

Introduction

1. Employers and employees alike are bewildered by, or unaware of, the existing legislation on maternity pay and leave. As it stands the system is a minefield of qualification periods and dates, variable leave lengths, different calculation periods and short notification requirements. This complexity is particularly a problem for small businesses that, on average, rarely need to encounter the world of maternity pay and leave.

2. The Green Paper *Work and Parents: Competitiveness and Choice*¹, put forward a range of options to balance improving choice for parents and enhancing competitiveness for business. The consultation, asking employers and employees which options they wanted the Government to pursue, finished on 7 March 2001. The Government is announcing decisions on the options in the Green Paper as they are taken to make it easier for employees and employers to absorb them.

3. The Green Paper suggests one option is to bring together experts in business, the public and voluntary sectors, and the unions to make recommendations to the Government on how the existing rules on maternity leave and pay could be made easier for employers to understand and cheaper to administer. Another option is to harmonise the rules on return to work to ensure there is always an adequate notification of return to work, and to lengthen the current 21 day notification period.

4. Simplification as a general concept is strongly supported. The option of establishing a group to work on simplification is also supported. Others feel that setting up such a group would delay change. They argue that action is the most important thing. Lengthening the notification periods is strongly supported by business, especially smaller employers, who consider that this would provide predictability and add planning time to the system.

5. Accordingly, the Government has decided to respond to this call for progress by moving straight to the publication of a framework for simplification as an aid to further discussion before moving on to detailed work on possible changes to regulations.

¹ Work and Parents: Competitiveness and Choice, A Green Paper, published December 2000

6. The simplified framework described in this paper includes an extension of unpaid leave so that a woman can choose to stay at home for a year in total. This Green Paper option is one of the top three priorities for change amongst many parents and employees. There was some support from business for the 12 week extension. Such businesses consider that this would provide a total length of leave for which cover would be easier to find. They also want to see greater certainty about return and this is covered in the framework. Other employers, however are concerned about costs and the impact on the business if more women stay out for a longer period. We estimate that an extension to unpaid leave is unlikely to have a dramatic effect on the levels of take up. At present, about a quarter of eligible employees take all or nearly all of the maximum entitlement.

7. This paper summarises the responses that were received to the Green Paper on the issue of simplification (pages 4 – 6). It sets out a philosophy and framework for a new system of maternity pay and leave (pages 7 – 12). It looks at the advantages of delivering greater simplicity for both employers and employees and improving planning and certainty for businesses.

8. An analysis of the costs and benefits of the simplification framework is presented at Annex A (pages 13 – 15).

9. This paper describes a radically simplified framework for maternity pay and leave. To simplify the existing maternity pay and leave system will require primary legislation and appropriate time will need to be identified when Parliament can consider the issue. Nearer this time the Government will seek to explore further the issues raised in this document with interested parties. Comments are also welcome at this stage.

10. This document is also available on the *Work and Parents: Competitiveness and Choice* website which also includes information on other issues relating to the Green Paper. The website is updated regularly and is at www.dti.gov.uk/er/review.htm

11. Any comments on the simplification framework should be sent to:

Work and Parents Review Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Fax: 020 7215 5450

Email: reviewteam@dti.gov.uk

12. Comments on the simplification framework may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part

of your response (including your identity) to be made public, you must state in the comments which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be available to any enquirers outside the UK, or published by any means, including on the Internet.

Responses received to the consultation

13. Over 600 formal responses were received by the end of the consultation. More than a fifth were from individual employers of all sizes. In addition, employer representative groups representing 237,000 members responded. Parents, predominantly mothers, sent in over 175 responses. Employee representatives, covering over 2.4 million people responded. The remainder of the responses came from charities, academics, lawyers and individuals. Over 10% of respondents did not indicate the basis on which they were responding. A further 66 responses have been received since the consultation period ended.

14. In addition, members of the Ministerial Group and officials from the review team met almost 300 individuals face to face. They spoke to employers or their representatives, working parents and those representing unions or family groups. Focus group work was also commissioned with expectant and recent mothers and with small employers across Britain.

Unpaid maternity leave

15. Extending maternity leave to one year is strongly supported by employee representatives. Employers are split over this option. Some recognise that it might be easier to find cover for this period. Others feel that this is too long a period for a woman to be away from the workplace. Many employers who object to this extension appear, however, to be unaware that current provision already entitles many women to 40 weeks' leave. Although there was little support for an extension of unpaid maternity leave in the small employer focus groups some of the employers recognised that this would help families and potentially give them more options to manage the absence. The focus group work with expectant and recent mothers highlights that extending leave would advantage mothers by providing time for parents to organise childcare for their return to work.

Simplification

16. Employers, employees and interest groups find the legislation over-complicated and in need of 'translating' before it can be understood.

Simplification is a key priority for employers, particularly small businesses. Businesses consistently state that they need more certainty, especially around notification on return to work.

Employers and their representatives told us...

“The law on maternity pay and leave is one of the most complex areas in the whole of Employment Law, defying both logic and understanding.” – Chartered Institute of Personnel and Development

“The simplification options go to the heart of remedying the two salient shortcomings in present arrangements – the lack of clarity in the regulatory framework and the considerable scope for misunderstanding between the employer and employee.” – The Institute of Management

“Simplifying legislation in claims and payments would be seen as beneficial to the company and the employee as it would be easier to operate and understand by both parties.” - Tesco

17. The Confederation of British Industry (CBI) say they would welcome an assessment of how maternity regulations could be simplified. CBI members also emphasised that the notification period for return from maternity leave is too short and does not allow for proper planning. The Small Business Service (SBS) who ran their own consultations on the Green Paper, told us from this that amongst the most important things for employers are greater certainty of mothers' intention to return and simplification of the existing system. The Small Business Council supported simplification.

Employees and their representatives told us...

“The simplification of existing legislation, regulations and guidance so that parental rights at work can be clearly understood and accessed by all is required.” – Scottish Trades Union Congress

“There is a pressing need to simplify and harmonise the rules governing the whole area of maternity and paternity rights.” – UNIFI

“As a parent I believe the most important issues to include the radical simplification and harmonisation of maternity, with guidelines setting out the rights and responsibilities of employees and employers’.” – An Employee

18. Those dealing with enquiries from working parents also support the idea of simplification. The TUC are 'extremely supportive' of the suggestion to simplify the current system of maternity and parental rights.

19. The Citizens Advice Bureaux (CABx) have thousands of maternity related enquiries every year. CABx employment advisers complain that the provisions are so complex that it is often impossible to advise a pregnant woman, in advance, exactly how much maternity leave she is entitled to and exactly when she will need to return to work. The CABx also receive numerous enquiries from employers.

20. The majority of calls to the Maternity Alliance helpline are from women who are 'deeply confused' about exactly what their current maternity rights are. The Maternity Alliance recognise that few employers or employees understand how to work out entitlement to maternity and parental rights and they want the Government to consider fundamental changes to the present system.

A new framework for maternity pay and leave

21. This new framework delivers simplicity, certainty and improved planning time. It covers changed notification procedures, unified qualification requirements, slightly longer notification periods and helps employers and employees to understand their rights and responsibilities by using as few dates and periods as possible.

Key features of the new framework for maternity pay and leave

- 26 weeks' Ordinary Maternity Leave (paid)
 - 26 weeks' Additional Maternity Leave (unpaid)
- } 1 year total
- 26 weeks' qualification period for pay and leave
 - Notification arrangements harmonised on one date - the 15th week before expected week of childbirth (EWC)
 - 26 weeks used for average earnings calculation
 - 4 weeks used for all notification periods
 - 4 weeks used for sickness trigger

22. The following is an outline for the new framework for maternity pay and leave. Changes would come into effect from April 2003 along with those changes on the length of maternity leave and the amount and length of maternity pay announced in the Budget, and take these changes into account. For ease of understanding in the narrative of this document ordinary maternity leave and additional maternity leave will be referred to as paid and unpaid leave respectively. The tables on the next two pages illustrate the simplicity of the new system, these are also expressed as flowcharts at Annex C (pages 18 and 19).

Qualification requirements: existing system

WEEKS EMPLOYED BY EXPECTED WEEK OF CHILDBIRTH (EWC)	MATERNITY LEAVE	MATERNITY PAY
Less than 41 WEEKS*	18 WEEKS⁺ Ordinary Maternity Leave	<ul style="list-style-type: none"> If eligible, Maternity Allowance (MA) if earning an average of £30 per week for any 13 weeks in the 66 weeks before the baby is due and have been employed for 26 weeks in the 66 weeks before the baby is due.
41 – 62 WEEKS (1 YEAR + 10 WEEKS)**	18 WEEKS⁺ Ordinary Maternity Leave	<ul style="list-style-type: none"> If eligible, Statutory Maternity Pay (SMP) if average weekly earnings in the eight weeks up to and including the qualifying week have been above or equal to the lower earnings limit for NICs. <p>or</p> <ul style="list-style-type: none"> If eligible, MA (see above).
63 WEEKS +	<p>A MAXIMUM OF: 11 weeks before EWC plus 29 weeks after date of childbirth (Total: 40 weeks)</p> <p>A MINIMUM OF: 29 weeks from date of childbirth***</p> <p>Ordinary Maternity Leave and Additional Maternity Leave</p>	<ul style="list-style-type: none"> If eligible, SMP for first 26 weeks (see above) <p>or</p> <ul style="list-style-type: none"> If eligible, MA for first 26 weeks (see above)

*Ordinary maternity leave is rising to 26 weeks from 2003

*Qualification for SMP is based on 26 weeks' employment up to the 15th week before expected week of childbirth (41 weeks).

**Qualification for AML is based on 1 years service up to the 11th week before EWC (63 weeks).

*** Ordinary Maternity Leave is 26 weeks and can be started up to 11 weeks before EWC; Additional Maternity Leave is 29 weeks and is calculated from childbirth.

Qualification requirements: new framework

WEEKS EMPLOYED BY EXPECTED WEEK OF CHILDBIRTH (EWC)	MATERNITY LEAVE	MATERNITY PAY
Less than 41 WEEKS	26 WEEKS	<ul style="list-style-type: none"> • If eligible, MA
41 WEEKS +	<p>26 WEEKS Ordinary Maternity Leave</p> <p>26 WEEKS Additional Maternity Leave</p> <p>(Total leave: 1 YEAR)</p>	<ul style="list-style-type: none"> • If eligible, MA for first 26 weeks <p>or</p> <ul style="list-style-type: none"> • If eligible, Statutory Maternity Pay (SMP) for first 26 weeks if average weekly earnings in the eight weeks up to and including the qualifying week have been above the lower earnings limit for NICs

Delivering greater simplicity for employers and employees

23. Fixing the length of leave is supported by employees and employers. This adds a considerable amount of certainty to the system for both employers and employees. All pregnant women will be entitled to 26 weeks' paid leave. Those entitled to Statutory Maternity Pay (SMP) will be paid at 90% of earnings for the first six weeks and the flat rate of SMP for the remaining 20 weeks.

24. The 26 weeks' unpaid leave will run directly from the end of the paid leave period. This will fix the length of leave so that employers and employees know how long the employee is entitled to, and their return to work date, well in advance and irrespective of date of childbirth. Currently the system is confusing for both employees and employers as many people think unpaid leave and paid leave run concurrently.

25. All women that meet the qualifying requirements for SMP will be entitled to unpaid leave. Currently there are two different qualification requirements, which use different weeks before expected week of childbirth (EWC), to calculate eligibility for unpaid leave and SMP. The employee must have had 26 weeks' service, before the 15th week before EWC, to qualify for SMP, but must have a year's continuous service, before the 11th week before EWC, to qualify for unpaid leave. This creates unnecessary confusion. Using one qualification period simplifies the framework substantially.

26. Changing the calculation period for average earnings for SMP to the 26 weeks before the notification week will also bring gains for employers and employees alike. The employer, to work out the employee's eligibility for SMP, has already calculated and dealt with this period. This gives a longer period over which average earnings are calculated, which allows any peaks and troughs in an employees earnings to be smoothed out.

27. Currently the calculation period for average earnings is taken over the eight weeks before the 15th week before the expected week of childbirth. This eight week period is not related to any other period used for calculation in the maternity legislation and adds confusion for employers.

Improving planning and certainty for employers and employees

28. An employee will inform her employer of her pregnancy and the date on which she intends to start her leave during the 15th week before the expected week of childbirth (EWC) - already a key week for the employer's calculations. Here this is called the Notification Week.

29. This would allow the employer to calculate SMP, the length of leave and the return date with more certainty and at a far earlier time than the current system allows. However, the employee would be able to adjust the start of her maternity leave as long as she gives four weeks' notice of her new intended start date (see paragraph 32).

30. During the Notification Week the employer would write to the employee informing her of her right to leave and explaining her responsibilities in terms of notification of the expected return to work date. It would be assumed that the employee will be returning at the end of her full leave entitlement unless she writes to her employer giving four weeks notice of an early return. An example of a standard employer letter under this new framework can be found at Annex D (page 20). Currently an employer needs to write to the employee while she is still on maternity leave and require her to write back to him explaining her intentions about her return to work. Employers and employees alike find this current system intrusive and confusing.

31. Currently an employee only has to tell her employer that she is pregnant, the expected week of childbirth and when she would like to start her leave, 21 days before she intends to take her leave. In reality, many employers and their employees are likely to have discussed the woman's plans well in advance. But these plans do not have to be formalised until three weeks before the woman goes on leave. This creates considerable uncertainty for employers and prevents them from planning how they might cover the absence effectively and leaves women uncertain about how their work is to be covered.

32. Employers are concerned that the current notification periods are too short and do not reflect how businesses plan. Currently employees are under an obligation to give 21 days' notice of their intent to take leave and 21 days' notice if they want to return from leave early.

33. The new framework is based on notification periods of four weeks. This is unlikely to have any significant impact on employees, who are likely to have taken a decision on when they will take or return from leave before this. But it will provide employers with a crucial additional week of planning time to manage the absence. We will look at other areas of legislation in this area where notification periods might need harmonising.

34. The sickness trigger will be reduced to four weeks before the expected week of childbirth. Currently if a woman is off work for pregnancy-related sickness reasons at any time during the six weeks before the expected week of childbirth she automatically triggers the start of her maternity leave. This trigger, although initially supported by employers, adds uncertainty to the system as maternity leave can start suddenly and up to six weeks earlier than the employer may have expected. There was a strong argument from

employee representatives that the trigger is unfair as often the pregnancy-related illness that starts the leave can be as little as a day long and there are no medical reasons that require the woman to start her leave. Reducing the sickness trigger to four weeks will harmonise the dates and periods of the system.

35. This framework lays the foundation for a new system of maternity leave and pay that is easier for employers to administer and manage and for employees to understand their rights and responsibilities. Further work will be required before this system can be operational but the Government welcomes comments at this stage. A full outline of the existing system and the new framework can be found at Annex B (pages 16 and 17).

A partial regulatory impact assessment

Benefits

A simplified system of maternity pay and leave will provide greater clarity for employees and employers. The increased notification periods will go some way to providing greater certainty for employers and will provide greater planning time to deal with the absence. This will allow employers, who plan to use external cover, to organise that cover more easily and employers, that re-organise their workforce to cover an absence, greater time to plan.

Additional benefits are likely to be found through increased understanding and knowledge of the system and the rights and responsibilities it creates. This could have a positive effect on the number of calls to the Department and other helplines and the number of people using Citizens Advice Bureaux and other such help sources. The simplified system will also require less written explanatory material to accompany its implementation. This will advantage small employers who often re-learn this one-off legislation as and when they need it.

The increased awareness of rights, which will result from this clarity, may help to prevent employers who deliberately set out to mislead workers about their rights and entitlements from doing so. Equally it will enable good employers to be confident that they are not breaking the law when they implement the system.

- **Increasing the length of unpaid maternity leave to 26 weeks**

Mothers who wish to will be able to take longer off work while having their job protected. This will enable more of them to return at a point when they are healthy and allow them longer to secure appropriate childcare arrangements. At the margin, this will enable some mothers to remain in employment with recruitment and training savings for their employers.

To illustrate the potential benefits, if only 10% of those women who are currently not returning to work after maternity leave were to return to work as a result of an increase in maternity leave, then employers could save up to £35 million each year in recruitment costs alone.

- Approximately 300,000 mothers each year claim SMP, which means they were in employment before giving birth.

- Survey evidence (source: 1996 maternity rights study) suggests that about a third of mothers do not return to work after maternity leave (= 100,000 mothers).
- Average recruitment and training costs are £3,500 per vacancy (source: CIPD survey). Increasing the number of mothers returning to work reduces recruitment costs by £35 million [= 100,000 x 0.1 x £3,500].

Costs

- **Increasing the length of unpaid maternity leave to 26 weeks**

To the extent that this leads to mothers taking longer periods of maternity leave, this will increase the costs of cover for employers.

Existing survey evidence suggests that a relatively small proportion (probably around 25%) of those mothers entitled to maternity leave of 40 weeks or more in fact take all or nearly all of this entitlement. Hence an increase in the maximum entitlement to maternity leave, which will be unpaid, is unlikely to have a high rate of take-up.

It is assumed that 20%-40% of mothers take, on average, an additional six weeks of maternity leave (= 60,000-120,000 mothers). These are assumed to be split 62%:38% between larger and smaller businesses, in line with the workforce as a whole.

This increase in time off will be concentrated among those mothers who already take the longest periods of maternity leave. Hence their employers are more likely than others to already manage the absence through a temporary replacement. We assume that 95% of larger businesses manage these absences through a temporary replacement, with a corresponding figure of 60% for smaller businesses. The costs of extending the employment of a temporary replacement are assumed to be 3-5% of weekly labour costs, whereas the costs of internal reallocation are assumed to be 9-15% of weekly labour costs.

Average earnings for women are £255 per week (based on 2000 New Earnings Survey, averaged across full-time and part-time female employees). Adding on 30% for non-wage labour costs gives an average cost of £331 per week. Up-rating to 2003/4 prices, this gives an average cost of £415 per week.

Combining these assumptions, costs to small businesses (i.e. less than 50 employees) are:

$[23,000-46,000 \times 0.4 \times (.09-.15) \times 6 \times £415] + [23-46,000 \times 0.6 \times (0.03-0.05) \times 6 \times £415] = £3.1-10.3 \text{ million}$

Costs to larger businesses are:

$[37-74,000 \times 0.05 \times (.09-.15) \times 6 \times \text{£}415] + [37-74,000 \times 0.95 \times (0.03-0.05) \times 6 \times \text{£}415] = \text{£}3.0-10.1 \text{ million}$

Total cost = £6 - 20 million

- **One-Off Administration costs to employers of changing maternity pay arrangements**

The system changes will involve one-off administration costs for larger employers who have existing systems and written policies. These changes would need to be completed by April 2003

Offsetting this would be on-going benefits from having to do less complicated calculations and, for smaller firms who do an ad hoc calculation, a simpler procedure when they have to do it.

- We expect approximately 40,000 (larger) employers will need to make changes to their payroll and administrative systems to cope with the proposed changes to arrangements for maternity pay.
- These are (one-off) system changes. We expect the typical cost to involve two days of a personnel manager's time and two days of a payroll administrator's time (based on the timings used in the RIA for the one-off changes announced in the budget²)
- Gross weekly earnings of a personnel manager and a clerk are £657 and £306 respectively (source: 2000 New Earnings Survey). Adding on 30% for non-wage labour costs gives weekly labour costs of £854 and £398 respectively. Assuming an average five day week gives daily costs of £171 and £80 respectively. Uprating to 2003/4 prices in line with earnings gives daily costs of £200 and £93.
- Total one-off costs are then calculated as:
- $[40,000 \times 2 \times \text{£}200] + [40,000 \times 2 \times \text{£}93] = \text{£}23.4 \text{ million}$

This one off cost includes the costs quoted in the RIA for those changes announced in the budget.

² RIA published in answer to Parliamentary Question number 156754 and available at www.dti.gov.uk/er/review.htm.

Outline of the current maternity pay and leave system

ORDINARY MATERNITY LEAVE (OML)

All pregnant employees are entitled to **18 weeks'**(rising to 26 weeks in 2003) OML.

ADDITIONAL MATERNITY LEAVE (AML)

Employees who have completed **one year's** continuous employment by the **11th week** before the expected week of childbirth are entitled to AML.

AML runs immediately from the end of OML up to the end of the **29th week** after childbirth, counting from the start of the week in which the baby was born.

STATUTORY MATERNITY PAY (SMP)

Employees who meet the following qualifying conditions are entitled to SMP:

- They have worked for their employer for a continuous period of at least **26 weeks** ending with the **15th week** before the expected week of childbirth (qualifying week)
- Their average weekly earnings in the **eight weeks** up to and including the qualifying week have been at least equal to the lower earnings limit for National Insurance contributions

NOTICE PERIODS

To receive SMP the employee must notify her employer **21 days** before she intends to start her leave that she is pregnant, the expected week of childbirth and the date she intends to take her leave.

To return early from OML or AML the employee must give her employer **21 days'** notice.

The employer may write to the woman no earlier than **21 days** before the end of her OML period to confirm the child's date of birth and ask whether she is still intending to return to work after her AML. This letter must explain how she calculates her AML. The employee must reply within **21 days**.

SICKNESS TRIGGER

An employee who is absent from work due to a pregnancy related reason after the beginning of the **sixth week** before the expected week of childbirth automatically triggers her maternity leave.

Outline of the 'new' maternity pay and leave framework

ORDINARY MATERNITY LEAVE (OML)

All pregnant employees are entitled to **26 weeks'** maternity leave.

ADDITIONAL MATERNITY LEAVE (AML)

All employees who qualify for statutory maternity pay are entitled to an additional **26 weeks'** unpaid maternity leave that runs directly from the end of OML.

STATUTORY MATERNITY PAY (SMP)

Employees who meet the following qualifying conditions are entitled to SMP:

- They have worked for their employer for a continuous period of at least **26 weeks** ending with the **15th week** before the expected week of childbirth (notification week)
- Their average weekly earnings in the **26 weeks** up to and including the notification week have been at least equal to the lower earnings limit for National Insurance contributions

NOTICE PERIODS

During the notification week the employee must notify her employer of, the fact that she is pregnant, the expected week of childbirth (EWC), and the date when she intends to start taking leave.

During the notification week the employer must acknowledge, in writing, the employees intended start date for maternity leave. They must make clear that the employee is expected to return to work at the end of her full maternity leave entitlement and specify this date (this will be either six months or 1 year from her starting date), unless she gives, in writing, **four weeks'** notice of early return.

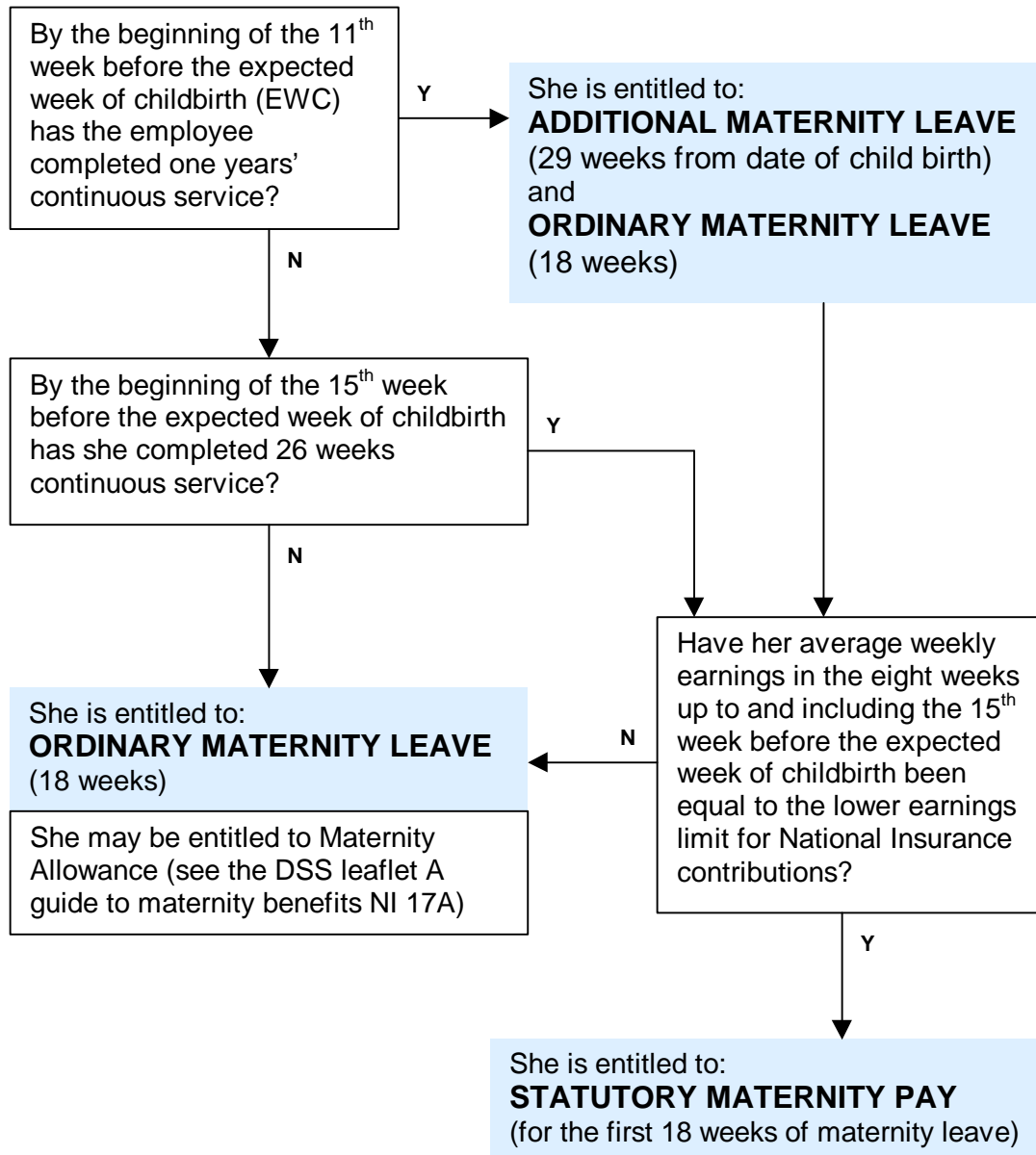
Any changes to the intended start date of her maternity given after the notification week must be given to the employer **four weeks** before the intended new start date, or as soon as reasonably practicable.

To return early from maternity leave the employee must give her employer **four weeks'** notice.

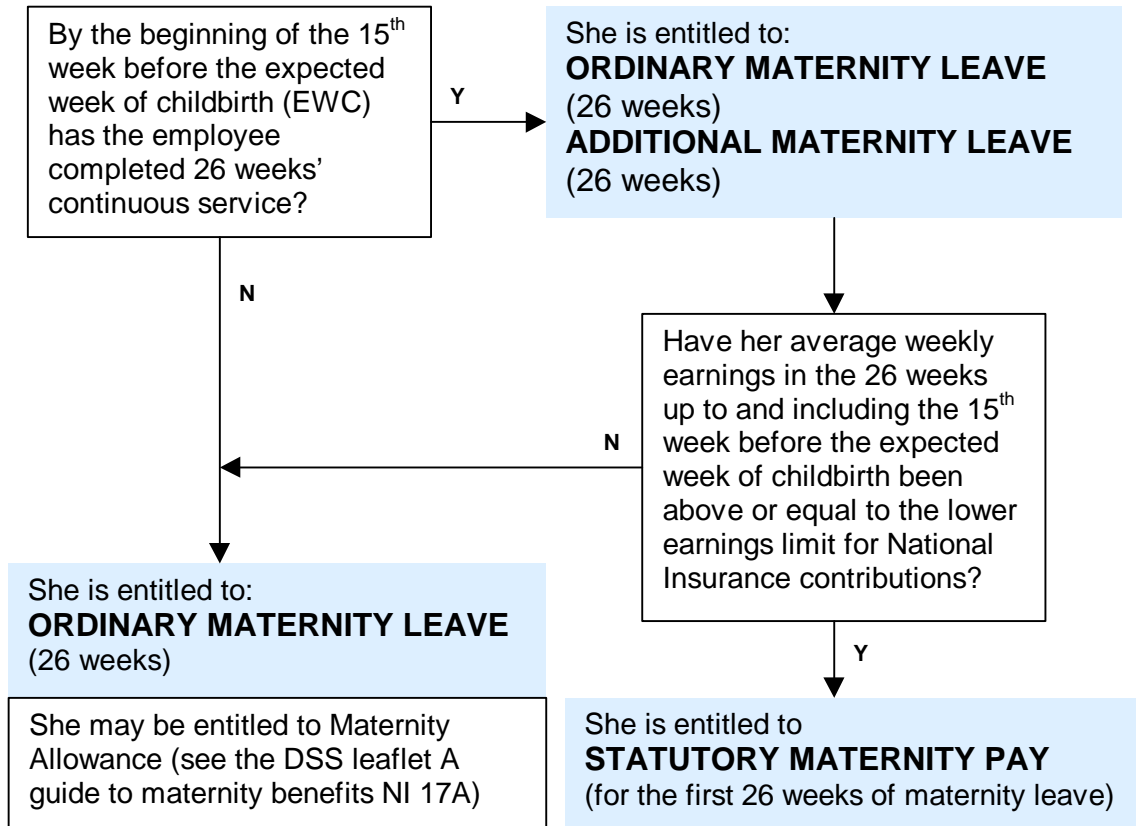
SICKNESS TRIGGER

An employee who is absent from work due to a pregnancy related reason after the beginning of the **fourth week** before the expected week of childbirth automatically triggers her maternity leave.

Qualification requirements: existing system



Qualification requirements: new framework



Example letter for employers to use at the Notification Week

Date:

Dear [name of employee],

Thank you for informing me of your pregnancy and the date that your baby is due. I am writing to you about your maternity leave.

You have told me that you would like to begin your maternity leave on [insert date].

If you want to change this date you must notify me at least four weeks (28 days) in advance, or as soon as reasonably practicable, before the new intended start date.

As we have discussed, you are eligible for **26 weeks' ordinary maternity leave / 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave** [delete as appropriate]. You have told me that you intend to return to work and I will expect you to return at the end of your full leave entitlement.

Given your chosen start date, this will be [insert date].

If you want to come back to work before this date you **must give me at least four weeks' (28 days') notice of your new intended return date**. If you don't give this notice, I have the right to postpone your return until four weeks from the date that you informed me that you would like to return early have elapsed.

I am happy to discuss the above and any other aspects of your maternity entitlements.

Yours sincerely,