businesses depend on being able to recruit and retain people from the widest possible pool of talent, and to develop the skills, creativity and imagination of all their staff.
- 1.21** Employers who have introduced family friendly working policies report improved morale, commitment and retention of staff, which in turn leads to wider business benefits such as improved customer service and the ability to react effectively to changes in demand.
- 1.22** For example, the evaluation of the Government's Work-Life Balance Challenge Fund shows that workplaces that have implemented family friendly measures report financial savings (81 per cent), reduction in staff turnover (68 per cent), reduction in absenteeism (50 per cent), and improved productivity (50 per cent).¹⁴
- 1.23** Research also shows that many employers consider the introduction of family friendly policies to be cost-effective. In a 2003 survey of employers, 75 per cent of managers said there were minimal or no costs involved in introducing family friendly working practices, with 66 per cent considering increased flexibility to be cost effective.¹⁵

14 "DTI Challenge Fund Round 4 Final Reports Evaluation", PWC, 2004

15 "The Second Work-Life Balance Employers Survey", National Centre for Social Research, 2003

Case Study: BT

BT's 'Achieving the Balance' portfolio gives employees greater choice and flexibility in the way they work. Flexitime, part-time and homeworking are just some of the patterns enjoyed by BT employees allowing them the freedom to balance their personal and professional lives. Tens of thousands of BT employees now work flexibly. The company reports that not only has this saved significant recruitment, retention, and accommodation costs, but it also enables many people for whom conventional hours and working patterns are a barrier to employment to contribute their talents to the success of the company.

BT reports that although employees' reasons for working flexibly are many and varied, the benefits to the firm are consistent. Flexible workers are more productive and provide better customer service. Loyalty and productivity are greatly increased with people feeling more fulfilled at work and reporting improved efficiency. Team performances are also enhanced by more flexible resource planning and increased motivation.

- 1.24** The need to offer flexible working is likely to increase in future. We live in an increasingly global and competitive market. China and India have joined the world economy. Other emerging economies, like Brazil and Indonesia, are competing for markets in developed countries. Closer to home, ten new countries have joined the European Union and others are queuing up to join. If British businesses are to remain competitive in the face of these changes, they will need to recruit employees from all sections of the population and draw on the skills and experiences of as diverse a talent pool as possible.

The role of Government

- 1.25** There are substantial public benefits to be gained from helping give children the best start in life and supporting parents in reconciling the demands of work and family life. These include expanding opportunities within and across generations, tackling disadvantage, and increasing the productive capacity of the nation. The needs of children and families cannot be traded against the demands of the labour market but must be advanced together.

1.26 In recent years the Government has built a strong foundation of support for working families:

- Nearly all working women are now entitled to 26 weeks' maternity pay, up from 18 weeks in 1997, and most may also take a further 26 weeks' unpaid maternity leave
- Statutory maternity pay has almost doubled from £55 a week in 1997 to £102.80 and rising to £106 from April this year
- For the first time working fathers now have a right to two weeks' paid leave when their child is born
- In 1999, employees were given a new right to 13 weeks' unpaid parental leave for each child which can be taken up to the child's fifth birthday, or 18th birthday if the child is disabled
- In 1999, all employees were also given the right to take time off work to deal with emergencies involving a family member, including child, spouse, partner or parent
- Parents with young and disabled children have the right to ask for flexible working and their employers have a legal duty to consider their requests seriously. In the first year since the new right was introduced, one million parents requested flexible working hours and nine out of ten had their requests accepted in full or in part
- For the first time adoptive parents have rights similar to those enjoyed by other parents
- The Government has created 1.2 million childcare places since 1997 (an increase in the net number of places of 525,000)
- All three and four year olds are entitled to a free part-time nursery place
- Around six million families are benefiting from the new Working Tax Credit and Child Tax Credit
- Parents can claim up to 70 per cent, rising to 80 per cent from April 2006, of childcare costs through the childcare element of the Working Tax Credit
- There are now 524 Sure Start Local Programmes providing a range of early years, health, parenting and family support to over 400,000 children in disadvantaged areas.

How the UK compares with other countries

1.27 The UK has traditionally lagged behind Europe in its provision of maternity, paternity and adoption leave and pay. Whilst some countries still provide significantly higher levels of support for parents, such as paid parental leave, the changes we have put in place mean we have made substantial progress since 1997. A decade ago the UK, along with several other European countries, had no paid paternity leave at all. Since then, we have introduced two weeks' paid paternity leave, putting us in the leading group of European countries on this measure. Increasing paid maternity leave to 26 weeks means the UK also has the longest period of paid maternity leave in the EU.

1.28 There are a number of areas where further action is needed to help families and business meet the challenges outlined above. For example:

- Most mothers are eligible for six months' paid maternity leave. The right to an additional 26 weeks' unpaid leave allows mothers to retain the right to return to work for longer. However, this fails to provide a real choice for many women who do not have another source of income, such as extra pay from their employer, a partner in work or savings, to support them during the period of unpaid leave. As a consequence, mothers may feel forced to return to work for financial reasons before they want to
- Paid paternity leave has been introduced to enable fathers to take time off around the birth of their child. However, many fathers would like to play a bigger role in bringing up their children, including during the crucial first year of life
- Parents often lack easy access to information about what choices are available to them as they try to balance work and family life, and about what services they can access for their children
- Parents and businesses are often unaware of their rights and responsibilities in relation to parental leave and flexible working, and contact between employers and employees during maternity leave can be poor
- Families with older children and those with caring responsibilities may need greater support in balancing their home and work responsibilities through the provision of more flexible working hours.

Conclusion

- 1.29** Children, parents and employers have all benefited from the new and improved support for families made available by the Government. However, there is still more to do to ensure every child is given the best start in life and all families have genuine choices about how to balance their work and caring responsibilities.
- 1.30** In this consultation document we are asking for your views on how the Government should meet the following goals and commitments, set out in the PBR:
- extending Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP) to nine months from April 2007, towards the goal of a year's paid leave by the end of the next Parliament (Chapter 2)
 - improving communication between parents and employers during maternity leave, including reforming the periods of notice to be given by an employee prior to returning to work (Chapter 3)
 - introducing a right for mothers to transfer a proportion of their statutory maternity leave and pay to fathers, and considering whether transferring payment of SMP, SAP and Statutory Paternity Pay (SPP) from employers, and MA from the Department for Work and Pensions, to the Inland Revenue would make administration easier for employers (Chapter 4)
 - considering extending the right to request flexible working to carers of sick and disabled relatives and parents of older children (Chapter 5)
- 1.31** Details of how to respond are provided on page 6.
- 1.32** We would like your views and suggestions on all of these issues, including the estimates of costs and benefits set out in the executive summary of the partial RIA at Annex E.

2

Extending maternity and adoption pay



This chapter sets out the case for extending maternity pay to nine months in April 2007 as a first step towards the goal of a year's paid leave by the end of the next Parliament. It also outlines how the Government intends to simplify leave entitlements. And looking at the longer term, it invites views on what the guiding principles should be for the level of the flat rate of pay.

The case for extending maternity pay

- 2.1** What happens in the early years of a child's life is critical for their later development. Evidence suggests that consistent one-to-one care is particularly beneficial during the first 12 months of a child's life when rapid development takes place. A number of studies suggest that maternal employment during the very early stages of a child's life can have some small negative effects on the development of some children. However, these negative effects tend to be concentrated on full-time employment and can be avoided by high quality care from others and by the increased involvement of fathers¹⁶.
- 2.2** Research has shown that paid maternity leave is associated with a range of significant health benefits for mothers and their babies. These include reduced levels of maternal depression, lower infant mortality, fewer low birth weight babies, more breastfeeding and more use of preventative health care.¹⁷ Unpaid leave does not have the same protective effects.
- 2.3** While the Government has extended a mother's right to maternity leave to 12 months and extended the statutory paid period to six months, up from 18 weeks in 1997, the second six months of maternity leave, called Additional Maternity Leave (AML), remains unpaid. Adopters are also able to take up to 12 months' leave with the second six months being unpaid.
- 2.4** As a result, many families find it hard to afford to make use of the full 12 months maternity or adoption leave they are entitled to. Research has shown that many women feel forced to go back to work before they are ready. For example, 75 per cent of those mothers surveyed in 2002 who were entitled to AML but returned to work early said they did so for financial reasons. Only 11 per cent said they were ready or wanted to go back to work¹⁸. Many women who return to work earlier than they want find it difficult to juggle work and caring for a young baby, and may end up resigning from their job as a result.

16 Gregg et al, "The Effects of Early Maternal Employment on Child Development in the UK", CMPO Working Paper Series No 03/070, 2003

17 Chatterji and Markowitz, "Does the Length of Maternity Leave affect Maternal Health?", NBER Working Papers 10206., National Bureau of Economic Research 2004

18 Hudson et al, "Maternity and Paternity Rights in Britain 2002: Survey of Parents", PSI, 2004

- 2.5** In order to give children the best start in life and to give parents more choice about how to balance their work and family responsibilities, the Government intends to extend paid maternity and adoption leave to nine months from April 2007 towards the goal of a year's paid leave by the end of the next Parliament.

Reducing complexity

- 2.6** Maternity and adoption leave and pay are made up of a number of elements (see also Annex B). These include Ordinary Maternity Leave (OML), AML, Ordinary Adoption Leave (OAL), Additional Adoption Leave (AAL), Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) and Maternity Allowance (MA). Not surprisingly, employers and employees say they often find these different elements difficult to understand and administer.
- 2.7** The Government has already taken steps to simplify the system. In 2003 we introduced a simpler framework for maternity leave, providing greater clarity for both employers and employees. This included harmonising the different qualification requirements relating to length of service.
- 2.8** The Government is committed to ensuring the proposed extension of paid leave is done in as straightforward a way as possible and that complexities are removed from the system wherever possible. This will help improve understanding and awareness of the rights and responsibilities of both employers and employees, and help make the system of maternity leave easier to administer.

Ensuring women claiming Maternity Allowance are entitled to the full period of paid leave

- 2.9** Under the current system, if a woman has worked long enough with her employer to qualify for SMP for the first 26 weeks of her leave (ie she has worked for 26 weeks continuous service, at the 15th week before expected week of childbirth), she will also qualify for an additional 26 weeks of unpaid leave (see also Annex B). Some women do not qualify for SMP because they have not worked for their employer for long enough. These women are instead entitled to MA. They also do not qualify for AML and are only able to take six months' OML.

- 2.10** If the qualifying requirement for the second six months of unpaid maternity leave remains unchanged when pay is extended, some women will be entitled to nine months' MA, but only six months' leave. These women would only benefit from the extension of MA to nine months and be able to return to their previous jobs if they have a contractual right to longer leave, or if they could negotiate an agreement with their employer to take additional leave. Some lower paid women could end up feeling the best course of action is to give up their right to return to their previous job and benefit from the extra three months of MA. This may risk further distancing them from the labour market. Women with higher pay and jobs that they value highly might return after six months to safeguard their job, even though they may not feel ready to do so and regardless of their new entitlement to three months more maternity pay. In addition, women who were entitled to nine months MA but only six months leave would be limited in the amount of leave they could transfer to the father of their child (see Chapter 5). We estimate that as many as 20,000 women would be affected by this situation.
- 2.11** The Government intends to ensure that women who claim MA are able to take the full paid leave when this is extended to nine months from April 2007, with the goal of 12 months by the end of the next Parliament.
- 2.12** In doing so, our aim is to make the system as straight forward and easy to understand and administer as possible, without introducing restrictions on employers that would prevent them from managing their workforce in a flexible and effective manner.
- 2.13** We have identified three possible options for achieving this goal:
- Option 1** remove the requirement to work for an employer for a minimum period to qualify for AML
 - Option 2** abolish AML and extend OML to 12 months
 - Option 3** extend OML to 12 months with different rights of return depending on the period of leave taken.

Contractual entitlements during OML and AML

OML (first six months)

During OML a woman is entitled to benefit from all her terms and conditions of employment as if she was at work, except for her normal pay. This means she may be entitled to use of a company car, mobile phone, childcare vouchers and bonuses if she would benefit from these if she were working normally.

The woman is entitled to return to the same job.

AML (second six months)

When a woman moves from OML to AML her entitlements change. Unlike her time on OML she is not entitled to all the benefits she would normally receive under her contract (such as those set out above). Her contract of employment continues but (unless the contract specifies otherwise) only certain elements apply. These are set out below.

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

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

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

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

The woman is entitled to return to the same job, unless it is not reasonably practicable, in which case the entitlement is to a similar job on terms and conditions which are no less favourable.

Option 1

- 2.14** Under this option, the Government would remove the separate qualification requirements for AML, so that all women who currently qualify for OML would be entitled to an additional six months of AML. This would mean that all employed women could take 12 months' maternity leave, regardless of how long they have worked for their particular employer. 22,000 women currently qualify for OML but not AML. Currently, over 90 per cent of women who qualify for OML also qualify for AML. Implementing Option 1 would increase this figure to 100 per cent.
- 2.15** Option 1 would help simplify the system, although not to the same extent as Option 2. The costs to employers are likely to be less than Option 2 because only certain elements of a woman's contract of employment continue during AML. Women would also continue to have different rights of return after AML (see also Annex B).

Option 2

- 2.16** Under this option, the Government would abolish AML and instead have one type of maternity leave, OML, available for 12 months. As now, OML would not be dependent on working for a particular employer for a minimum period of time.
- 2.17** Employers may feel it is simpler to administer a single period of leave, entitlement criteria and contractual rights rather than two different sets. Women would also find their rights easier to understand.
- 2.18** Option 2 would mean an extension of entitlements for pregnant women, as women have greater contractual rights during OML. It would also mean giving women the same right to return to work as currently exists at the end of OML.

Option 3

- 2.19** Under this option, a woman who takes up to six months' leave would be entitled to return to the same job on her return, whereas a woman who takes more than six months' leave would be entitled to return to the same job, unless it is not reasonably practicable, in which case she would be entitled to a similar job on terms and conditions which are no less favourable.

- 2.20** This option would help simplify the system by introducing a single period of leave, with the same contractual entitlements applying, but retain the distinctive rights of return that currently apply where a woman takes more than six months' maternity leave.
- 2.21** Whichever of the three options is preferred, we intend to apply the same approach to adoptive parents taking leave.

Right to return after AML for small employers

- 2.22** The Government also intends to clarify the rules on the right of return after AML, and AAL, so that it is clear that a woman cannot be dismissed or selected for redundancy simply because she is pregnant or has taken maternity leave, whatever the size of the organisation. We believe the current framework leaves scope for confusion about this basic right.
- 2.23** Under the maternity and adoption rules, where an employer has five or fewer employees (22 per cent of businesses¹⁹ which employ nine per cent of women employees of childbearing age), it does not currently constitute automatic unfair dismissal if the woman or adopter is not allowed to return at the end of AML because the employer regards this as not reasonably practicable. This exemption was intended to help very small firms but has not, in practice, had this effect. A woman affected by this exemption could still make an unfair dismissal claim, and more significantly, a Sex Discrimination claim. Case law has established that an employer who denies a woman a post on her return from maternity leave is likely to be in breach of the provisions of the Sex Discrimination Act (SDA).
- 2.24** In practice, there may be some exceptional circumstances, for example, a genuine redundancy situation, which mean an employer is not able to provide a job for a woman on maternity leave to return to, and such circumstances may be more likely to occur in the smallest firms. But the combination of the SDA and the rules on redundancy during maternity leave means an employer would have to do more than consider whether they met the terms of the small firms exemption in order to be confident their action was lawful. An employer who did not allow a woman to return to work after AML, relying solely on the small employers' exemption, would therefore be at high risk of an Employment Tribunal ruling against them, and they could be liable to pay compensation.

¹⁹ This figure represents the number of businesses with between one and five employees. It includes the private sector and non-profit organisations, but excludes Government.

- 2.25** In addition to the SDA case law, the amended Equal Treatment Directive (ETAD) requires that a woman or adopter returning to work after maternity or adoption leave must be able to return to her job or to an equivalent post. The Government has been looking at what action is needed to implement the ETAD (a consultation document on issues relating to the ETAD will be published next month) and has reviewed the small employers' exemption as part of that work.
- 2.26** We are also concerned about the interim findings of the Equal Opportunities Commission's (EOC) investigation into pregnancy discrimination, which indicate that employers and employees are often unclear about the rules surrounding maternity leave. We believe that the small employers' exemption could mislead small firms about their rights and responsibilities, and leave them open to SDA claims.
- 2.27** For all these reasons, the Government has concluded the small firms exemption should be removed from the maternity and adoption leave regulations. We believe it will be most straightforward for both employers and employees to remove the small employers' exemption alongside the other changes to the maternity leave arrangements we intend to bring in by April 2007.
- 2.28** In order to address the uncertainties about rights and responsibilities, which were highlighted by the EOC's findings, we are also looking at how we can work with employers and employers' organisations to make sure that businesses have access to the information and guidance they need for staff who are pregnant, and for managing maternity and adoption leave (see Chapter 3).

Longer term

- 2.29** The Government's aim is to give all children the best start in life and to give parents more choice about how to balance their work and family responsibilities. As part of this, we will extend paid maternity and adoption leave from six months to nine months from April 2007, towards the goal of 12 months' paid leave by the end of the next Parliament.
- 2.30** Increasing the amount of maternity leave which is paid, and the other measures we are proposing in this consultation document, will build on the changes we have introduced since 1997, and will support and enlarge families' choices in how to balance their home and work responsibilities.

- 2.31** Whether parents can afford to take time off work after the birth of a child is a crucial factor determining how much leave they use. However, the level of maternity pay is not the only issue that can make parents feel constrained in their choices about how to balance work and caring responsibilities. Cultural attitudes on the part of both parents and employers also play a part. There is evidence that such attitudes are beginning to change. For example, among employers, more than nine in ten (94 per cent) said in 2003 that people work best when they can strike a better balance between work and the rest of their lives²⁰. Almost two-fifths (39 per cent) of employers strongly agreed with this statement, which was a substantial increase from 2001 (31 per cent).
- 2.32** These cultural changes should mean parents feel increasingly confident about taking up the opportunities provided by the changes we introduced in April 2003, and which we will introduce following this consultation. Taking all these changes into account should mean we see increased take-up of leave over time.
- 2.33** We will continue to monitor closely the take-up rates of statutory maternity pay (SMP), statutory paternity pay (SPP), statutory adoption pay (SAP) and maternity allowance (MA). The Department for Trade and Industry and the Department for Work and Pensions has research underway to assess the impact of the changes to the entitlements in 2003 and results will be available around the end of the year. Our ambition is to increase the flat rate over time to ensure all parents feel able to take the leave to which they are entitled. We would welcome views on what the guiding principles should be for setting the level of flat rate payments, and on the case for increasing the percentage of earnings covered for those parents who receive less than the flat rate.
- 2.34** We will assess how take up rates have been affected by the changes set out in this document once they have been implemented, and we will consider the implications for the level of flat rate payments. When considering the approach to flat rate payments the Government will need to strike the right balance between the needs of all stakeholders, ensuring parents, fathers as well as mothers, have genuine choices about how much time to take off work around the birth of a child, while also ensuring that any future increases in pay are affordable and supported by wider society, including business.

20 "The Second Work-Life Balance Study: Results from the Employers' Survey", Employment Relations Research Series No. 22, DTI, 2003

Conclusion

2.35 The Government welcomes views on the following questions relating to the changes intended for April 2007, and on the principles underpinning changes to the flat rate of pay for the longer term:

Q1 In changing the qualification requirements for maternity leave, which of the following options is preferable, and why?

- **Option 1: extend entitlement to AML to all women who qualify for OML**
- **Option 2: abolish AML and extend OML to 12 months**
- **Option 3: abolish AML and extend OML to 12 months with different rights of return dependent on the period of leave actually taken**

Q2 Are there other measures the Government should introduce to make the system of maternity and adoption leave and pay simpler to understand and administer for employers and employees?

Q3. What should be the guiding principles for setting the level of flat rate payments, including the percentage of earnings covered for those parents who receive less than the flat rate?

3

Keeping in touch and planning ahead



This chapter looks at arrangements for supporting effective communication between employers and employees during maternity leave, including notification periods. The Government wants to ensure that employers can make plans for their business with confidence and that employees can be kept in touch with the workplace whilst on maternity leave.

- 3.1** Research shows that the more planning women do before their maternity leave and the more support they receive in the workplace then the more likely they are to return to work after maternity leave²¹. Whilst mothers do not want to be contacted unnecessarily when they are on maternity leave, many do want to be kept in touch with important changes. Employers also need as much clarity and notice as possible about when a mother is going to start and return from her maternity leave so they can properly plan for cover while she is away. Getting communication right during maternity leave can therefore ease the return to work for both the mother and the employer. Increasing certainty for employers and helping them to better manage maternity leave may also help avoid discrimination and other problems women face at work when they are pregnant.
- 3.2** The Government's aim is to support a framework of communication between parents and their employers that benefits both parties. This framework needs to be based on a clear understanding of rights and responsibilities.
- 3.3** Employees have the right to take maternity or adoption leave and to be made aware of important changes in the workplace whilst they are away. They also have responsibilities to inform their employer of their plans for taking maternity or adoption leave as soon as is reasonably practicable, to enable employers to plan effectively for cover.
- 3.4** Employers have the right to receive proper notification of their employees' plans in relation to maternity or adoption leave. They also have responsibilities to ensure reasonable contact with their staff on maternity or adoption leave.

Current provisions

- 3.5** Before 2003, a woman could give her employer as little as 21 days' notice before starting her maternity leave. In 2003, the Government introduced a new requirement so that an employee has to notify her employer no later than the end of the 15th week before the week her baby is due, or as soon as reasonably practicable, that she is pregnant and when she intends to start her maternity leave. This change was introduced to give employers more time to plan cover while women are on leave.

21 Houston, D. and Marks, G., "The role of planning and workplace support in returning to work after maternity leave", 2003

- 3.6** At present, the assumption is that a woman will return to work after her full maternity leave entitlement is over: either six or twelve months. The woman can return earlier, if she chooses to do so, provided she gives her employer at least 28 days' notice of an earlier return date.
- 3.7** Following the changes to maternity leave introduced in 2003, most women now qualify for 12 months' leave. This means their return date is fixed more than a year in advance, and there is currently no requirement for women on maternity leave to contact their employers again before they return to work. This can leave employers uncertain as to when the mother is going to return, or indeed if she intends to return at all, which can in turn make it difficult for employers to plan and can cause problems for other staff.
- 3.8** As set out in Chapter 2, the Government will increase the proportion of maternity leave which is paid from six to nine months in April 2007, towards the goal of a year's paid leave by the end of the next Parliament.
- 3.9** The extension of maternity pay means there is a new compelling case for reviewing notification periods. The Government will retain the current timing for a pregnant woman to notify her employer about her start date for her maternity leave. However, we intend to look at options that would provide employers with more certainty about womens' intentions regarding their return date. We also want to encourage more effective communication between employers and employees during maternity leave.

Changing notice periods

- 3.10** We have identified three options for amending the notice a mother should give on her return to work:

Option 1 placing a new requirement on mothers to confirm their return date with their employers in advance

Option 2 increasing the notice period a woman must give her employer if she wants to return to work from maternity leave earlier than originally planned from one month to two months

Option 3 increasing the notice period a woman must give her employer if she wants to return to work from maternity leave earlier than originally planned from one month to three months.

Option 1

- 3.11** Under this option, the mother would have to notify her employer of her return date, even if the date of return remains as originally agreed before she went on maternity leave.
- 3.12** For example, where it was agreed before the mother went on maternity leave that she would take all her leave, her employer would write to her three months before the year was up and ask her to confirm that she was returning as planned. The mother would then have to confirm this with her employer in writing two months before the agreed return date. This could apply in all cases, regardless of how much or how little leave the mother was taking.

Option 2

- 3.13** Under option 2, the current 28-day notice period a woman must give her employer if she wants to return to work from maternity leave earlier than originally planned would be extended to two months. This would help give employers more time to plan for the woman's return, such as cancelling contracts with temporary or agency staff.

Option 3

- 3.14** Under this option, the current 28-day notice period would be extended to three months. This would give employers even more time to plan for a woman's return from maternity leave.
- 3.15** In addition, the Government believes a small change to the notice period regime is necessary to cover the specific circumstance where a mother gives notice that she wishes to go back to work early but then changes her mind and returns on a later date. Currently, the woman is only obliged to notify her employer of the initial amended return date 28 days before that date. If the woman postpones her return, the employer may receive very little notice that she will not be returning on the date previously agreed. The Government intends to remove this anomaly, so that the mother has to give the same amount of notice that she will not be returning on her revised date as she would if she were returning to work earlier than planned.

- 3.16** In order to ensure that notification periods are straightforward and easy to understand for both employers and employees, the Government intends to ensure the same notice periods apply wherever possible in the maternity leave system.
- 3.17** We will therefore apply any new requirement on mothers to confirm their return date further in advance, or any new notice periods, to adoptive parents who want to return to work earlier than planned.
- 3.18** We will also apply the requirement to confirm return dates or notice periods to fathers in cases where mothers choose to transfer some of their leave, and for the transferable leave scheme more generally (see Chapter 4).

Improving communication between employers and employees

- 3.19** Effective communication between employers and employees is crucial in making maternity and adoption leave easy to manage, for both employers and employees.
- 3.20** Good practice suggests that establishing effective dialogue before maternity leave starts can help encourage better communication during the leave. However, some employers and employees fail to establish such a dialogue, which can cause problems further down the line.
- 3.21** Contact between employers and women during maternity leave can also be beneficial and there is nothing in law to prevent it. Contact helps to keep women up to date with changes at work and helps employers keep in touch with their employees' plans, and manage the maternity leave and return to work. However, we recognise that some employers do not feel confident about contacting mothers on maternity leave. Some are unsure whether it is within their rights to make contact at all. At the same time, some mothers feel they miss out on developments at work and think that an ongoing dialogue with their employer would help ease their return.
- 3.22** The Government intends to clarify any uncertainty amongst employers and encourage better communication both before and during maternity leave.

- 3.23** We wish to explore options for establishing an effective dialogue before maternity leave begins. One option proposed by the Equal Opportunities Commission (EOC) as part of its General Formal Investigation into pregnancy discrimination at work²² is to provide a leaflet on employees' and employers' rights and responsibilities in relation to maternity leave and pay and flexible working, at an early point, for example, at a woman's early ante-natal appointment. The leaflet would include information about notice periods, and the benefits of employers and employees agreeing in advance how they will communicate with one another during maternity leave.
- 3.24** We have also identified three ways to support effective communication during maternity leave. The first is to re-instate a specific point when employers can contact women during their maternity leave. Before April 2003, an employer could contact a mother about her plans to return after she had been on leave for 15 weeks. At the time, the end of the mother's additional maternity leave (AML) was linked to the date her baby was born. Contact between the employer and employee at this stage helped the employer to know when AML would end. Experience of this regime suggested that employers were confused about whether they could contact the mother at other times and what they should do if the mother failed to respond. We therefore removed this specific contact point in April 2003.
- 3.25** As we introduce nine months' paid leave and move towards a year's paid leave by the end of the next Parliament, employers may find it useful if we re-instate the specific contact point during leave. This could give both the employer and employee an opportunity to discuss wider issues related to the mother's return, such as flexible working opportunities, if the mother was interested in changing her work hours. If the specific contact point was re-instated, it would not be the only time when communication could occur.
- 3.26** The second option is to spell out in the law that an employer can make reasonable contact with an employee during maternity leave. Guidance could explain what is reasonable.
- 3.27** The third option is to increase awareness through providing improved guidance to employers and employees on keeping in touch. Advice is provided by Acas via their helpline²³, and workplace projects that can be tailored to meet a particular company's needs. We are planning to provide

22 "Tip of the Iceberg: Interim Report of the EOC's investigation into pregnancy discrimination against new and expectant mothers in the workplace", EOC, 2004

23 08457 474747

clearer advice, tailored to small employers, about managing pregnancy in the workplace through the BusinessLink.gov website²⁴. In addition, the Government could work with employers and employers' organisations to provide guidance on maintaining contact during maternity and adoption leave. The guidance would explicitly state that employers have the right to contact their employees whilst they are on maternity leave. It would also include examples of good practice. Many employers already operate successful 'keep in touch' schemes and many mothers have benefited from these or other less formal arrangements.

Improving information and advice for parents

- 3.28** Having easy access to good quality information helps parents plan their return to work and their options for balancing their work and caring responsibilities. However, many parents have to go to a range of different places to get the information they need about maternity, paternity or adoption leave and pay, how to get working hours that enable them to meet their caring responsibilities and what childcare is on offer in their local area.
- 3.29** Acas provides advice to parents about employment issues through their helpline. Additionally, we are developing a new website for individuals that will cover employment rights, linking to other Government websites covering related subjects.
- 3.30** The Government has already done much to improve the availability of information on services for children, for example through Children's Information Services. In disadvantaged areas, Sure Start Local Programmes are providing a broad range of information about what childcare and other support for parents is available locally.
- 3.31** *Choice for parents, the best start for children: a ten year strategy for childcare*²⁵ set out the Government's plans to further improve the provision of information. This includes working with local authorities to improve the quality and accessibility of local advice and information about childcare, using Sure Start Children's Centres as a focus for local advice and information, with parents given the opportunity to discuss and explore options with professional staff.

24 www.businesslink.gov.uk

25 "Choice for parents, the best start for children: a ten year strategy for children", HMT, 2004.

- 3.32** Developing a one-stop-information-shop for working families would help better enable parents and carers to make choices about how to balance their work and family responsibilities. Such a service could advise on working time options, provide support to an individual employee who wants to change their working hours, and help to find childcare or elder care services where those are needed. There are a number of possible providers of such services, including help line services and websites for parents as well as direct face-to-face advice. We welcome views on what such a service should include and how it should be provided.

Case Study: Parent Direct Cambridgeshire and Peterborough

Parent Direct Cambridgeshire is delivered through Opportunity Links, a voluntary sector organisation providing information services to help parents make choices about their home and work life. Parent Direct offers one to one support on childcare, maternity and paternity rights, financial support including tax credit estimations and assistance in requesting flexible working.

Supporting women returning to work

- 3.33** Some women no longer have contact with an employer because they have resigned from work in order to bring up their children full-time at home, or because they have other caring commitments. While 73 per cent of working age women are in work, around 43 per cent of mothers with a pre-school child are not economically active²⁶. These are more likely to be low or medium skilled women as highly skilled women are less likely to stop work completely when their children are young²⁷.
- 3.34** In some cases these women may have been out of the workforce for a number of years. This will have long-term consequences for their employment, lifetime earnings and future pensions, as well as for their aspirations to use their skills and experience and fulfil their potential. It will also have consequences for the economy, as their skills are lost to the labour market.

26 "Key indicators of women's position in Britain", Institute for Economic Studies/Women and Equality Unit, 2005

27 Rake, K., Davies, H., Joshi, H. and Alami, R., "Women's incomes over their lifetime. A report to the Women's Unit", 2000

- 3.35** The DTI is already conducting research into the way women re-enter the labour market after taking time out to bring up their children. This will identify the skills profile of women returners and assess whether and how skills can be a barrier to returning to the labour market, particularly to high skilled jobs.
- 3.36** Regional Development Agencies in London, the East Midlands and the South East are developing pilot programmes to support women considering returning to work, through offering careers advice, access to training, confidence building, work placements and childcare. The results of these pilot schemes will help to inform the development of further support for women wanting to return to work.
- 3.37** Some of the women who have been out of the labour market for a considerable period of time will be lone parents. The great majority of Britain's 1.8 million lone parents are women. Helping them return to the labour market, whether part-time or full-time, is the most effective way of keeping them and their children out of poverty. The Government's target is to increase the percentage of lone parents in work from 54 per cent to 70 per cent by 2010. The New Deal for Lone Parents is helping to achieve this. Lone parent employment is now at a record high with nearly one million lone parents in work. This is 277,000 more than in 1997.
- 3.38** In our White Paper *21st Century Skills – Realising our Potential*²⁸ we showed how we support individuals and employers in gaining the skills they need for success. Many of the initiatives put in place will be particularly helpful for women who lack basic employability skills and want to return to the labour market. In particular, individuals who lack employability skills will have a guarantee of free tuition to gain a level 2 qualification. There is also increased support for higher-level skills in areas of regional and sectoral priority.
- 3.39** We are interested in views on other ways in which the Government could best support and give choices to those women who would like to return to work.

28 "21st Century Skills – Realising our Potential", DfES, 2003

Conclusion

3.40 The Government wants to ensure that employers can make plans for their business with confidence and that employees can be kept in touch with the workplace in an appropriate manner. Our aim is to support a framework of communication between parents and their employers that benefits both parties, based on a clear understanding of rights and responsibilities.

3.41 We welcome views on the following questions.

- Q4** Should mothers have to confirm their date of return from leave? If so, when should the notice point be?
- Q5** Should we extend the notice period for early return? If so, what should the new notice period be?
- Q6** Are there other steps the Government could take to ease the difficulties employers experience with the current notice periods?
- Q7** How can dialogue and communication between employers and mothers be improved before and during maternity leave?
- Q8** How can information on the rights and entitlements of working parents best be provided and combined with information on other relevant issues for working families, such as childcare?
- Q9** What more could be done to help women returning to the labour market after a period of time out caring for their children?

4 Transferable maternity leave and pay



This chapter outlines the Government's plans to give mothers the right to transfer a proportion of their maternity leave and pay to fathers. It sets out the principles on which transferable leave and pay will be based in order to help give children the best start in life, parents more choice, and employers the ability to plan and manage their workforce effectively. It also explores options for ensuring the new system is straightforward and accurate with the fewest possible requirements on business.

The best start for children, more choice for parents

- 4.1** In moving towards the Government's goal of 12 months' paid maternity leave by the end of the next Parliament, we will introduce a new law to enable mothers to transfer a proportion of their maternity leave and pay to fathers. This law will help give children the best start in life and provide parents with more choice by allowing the mother the option of returning to work earlier if she wants to and responding to the growing demand from fathers to stay at home and care for their child. This reflects changing family patterns, the different choices families are increasingly facing, and helps support greater equality at home and at work for men and women.
- 4.2** There is a growing body of evidence that fathers can play an important part in their child's development from birth through to adolescence. For example, when mothers work during the first year of their child's life and fathers play a greater role in bringing up children, this can lead to strongly positive educational effects later on in the child's life²⁹.
- 4.3** Since the 1970s fathers have been spending increasing amounts of time with their children. In the late 1990s fathers with children under five years of age spent an average of two hours a day caring for their children, compared with less than a quarter of an hour a day in the mid 1970s³⁰. Fathers now contribute around a third of all time spent by parents in caring for children³¹. Recent survey evidence suggests that fathers would like to be even more involved³².
- 4.4** The Government has already taken significant steps to enable fathers to play a bigger role in bringing up their children. In December 1999, we introduced a new right to parental leave. Mothers and fathers are entitled to 13 weeks' unpaid parental leave per child, which can be taken up to the child's fifth birthday. Parents of disabled children are able to take 18 weeks' parental leave up to their child's 18th birthday. In April 2003, the Government introduced two weeks' paid paternity leave for the first time and a new right to request flexible working hours, which is available to fathers as well as mothers.

29 The Effects of Early Maternal Employment on Child Development in the UK, Gregg et al, CMPO Working Paper Series No 03/070, May 2003.

30 British Fathers with children. Working Paper. Fisher, McCulloch and Gershuny 1999, Essex Institute for Social and Economic Research

31 Working Fathers: Earning and Caring, O'Brien, Shemilt, EOC 2002

32 Guardian / ICM poll on family friendly policies, August 2004

- 4.5** 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.
- 4.6** The new law enabling mothers to transfer a proportion of their maternity leave and pay to fathers will help give children the best start in life by supporting fathers' involvement in their care. It will also give parents more choice about how best to balance their work and family responsibilities during the first year of their child's life.

Principles of transferable leave

- 4.7** In introducing the new law on transferable leave and pay, the Government will seek to balance the needs of children, mothers, fathers and employers.
- 4.8** Our aim is to give parents as much flexibility and choice as possible about who takes maternity leave and pay. At the same time, the new law must be designed in such a way to make its administration as straightforward as possible for employers. Employers need to be able to plan and manage their workforce effectively when their employees are on leave. Taxpayers also need to have confidence in the integrity of the system. The Government has a responsibility to ensure that appropriate checks are put in place so that taxpayers' confidence in the system is assured. We must also bear in mind the law in this area – mainly the European Pregnant Workers Directive and equal treatment legislation.
- 4.9** The new system of transferable leave and pay will be based on a clear framework of rights and responsibilities. Mothers will have the right to transfer a proportion of their leave and pay to fathers, which will help give families more choice about how best to bring up their children during the first year of life. Both parents will have responsibilities to give sufficient notice of their intentions to enable their employers to plan and manage their businesses.

Eligibility and fathers' rights to return to work

- 4.10** The intention is that the mother will decide whether or not to transfer statutory maternity leave and pay to the father. It will be her entitlement to statutory leave and pay which will determine how much leave and pay the father will benefit from.

- 4.11** The same principles will apply for adopters. Where a couple adopt they can already choose which of them will take adoption leave. Transferable leave will mean they will both be able to take a share of the leave.
- 4.12** Eligible mothers and fathers will need to notify their respective employers by a specified point in time when transferring leave and pay. When the mother returns to work the father will immediately begin his period of transferred leave so that, as now, the total period of leave taken is continuous. Should a father who has taken transferred leave and pay subsequently decide to return to work earlier than planned, any untaken leave will be lost.
- 4.13** This approach is similar to how maternity and adoption leave is taken at present (see Annex B).
- 4.14** In order to keep the system as straightforward as possible, our intention is that fathers taking transferred leave will benefit from the same rights which are enjoyed by mothers taking maternity leave. For example, the father would be protected from unfair dismissal and detriment in taking the leave and have the same rights of return to his job.

The amount of leave and pay that can be transferred

- 4.15** The Government sees three main options with regard to the amount of leave and pay that could be transferred:
- Option 1** any leave and pay after six weeks following the start of maternity leave (or two weeks after the birth of the child if this is later)
 - Option 2** any leave and pay after six months following the start of maternity leave
 - Option 3** any leave and pay after three months following the start of maternity leave.

Option 1

- 4.16** Under this option, a mother would have the choice of transferring nearly all of her entitlement to statutory maternity leave and pay to the father. At present, mothers can start their leave up to 11 weeks before the expected date of birth, and for medical reasons the law does not allow new mothers

to return to work until at least two weeks after the birth. We do not propose to change these provisions.

- 4.17** An initial non-transferable period of six weeks would recognise that the majority of mothers plan to begin their maternity leave and pay before the expected date of birth, as well as taking some time afterwards. It helps to keep the focus of the first part of maternity leave around the birth of the child and the health of the mother. It is also consistent with the point at which most mothers start to receive the statutory flat rate of SMP.
- 4.18** Where a mother decides to transfer her entitlements at the earliest opportunity she and the father would need to consider when he should take his statutory paternity leave and pay. At present a father can take statutory paternity leave and pay up to eight weeks after the birth and this will need to be taken before starting any period of transferred leave and pay.
- 4.19** This option would give parents the most choice about how they use their statutory entitlements to balance work and family responsibilities and make the largest period of leave and pay available to fathers. However, whilst it will be the mother's choice to transfer her leave and pay to the father, a six week period could lead to some feeling pressurised to return to work sooner than they want. This would not be beneficial for children, for mothers or for employers. As the birth date might not fall when expected this option could also lead to more uncertainty about when a mother might actually return to work, and when the father would start to take his transferred leave and pay. It might impact on the parents' ability to plan ahead and their employers' ability to manage the leave.

Option 2

- 4.20** Under this option, a mother would be able to transfer a proportion of her leave and pay six months after her maternity leave has started. This option recognises that maternity leave and pay may start several weeks before the birth of a child. It would help remove concerns about mothers feeling pressurised to return to work sooner than they are ready and provide greater certainty about when transferred leave and pay would start. As many women continue to breastfeed on returning to work, this option would also be consistent with Government advice that children should be solely breastfed for the first six months of their life.

4.21 However, option 2 would reduce the choices available to parents. It would limit the amount of leave and pay available to fathers and offer the least scope for women to return to work during the first year of their child's life.

Option 3

4.22 Under this option, a mother would be able to transfer a proportion of her leave and pay three months after her maternity leave has started.

4.23 This option would continue to provide mothers and fathers with significant choice about how much leave could be transferred, and more than Option 2, whilst avoiding many of the uncertainties about returning to work arising from premature or late births which would affect Option 1.

Ensuring effective administration

4.24 The Government is committed to ensuring that the administration of the new system of transferable leave and pay is straightforward and has the fewest possible requirements on business. Expectant parents and their employers will want and need to understand readily their rights and responsibilities under the law. Taxpayers will want to be assured that the potential for pay being claimed in error or, at worst, fraudulently is minimised.

4.25 We are aware that there is already significant experience of administering different types and periods of maternity leave and pay. We want to learn from this experience when designing the new law. For example, we intend that fathers should take at least two weeks' leave, rather than a few days. This should help make it easier for employers to plan and provide cover for fathers taking transferred leave and pay. It is also consistent with the Government's objective of giving children the best start in life by supporting fathers who wish to take on a greater role in bringing up their children.

4.26 The Government believes there are three options on which the procedure for administering transferable leave and pay could be based:

Option 1 Self-certification by the mother and father of their eligibility

Option 2 Self-certification combined with confirmation by the mother's employer

Option 3 Inland Revenue compliance checks

Option 1

4.27 Under this option, parents would be required to provide written notice to their respective employers of their eligibility to take transferred leave and pay. The Government would make available a standard form, similar to the form we currently provide for fathers wanting to take statutory paternity leave and pay³³, which both the mother and father would have to complete. The mother would confirm her entitlements to leave and pay, the amount of leave she plans to take and when. Both parents would sign the form to certify that the leave was being taken to care for their child. On the mother's return to work the father would immediately begin the period of transferred leave and pay.

4.28 The father would pass the self-certificate to his employer as evidence of his entitlements so the employer could prepare to administer transferred leave and pay, again following an approach similar to the current administration of paternity leave and pay.

4.29 This certificate would be evidence of the father's entitlement, which would enable employers to be reimbursed for the payment, as currently happens for Statutory Paternity Pay (SPP). Employers recover 92 per cent of SMP, SPP and SAP. Small employers (those whose total NI liability is £45,000 or less in the previous tax year) may recover 104.5 per cent of the pay.

4.30 This option is the most straightforward approach with the least administrative burden on both parents and employers.

33 www.inlandrevenue.gov.uk/pdfs/emp2003/sc3.pdf

Option 2

- 4.31** Under this option, the mother's employer would check the self-certificate and sign to confirm that the entitlements the mother has declared are accurate. The completed self-certificate would once again act as the evidence for the father's employer to administer the transferred leave and pay and for the reimbursement of the transferred pay.
- 4.32** This option would require a slightly greater involvement by employers in the administration of transferable leave and pay. However, it would provide an additional check in the system that could help avoid any errors in payment or potential abuses of the system.

Option 3

- 4.33** Under this option, the Inland Revenue (IR) would undertake an additional check to ensure the accuracy and integrity of the system.
- 4.34** The mother's employer would be required to pass the standard form, or the information it contains, to the IR. The IR would then be able to confirm the father's entitlements to transferred leave and pay to the father's employer. This confirmation would enable the father's employer to proceed and administer the transferred leave and pay with confidence that this was in line with the requirements.
- 4.35** This option would require the IR to have up-to-date information about both parents' pay and the mother's work history. It would not relieve employers of the need to provide information to the IR, but it would provide greater certainty to the father's employer that they can administer transferred pay and recover payment.

Notice to transfer leave and pay

- 4.36** To further help keep the system of maternity leave and pay straightforward we intend to keep the notice period that mothers and fathers have to give to their respective employers when transferring leave in line with those that apply to mothers when notifying the start and end dates of their leave (see Chapter 3).

Contractual schemes

- 4.37** Almost one in five employers (employing 39 per cent of all employees) currently provide additional benefits for parents on top of the statutory entitlements. Evidence shows that businesses that provide additional support to their employees benefit from improved retention rates, reduced recruitment costs, improved staff morale and increased productivity.
- 4.38** The Government supports and seeks to encourage contractual schemes. We want to ensure that the entitlement to transfer maternity leave and pay is compatible with steps taken by good employers to provide additional support to their staff. We particularly want to hear the views of such employers about how best to design the new system of transferable leave and pay.
- 4.39** The new law will apply to the transfer of statutory maternity leave and pay. The Government does not intend that any contractual benefits available to mothers taking maternity leave and pay will be transferred to the father. However, employers who seek to go beyond the statutory minimum may wish to consider whether they want to provide similar entitlements to employees who are new fathers.

Simplifying the administering of payment

- 4.40** Keeping administrative requirements to a minimum as we introduce the measures set out in this document is a key priority for the Government. An option some employers have suggested that might make payment more straightforward is for the state to take over responsibility from employers for paying parents direct, via the IR.
- 4.41** Most parents in work currently receive their statutory payments through their employer (mothers in receipt of MA receive payment direct through the Department for Work and Pensions (DWP)). This approach can help the employee and employer stay in touch during the period of leave, reducing the risk of the employee not returning to work and the likelihood that the employer will lose valuable skills and experience from the workforce. As discussed in paragraphs 4.37 – 4.39, many employers also provide additional contractual payments on top of the statutory entitlements in order to further support their staff.

- 4.42** There are advantages and disadvantages for employers and employees with the state taking over responsibility for paying parents direct. These are set out below.

Savings and costs for employers

- 4.43** Under a direct payment scheme, employers could save time in calculating payments, paying employees, and claiming payments back from the State. Small employers, who are less likely to have human resources experts and automated payroll systems, would be most likely to benefit. We welcome views on this issue, including indications of how much it currently costs to calculate, pay and reclaim a woman's maternity pay.
- 4.44** Although a direct payment scheme could help save time for employers, it would not entirely remove employers from the process of administration of pay. New processes, with different timescales, would need to be put in place to ensure the IR received reliable, relevant and up to date income information and service history to assess the employee's eligibility and level of pay. This information would need to cover tax and National Insurance Contributions (NICs) implications, including the collection of employer NICs. The IR would also need to establish the employee's bank account details. We welcome views about the extent to which a direct payment system which required employers to provide the IR with recent pay and work history would ease the overall requirements of the present system on employers.
- 4.45** Although a direct payment scheme might help reduce the amount of time an employer spends administering pay, it would not remove the need for employers to spend time managing their employees' absence. For example, making arrangements for taking on a temporary member of staff or for existing employees to provide cover. We welcome comments on the potential impact of direct payments on how employers manage leave, including specific examples of the time and costs involved.
- 4.46** Many employers, particularly large employers, have invested heavily in automated payroll systems so that the calculation of SMP, SPP and SAP is automatic. A direct payment scheme may be less attractive for such employers. In moving towards any new system, there would be transitional costs for employers, as payroll software would need to be updated to reflect changes in arrangements. Employers would need time to familiarise themselves with the arrangements, whether they use payroll software or payroll agents for calculating SMP, SPP, or SAP, or do this

manually. Additional costs may also be incurred in taking an employee temporarily off the payroll and then restoring him or her once s/he has returned from leave. We welcome views on these potential costs and whether these differ if the period of leave is two weeks in the case of SPP or 26, 39 or 52 weeks in the case of SMP and SAP.

4.47 In considering the case for introducing a direct payment scheme, the Government is not proposing:

- to remove the requirement on large employers (those who pay more than £45,000 in national insurance) to cover a proportion of the cost of statutory payments. If a direct payment scheme were introduced, we would make new arrangements for collecting this contribution.
- to reduce the compensation rate for small employers. Small employers (those whose total National Insurance liability is £45,000 or less in the previous tax year) may recover statutory maternity, adoption and paternity pay in full and receive compensation of 4.5 per cent. The rate of compensation is reviewed annually.

Links between employers and employees

4.48 Payment of SMP, SPP and SAP by employers can help maintain links between employers and their employees, particularly where there is no contractual scheme or where any contractual entitlement has ceased. Parents are able to stay in touch with the labour market and their employer whilst they are on leave, which can be helpful in facilitating their return to work. This is a particularly important issue as the Government extends the period of entitlement to paid maternity and adoption leave to nine months by April 2007, with the goal of a year's paid leave by the end of the next Parliament. We would welcome suggestions about how the employer/employee relationship could be maintained to suit both their needs should the Government introduce a direct payments scheme.

Contractual pay

4.49 An important feature of the current system of maternity, paternity and adoption leave and pay is that it allows employers to exceed statutory entitlements by providing more generous contractual schemes (see paragraphs 4.37 – 4.39). The Government welcomes these schemes because of the benefits they bring for employers, employees and the economy as a whole.

4.50 One possible consequence of a direct payment scheme is that it might make the provision of contractual schemes more difficult or less likely. In many schemes, an employee may receive additional contractual pay on top of his or her statutory entitlement up to the equivalent of the employee's full pay. Under a direct payment scheme, if the employer continued to pay full contractual pay whilst the employee also received statutory pay, the employee could receive more than his or her normal earnings in total. In order to prevent this happening, employers would have to know the amount that was being paid direct to reduce contractual pay appropriately.

Options for introducing a direct payment scheme

4.51 The Government sees two options for introducing a direct payment scheme:

Option 1 The Government calculates SMP, SPP and SAP and pays them, and MA, direct to parents whenever a mother or father takes paid leave, based on information supplied by the employer and employee

Option 2 The Government calculates SMP and SAP, and MA, and pays them direct, but only where leave and pay is transferred from the mother to the father or between adopters.

Option 1

4.52 This option would remove the need for employers to calculate and make the payments due in all circumstances, not just where leave and pay is transferred to the father. This would make the system of administering leave and pay simpler and clearer for employers.

4.53 However, employers would still need to provide a range of information to the IR in order that pay could be calculated accurately. Additional costs might be involved in restoring employees to the payroll when they return to work. It might also weaken the links between employers and employees whilst parents are on leave.

Option 2

- 4.54** This option would apply only where a mother decides to transfer a proportion of her leave and pay to the father. In all other circumstances the mother's employer would pay the employee and claim it back from the State as at present.
- 4.55** This would help simplify the system of administering leave and pay for some employers and would retain the visible link between the mother and her employer via the payroll during maternity leave. However, the mother's employer, and the father's, would still need to provide details to the IR. Paying direct only in limited circumstances and not in others may also create uncertainty.

Timing

- 4.56** It will not be possible to introduce a direct payment scheme immediately. The computer systems of the IR and DWP would need extensive changes. Employers would also need time to amend their own systems. The Government's goal is to give parents greater choices in balancing work and family responsibilities. We have made clear our commitment to extend maternity leave to nine months from April 2007 and give mothers a new right to transfer a proportion of their leave and pay to fathers. We welcome comments about the potential impact of introducing different systems to administer transferable leave and pay in order to achieve this goal.
- 4.57** The Government is keen to hear views on whether there are alternative approaches that would help make administering the system of leave and pay easier, such as simplifying the pay calculation that employers undertake. Such approaches would need to meet the Government's legal obligations and represent value for money for the taxpayer.

Conclusion

4.58 This chapter has set out the main issues that we need to consider in implementing the new law to give mothers the right to transfer a proportion of their maternity leave and pay to the father and asks how we can keep the administration straightforward. We welcome comments on the issues raised and specifically on the following questions:

- Q10** How much statutory maternity leave and pay should mothers be entitled to transfer to fathers?
- Q11** What steps would help keep the procedure for transferred leave and pay administratively straightforward?
- Q12** How much notice should the mother and father provide their employers when transferring leave and pay?
- Q13** Are there any other issues the Government needs to consider when designing the right to transfer maternity leave and pay, such as how long employers, employees and their representatives need to prepare for the introduction of the law?
- Q14** What examples are there of the costs to (1) calculate, pay and reclaim, maternity, paternity and adoption pay; and, (2) administer maternity leave and arrange cover for absences?
- Q15** What would be the impact of introducing a direct payment scheme on employees and employers?
- Q16** What advantages and disadvantages do you see in the State paying SMP, SPP, SAP and MA direct for the two options outlined?
- Q17** Are there other approaches that could help make administering the system of leave and pay easier?
- Q18** What else should we consider in deciding whether to transfer payment to the State?

5

Flexible working



This chapter sets out the case for extending the right to request flexible working for parents with young or disabled children to other groups. It outlines how the new law has worked so far, including the benefits for children, families and businesses. It considers how the law might be extended to carers and/or parents with older children and explores how this might be achieved in a way that balances the needs of families with those of business.

The case for flexible working

- 5.1** Recent decades have seen significant changes in family life and working patterns. More women are working than ever before, including women with children. Men are playing a greater role in bringing up their children. And more families are taking on responsibility for caring for an elderly, sick or disabled relative, often at the same time as continuing to care for children. (see Chapter 1).
- 5.2** Finding working hours to match their caring responsibilities is a crucial issue for many of today's families. The Government wants to support families in securing the working hours they need. We believe flexible working is:
- **Good for children** – enabling families to spend time with their children as well as work and contribute to the family income
 - **Good for parents** – helping them to find working hours to match their caring responsibilities
 - **Good for business** – enabling them to draw on a wider pool of skills and talents in the workforce, improve recruitment and retention rates, and increase staff morale and productivity.

The impact of the current right to request

- 5.3** The Government's aim is to encourage employers to provide flexible working across their workforce. Many good employers are already offering flexible hours to their employees.
- 5.4** In April 2003, we sought to help parents who face particular challenges in balancing work with caring for their child. Parents of young and disabled children were given a new legal right to request flexible working hours with a duty on their employers to consider their requests seriously.
- 5.5** In the first year since the new right was introduced, almost a quarter of parents of children under six asked to change to a more flexible working pattern. Over three-quarters of these requests were fully accepted and another nine per cent were partly accepted or a compromise was reached. This means around 800,000 families have secured flexible working hours since the new right to request was introduced³⁴.

34 "Results of the first flexible working employee survey", DTI, 2004

Case Study

Central Scotland Forest Trust (CSFT) leads the creation of the Central Scotland Forest. Its projects include landscape improvements such as woodland planting and paths, recreation facilities, and a wide range of community projects.

Introducing work-life balance measures has been a great success for the CSFT with over three-quarters of its staff making use of flexible working arrangements. Keen to be seen as an employer of choice, by offering increased flexibility to all staff they have seen a twofold increase in the number of applicants for vacancies, a nine per cent reduction in training costs and a 16 per cent reduction in recruitment costs. Staff turnover has also reduced by 49 per cent. In 2003, 85 per cent of their staff said they would recommend CSFT as an employer.

- 5.6** Thirty eight per cent of all requests were for part-time working, 46 per cent were for smaller variations to working hours, including flexitime, compressing their working week, or asking to reduce hours for a limited period. Ten per cent of requests were to work from home on a regular basis³⁵
- 5.7** Research suggests that employers are showing an increasing willingness to go beyond the current scope of the law³⁶ and to accommodate requests whenever they can. Since the law took effect, the number of refused requests has declined by around a half. Recent evidence shows just eight per cent of requests are now being turned down³⁷. This may be because employers believe the right has either a positive or no impact on their business, and that implementation costs associated with the right are insignificant³⁸.
- 5.8** The Government intends to build on the success of the right to request flexible working hours for parents with young children. Our goal is to support all families find working hours to match their caring responsibilities

35 *ibid*

36 "Flexible working and paternity leave", CIPD, 2004

37 "Measuring flexibility in the labour market: Employment Trends Survey", CBI, 2004

38 "A parent's right to ask: a review of flexible working arrangements", CIPD, 2003

whether for children or sick or vulnerable adults, in a way that enables businesses to effectively plan and manage their workforce.

- 5.9** We would like to learn more from employers and employees about their experience of the current legislation and their views on the potential consequences of extending the scope of the law to other groups. We know that the majority of requests are from women and would like to hear views on the reasons for the fact that more fathers are not requesting to work flexibly.
- 5.10** We would welcome comments, including from businesses which already offer flexible working across their workforce, about the implications for employers of managing an increasing number of requests from different groups in the workforce. In particular, we would like views about when we should move to extend the scope of the legislation.

Extending the right to request to carers

- 5.11** Caring is something that affects almost everyone at some stage in their life. In 2000, one in six people aged 16 or over cared for a sick, disabled or elderly person and one in five households contained a carer.³⁹ Changing demographics – an ageing population, smaller families and different family structures – mean that in future more people are likely to end up caring for another adult at some point in their lives.
- 5.12** The Government estimates that there are currently 5.3 million carers of working age (between 16 and 64), 3.5 million of whom are working either full or part-time and provide some form of unpaid care. Many carers struggle to balance their work and caring responsibilities. Others feel they have to make a choice between work and caring. Evidence shows that once carers give up work completely, they tend to remain out of work for several years, which further weakens their contact with the labour market and can make it harder to return to work later.
- 5.13** The Government recognises the valuable contribution carers make to society and the difficulties they can face in juggling paid work with their other responsibilities. We believe much greater recognition should be given

39 General Household Survey, ONS, 2000

to the contribution carers make to society. We think there is a strong case for extending the right to request flexible working to carers as priority.

- 5.14** We recognise that the situation facing families with responsibilities for caring for sick or disabled relatives is different from those with responsibilities for caring for children. There is greater uncertainty for carers since the needs of sick and disabled relatives can often change over time. Whereas parents may have greater confidence in agreeing a permanent change in their working hours, particularly once their child goes to school, carers may be more reluctant to do so as their caring responsibilities may change. This could lead to greater uncertainty for employers who need to be able to plan their workforce requirements over the long term.
- 5.15** We want to take into account the needs of both employers and carers. In doing so, we are committed to ensuring the law continues to take a light touch approach and that the definition of carers is clear, straightforward and easy to understand for both employers and employees. The procedure for the new right to request for carers and the requirements it places on employees and employers would remain the same as under the current legislation. For example, a carer could make only one request a year under the law and any changes in their working pattern that result from a request would lead to a permanent change to the carer's employment contract. Employers would only have to agree to further changes in working patterns where these are compatible with the operation of business, as is the case under the current right to request for parents with young children.

Defining Carers

- 5.16** The new law must be based on a straightforward and easily understandable definition of carers. This will be crucial in helping to raise awareness about the new right amongst employees and to making the new right easy to administer for employers.
- 5.17** The degree of care an adult may require can vary significantly and may do so over time. We would welcome views about whether we need to specify in legislation the level of care that an employee would need to provide in order to determine eligibility, or whether this should be dealt with in guidance.
- 5.18** Under the current right to request there is no requirement on parents to produce evidence that they are caring for their child. We would welcome

views about whether the same approach can be taken with carers or whether there should be an additional requirement to produce evidence of providing care.

- 5.19** The Government is seeking views on the following 5 options to define carers:

Option 1 caring for a partner only

- 5.20** We estimate this would give 127,000 employees the right to request flexible working. It would include those individuals who have a caring responsibility for their sick or disabled spouse or partner. The straightforward approach would provide clarity for both employers and carers but it is also the narrowest in scope and would exclude many other carers.

Option 2 caring for either a partner or a parent

- 5.21** We estimate this would give 837,000 employees the right to request flexible working. This is similar to Option 1 and includes an individual's parents, or their partner's parents.

Option 3 caring for any dependent adult relative

- 5.22** We estimate this would give 1.3 million employees the right to request flexible working. It would enable an individual to make a request who cared for a dependent relative who was sick or disabled. We would welcome views about how we could keep this definition straightforward and avoid ambiguity about who a dependent relative might be. We could define a dependent relative as being either (1) an immediate relative of the employee (the spouse or partner, son or daughter, or parent or parent-in-law) or (2) a relative living in the same house as the employee. This could therefore include an elderly aunt or grandparent.

Option 4 caring for any disabled dependant

- 5.23** This option is the widest in scope and we estimate it would give 1.8 million employees the right to request flexible working. The approach is explicitly based on individuals who are disabled and would enable the law to be targeted at those who provide substantial care.
- 5.24** For this option we have defined "disabled" as someone in receipt of Disability Living Allowance or Attendance Allowance (DLA/AA), which are

State benefits designed to help the long-term disabled. The approach is straightforward and provides clarity. Dependants do not have to be an immediate relative, and could therefore be a disabled next-door neighbour. Basing the definition of disabled on DLA/AA receipt means it would not be responsive to sudden onset of illness or after an accident. In addition, the processing of an application for DLA/AA can take up to six weeks and there are qualifying times of up to six months. We would therefore welcome views on whether a more appropriate definition of “disabled” is possible.

Option 5 another definition of a carer

- 5.25** We are conscious that there are several ways that we can define a carer and that there might be more suitable approaches that meet the objectives of providing a straightforward and targeted approach.
- 5.26** Estimated costs and savings of extending the right to request flexible working to carers are set out in the partial RIA accompanying this consultation (summarised at Annex E).

Extending the right to request to parents of older children

- 5.27** There are 3.7 million parents of young children who are currently eligible for the right to request flexible working. However, the Government is mindful that many parents of older children also need support in finding hours to match their work and caring responsibilities. We therefore wish to consider whether the law should be extended to parents of older children.
- 5.28** The Government is seeking views on the following three options to extend the right to request:

Option 1 to parents with children under nine

- 5.29** We estimate this would benefit an extra 1.4 million parents. This would be a small but significant step that supports greater flexibility in the workplace at the same time as minimising any extra impact on employers.

Option 2 to parents with children under 12

5.30 At age 11, the vast majority of children in England and Wales start secondary school, whilst in Scotland it is between 11 and 12. Extending the scope to children up to and including 11 therefore presents a key point in time when parents may want to change their working pattern. In addition to those who are already eligible, an estimated extra 2.6 million parents would benefit from this extension. Employers might also be comfortable with taking a greater step given that the law is now established and that they have greater experience of flexible working.

Option 3 to parents with children under 17

5.31 Teenagers still need a great deal of support throughout secondary school and compulsory school age stops when a child reaches 16. Extending the right to request flexible working to include parents of children under 17 would benefit an additional 4.5 million parents.

Support for employers and employees

5.32 Constructive dialogue between employers and employees has been critical to the success of the current right to request, as has the use of trial periods and reviews of new working arrangements. Feedback from employers and employees about the guidance⁴⁰ that is available on the right to request is generally positive although managers have reported that they are not always aware of all the options open to them.

5.33 We want to know if there is more the Government can do to assist employers handling requests for flexible working and to help employees make requests, particularly those in low paid work, or where there is no culture of flexible working. We are conscious that flexible working is more established in some sectors than in others; for example, the construction sector has the lowest level of flexible working arrangements.

⁴⁰ Guidance on the flexible working law is available at www.dti.gov.uk/workingparents. Acas provide advice through their helpline (08457 474747) and their website www.acas.gov.uk.

Conclusion

- 5.34** Finding working hours to match their caring responsibilities is a crucial issue for many of today's families. The Government intends to build on the success of the current right to request flexible working for parents by extending the scope of the law to other groups. In doing so we need to strike the right balance between supporting families and ensuring business can manage their workforces effectively.
- 5.35** We welcome comments on the issues raised above and specifically the following questions.

- Q19** How should the impact of the flexible working law influence the way we consider extending its scope to carers and parents of older children?
- Q20** What is the case for extending the law to carers of adults?
- Q21** What types of caring should the law cover and how should this be defined?
- Q22** What is the case for extending the law to parents of older children? When might we do this?
- Q23** What parents would the law cover? (i.e. what would be the age cut-off?)
- Q24** What is the level of demand for extending the right to request flexible working likely to be from: (1) carers of sick and disabled adults; and (2) older children?
- Q25** What further support and guidance should the Government provide to facilitate the spread of flexible working?

ANNEX A - Glossary of key terms

| | |
|---------------|---|
| AAL | Additional Adoption Leave |
| AML | Additional Maternity Leave |
| DLA/AA | Disability Living Allowance or Attendance Allowance |
| DTI | Department of Trade and Industry |
| DWP | Department for Work and Pensions |
| EOC | Equal Opportunities Commission |
| ETAD | The amended Equal Treatment Directive (2002/73/EC) |
| IR | Inland Revenue |
| MA | Maternity Allowance |
| NICs | National Insurance Contributions |
| OAL | Ordinary Adoption Leave |
| OML | Ordinary Maternity Leave |
| PBR | Pre-Budget Report |
| RIA | Regulatory Impact Assessment |
| SAP | Statutory Adoption Pay |
| SDA | Sex Discrimination Act |
| SMP | Statutory Maternity Pay |
| SPP | Statutory Paternity Pay |

ANNEX B – Summary of current provisions

Maternity leave

All pregnant employees are entitled to 26 weeks' ordinary maternity leave (OML), regardless of length of service.

Women who have completed six months' service with their employer into the 15th week before the week the baby is due are also able to take 26 weeks' additional maternity leave (AML), which follows on from OML. In practice, to be eligible for AML the woman must have been working for her employer before the pregnancy began.

Notice

A woman must notify her employer no later than the end of the 15th week before the week her baby is due (the qualifying week) or as soon as reasonably practicable that she is pregnant and when she intends her maternity leave to start.

The assumption is that she is returning after her full maternity leave entitlement (six or twelve months). She can return earlier, if she chooses to do so, provided she gives at least 28 days' notice of an earlier return date.

Contractual benefits

- During OML, women are entitled to benefit from their normal terms and conditions of employment (except for terms relating to remuneration). Most women will be entitled to Statutory Maternity Pay (SMP) or Maternity Allowance (MA) for this period.
- During AML, the employment contract continues and an employee is entitled to the benefit of certain terms and conditions of her employment, for example, compensation in the event of redundancy and notice period.
- The entitlement to four weeks' paid annual leave under the Working Time Regulations is not affected by maternity leave.

Right to return

- After OML a woman has a right to return to the same job on the same terms and conditions as before her leave began.
- After AML a woman also has the right to return to the same job on the same terms and conditions as before her leave began unless it is not reasonably practicable for the employer to take her back in her original job. If this is the case she must be offered a suitable and appropriate alternative job with terms and conditions as to remuneration which are no less favourable than those of her previous position.

Protection from dismissal, detriment and discrimination

- Women are protected from being unfairly dismissed or selected for redundancy for any reason connected with pregnancy, childbirth or taking maternity leave.
- Women are also protected from suffering a detriment at work because of pregnancy, childbirth or taking maternity leave.
- Women are also protected from discrimination due to pregnancy or maternity leave under the Sex Discrimination Act.

Statutory Maternity Pay (SMP)

Pregnant employees who meet the qualifying conditions based on their length of service and average earnings are entitled to receive from their employers up to 26 weeks' SMP.

Qualifying conditions

- For employed earners (she must work for someone who is liable (or would be liable but for low earnings) to pay the employer's share of her Class 1 National Insurance contributions).
- A woman must have 26 weeks' continuous service with her employer into the 15th week before the week her baby is due. The 15th week before the week the baby is due is known as the qualifying week.
- A woman must have average weekly earnings in the eight weeks up to and including the qualifying week at or above the lower earnings limit (LEL) for the payment of National Insurance (NI) contributions (£79 a week from April 2004).

Levels and length of payment

- Paid for a maximum of 26 weeks.
- Six weeks at 90 per cent of her average weekly earnings (with no upper limit).
- 20 weeks at a flat rate of £102.80 (rising to £106 from April 2005) or 90 per cent of her average weekly earnings if that is less than the flat rate.

Employer reimbursement level

- Employers recover 92 per cent of the SMP they pay by deducting it from their next payment of NI contributions, PAYE and other payments to the Inland Revenue.
- Small employers (those whose total NI liability is £45,000 or less in the previous tax year) may recover 104.5 per cent (April 2004) of the SMP they pay.
- Employers may claim money in advance to help with their cashflow.

Maternity Allowance (MA)

Women who do not qualify for SMP may qualify for MA. This is paid by JobCentre Plus and is based on the woman's recent employment and earnings record.

Qualifying conditions

- For employed women who do not qualify for SMP, the self-employed and recently employed.
- A woman must have been employed or self-employed in at least 26 weeks of the 66 weeks ending with the week before the expected week of childbirth (the test period).
- She must also earn at least £30 per week on average.

Levels and length of payment

- Paid for a maximum of 26 weeks at a flat rate of £102.80 (rising to £106 from April 2005) or 90 per cent of her average weekly earnings if that is less than the flat rate.

When SMP and MA start

Women can start their maternity pay at any time from the 11th week before their expected week of childbirth right up to the birth. However, if they fall sick with a pregnancy-related illness in the four weeks before the week the baby is due, their maternity pay (and leave) will start automatically. The latest SMP or MA and leave can start is the day after the birth.

Paternity leave

Employed fathers who have completed six months' service with their employer into the 15th week before the week the baby is due can take paternity leave to support the mother and to care for the child.

The father can choose to take one or two weeks' paternity leave at any time in the eight weeks following the birth of the child. Leave must be taken in one block.

Notice

The father must tell his employer in the 15th week before the week the baby is due when he is planning to take his paternity leave. He may change his mind later but should give 28 days' notice (or as much notice as reasonably practicable).

Statutory Paternity Pay (SPP)

Fathers who meet the qualifying conditions based on their length of service and average earnings are entitled to receive SPP from their employers.

Level and period of pay

The father can choose whether to receive one or two weeks' SPP. Paid at a flat rate of £102.80 (rising to £106 from April 2005) or 90 per cent of the father's average weekly earnings if that is less than the flat rate.

Qualifying conditions

- He must be an employed earner.
- He must have 26 weeks' continuous service into the 15th week before the week the baby is due.

- He must have average weekly earnings in the eight weeks up to and including the qualifying week above the LEL for the payment of NI contributions (£79 a week from April 2004).
- He must be the father of the child or the mother's partner and be taking time off to care for the child and/or support the mother. He must provide his employer with a declaration of this. This will usually be done by completing a self-certificate.

Employer reimbursement

Employers are reimbursed in the same way as for SMP.

Adoption leave

Adopters who have completed six months' service with their employer into the week in which they are notified they have been matched with a child for adoption can take 52 weeks' adoption leave. This is made up of 26 weeks' ordinary adoption leave (OAL) and 26 weeks' additional adoption leave (AAL). Adoption leave can begin any time from 14 days before the expected date of placement. It cannot start later than the date of placement.

When a couple adopts a child they can choose which of them will take adoption leave. The other adopter, or the partner of an individual who adopts, may be able to take paternity leave and receive SPP.

Contractual entitlements and right to return.

The rights which apply to OML also apply to OAL. The rights which apply to AML also apply to AAL.

Notice

The adopter must inform their employer by the end of the week in which they are notified they have been matched with a child for adoption (the notification week) that they have been matched with a child, the date it is expected the child will be placed with them and the date on which they intend to begin their adoption leave. The adopter can change the start date of their leave but should give 28 days' notice (or as much notice as reasonably practicable).

Statutory Adoption Pay (SAP)

Adopters who meet the qualifying conditions receive 26 weeks' SAP, paid by their employer.

Qualifying conditions

- The adopter must be an employed earner.
- The adopter must have 26 weeks' continuous service into the notification week.
- The adopter must have average weekly earnings in the eight weeks up to and including the qualifying week above the LEL for the payment of NI contributions (£79 a week from April 2004).
- They must provide evidence that they have been matched with a child and of the expected date of placement. Adoption agencies will usually supply a "Matching Certificate" which gives this information.

Level and period of pay

Paid for a maximum of 26 weeks at a flat rate of £102.80 (rising to £106 from April 2005) or 90 per cent of the adopter's average weekly earnings if that is less than the flat rate.

Employer reimbursement

Employers are reimbursed in the same way as for SMP.

Right to request flexible working

Parents of children under six or of disabled children under 18 have the right to apply to work flexibly and their employer has a duty to consider these requests seriously and can only refuse a request on set business grounds.

The procedure

The employee makes a considered application in writing. The employee needs to give careful consideration to which working pattern will help them best care for their child, and any financial implications it may have on them if the desired working pattern will involve a drop in salary. The employee also needs to consider any effects their request will have on their employer's business and how these might be accommodated.

Within 28 days the employer must meet with the employee to discuss the application. This provides both employer and employee with the opportunity to explore the proposed working pattern and discuss how it might work for them.

Within 14 days of the meeting the employer must write to the employee to either agree the new working pattern and a start date or to provide business grounds why the application cannot be accepted. Business grounds for refusing a request are:

- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during periods the employee proposes to work
- Planned structural changes

Employees can appeal against their employer's decision.

Any request that is agreed is a permanent change to the employee's employment contract.

Parental leave

Parental leave is the right to take time off work to care for a child or make arrangements for the child's welfare. Parents can use it simply to spend more time with their children and strike a better balance between their work and family commitments. The leave is unpaid.

Qualifying conditions

Both mothers and fathers can take parental leave.

The parent must have completed one year's qualifying service with their employer by the time they want to take the leave.

Amount of parental leave and when it can be taken

- Employees get 13 weeks in total per child which can be taken up to the child's fifth birthday.
- Parents of disabled children are able to take 18 weeks' parental leave up to their child's 18th birthday.
- Adopters can take parental leave during the five years after the child is placed for adoption with the family (or until the child's eighteenth birthday if that comes sooner).

The fallback scheme

Employers and employees are encouraged to agree their own procedures for taking parental leave, through workforce or collective agreements or through individual arrangements. Otherwise the fallback scheme applies:

- Leave must be taken in blocks or multiples of one week. Parents of disabled children can take leave in blocks or multiples of one day.
- In all cases a maximum of four weeks' parental leave a year can be taken in respect of any individual child.
- 21 days' notice must be given to the employer.
- The employer can postpone the leave for up to six months where the business would be particularly disrupted if the leave were to be taken at the time requested. But parental leave cannot be postponed where the employee gives notice that he/she will take it immediately after the time the child is born or is placed with the family for adoption.

Returning to work after parental leave

After a period of parental leave of four weeks or less, the employee is entitled to return to the same job. If the leave is taken at the end of AML or when parental leave exceeds four weeks, the employee is entitled to return to a suitable and appropriate job with terms and conditions which are no less favourable than those of the previous job.

Time off for dependants

All employees have the right to take a reasonable period of time off work to deal with emergencies involving a dependant.

A dependant can be the spouse, partner, child or parent of the employee, or someone who lives with the employee as part of their family. A person who reasonably relies on the employee to provide assistance or make arrangements will also be considered a dependant in cases of illness, injury or where existing care arrangements break down.

Circumstances covered by the law

- A dependant falls ill or has been involved in an accident or assaulted, including where the victim is distressed rather than injured physically
- A dependant is having a baby
- Care arrangements for a dependant who is ill or injured need to be made
- A dependant has died; for example to make funeral arrangements or to attend a funeral
- There is an unexpected disruption or breakdown in the care arrangements of a dependant; for example when a childminder or nurse is unexpectedly unavailable
- There is an incident involving the employee's child during school hours; for example, if the child has been involved in a fight or is being suspended from school.

Length of time off and notice

- There is no set amount of time off which can be taken as this will depend on the circumstances in each case. In most cases, the amount of leave will be one or two days at the most, but this will depend on individual circumstances. An employee may be able to take a longer period of leave under other arrangements with the employer.
- Employees must tell their employer, as soon as practicable, the reason for their absence and how long they expect to be away from work.

- There is no limit on the number of times an employee can be absent from work under this right. However, the right is intended to cover genuine emergencies.

Tax Credits

Child Tax Credit and Working Tax Credit provide income-related support to families with children.

Child Tax Credit

This is for families with at least one child. It is made up of the following elements:

- A *family element* that is payable to any family with annual household income of less than £50,000 responsible for a child. It is paid at a higher rate to families with at least one child under the age of one. This is known as the baby element.
- A *child element* for each qualifying child the claimant is responsible for. This is paid at a higher rate if the child has a disability and at an enhanced rate for a child with a severe disability. This is known as the disabled child element.

Working Tax Credit

This is a tax credit for people who are in paid work. The amount you receive will depend on annual income. It is made up of the following elements:

- A basic adult element.
- An extra element which is paid to single parents and couples.
- An extra element which is paid if the claimant and their partner, if they have one, work a total of 30 hours or more a week.
- An extra element which is paid if the claimant (or their partner) is working and has a disability.
- An extra element which is paid if the claimant (or their partner) is working and has a severe disability

ANNEX C - The Consultation code of practice criteria

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

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

www.cabinet-office.gov.uk/servicefirst/index/consultation.htm

ANNEX D - Summary of questions

In this consultation document the Government invites responses to the following questions:

- Q1** In changing the qualification requirements for maternity leave, which of the following options is preferable, and why?
- **Option 1:** extend entitlement to AML to all women who qualify for OML
 - **Option 2:** abolish AML and extend OML to 12 months
 - **Option 3:** abolish AML and extend OML to 12 months with different rights of return dependent on the period of leave actually taken
- Q2** Are there other measures the Government should introduce to make the system of maternity and adoption leave and pay simpler to understand and administer for employers and employees?
- Q3.** What should be the guiding principles for setting the level of flat rate payments, including the percentage of earnings covered for those parents who earn less than the flat rate?
- Q4** Should mothers have to confirm their date of return from leave? If so, when should the notice point be?
- Q5** Should we extend the notice period for early return? If so, what should the new notice period be?
- Q6** Are there other steps the Government could take to ease the difficulties employers experience with the current notice periods?
- Q7** How can dialogue and communication between employers and mothers be improved before and during maternity leave?
- Q8** How can information on the rights and entitlements of working parents best be provided and combined with information on other relevant issues for working families, such as childcare?
- Q9** What more could be done to help women returning to the labour market after a period of time out caring for their children?

- Q10** How much statutory maternity leave and pay should mothers be entitled to transfer to fathers?
- Q11** What steps would help keep the procedure for transferred leave and pay administratively straightforward?
- Q12** How much notice should the mother and father provide their employers when transferring leave and pay?
- Q13** Are there any other issues the Government needs to consider when designing the right to transfer maternity leave and pay, such as how long employers, employees and their representatives need to prepare for the introduction of the law?
- Q14** What examples are there of the costs to (1) calculate, pay and reclaim , maternity, paternity and adoption pay; and, (2) administer maternity leave and arrange cover for absences?
- Q15** What would be the impact of introducing a direct payment scheme on employees and employers?
- Q16** What advantages and disadvantages do you see in the State paying SMP, SPP, SAP and MA direct for the two options outlined?
- Q17** Are there other approaches that could help make administering the system of leave and pay easier?
- Q18** What else should we consider in deciding whether to transfer payment to the State?
- Q19** How should the impact of the flexible working law influence the way we consider extending its scope to carers and parents of older children?
- Q20** What is the case for extending the law to carers of adults?
- Q21** What types of caring should the law cover and how should this be defined?
- Q22** What is the case for extending the law to parents of older children? When might we do this?
- Q23** What parents would the law cover? (i.e. what would be the age cut-off?)
- Q24** What is the level of demand for extending the right to request flexible working likely to be from: (1) carers of sick and disabled adults; and (2) older children?
- Q25** What further support and guidance should the Government provide to facilitate the spread of flexible working?

ANNEX E - Partial Regulatory Impact Assessment

EXECUTIVE SUMMARY

1. INTRODUCTION

- 1.1** This is an Executive Summary of the partial Regulatory Impact Assessment (RIA). The full text of the partial RIA, which contains detailed explanations of the assumptions and methodologies used in coming to the estimates, can be found on the DTI website at www.dti.gov.uk/workandfamilies_ria.htm
- 1.2** It must be emphasised that the estimates of costs and benefits in the RIA are provisional. The views of consultees are requested on these aspects as part of the consultation. Another RIA will be produced for a further round of consultation in the course of preparing any legislation required to carry forward the proposals.
- 1.3** The RIA looks at the following proposals covered by the consultation document:
- (a) extending the period for payment of statutory maternity pay (SMP), maternity allowance (MA) and statutory adoption pay (SAP) initially from 26 to 39 weeks by April 2007;
 - (b) reforming the period of notice to be given by an employee prior to returning to work after maternity leave (alongside other measures to encourage planning ahead and keeping in touch);
 - (c) introducing a right for the mother to transfer a proportion of her maternity leave and pay entitlement to the father, and considering possible means of simplifying the administration of such payments, for example through giving responsibility for payments to the Inland Revenue;
 - (d) extending the right for an employee to request flexible working to carers of sick and disabled relatives and parents of older children.

2. PURPOSE AND INTENDED EFFECT

2.1 The overall objective of this package of measures is to give children the best start in life and parents more choice about how to balance their work and family responsibilities.

2.2 **Devolution.** The proposals would extend to England, Wales and Scotland only. Separate legislation would be required for Northern Ireland.

(a) Extending the period for payment of SMP, MA and SAP initially from 26 to 39 weeks by April 2007

2.3 These measures are intended to enable mothers and adopters to take longer off work following the birth or placement for adoption of their child. Details of the current entitlements to payment of SMP, MA and SAP as well as to maternity and adoption leave are contained in Annex B of the consultation document. The main effect of this measure would be to extend the entitlement to payment to cover an additional thirteen weeks for SMP, MA and SAP.

(b) Reforming the period of notice to be given by an employee prior to returning to work after maternity leave (alongside other measures to encourage planning ahead and keeping in touch)

2.4 This measure is intended to provide greater certainty for employers as to when a mother is planning to return to work following the birth. The consultation seeks views on and the RIA examines the options for extending the current 28-day notice period to two or three months.

(c) Introducing a right for the mother to transfer a proportion of her maternity leave and pay entitlement to the father

2.5 This measure is intended to give parents greater choice in balancing their work and caring responsibilities in the first year of their child's life. The consultation document proposes and the RIA considers three options for the time of transfer of the mother's entitlement to leave and pay: after six weeks following the start of maternity leave; after three months following the start of maternity leave; or after six months following the start of maternity leave.

2.6 Within the context of considering possible means of simplifying the administration of these payments, the RIA also looks at the implications if a decision were taken to transfer responsibility for payment to the Inland Revenue.

(d) Considering the case for extending the right for an employee to request flexible working to carers of sick and disabled relatives and parents of older children

2.7 These measures would provide carers of sick or disabled adults and parents of older children with greater choices about how they balance caring responsibilities or childcare with work, in a way which balances the needs of families with those of business. The consultation document proposes and the RIA considers various options for extending the existing right to request flexible working to carers of sick or disabled adults; and to parents of children under ages 9; 12; 17.

3. RISK ASSESSMENT

3.1 These measures actively address a number of risks:

- **to adequate childcare by the mother and father.** Extending SMP and similar entitlements initially to 39 weeks (from April 2007) will further encourage parental care for children during their first year; in addition, allowing some of the mother's entitlement to be transferred to the father will help encourage sharing of childcare responsibilities. It will not be obligatory for parents to take such entitlements. But their greater availability should encourage greater take-up;
- **to staff morale, retention and recruitment.** Although most women are entitled to 52 weeks' maternity leave, many feel they have to return to work earlier because the second 26 weeks is unpaid; or decide not to return at all. Extending maternity pay and, where necessary, leave and allowing more employees to request flexible working arrangements, will address the risk of significant staff turnover, skills loss and disruption to businesses and enable employers and employees to come to mutually acceptable arrangements;
- **to business operations.** Extending the period of notice of return is one of a number of measures to encourage more contact between employer and employee during maternity leave which will help protect businesses from undue disruption.

4. OPTIONS

- 4.1** All the main options relating to each of the proposals are summarised below in the section on "Estimated Costs and Benefits". The consultation will enable the Government to choose the options which achieve the best balance between the estimated costs and benefits.

5. ESTIMATED COSTS AND BENEFITS

- 5.1** The estimated costs and benefits for each measure (and the main options within each measure) are set out below. A summary table of costs and benefits is provided at the end of the section discussing each measure. As indicated earlier, the figures both for costs and benefits are provisional; and in many cases it is difficult to put a figure on undoubted substantial benefits of supporting greater parental leave during the first year of a child's life; improved workforce morale; better employee/employer relations - all of which are intended effects of these measures. The consultation is intended to firm up these figures where it is possible to do so. The following analysis summarises the discussion of costs and benefits contained in the partial RIA at www.dti.gov.uk/workandfamilies_ria.htm.

(a) Extending the period for payment of SMP, MA and SAP initially from 26 to 39 weeks by April 2007

- 5.2** The Government has already made a commitment in the Pre-Budget Report 2004 to implement this measure. The partial RIA therefore deals with the additional costs and benefits of these intended extensions to the periods for which the various entitlements are paid. It does not deal with the options for extending entitlements to maternity leave (as distinct from pay) which are set out in the consultation document. The policy on this will be developed in the light of the consultation.

Benefits

- 5.3** The main benefit to employers is likely to be a saving in the costs of having to recruit and train staff to replace mothers who return to work after 26 weeks (the current payment period) but subsequently leave their jobs shortly after returning - because they have returned too early. The extension of the payment period by 13 weeks is assumed to reduce this "quit rate".

- 5.4** We assume, based on provisional estimates, that 52,000 additional mothers are likely to take advantage of the extra 13 weeks' payment; and that 5 per cent (2,600) who would otherwise have left their job after 26 weeks will stay on. Multiplying 2,600 by our estimated cost of £4,800 for filling each vacancy produces a total estimated saving to employers of around £12.5m/yr.
- 5.5** More significant but less quantifiable benefits include the socio-economic effects of mothers having more time off following the birth of their baby. There are potentially long-term benefits to children and the rest of society of extending paid leave during the first year of life. There may also be quality-of-life improvements for the mother and her partner.

Costs

- 5.6** By far the majority of costs will fall to the Exchequer (which reimburses employers for payment of SMP and SAP and pays MA direct to mothers). Around 291,000 women currently qualify for SMP each year and around 60,000 for MA. We estimate that the cost to the Exchequer of paying an extra 13 weeks' of SMP at current prices (flat rate £102.80/week) will be: £259m/yr; and of MA: £70m/yr. It is assumed that additional costs of extending payment of SAP will be small as the number of parents eligible for SAP each year is currently low - around 4,000/yr.
- 5.7** There will be some costs to employers. Larger employers are reimbursed by the Exchequer at a rate of 92 per cent, whilst small employers are reimbursed at a rate of 104.5 per cent. As a result, we estimate that the net additional costs to employers from extending the payment period by 13 weeks will be around £19m/yr. In addition, there will be an increased need for employers to provide cover for employees who are on leave during the additional 13 weeks. We estimate that this could amount to £16m-£27m/yr.

5.8 Summary table 1: Costs and benefits of extending the period of statutory maternity pay, maternity allowance and statutory adoption pay initially from 26 to 39 weeks:

| Description | Additional Costs | Benefits |
|--|---|---|
| 1. Extend SMP from 26 weeks to 39 weeks | Additional costs: to Exchequer: £259m/yr (net) to employers: £35m-£46m/yr implementation costs: negligible | The child will benefit from greater support for parents to stay at home. Parents will benefit from being able to spend more time with their children and mothers will have more choice about when they return to work as well as having longer to secure other childcare arrangements. For employers, the estimated reduction in recruitment costs as a result of increasing the number of mothers staying on after return to work is: £12.5m/yr |
| 2. Extend MA from 26 weeks to 39 weeks | Additional costs: to Exchequer: £70m/yr | |
| 3. Extend statutory adoption pay initially from 26 weeks to 39 weeks | Additional costs: to Exchequer and to employers: negligible | |

(b) Reforming the period of notice to be given by an employee prior to returning to work after maternity leave (alongside other measures to encourage planning ahead and keeping in touch)

5.9 The main options considered are:

- **Option 1:** placing a new requirement on mothers to confirm their return date with their employers in advance;
- **Option 2:** extend the notice period from 28 days to 2 months;
- **Option 3:** extend the notice period from 28 days to 3 months

Benefits

5.10 Option 1 is seen as relatively neutral in terms of benefits as well as costs, though it should help contribute to business planning and increase certainty for employers. There will be some benefits to employers of both options 2 and 3 in particular, the savings to employers from reducing double payment of the mother and a replacement temporary worker when the mother

returns earlier than expected. The assumptions and methods of calculating these benefits are shown in detail in the partial RIA at www.dti.gov.uk/workandfamilies_ria.htm

5.11 On the basis of the assumptions and calculations used, we estimate that the total benefits to employers of options 2 and 3 would be as follows:

- **Option 2:** up to £1.4m/yr
- **Option 3:** up to £1.9m/yr

Costs

5.12 We consider that there will be only a very small cost to employers as a result of informing their employees of the new rules.

5.13 **Summary table 2:** Costs and benefits of increasing the period of notice to be given by an employee prior to returning to work after maternity leave:

| Description | Additional Costs | Benefits |
|---|--|---------------------------|
| Option 1: new requirement on mother to confirm return date in advance | Very minor costs of informing employee of new obligation | Assists business planning |
| Option 2: extend the notice of return period from 28 days to 2 months | Very minor costs of informing employees of new rules | To employers: £1.4m/yr |
| Option 3: extend the notice of return period from 28 days to 3 months | Very minor costs of informing employees of new rules | To employers: £1.9m/yr |

(c) Introducing a right for the mother to transfer a proportion of her leave and pay entitlement to the father

5.14 The consultation document asks for views on and the partial RIA considers three main options for determining the maximum amount of transferable leave and pay:

- **Option 1:** transfer any leave and pay after 6 weeks following the start of maternity leave;
- **Option 2:** transfer any leave and pay after 3 months following the start of maternity leave;
- **Option 3:** transfer any leave and pay after 6 months following the start of maternity leave.

5.15 Whichever of these options is adopted, or some other option following the consultation, the Government's intention is that the decision to transfer would be entirely optional; and that any transfer would be one-off (ie a mother could not transfer her remaining leave and pay entitlement to the father for a specific period and then have it transferred back again) A minimum block of 2 weeks will be available for transfer. Similar rights will also apply to adoption leave.

Benefits

5.16 The main benefits are likely to be substantial, but difficult to quantify. The ability to transfer leave and pay from the mother to the father will provide greater choice to parents to share childcare responsibilities so that the child benefits from the close attention of one parent or the other during its early months. Transferring leave will also enable families to take advantage of situations where the returning mother earns more than the father, while retaining the benefit of the transferred maternity entitlements. In short, the overall benefit will be to provide parents with greater choice about how they manage their combined work and family commitments; and to promote greater equality of opportunity at home and at work. We estimate that there could be between 1,000 and 1,200 transfers starting from week 7. This builds up to between 3,800 and 4,600 transfers in the second six months.

Costs

5.17 On the basis of an estimated 3,800 to 4,600 transfers/yr, the additional cost to the Exchequer for option 1 is estimated at around £7m-8m/yr; for option 2 also at around £7m-£8m/yr; and for option 3 at around £5m-£6m/yr.

5.18 Option 1 could result in a significant extra cost to some employers (particularly if the father's employer needed to find a temporary

replacement). However, we assume that the number of transfers as early as 6 weeks after start of maternity leave would be low; and the costs to the father's employer are likely to be lower, the shorter the period of leave which is transferred from the mother. In addition, the mother's employer may gain from her earlier return to work and the reduced need to provide cover. We provisionally estimate that option 1 will result in a recurring cost to employers of £9m-£16m/yr, including administration costs; that option 2 will result in a cost to employers of £10m - £17m/yr; and that option 3 will result in a cost to employers of £7m to 13m/yr.

5.19 Summary table 3: Costs and benefits of allowing a mother to transfer part of her leave and pay entitlement to the father:

| Description | Additional Costs | Benefits |
|---|--|---|
| Option 1: leave and pay transferable after six weeks following start of maternity leave | Additional costs: to Exchequer: £7m-8m/yr to employers: £9m-£16m/yr including administration costs. | Greater choice for parents to share childcare responsibilities and to take advantage eg of situations where the mother earns more than the father |
| Option 2: leave and pay transferable after 3 months following start of maternity leave | Additional costs: to Exchequer: £7m - £8m/yr to employers: £10m-£17m/ yr including administration costs | Greater choice for parents to share childcare responsibilities and to take advantage eg of situations where the mother earns more than the father |
| Option 3: leave and pay transferable after 6 months following start of maternity leave | Additional costs: to Exchequer: £5m-£6m/yr to employers: £7m-£13m/yr including administration costs. | Greater choice for parents to share childcare responsibilities and to take advantage eg of situations where the mother earns more than the father |

5.20 Placing the proposal for transferability in a broader context, there may be a case for considering more generally the way in which these payments are administered. Aside from the option of leaving the system as it currently stands, two options are provisionally put forward for consideration in the consultation document and covered in the RIA:

- **Option 1:** Government (Inland Revenue) calculates and pays SMP, MA, SAP and SPP direct whenever a mother or father takes maternity, paternity or adoption leave, based on information supplied by the employer;

- **Option 2:** Government calculates and pays SMP, MA and SAP direct, but only in those cases where leave and pay are transferred from the mother to the father or between adopters. This would mean that the mother's, or first adopter's, employer would pay SMP or SAP (as at present) but Inland Revenue - not the father's or second adopter's employer - would pay if he took some transferred leave and pay.

Benefits

- 5.21** There would be some benefits to employers, though these are difficult to quantify. Clearly, option 1 would be far wider-ranging than option 2, so the benefits (to employers) and costs (to Inland Revenue) will be greater for option 1 than for option 2.
- 5.22** For employers who currently do not use an automated statutory payments system, direct payment by Inland Revenue would replace quite a complicated calculation; and those who pay a payroll agent to handle SMP etc for them will save the fees involved. On the other hand, whether employers use software, a payroll agent or calculation methods they would need to provide Inland Revenue with reliable, relevant and current payroll information and employee service history to assess the employee's eligibility and level of pay and deductions. This information would need to cover employee tax, NICs and other payroll deductions as well as the collection of employer NICs. New procedures would need to be introduced for cash reconciliation and accounting.
- 5.23** The main beneficiaries under option 1 would be those employers for whom SMP etc is not routine - including those newly registered employers encountering SMP for the first time. They would have no pre-existing software systems to upgrade and would benefit direct.

Costs

- 5.24** Option 1 would involve significantly greater public-sector costs than option 2. More than half a million parents receive these payments each year: a substantial number of extra staff would be needed to process them.
- 5.25** Initial estimates suggest that the one-off costs of option 1 to the Inland Revenue would be £55m, consisting of £18m staff training and development in the run-up to and the first year of the scheme; and £37m for a new IT system. The estimated running costs would be £25.6m/yr (£19m for ongoing running costs and £6.6m for IT running costs).

5.26 Option 2 would be less costly to the Revenue. One-off costs are estimated at £33m (mainly a new IT system); and running costs at £9m/yr.

5.27 Summary table 4: Costs and benefits of giving Inland Revenue responsibility for payment of SMP, MA, SAP and SPP:

| Description | Additional Costs | Benefits |
|--|---|--|
| Option 1: Govt calculates and pays the entitlements direct to the parent, based on information supplied by the employer | <p>Cost to Inland Revenue One-off costs: £55m Ongoing running costs £26m/yr</p> <p>Cost to employers All affected employers would need to familiarise themselves with a new set of rules and provide in-year information to Inland Revenue.</p> | For employers currently not using an automated statutory payments system, this would replace quite a complicated calculation. Those using a payroll agent to handle SMP etc will save the fees involved. Main beneficiaries will be those employers for whom SMP etc is not routine. |
| Option 2: Govt calculates/pays the entitlements, but only where pay is transferred from mother to father. The number of instances may in practice be around 4,000/yr | <p>Cost to Inland Revenue One-off costs: £33m Ongoing running costs £9m/yr</p> <p>Cost to employers Familiarisation costs and provision of in-year information to Inland Revenue</p> | The benefits here will be similar in nature to Option 1 but on a much smaller scale. |

(d) Considering extending the right for an employee to request flexible working to carers of sick and disabled relatives and parents of older children

5.28 The consultation document proposes and the RIA considers two main options:

- **Option 1:** extend the existing right to carers of sick and disabled relatives. Within this option there are various alternatives for extension to:
 - those caring for a partner only
 - those caring for a partner or parent
 - those caring for any adult relative
 - those caring for any disabled dependant

- **Option 2:** extend the existing right to parents of older children. Within this option various alternatives are proposed for extension to:
 - parents of children under age 9
 - parents of children under age 12
 - parents of children under age 17

Benefits

- 5.29** Under option 1, there should be substantial benefits, albeit difficult to quantify, for those being cared for, because they should receive greater attention from a relative or person close to them who is able to take advantage of flexible working. There will also be benefits to carers who should have better employment prospects if flexible arrangements are widened. For employers, there should be savings as a result of reduced recruitment costs; benefits in the form of increased productivity; and savings in costs of absence other than annual leave. For the economy as a whole, a workforce better able to balance its home and work responsibilities is likely to be a more productive workforce.
- 5.30** We provisionally estimate that under option 1 the main savings for employers, depending on the alternatives for extension and take-up rates, could range from £140,000 to £3m/yr as a result of reduced recruitment costs; and from £0.5m to £10m/yr as a result of savings in costs of absence other than annual leave. In addition, we estimate benefits ranging from £4m to £94m/yr in the form of increased productivity.
- 5.31** For option 2, again depending on the alternatives for extension and take-up rates, we estimate that the total recruitment cost savings for employers as a result of some of the parents concerned deciding to remain in their job could range from £56m to £148m/yr; savings in absence costs could range from £3m to £7m/yr; in addition, increased productivity could result in benefits ranging from £33m to £69m/yr.

Costs

- 5.32** It is extremely difficult to come to even a provisional estimate of costs to employers of Option 1, in the absence of any data on likely take-up rates for each of the alternatives indicated above. The following cost figures are based on some detailed provisional assumptions which can be found in the RIA at www.dti.gov.uk/workandfamilies_ria.htm.

- 5.33** On the basis of the assumptions we have made (as to eg definition of "carers"; number of carers; number of carers who request flexible working), our provisional estimate is that the additional costs for employers of option 1, depending on the alternatives for extension under this option, could range from £10m to £223m/ yr. In addition, we estimate that employers would face a one-off implementation cost of £19m.
- 5.34** It is less difficult to estimate costs of option 2, though the extent to which employers' previous experience with flexible working arrangements can act as a mitigating factor is hard to judge. Our provisional estimates of additional costs for employers, depending on the alternatives for extension under this option and take-up rates, range from £40m to £87m/yr.
- 5.35** **Summary table 5:** Costs and benefits of extending the existing right for an employee to request flexible working arrangements to carers and parents of older children:

| Description | Additional Costs | Benefits |
|---|---|---|
| <p>Option 1: extend the right to request flexible working to people caring for (one or more of the following):</p> <ul style="list-style-type: none"> • partner • partner or parent • any adult relative • any disabled dependant | <p>Costs to employers: Depending on how far the right is extended and likely demand, recurring costs could range from £10m/yr to £223m/yr One-off costs: £19m</p> | <p>In general, this and each of the other options will lead to substantial quality-of-life benefits through more flexible working and a better family life.</p> <p>In this case also, better employment prospects for carers</p> <p>Benefits for employers:</p> <ul style="list-style-type: none"> • savings in recruitment costs: £140k to £3m/yr • increased productivity/profits: £0.5m to £94m/yr • savings in absence costs: £4m to £10m/yr |
| <p>Option 2: extending the right to request flexible working to parents of children under:</p> <ul style="list-style-type: none"> • age 9 • age 12 • age 17 | <p>Costs to employers: Depending on how far the right is extended and likely demand, recurring costs could range from £40m/yr to £87m/yr</p> | <p>Depending on how far the right is extended, benefits for employers in the form of:</p> <ul style="list-style-type: none"> • savings in recruitment costs could range from £56m/yr to £148m/yr • increases in productivity/profits: from £33m/yr to £69m/yr • savings in absence costs: from £3m/yr to £7m/yr |

6. IMPACT ON SMALL BUSINESS

- 6.1** The impact of each measure on small business will vary, both in costs and in benefits. It is a purpose of the consultation to gain a clearer picture of those effects. Current initial estimates indicate that the impact on small business of each proposal may be as follows.
- 6.2** **Extending the period of statutory maternity pay, maternity allowance and statutory adoption pay initially from 26 to 39 weeks.** Small firms paying £45,000 or less in national insurance in the previous tax year can recover all of these entitlements and may be able to do so in advance, plus an additional 4.5% to compensate them for the employers' NICs paid. In addition, small firms like large firms should benefit from increased employee motivation and retention, with reduced recruitment costs.
- 6.3** **Increasing the period of notice to be given by an employee prior to returning to work after maternity leave.** Small firms are particularly vulnerable to short-term disruption where a member of staff is absent and are less able to adjust to changes of plan than large firms with greater resource flexibility. This proposal should be beneficial particularly to small firms.
- 6.4** **Allowing a mother to transfer part of her leave and pay entitlement to the father.** There will be some administration costs for small firms as for large firms. Overall, however, while there will be costs to the father's firm of him taking the mother's leave and pay, there will also be benefits to the mother's firm to which she will be returning earlier than otherwise. As to the possibility of giving Inland Revenue responsibility for administering these payments, smaller firms like larger firms would be freed from having to calculate the amount of payments due and paying them to their employees. However, they would need to provide reliable and up-to-date employee information to Inland Revenue.
- 6.5** **Extending the existing right for an employee to request flexible working arrangements to carers and parents of older children.** As at present, there will be no automatic right to flexible working arrangements. The only obligation on small firms will be to consider any request for flexible working. Many small firms are already offering some type of flexible working, according to CBI survey evidence (CBI employment trends survey 2004).

7. EQUITY AND FAIRNESS

- 7.1 There may be some sectors that proportionately include more working parents or employed carers and we shall consider this aspect in the light of the consultation.

8. COMPETITION ASSESSMENT

- 8.1 Initial conclusions are that a detailed competition assessment is not necessary for any of these proposals. They primarily affect the labour market and do not favour one sector of employment or business activity over another.

9. GUIDANCE, ENFORCEMENT AND EVALUATION

Guidance

- 9.1 One of the objectives of the consultation will be to identify non-legislative means of encouraging and enabling employers to comply with the proposals. It is expected that guidance will be made available, as it is now, on new entitlements that arise from subsequent legislation.

Enforcement

- 9.2 Under existing legislation on maternity and adoption leave, employees can seek redress through an employment tribunal, for example in cases of detriment or dismissal.
- 9.3 Similarly, employees will be able to seek redress through an employment tribunal for infringements of any new rights. The introduction of transferable leave and pay rights, and extending the right to request flexible working, may have an impact on the number of employment tribunal cases and calls to ACAS and family advisory groups but we anticipate that any increased cost will be small in aggregate.

Monitoring and Review

- 9.4 The DTI, with the DWP, will monitor information on take-up rates of extended maternity and adoption leave and pay; the incidence of leave and pay transferred from mother to father and from one adopter to another. DTI will continue to monitor employee awareness and take-up of the right to request flexible working through periodic Flexible Working Employee Surveys and the Work-Life Balance Surveys. In consultation with the

Office for National Statistics, DTI will also consider the feasibility of monitoring extended maternity leave and pay through questions in the Labour Force Survey. DTI will continue informal discussions with parents', carers', employee and employer representatives to assess qualitatively the response to the introduction of any new measures.

10. CONSULTATION

(i) Within Government

10.1 The RIA has been developed in consultation with various Departments including the Department for Work and Pensions, the Department for Education and Skills, HM Treasury, Inland Revenue and the Small Business Service.

(ii) Public consultation

10.2 There has already been some initial consultation leading to a number of these proposals. For example, from May to July 2004, ten roundtable events took place in England, Wales and Scotland at which Ministers heard parents and employers explain how they balance work and family commitments. DTI also commissioned a citizens' jury to consider how Government can support parents and carers juggling family responsibilities and work. The Small Business Service brought together employers to talk to DTI about the impact of the current legislation on their business, including statutory maternity and paternity leave and pay and the right to request flexible working.

10.3 The estimates in the partial RIA will be considered in the light of responses to the current consultation.

11. SUMMARY

11.1 The package of proposals which are the subject of the consultation will further strengthen the choice and flexibility available to parents and carers who need to balance their childcare responsibilities with their work commitments. They should lead to better care for children, particularly in their first year; and a more motivated, less conflicted and hence more productive workforce.

Contact Details

Comments on the RIA should be addressed to:

Jonathan Gershlick
Employment Market Analysis and Research
Department of Trade and Industry
1 Victoria Street
London
SW1P 0ET

Tel: 020 7215 5799

Fax: 020 7215 2641

Email: jonathan.gershlick@dti.gsi.gov.uk

