

Introduction

The Government intends to make changes to the regulations which govern parental leave. At the moment, only parents of children born on or after 15 December 1999 qualify for the right, and parents of disabled children are entitled only to the same amount of leave, 13 weeks, as all other parents. The changes now planned will mean that all parents of children who were under five as at 15 December 1999 will be eligible to take parental leave. In addition all parents of disabled children will be able to take up to 18 weeks' leave.

2. The Government is committed to helping parents achieve a better balance between their home and work lives. The Green Paper *Work and Parents: Competitiveness and Choice* 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 employers and employees to absorb them.

3. Extending the amount of parental leave for parents of disabled children is almost universally positively received by parents and employers, although it was not frequently rated as a high priority for change. Extending parental leave was not offered as an option in the Green Paper but was raised during the consultations following its publication. Accordingly, the Government announced on 25 April 2001¹ new measures to extend entitlement to parental leave.

4. This paper summarises the responses that were received to the Green Paper, outlines the way that the Government proposes to deal with the transitional issues that arise from its decision and consults on draft regulations to implement the changes.

5. An analysis of the costs and benefits of the regulations as drafted is at Annex A (pages 7-12). This draws on the partial regulatory impact assessment published alongside the announcement of the changes.

¹ In response to Parliamentary Question 159150

6. The changes to parental leave can be introduced by regulations, which will be put before Parliament as soon as possible after the Government has had the opportunity to consider the responses to this consultation. The draft regulations are at Annex B (pages 13-15).

7. 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 is at www.dti.gov.uk/er/review.htm. Decisions on other options that have been announced can be found at Annex C (pages 16-17)

8. Any comments on these draft regulations 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

Responses are needed by 8 August 2001.

9. Comments on these proposals 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, including from outside the UK, or published by any means, including on the Internet.

Employers and their representatives told us

"We believe that parents of disabled children should be entitled to up to 18 weeks' unpaid parental leave up until the child is 18 years old." - South West Water

"In fairness to the parents, to have the same amount of time off in their circumstances although over a far longer period of time is unfair. The needs of the child who is disabled are greater as is the pressure on the parents." - Forum of Private Businesses

Responses received to the consultation

10. Over 600 formal responses were received by the end of the Green Paper 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, also 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.

11. 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. Further focus group work was also commissioned with expectant and recent mothers and with small employers across Britain.

12. Extending the amount of parental leave for parents of disabled children was almost universally positively received by parents and employers. This will give parents of children with disabilities greater flexibility to strike the balance between working and caring for their child's additional needs. The move has been strongly supported by business, parent and disability groups.

13. The Confederation of British Industry (CBI) say that their members accept there may be a case for increasing the amount of parental leave available to parents of disabled children. The Small Business Service (SBS) who ran their own consultation on the Green Paper, told us from this that small businesses also supported this, provided that there is a clear definition of disability. The existing parental leave regulations provide that clear definition by limiting the additional rights to parents of children who receive Disability Living Allowance. This is paid for a child with a physical or mental illness or disability if they need more help or looking after than other children of the same age because of their illness or disability.

14. Not surprisingly, there were few comments in the written responses on extending parental leave to parents of children who were under five at 15 December 1999, as this was not one of the nearly 50 options included in the Green Paper. But one company asked for it to be added, on the grounds that the cut-off is against the spirit of the legislation. Employers in discussion

are generally relaxed about the extension, provided that parental leave remains unpaid.

Employees and their representatives told us...

“The needs of disabled children and their parents are considerable. It is highly probable that parents of a disabled child will need to make more medical appointments and arrange for additional support” - Catholic Bishops’ Conference Committee for Marriage and Family Life

“We welcome the suggestion that parents of disabled children should be entitled to more than 13 weeks’ parental leave. We know from the 1,500 parents in our network for parents of disabled children that they face many difficulties in reconciling work and home responsibilities. The result is that a far higher proportion of families with disabled children are dependent on benefits” - Parents at Work.

“Working parents with disabled children frequently experience barriers to employment and the ability to take additional days off for assessments, hospital visits or to care for a sick child will be greatly welcomed” – Council for Disabled Children.

15. The TUC said that they and helplines find that many parents have been adversely affected by the 15 December cut-off although they acknowledged that some employers voluntarily offer parental leave to parents of older children. Parents and their representatives in discussions also sought changes to the parental leave regulations, including the abolition of the cut-off. They argue that it would offer more choice and flexibility to parents of young children.

The changes to the regulations

The Existing Rights

16. Since 15 December 1999, new parents and adoptive parents have qualified for parental leave, provided they are employees and have worked for their employer continuously for a year by the time they want to take the leave. The right entitles qualifying parents of children born or placed for adoption on or after the 15 December 1999 to a total of 13 weeks' unpaid parental leave to look after a child or make arrangements for the child's welfare. Parental leave can be taken up to the child's fifth birthday, or fifth anniversary of the date of placement for adoption (or the child's eighteenth birthday if that is sooner). Parents of disabled children (those who qualify for Disability Living Allowance) can take parental leave over a longer period, up to the child's eighteenth birthday.

17. Under the statutory fallback scheme, parental leave can be taken only in blocks of a week at a time and a maximum of four weeks can be taken in each year. Parents of disabled children are able to take the leave in blocks of less than a week. Employees have to give their employer 21 days' notice of the intention to take parental leave, and employers have the right to postpone the leave if to grant the request would unduly disrupt the business.

The Government's Plans

18. The Government believes the time is now right to increase the number of parents who are able to exercise the right to parental leave. It has, therefore, announced to Parliament that the right will be extended to parents of all children who were under five as at 15 December 1999.

19. Transitional arrangements are needed to cover parents of children who have since reached, or will soon reach, the age of five. The aim is to ensure that such parents are not disadvantaged but to preserve the existing requirements of the regulations apart from that.

20. As stated above, under the statutory fallback scheme parents can take a maximum of four weeks' leave in any one year. On this basis, it will take over three years for parents whose children were under five at 15 December 1999 time to take their new entitlement to a total of 13 weeks' leave. Accordingly, parents of children born of placed with them for adoption between 15 December 1994 and 14 December 1999 will be given a period of a little over three years to take their leave from the point at which new regulations come into force.

21. In addition, the Government has announced that parental leave for parents of disabled children will be increased from 13 to 18 weeks. Different rules already exist under current legislation for parents of disabled children relating to time over which, and how, the leave can be taken. Parents of disabled children are able to use their parental leave entitlement over a longer period than other parents, up to the child's 18th birthday. Increasing the amount of time these parents can take off to 18 weeks will mean that they can (if they so wish) take one working week off per year in parental leave, up to the child's 18th birthday.

Notice periods for taking leave

22. A new radically simplified framework for maternity pay and leave has been published². It suggested amongst other things, that the period of notice which an employee needs to give before exercising various rights, including to parental leave, could be brought into line at 28 days in each case. As the aim of the framework is to deliver simplicity and consistency, the Government will not change notification periods for parental leave, except at the same time as it makes other changes to notice periods. The Government will need to consider comments on the framework carefully, but would be interested in views on whether:

- notification periods for most parents wishing to take a period of parental leave, currently 21 days, should also be harmonised at 28 days?
- notification periods for parents of disabled children, who are statutorily entitled to take leave in blocks of less than a week, should be set at a lower level where they only wish to take a very short period of leave?

² 'A framework for simplification' published on 1 May in answer to Parliamentary Question 160153. Available at www.dti.gov.uk/er/review.htm

A partial regulatory impact assessment

Introduction and summary

This assessment considers the likely impact of:

- a) extending the Parental Leave Regulations 1999 to parents of children under five years of age at 15 December 1999. These parents will be entitled to take a total of 13 weeks' unpaid parental leave over a period of approximately three years from the point at which new regulations come into force.
- b) extending the period of leave to which all parents of disabled children are entitled from 13 to 18 weeks.

Purpose and intended effects

The measures will help all parents of pre-school age children better to balance their work and family life, and recognises the special, additional needs of parents of disabled children.

A. Extension to all parents of children under five as at 15 December 1999

Benefits to employees

On 15th December 1999 there were approximately 2.8 million parents³ (1.1 million mothers and 1.7 million fathers) who would qualify for parental leave under the current conditions (employees with at least one year's service with the same employer and a child under five). These parents will be entitled to up to 13 weeks' unpaid leave to spend with their children. Under the statutory fallback scheme, the leave will need to be taken in weekly blocks up to four weeks per year.

The Government proposes that these parents should have a period of just over three years during which they can take the leave. Increasing the number of employees benefiting from the parental leave regulations will enhance the benefits of the original regulations.

³ See Endnote 1 (page 12)

Estimated take-up

The statutory entitlement to parental leave is unpaid. The Regulatory Impact Assessment prepared in support of the original regulations assumed take-up of 10% for fathers and 50% for mothers.

Survey evidence collected by DTI in autumn 2000 found that 12% of employed parents who said their employers provided parental leave also said that they had taken parental leave since December 1999. This equates to about 3% of all employed parents (the difference is because many respondents said their employers did not provide parental leave or were unsure of whether they did)⁴. Contrary to the assumptions made previously, take-up rates were identical for mothers and fathers.

Given these uncertainties, and also the fact that take-up may increase over time as awareness of entitlements increases, it is assumed that take-up will be in the range 3-12%. This would mean that an additional 84-336,000 employees will take parental leave as a result of the new regulations, 33-132,000 mothers, and 51-204,000 fathers.

However, an adjustment to these figures must then be made to take account of cases where employers already extend parental leave arrangements to parents of children born before 15 December 1999, on a voluntary or contractual basis. The DTI survey referenced above asked working parents who said their employers provided parental leave whether this applied to 'children born at any time' (i.e. which would include before 15 December 1999). Just over half of respondents said their employer did extend parental leave arrangements to this group - equivalent to about 15% of all employed parents.

It is therefore assumed that 20% of parents of children born before 15 December 1999 already receive parental leave. The additional number of employed parents gaining entitlements as a result of the new regulations then becomes 67-269,000 (26-106,000 mothers, 41-163,000 fathers).

Benefits to business

An improved work-life balance will lead to increased morale and better performance. These benefits can not easily be quantified.

⁴ Further information on these survey results, and the design of the relevant survey, can be found in *Work and Parents: Competitiveness and Choice - Research and Analysis* available at www.dti.gov.uk/er.

Costs to employers

There is no requirement for employers to keep records. Hence the main cost to business of this change will be in covering for the additional absences⁵.

Parental leave is unpaid unless the employer chooses to offer payment. It is, therefore, assumed that parents will, on average, take two weeks' leave each year. We further assume that a small percentage take a final week of parental leave at the start of year four.

As parental leave is taken in short spells of one week, it is assumed that all employers react by reallocating work within their organisations rather than by recruiting temporary replacements. The cost to employers of doing this is taken to be 9-15% of the labour costs of the absent employee⁶. This equates to £53-88 for each week's leave taken by employed fathers and £30-50 for each week's leave taken by employed mothers (April 2000 prices). See Endnote 2 (page 12) for details.

Combining length of leave assumptions by these average cost estimates implies that the annual additional cost of the proposed extension to the Regulations would cost employers between £6 million and £39 million over each of the next three years.

In addition, the Government's proposals will allow a limited period of up to three months at the start of the fourth year during which leave could be taken. Depending on the assumptions made for take-up in this period, we estimate that the costs of cover for this period may be between £ 1 and 8 million.

⁵ Experience to date with the Parental Leave Regulations suggests that there would be negligible impact on Employment Tribunal caseloads.

⁶ The background to these assumptions is set out in Parliamentary Question 156752 and in the Regulatory Impact Assessment produced in response to Parliamentary Question 156754.

B. ADDITIONAL LEAVE FOR THE PARENTS OF DISABLED CHILDREN

Numbers affected

There are estimated to be about 330,000 disabled children under 16 in England and Wales. Adding in 16 and 17 year olds and Scotland might add 15% to these numbers, i.e. 380,000 children in total. Of their parents, 308,000 fathers and 76,000 mothers (12,000 full-time, 64,000 part-time) are estimated to be in employment⁷.

Estimated take-up

Parents of disabled children are more likely than other parents to take parental leave, even if it is unpaid. There will be more occasions when they might need to spend time with their child, e.g. covering for vacations in specialist caring agencies. Take-up rates for additional parental leave are therefore assumed to be 50% for mothers of disabled children and 25% for fathers. In other words, 38,000 mothers and 77,000 fathers take additional parental leave.

Benefits

About 115,000 parents of disabled children would choose to use an increased entitlement to parental leave over the period until the disabled child reaches 18 years of age.

Parents with disabled children are more likely to need time off to cope with family difficulties. Furthermore, the need for time off is likely to persist throughout childhood. More time off for parents would enable them to contribute more time towards the care of their children where this was necessary (e.g. in familiarising themselves with specialised equipment) and to help their children at key transitions in their life (e.g. when they start or move schools).

More time off might also enable some parents of disabled children to re-enter the labour market. Employment rates for the mothers of disabled children are very low.

⁷ The source of the overall numbers and the employment rates for mothers is the OPCS disability survey of 1986, with a correction to allow for Scotland and 17-18 year olds. This is now quite dated although the broad findings are believed to be still reliable. Fathers of disabled children are assumed to have the same employment rate as men aged 35-49 as a whole.

Costs

Parental leave is unpaid and there is no requirement for employers to keep records. Hence the cost to business of this change will be in covering for the additional absences⁸.

As set out above, 77,000 fathers and 38,000 mothers are assumed to take an additional five weeks leave. In all cases, it is assumed that employers manage this through reallocation of work - rather than recruitment of temporary cover - and that the average cost of doing this is 9-15% of labour costs. On this basis, the cost to employers is £53-88 for each week's leave taken by employed fathers and £20-34 for each week's leave taken by employed mothers (April 2000 prices).

The additional annual cost to employers is between £1 million and £2 million.

⁸ Experience to date with the Parental Leave Regulations suggests that there would be negligible impact on Employment Tribunal caseloads.

Endnote 1

Numbers affected

There are estimated to be approximately 3.5 million⁹ children who were less than 5 years old at 15 December 1999. The proposed change would give all eligible parents of these children additional entitlements to parental leave, in total 1.7 million fathers and 1.1 million mothers¹⁰. These are employees with dependent children aged under 5 years and with one year's service with their employer. Some of these employees may already have an entitlement to parental leave arising from children born after 15 December 1999. They would now gain additional entitlements.

Endnote 2

Calculation of cover costs

Costs for the first three years

Calculated by taking average earnings for men and women from the 2000 New Earnings Survey (£453 and £254 respectively - the latter is a weighted average of full-time and part-time average earnings), adding 30% for non-wage labour costs, and then multiplying by 0.09 to 0.15.

Fathers = [41-163,000] x 2 x £53-88 = £4.3-28.6 million
Mothers = [26-106,000] x 2 x £30-50 = £1.6-10.6 million.

Costs for year four

We assume that between 1 and 5% of parents will take up parental leave in the early part of year four. As before we assume that 20% of the parents would already have access to parental leave.

Mothers: 1.1 million x 0.8 x [1-5%] = 9,000 – 44,000
Fathers: 1.7 million x 0.8 x [1-5%] = 14,000 – 68,000

Fathers = [14 – 68,000] x £53-88 = £0.7 – 6 million
Mothers = [9 - 44,000] x £30-50 = £0.3 – 2.2 million.

The total costs of cover will be between £ 1 and 8 million

⁹ About 700,000 children are born each year.

¹⁰ LFS, Autumn 1999

Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Maternity and Parental Leave (Amendment) Regulations 2001

Made - - - - 2001
Coming into force - 2001

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996^(a) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by section 76(1), (2) and (5) of that Act and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Maternity and Parental Leave (Amendment) Regulations 2001 and shall come into force on 2001.

(a) 1996 c. 18; section 76 was substituted, and section 236 amended, by Schedule 4 to the Employment Relations Act 1999 (c.26).

(2) In these Regulations, "the Principal Regulations" means the Maternity and Parental Leave etc. Regulations 1999^(b).

Amendments to the principal Order

2. The Principal Regulations shall be amended as follows.

3. In regulation 13 (entitlement to parental leave)—

(a) in paragraph (1)(a), after the words "employed for a period of not less than a year", insert "or is to be treated as having been so employed under paragraph (1A)"

(b) after paragraph (1), insert—

"(1A) If, in a case to which regulation 15(aa) or (c)(i) applies—

(a) the employee was employed, during the period between 15th December 1998 and [*the day before the date on which the amending regulations come into force*], by a person other than his employer on that date, and

(b) the period of his employment by that person (or, if he was employed by more than one person during that period, any such person) was not less than a year,

then, for the purposes of paragraph (1), he shall be treated as having been continuously employed for a period of not less than a year."

(c) omit regulation 13(3).

4. In regulation 14 (extent of entitlement)—

(a) for "An employee is entitled" substitute "Except in the case referred to in paragraph (1A), an employee is entitled";

(b) after paragraph (1), insert—

"(1A) An employee is entitled to eighteen weeks' leave in respect of a child who is entitled to a disability living allowance".

5. In regulation 15 (when parental leave may be taken)—

(b) SI 1999/3312.

(a) in paragraph (a), for "paragraphs (b) to (d)" substitute "paragraphs (aa) to (d)";

(b) after paragraph (a), insert—

"(aa) in a case where the child was born before 15th December 1999 and his fifth birthday was or is on or after that date, after [*a date not less than three years and one week after the date on which these regulations come into force and not more than three years and three months after that date*];"

(c) in paragraph (c), for the words from "(i)" to the end substitute the following—

"(i) where the placement was before 15th December 1999 and its fifth anniversary was or is on or after that date, [*the same date as is referred to in the preceding amendment*],
(ii) where the placement on or after 15th December 1999, the fifth anniversary of the date on which the placement began, or, in either case, the date of the child's eighteenth birthday if that is earlier;".

6. In Schedule 2 (default provisions in respect of parental leave), after paragraph 2, insert—

"2A. Where regulation 13(1A) applies, and the employee's entitlement to parental leave arises out of a period of employment by a person other than his employer, the employee may not exercise the entitlement unless he has given his employer notice of that period of employment, and provided him with such evidence of it as the employer may reasonably require."

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 makes 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
- allowing more small businesses to claim extra compensation for administering maternity pay, by doubling the threshold for Small Employer Relief to £40,000 from April 2002. Around 60% of all firms paying SMP each year will be able to reclaim their costs in full, plus compensation
- 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 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 by 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) to help them get information about what they are entitled to.

Frameworks for paternity and adoption leave have also been published. The framework for paternity leave 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. The framework for adoption leave delivers simplicity and certainty. One adoptive parent will be entitled to 26 weeks' paid leave and 26 weeks' unpaid leave. The other adoptive parent will be able to take two weeks' paid leave around the time of placement. 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