

**Full Regulatory  
Impact Assessment**  
Employment Relations Directorate

**Amendments to adoption and paternity leave  
and pay regulations**

**February 2004**

<http://www.dti.gov.uk/access/ria/#employ>

***Executive Summary***

## ***Policy Objectives***

1. Paternity and adoption leave and pay were introduced from April 2003. The Government has become aware of some paternity and adoption leave and pay regulations that need to be fine-tuned to ensure they fully reflect the policies that were consulted on. The draft regulations published alongside this regulatory impact assessment will ensure that working parents are fully able to benefit from the new provisions in the way that the Government set out during the consultations on these policies.
2. The standard rate of Statutory Paternity Pay (SPP) is to be increased from £100 per week to £102.80 per week from 4 April 2004. A technical amendment to the SPP regulations will ensure people getting SPP will benefit from the increased rate in the same way as recipients of Statutory Maternity Pay (SMP) and Statutory Adoption Pay (SAP). This alignment will also simplify the position for employers who administer payments, as the statutory leave provisions and the statutory payment schemes for SMP, SPP and SAP will be brought even more closely together.
3. Amending the provisions for overseas adoptions will ensure that people who have begun to work for a new employer will not be disadvantaged (in terms of being eligible for SPP and SAP) so long as they serve a continuous period of 26 weeks with their new employer and satisfy the other eligibility criteria.
4. The privacy of the child and the adoptive family will be protected by removing the requirement for employees to supply their employer with the name and date of birth of an adopted child. This will bring the relevant regulations for pay into line with those for leave.
5. Another proposal will ensure that adopters are able to return to work from adoption leave on the same terms and conditions as if they had not been absent. This is the same entitlement as mothers returning from maternity leave.
6. An omission will be corrected by applying the definition of the term, "partner" that is used for cases of SPP after a baby's birth to cases of SPP after a child's adoption.

## ***Costs and Benefits***

7. The regulations will involve very little cost to employers. They are mainly technical in nature and are intended to ensure that the policy intentions underpinning the paternity and adoption schemes introduced last year, are met in full. The benefits will also be quite limited, as only a small number of employees will be affected by the proposals. However, the alignment of SPP payment with SAP and SMP is likely to simplify the position for employers.

## ***Equity and Fairness***

8. These regulations are not likely to have a significant impact, as only small numbers of people should be affected. Even so, there may be a tiny benefit for those fathers who will now be entitled to receive the increase in SPP rates for the second week of paternity leave in cases where the second week of paternity leave starts on or after the date of any increase in the rate of paternity pay. Also some individuals adopting a child from overseas who take on new jobs during the adoption process could benefit.

## ***Enforcement/incentives***

9. There are no enforcement mechanisms associated with the draft proposals, which are on the whole designed to address errors and omissions associated with

the regulations on paternity and adoption leave and pay which came into effect in April 2003.<sup>1</sup>

### ***Background and policy objective***

10. In April 2003 the Government introduced a package of new and improved measures to give parents more choice and more support than ever before to help balance childcare with work in ways that are intended to benefit employees, families and employers. The new laws followed extensive consultation with parents, unions, employers and their representatives on what the new measures should be and how they should work.

11. The package included new entitlements to paternity leave and adoption leave. Fathers can take two week's paternity leave with Statutory Paternity Pay (SPP (birth)) paid at the same standard rate as Statutory Maternity Pay (SMP). This is currently £100 per week or 90% of the person's average weekly earnings where that is less than £100 per week. Adoptive parents can take up to one year's adoption leave with 26 weeks' Statutory Adoption Pay (SAP), also paid at the same standard rate as SMP. Where a couple is adopting a child, one parent can take adoption leave and SAP. The other can take paternity leave and SPP (adoption). These provisions apply to parents adopting children both from within the UK and from overseas.

12. This assessment estimates the costs and benefits to business of amendments to Regulations (and new Regulations to amend the Regulations) that were made under the Employment Act (2002).

13. The amendments are:

- To ensure that those adopting a child from overseas are able to qualify for SPP and SAP if they start a new job during the adoption process. The conditions for eligibility require that employees must have at least 26 weeks' continuous service with their employer. They must also have average earnings above the lower earnings limit for national insurance contributions. For overseas adoptions, length of service and average weekly earnings calculations are currently linked to the time the adopter receives official notification. This point may often be a year or more before the child enters the UK, which means that some adopters will have changed jobs and thereby lose their eligibility to receive SPP or SAP by the time the adoption takes effect. The amendment will enable adopters to qualify for SPP or SAP even if they begin working for a new employer after receipt of their official notification so long as they serve 26 weeks with the new employer and satisfy the other eligibility criteria.
- To ensure that from April 2004 the payment process for SPP is brought into line with the processes for SMP and SAP. In particular this will ensure that those whose second week of SPP begins on or after the date of any increase in the rate of paternity pay will receive the higher rate in the second week rather than the existing rate.
- To correct an omission by bringing the definition of the term, "partner" that is used for cases of SPP after a baby's birth into use in cases of SPP after a child's adoption.

14. The new regulations are intended to:

---

<sup>1</sup> The web link for the accompanying regulatory impact assessment is <http://www4.dti.gov.uk/access/ria/pdf/maternity.pdf>

- To ensure greater privacy for the adopter by removing the requirement for an employee to supply the name of an adopted child. Employers will still be able to request to see sufficient evidence of the expected placement.
- Ensure that adopters return to work from adoption leave on the same terms and conditions (and not just pay) as if they had not been absent, as is the case for mothers returning from maternity leave. This will be achieved by ensuring adopters may return to work on terms and conditions (e.g. hours) which are not less favourable than they would have been if no adoption leave had been taken.

### ***Risk assessment***

15. The proposed amendments will help ensure the statutory schemes operate in the way set out during the consultation that took place ahead of the introduction of the Employment Act (2002). Without these technical amendments there is some misalignment between the different statutory schemes, which will complicate administration by employers and may mean some parents do not benefit from the provisions in the way that was intended.

### ***Options***

16. The proposals are technical in nature and are intended only to correct oversights, and to ensure that the policy intentions of last year's regulations are met. Therefore, it was judged that this would be best achieved through amendments to existing regulations and the introduction of two new regulations rather than through the introduction of voluntary measures.

### ***Numbers affected***

17. The regulations and amendments are expected to have limited impact in terms of the numbers of people that they will affect:

- There are estimated to be 430,000 employed fathers who will be eligible for paternity leave.<sup>2</sup>
- There are around 3,500 domestic adoptions each year by strangers (i.e. excluding cases where a child is adopted by a family member, step-parent or foster carer).<sup>3</sup> For costing purposes, it is also assumed that the number of domestic adoptions in future years increases in line with the Government's objective. This objective is that the number of looked after children adopted by 2004/05 should exceed the 2000 figure by at least 40%. This means that in 2004 there could be approximately 4,100 domestic adoptions. In addition, there are around 300 overseas adoptions per year.<sup>4</sup>

### ***Equity and fairness***

18. The effects of the proposals while small are, however, likely to have a positive impact in terms of equity and fairness especially as they are intended to ensure the effectiveness of the regulations that were introduced under the Employment Act (2002). In particular:

- The changes are ensuring adopters can return to work on the same terms and conditions after leave as if they had not been absent. By contrast, the current situation is that this only applies to pay, which means it is possible that adopters

---

<sup>2</sup> Source: Labour Force Survey, male employees with a dependent child under the age of one and with six months or more length of service with their employer. Figure is average of 4 results over 4 quarters to Spring 2003.

<sup>3</sup> This estimate is for 2002/03 and has been provided by the Department for Education and Skills.

<sup>4</sup> This estimate is for 2002/03 and has been provided by the Department for Education and Skills.

could find their other terms and conditions amended on return to work. Hence the proposed changes put returning adopters onto the same footing as women returning from maternity leave.

- Those whose second week of SPP begins on or after the date of any increase in the rate of paternity pay will receive the higher rate in the second week rather than the existing rate, thereby ensuring all SPP beneficiaries are paid the correct rate whatever time of year their baby is born.
- The proposed legislation ensures that those adopting a child from overseas will not be disadvantaged if they start a new job during the adoption process, which can be a lengthy process lasting up to 15 months (if not longer) from the point of official notification. So, this measure also ensures the law is fair by applying it to a higher proportion of employees that the scheme is aiming to target.

## **Benefits**

19. The proposals are likely to benefit a small number of people, and the benefits are likely to be quite small.

20. The Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations will ensure that people getting SPP benefit from the increase in standard rate in the same way as recipients of other statutory payments – SMP and SAP. It will mean that these statutory payment schemes will be aligned thus simplifying administration for employers.

21. There would be an increase in financial support for those whose second week of SPP begins on or after the date of any increase in the rate of paternity pay. The number of employees that are likely to be affected, however, are small. Since some fathers will not wish to take two weeks off work for financial or other reasons we assume that there is 70% take-up of a two-week entitlement i.e. 301,000 fathers.<sup>5</sup> We estimate that around 5,800 people will be affected.<sup>6</sup> The total additional benefit is estimated to be around £16,000.<sup>7</sup>

22. Overseas adopters will receive a small benefit as a result of the change in the regulations that will allow more parents who change jobs between notification and adoption to be eligible for SAP. We assume that the time span between notification and adoption of a child from overseas is over a year<sup>8</sup>. Under the new provisions, for adopters to be able to receive SAP they still have to be in the same job in the six months prior to the adoption taking effect. Hence the change to the regulation will benefit those people who change jobs in the first six months after notification but who remain in that job thereafter. According to the Labour Force Survey the proportion of employees who have been with their current employer for less than six months is 10 per cent. Therefore, the total additional benefit resulting from the new provisions for adopters of overseas children will be around £86,000.<sup>9</sup>

23. This is a maximum figure since it is possible the proportion of adopters could be less than 10 per cent if one assumes adopters are less likely to change jobs than the average employee.

---

<sup>5</sup> Calculated as: 430,000 fathers\*0.7 = 301,000

<sup>6</sup> It is estimated that for 5,800 fathers the second week of SPP begins on or after the date of any increase in the rate of paternity pay (1/52\*301,000).

<sup>7</sup> Calculated as: (5,800\*£2.80\*1 week)

<sup>8</sup> Source: Department of Health

<sup>9</sup> Calculated as: Assuming both adoptive parents are working (10%\*300 cases\*26 weeks\*£102.80)+(10%\*300 cases\*2 weeks\*£102.80)

24. The removal of the requirement that an employee has to supply the name and date of birth of an adopted child to the employer will be beneficial in terms of protecting privacy. However, there will be no financial benefit to employers or employees.

### **Costs**

25. The costs of most of these proposals are likely to be negligible.

26. But there may be some identifiably small costs associated with three of the measures. In particular, the potential cost to the Exchequer as a result of bringing the payment process for SPP into line with SMP and SAP has been estimated to be around £16,000 (as in paragraph 21). This assumes that in the absence of the amendment if those whose second week of SPP begins on or after the date of any increase in the rate of paternity pay would not receive the higher rate in the second week. It is possible that this cost will not exist if all the employers are already passing on the increase in the SPP rate in the manner that was originally intended.

27. The potential cost to the Exchequer has been estimated to be around £86,000 (as in paragraph 22).

28. Also there is no apparent evidence that the regulation, which defines the term, “partner” that is used for cases of SPP after a baby’s birth, is being abused. So, we do not envisage any cost from this measure.

29. Any administrative costs resulting from the regulatory changes addressing these issues are likely to be very small.

### **Impact on small firms**

30. The impact on small business of the regulations contained in the Employment Act (2002) to extend maternity leave and introduce paid paternity leave and paid adoption leave was considered throughout an extensive public consultation process. Responses to the consultation were sought and received from small employers and their representatives; discussions were held with the Small Business Service and small employer focus groups set up by the Small Business Service.

31. These amendments are being made without the usual twelve-week period since they are unlikely to have any impact on individual employers and are quite detailed amendments. They do not involve any change in policies but merely represent the means by which the policy that was consulted extensively on can be correctly implemented as originally intended.

32. However, it needs to be recognised that the events triggering paternity and adoption leave may not happen very often in the ‘typical’ small firms. For example, a business with 50 employees with a workforce that is representative of the labour force as a whole would expect to have just one case of paternity leave each year. Adoption leave will be a rare occurrence for all but the largest employers.

33. Even in the rare case that an adoption leave case arises the proposed change in regulation will have little additional effect on the administrative costs faced by a small employer. The previous 2002 regulatory impact assessment already includes an element for administrative costs. Furthermore, since we assume that owner managers need to refer to regulatory guidance on the occasion that a case arises irrespective of whether there has been a change in the law, there should only be an additional cost on the employer if the proposed change is more complex. The proposed change does not increase complexity. Therefore, there is no additional burden on small employers as a result of this proposal.

### **Potential Unintended consequences**

34. Some potential unintended difficulties arising from the operation of the original regulations in the Employment Act (2002) have been identified. These minor changes discussed in this regulatory impact assessment are intended to ensure that these potential difficulties are ironed out, ensuring that the law is consistent with the policies and guidance that was released.

35. No other unintended consequences arising from these technical amendments or the original legislation have been identified.

### ***Distributional impacts***

36. The distributional impact resulting from these proposals is negligible.

### ***Evaluation***

37. As stated in the regulatory impact assessment for regulations on maternity and paternity leave and adoptive leave and pay, the Department of Trade and Industry (DTI) will work with the Inland Revenue and the Department for Work and Pensions to monitor information on take-up rates of paternity and adoption leave and pay. The DTI will continue informal discussions with family groups, and employee and employer representatives to assess qualitatively the impact of the measures (including the new amendments).

38. The Inland Revenue has responsibility for the operation of the schemes and will conduct reviews to assess the operational detail of the schemes and the usefulness of their guidance for employers, particularly small employers.

### ***Consultation***

39. The implementation of paternity and adoption leave and pay reflected the responses to an extensive public consultation, first proposed in the Green Paper *Work and Parents: Competitiveness and Choice*<sup>10</sup>. Further public consultation took place on subsequent framework documents<sup>11</sup> outlining the paternity and adoption leave and pay schemes and on a note on the schemes for overseas adopters<sup>12</sup>. These technical changes are being made only to ensure the regulations fully reflect the schemes that were consulted on.

---

<sup>10</sup> *Work and Parents: Competitiveness and Choice*, a Green Paper – published December 2000

<sup>11</sup> *Work and Parents: Competitiveness and Choice*, a framework for paternity leave and *Work and Parents: Competitiveness and Choice*, a framework for adoption leave. Both published May 2001

<sup>12</sup> *Adoption Leave and Pay: A Note on Intercountry Adopters* - published November 2002

## Summary of costs and benefits

**Table 1: Quantified and unquantified costs and benefits**

	Annual benefits	Annual costs	One-off costs
To employers	<ul style="list-style-type: none"> <li>Greater simplification of procedures with realignment of statutory pay procedures.</li> </ul>		<ul style="list-style-type: none"> <li>Low administrative costs for clarification of the definition of the term “partner” in regulations.</li> </ul>
To individuals	<ul style="list-style-type: none"> <li>Around £86,000. (Overseas adopters who change jobs will benefit.)</li> <li>Around £16,000. (Fathers whose second week of paternity leave begins on or after the date of any increase in the rate of paternity pay).</li> <li>Protection of privacy with employee no longer required to provide name and date of birth of adopted child to employer.</li> </ul>		
To the taxpayer		<ul style="list-style-type: none"> <li>Around £86,000 (Fathers whose second week of paternity leave begins on or after the date of any increase in the rate of paternity pay).</li> <li>Around £6,000. (Overseas adopters who change jobs will benefit.).</li> </ul>	

---

*Declaration*

*I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.*

*Signed.....*

*Gerry Sutcliffe, Parliamentary Under-Secretary of State, Department of Trade and Industry*

*Date: 3 February 2004*

*Contact point*

Any comments on this Regulatory Impact Assessment should be addressed to:

Stephen Fernando  
Employment Relations Directorate  
Department of Trade and Industry  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 3945  
Email: [stephen.fernando@dti.gsi.gov.uk](mailto:stephen.fernando@dti.gsi.gov.uk)