

Work and Families

Additional Paternity Leave and Pay
Administration

GOVERNMENT RESPONSE TO
CONSULTATION

JANUARY 2008

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WORK AND FAMILIES – ADDITIONAL PATERNITY LEAVE AND PAY ADMINISTRATION

GOVERNMENT RESPONSE TO CONSULTATION

1. INTRODUCTION AND BACKGROUND

1.1 The Work and Families Act 2006 took powers to enable a new provision of Additional Paternity Leave and Pay (APL&P) to provide more choice to parents in caring for their child and give fathers a greater opportunity to be involved in the upbringing of their child.

1.2 On 14 May 2007 the Government published a consultation document seeking views on the administration of APL&P¹. The consultation closed on 3 August 2007. This consultation was undertaken in response to the March 2006 consultation² where respondents had asked for another opportunity to consider the detail of the administration of the scheme.

1.3 The 2007 consultation invited views and practical suggestions on the preferred administration process and some of the remaining detail of the APL&P scheme. The consultation received 81 responses from across a wide range of organisations and individuals including; businesses (22), employer/trade organisations and associations (19), unions (9), local government and public bodies (17), individuals (10) and others (4). In addition to the written consultation, face-to-face meetings were held with business organisations and other interested parties.

¹ “Work and Families – Additional Paternity Leave and Pay Administration Consultation” May 2007; URN 07/788 www.berr.gov.uk/files/file41515.pdf

² “Work and Families Choice and Flexibility – Additional Paternity Leave and Pay” March 2006; URN 06/639 www.berr.gov.uk/files/file25024.pdf

1.4 Responses to the consultation were generally positive and indicated that respondents were keen for the administration of the scheme to be kept as straightforward as possible and to reflect existing maternity, paternity and adoption provisions where possible.

1.5 It remains the Government's intention to implement APL&P, alongside the extension of Statutory Maternity Pay, Maternity Allowance and Statutory Adoption Pay before the end of this Parliament.

1.6 Although the term 'father' is used throughout this document, APL&P will also be available to partners and civil partners of mothers, and to members of adopting couples where there is an entitlement to Statutory Adoption Leave and Pay. Additional Paternity Leave and Pay will be available to the member of the adopting couple who chooses not to receive Statutory Adoption Pay. The same administration and eligibility arrangements will apply.

2. THE ADMINISTRATIVE PROCESS

2.1 It is the Government's intention to keep the APL&P provisions as straightforward and as 'light touch' as possible in order to reduce administrative burdens to business, whilst ensuring both employers and employees are clear on their respective rights and obligations under the scheme. Where statutory payments are concerned, the Government also needs to consider the balance between these interests and protecting the taxpayer from the consequences of payments made or claimed either in genuine error or fraudulently. The new scheme, as with any other statutory payment, will bring with it the risk of abuse, but we expect this to be relatively low and the steps taken to ensure compliance will be proportionate.

The specific questions explored during May 2007 Additional Paternity Leave and Pay Administration consultation and the Government's response to them are set out in this document.

3. CONSULTATION QUESTIONS

Question 1

Are there any practical problems with this process and if so, what can be done to overcome these problems?

2.2 Respondents were largely happy with the balanced approach being taken. They liked the fact that the administration of the scheme was being kept as straightforward and as 'light touch' as possible. Respondents also commented that they did not expect the burden on business to be great because the expected take up of APL&P would be low. However, where there were concerns, they tended to centre on the potential for fraud and on the notice period that a father should provide his employer with where he wanted to change his previously agreed dates for taking APL&P (for the Government's response regarding 'notice periods' please see question 8).

'Support self-cert, but have concerns about abuses.'

Employment Lawyers' Association

'The FSB is concerned that it will be impossible for an employer to be completely certain on the accuracy of any information provided by the employee which relates to his entitlement to APL.'

Federation of Small Businesses

'We endorse the commitment to keeping the administration as simple and straightforward as possible. In our view the process put forward in this consultation is a significant improvement on the original and we are pleased that some of our concerns have been addressed. Self-certification is simple, least burdensome to employers and minimises the risk of the father's rights being jeopardised by a failure of one employer to pass information to the other by the due date.'

Equal Opportunities Commission

A number of respondents to question 1 raised concerns over the possibility for fraud. In order to discourage fraud HMRC will carry out compliance checks and may impose financial penalties where it can be shown that claimants either fraudulently or negligently make a claim for APL&P.

Questions 2 & 3

2.3 It will be important that where an employee has indicated that he wishes to take Additional Paternity Leave and Pay, he receives confirmation of his eligibility and the timing of his leave and pay in good time before any leave is due to begin. In the consultation we asked:

Q2 Do you agree that there should be a notice period for an employer to confirm an employee's entitlement to Additional Paternity Leave and Pay?

and

Q3 Would 28 days be a reasonable period for both the employer and the employee? If not, what would be a reasonable period?

2.4 Of those respondents that answered the questions (85%), all agreed that there should be a notice period for employers to confirm an employee's entitlement to APL&P. The majority (77.5%) further agreed that 28 days, which mirrors the current maternity leave notice period for employers, would be reasonable.

'Yes. This mirrors the notice period for confirmation of a woman's entitlement to maternity leave and pay, so there is a clear advantage in having the same arrangements for APL&P.'

TUC

'The FSB agree that it is reasonable for the employer to have a time frame to confirm the employee's entitlement to Additional Paternity Leave and Pay. The FSB agree that 28 days would be an appropriate period of notice.'

Federation of Small Businesses

'A 28 day period of confirmation appears reasonable, and has the support of some of our employer members.

Working Families

When an employee applies for a period of APL&P the employer will be required to confirm an entitlement within a 28 day statutory period.

Questions 4 & 5

2.5 Under current Ordinary Paternity Leave and Pay provisions, a father is required to self-certify that he is eligible for Ordinary Statutory Paternity Pay. This can be done by providing the information required on HMRC's SC3 form, although use of the form itself is not a statutory requirement. The information needed to claim Ordinary Paternity Leave must be put in writing if the employer requests it. In line with the Government's commitment to ensuring that the administration and provision of APL&P is kept 'light-touch', and as straightforward as possible for both employers and employees, the consultation asked:

Q4 Should an entirely new form be developed purely for Additional Paternity Leave and Additional Statutory Paternity Pay, instead of amending the existing SC3?

and

Q 5 Should it be a mandatory requirement to use either this form or a substitute to notify the intended dates for Additional Paternity Leave and Additional Statutory Paternity Pay?

2.6 The majority of respondents (62.5%) thought that amending the existing SC3 form would be sufficient as long as it was 'user friendly' and gave clear guidance on how and when it should be completed. People said that they wanted explanatory information on the form, for example, the form should state what the qualifying period is for a father to claim APL&P rather than just asking whether a father was eligible. It was also felt amongst some of the respondents that introducing a new form solely for APL&P purposes would increase the administrative burden, particularly for small businesses.

Most respondents (68.75%), and businesses in particular, said that they would like to see the completion of the SC3 form made mandatory. It was felt that by doing so there would be fewer opportunities for mistakes to be made by

employees when applying and it would make the administration of the scheme simpler for employers. However, it was also recognised that it would be difficult to penalise an employee where they had supplied sufficient information, but not in the correct format. Some larger organisations also pointed out that they would use 'in house' versions of the form that were more in line with their own administrative processes.

'The existing form should be amended as administrators are already familiar with the form and its purpose. Including APL and ASPP on the one form will help raise awareness of additional entitlements.'

Leeds City Council

'Yes, although companies should be allowed to develop their own form, so that employees are only filling in one form and not several. We would want to issue our form electronically.'

Tesco Stores Limited

'.....if the mother and father have submitted all the required information in time in different form then no penalty should apply as long as the form is completed as soon as practically possible.'

UNISON

'The NUT suggests that it would be preferable for claimants to use the standard form or a substitute to ensure that claimants are aware of the information they need to provide.'

National Union of Teachers

'The FSB would not recommend an entirely new form for any aspect of APL. The FSB believe that forms for APL and Additional Paternity Pay should mirror those of maternity leave and Statutory Maternity Pay as closely as possible to ensure consistency and ease of use for the employer.'

Federation of Small Businesses

- **Responses showed a preference to amend the existing SC3 to include APL&P – and thus avoid increasing the number of forms. HMRC will undertake work to test whether this is user-friendly, or whether an entirely new form will be required.**
- **Completion of a form containing all the required information will be compulsory.**
- **Employers will be allowed to produce their own substitute versions of the form - but such substitutes must contain as a minimum the information on the standard HMRC form.**

Questions 6 & 7

2.7 At the request of employer representative groups, HMRC produced a draft employer checklist to help employers in making decisions on their employees' eligibility for APL&P.

The consultation asked:

Q6 Is there anything else that should be included in the checklist for employers?

and

Q 7 Should completion of the employer checklist (or a substitute) be a mandatory requirement in every Additional Paternity Leave and Pay case?

2.8 There were few suggestions about what else should be included in the employers checklist. However, among those respondents that did answer the questions (83%), many had strong opinions, both for and against, about whether the completion of the checklist should be made mandatory. Whilst it was recognised that many employers would undoubtedly find a checklist helpful, others thought that it would be an unnecessary administrative burden if completion were made compulsory.

'Checklist should not be mandatory – employers should be allowed to use other means to demonstrate payments made in good faith.'

Association of Licensed Multiple Retailers

'No - At the very most the completion of the employer checklist (or a substitute) should be recommended but not mandatory.'

Eversheds LLP

'UNISON believes that a compulsion on employers to complete the employer checklist would avoid complicated errors needing to be addressed at a later stage and would protect an employee who had made a claim in good faith and place the onus to confirm eligibility on the employer.'

UNISON

Completion of the checklist by employers will not be made mandatory. It will be strongly recommended that employers use the checklist to demonstrate that they have acted with due care. If employers choose not to use the checklist then they will still need, by some other means, to satisfy themselves (and potentially also HMRC) that they have carried out the necessary checks for HMRC compliance purposes.

Question 8

2.9 Under the terms of the APL&P scheme, fathers will be required to provide their employers with at least 8 weeks' notice of their intention to take APL&P. When applying, they will also be required to provide their employer with a declaration from the mother which states the start and end dates of her Statutory Maternity Pay or Maternity Allowance and her intended return to work date.

Under current maternity leave provisions, mothers are entitled to change their return to work dates. They are required to provide their employer with at least 8 weeks' notice of any changes. However, with the agreement of their employer, a mother may return to work after a shorter notice period.

If the mother does decide to change her maternity leave dates, then the father may also have to alter his APL&P start and finish dates. The consultation proposed that the period of notice for a father to notify his employer of any changes should be either 4 or 6 weeks. We considered that an 8 week notice period would not work in practice. This is because it would effectively require a father to notify his employer of the original start date and of the change date at the same time. This would not be possible given that the change is likely to be caused by the mother altering her return dates. The consultation asked:

Q8 How much notice should the regulations require the employee to give his employer of any change of plans before beginning his Additional Paternity Leave / Additional Statutory Paternity Pay?

'We believe that 6 weeks would be reasonable and would give the father sufficient time to inform his employer of any change in plans caused by the mother changing her return dates.'

Travers Smith

'We believe that 6 weeks is a reasonable period.'

Federation of Small Businesses

'GMB believes that a 4 week period as suggested is sufficient in circumstances that require a late notice to be provided to the employer.'

GMB

'4 weeks notice is acceptable in genuine changes of circs.'

Institute of Payroll Professionals

In order to allow a degree of flexibility between mothers changing their dates and fathers informing their employers of their change in circumstances, the legal requirement will be for fathers to provide 6 weeks' notice of any changes to their start and finish dates for APL&P. Employers will of course be free to agree to a shorter notice period if they wish.

Question 9 & 10

2.10 In many cases, once a father has given the necessary notice to his employer that he wishes to take Additional Paternity Leave and/or Pay, there will be no further changes to his planned arrangements. However, there will be instances where a couple's circumstances change, possibly after the 6 week notice period required to inform the employer of a late change of circumstance. The consultation asked:

Q9 Do you agree with the proposal to allow employers, where a late change of circumstances cannot reasonably be accommodated, to oblige a father to take his Additional Paternity Leave and Pay (or unpaid leave if he is no longer entitled to Additional Paternity Leave and Pay) at the previously agreed times, if the employee provides insufficient notice of a change of plan?

and

Q10 Can you identify any other preferable means of achieving the same result?

2.11 The majority of respondents (72.5%) thought that where a late change of circumstances could not be accommodated, then an employer should have the right to compel the employee to take his leave at the previously agreed times. However, respondents were also very clear that compelling fathers to take their previously agreed leave should only be used in exceptional circumstances where a late change could not genuinely be reasonably accommodated. Respondents also suggested that, where possible, employers should be flexible when considering any changes and clear guidance should be provided. There were few suggestions in response to question 10.

'Employer should have power to enforce APL, but only where change of circumstances cannot reasonably be accommodated.'

Royal Mail Group

'Yes - employer should have power to turn down request if change cannot reasonably be accommodated (i.e. hired a replacement to cover absence).'

British Chamber of Commerce

'BP agrees that this would be a good fall back position but that it should only be used as a last resort'.

BP International UK

Where a father's late change of circumstances cannot reasonably be accommodated by his employer, then the employer will have the right to insist that leave dates, whether paid or unpaid, are taken at the previously agreed times.

4. Conclusion

3.1 The Government is grateful to all those businesses, organisations and individuals who have taken the time to respond to this consultation. The feedback we received has been instrumental in the further development of the APL&P scheme.

3.2 The Government now intends to carry out a further consultation on the legal and technical aspects of the APL&P draft regulations.

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5. Summary of consultation questions

Q1 Are there any practical problems with this process and if so, what can be done differently to overcome these problems?

Q2 Do you agree that there should be a notice period for an employer to confirm an employee's entitlement to Additional Paternity Leave and Pay?

Q3 Would 28 days be a reasonable period for both the employer and the employee? If not, what would be a reasonable period?

Q4 Should an entirely new form be developed purely for Additional Paternity Leave and Additional Statutory Paternity Pay, instead of amending the existing SC3?

Q5 Should it be a mandatory requirement to use either this form or a substitute to notify the intended dates for Additional Paternity Leave and Additional Statutory Paternity Pay?

Q6 Is there anything else that should be included in the checklist for employers?

Q7 Should completion of the employer checklist (or a substitute) be a mandatory requirement in every Additional Paternity Leave and Pay case?

Q8 How much notice should the regulations require the employee to give his employer of any change of plans before beginning his Additional Paternity Leave / Additional Statutory Paternity Pay?

Q9 Do you agree with the proposal to allow employers, where a late change of circumstances cannot reasonably be accommodated, to oblige a father to take his Additional Paternity Leave and Pay (or unpaid leave if he is no longer entitled to Additional Paternity Leave and Pay) at the previously agreed times, if the employee provides insufficient notice of a change of plan?

Q10 Can you identify any other preferable means of achieving the same result?

Department for Business, Enterprise and Regulatory Reform.

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