

## Introduction

Over the years, many thousands of children have benefited from the commitment of adoptive families. Yet there has been a failure to recognise and support, in practical terms, the vital role that adoptive parents play. Adoptive parents have not been entitled to the full extent of leave or any of the financial support that is available to natural birth parents. At an average of 2000 adoptions a year, the numbers are relatively small. But these issues must still be addressed.

2. The Green Paper *Work and Parents: Competitiveness and Choice*<sup>1</sup>, 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 want 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. There is strong support, from employees and particularly from employers, for the Green Paper option to introduce a right for an adoptive parent to take leave paid at the same flat rate as Statutory Maternity Pay (SMP). Recognising this level of support, an entitlement to paid adoption leave has been announced as part of the March 2001 Budget which says:

*“Since 1999, adoptive parents have been entitled to parental leave, but they do not receive any statutory paid leave in the vital first months after adopting their child. The Government’s review has found widespread support for change. The Government will therefore introduce paid adoption leave from 2003, paid for the same period and at the same flat rate as Statutory Maternity Pay, starting when a child is first placed with the family. Adoptive parents will be able to choose which of them takes time off work and receives the payment.”*

4. An adoptive parent will be entitled to 26 weeks’ leave paid at the same flat rate as SMP<sup>2</sup> with, additionally, the right to take a further 26 weeks’ unpaid

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<sup>1</sup> Work and Parents: Competitiveness and Choice, A Green Paper, published December 2000

<sup>2</sup> On the introduction of adoption leave in 2003, the flat rate of Statutory Maternity Pay will be £100 per week.

leave. They will be able to start the leave when the child is placed with them for adoption. They will be eligible to take the leave if the child is under 18 years of age. This paper refers throughout to the adoption of a single child. For siblings that are simultaneously placed with a family only one period of adoption leave will apply.

5. This paper summarises employers' and employees' views on the issue of paid adoption leave (pages 3-4). It sets out a framework for adoption pay and leave (pages 5-10). The framework aims to be as easy to administer as possible.

6. An analysis of the costs and benefits of paid adoption leave is presented at Annex A (page 11).

7. To introduce adoption leave 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 the issues raised in this document with interested parties. Comments are, however, welcome at this stage.

8. This document is also available on the *Work and Parents: Competitiveness and Choice* website which includes information on other issues relating to the Green Paper. The website is updated regularly and can be found at [www.dti.gov.uk/er/review.htm](http://www.dti.gov.uk/er/review.htm). Decisions on other options that have been announced can be found at Annex B (page 13).

9. Any comments on the adoption leave 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](mailto:reviewteam@dti.gov.uk)

10. Comments on the adoption leave framework may be made publicly available in whole or 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 made available to any enquirers, including enquirers outside the UK, or published by any means, including on the Internet.

## Responses received to the consultation

11. 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 a membership of 237,000 members responded. Parents, predominantly mothers, sent in over 175 responses. Employee representatives, covering well 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 were received after the consultation period had ended.

12. 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.

13. The option to introduce paid adoption leave for the same period as maternity leave continually received strong support during the consultation, both in the formal responses received and in the focus groups. The vast majority of employers agree that adoptive parents should be given the same rights to maternity/paternity leave as biological parents.

### **Employers and their representatives told us...**

*“This is a logical extension of existing maternity legislation and, as such, should not cause employers any more difficulty than current legislation.” – Nationwide Building Society*

*“Adoptive parents face many challenges that natural parents face with the introduction of a new member to the family. There is, therefore, a moral case for the introduction of adoption leave” – BAE Systems*

14. The Confederation of British Industry (CBI) reports that the introduction of adoption leave is widely supported by employers. Employers accept that adoption is a considerable undertaking and that time is necessary if good relationships are to develop. The number of adoptions is relatively small and the disruption for any particular employer should usually be low. But the CBI also points out that businesses clearly want substantial notice, in order to be able to plan properly for the employee's absence. The Small Business Service, who ran their own consultations on the Green Paper, told us from this that employers would like to see adoption leave restricted to young children. Employers also call for businesses and adoptive parents to be compensated by Government to encourage the adoption of older children.

**Employee representatives have told us...**

*"It should be clear that giving paid time off to adoptive parents will ease the settling in period for parents, and child. And would also lessen the chances of problems which would have an effect on the parents work."* – Transport and General Workers Union

*"This is overwhelmingly justified in view of the public interest in encouraging adoptions of children of all ages."* – Trades Union Congress

15. The Trades Union Congress (TUC) and affiliated unions support the introduction of adoption leave. They call for leave and pay to be available for all adoptions, including those of older children. However, the TUC disagree with the idea of a flat rate payment rather than an earnings-related one. The GMB Union supports the right, saying adoptive couples are more likely to have to deal with difficulties of bonding with an older child or older children who may have emotional scars. It also believes that there would be little problems for workplaces to adapt.

## A framework for paid adoption leave

16. This framework for paid adoption leave delivers simplicity and certainty. It is light touch and balances the needs of both adoptive parents and employers,

### Key features of the new framework for paid adoption leave

- 26 weeks' adoption leave paid at flat rate SMP
  - 26 weeks' additional unpaid adoption leave
- } 1 year total
- Where couples adopt, they can chose which of them takes the paid adoption leave
  - The other parent will be able to two weeks paid leave around the time of placement (equivalent to paternity leave)
  - Available to those adopting children of up to 18 years of age
  - The employee must have worked for the employer for 26 weeks before notification
  - The payment mechanism will be that used for Statutory Maternity Pay

17. The Government recognises that it would be helpful if, wherever possible, the rules and procedures surrounding adoption leave mirror those applying to maternity pay and leave. A new radically simplified framework for maternity pay and leave has been published<sup>3</sup>. That work is reflected in the following framework. The adoption process has existing procedures and letters that can be adopted to mimic the processes and procedures of maternity leave. They produce different timescales but, in the majority of cases, should not result in any less notice for employers.

<sup>3</sup> 'A framework for simplification' published on 1 May in answer to Parliamentary Question 160153. Available on the Internet at [www.dti.gov.uk/er/review.htm](http://www.dti.gov.uk/er/review.htm)

## Eligibility Criteria

### Main Points

- Either parent, if adopting jointly, will be eligible for paid adoption leave
- Employees must have worked for the employer for 26 weeks before notification to qualify for paid adoption leave
- Available to those adopting children who are up to 18 years of age
- Will not cover step-family adoptions or adoptions by foster carers

18. Where parents adopt jointly, it will be for them to choose who should take adoption leave. As adoption leave is not required to satisfy the same health and safety requirements of the mother and new born child as is maternity leave, it is possible to allow adoptive parents to decide who is best placed to use the entitlement.

19. Statutory Maternity Pay (SMP) requires mothers to have been employed continuously by their employer for 26 weeks prior to the 15<sup>th</sup> week before childbirth. To be as consistent as possible, the adoptive parent taking the paid leave will have to have worked for the employer for 26 weeks prior to notification. This potentially means that adoptive parents would have to serve a longer qualification period than natural parents, who have to have been employed for 26 weeks prior to the 15<sup>th</sup> week before the expected date of childbirth. The Government would welcome views on this issue.

20. Adoption leave will be available to people who have children placed with them who are not yet 18 years old. There is a general perception that, once adopted, an older child will be at school and that adoptive parents do not need leave. However, teenagers can be the most difficult of all children to adopt. This is reflected in the higher level of disruption of adoptive placements of older children (see table below). Time with the child should help reduce the number of disrupted placements.

<b>Age at placement</b>	<b>Approx. % placements disrupting</b>
Infants	5%
5 years	10%
7-8 years	20%
11-12 years	40-50%
Later teens	30-40%

21. The extra costs of extending adoption leave to cover the older age groups will be very low. Most children adopted are aged between one and four years old, and the number of children who are over ten when adopted is relatively small.

22. Adoption leave will apply only where the child is placed with new parents. It will not apply to step-family adoptions or adoptions by foster carers where there is already an established relationship. The aim of the right is to provide time for the adoptive child and parent to bond and to adjust to their new surroundings.

## Notification Criteria

### Main points

- To meet employers' need for time to plan cover for the absence, employees who wish to take advantage of paid adoption leave will notify their employers when they have been approved for adoption and of the indicative matching time they have been given by the adoption agency
- If employees intend to return to work before the end of their adoption leave period, they must give their employer 28 days notice of their date of return

23. Employers have told us that they want certainty about an employee's plans. Early notification of an employee's intention to take adoption leave, and an indication of when this might be taken, will give employers appropriate notice and will draw on the existing processes of adoption. Due to the nature of the adoption process, while the employer will know once an employee has been approved for adoption and when the adoption leave might start, they may have little or no notice of the actual date on which child is placed with the employee.

24. Employees will inform their employers when they have been approved for adoption and of the indicative matching time they have been given ie the best estimate of when the adoption leave might start. At this stage, the adoption agency will issue the employee with a letter which the employee can give to their employer. This letter will play the same role in providing evidence for maternity leave as the MAT B form, signed by a doctor or a midwife, does for maternity leave. But all concerned will need to recognise that the timings are indicative and that there is no guarantee that a placement will actually be

made at the date indicated. In the case of parents seeking to adopt a baby or seeking to adopt from overseas, the matching time may also be longer.

25. The other parent, who wishes to take the two weeks' paid "paternity" leave must also notify his or her employer of the intention to take this leave and the estimated date when it will start.

## **Start and Finish of Adoption Leave**

### **Main point**

- Employees will notify employers to trigger the start of adoption pay and leave
- Notice periods on return from adoption leave will mirror those for maternity leave

26. Adoption leave and pay would start when the child is placed with the adoptive parents. Employees must inform their employers as soon as they know the date of placement, confirming this with a copy of the placement papers. This will enable employers to seek reimbursement for adoption pay. Parents taking the "paternity" leave entitlement must also notify the employer to trigger the start of their payments.

27. Notification when returning from adoption leave will mirror the rules that apply to maternity leave. If employees taking adoptive leave intend to return to work before the end of their adoption leave period, they must give employers at least 28 days' notice of their date of return. This is the period proposed within the simplified framework for maternity leave and pay.

## **Payment Mechanisms**

### **Main points**

- The mechanism for paying adoption leave should mirror the mechanism for paying SMP

28. It is sensible that the same payment mechanism is used as that for SMP. Employers, particularly small employers, do not want to have to cope with different systems.

29. Small employers, in certain circumstances, are able to seek payment in advance for payments they are required to make for SMP. This will also be the case for payments made for adoption leave.

## Other Issues

### Main points

- Adoptive parents should not experience any detriment for taking adoption leave
- The other parent has the right to two weeks' paid leave around the time of adoption (equivalent to paternity leave)
- Joint adopters should be allowed to change their minds about who remains at home only if there is a 'significant' change in circumstances
- It is difficult to find a payment mechanism for parents who would not be eligible for statutory adoption pay

30. To ensure that parents taking adoption leave are protected from discrimination, the same protections that are available to mothers taking maternity leave will apply. These concern dismissal and detriment. During the period of paid adoption leave, parents are guaranteed the right to return to the same job on terms and conditions not less favourable than those which would have applied had he or she not been absent (unless a redundancy situation has arisen). During the unpaid period of adoption leave, the same right applies unless not reasonably practicable.

31. From 2003, fathers will be entitled to two weeks' paid paternity leave around the time their partners give birth. It is appropriate for the other parent of an adoptive child to receive the equivalent of paternity leave immediately after the adoption to support the other parent and to bond with the child.

32. Joint adopters will be able to change their minds about who remains at home only if there is a significant change in their circumstances. There would

need to be appropriate notification if there was to be such a change to reduce uncertainty for employers.

33. What is deemed to be significant could be set out in regulation or in practical guidance. Views are sought on whether a legislative solution or guidance is the best option and what could significant might mean. For example:

- unexpected long term sick leave of the nominated parent which results in them being physically incapable of looking after the child
- a change in the earning power of the other adoptive parent which would make it more economically viable for the nominated parent to work instead.

34. Some mothers who earn less £72 a week, the lower earnings limit, are entitled to a Maternity Allowance payment at the same flat rate as SMP. This is paid through the Benefits Agency and has a number of qualifying conditions. As the total number of adoptions is small, it is difficult to justify the setting up of a similar scheme to administer the payment of adoption allowance to those whose weekly earnings are below the limit for payment of National Insurance contributions. Views are sought on this issue, and if an equivalent allowance is sought, on the appropriate payment mechanism.

35. This framework focuses on how the right applies to employees. An alternative will need to be identified for those adoptive parents who are self-employed. Work continues to identify a satisfactory way forward.

36. This framework lays the foundation for rights and responsibilities for the first time for adoptive parents equivalent to those for natural parents. It does so in a way that mirrors the processes of maternity leave as far as possible, in order to make it easier for employers to understand, while building on the existing and future processes of adoption. Further work will be required before this system can be operational but the Government welcomes comments at this stage.

## A partial regulatory impact assessment

There are about 2000 adoptions each year by strangers (i.e. excluding cases where a child is adopted by a family member, step-parent or foster carer). It is recommended practice that at least one adoptive parent is able to spend time at home with the child during the first few months of placement. It is, therefore, assumed that there is 100% take-up of the entitlement to paid adoption leave<sup>4</sup>.

### Benefits

- **More financial support**

About a third of employers already offer support to adoptive parents<sup>5</sup>. In most cases though, provision of paid adoption leave will make families better off. By 2003, families where a parent would otherwise receive no financial support for staying with the child would be up to £2,600 better off.

- **More time off and better family life**

It is recommended practice that at least one adoptive parent spends time at home with the child in the months following placement. The recommended period is up to nine months; hence this is likely to happen in most cases already. At the margin, though, some adoptive parents might be able to spend a bit longer with the child.

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

- **Retaining staff and skills in the labour market**

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

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<sup>4</sup> It is also proposed that the parent not taking the paid adoption leave would be entitled to the equivalent of paid paternity leave. The cost of this is already included in the estimates of the cost of paid paternity leave.

<sup>5</sup> "Employers' survey of support for working parents", DTI, 2000

As an illustrative calculation, if an additional 25% of adoptive parents were able to remain in employment as a result of paid adoption leave, then the savings to employers in recruitment costs would be £175,000 per year<sup>6</sup>.

## Costs

- **Costs to the Exchequer**

Assuming 100% take-up, the cost to the Exchequer by financial year 2003/04 would be £5 million<sup>7</sup>.

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

- **Costs to employers of administering adoption leave**

There would be some additional administration costs for employers of people taking adoption leave. Given the numbers involved, the aggregate cost will be modest and probably less than £1 million.

- **Costs to employers of covering for absences**

It is likely that one adoptive parent takes time off work or gives up employment in most cases already. Hence the additional number of spells of absence is likely to be small. The cover costs are therefore likely to be negligible.

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<sup>6</sup> Calculated as  $2,000 \times 0.25 \times £3,500$  (average cost of recruitment: source CIPD survey). Note that some families adopting will already have one parent who is not working; in other cases, the parent who takes time off will decide not to return to work; and in other cases, the employer of the parent taking time off will already keep their job open.

<sup>7</sup> Calculated as  $2,000 \text{ parents} \times 26 \text{ weeks} \times £100 \text{ per week}$ .

Since the end of the consultation period, the Government has made a number of announcements on how it intends to proceed on some of the options outlined in the Work and Parents: Competitiveness and Choice Green Paper. Announcing decisions as they are taken make it easier for employers and employees to absorb them.

The Government announced how it intended to proceed on those issues with financial implications for the State, in the Budget on 7 March 2001. This covered:

- an increase in the flat rate of Statutory Maternity Pay (SMP) and Maternity Allowance from its present rate of £62.20 a week to £75 a week from April 2002 and from £100 a week from April 2003
- an extension of the period of maternity pay at this enhanced rate from 18 weeks to 26 weeks from April 2003
- the right to two weeks' paid paternity leave from 2003, paid at the same flat rate as SMP
- from 2003, paid adoption leave when a child is first placed with a family, to allow one of the adoptive parents to take leave for the same period and paid at the same rate as SMP
- a further increase in the Sure Start Maternity Grant from £300 to £500 in April 2002, for 215,000 low income families a year.

On 25 April, the Secretary of State for Trade and Industry made three announcements on parental leave. First that parental leave will be extended from 13 to 18 weeks for parents of disabled children. Second, parental leave will remain unpaid. Third, the entitlement to parental leave will be extended to parents of all children who were under five on 15 December 1999 when the right was first introduced.

On 1 May, further moves to help working mothers and ease the administrative burden of maternity leave on businesses were announced. A three-part package of measures was unveiled comprising:

- unpaid maternity leave being extended to three months, enabling mothers to take up to a year off work
- a new simplified framework of maternity pay and leave regulations for both employers and employees
- the launch of a new website for working mums (**[www.tiger.gov.uk](http://www.tiger.gov.uk)**) to help them get information about what they are entitled to.

Simultaneously with this paper, a framework for paternity leave has been published which specifically addresses employers' concerns that the right should be as easy to administer as possible. The payment mechanism used will be that used for SMP.

Further details on all these announcements can be found at [www.dti.gov.uk/er/review.htm](http://www.dti.gov.uk/er/review.htm)