

EMPLOYMENT ACT 2002: REGULATIONS ON MATERNITY LEAVE AND PATERNITY AND ADOPTION LEAVE AND PAY

REGULATORY IMPACT ASSESSMENT

I. INTRODUCTION AND SUMMARY

1. This assessment estimates the costs and benefits to business of Regulations, set out below, expected shortly to be made under the powers of the Employment Act 2002¹.

Regulations under powers of the Employment Bill	
Regulations	Main provisions
The Maternity and Parental Leave (Amendment) Regulations 2002 [*]	Amendments to present maternity leave provision: <ul style="list-style-type: none"> • Increase in ordinary maternity leave from 18 weeks to 26 weeks • Increase in additional maternity leave to 26 weeks
The Paternity and Adoption Leave Regulations 2002 [*]	Paternity and adoption leave: <ul style="list-style-type: none"> • Introduction of 2 weeks' paternity leave • Introduction of adoption leave equivalent to maternity leave
The Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 [*]	Sets out weekly rates of paternity and adoption pay
The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 [^]	Paternity and adoption pay: <ul style="list-style-type: none"> • Introduction of 2 weeks' statutory paternity pay • Introduction of 26 weeks' statutory adoption pay
The Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 [^]	Administration of SPP and SAP: <ul style="list-style-type: none"> • Funding of employers liabilities • Records to be kept by employers • Provision of information to Inland Revenue

¹ The Employment Act 2002 c.22 (Available at: <http://www.legislation.hmso.gov.uk/acts/acts2002/20020022.htm>)

^{*} Draft affirmative Regulations now laid before Parliament

[^] These, and certain other minor Regulations, are subject to negative procedure and will be laid before Parliament a little later.

2. The Regulations set out the fine detail of changes to maternity leave and new rights to paid paternity and adoption leave. The new and improved rights are introduced by means of the Employment Act 2002.

3. The rights reflect the responses to an extensive public consultation on benefits for employed parents, first proposed in the Green Paper *Work and Parents: Competitiveness and Choice*², published in December 2000. Further consultation was undertaken on three subsequent framework documents³ taking forward the options for simplification of maternity leave provisions and outlining the paternity and adoption leave and pay schemes. Most recently, a consultation⁴ was published in May 2002 on draft regulations setting out the fine detail of the schemes.

4. The Government response to the public consultation⁵ explored the options considered and the decisions, which have been taken as a result of over 600 formal consultation responses. The potential administrative burdens, and hence costs, to UK businesses were kept to a minimum, in keeping with the light touch approach requested during the public consultation, whilst maintaining the benefits of the schemes.

5. Previous partial Regulatory Impact Assessments were published with the Government Response and on the introduction of the Employment Bill. This current assessment reflects these previous versions and costs have been updated where possible.

6. The key benefits of simplifying maternity leave and introducing paid paternity leave and paid adoption leave together with estimates of the costs are summarised in the following table (all costs and benefits at 2003/04 prices).

² *Work and Parents: Competitiveness and Choice, a Green Paper* - published December 2000 (available at <http://www.dti.gov.uk/er/review.htm>)

³ *Work and Parents: Competitiveness and Choice, a framework for simplification* - published May 2001 (available at <http://www.dti.gov.uk/er/review.htm>)

Work and Parents: Competitiveness and Choice, a framework for paternity leave - published May 2001 (available at <http://www.dti.gov.uk/er/review.htm>)

Work and Parents: Competitiveness and Choice, a framework for adoption leave - published May 2001 (available at <http://www.dti.gov.uk/er/review.htm>)

⁴ *Work and Parents: competitiveness and choice, consultation on draft regulations*, published May 2002 (available at <http://www.dti.gov.uk/er/review.htm>)

⁵ *Work and Parents: Competitiveness and Choice, Government response on simplification of maternity leave, paternity leave and adoption leave* (available at <http://www.dti.gov.uk/er/review.htm>)

A summary of the costs and benefits of Regulations to Business

	Benefits	Costs
Maternity leave	<ul style="list-style-type: none"> • Simpler provisions make it easier for employers and employees to understand their rights and responsibilities. • Mothers are able to spend longer with their new child. • More mothers remain in employment with recruitment and training savings for employers = up to £39 million. 	<ul style="list-style-type: none"> • Costs to employers of implementation = £10 to 24 million (one-off). • Costs to employers of covering for absences = £51 to 94 million (recurring).
Paternity leave	<ul style="list-style-type: none"> • More financial support for new fathers = £40 million. • Employers who currently give fathers an entitlement to paternity leave will gain by £17million. • More fathers take time off following the birth or placement of their child, helping father-child relationships and providing more support for the other partner. 	<ul style="list-style-type: none"> • Costs to taxpayers of payments = £57 million. • Costs to employers of implementation = £10 million (one-off). • Administration costs to employers = £7 to 13 million (recurring) • Costs to employers of covering for absences = £23 to 39 million (recurring).
Adoption leave	<ul style="list-style-type: none"> • More financial support for adoptive parents = £10 million. • Adoptive parents spend more time at home following placement, reducing the risk of a disrupted placement and improving the life chances of children. • More adoptive parents to remain in employment with recruitment and training savings for employers = about £1 million. 	<ul style="list-style-type: none"> • Costs to taxpayers of payments = £10 million. • Costs to employers of implementation = Less than £1 million (one-off). • Costs to employers of covering for absences = £1 to 1.5 million (recurring).

II. MATERNITY LEAVE

Purpose and intended effect

7. The simplification of maternity leave includes a number of improvements to the existing scheme, including extending the period of ordinary maternity leave to 26 weeks, setting additional maternity leave as 26 weeks, harmonising qualifying dates and increasing notification periods⁶.

8. The current maternity leave system is considered overly complex by many employers, employees and interest groups. Simplification of key areas will deliver simplicity, certainty and improved planning time. Changes to notification procedures, unified qualification requirements and slightly longer notification periods will help employers and employees to understand their rights and responsibilities by using as few dates and periods as possible.

III. MATERNITY LEAVE - BENEFITS

Simplification

9. A simplified system of maternity pay and leave will provide greater clarity for employees and employers. The increased notification periods will go some way to providing greater certainty for employers and will provide greater planning time for employers to deal with an employee's absence. Employers will have more time to plan and organise external cover or re-organise workloads.

10. Additional benefits are likely to be found through an increase in employees and employers' understanding and knowledge of the system and their rights and responsibilities. This could have a positive effect on the number of calls to the Department, the Department for Work and Pensions, the Inland Revenue and other helplines, and the number of people using Citizens Advice Bureaux and other such sources of advice. The simplified system will also require less complex written explanatory material to accompany its implementation. This will be particularly advantageous to small employers who often reacquaint themselves with the legislation as and when necessary.

11. Greater clarity is likely to lead to increased awareness of maternity rights. This may help to prevent employers from deliberately misleading workers about their rights and entitlements. Equally it will enable responsible

⁶ Further information on the key features of the simplification of maternity leave and pay are available in the summary leaflet *Maternity leave – changes: A basic summary (PL507 Rev 2)* (Available at <http://www.dti.gov.uk/er/matleafr.htm> or from the DTI publications orderline on 0870 1502 500).

employers to be confident that they are not breaking the law when they implement the system.

More time off for mothers

12. Increases to the standard rate and period of Statutory Maternity Pay (in 2003, £100 per week or 90% of the woman's average weekly earnings whichever is lower for up to 26 weeks⁷), a longer entitlement to ordinary maternity leave (extended to 26 weeks) and a longer entitlement to additional maternity leave (set at 26 weeks) means that mothers will be able to take longer off work while having their job protected. This will enable more mothers to return at a point when they are healthy and allow them longer to secure appropriate childcare arrangements. At the margin, this will enable some mothers to remain in employment with recruitment and training savings for their employers.

13. To illustrate the potential benefits, if only 10% of those women who are currently not returning to work after maternity leave were to return to work as a result of an increase in maternity leave, then employers could save up to £39 million each year in recruitment costs alone.

- Approximately 350,000 mothers each year claim either SMP or MA⁸ and were in employment before giving birth.
- Survey evidence⁹ suggests that about a third of mothers do not return to work after maternity leave (approximately 110,000 mothers).
- Average recruitment and training costs are £3,500 per vacancy¹⁰. Increasing the number of mothers returning to work reduces recruitment costs by £39 million (calculated as: 110,000 x 0.1 x £3,500).

IV. MATERNITY LEAVE - COSTS

14. Changes to arrangements for maternity leave will have two principal costs for employers. First, to the extent that employees take longer periods of maternity leave, employers will have to cover longer periods of absence. Second, there are likely to be one-off implementation costs arising from changes to the employment protection aspects of maternity legislation.

⁷ Amendments provided for in The Statutory Maternity Pay, Statutory Sick Pay and Maternity Allowance (Miscellaneous Amendments) Regulations 2002, under powers of the Employment Act 2002

⁸ Source: Department for Work and Pensions.

⁹ Source: DSS maternity rights study, 1996.

¹⁰ Source: CIPD turnover survey, 2000.

Costs to employers of covering for absences

Increased levels of Maternity Allowance and Statutory Maternity Pay

15. The 2001 Budget announced increases to the rates of Statutory Maternity Pay (SMP) and Maternity Allowance (MA)¹¹:

- An increase in the level of SMP and MA to, in 2003, £100 a week or 90% of the woman's average weekly earnings whichever is the lower; and
- An extension of the maximum payment period of SMP and MA from 18 weeks to 26 weeks.

16. Higher levels of SMP and MA for a longer period combined with an increase in the period of ordinary maternity leave from 18 weeks to 26 weeks will mean that on average women will take longer maternity leave. This will involve extra costs for employers in covering for absences.

17. About 305,000 women each year qualify for SMP and about 45,000 a year qualify for MA¹². We assume that because of the increase and extension to maternity pay, 85% of eligible mothers will take the extra 8 weeks of ordinary maternity leave. There is assumed to be a 60%:40% split between larger and smaller businesses, in line with the female workforce as a whole¹³.

18. The additional 8 weeks of leave extend the existing period of ordinary maternity leave. Employers may have decided to cover an employee's absence on maternity leave either through recruitment of a temporary replacement or through rearranging existing workloads and staffing. It is assumed that 70% of larger businesses and 40% of smaller businesses accommodate maternity leave through use of a temporary replacement¹⁴.

19. The costs of extending the employment of a temporary replacement are assumed to be 3 to 5% of weekly labour costs, whereas the costs of internal reallocation are assumed to be 9 to 15% of weekly labour costs¹⁵.

¹¹ The costs and benefits of increased SMP and MA to individuals, employers and the taxpayer are assessed separately in a Regulatory Impact Assessment accompanying the implementing legislation.

¹² This figure might over-estimate slightly the number of women receiving MA who are on maternity leave, since some women entitled to MA will have left their employer by the time of birth.

¹³ Spring 2002 Labour Force Survey - based on a distinction between workplaces with 25 or more employees and those with fewer than 25 employees.

¹⁴ Evidence suggests larger firms are more likely to deal with long-term absences through a temporary replacement. For an explanation of the reasoning behind this assumption, see Parliamentary Question number 156754 and available at www.dti.gov.uk/er/review.htm

¹⁵ For an explanation of the reasoning behind these assumptions, see Parliamentary Question number 156754.

20. It is assumed that the average weekly earnings of women entitled to MA are £100 per week. For women in receipt of SMP, the calculation is based upon average earnings for women of £267 per week¹⁶. Adding on 30% for non-wage labour costs gives an average cost of £348 per week. Uprating in line with average earnings growth to 2003/4 prices, gives an average cost of covering for absence of £377 per week for SMP recipients.

21. Combining these assumptions produces the following calculations of the costs to employers of covering for absences as a result of the change to ordinary maternity leave, giving a total annual cost of £45 million to £75 million.

	Estimated costs
MA recipients, smaller firms Calculated as: $45,000 \times 0.4 \times 0.85 \times 8 \times £100 \times \{[0.4 \times (0.03 \text{ to } 0.05)] + [0.6 \times (0.09 \text{ to } 0.15)]\}$	£0.8 to 1.3 million
MA recipients, larger firms Calculated as: $45,000 \times 0.6 \times 0.85 \times 8 \times £100 \times \{[0.7 \times (0.03 \text{ to } 0.05)] + [0.3 \times (0.09 \text{ to } 0.15)]\}$	£0.9 to 1.5 million
SMP recipients, smaller firms Calculated as: $305,000 \times 0.4 \times 0.85 \times 8 \times £386 \times \{[0.4 \times (0.03 \text{ to } 0.05)] + [0.6 \times (0.09 \text{ to } 0.15)]\}$	£20.7 to 34.4 million
SMP recipients, larger firms Calculated as: $305,000 \times 0.6 \times 0.85 \times 8 \times £386 \times \{[0.7 \times (0.03 \text{ to } 0.05)] + [0.3 \times (0.09 \text{ to } 0.15)]\}$	£22.5 to 37.6 million
Total annual cost of covering for absences	£45 to 75 million

Increasing the length of additional (unpaid) maternity leave to 26 weeks

22. Unpaid, additional maternity leave immediately follows ordinary maternity leave. Under existing legislation, a woman can take between 11 and 22 weeks additional maternity leave depending on when she started her ordinary maternity leave. Increasing the length of additional maternity leave to a set 26 weeks following ordinary maternity leave will lead to mothers taking longer periods of maternity leave, increasing the costs of cover for employers.

23. Survey evidence suggests that only about a quarter of mothers currently entitled to ordinary and additional maternity leave in fact take all or nearly all of their current entitlement¹⁷. Thus take-up of the additional unpaid leave is likely to be much lower than take-up of additional paid leave.

¹⁶ Based on 2001 New Earnings Survey, averaged across full-time and part-time female employees.

24. It is therefore assumed that between 20 and 40 per cent of eligible mothers take, on average, an additional six weeks of maternity leave (= 60,000 to 120,000 mothers). These are again assumed to be split 60%:40% between larger and smaller businesses, in line with the female workforce as a whole.

25. This increase in time off will be concentrated among those mothers who already take the longest periods of maternity leave. Hence their employers are more likely than others to already manage the absence through a temporary replacement. We assume that 95% of larger businesses manage these absences through a temporary replacement, with a corresponding figure of 60% for smaller businesses.

26. Using the same assumptions on average labour costs and costs of covering for different types of absence as in paragraphs 15 to 21 produces the following calculations of the costs to employers of covering for absences as a result of the change to additional maternity leave, giving a total annual cost of £5 million to £18.8 million.

	Estimated costs
Smaller businesses Calculated as: $[(24,000 \text{ to } 48,000) \times 0.6 \times (0.03 \text{ to } 0.05) \times 6 \times \text{£}377] + [(24,000 \text{ to } 48,000) \times 0.4 \times (0.09 \text{ to } 0.15) \times 6 \times \text{£}377]$	£2.9 to 9.8 million
Larger businesses Calculated as: $[(37,800 \text{ to } 75,600) \times 0.95 \times (0.03 \text{ to } 0.05) \times 6 \times \text{£}377] + [(37,800 \text{ to } 75,600) \times 0.05 \times (0.09 \text{ to } 0.15) \times 6 \times \text{£}377]$	£2.7 to 9.0 million
Total annual cost of covering for absences	£5.6 to 18.8 million

Implementation (administration) costs

27. Only the marginal costs to employers arising from changes to the legislation are relevant.

Larger firms

28. For larger employers (defined here as those with annual NICs in excess of £40,000), the administrative costs will require changes to existing systems and written policies.

29. We expect approximately 40,000 (larger) employers will need to make changes to their administrative systems to cope with the proposed changes to

¹⁷ Based on evidence from the 1996 maternity rights study and a DTI survey carried out in 2000.

arrangements for maternity pay and leave. This work will mainly fall to human resource functions in absorbing the substance of the changes and their implications for terms and conditions. Changes may be required to systems for detailing terms and conditions (staff handbooks, corporate electronic guidance etc.) and these changes may need to be communicated to employees.

30. These are (one-off) system changes. On average, the typical cost is assumed to be two days of a personnel manager's time and two days of a payroll administrator's time. A lower case assumption is also used, namely one day of a personnel manager's time and half a day of a payroll administrator's time.

31. Gross weekly earnings of a personnel manager and a clerk are £744 and £328 respectively¹⁸. Adding on 30% for non-wage labour costs gives weekly labour costs of £967 and £426 respectively. Assuming an average five-day week gives daily costs of £193 and £85 respectively. Uprating in line with average earnings growth to 2003/4 prices in line with earnings gives daily costs of £210 and £93.

32. The total one-off implementation (administration) cost for larger firms is estimated as £10.2 to 24.2 million (calculated as: $40,000 \times \{[(1 \text{ to } 2) \times £200] + [(0.5 \text{ to } 2) \times £93]\}$)

Smaller firms

33. In small firms, the probability of an employee taking maternity leave in any given year is low. Survey evidence suggests that only about a tenth of workplaces with 10 or fewer employees have anyone going on maternity leave in any given year. Thus as maternity leave is a fairly infrequent event for most small employers, they are unlikely to incur additional administration costs from the changes to SMP. Most small employers will continue as before, acquainting themselves with the SMP rules each time they face a maternity case in their organisation. On each occasion, this takes time but this is no different from the current position.

Summary of costs

34. In summary the total estimated costs to employers are:

- Policy costs (covering for absences): £51 to 94 million (recurring)
- Implementation costs (administration): £10 to 24 million (one-off)

¹⁸ source: 2001 New Earnings Survey

V. PATERNITY LEAVE

Purpose and intended effect

35. Introduction of a new right for employees to take 1 or 2 weeks paid paternity leave around the time of the birth of a child or the placement of a child newly placed for adoption. Leave must be taken in a single block within the first 8 weeks of the child's birth or placement. In 2003, Statutory Paternity Pay will be paid at the rate of £100 per week or 90% of the employee's average weekly earnings whichever is lower.¹⁹

36. Since 1999, fathers, whether natural or adoptive, have been entitled to parental leave but have had no statutory right to paid leave. Parents and many employers recognise that in today's society, fathers want to provide more support to their partners around the time of a child's birth or placement. Paternity leave will help fathers to be part of this crucial time in a family's life, assisting them in building a relationship with the new child and offering support to the other parent.

Numbers affected and take-up

37. There are estimated to be 400,000 employed fathers each year who will be eligible for paternity leave²⁰.

38. Most fathers able to take time off do in fact choose to do so²¹. The average length of time taken off is about seven to eight days²². A substantial proportion of employers - possibly covering as many as half of employed fathers - already provide for some paid paternity leave²³, usually at full salary. These employers will have an incentive to reclaim the new paid entitlement because they will be able to offset the flat rate payment against the (usually higher) payment they already make.

¹⁹ Further information on the key features of paternity leave and pay are available in the summary leaflet *Paternity leave and pay – a basic summary* (PL 514) (Available at <http://www.dti.gov.uk/er/individual/paternity-pl514.htm> or from the DTI publications orderline on 0870 1502 500).

²⁰ Source: Labour Force Survey, male employees with a dependant child under the age of one and with six months or more length of service with their employer. Note that the precise length of service requirement is 41 weeks at the time of birth (26 + 15 weeks). Hence, these estimates will slightly over-estimate benefits and costs. Figure is average of 4 results over 4 quarters to Spring 2002.

²¹ 91% from Callendar, C., Millward, N., Lissenburgh, S., Forth, J., "Maternity Rights and Benefits in Britain in 1996", Department of Social Security Research, Report no. 67; 85% in "Survey of how parents balance work, family and home", DTI, 2000.

²² Consistent across surveys, see *Work and Parents: Competitiveness and Choice - Research and Analysis* page 20 (available at <http://www.dti.gov.uk/er/review.htm>).

²³ See *Work and Parents: Competitiveness and Choice - Research and Analysis* pages 21-22 (available at <http://www.dti.gov.uk/er/review.htm>).

39. It is likely that take-up will be high but less than 100%. Some fathers will not wish to take two weeks off work for financial or other reasons. For costing purposes, it is assumed that there is 70% take-up of a two-week entitlement, i.e. 280,000 fathers²⁴. This is equivalent, for example, to an assumption that 20% of fathers take a one-week block of leave and 60% of fathers take the full two-week block of leave.

VI. PATERNITY LEAVE - BENEFITS

More financial support

40. Total payments made by the Government would be £57 million²⁵. A considerable number of working fathers already receive paid paternity leave, usually at full salary. These will not feel a difference in the payment made to them. However, fathers who currently take time off unpaid or part-paid will be up to £200 better off in cash terms as a result²⁶. The total benefits would be shared between employees, who would gain an estimated £40 million, and employers, who would gain an estimated £17 million.²⁷

More choice and more time off

41. There will not be additional time off in all cases, as some employees already receive paternity leave from their employers. Nevertheless, the entitlement will help those fathers who are refused time off. Other fathers will be able to take more time off than would have otherwise been the case. Fathers who currently take time off out of their annual leave entitlement will now have the option of saving this leave for use at a later date.

²⁴ Calculated as: 400,000 fathers x 0.7 = 280,000

²⁵ Calculated as: 400,000 fathers x 0.7 x 2 weeks x £100 Statutory Paternity Pay per week. This will be a very slight over-estimate because fathers earning less than an average of £111 per week will receive less than £100 Statutory Paternity Pay. But the number of fathers affected is no more than 5% of the total and the difference in total payments involved will be small (probably less than £50 per person).

Small Employer Relief (in 2002 available to those employers with NICs due in a year of £40,000 or less), which will enable small employers to reclaim 100% of Statutory Paternity Pay and an additional element of compensation (5% in 2001/2002), will not significantly add to these costs.

²⁶ The size of this group cannot be quantified but it is likely to be relatively small.

²⁷ This division of the benefits assumes that 30% of employers already provide an entitlement to paid paternity leave. See the DTI survey of working parents summarised in Work and Parents: Competitiveness and Choice – Research and Analysis (available via <http://www.dti.gsi.gov.uk/er/review.htm>). The survey found that 38% of fathers with children under five who were in employment said that, at the time their last child was born, their employer provided a 'written policy giving entitlement to specific period of leave'. A further 31% reported 'time off at the discretion of management'. The assumption of 30% is conservative to allow for cases where the entitlement was to less than 10 days' leave.

Better family life

42. Where fathers take additional time off, either around the time of birth or placement, or by taking paid annual leave at a later point (as they did not have to take annual leave in order to take time off following the birth or placement), this should help father-child relationships and provide more support for the other parent.

VII. PATERNITY LEAVE - COSTS

Costs of the payments

43. The cost to the Exchequer in 2003/04 is estimated at £57 million²⁵. These are transfer payments. The beneficiaries will be fathers and those employers who already provide paid paternity leave. There may be a few large employers (in 2002, those with NICs due in a year of more than £40,000) who are currently not providing paid paternity leave and who will find themselves having to finance 8% of the payments to their employees. This arises because large employers will be entitled to recover a percentage of the amount of Statutory Paternity Pay they pay to employers as is the case for Statutory Maternity Pay (92% in 2001/2). This will not result in a significant additional increase in costs to larger employers. Since large employers are more likely to provide paid paternity leave, the net cost to employers of making these payments is likely to be small. Small employers who qualify for Small Employers' Relief (in 2002, those with NICs due in a year of £40,000 or less) will be able to claim 100% of the Statutory Paternity Pay they pay out and an additional element of compensation (in 2001/2, 5% of the value of payments made) to cover costs.

Costs to employers of covering for absences

44. Short-term absences lasting a few weeks (such as the existing entitlement to paid annual leave) tend not to be covered by using a temporary employee. Instead work is re-arranged among staff. Possible costs involved may be the payment of overtime and/or a loss in productivity²⁸.

45. Some employers already grant paternity leave. In these cases, additional coverage costs will be lower, and zero for those firms providing an entitlement to two weeks' leave. On the basis of survey evidence collected recently by

²⁸ In some cases, such as very short term unplanned absences, part of the firm's response may be through increased amounts of unpaid overtime worked by other employees. Hence some of the costs may be borne by other employees rather than by the employer.

the DTI, we assume that 30% of eligible fathers already benefit from this right²⁹.

46. There are 280,000 employees each year assumed to take up their entitlement to two weeks' paternity leave. There is assumed to be a 68%:32% split between larger and smaller businesses, in line with the male workforce as a whole³⁰. Therefore, around 190,000 are employed in larger businesses and 90,000 in smaller businesses. It is assumed that all absences are covered through internal reorganisation. Costs of covering for absence are assumed to be 9 to 15% of weekly labour costs.

47. Average earnings for men are £462 per week³¹. Adding on 30% for non-wage labour costs gives an average cost of £653 per week. Uprating to 2003/04 prices gives a figure of £640 per week. Cost estimates are then reduced by 30% to allow for cases where fathers already have an entitlement to paternity leave.

48. Combining these assumptions, the total annual cost to all businesses from the new paternity arrangements is estimated to be £23.3 million to £38.8 million (calculated as: $280,000 \times (0.09 \text{ to } 0.15) \times 2 \times £653 \times 0.7$).

49. The proposal will affect businesses of all sizes. An individual small business is less likely to be directly affected over any specific period because the circumstances that trigger these proposals, becoming a father, are less frequent in small businesses than in large businesses. However, small businesses have a smaller pool of internal labour and may therefore find it more difficult to cover employees' absences.

Implementation (administration) costs

50. The Statutory Paternity Pay system will mirror as far as possible the system for Statutory Maternity Pay. This will allow those employers who have already set up systems for maternity pay to adapt them for paternity pay - reducing costs and simplifying the overall administrative system.

51. An entitlement to paid paternity leave would more than double the number of employees each year where administration costs are involved. This will

²⁹ See the DTI survey of working parents summarised in *Work and Parents: Competitiveness and Choice - Research and Analysis* (available at <http://www.dti.gov.uk/er/review.htm>). The survey found that 38% of fathers with children under five who were in employment said that, at the time their last child was born, their employer provided a 'written policy giving entitlement to specific period of leave'. A further 31% reported 'time off at the discretion of management'. The assumption of 30% is conservative to allow for cases where the entitlement was to less than 10 days' leave.

³⁰ Spring 2002 Labour Force Survey - based on a distinction between workplaces with 25 or more employees and those with fewer than 25 employees.

³¹ Based on 2001 New Earnings Survey, averaged across full-time and part-time employees

involve on-going costs to employers in addition to any one-off costs of adapting present systems to incorporate paternity leave.

Cost to large firms

52. For large firms, there will be administration costs from introducing the new arrangements for paid paternity leave. After the first year, the administrative costs will be much smaller.

One-off costs

53. Paternity leave will be introduced alongside changes to maternity pay and leave. The processes used to understand and update systems involved in these changes can be used in parallel for paternity leave (for example, updating staff handbooks).

54. It is therefore assumed that, on average, the additional costs of implementing paternity leave are one day of a personnel manager's time and half a day's clerical time. Using the labour cost assumptions set out above, this gives a cost of £9.8 million (calculated as: $40,000 \times \{[1 \times £210] + [0.5 \times £93]\}$)

Recurring costs

55. In large firms, the on-going costs of the 190,000 paternity leave cases each year are likely to be modest. Once systems are set up, the additional cost is the processing of a case from notifying management to triggering the payment (if paternity leave is not paid already) to claiming the payment back from the state. This is likely to be a routine task involving a relatively small amount of staff input.

56. To provide an indication of these costs, a range of average costs is assumed. The low case is one hour of clerical time. The higher end of the range assumes one hour of personnel management time and two hours of clerical time.

57. Using the labour cost and take-up assumptions set out above³², the recurring costs can be calculated as £1.8 million to £7.6 million (calculated as: $190,000 \times 0.7 \times \{[1 \times £13] - [1 \times £30 + 2 \times £13]\}$).

Cost to small firms

58. As with maternity leave, in small firms the probability of an employee taking paternity leave in any given year is low. As paternity leave will be a

³² To calculate hourly labour costs, weekly cost estimates are divided by 35.

fairly infrequent event for most small employers, they are unlikely to incur one-off costs involved with setting up new systems.

59. However, there will be an additional administrative cost every time an employee takes paternity leave. On average, this cost is assumed to be greater for small firms because they often have to learn the rules afresh and lack specialist human resource capability. It is therefore assumed that the average cost per case for small firms is half a day's management time (£84 per case). Multiplying by 90,000 cases a year and reducing costs by 30% to allow for cases where fathers already have an entitlement to paternity leave, gives an annual recurring cost of £5.3 million.

Summary of costs

60. In summary, the total estimated costs to employers are:

- Policy costs (covering for absences): £23 to 39 million (recurring)
- Implementation costs (administration): £10 million (one-off) and £7 to 13 million (recurring)

VIII. ADOPTION LEAVE

Purpose and intended effect

61. Introduction of a new right for employees to take 26 weeks paid ordinary adoption leave, followed immediately by 26 weeks unpaid additional adoption leave around the time of placement of a child with them. Leave must be taken shortly before or following the placement of the child. In 2003, Statutory Adoption Pay will be paid at the rate of £100 per week or 90% of the employee's average weekly earnings whichever is lower.³³

62. Since 1999, adoptive parents have been entitled to parental leave but have had no statutory right to paid leave. It is recommended practice that at least one adoptive parent spends time at home with the child in the months following placement. The introduction of adoption leave will enable adoptive parents to take a total of one year's leave from work, providing time for the adoptive child and parent to adjust to their new relationships and surroundings. Time spent by an adoptive parent with their child should help reduce the number of disrupted placements. The right to return to the same job after adoption leave will benefit those adoptive parents who would prefer to return to the labour market, retaining staff skills in the labour force.

³³ Further information on the key features of adoption leave and pay are available in the summary leaflet *Adoption leave and pay – a basic summary* (PL 515) (Available at <http://www.dti.gov.uk/er/individual/adopt-pl515.htm> or from the DTI publications orderline on 0870 1502 500).

Numbers affected and take-up

63. There are around 3100 domestic adoptions each year by strangers (i.e. excluding cases where a child is adopted by a family member, step-parent or foster carer). In addition, there are around 300 inter-country adoptions each year. For costing purposes, it is also assumed that the number of domestic adoptions in future years increases in line with the government's objective. This objective is that the number of looked after children adopted by 2004/5 should exceed the 2000 figure by at least 40%³⁴. This means that in 2003 approximately 3,850 adoptions per year are likely to be in scope.

64. It is recommended practice that at least one adoptive parent is able to spend time at home with the child during the first few months of placement. It is therefore assumed that there is 100% take-up of the entitlement to paid adoption leave³⁵.

IX. ADOPTION LEAVE - BENEFITS

More financial support

65. About a third of employers already offer support to adoptive parents³⁶. In most cases though, provision of paid adoption leave will make families better off. By 2003, families where a parent would otherwise receive no financial support for staying with the child would be up to £2,600 better off.

More time off and better family life

66. It is recommended practice that at least one adoptive parent spends time at home with the child in the months following placement. The recommended period is up to nine months; hence this is likely to happen in most cases already. At the margin, though, the total period of one year's adoption leave means that some adoptive parents will be able to spend longer with their child.

67. Paid time-off, combined with enhanced financial support for the family, might reduce the risk of disrupted placements. Even a marginal reduction in disruption will improve the life chances of children and reduce the costs of care.

³⁴ *White Paper: Adoption - a new approach*, December 2000

³⁵ It is also proposed that the parent not taking the paid adoption leave would be entitled to the equivalent of paid paternity leave. The cost of this is already included in the estimates of the cost of paid paternity leave.

³⁶ "Employers' survey of support for working parents", DTI, 2000

Retaining staff and skills in the labour market

68. In some cases, one adoptive parent will be forced to give up work at the time of placement in order to look after the child. Paid adoption leave, with an entitlement to return to their previous job, will benefit those adoptive parents who would prefer to return to employment after several months. Where this happens, it will benefit both the adoptive parent, by maintaining their employability, and their employer, through improved staff retention.

69. As an illustrative calculation, if an additional 10% of adoptive parents were able to remain in employment as a result of paid adoption leave, then the savings to employers in recruitment costs would be £1.3 million per year³⁷.

X. ADOPTION LEAVE - COSTS

Costs of adoption leave payments

70. Assuming 100% take-up, the cost to the Exchequer in financial year 2003/04 would be £10 million³⁸.

71. These are transfer payments. The beneficiaries would largely be adoptive families, although employers who already provide paid adoption leave may also benefit.

Costs to employers of covering for absences

72. It is likely that one adoptive parent takes time off work or gives up employment in most cases already. The effect of the new entitlement to adoption leave will be to increase the number of cases where employers leave jobs open for employees on adoption leave (and thus cover for absence).

73. There are no available statistics on current practice, mainly because the numbers of parents involved are very small. We set out an illustrative

³⁷ Calculated as $3,850 \times 0.1 \times \text{£}3,500$ (average cost of recruitment: source CIPD survey). Note that some families adopting will already have one parent who is not working; in other cases, the parent who takes time off will decide not to return to work; and in other cases, the employer of the parent taking time off will already keep their job open.

³⁸ Calculated as: $3,850 \text{ adoptions} \times 26 \text{ weeks} \times \text{£}100 \text{ per week}$.

This calculation will be a very slight over-estimate because a few adoptive parents will earn less than £111 per week and therefore receive less than £100 per week Statutory Adoption Pay.

Small Employer Relief (in 2002 available to those employers with NICs due in a year of £40,000 or less) which will enable small employers to reclaim 100% of Statutory Adoption Pay and an additional element of compensation (5% in 2001/2002), will not significantly add to these costs.

calculation. Suppose that employers are now required to keep an additional 1,000 jobs each year open for an average period of 9 months. Using similar assumptions to those made for the costs of maternity leave, the total cost to employers would be approximately £1 – 1.5 million³⁹.

Implementation (administration) costs

74. The system for adoption leave is designed to mirror that for maternity leave in many respects. In addition, many employers already treat adoptive parents in a similar fashion to biological parents and will have constructed their personnel and payroll systems accordingly. Hence there are unlikely to be noticeable one-off implementation costs.

75. There will be some recurring costs arising where this proposal leads to claims to adoption leave where parents do not currently have an entitlement. Even if, on average, these claims involved a day of management time, the total cost would be below £1 million (calculated as: 3,850 cases x £210 per day).

Summary of costs

76. In summary, the total estimated costs to employers are:

- Policy costs (covering for absences): £1 – 1.5 million (recurring)
- Implementation costs (administration): Less than £1 million

XI. SECURING COMPLIANCE

77. In putting enforcement mechanisms in place, the Government is aware of the need to strike a balance between avoiding placing undue burdens on business and ensuring that employees receive their rights. We expect the compliance risks for the new paternity and adoption schemes to be low and the steps taken to ensure compliance will be proportionate.

78. The Statutory Paternity Pay and Statutory Adoption Pay (SPP/SAP) schemes will be administered by the Inland Revenue. These new schemes involve additional obligations for employers and the Inland Revenue will encourage voluntary compliance by setting up systems to provide guidance and support to employers, including clear paper guidance, information on the Internet and a dedicated telephone helpline. In addition, the Inland Revenue will carry out some routine checking of employer's records as part of its

³⁹ Calculated using the following assumptions. The split of the 1,000 adoption leave cases between large and small employers is 60%:40%. The average pay of people taking adoption leave is equal to that of people entitled to SMP (£377 per week). In larger firms, 95% of employers take on a temporary replacement for the 9-month period, whereas the similar figure in smaller firms is 60%.

existing programme of visits to employers - this will be light touch and is not expected to increase costs to employers. The majority of employers are expected to comply voluntarily with their obligations but where necessary the Inland Revenue will have the right to obtain information. Civil penalties can be imposed where there is a refusal or repeated failure to comply.

79. Under existing legislation on maternity leave, employees can seek redress through an employment tribunal, for example in cases of detriment or dismissal, for infringements of their rights. We do not anticipate a significant change in the number of enquiries to the Arbitration, Conciliation and Advisory Service (ACAS) or employment tribunal cases as a result of the simplification of maternity leave.

80. Similarly, employees will be able to seek redress through an employment tribunal for infringements of their rights to paternity or adoption leave. The introduction of paternity and adoption leave will have an impact on the number of calls to ACAS, family advisory groups and employment tribunal cases but we anticipate that any increase will be marginal. In keeping with the light touch approach adopted, it will be a disciplinary matter for the employer if an employee fraudulently claims paternity or adoption leave.

XII. IMPACT ON SMALL BUSINESS

81. The impact on small business of simplification of maternity leave and the introduction of paid paternity leave and paid adoption leave has been considered throughout the public consultation process - responses to the consultation were sought and received from small employers and their representatives; discussions were held with the Small Business Service and small employer focus groups set up by the Small Business Service. Overall, small employers and their representatives broadly welcomed the measures for simplifying maternity leave and introducing paid paternity leave and paid adoption leave but raised concerns about some elements of the proposals.

82. The Government has listened to the responses from small employers and their representatives in taking final decisions⁴⁰. For example, employers, particularly small employers who don't use payroll software, felt that the proposal in the framework documents for an employee's average earnings to be calculated over a 26-week period would impose an unfair administrative burden on employers. The Government has responded to these concerns, alongside the views expressed by others on this issue, by retaining the current calculation period of at least 8 weeks for maternity pay and introducing the same calculation period for paternity and adoption pay.

⁴⁰ The Government's response to the public consultation process is contained in *Work and Parents: Competitiveness and Choice, Government response on simplification of maternity leave, paternity leave and adoption leave*, available at <http://www.dti.gov.uk/er/review.htm>

83. More generally, it is recognised that small firms can sometimes find it more difficult than large firms to cover for absence. However, it needs to be recognised that the events triggering paternity and adoption leave may not happen very often in the 'typical' small firms. For example, a business with 50 employees with a workforce representative of employees as a whole would expect to have just one case of paternity leave each year. Adoption leave will be a rare occurrence for all but the largest employers.

XIII. MONITORING AND EVALUATION

84. Working with the Inland Revenue and the Department for Work and Pensions, the Department will monitor information on take-up rates of maternity pay and leave and paternity and adoption leave and pay. The Department will continue informal discussions with family group, employee and employer representatives to assess qualitatively the response to the introduction of the new measures.

85. The Department will, in consultation with the Office for National Statistics, consider the feasibility of monitoring paternity and adoption leave through questions in the Labour Force Survey. The Department, in collaboration with the Department for Work and Pensions, is commissioning a survey of new mothers and fathers with fieldwork to take place next year. This survey will provide baseline data for monitoring the impact of these changes. A further survey, to measure impact, is envisaged in around 2005. Studies of employers may also be commissioned. The Inland Revenue will have responsibility for the operation of the schemes and will conduct reviews to assess the operational detail of the schemes and the utility of their guidance for employers, particularly small employers.

CONTACT DETAILS

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