

WORK AND FAMILIES

Choice and Flexibility

GOVERNMENT RESPONSE TO PUBLIC
CONSULTATION

OCTOBER 2005

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EXECUTIVE SUMMARY

1. Following publication of our Ten Year Strategy for Childcare, we consulted on a set of proposals aimed at providing more choice for families in how they balance work and caring responsibilities. The underpinning principles guiding the development of the proposals were to: ensure that every child has the best possible start in life; respond to the changing patterns of employment and ensure that parents, especially mothers, and others with caring responsibilities can work and progress their careers; and enable all families to have genuine choices about how they balance work and family life.
2. We drew on earlier consultations with stakeholders, including a Citizens' Jury, and examined the evidence base prior to developing the proposals that were set out in the consultation document 'Work and Families: Choice and Flexibility'. We set out our cost estimates for the range of possible proposals in a partial Regulatory Impact Assessment (RIA). These have now been subject to extensive consultation, more details of which are provided in part 1 of this document, and in Annex A. Our discussions with stakeholders - business representative bodies, small businesses, Trade Unions, the Equal Opportunities Commission (EOC), parents and their representatives – and with the Advisory Group we set up to assist us, have proved invaluable in helping us assess the merits of different options. This document summarises what we heard during the consultation and sets out the steps we intend to take in response.

Our Approach

3. We are committed to retaining a flexible labour market and introducing legislation in line with better regulation principles. In considering how to take forward the ideas in the consultation document, we were clear we wanted to establish a balanced framework of rights and responsibilities for both employers and employees.
4. Although the time frame for this consultation did not allow for a detailed review of every aspect of the way maternity, paternity and adoption leave and pay operates, we were clear that in parallel with providing enhanced choice and entitlements for employees, wherever possible we would look to make administration simpler for employers. In this we have been supported by an Advisory Group of HR experts who have provided guidance and advice on how to introduce the new measures which were the subject of the consultation with minimum additional burdens for employers, and also helped identify and develop other changes to help business.

5. In addition, the overall package of measures will be supported by new guidance written with the intention of providing employers and employees with clear, comprehensive advice on both the new and existing law. This guidance, will be developed with the help of external stakeholders and our aim is to better join up related guidance produced by the Health and Safety Executive, HM Revenue and Customs (HMRC formerly Inland Revenue) and the Department for Work and Pensions (DWP) so that it is clear and coherent and employers and employees can easily find all the information they need.

Timing

6. We made a firm commitment in 2004 to extend the period of maternity pay from six months to nine from April 2007. We heard during the consultation that business and employees would prefer us to introduce any changes to the eligibility for the right to request flexible working to the same timescale, to reduce the number of changes that had to be made to systems within businesses, and increase the prospect of high levels of understanding and awareness of the new entitlements.
7. The package of proposals being introduced in 2007 is designed to provide more support and choice to employees. In order to ensure these enhanced choices can be accommodated more easily by business, we will be introducing measures to make it easier for employers to manage the administration of pay and leave to the same timescale, April 2007.
8. Other changes, benefiting both employers and employees, will take more time to develop and be implemented after further consultation.

Summary of proposals

9. Most workingwomen are already entitled to 12 months' maternity leave. **We will extend the right to 12 months' leave to all employed women, while leaving untouched the existing distinctions in contractual rights between the first and second six months of leave, as well as the different rights to return.** This will minimise the administrative changes for business.
10. **We will extend the period of maternity pay from six months to nine from April 2007 on the road to 12 months.** Increasing the proportion of the leave that is paid will provide more support and more choice for women about how much of their leave they choose to take. And employers will benefit through reduced recruitment costs if more

women return to work and stay at work after having taken the amount of paid maternity leave they feel they need.

11. Alongside these enhanced choices for parents, **we will also be taking steps to ease any possible new burdens for business. These include increasing the amount of notice mothers returning from maternity leave must give to their employers when their plans change; enabling improved contact between mothers and their employers during the maternity leave period – including by introducing Keeping In Touch Days – and provisions to help employers manage the administration of maternity pay by enabling Statutory Maternity Pay (SMP) to start from any day of the week and be paid on a daily basis. In addition we will provide more and better targeted guidance to ensure both employees and employers are aware of their rights and responsibilities.** More detail is set out in paragraphs 2.12 –2.15 and 3.1 – 3.35 of part 2, where we set out our response to the issues covered in chapter 2 and 3 of the consultation document.
12. We recognise that families have diverse needs, and are committed to offering choices that respond to the diversity of needs and preferences. The principles of choice and equality underpin the proposal to enable fathers to play a bigger role in caring for their young children. **We will do this by giving fathers a right to a maximum of six months' additional unpaid paternity leave, with paternity pay at the flat rate if the mother returns to work before taking her full entitlement to SMP and Maternity Allowance (MA).**
13. It is difficult to estimate the levels of take-up by fathers initially, but we want to build a modern system of statutory payments that is flexible enough to accommodate parents' reasonable expectations of choice in how they care for their children. We believe we should move towards this goal, but this is an important step and we need to make sure we get the details right, for the benefit of both employees and employers. We also need to ensure we allow enough time for business to plan to accommodate this change. We intend to consult further on how best to design the proposed new rights to Additional Paternity Leave and pay.
14. We are also continuing to review statutory payment mechanisms, in order to identify and examine ways to ease the burden the current system places on employers, including by considering the case for transferring the responsibility for paying SMP, Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPP) from employers to HMRC. What we heard in the consultation and how we intend to take forward

our consideration of these issues is set out in paragraphs 4.28– 4.42 of part 2.

15. The right to request flexible working, for parents of young or disabled children, has been a success. Many employers already offer flexible working to groups outside the scope of the existing law, and in only around 10% of cases are requests refused. Respondents to the consultation generally agreed that those caring for adults should be the next priority, although they acknowledged that this would be more novel than extending to more parents, as the nature of the caring responsibilities is likely to be different. Some businesses were concerned that extending the right to parents of older children at the same time as carers would be too much of a step change in the numbers covered. We agree this could be difficult for businesses to accommodate and might pose a risk to the smooth operation of the existing law, and to the roll-out to carers. **We have decided to extend the right to carers of adults from 2007. We also intend to develop improved guidance for both employers and employees.** More detail is provided in paragraphs 5.1- 5.32 of part 2.
16. In part 3 of this document we set out in more detail how we intend to take forward our conclusions, through both legislation and non legislative measures. A full Regulatory Impact Assessment has been prepared, and is available on the Work and Families part of the DTI website (www.dti.gov.uk/workandfamilies).

PART 1: BACKGROUND TO THE CONSULTATION

- 1.1. The Government has set out clear commitments to ensure every child gets the best start in life and to give parents more choice about how to balance their work and family responsibilities. At the same time, we want to help businesses recruit and retain the best people.
- 1.2. The Government has already set in place a foundation of support for working families:
 - nearly all working women are now entitled to 26 weeks' maternity pay and most may also take a further 26 weeks' unpaid maternity leave
 - employed fathers can qualify for two weeks' paid paternity leave
 - parents with young or disabled children have the right to request flexible working
 - adoptive parents enjoy similar paid leave rights to those enjoyed by other parents
 - employees have a right to time off to deal with family emergencies
 - 1.2 million childcare places have been created since 1997
 - all three and four year olds are guaranteed a free part-time nursery place
 - families can benefit from improved financial support, including with the costs of childcare through increased Child Benefit and the Child and Working Tax Credits
 - 524 Sure Start Local Programmes provide a range of health, parenting and family support to over 400,000 children in disadvantaged areas

A Ten Year Strategy for Childcare

- 1.3. The 2004 Pre-Budget Report and the accompanying document, *"Choice for parents, the best start for children: a ten year strategy for childcare"*, set out how the Government will build on this framework to deliver our commitments to ensure every child gets the best start in life and give parents more choice about how to balance their work and family responsibilities. The strategy explains Government's plans to improve the availability, quality and affordability of childcare as well as

a number of new commitments and goals to extend further maternity and adoption pay and leave and paternity pay and leave and flexible working.

Childcare

- 1.4. By 2008 there will be 2,500 children's centres, extending from the initial focus on the most disadvantaged neighbourhoods to begin to cover communities across much of the country. By the end of the decade, we aim to have 3,500 children's centres: one for every community in England, offering childcare, education, health and parenting support together, and ensuring that all families which need these services will have access to them, wherever they live.
- 1.5. For older children, we are investing to bring together more opportunities and services in extended schools. In many schools all over the country extended services are already engaging children, helping them flourish through sports, homework clubs and special interest clubs. The Government firmly believes that pupil well-being and high educational standards go hand in hand, and wants to see all pupils under 14 have access to such extended services. Both children's centres and extended schools will play a key role in delivering the Government's vision of affordable, flexible, high quality childcare places being available for all families with children aged up to 14 who need them.

Work and families: choice and flexibility

- 1.6. On 28 February 2005, the DTI published its consultation document, "*Work and families: choice and flexibility*", asking for views about how the employment measures proposed in the Ten Year Strategy for Childcare should be delivered in ways that meet children's, families' and employers' needs. The consultation closed on 25 May 2005.
- 1.7. This document sets out the Government's response to the views received through the consultation on how we should meet the following goals and commitments:
 - extending SMP, MA and SAP to 39 weeks from April 2007, towards the goal of a year's paid leave by the end of the Parliament
 - 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

- introducing a right for mothers to transfer a proportion of their statutory maternity leave and pay to fathers, and considering the transfer of payment of SMP, SAP and SPP from employers and MA from the DWP to HMRC and alternative approaches that would make administration easier for employers
- considering extending the right to request flexible working to carers of sick and disabled relatives and parents of older children.

The consultation process

- 1.8. The consultation document was published on 28 February 2005, with an accompanying partial Regulatory Impact Assessment. Electronic copies of both were also made available on the Work and Families website (www.dti.gov.uk/workandfamilies). During the consultation period, we had over 12,000 visits to the website. In addition, over 750 hard copies were sent to those on the Work and Families database and 413 copies were ordered from the DTI. We circulated an e-newsletter to over 500 people on the Women and Equality database and a link to the website was sent to over 700 small businesses via the Small Business Service.
- 1.9. We have held over thirty individual meetings with the representatives of parents, carers, unions and employers as well as with individual employers. Focus groups were held for small businesses, working parents and black and minority ethnic women. Presentations were given to the Small Business Council and the Fathers Direct conference. The consultation was also discussed at national seminars for children's charities and businesses in the northwest.
- 1.10. In addition, the DTI established an external Advisory Group, with expertise in HR policies, to advise on some of the practical measures needed. HMRC have also set up a group, comprising experts in payroll and in payroll software development, to provide advice on the practicalities of direct payment and alternative approaches.
- 1.11. The meetings with external stakeholders and input from the Advisory Group have been an important means of identifying and developing proposals to ensure systems are straightforward and impose the least possible administrative requirements on business. We have considered a range of proposals, tested ideas and looked at the costs and benefits of new and different approaches. The Government response includes a number of new proposals that respond directly to points raised by employers and their representatives. We also commit to continuing to work with stakeholders to see what more can be done. We appreciate that ongoing dialogue and discussion will help to

ensure that we fully meet the principles of better regulation and we therefore look forward to working with stakeholders as we take this agenda forward.

Access to the consultation responses

- 1.12. The responses, except those made in confidence, are available on the Work and Families website (www.dti.gov.uk/workandfamilies).
- 1.13. Copies are also held by the DTI and can be accessed on request by contacting the Work and Families Team in the DTI on 020 7215 5000. A list of those respondents who were willing to have their names and responses disclosed can be found in Annex B.

Summary of responses from parents, carers, employees and employers and their representatives

- 1.14. We are grateful to all those who responded to the consultation. We received over 200 formal responses to the "*Work and families: choice and flexibility*" consultation. Around a third were from individual employers and 18 of these were from small employers. In addition 26 employer groups, including the CBI and FSB, representing well over 850,000 members responded. Parents and individual employees accounted for just over ten per cent of the responses. We also heard from a number of parent and carer groups. 19 unions responded, including the TUC, Amicus and Unison, as well as those representing specialist sectors such as construction, retail and the newspaper industry. A further ten per cent of responses were from charities, predominantly representing the interests of mothers and working parents. The remainder of responses came from academics and lawyers or others. Just under five per cent of respondents did not indicate the basis on which they were responding. A summary of the responses was made available on the Work and Families website: www.dti.gov.uk/workandfamilies and is attached at Annex A.

PART 2: WHAT WE HEARD AND WHAT WE WILL DO

- 2.1. The consultation document, "Work and families: choice and flexibility", sought views from stakeholders on a number of questions. In this section, we set out what we heard during the consultation and what the Government intends to do in response.

Extending Maternity and Adoption Pay

- 2.2. Chapter 2 of the consultation document outlined the Government's commitment to extend maternity and adoption pay from six to nine months from April 2007, as a step towards the goal of 12 months' paid leave by the end of the Parliament, and set out how current maternity leave entitlements could be changed to ensure all women who receive Maternity Allowance benefit from the extension of pay. It asked what measures the Government should take to make maternity leave and pay easier to understand and administer for employers and employees. It also welcomed views on what the guiding principles should be for any future increases in the flat-rate of statutory maternity, paternity and adoption pay.

We intend to:

- **change the eligibility rules so that all women who qualify for Ordinary Maternity Leave (OML) also qualify for Additional Maternity Leave (AML)**
 - **introduce changes to harmonise the SMP and leave regimes**
 - **continue working with stakeholders to examine other ideas for simplifying the administration of maternity pay**
- 2.3. The general response to the commitment to extend maternity and adoption pay to nine months, with the goal of 12 months by the end of the Parliament, was positive. Parents' groups and unions welcomed the extension and the vast majority of employers recognised the need to work constructively with all concerned to make these new rights work for both business and employees.

"TUC welcomes the planned extension of maternity leave as outlined in this consultation paper and the continued focus on support for pregnant women and new parents that this Government has given."

TUC

“From a national perspective it is important that we establish a family-friendly culture...there is a case for providing a more family-friendly environment...”

Institute of Directors

- 2.4. Some businesses – particularly small employers and their representative bodies - expressed concerns over the extension of the statutory pay period, arguing that the absence of an employee over a long period can cause difficulties and additional costs to the employer. We will ensure that the views of employers are fully understood and considered before any further extension in the period of maternity and adoption pay to 52 weeks.

“We consider that extending paid leave to one year would further compound the already difficult position in a small business....Finding appropriate maternity cover can be difficult and expensive.”

Federation of Small Businesses

- 2.5. The specific questions explored by this chapter of the consultation and our response to them are set out below.

Question 1 In changing the qualifying requirements for maternity leave, which of the following options is preferable, and why?

- Option 1: Extend entitlement to AML to all women who currently 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

- 2.6. All pregnant employees are entitled to 26 weeks' 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' AML, which follows on from OML.

- 2.7. In broad terms, parent organisations and unions expressed a preference for extending OML and retaining the right to return to the same job. This option delivers the greatest degree of simplification since there would be one type of maternity leave with one set of contractual rights and one right to return.

- 2.8. Employers and their representatives however expressed strong concerns about being required to hold the same job open for up to 12 months. They believed that the existing, different rights of return that currently exist at the end of OML and AML should be retained.
- 2.9. Opinion was divided, however, as to whether a single period of OML would provide a simplification that outweighs the costs of extending contractual entitlements to 12 months. Although some employers thought that abolishing AML would result in some degree of simplification, others pointed out that extending OML to 12 months would require employers to face the cost of extending non-pay contractual entitlements to all employed mothers for an additional period, for example use of a company car. Some employers and their representatives questioned whether it was proportionate to extend rights for all women in order to give new benefits to a relatively small number, and therefore expressed a preference for retaining the distinction between OML and AML.
- 2.10. **We propose to change the eligibility rules so that all women who qualify for OML also qualify for AML.** If employers feel it is administratively simpler to provide contractual benefits for the full twelve months it is open to them to do so. But it should not be a requirement. This is the most targeted approach since the changes would affect only the small number of women (estimated at around 20,000) who would not qualify for AML under the current arrangements. The RIA estimates that the cost to employers of extending OML to 12 months would have been £31.5 million.
- 2.11. The Government made a commitment in the Ten Year Childcare Strategy that parents on paid maternity, paternity or adoption leave retain their eligibility for Working Tax Credit and the childcare element of Working Tax Credit. This means they currently receive additional financial support and can continue to receive help with the costs of childcare during the first six months of paid leave. As the Government progresses towards 12 months of paid leave, the extension to 39 weeks of the paid period will automatically benefit from this treatment. £100 a week of SMP, SPP, and SAP will continue to be disregarded as income for tax credit purposes, providing additional support from tax credits for eligible families.

Question 2 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?

- 2.12. A number of respondents put forward suggestions about how the SMP scheme might be made simpler to administer and operate. The

Government welcomes these suggestions and has examined each of them. As a result, **we will introduce changes to harmonise the statutory maternity pay and leave regimes**. These will enable:

- 2.13. SMP to start from any day of the week to align with the start of maternity leave. Currently maternity leave can start on any day of the week but, in most circumstances, SMP will begin on the following Sunday. Employers and the TUC believe it would be more straightforward for SMP to begin on the same day as leave.
- 2.14. Enable employers to pay SMP on a daily basis (SMP weekly rate divided by 7) to make it easier to align SMP with the employers payment systems. Employers have told us the current system of weekly payments can make it difficult to align SMP with a woman's normal pay period and that daily payments would make the administration of SMP easier.
- 2.15. **We will continue working with stakeholders to identify and explore other ideas for simplifying the administration of maternity leave and pay.**

Question 3 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?

- 2.16. The majority of substantive comments on the level of the flat-rate came from parents' groups and unions who believed that the flat rate should be increased, though some employers and their representatives also made the point that in order for parents to have genuine choices to take leave and for how long the rate should be set at a level that enables parents to be able to afford to take leave. There were a number of alternatives proposed about the basis of payments. For the flat-rate, it was suggested that it should be linked to average male or female earnings, tied to the national minimum wage or at a 'living wage' level. Others believed that there should not be a statutory flat rate, but that the level of pay throughout the period of maternity, paternity or adoption leave should refer back to an employee's average earnings.

"...an immediate increase in the level of flat rate statutory leave to at least £200 per week as a staging post to introducing earnings related pay subject to a cap in future"

EOC

“If the aim is to make administration as easy as possible and avoid complexity, a flat rate carries a very real advantage over a percentage of earnings approach.”

Eversheds

- 2.17. In addition, a number of respondents commented on the rate for those employees who do not earn enough to receive the flat rate but instead receive a lesser rate of 90% of their average weekly earnings. Some suggested that they should receive 100% of their earnings throughout the period of maternity, paternity or adoption leave whilst others thought that everyone should be entitled to the flat rate, whatever their earnings.
- 2.18. Our ambition is to deliver greater choice to parents in how they balance their work and family life during the first year of a child's life by increasing the flat rate of SMP, SPP and SAP over time. We also see the flat rate of SMP, MA, SPP and SAP as part of a package of financial support to the family during the first year of a child's life, which includes Child Benefit for all families and the Child Tax Credit for around nine out of ten families. Since the consultation more work by the EOC¹ has become available suggesting encouraging take up rates of SPP.
- 2.19. From April 2007, the flat rate of SMP combined with other financial support for families will together be worth up to approximately £8,300 in the first year of a child's life compared to £2,610 in 1997. Entitlement to tax credits is determined by household income and circumstances (including childcare and additional support for disabled children) making it an effective tool to support the work-life balance choices of low-income households. £100 a week of SMP, MA, SPP and SAP is disregarded as income for tax credit purposes helping to deliver additional support during the crucial first year. In addition, all families with income of less than £66,000 a year will benefit from the baby element of Child Tax Credit, worth up to £545 a year for the first year. In considering any changes to the flat-rate other than the usual indexation, we will consider how well the package of support as a whole helps families make choices over balancing work and family life.

¹ “Dads and their babies: leave arrangements in the first year”, Spring 2005

Keeping in Touch and Planning Ahead

3.1. Chapter 3 of the consultation document outlined how the Government intended 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. The chapter included 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.

We intend to:

- **introduce 'keeping in touch days' to enable women and adopters to work for a limited number of days during their pay period without losing statutory payments for that week or ending their leave**
- **clarify, in law, that reasonable contact is permitted at any stage during maternity leave**
- **extend the period of notice that a woman has to give when returning early from maternity leave from 28 days to eight weeks**
- **apply the same length of notice period (eight weeks) to women who wish to extend their maternity leave**
- **make clear in guidance that if a mother gives her employer more than the required advance warning that she does not intend to return to work after maternity leave, this cannot of itself result in her contract being terminated early and her losing the right to accrue other entitlements**

3.2. The vast majority of responses indicated strong support for the principle that constructive and open communication between the employer and the employee during maternity leave is beneficial for

both, and almost all agree that the Government has a key role to play in encouraging this important dialogue.

- 3.3. Employers, trade unions and parents' groups all recognise that a system which allows businesses to plan ahead, arrange start and end dates for cover while the woman is away, and have some certainty through sufficient notice where plans change, is ultimately helpful for employees too. A mother should be able to plan ahead for her return certain in the knowledge that the employer is expecting her back at work on an agreed date. If she and the employer are more confident about the kind of communication between them that is acceptable while she is away, such contact is much more likely to occur, keeping her in touch with other developments in the workplace and allowing discussions of arrangements for her return to work to take place.
- 3.4. There is general support for the argument that the more support pregnant women receive in the workplace - and the clearer the communication with women on maternity leave - the more likely women are to return to work after leave, thereby causing employers fewer problems with retention of key staff. We have been encouraged by this clear consensus among the consultation responses, and believe that changes are necessary to existing arrangements to improve understanding and adapt legislation and guidance to take account of the new, extended period of paid leave. One of the key judgements for us to make is how to strike the right balance between new regulations to help achieve this result, on the one hand, and improved, clearer guidance, on the other.
- 3.5. The specific questions explored by this chapter of the consultation and our response to them are set out below.

Question 4 Should mothers have to confirm their date of return from leave? If so, when should the notice point be?

- 3.6. Many employers have argued that because a considerable amount of time can elapse between a woman beginning her maternity leave and her eventual date of return – often a year later – during which much can change, there is a need for a new requirement for her to give notice of her return plans, whether these have changed or not.
- 3.7. We recognise that employers need to have as much certainty as possible about an employees' return plans: whether she intends to return early, late, or, perhaps, not at all. In the case of changes to return dates we agree that amending existing notice periods is necessary, and this is discussed at Question 5 below.

- 3.8. We believe, though, that a legal obligation to confirm plans other than when they have changed is not necessary. To do so would in fact place a burden on employers as it is likely that the system would only work if they were required to make initial contact with the employee to ask them to reconfirm their plans. Many responses have queried whether requiring all women on maternity leave to confirm their plans, even if they had not changed, would work in practice. There is doubt as to whether many would do so if there was no change to report, and whether employers would be likely to initiate the formal contact. It might also give the false impression that contact can only take place at the point specified in the regulations.

“Our members emphasise that setting out overly-prescriptive rules about notification and rights of contact can inhibit the sort of dialogue between women on maternity leave and their employer that is desirable during this period.”

EEF

- 3.9. We believe, instead, that encouraging both parties to communicate during maternity leave and discuss arrangements for return to work (see response to Question 7 below) is most likely to achieve the desired result without additional regulation.

*Question 5 Should we extend the notice period for early return?
If so, what should the new notice period be?*

- 3.10. There is a considerable degree of consensus among stakeholders over the question of notice periods for those employees who wish to return to work from maternity leave early. Employers have pointed out that with the extension of SMP, MA and SAP to 39 weeks (with a goal of 12 months by the end of the Parliament), the overall effect will be for women to be away from work for longer. This means that cover will have to be arranged for longer periods, whether through recruitment of temporary staff or internal staff changes.

“Certainty about when women will return is crucial for employers – to enable them to plan work and to make decisions about training and development...It enables them to plan for the woman’s return and consider any support she might need to reintegrate herself into the workplace.”

CBI

- 3.11. In addition, since 2003 most women have qualified for 12 months’ maternity leave, which means that in many cases the return date is already being set more than a year in advance. During that time the individual circumstances of the mother and her family can, and

frequently do, change, meaning that she feels the need to return to work early. Most employers therefore feel that, regardless of the additional effect of extending maternity and adoption pay, the existing 28-day notice period is already insufficient to allow them either to find alternative duties for an employee covering the mother's post, or to terminate a temporary contract, and that a longer notice period is required. Many, but not all, parents' and employees' groups accept this logic.

"In light of the fact that many employers appear to require further support in dealing with pregnancy related issues, the NUT agrees that the Government should extend the notice period for early return....doing so will achieve the objective of providing employers with sufficient advance notice to follow the dismissal procedure prior to terminating any contracts for maternity cover"

National Union of Teachers

"We think the difficulties being faced by employers in this area are being overstated. We believe the current regulations governing notice strike the right balance between the needs of the employer and of the individual woman."

USDAW

- 3.12. Although some responses argued for an extension of the notice period for early return to three months, in the light of the consultation responses, we believe a tripling of the existing notice periods would be overly burdensome and potentially difficult to manage for both parties. The impact on an employee's flexibility would be significant. And the longer the period of notice, the greater the likelihood that personal circumstances change meaning the notice point is less certain.
- 3.13. The option supported by a majority of responses to the consultation is for a two month notice period for employees wishing to return to work early. We agree that this change in the regulations is the most appropriate response in the circumstances, and **will extend the period of notice that a woman has to give when returning early from maternity leave from 28 days to eight weeks.**
- 3.14. We believe this is sufficiently light-touch and possible to manage, respecting some mothers' legitimate need to change their plans, whilst significantly increasing an employer's ability to plan ahead and adapt the business to take account of these changing circumstances. The two month notice period will be calculated from the new date of return (so, for example, if the mother was originally expected back at the beginning of August but wished to return a month earlier, she

would need to provide the employer with notice of her new plans by the beginning of May).

- 3.15. In extending the notice period for early return our intention is to provide employers with a minimum safeguard so they can plan ahead with greater certainty. It is not our intention to replace the open dialogue and good communication that in many cases already takes place. Employers can, of course, waive the full notice period, if they choose to. It may often be helpful, for example, to the employer for the woman to return to work early if she wishes to do so.

Question 6 *Are there other steps the Government could take to ease the difficulties employers experience with the current notice periods?*

- 3.16. As the consultation document set out, we also intend to make a change to the notice periods relating to mothers who wish to extend their maternity leave (provided of course there is further leave to be taken). This situation will normally arise where she has notified the employer before going on leave of her intention to return to work before the maternity leave expires.
- 3.17. **We intend to apply the same length of notice period (two months) to women who wish to extend their maternity leave;** and will make it clear in the regulations that this notice period is calculated from the original date of return, so as to give the employer the full benefit of the notice period.
- 3.18. We also intend to encourage those employees who do not wish to return to work after maternity leave to give their employers as much notice as possible of this fact so that plans can be made to provide permanent cover for a post that had, until then, been covered on a temporary basis. However, we do not believe that it would be appropriate to place more onerous legal requirements on women who wish to resign while on maternity leave than would apply to employees who wish to resign in other circumstances, so a requirement in the regulations to give greater notice of her resignation than either the Employment Rights Act 1996 or her contract determine would not be appropriate.
- 3.19. Responses to the consultation have highlighted the fact that many women do not wish to give more than the minimum notice of their intention to resign at the end of maternity leave for fear of losing other entitlements, such as accrued annual leave. We will make clear in guidance that if a mother gives her employer more than the required advance warning that she does not intend to return to work after

maternity leave, this cannot of itself result in her contract being terminated early or her losing the right to accrue other entitlements.

Question 7 How can dialogue and communication between employers and mothers be improved before and during maternity leave?

- 3.20. We believe that there is considerable scope for building on existing arrangements for encouraging dialogue between employers and employees, before and during maternity leave to support the mother's return to work, and in the light of the responses received, there is clearly much support for doing so.
- 3.21. The EOC recommendation of a leaflet setting out the rights and responsibilities of both employers and employees is one we welcome and see considerable merit in. A majority of responses have either supported the recommendation or recommended a similar approach.
- 3.22. Such a written statement, clarifying understanding of the new law, would go a long way to removing the uncertainty that still persists in some places over what the law expects of both business and employees, and their responsibilities to one another, before, during and after maternity leave. The proposed changes to the legislation make it a particularly timely recommendation. The leaflet would also provide a useful opportunity to give women additional information on other related issues, such as childcare and other Government support potentially available to them, and on the right to request flexible working. The DTI is already liaising with other Government Departments and Agencies to work through the detail of a written statement.
- 3.23. In addition to extending the notice an employee needs to give of any change to existing, agreed or previously notified plans, we agree with the vast majority of responses to the consultation arguing for greater clarity over the sort of contact that is acceptable, and can be expected, between employer and employee during maternity leave. The EOC have also suggested that employers should be given a 'green light' to make contact with employees who are on maternity leave. Many employers told us that they are sometimes unclear as to whether they are allowed to contact employees in these circumstances.
- 3.24. Although not expressly addressed as an option by many respondents, **we will clarify that reasonable contact is permitted at any stage during maternity leave** and believe this would have the effect of reducing the uncertainty some employers feel about the lawfulness of doing so. By setting out in detail in the guidance what 'reasonable

contact' means (with examples) we believe that establishing the principle in law sends a stronger signal than guidance alone can achieve. We will continue to discuss with the EOC and others how the guidance on this point can be made as clear and helpful as possible.

- 3.25. A number of other suggestions for changes both to regulations and guidance, to enhance and enable better communication to the mutual benefit of employers and employees during maternity leave and supporting the return to work, have been made during the consultation period. This includes a concern that the current operation of the maternity pay regime can discourage contact during leave because if a woman does any work under her contract even for a day, for example to attend an appraisal, she cannot receive SMP for that week. She will also lose MA but not necessarily for the whole week.
- 3.26. We recognise that employees and employers can benefit from some lightening of this regulation to enable women to return for a short period, perhaps for training. Although not formally consulted upon as an option, this measure was suggested by payroll professionals during the consultation and, when raised with other stakeholders, it has been welcomed. In these circumstances, **we will make changes to enable women and adopters to work for a limited number of days during their maternity pay or allowance or adoption pay period without losing payments for that week.** The Government intends to mirror this arrangement for fathers in receipt of Additional Statutory Paternity Pay (ASPP). We will also amend any necessary regulations to ensure existing rights to statutory leave are not lost as a result.

Question 8 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?

- 3.27. As mentioned above, we see merit in the EOC's proposal for a written statement of rights and responsibilities and will work with stakeholders to develop this idea.
- 3.28. In addition, what came out clearly in responses to the consultation is that employers and employees would value more cohesive and comprehensive guidance and information about the law and how it applies to them. A number of respondents have pointed out that guidance and support from Government is available from a number of different Departments and agencies. Though this is often helpful, it is not as comprehensive as some would like.
- 3.29. We recognise there is a need to review and revise the guidance and information available to employees and employers to ensure it is

accessible, comprehensive and appropriate for purpose. We will do so in the context of developments taking place across Government.

- 3.30. The DfES currently provides a range of information, advice and support services for parents. These services are delivered via Children's Information Services (CISs), providing information on local childcare and associated services, via websites: Direct Gov (www.directgov.gov.uk) and Parents Centre (www.parentscentre.gov.uk). Information is also provided through publications and campaigns: Sure Start, Looking for Childcare and the leaflet campaign with ASDA supermarkets, run during August-September 2005 to coincide with children's return to school.
- 3.31. Following recommendations contained in the *Ten Year Strategy for Childcare and Every Child Matters*, we are developing proposals, including legislation in the forthcoming Childcare Bill to:
- broaden the range of information available to parents
 - extend the outlets through which information is delivered (to include children's centres and extended schools)
 - support parents in making informed childcare choices to suit their needs.
- 3.32. This will build upon the good practice already undertaken in many CISs to deliver a more comprehensive service providing information on services available locally and nationally for parents with children aged up to 20. A feasibility study has been undertaken regarding the provision of telephone help lines to explore how these and other services can be incorporated into proposals for Parents Direct to deliver comprehensive information, advice and support for parents.
- 3.33. The DTI is developing a new website for employees. As part of the wider www.direct.gov.uk website, it will provide information and practical advice on the whole range of employee rights and responsibilities. The interactive tools which are currently available on the www.tiger.gov.uk website (for example a calendar to work out the earliest date an expectant mother can start her maternity leave), will also be available from the new site.
- 3.34. Already available for employers is the businesslink.gov website. The 'Employing People' section of the website includes general information on maternity, paternity, adoption and other parental rights, access to interactive tools and links to further material and guidance,

including forms, available on Departmental sites.

- 3.35. These websites offer clear opportunities to streamline access to basic web-based information for parents and employers. There is still some capacity for DTI, DWP and HMRC to rationalise the more detailed guidance they provide on their own sites and the three Departments have agreed to work together to try and ensure that there is comprehensive and coherent information available that is easily accessible. This means ensuring there is proper signposting to information, links work properly between sites and duplicate information is removed.

Question 9 What more could be done to help women returning to the labour market after a period of time out caring for their children?

- 3.36. We believe that helping to support and encourage communication between mothers and employers during maternity leave will help with the return to work. Where women had taken more time out of the workplace than maternity leave, there was a general view that they needed specific support in returning to the workplace. It was suggested that this should concentrate on confidence-building, updating skills and career advice.
- 3.37. We recognise that women returning to work after taking time out for caring responsibilities may face particular barriers. The DTI has commissioned research from the University of Manchester on women returners which will help to provide an evidence base on which the Government can best help women who have taken time out of the workplace. The research will be published later this year. A pilot with Regional Development Agencies is also providing programmes of support giving women returners advice on career options, access to training, work placements and good quality affordable childcare. If the model proves successful, potentially there is scope to explore whether it could be applied more widely. The pilots are due to conclude in December 2007.
- 3.38. We are also looking at specific sectors and how we can support women returning to certain careers. For example, the UK Resource Centre for Women in Science, Engineering and Technology has now been operating for a year. It has a specific remit to help those women trained in science, engineering and technology (SET) to return to SET professions by connecting them to a host of free services and support, including training, courses, mentoring schemes and networking organisations. This has included the Return Campaign and central to this is a free, Open University, on-line course which will start October 2005. It will help women plan their return and update their skills, as

well as providing opportunities to attend networking events, meet with potential employers, role models and mentors.

- 3.39. The Women and Work Commission has also looked at issues concerning women returners. It will report back to the Prime Minister in January 2006 on ways to tackle the gender pay gap and give women a fairer deal in the workplace.

Transferable maternity leave and pay

- 4.1. Chapter 4 of the consultation outlined the Government's commitment to introduce a new law that would provide parents with greater choice and flexibility in caring for their children during the first year of life. This was in response to a growing demand for fathers to have greater opportunities to care for their child and be the primary carer.
- 4.2. It set out the principles of a scheme which would allow a mother to transfer some of her maternity leave and pay to a father and it explored options on how the scheme might work to ensure that it would be straightforward with the least possible administrative burdens on business. It also explored 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 HMRC.
- 4.3. In particular the consultation sought responses on the amount of maternity leave that could be transferred and the timing of any transfer of maternity leave and pay.
- 4.4. In response to the views received, we:
 - **recognise that the first six months of maternity leave should be preserved for women and not be shared**
 - **will take powers in primary legislation to provide eligible fathers with an additional period of paternity leave that can be paid if certain criteria are met, but will undertake more work and consult again on the details before moving to introduce this new right**
 - **will provide comprehensive guidance in advance of introduction**
- 4.5. The ability for a mother to transfer maternity leave and pay to the father was a concept that received a mixed response. Many employers supported the principles behind the transfer of maternity leave and pay but had concerns about the administration of any system that would be needed to support it. The need for a straightforward system was considered essential to ensure that burdens and compliance costs were kept to a minimum.
- 4.6. Employee representative bodies strongly supported individual rights for mothers and fathers instead of allowing women to transfer maternity leave and pay. They indicated support to enhance the choice

and flexibility for parents in the workplace.

Some examples of the comments received are shown below:

“The FSB has no objection to the principle of transferring leave and offering flexibility to parents. We do, however, consider the issue of ‘policing’ transferable leave to be of greatest concern. We are not convinced that the consultation gives sufficient attention to how the policy would work in practice. The FSB would not wish to see any burden or requirement placed on the business to monitor which of the parents is taking leave.”

Federation of Small Businesses

“CBI members have responded positively to the proposal but this new entitlement must be implemented in a way that minimises the administrative burdens on employers.”

Confederation of British Industry

“Many Mothers’ Union members supported the idea of transferring a proportion of maternity leave and pay to the father.....Despite welcoming the fact that this proposal is intended to give mothers and fathers greater choice and flexibility in balancing their work and caring responsibilities between them, the Mothers’ Union would urge that any such provision should not negate the need for the extension of dedicated leave for fathers, which can run concurrently with paid maternity leave during the first year of the child’s life.”

Mothers’ Union

“The Small Business Council can see no merit in this idea and believes if introduced it will create considerable potential for administrative confusion.”

Small Business Council

- 4.7. During the consultation, some respondents argued for the introduction of paid parental leave and an extension to paid paternity leave. The current entitlements to parental leave provide 13 weeks in total per child, which can be taken up to the child’s fifth birthday. For parents of disabled children, 18 weeks’ parental leave up to their child’s 18th birthday can be taken. Adopters can take parental leave during the five years after the child is placed for adoption with the family (or until the child’s 18th birthday if that comes sooner).
- 4.8. Paid parental leave was an option considered in the 2000 Green Paper and responses at that time highlighted other options were of higher priority to parents and employers. Similarly, ways to improve maternity and paternity leave and pay during the round table

discussions and Citizens Jury in 2004 attracted greater discussion and were suggested as the priority.

- 4.9. Our priority is to provide more support and more choice in the first year of a child's life, and in line with this we will extend the period of SMP and MA from six months to nine months in 2007. The next step will be to extend this to 12 months; our ambition is to do so by the end of Parliament.
- 4.10. The specific questions explored by this chapter of the consultation and the Government's initial responses to them are set out below.

Question 10: How much statutory maternity leave and pay should mothers be entitled to transfer to fathers?

- 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.
- 4.11. In response to the consultation the majority of respondents were in favour of Option 2 as they felt it was important that the health and safety of the mother and her child were protected during the first six months of her maternity leave.

“Once the government has moved to a full years paid leave the situation will be a little more straightforward, in that the logical position would be for six months leave and pay to be taken by the mother with the other six months being transferable. A possible option for the intervening period would be to make half of whatever leave and pay is available transferable.”

4Children

“We believe that if some of this leave is to become transferable to fathers it must a) remain in the gift of the mother, and b) be transferable only after six months after the birth of the child. Current government, and World Health Organisation recommendations are for six months breastfeeding,”

One Parent Families

“Maternity leave should take full account of the need to protect the health and welfare of the mother and the child after pregnancy and childbirth. It notes that the Department of Health recommends breast feeding for at least six months after birth, and that mothers may find difficulty in returning to work whilst breast-feeding.”

Public and Commercial Services Union

*“Mothers should be able to transfer leave **only** after six months. We recognise, however, that this will present additional red tape and administrative “headaches” for employers.”*

London Chamber of Commerce

- 4.12. Responses to this question from business and their representative groups also had concerns that any transfer of maternity leave and pay during the first six months would result in an increase in pressure on employers to provide occupational top up beyond the statutory payments. At present, many employers offer payments above the statutory level for the first six months of a mother’s maternity leave and pay.

“In terms of how much leave and pay is transferred we would, in principle, prefer as much flexibility for our employees as possible. However if there is overriding medical evidence in relation to the health of the mother, the baby and in relation to breast feeding this should be taken into account. It may therefore be necessary to reduce the level of choice available to parents. EOC evidence categorically shows that there is a detrimental impact on women’s health with a return to work date within 3 months of the birth of a child. Option 2 (any leave and pay after six months) maybe a sensible option as an initial introductory position, in order to assess and review the take-up and effect on employers.”

BT People Network

- 4.13. We recognise the concerns expressed by respondents, and that there was a broad consensus that the first six months of the maternity leave period should be reserved for the mother. This provides the necessary balance between the needs of the child, parents and business, and in moving towards new rights for fathers to take leave we will ensure that this first half of the mother’s maternity leave period will be reserved for the mother alone, to ensure that the health and safety of mother and child is not affected and that we conform to the World Health Organisation’s guidelines on breastfeeding within the first six months of the child’s life.

Question 11: What steps would help keep the procedure for transferred leave and pay administratively straightforward?

- 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.

4.14. Employer representatives strongly indicated a requirement for any system adopted to be administratively as straightforward as possible. Employee representatives were also keen to keep things simple. Option 2 was the favoured option by the majority of respondents. This is likely to involve the completion of a standard form similar to the form we currently provide for fathers wanting to take statutory paternity leave and pay. The form would be completed by both the mother and father and the mother’s employer would confirm that the entitlements the mother has declared are accurate.

“ We would favour self-certification by the mother and father and no further employer or Inland Revenue checks. We believe the likelihood for fraudulent claims is too small to justify the extra administration.”

Barclays

“ Under this option the mother’s employer would check the self-certificate and sign to confirm the entitlements the mother has declared are accurate. This would give the father’s employer evidence of how much leave he was entitled to and when he intended to start it.”

Food and Drink Federation

4.15. There were also general concerns from employer representatives, for example, how contact between employers would be administered, how ‘problem’ cases would be policed and the potential burdens that this could create. We would envisage some compliance checks to be carried out by HMRC but they would not be involved in every case.

4.16. We recognise that there is a need to minimise the burdens on individuals and business and that a ‘light touch’ approach is required. Through further consultation we will ensure that this objective is met and the concerns overcome.

Question 12: How much notice should the mother and father provide their employers when transferring leave and pay?

- 4.17. In order to keep the system of transfer of leave and pay straightforward, the consultation document suggested that the Government would aim to keep consistent the notice period that fathers would have to give to their employers when taking transferred maternity leave and pay in line with those that apply to mothers when notifying they wish to extend their maternity leave or return to work early. This approach has received support from stakeholder interests and we will aim to do this, subject to any further views heard as we consult further.

Question 13: 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?

- 4.18. The responses from employers and employer representatives have highlighted the importance of having time to prepare for introduction of any new scheme. Employers felt that 6-12 months would be the minimum amount of time required before any law came into force and that they would need sufficient guidance to support and help them understand how any scheme might work.

"Members have also indicated that, while they might be able to provide for transferred leave by 2007, to meet this deadline the Government must design the right and communicate it to business with enough time for them to prepare. They would like twelve months notice of the regulations with guidance available a minimum of six months before implementation date."

Confederation of British Industry

"Any scheme will inevitably involve increased bureaucracy for employers but the scheme that we would propose should help to reduce this. This scheme would require both parents to 'self-certify' to their respective employer on the standard form the Government proposes with both employers then exchanging the information they have received. This option would afford maximum protection from error or abuse without the bureaucracy of Inland Revenue compliance checks."

Engineering Employers Federation

"If the Government were to introduce a right to transfer maternity leave and pay, the TUC would suggest a further separate consultation exercise on the technical and administrative aspects of it."

TUC

- 4.19. We recognise that businesses need time to plan for the introduction of any scheme and this will be provided. We also aim to produce comprehensive guidance material in advance of any introduction to ensure a smooth implementation.
- 4.20. The general consensus from all stakeholder interests was that further reflection and consultation on the detail of the proposals should be undertaken. We recognise the benefits of this approach. It will help ensure arrangements that can be widely supported and are easy to administer.
- 4.21. In the light of responses, and having considered the existing framework of maternity, paternity and parental leave and equality law we concluded that it would be more appropriate to provide fathers with an additional period of paternity leave, rather than transferred maternity leave.
- 4.22. The fundamental objectives of the transferred maternity leave and pay scheme remain and we will continue to work within these in developing any scheme involving Additional Paternity Leave (APL). Our aim is to enable either the mother or the father to be off work to care for their child in the first year. It is intended that an employed father's entitlement to APL and Pay will be dependent upon the mother returning to work. Taking into account what we heard during the consultation, fathers will be entitled to a maximum of 26 weeks leave, enabling them to take leave in the second half of the maternity leave period. Some of this leave could be paid if the mother was entitled to SMP or MA. Like maternity leave, if a father returns to work during his APL, he will lose any remaining entitlement.
- 4.23. As with the existing right to two weeks' paternity leave around the time of the birth, employed fathers will be able to qualify for a single block of APL. To keep the system as straightforward as possible we intend to keep the eligibility criteria for APL similar to that of existing paternity leave provisions, however, further consultation will take place on the detail, for example, the length of service an employee should have given to an employer to be eligible.
- 4.24. We propose to consult on some of the detail before developing this scheme any further. The Work and Families Bill will, therefore, provide broad powers to enable us to move towards our longer term goal of enabling fathers to share in caring for their young children, while allowing us time to work through the details carefully.

Additional considerations

Contractual arrangements

- 4.25. The consultation document indicated that almost one in five employers (employing 39 per cent of all employees) currently provide additional benefits for parents on top of the statutory entitlements. We were keen to hear the views of employers who provided such schemes and the potential impact of any new provisions. As with the existing statutory paternity period, there will not be a legal obligation on an employer to offer occupational top up payments to a father, even if they were providing occupational top up beyond the statutory level of pay for a father on paternity leave or for a mother on maternity leave.
- 4.26. From the responses received on this particular issue, it was clear that there were concerns about this particular point. We will look closely at this issue in the further work that will be carried out to develop the approach.

Situations where a mother passes away before the child's first birthday

- 4.27. During the consultation several stakeholders called for the Government to make a provision for fathers in the circumstances when a mother passes away after the child is born. We estimate that about 300 mothers per year die within the first year of childbirth. When exploring options we found that many other European countries provide for fathers to take paid leave equivalent to that which the mother would have been entitled to in these circumstances. We intend to take a power in the Bill to enable us to create special provisions for fathers in these difficult circumstances. The details of this provision will be the subject of further consultation.

Direct payment and alternative approaches

- 4.28. In the context of looking for ways to simplify the administration of maternity leave and pay, the consultation document sought specific views on the proposal that HM Revenue and Customs take over, from employers, responsibility for paying SMP, SAP and SPP directly to employees; and paying MA in place of the Department for Work and Pensions. It also sought views on alternative approaches.
- 4.29. The questions asked in the consultation document were:

Question 14 What examples are there of the costs to (1) calculate, pay and reclaim, maternity, paternity and adoption pay; and (2) administer maternity leave and cover for absences?

Question 15 What would be the impact of introducing a direct payment scheme on employees and employers?

Question 16 What advantages and disadvantages do you see in the State paying SMP, SPP, SAP and MA direct for the two options outlined?

Question 17 Are there other approaches that could help make administering the system of leave and pay easier?

Question 18 What else should we consider in deciding whether to transfer payment to the State?

- 4.30. We have consulted closely with employers and their representative bodies on this. Employers of all sizes and their representatives put their views forward, some in written responses and some in face-to-face meetings. Parents' groups, Trade Unions and others also put forward their views. Reactions to Direct Payment were very mixed.

"We would like to see the Government calculate all maternity/paternity/adoption pay (option 1) and pay direct to the employee. We appreciate that business will be required to provide information concerning the employee's circumstances but consider this to remove a significant burden from a small business."

Federation of Small Businesses

"Doing this [HMRC taking on DP] would still require employers to provide notification and information to the Inland Revenue and in reality, this will only have the effect of substituting one set of obligations (regarding the payment and offsetting and calculations) for another notification and information to the Inland Revenue. In addition, by giving employers continued responsibility regarding payments, as we have said earlier, it encourages and enables a continuing dialogue and communication to be maintained."

Eversheds

"The administration of maternity leave and pay is a considerable burden on many employers, particularly small employers, and the CBI welcomes the Government's suggestion to introduce a direct payment system. However, many larger employers have said that they want to retain responsibility for making payments themselves. To overcome this, the CBI believes that the Government should set up a direct payments system and transfer all payments to the Inland Revenue, but should give employers the choice to opt out and make payments themselves."

CBI

- 4.31. Given this mixed reaction it was clear that not all employers saw Direct Payment as desirable. And it was unclear whether direct payment would reduce employers' burdens; in fact, many responses pointed out that it could add new administrative costs. So we sought practical advice from a consultation group set up by HMRC, consisting of payroll experts representing large and small employers, payroll bureaux and software developers. Through these discussions it has become clear that fresh information exchanges between employers and HMRC would be needed to make direct payment work, and there would be further costs in dealing with the consequences of errors in those information flows which the payroll experts considered inevitable. These additional costs might be substantial for many employers.
- 4.32. An important element of the costs for employers would be the potentially complex information exchange needed between them and HMRC. For example, employers would need to supply up-to-date information so that HMRC could take over, from the employer, as temporary payroller for the employee to undertake a range of tasks. These tasks would include: deciding eligibility for and calculating SMP; calculating all deductions according to the detailed rules for each deduction (e.g. tax, NICs, pension contributions, Union subscriptions, Payroll Giving); paying over the deductions properly; and deciding whether the employer is obliged to contribute 8% to the SMP (only larger employers have to make this contribution).
- 4.33. Similarly, employers would need up-to-date information to be supplied by HMRC so the employer could make timely earnings-based contributions in respect of the SMP paid. Examples of this information exchange include data to enable employers to: make contributions to occupational pensions; make the employer's 8% contribution to SMP where appropriate; submit their End of Year Returns; and take over the payroll again when the direct payment period ended.
- 4.34. These information exchanges would need to take place to high standards of accuracy and to tight time-limits, to meet the due dates for the employee's pay. And any changes in circumstances would have to be notified speedily too, so that pay could be adjusted promptly (e.g. changed date of return from maternity leave).
- 4.35. Our work to date suggests that Direct Payment may not offer real reductions in burdens for employers. Further work needs to be done to bottom out the costs and the benefits to both employers and government of direct payment on a compulsory basis to all employers and - as some have suggested - on an optional basis. Though an optional scheme would cost nearly as much as a universal scheme so

is less likely to be value for money. To put this in context, the maximum potential saving for all employers from handing over the calculation of SMP to HMRC is £4.5m a year, compared to HMRC administration costs of £75m set up and £50m a year running costs.

- 4.36. So we will continue to consult with employers to be certain we have fully understood the processes and the potential costs and benefits involved.
- 4.37. In the meantime work has also been taking place on other ways to ease the administration of maternity leave and pay for employers. The regulatory changes to the start date of statutory payment, daily payment and allowing limited work during the statutory pay period that consultees have asked for will offer greater flexibility to employers.
- 4.38. No employer now needs to calculate SMP manually. From February 2005 HMRC has introduced and supplied a new SMP calculator to all employers on its Employer's CD-ROM 2005. The SMP calculator on the HMRC Internet site has also been substantially improved.
- 4.39. HMRC now plans to provide new calculators for SAP and SPP on CD-ROM and Internet from April 2006, and to provide customer-based enhancements to the existing SMP calculators at the same time.
- 4.40. To support those less comfortable with electronic solutions the Employer's Helpline will focus its service better – calculating for employers the SMP etc amounts and dates payable and the amounts recoverable, and following this up with prompt reassurance in the form of written confirmation.
- 4.41. Finally guidance will be improved. The CD-ROM 2006 will include new Teach Yourself packages on SMP, SAP and SPP. And plans are being developed by DTI, DWP and HMRC to co-ordinate better their Internet guidance on common topics provided on their separate Internet sites.
- 4.42. So our further consultation with employers will consider the cost/benefit case for direct payment in the light of these improvements that have already been made to ease the administration of leave and pay.

Flexible Working

5.1. Chapter 5 of the consultation document set 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 employees, helping them to find working hours to match their caring responsibility; and, 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. It outlined the success of the new right for parents of young and disabled children to request flexible working, which was introduced in April 2003. It asked for views on the impact of the law with a view to extending its scope to cover carers of adult relatives and/or parents of older children. It particularly welcomed comments about the types of caring that the law should cover for individuals who care for other adults.

5.2. Since the end of the consultation, the EOC have published the findings of their General Formal Investigation (GFI) into flexible and part-time working. One of the recommendations they put forward is that the right to request should be extended to all employees.

5.3. We will:

- **extend the right to request flexible working to carers of adults from April 2007**
- **explore further which carers are covered by the extension when it consults on the secondary regulations in 2006**
- **work with carers, parents and their employers to develop improved guidance**

5.4. Many of the responses reinforced our view that the right to request flexible working has had a positive impact for employees and employers:

"Feedback through formal surveys and through PCS indicates that the benefit of the existing law has been to encourage workers, employers and trade unions to think more seriously about flexible working options and work-life balance. An extension of the rights would reinforce this trend"

Public and Commercial Services Union

" We positively support flexibility in the labour force and we agree that the flexible working regulations are working well."

The Federation of Small Businesses

5.5. DTI research published during the consultation also supports the proposition that the law is having a positive impact². The Second DTI Flexible Working Employee Survey found that almost a quarter (22 per cent) of employees with dependent children under six have requested to work flexibly in the last two years. Over four-fifths of requests were fully or partly accepted by employers, with the refusal rate significantly lower than before the right to request flexible working was introduced.

5.6. Nevertheless unions and some other parent representatives did report that not everyone has felt the benefit and some argued for the law to be reviewed and strengthened.

" There is no evidence yet that the right to request flexible working is opening up in more senior jobs. Indeed managerial employees are the most likely to be excluded from any arrangement, and several TUC affiliates report that those working on shifts are often excluded."

TUC

5.7. The overall positive feedback on the impact of the law supports the Government's proposition that it is now appropriate to consider how to take forward the law to ensure:

- other groups who face particular challenges in balancing work with family responsibilities benefit from the opportunities flexible working provides, and
- accompanying guidance and support reaches the low paid and those where there is little culture of flexible working and assists employers when handling requests.

5.8. We believe that extending the scope rather than undertaking a review of the principles of the law offers a better outcome for both employers and employees. We appreciate it is important to monitor the impact of the right and we will continue the approach we established from the outset of undertaking surveys and analysing others' research. This will help to ensure we target any further support where it is most needed and continue to take into account employee's and employers needs.

² Holt and Grainger, " Employment Relations Research Series No 39: Results of the second flexible working employee survey", DTI 2005

- 5.9. The specific questions explored by this chapter of the consultation and our response to them is set out below:

Question 19 How should the impact of the flexible working law influence the way we consider extending its scope to carers and parents of older children?

- 5.10. The vast majority of responses agreed there is potential to extend the scope of the law to both or either carers of adults and parents of older children. Parents, employees and their representatives argued that there was a strong case for extending the law to carers and parents of older children, if not to give the right to all employees.
- 5.11. Employers on the whole welcome flexible working and many stressed that they went beyond the minimum provided by the law. Subsequent arguments varied, however, about how this impacted on taking forward the right to request. Employers who already offered flexible working opportunities across their workforce were more relaxed about how we extend the scope of the law. Others thought that the scope could be widened but this should be on a gradual basis.

“Members feel strongly that the Government should only extend it to one group of employees at a time...to avoid a large and sudden increase in the number of requests which may lead to capacity difficulties and secondly to allow employers time to get used to accommodating the needs of different groups”

CBI

- 5.12. A third group questioned whether there was any case for further Government intervention and legislation because employers were growing flexible working anyway.

“The IoD and its members support flexible working practices and are fostering them in their workplaces. If this pattern is a fair reflection of all UK businesses it is questionable whether there is a need for Government intervention to encourage flexible working still more”

Institute of Directors

“Businesses make decisions on such issues on a case-by-case basis. There is no requirement for further legislation, business practice is already ahead of these proposals.”

Small Business Council

- 5.13. The key concern for employers is that any request can be made to work within the business. They were less concerned about an employee's reasons for making a request. That said, employers,

particularly small employers, felt that a factor that has contributed to the success of the law is its targeted, rather than blanket, approach that has enabled them to manage and grow flexible working in their individual organisations. The retention of this principle is important for employers.

Question 20 What is the case for extending the law to carers of adults?

5.14. The vast majority of respondents agreed with the case set out in the consultation document that it is appropriate to extend the law to carers. Carer representatives, unions, public sector employers and employers who already accept flexible working requests from across their organisation were typically highly supportive of the proposal. Other employers, particularly small businesses, and employer representatives expressed concerns about their ability to manage increasing employee expectation and were unsupportive of the case to extend the scope of the legislation in any instances.

5.15. That said, overall there was also strong support for the Government's view that extending the law to carers should be the priority.

"There is a very strong case for extending the right to request flexible working to carers... The right to request flexible working would enable many of these carers to remain in work which would benefit both employers and carers themselves"

Carers UK

"We support the approach adopted in the current flexible working legislation... We believe demographic change makes this [carers] extension inevitable in the future"

BUPA

5.16. Arguments and facts put forward to justify why carers should be a priority covered a broad range of issues and included:

- Just under six million people aged 16 or over care for a sick, disabled or elderly person.
- For someone aged 24 now, their chances of becoming a carer will have trebled by the time they are 59.
- The peak age for caring is between 50 to 59. More than one in five people in the UK between these ages are carers.

- In the two years up to April 2005, 50% of employees who had reported taking time off work to care for someone had done so to care for partners, parents or other relatives – this is nearly 10% of all employees.
- Around 1.8 million people are likely to be in work when their caring role begins. One in five of these new carers are likely to leave work.
- Carers are a group at particular risk of poverty. One Carers UK survey found that over half the respondents had given up work to care.
- Around 700,000 carers of working age are not currently in work and are caring for less than 20 hours per week. This suggests that in many cases it is not simply the number of hours the carer spends caring that prevents their attachment to the labour market.
- With a declining working age population helping carers to remain in work or return to work will have an increasingly stronger economic imperative.
- Employers are already recognising that it makes business sense to support their employees with caring responsibilities, as is demonstrated by the formation of the 'Employers for Carers' group.

5.17. In light of the support and evidence submitted the Government will extend the right to request flexible working to carers of adults from April 2007.

Question 21 What types of caring should the law cover and how should this be defined?

- 5.18. The consultation document set out a number of options to define a "carer". Employee and carer representatives were keen for as broad a definition of a carer as possible. They argued that the law should be sufficiently flexible to cover a wide range of caring needs including individuals with responsibility for long-term care (e.g. the terminally ill) to those who suddenly find themselves caring for another (e.g. following a road accident). Many of these representatives referred to advice provided on the website of Employers for Carers³ which provides the following definition of a carer:

³ Employers for carers website www.employersforcarers.org.uk

“Carers are employees with significant caring responsibilities that have a substantial impact on their working lives. These employees are responsible for the care and support of disabled elderly or sick partners relatives or friends who are unable to care for themselves.”

- 5.19. Employers said they were unlikely to want to ask an employee for evidence to justify their personal circumstances to back up their request. They said though that they had a finite capacity to accept flexible working requests and argued for a clear and straightforward definition to help manage demand. This was a view particularly of small employers and their representatives. Employers therefore tended to support a definition that was straightforward, would provide clarity and was not all embracing. Options supported were typically based around caring for specific relatives or others living in the same household, and that did not go as far as to include a friend.
- 5.20. Many responses also stressed that any definition needs to recognise that the nature of care provided could vary significantly and while in some cases individuals have time to plan, in others the need to provide care can occur suddenly. On this basis broadly speaking responses suggested that it would either be best not to try to define care in legislation or to cross-reference to carer's legislation such as the Carers (Equal Opportunities) Act 2004 which applies to a 'substantial amount of care on a regular basis'. **The DTI will explore further which carers are covered by the extension when it consults on the secondary regulations in 2006.**
- 5.21. Responses to the consultation document noted that the flexible working law was designed originally for parents and some aspects of its design might work less well for carers. The consultation explained that, to take account of the needs of both employers and carers, the procedure that applies and the requirements it places on employees and employers would remain the same as under the current legislation. Concerns were made in the consultation about the one request a year limit and that any agreed changes usually lead to a permanent change to the carer's employment contract.
- 5.22. These are concerns that parent representatives have expressed in the past. Some employers have also said that in some circumstances the permanent change in the employment contract has presented problems. We will **work with all carers, parents and employers to develop improved guidance**, particularly tailored guidance for carers that highlights the advantages of agreeing reviews at the outset.

Question 22 What is the case for extending the law to parents of older children? When might we do this?

Question 23 What parents would the law cover? (i.e. what would be the age cut-off)

- 5.23. Parents, their representatives and unions all argued the case for extending the law to parents of older children and nearly all their responses supported extending the age cut-off up to 17 or were supportive of a wider extension. The point that the needs of children remain high as they grow up and the demands made on their parents' time do not change as a result was made frequently.

"Extending the right ...to parents of older children would enable those parents who feel they need to offer more support to their older children, for example following parental separation or problems at school, and yet want to maintain their participation in the labour market"

One Parent Families

- 5.24. Many employers are also sympathetic to the case for extending the law to more parents and in practice many already do. The DTI's latest employee survey⁴ shows that, whilst the proportion of parents making a request is highest for those eligible under the law, a significant number of employers are accepting flexible working requests from parents of older children. Those employers who already consider requests from across their organisations and public sector employers were most likely to accept an extension to parents with children under 12 or 17.
- 5.25. However, small employers and their representatives almost unanimously held the view that the law should not be extended to include other parents. In particular they are concerned about their overall capacity to agree suitable flexible working arrangements and their ability to meet the raised expectations that widening the law would bring.
- 5.26. Overall support for extending the law to parents, whilst high, was not as strong as carers. Evidence shows that many employers are considering going beyond or already exceed statutory requirements, with regard availability of flexible working for parents with older children. The incidence of provision for those with other caring responsibilities is less clear. A survey by the CIPD suggested just 4% of workplaces have eldercare provision, which gives weight to the argument that carers should be the priority group to benefit from a

⁴ Holt and Grainger, " Employment Relations Research Series No 39: Results of the second flexible working employee survey", DTI 2005

change in the law. It was also noted that other measures including those outlined in our Ten Year Childcare Strategy also provide support to parents, which is not available to carers to the same extent. This includes our commitment by 2010 to provide an out of school childcare place for all children aged from 3 to 14.

- 5.27. The EOC has recently published the findings of its GFI into part-time and flexible working. A key recommendation concerns extending the right to all employees. This is wider than the options proposed in the consultation covering both carers of adults and parents of older children. In particular the report suggests this approach would be less divisive with other staff. This latter point is not one that has been reported as a major concern following the introduction of the current law and, as the EOC report acknowledges, it has anyway been avoided by many employers through opening up flexible working to their entire workforce.
- 5.28. In light of all the arguments we are not persuaded to take a blanket approach to the right to request flexible working and extend its scope to all employees. In exploring the extension we remain committed to targeting the law to cover those who face particular challenges in balancing work and caring responsibilities, combined with spreading best practice and improving guidance to create a working culture where best practice is the norm. It is on this basis that we are persuaded that the time is right to extend the law to carers of adults. Equally, having considered the arguments and the positive impact that the law has had to date for parents we do not believe that there is a sufficient case for extending the law to other parents at this time.

Question 24 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?

- 5.29. Responses to the consultation recognised that flexible working was a popular concept and the general view was that requests were likely to increase over time. It was also thought that the level of demand would be higher for carers than parents of older children.

Question 25 What further support and guidance should the Government provide to facilitate the spread of flexible working?

- 5.30. There is a range of existing support and guidance available to businesses from a wide variety of sources such as the Government, non-profit organisations, Acas, Regional Development Agencies, and local Chambers of Commerce. The provision of support for Small Employers was also raised by the recent EOC GFI. Business Link

works closely with small businesses to provide help in identifying appropriate sources of advice, grants, and subsidies to help with managing flexible working.

- 5.31. We are committed to developing improved guidance, particularly tailored guidance for carers and their employers that highlights the advantages of agreeing review periods at the outset. However, we have heard that whilst overall the law has proven a real success not everyone has the opportunity to work a different arrangement. We want to assist employers in how they handle requests and to help employees make requests, particularly those in low paid work or where there is no culture of flexible working.
- 5.32. In light of this we are considering how we can improve guidance available by looking further at solutions suggested in the consultation and working with stakeholders to take them forward. We will look, in particular at: raising awareness of using trial periods and making available “how to” guidance on managing flexible working arrangements, targeted at small employers. A small number of employers also asked for more guidance on the business grounds on which a request can be refused to help clarify when their use was justifiable. It was reported that where there was doubt employers tended to accept a request:

“It is more difficult to judge what reasons a large company would need to justifiably turn down a request. This has led to our managers approving nearly all requests because, whilst a lot of them cause difficulties, they’re not sure if they are acceptable reasons to say no”

Friends Provident PLC

PART 3: IMPLEMENTATION

- 6.1. The provisions relating to families are designed to support employees by providing longer statutory pay in the maternity leave period, enabling leave and pay to be taken by fathers instead of mothers in specific circumstances at some future date, and extending the existing light touch legislation on flexible working beyond parents of young and disabled children to those caring for dependant adults, without changing the nature of the law. Alongside these enhanced choices for parents and those with caring responsibilities, we will be increasing the amount of notice mothers returning from maternity leave must give to their employers, enabling improved contact between mothers and their employers during the maternity leave period, and providing more and better targeted guidance to ensure both employees and employers are aware of their rights and responsibilities.
- 6.2. Primary legislation is needed to take forward some of the measures, and the Government will bring forward a Bill in Autumn 2005 with the aim of introducing a package of changes for April 2007, and taking powers that will enable it to realise its longer term ambition to extend maternity pay and allow fathers to take leave and benefit from statutory payments when the time is right. The Bill will therefore:
- extend the period for which payment of SMP, MA, and SAP can be made to a maximum of 52 weeks
 - widen the scope of the existing law on the right to request to work flexibly to enable it to be extended to those caring for adults
 - Harmonise rules of statutory pay and leave by enabling SMP, MA and SAP to begin on any day of the week, and be capable of being paid on a daily basis
 - Introduce Keeping in Touch days, enabling women to work for a few days in their maternity leave without foregoing a week's SMP or MA, or ending their maternity leave prematurely
 - include a power to give a new right to Additional Paternity Leave (APL) to fathers, and to enable them to receive statutory paternity pay during this leave if the mother returns to work before she has taken her full entitlement to SMP or MA.
- 6.3. The Bill will be followed by secondary legislation, in which we will extend the period of SMP, MA and SAP to nine months for mothers with a due date of April 2007, and set out exactly how we propose to define carers who will be eligible for the right to request flexible

working. Other changes to the rules do not require new primary legislation, but will require changes to secondary legislation: extending eligibility for AML so that all women who currently qualify for MA can benefit from the extension to nine months; increasing notice periods for women who want to change their date of return, and making clear that employers are allowed to make reasonable contact with employees on maternity leave. In order to meet the Government's commitments to introducing legislation that affects business on only two dates a year, the aim is for the regulations extending maternity payments to come into force on 1 October 2006, so they are in place to cover all births due in April 2007, including the possibility of any premature births. We aim to publish draft regulations for consultation. The first set of drafts available will be those covering the right to request flexible working, where we are aiming to begin consultation early in 2006.

- 6.4. We will continue to work with stakeholders to produce a comprehensive package of guidance and support for employers and employees to ensure they are clear about their rights and responsibilities well in advance of 2007. We are also taking steps to improve the guidance on the current framework of rules, including by seeking to better join up guidance currently available from different Government departments. We also intend to take on board EOC's recommendation to develop a leaflet with a checklist of key rights and responsibilities, for the employer and employee, to be distributed to women at an early stage in their pregnancy.
- 6.5. We will continue to work with stakeholders to develop thinking on how we can best shape the new rights for fathers, with the aim of ensuring the most straightforward system possible, with the least possible administrative burden on business. We will work with stakeholders to understand when and how best we can make these changes to ensure that they deliver real benefits for employers and employees. In parallel, we are continuing to examine and identify ways to ease the burden of existing statutory payment mechanisms, including by considering scope for Direct Payments.
- 6.6. Will also keep under review the impact of these changes on employees and business, and take this into account when considering possible next steps. Our aim is to retain a framework of support that matches rights with responsibilities and meets both the needs of families and the demands of a modern flexible labour market.

ANNEX A

SUMMARY OF RESPONSES – WORK AND FAMILIES CONSULTATION

- 7.1. We received over 200 formal responses to the “Work and families: choice and flexibility” consultation. Around a third of these were from individual employers and 18 of these were from small employers. In addition 26 employer groups, including the CBI and FSB, representing well over 850,000 members responded. Parents and individual employees accounted for just over ten per cent of the responses. We also heard from a number of parent and carer groups. 19 unions responded, including the TUC, Amicus and Unison, as well as those representing specialist sectors such as construction, retail and the newspaper industry. A further ten per cent of responses were from charities, predominantly representing the interests of mothers and working parents. The remainder of responses came from academics and lawyers or others. Just under five per cent of respondents did not indicate the basis on which they were responding.
- 7.2. The majority of parents, carers, employees and their representatives welcomed the proposals, which they believe will make a real difference to the lives of working parents. Some respondents from these groups felt the proposals did not go far enough, and argued for additional rights such as paid parental leave and an increase in paternity pay and leave, but on the whole there was consensus that the Government is moving in the right direction.

“Maternity Alliance welcomes the Government’s commitment to extend paid maternity leave and to consider the other options in this consultation. These are useful steps towards a comprehensive package of support for parents of young children.”

Maternity Alliance

“We are fully supportive of the Government’s initiative to help employees balance their work and home lives. As an organisation committed to helping parents make important life choices on childcare and flexible working, we strongly believe that choice and flexibility will be beneficial to both families and businesses.”

Opportunity Links

- 7.3. Responses from employers and their representatives were more varied. There was widespread recognition that workplaces are changing. Whilst some employers saw the move towards more family friendly working as a positive change that could be good for business, others expressed concern about the potential burden the new measures would impose. There was a strong view from employers of all sizes, that there should be a balanced package of measures for

business which supported their rights as well as ensuring employees met their own responsibilities.

“CBI members accept in principle the Government’s desire to extend family-friendly rights further but believe there should be compensating changes to reflect the increased burden on employers.”

CBI

“As a representative of 800 local businesses we understand the need to achieve a balance between work and family life but that this needs to be done in a way that business productivity is not threatened.”

Portsmouth and SE Hampshire Chamber of Commerce & Industry

Extending maternity and adoption pay

- 7.4. Most parents, employees and their representatives welcomed the extension to maternity and adoption pay. There was support, particularly from unions, for extending OML to 12 months, with the right to return to the same job at 12 months. It was felt that this would encourage a woman to take her full entitlement to leave and encourage her to return to work. However, some respondents recognised that it might be difficult for an employer to keep the same job open for this length of time.
- 7.5. There was a strong view amongst these groups that the level of flat rate should be increased to enable more parents to take up maternity leave. There were a number of suggestions for how this could be done, including linking it to the National Minimum Wage. Some respondents also wanted an extension to the period over which 90% of average weekly earnings is paid, whilst a few wanted this amount increased to 100% throughout the whole period of maternity leave.
- 7.6. Whilst the majority of employers and their representatives were generally supportive about the extension to maternity and adoption paid leave, there was some concern, particularly from SMEs, about their ability to cope. Issues raised included additional costs to employers of covering absences and employers being forced to review contractual schemes that offer benefits over and above the statutory minimum.
- 7.7. Some argued that the existing OML/AML distinctions should remain, whilst others felt that one period of leave, namely OML, would be simpler to administer. There was a universal reaction from business that different rights of return should remain.

Notice periods and keeping in touch

- 7.8. There was little support amongst parents groups and unions for a woman to have to reconfirm her return date during maternity leave.

“Employers need to be aware that it is often very difficult for many women to confirm their return to work as there are many factors beyond her control such as childcare availability, acceptance of flexible work, hers and her baby’s health.”

Maternity Alliance

- 7.9. However, there was recognition that women on maternity leave would benefit from keeping in touch with developments at work. There was consensus that improved dialogue between the employer and employee around the period of maternity leave would benefit all parties. This should be done through best practice and clear guidance, rather than legislation.
- 7.10. The majority also felt that the current notice period of one month, for employees wishing to return to work early, was sufficient. A few respondents, such as the National Union of Teachers felt that a two month notice period would be reasonable and would help business to plan ahead.
- 7.11. There was consensus from employers and their representatives that notice periods should be extended if an employee wants to return to work earlier, or later, than previously agreed. This would give business more time to plan effectively around the period of leave. Whilst some argued for a three month notice period, more respondents felt that two months would be sufficient.
- 7.12. There was also strong support for greater clarity in law about reasonable contact during maternity leave. It was felt that clearer guidance would improve communication between the employer and employee and help women returners.

“Businesses would certainly welcome better assurances from staff of the intention to return to work after pregnancy/early childcare; they would also like to see improved notice periods to help plan, prepare and (if necessary) recruit.”

Bradford Chamber of Commerce and Industry

Transferred leave and pay

- 7.13. There was support amongst parents, employees and their representatives for the principles behind transferred leave and pay, but

many argued for individual rights for mothers and fathers instead. Some felt that a period of shared paid parental leave or an extension to paternity leave and pay would give parents more choice about how they share the care of the child. There was some concern, particularly from parent's groups, about the number of fathers who would be eligible for such a scheme.

"Although the proposals around transferability of maternity leave and pay are welcome, we do not believe that they will have a significant impact on the ability of fathers to increase their caring role."

Working Families

- 7.14. Although most employers and their representatives supported the principle behind transferred leave and pay, many expressed concerns about the potential complexity of such a system and the administrative burden this would cause. They suggested that the Government should look at alternative mechanisms to achieving the same policy intentions, which would be more straightforward and easier for business to understand.

"....companies our size or smaller are already coping with so much employment legislation, some of which is only formalising what we do as good practice (staff consultation for example) but all of this has cost implications and time/manpower implications for us as a business."

Smith & Pinching Financial Services Limited

- 7.15. If such a scheme were to go ahead, employers wanted enough time to prepare for introduction with suggestions varying from six months to three years.

Direct Payment

- 7.16. There was a mixed response amongst parent groups and unions about direct payment. Whilst some felt it would be advantageous to employers, with no detrimental effect on employees, others could see no advantage for employers. Some had concerns about distancing the employee from the employer and others about the effect of late payments.
- 7.17. Many employers were opposed to direct payment as they already have systems in place to calculate pay. They felt that there would be entirely new burdens for employers to have to exchange information with HMRC to tight deadlines and then cope with the consequences of errors which they regarded as almost inevitable. They foresaw particular payroll complications for those employers who pay more

than the statutory minimum and potentially damaging effects on the employer / employee relationship.

- 7.18. Some employers believed in principle that the State should administer these payments anyway and could see benefit in direct payment such as removal of one of the disincentives to employing women. There was a view, in particular from those representing SMEs, that direct payment by the State would remove the payroll burden for small employers as they are not as familiar with the process. But they insisted administration should be kept to a minimum and the system should be robust. Some organisations, such as the CBI, suggested the best solution would be to give employers the option.

Flexible working

- 7.19. Many parents, employees and their representatives welcomed how the right to request and duty on employers to seriously consider has helped to change the way people think about flexible working. Some parents groups and unions argued though for the law to be strengthened. They felt that there were still too many people who don't ask for it for fear of being refused or because it may have a detrimental affect on their career. There was strong support for an extension of the law to carers, with employee and carer representatives keen for as broad a definition as possible. Many of these groups also felt there was a case for extending to parents of older children at the same time, with many supporting an extension to cover all parents of children up to 16.

"With people living longer, there will be more employees caring for elderly relatives. It makes economic sense to give them greater flexibility regarding their working hours so that they can continue to work, rather than claim benefit..."

Employee

- 7.20. Many of the responses from employers and their representatives suggested that the current flexible working law is a success, with many employers reporting that their company policy went beyond the minimum set out in law.

"As an employer we are constantly seeking ways to increase flexibility so that we can effectively recruit and retain a well-motivated workforce."

Oxford City Council

“Official statistics, which indicate that nine out of ten requests are accommodated in some way, suggest that employers do not have a problem with flexible working.”

Small Business Council

- 7.21. Employers felt that there was no need to change the basis of the law, reporting the light touch and targeted approach built on best practice was working well. Many accepted there was a business case for extending to carers and which should be the priority. Overall employers expressed a preference for a definition that provided clarity, to help manage requests should issues arise from increasing demand, which they thought was best met by basing the definition around caring for an adult dependent relative.
- 7.22. There was far less consensus amongst employers about whether there was a case for extending the law to parents of older children, with a proportion arguing that employers' willingness to consider requests beyond the law indicated that there was no case for further legislation covering parents. Some employers felt that it would be fairer to extend the scope of the law to all employees and we heard from a few employers, such as Ford, who already do this. Others felt a phased approach to extending the law to different groups would help employers cope with any changes and manage increasing demand. There was also concern from some employers, and in particular SMEs, about their ability to cope with any extension.

Annex B

Alphabetical list of respondents who did not request confidentiality

4 Children
Acas
ACCA
Accor Services Adoption UK
Adrian Christmas
Age Concern
Alison Clarke
AMICUS
Andrea Ford
Archbishops' Council
Armagh & Dungannon HSS Trust
Asda Stores Ltd.
Association of Convenience Stores
Association of University Teachers
Barclays PLC
Barnardos
Barry Graham
Bexley Council
Birmingham Law Society
Bliss
Boots
Bradford Chamber of Commerce and Industry
Breckland Council
Bristol City Council
British Airways
British Association for Adoption and Fostering
British Association of Social Workers
British Chamber of Commerce
British Dental Association
British Printing Industries Federation
British Psychological Society
British Retail Consortium
BT
BUPA
Canford School
Carers UK
Carol Hirst
Cathy Abu
CBI
Centrica plc
Ceredigion CC

Charles Russell
Chartered Institute of Personal Development
Chartered Society of Physiotherapy
Cheryl Neale
4Children
Church of Ireland
Citizens Advice
CMS Cameron McKenna
Communication Workers Union
Conquest Foods
Construction Confederation
Contact a Family
Counsel & Care
Credit Protection Association Group
Dacorum Council
David Barry
Daycare Trust
Deborah Lonnon
De Montfort University
Department of Health
Department for Work and Pensions
Dudley MBC
EAMA
Employers' Organisation for local Government
Employment Lawyers Association
Engineering Employers Federation
Equal Opportunities Commission
Eversheds
Family Info Link
Family Policy Alliance
Fathers Direct
Fawcett Society
Federation of Small Businesses
Field Seymour Parkes
First Business Support
FDA
Floranova Ltd
Food and Drink Federation
Ford Motor Co. Ltd.
Forum of Private Business
Friends Provident Plc
Gerald Pearse
Gillian McConnell
GMB
HA Prowse
Help the Aged

Help the Hospices
Institute of Directors
Institute of Payroll and Pensions Management
Jennifer Hill
Joy Shaw
Julie Kelly
Juliet Richardson
Keoghs
Law Society
Legal & General with Amicus
Leonard Cheshire
Linda French
Liverpool John Moores University
Liz Moir
London Chamber Commerce
Lorimer Livisu
Maggie Siviter
Mary Bisset
Maternity Alliance
Mavis Pickard
Mayor's Office Greater London Authority
MJCA
Mothers' Union
Ms C Brooks
Mid Yorkshire Chamber of Commerce
NACIS
NASUWT
National Childbirth Trust
National Council of Women of Great Britain
National Day Nurseries Association
National Hairdressers' Federation
National Institute of Adult Continuing Education
National Union of Teachers
Nationwide Group Staff Union
Netmums
Nick Henderson
Nokia UK
North Belfast Advice Partnership
North East Chamber of Commerce
Northumbria University
North West Employers
Nottinghamshire CC
NSPCC
Olga Aikin and Yvonne Perry
One Parent Families
Opportunity Links

Oxford City Council
Pamela Thompson
Pay and Employment Rights Service (Yorkshire)
Peter Moss
Portsmouth Chamber of Commerce
Pre-School Learning
Prospect
Public and Commercial Services Union (PCS)
Relate
Relationships Foundation
Richard Barnard
Road Haulage Association
Robert Gordon University
Rosemount Lifelong Learning
Rowena Moore
Royal Mail Group plc
Sally Cox
Sarah Jenkins
SBS
Scottish Enterprise Network
Scottish Trades Union Congress
Selfridges
Sefton MBC
Shah Khadiza Hoque
Sheila Godfrey
Simon Whittaker
Single Parent Action Network
Skanska UK plc
Small Business Council
Somerset County Council
South East Employers
Southern Health and Social Services Board
Sunita Knight Webb
Susan Cox
Susan Edwards
Susan Taylor
Suzan Rae
Telework Association
Tessa Hughff
TGWU
The Newspaper Society
Third Age Employment Network
Transport for London
TUC
UNISON
USDAW

Vivian Halliday
Wandsworth Borough Council
West Sussex CC
Women's Budget Group
Work Life Balance Trust
Working Families
Yvonne Fairbrother

DTI
October 2005
URN05/1298