



Department
for Business
Innovation & Skills

MODERN WORKPLACES:

**Shared parental leave and pay
- administration consultation**

FEBRUARY 2013

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Shared Parental Leave Administration Consultation

1. The Government is publishing this consultation on the administration of shared parental leave and pay following commitments made in the Government's response on the flexible parental leave element of the Modern Workplaces consultation, which we published on 13 November 2012.

Shared parental leave and pay will give parents more choice and flexibility in how they share the care of their child in the early stages of its life. This will enable both parents to retain a strong link with the labour market; encourage more fathers to play a greater caring role (both pre-natal and in the early stages); and allow employers and employees greater flexibility in the way in which they reach agreement on how best to balance work and domestic needs without state interference.

This consultation seeks practical comments and suggestions on the administrative process to ensure that it is as streamlined as possible.

Details of the Modern Workplaces consultation can be found at:

<http://www.bis.gov.uk/Consultations/modern-workplaces>

Issued: **25 February 2013**

Respond by: **17 May 2013**

Enquiries to: Modern Workplace Team
Department for Business Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Email: modernworkplaceconsultation@bis.gsi.gov.uk

This consultation is relevant to employers and employees, family groups, unions and representative organisations, but welcome suggestions from others who may wish to be involved in this consultation process.

1. Foreword



2. Enabling mums and dads to choose how to share time off after their baby is born will help families juggling their new responsibilities at what is a joyous, but challenging, time. While the Government response to the Modern Workplaces Consultation set out the broad policy for shared parental leave, as business leaders regularly remind me, the devil is in the detail. I am keen to ensure that administering shared parental leave is simple and straightforward for parents and employers alike. This consultation is about getting this detail right and making shared parental leave workable.
3. Drawing on all the talents in the workplace is essential if we are to build a stronger economy and a fairer society. Family-friendly workplace policies simultaneously support working families and economic growth. Shared parental leave is about a real cultural shift in the way we view the responsibility for raising children and how this fits in with the working lives of dads, mums and employers.
4. Shared parental leave also gives dads the opportunity to play a greater role in raising their child; supports mums in returning to work at a time that is right for them without losing entitlement to their remaining leave; and enables both parents to keep contributing to the labour market.
5. Employers too can benefit from this new system enabling them to have frank and open discussions with their employees about their leave plans. It means that they can attract and retain talented women who may otherwise struggle to combine their work and family responsibilities. It also reduces the loss of knowledge and human capital from the workplace, and increases employee commitment.
6. This consultation seeks views on the detailed administration of the scheme and the implications of these changes. I look forward to hearing your views on the proposals and would like to thank you for taking the time to respond.

**Jo Swinson MP, Minister for Employment Relations
and Consumer Affairs**

2. Executive Summary

7. This consultation seeks views on the detailed administration of shared parental leave and pay.
8. It sets out our proposals for changes to maternity, paternity, adoption and shared parental leave. This is to give clarity on how the system will work and fit together. Views are sought on a range of issues. These, in turn, will influence how we legislate under the Children and Families Bill 2013.
9. The proposals set out in this consultation cover:

Name change from flexible parental leave to shared parental leave

10. To avoid confusing the new statutory leave and pay system with the EU derived unpaid parental leave entitlement, we have decided to call the new system 'shared parental leave and pay'. This is to distinguish it from the individual entitlement to unpaid parental leave, which may also be taken flexibly. It also underlines the shared nature of the leave, which can be taken by two people. From this point forward the consultation will refer to the new system as shared parental leave.

Ante-natal appointments

11. We are introducing a statutory "day-one" right for fathers and partners of pregnant women to unpaid time off work to attend up to two ante-natal appointments. This right will be extended to including certain intended parents of children born through surrogacy. We are proposing that:
 - individuals will not be required to provide evidence of the pregnancy to qualify for time off;
 - there will be no statutory process for making request for time off to attend ante-natal appointments; instead this will be left to employers to set a process if they wish to.

Informing employers of the intention to take paternity leave and pay

12. The baby's father, mother's partner or a "secondary adopter" (the individual in a couple who has not been designated as the "primary adopter") will continue to be entitled to up to 2 continuous weeks' paid paternity leave as they are currently. At present, to be eligible for leave, individuals must provide notice by the 15th week before the week the baby is due (or within 7 days of being matched with a child for adopters); to be eligible for pay the individual must provide 28 days notice of their intention to take pay. We are seeking views on whether the differing notice periods

for leave and pay can create confusion amongst employers and employees.

Eligibility criteria for shared parental leave

13. To qualify for shared parental leave and pay both parents (birth or adoptive or intended parents in surrogacy agreements) will be required to follow a two-stage process. We will introduce an economic activity test that sets a low earnings and labour market attachment threshold for parents. Parents will then need to consider their own employment record to assess whether they qualify individually for shared parental leave and statutory shared parental pay.

Notice to bring to an end maternity leave and maternity pay, or allowance, if accompanied by a notification of intention to access the shared parental system

14. Mothers who currently qualify for 52 weeks of maternity leave and 39 weeks of maternity pay or allowance will continue to do so in the same way that they do at present.
15. We will introduce a notification to indicate to employers that eligible parents (birth, adoptive or intended parents in a surrogacy arrangement) plan to opt into the shared parental system. Each employed parent will need to submit this to their own employer. The form will set out how the balance of shared parental leave and pay will be divided between them. We are consulting on the level of information that needs to be provided by the employee in this notification. Parents will be able to agree how they divide their total shared parental leave and pay entitlement between them, including agreeing to transfer their remaining leave and pay from one parent to the other at a later date. Alongside this, we propose to provide scope for individuals to make changes to their individually agreed patterns of leave with the agreement of their employer.
16. We propose that a woman can commit to ending her maternity leave at some future date, with protections in place where a mother gives notice prior to the birth to end her maternity leave at a future date. The untaken weeks of her overall leave and pay entitlement can become available for her partner to take as shared parental leave and/or pay to allow the mother and her partner to take leave at the same time and for the family to be at home together, if they so choose.
17. Mothers will, for a limited period, be able to revoke the notice to end maternity leave for a specified period after birth. We are consulting on the length of time after the birth that it would be reasonable for the mother to be able to revoke her notice.
18. All eligible parents (including birth, adoptive and intended parents in surrogacy arrangements) will be able to agree how they divide their total shared parental leave and pay entitlement between them, including

agreeing to transfer their remaining leave and pay from one parent to the other at a later date. Alongside this, we propose to provide scope for individuals to make changes to their individually agreed patterns of leave with the agreement of their employer.

Time limit in which to use the shared parental system

19. We are consulting on the cut-off point after which parents will no longer be able to use any outstanding shared parental leave or pay entitlement.

Keep in Touch (KIT) days

20. We propose introducing Keep in Touch days for parents on shared parental leave. These will operate along the same principles as the current system which will continue to be available to women on maternity leave. With the mutual agreement of the employer and the employee, parents may choose to use these days to test out a new pattern of working before making a formal request for flexible working, or to phase their return to work. We are consulting on the appropriate number of KIT days for shared parental leave.

Right to return to the same job

21. We want the new shared parental leave system to provide suitable protection for parents whilst maintaining flexibility for employers. We are consulting on the most suitable approaches to employee protections when returning from shared parental leave.

Adoption

22. Adoption leave will become a “day-one” right for employed adopters and statutory adoption pay will be enhanced to 90% of salary for the first 6 weeks for the “primary adopter”, in line with statutory maternity pay. We will also introduce an entitlement to time off to attend adoption meetings. The “primary adopter” will be entitled to time off to attend up to 5 paid pre-adoption appointments and the “secondary adopter” will be entitled to time off to attend up to 2 unpaid pre-adoption appointments. The total amount of time off per appointment will be capped at 6.5 hours.
23. In order to speed up the adoption process, the Government is making changes to the adoption system. Local authorities will now have a duty to consider using ‘fostering-to-adopt’ placements for looked after children, as these placements are very likely to lead to adoption. In a bid to support this, we are proposing to make statutory adoption leave and pay entitlements available to approved adopters, where a child is placed with them in a fostering-to-adopt capacity. We are consulting on how we can provide realistic notification for employers of the need to take adoption leave and pay in these circumstances.

24. We will publish an amended Impact Assessment that sets out the estimated costs and benefits of the proposed administration process of the new scheme alongside the Government response to this consultation.

3. How to respond

25. NOTE: in addition to the response form annex, you must provide this in a separate Word document. This is for accessibility purposes, and to help respondents to reply electronically. Remember that consultations are digital by default.
26. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
27. For your ease, you can reply to this consultation online at <https://www.surveymonkey.com/s/Y8BZBFL>
28. A copy of the Consultation Response form is enclosed at Annex E or available electronically at <https://www.gov.uk/government/consultations> (until the consultation closes). If you decide to respond this way, the form can be submitted by letter, fax or email to:

Sammy Harvey
Modern Workplaces
Department of Business, Innovation and Skills
1-19 Victoria Street
London
SW1H 0ET
Tel: 020 7215 4268

Email: modernworkplacesconsultation@bis.gsi.gov.uk

29. A list of those organisations and individuals consulted is in Annex B. We would welcome suggestions of others who may wish to be involved in this consultation process.

4. Additional copies

30. You may make copies of this document without seeking permission. BIS consultations are digital by default but if required, printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845-015 0010
Fax: 0845-015 0020
Minicom: 0845-015 0030

www.bis.gov.uk/publications

31. Other versions of the document in Braille, other languages or audio cassette are available on request.

5. Confidentiality & Data Protection

32. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
33. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

6. Help with queries

34. Questions about the policy issues raised in the document can be addressed to:

Sammy Harvey
Modern Workplaces
Department of Business, Innovation and Skills
1-19 Victoria Street
London
SW1H 0ET
Tel: 020 7215 4268

Email: modernworkplacesconsultation@bis.gsi.gov.uk

7. The proposals – Shared Parental Leave

35. In May 2011 the Government published the Modern Workplaces consultation which included proposals to create a system of flexible parental leave. On 13 November 2012 we published the Government response to the shared parental leave element of the consultation (“the Government Response”) setting out our proposals for reforms to the current maternity and paternity system. This consultation seeks views on the detailed administration and practical implications of the changes which will be taken forward in secondary legislation.

The Proposals

36. Name change from flexible parental leave to shared parental leave

- a) We have decided to call the new statutory leave and pay ‘shared parental leave and pay and not ‘flexible parental leave and pay’ (as originally suggested in the Modern Workplaces consultation document). The name change highlights the fact that this new entitlement is only available to couples who are both economically active and avoids any possible confusion with the EU derived entitlement to unpaid parental leave.

37. The package of leave and pay that will be available to parents and adopters following the Children and Families Bill and subsequent secondary legislation is:

- b) The 52 weeks of maternity leave will remain in place as the default position for all employed women. Women who are currently eligible to receive statutory maternity pay or maternity allowance will continue to be able to do so for 39 weeks.
- c) Mothers with a partner where they both meet the qualifying conditions for the shared parental system will be able to return to work, or commit to ending their maternity leave on a specific date, and share the untaken balance of maternity leave and pay as shared parental leave and pay. The length of shared parental leave will not exceed the balance of untaken maternity leave, and the amount of statutory shared parental pay will not exceed the balance of untaken statutory maternity pay or maternity allowance available at the point at which the woman returned or commits to return to work. Each parent will need to qualify in their own right for shared parental leave and pay.
- d) To use the new shared parental system an individual’s partner will need to meet certain economic activity tests. Each parent will need to meet the qualifying criteria for leave and/or pay on an individual basis in order to be entitled to it. These qualifying criteria will mirror criteria for existing entitlements such as maternity pay and allowance and paternity pay

and leave so that families will be able to easily work out their entitlement.

- e) Adoptive parents (including parents in surrogacy arrangements who are eligible for adoption leave and pay and paternity leave and pay) will also be able to access the shared parental leave and pay system. The qualifying conditions will be as close as possible to those for birth parents. Where both adopters meet the qualifying conditions, the primary adopter will give notice to end adoption leave and pay and notify their employer that they intend to give rise to shared parental leave and pay. The couple will then be entitled to shared parental leave and pay equal to the remaining weeks of adoption leave and pay.
- f) It is envisaged that shared parental leave may be taken by the mother or primary adopter and a person with whom care of the child is shared who is the father of the child or the mother's/primary adopter's partner (husband, civil partner or partner, including same sex). (For ease this person is referred to as the 'mother's partner'. The mother and the mother's partner are referred to together as 'partner/carer'). Shared parental leave can be taken at the same time that the mother is still on maternity leave, or both the mother and her partner can be on shared parental leave together, so long as the total amount of leave does not exceed the couple's joint entitlement. Each parent will only be entitled to the leave and pay that they qualify for.
- g) It is envisaged that shared parental leave can be taken in a minimum of one-week blocks. The amount available to each parent will be decided by the parents, who will each subsequently need to agree the timing and individual periods of leave with their employer. In the event that individual periods of leave cannot be agreed, the leave will default to a single block of leave to commence on a date specified by the employee.
- h) We propose to introduce shared parental leave and statutory shared parental pay in 2015. We will consider making arrangements for working parents who do not meet the qualifying conditions for statutory payments. Such a provision will not be introduced before 2018.

Paternity Leave

- i) We will retain the 2 weeks' paternity leave provision for the exclusive use of the father or the mother's/primary adopter's partner (including intended parents in surrogacy arrangements) on a "use it or lose it" basis in a single block of one week or two weeks. This will still have to be used within 56 days of the birth.

Ante-natal appointments

- j) We will be providing the right for employees and qualifying agency workers to take time off work to attend up to 2 ante-natal appointments. The right is available to the husband, civil partner or partner of the

pregnant woman, to the father or parent of the expected child, or to intended parents in surrogacy cases who meet specified conditions relating to parental orders under the Human Embryology and Fertilisation Act 2008. This right will be unpaid.

Extending the age cut off for unpaid parental leave

- k) We will increase the age limit on unpaid parental leave from the current years to 18 years. From 2015, each parent will have the right to 18 weeks of unpaid parental leave for each child up to the age of 18. We are not proposing to make any changes to the current arrangements regarding notification and time limits on taking leave.

Adoption: leave and pay

- l) Statutory adoption leave will become a “day one” right with no qualifying length of service conditions for eligible adopters who are matched with a child for the purpose of adoption (or who are matched with a child under the “fostering for adoption” scheme). An adopter who qualifies for statutory adoption leave may end that leave and trigger shared parental leave if both adopters, or the adopter and his or her partner, meet the qualifying criteria for the shared parental leave and pay system. Each parent will need to qualify for leave and pay in their own right in the same way as birth parents. In addition, statutory adoption pay will be increased to 90% of weekly earnings for the first six weeks of the statutory adoption pay period (to match the rate for statutory maternity pay).

Surrogacy

- m) The intended parents in a surrogacy arrangement who meet the criteria to apply for a Parental Order under the Human Fertilisation and Embryology Act 2008 and who intend to apply for one or have applied for one will be eligible for statutory adoption leave and pay and shared parental leave and if they meet the relevant additional qualifying criteria.

8. Administration of Maternity and Paternity rights

38. Shared parental leave and pay will support shared parenting by giving mothers and fathers (or mother's partner) access to a period of paid parental leave in the first year of their child's life, in circumstances where maternity and adoption leave and pay are brought to an early end. It will encourage both parents to take an active caring role, and help both parents to retain their attachment to the workplace by allowing them to agree periods of leave that works for them and their employers. More importantly, for those working families who choose, the new system will give parents the opportunity to share the leave and pay much more flexibly.
39. We want to make it easier for businesses to employ people; and for employees to balance work and family commitments. This enables employers to recruit from the widest possible pool of talent, and helps contribute to the UK's skilled and flexible workforce.
40. We are aware that businesses need to adapt to new regulations and we are keen to ensure that this is as straightforward as possible. We recognise that employers need to be able to plan and manage their workforce whilst their employees are absent from the workforce. We want to ensure that the administration of the new shared parental leave scheme is light touch and simple. We want to explore fully the views and concerns of employers and employees to determine the best routes to implementing the new scheme with minimised administrative costs.

Section 1: Ante-natal appointments

Ante-natal appointments

41. Under the current process, pregnant women have the right to reasonable paid leave from their employer to attend ante-natal appointments recommended by a health professional. However, a mother's partner has no statutory entitlement to take time off to attend ante-natal appointments with their wife/partner. Under the new shared parental leave proposals we intend to provide a "day-one" right for employees and qualifying agency workers to take time off work to attend up to 2 ante-natal appointments. The right is available to the husband, civil partner or partner of the pregnant woman, to the father or parent of the expected child, or to intended parents in surrogacy cases who meet specified conditions relating to parental orders under the Human Embryology and Fertilisation Act 2008 (references to the 'father' in the rest of this document will include all the persons listed above). The decision as to whether an individual father can attend an ante-natal appointment will always rest with the mother, but fathers will be able to use this entitlement to take leave from their employer for this purpose.
42. In order to ensure that the absence from work is proportionate, we have capped the amount of unpaid leave available for travelling and attending

the appointment at 6.5 hours per appointment. 6.5 hours was chosen because this is ½ a day, under the maximum working day allowed by the Working Time Directive.

43. We propose that the right to take unpaid time off to attend two ante-natal appointments will be a day one-right for all employed fathers (or the mother's partner) and applicants will not have to provide an employer with any evidence of the pregnancy in order to exercise this right. We have reached this conclusion on the grounds that the amount of leave available is low, and is unpaid, and there is no proportionate way to demonstrate the pregnancy. A mother's appointment card for an ante-natal appointment is confidential and contains personal information that she should not be required to share with her partner's employer. If an employer wished to offer pay for this leave on a contractual basis they would be able to attach their own evidence conditions to this leave, if they wished. Time off to attend ante-natal appointments will be a new statutory right for fathers. Employers will not be able to refuse a father's request for unpaid time off to attend an ante-natal appointment. We do not propose to create any statutory process for making a request for time off to attend an ante-natal appointment; this will instead be left to employers to set a process if they wish to.
44. Time off to attend ante-natal appointments will also be available to intended parents in a surrogacy arrangement who are potential applicants for a parental order. They will be able to attend appointments with the pregnant surrogate (host). Each intended parent in a surrogacy arrangement will be entitled to unpaid leave to attend up to 2 antenatal appointments capped at 6.5 hours per appointment.

Section 2: Informing employers of the intention to take leave and pay.

Maternity leave and pay

45. All pregnant employees will retain their entitlement to up to 52 weeks' statutory maternity leave. Currently to be eligible to claim maternity leave a pregnant woman is required to give notice to her employer that she is pregnant and intends to take maternity leave at least 15 weeks before her expected week of confinement (EWC) (baby's due date). This is the week her baby is due to be born. If this is not possible she must submit this notice at the earliest practical date. She can change the start date of her maternity leave if she gives at least 28 days' notice. Maternity leave begins automatically if at any time within the 4 weeks before the EWC the mother is absent from work with a pregnancy related illness, or from the day after a woman gives birth. Pregnant women are always encouraged to notify their employer of their pregnancy at the earliest opportunity to enable the employer to make any necessary adjustments to her work environment. This also helps employers plan for employee absence.

46. A woman's employer is currently entitled to ask the woman for the notice in writing and a copy of the maternity certificate (form MAT B1) as evidence of her pregnancy. The woman will be given a MAT B1 by her doctor or midwife after her 21st week of pregnancy. Her employer must write to her within 28 days of receiving the notice confirming her entitlement to take statutory maternity leave and giving the date that her statutory maternity leave will end. A woman on statutory maternity leave is expected to return to work at the end of her 52 weeks' maternity leave. However, she may return to work before the end of the 52 week statutory maternity leave period, providing she gives her employer a minimum of 8 weeks' notice of her intention to return.
47. As maternity leave is a "day-one" right for pregnant employees and mothers must be allowed to take maternity leave for health reasons. An employer must allow them leave regardless of whether they give the required notice or not.
48. If the mother qualifies for statutory maternity pay (SMP) from her employer she is required give her employer at least 28 days notice of when she wants the payments to begin. If she is unable to give 28 days notice she should tell her employer as soon as possible, when she wants SMP to start.

Paternity leave and pay - notice period

49. Employed fathers, or a mother's/primary adopter's employed partner, will remain entitled to up to 2 continuous weeks' paternity leave, to support the mother and/or care for the child, if they have been continuously employed by the same employer for at least 26 weeks by the end of the 15th week before the week the baby is due and continue to be employed by the same employer until the date the baby is born.
50. Currently, to be eligible to take leave the father or mother's partner must give their employer notice by the 15th week before the week the baby is due (or within 7 days of being matched with a child for adopters); of whether they will take one or two weeks; and of when they will take the leave.
51. Fathers (or a mother's partner) must give their employer notice of their intention to take paternity pay at least 28 days before they intend to take it.
52. The difference between the notice periods for leave and pay has the potential to cause confusion to both employers and employees, and has led to instances where employees have failed to give sufficient notice for paternity leave, but are still entitled to the pay if they take a different type of leave e.g. special unpaid leave, or parental leave.
53. We propose to align the notice periods for paternity leave and pay to require fathers (or a mother's partner) or a secondary adopter to give their employer notice at least 15 weeks before the expected week of

confinement (or within 7 days of being matched with a child for adopters) for paternity leave and pay. We believe that this will simplify the system for employers and ensure that they get sufficient notice of a father's plans. Applicants will continue to be able to make changes to the number of weeks and provisional dates of paternity leave by giving their employer at least 28 days' notice before the expected week of child birth.

54. However we do not have any statistical evidence to show that the difference between notice periods is a significant issue. We would therefore like to invite evidence on whether or not the difference in notice periods does cause employers a problem and whether there are any other consequences to aligning the notice for leave and pay.

Q.1. Do you have any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

Q.2. Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth(or within 7 days of being matched with a child for adopters)? If not, please explain why.

55. Paternity leave cannot be started before the birth and has to be taken within 56 days of the birth. There is no statutory process or form for fathers to notify their employer of their intention to take paternity leave, but an employer may ask an applicant for paternity leave to declare their relationship status with the mother/primary adopter's and that they will be responsible for the child's upbringing, and that they are taking the leave to support the mother or care for the child. We do not propose to make any changes to this.

56. We do not intend to align maternity leave and pay notification dates because the current rules allow some flexibility for mothers to choose what suits them best with regards leave and pay during the late stages of pregnancy?

Eligibility criteria for shared parental leave

Economic activity test

57. In order to qualify for shared parental leave and pay the mother/primary adopter's and their partner must have caring responsibility for the child. The first stage of the eligibility assessment is an economic activity test that an individual's partner must meet in order to qualify for the system. This criteria is based on the criteria for maternity allowance which is as follows:

- a) The person partner must have worked for any 26 out of the 66 weeks preceding the baby's due date, or the adoption matching date, (or date of the child's entry into the UK for overseas adopters) and have earned at least £30 gross salary per week for any 13 of those 66 weeks.

58. This criterion sets a low earnings and labour market attachment threshold. We believe that this test is appropriate to meet the aims of the shared parental leave policy which is to allow choice and flexibility for working families with regard to childcare in the early months of a child's life (or during the first few months of placement of a child with an adopter or prospective adopter). The policy aims to support working parents and promote labour market attachment.
59. We believe that this criteria will ensure that working parents where both are economically active will be able to access the system to share leave and pay, even though they might not both qualify for both the leave and the pay.
60. Eligibility for the shared parental leave system for one parent/carer is dependent on the other parent/ carer being economically active as defined by the economic activity test. (This is because this is a labour market policy, designed to support working parents who wish to share childcare responsibility between them to better balance their responsibilities at home and at work). Parents are required to demonstrate their eligibility by meeting certain qualifying criteria.
61. This type of system is called a "joint eligibility" system, as it is necessary for one parent's partner to meet the qualifying criteria, in order for an individual to use the system. This will give the parents access to the shared leave and pay system. Once they are able to access the system, each parent will need to consider their individual employment and earnings history to work out what they are personally entitled to.

The parents would need to follow a two-stage process to determine their eligibility:

62. Stage 1 (the joint test): A parent/carer would need their partner to meet the economic activity test. Passing this test would mean that the parent/carer has access to the shared parental leave system. They would then need to consider their personal employment and earnings history to work out what leave and pay they would individually qualify for. This will enable them to consider whether there would be benefits to the family in the woman ending her maternity leave/pay/allowance early in order to opt into the shared parental leave and pay system.
63. Stage 2 (the individual test): In order to be eligible for shared parental leave and pay, the parent must be employed. An agency worker may also qualify for pay.

Each parent/carer would need to consider whether they meet the qualifying criteria for shared parental leave, and if so, whether this leave will attract statutory pay; or whether they are only eligible for pay.

To qualify for leave, it is envisaged that the parent/carer must have at least 26 weeks' continuous service with the same employer at the 15th week before the baby's due date and still be working for the same employer when they intend to take the leave. This is the same qualification requirement for paternity leave.

To qualify for statutory pay, it is envisaged that the parent/carer must have earned an average salary of the specified amount, or more (the Lower Earnings Limit – currently £107 per week) for 8 weeks prior to the 15th week before the baby's due date. Some women such as agency workers may meet this requirement, but may not be entitled to leave. An eligibility flow chart is set out in Annex C to explain this test.

Notice to bring to an end maternity leave and maternity pay or allowance if accompanied by a notification of intention to access the shared parental system.

64. Women who meet the eligibility criteria for shared parental leave, and have a partner who also meets that criteria will be able to bring their maternity leave and/or pay/allowance to an early end and they will, with their partner, be able to opt into the shared parental leave and pay system. This will give them a joint entitlement to shared parental leave and pay. The maximum amount of shared parental leave and pay available will be the balance of the mother's untaken maternity leave and pay or allowance. Eligible Primary Adopters will also be able to bring their Adoption Leave to an early end, allowing eligible adoptive parents to opt into the shared parental leave system.
65. Where possible, we will be modelling the new arrangements on the existing processes and administration arrangements currently in place for additional paternity leave in order to minimise changes for employers and employees. However, it will be necessary to make some changes to the notification process to account for the shareable nature of the leave. A separate notification will be needed to indicate to employers that eligible parents (birth or adoptive) plan to opt into the shared parental system, this will need to be submitted to each parent's employer.
66. Currently, a woman can end her maternity leave at any time following the compulsory maternity leave period by returning to work (subject to her providing her employer with the correct notice). This will not be changing. However, we intend to provide that a woman on maternity leave can commit to ending her maternity leave at some future date. The untaken weeks of her overall leave and pay entitlement as of the date of the intended end of maternity leave can immediately become available for her partner to take as shared parental leave and/or pay providing she and her partner meet the eligibility criteria and her partner gives his or her employer sufficient notice of their intention to take the leave.

67. We are thus introducing the option for a woman on maternity leave to give notice of the end of her maternity leave on a specific future date in order for her and her partner to opt into the shared parental system. The date does not necessarily mean the woman will return to work on that date (she may choose, having given her employer sufficient notice, to remain off work on shared parental leave). However, the maternity leave will end on the date specified.
68. We intend to create a form for the purposes of giving rise to shared parental leave and pay, which we are currently referring to as the ShPL1. This will work in the same way for primary adopters.
69. When a notice to end maternity leave is accompanied by a notice of intention to access the shared parental system (ShPL1), the notice to end maternity leave and statutory maternity pay or maternity allowance will be binding. A woman will need to give at least 8 weeks' notice of her intention to end maternity leave and she and her partner will have to give 8 weeks notice of their intention to take shared parental leave or pay. We anticipate the notices being submitted together. The notice takes effect 8 week after it is submitted and mother's maternity leave and the mother's maternity pay or allowance period will cease on the day specified on the notice. If the woman is eligible for statutory maternity pay but not maternity leave (for example, an agency worker), she will need to notify her employer of her intention to end statutory maternity pay on a specified date in order for her and her partner to opt into the shared parental system. If a woman is claiming maternity allowance, she will need to tell the Department for Work and Pensions of her intentions so that her Maternity Allowance ceases on the date specified in her notice.
70. Where a woman gives notice to end her maternity leave in order to opt into the shared parental system, she will only be able to change her mind in the following two circumstances.
- a) Firstly, If the parents (or the mother and her partner) discover during the 8-week notice period that they do not meet the economic activity test qualifying conditions, and are consequently not eligible to access shared parental leave. In these circumstances, the notice to end maternity leave and pay can be revoked and the notice to opt into the shared parental system will be void. This will only be possible in circumstances where the couple made a mistake in their assessment of eligibility (in relation to the economic activity test), not where parents just change their minds.
- b) Secondly, where the notice has been given before the birth. We do not want to prohibit notice being given before birth, in order for a woman to end her maternity leave very early after birth and make the maximum amount of shared parental leave available. However, we recognise that birth is a very unique experience and the arrival of a child can have a significant impact. It seems to us to be unreasonable to bind a woman to a decision made before the birth in this way. It seems to us to be unreasonable and impractical to hold a mother to a pre-birth commitment.

Consequently, we consider that it would be reasonable to allow mothers to revoke the notice to end maternity leave for a specified period after birth. This means that if a mother wishes, following the birth, to withdraw her notice to end her maternity leave given before birth then she will be able to do so within a set period of time if she wishes. Should she not revoke it, then the maternity leave ends on the date specified in the pre-birth notice.

71. We recognise that giving the mother a grace period after birth to revoke her notice reduces certainty for her employer, and potentially her partner's employer if they were planning to take shared parental leave from the early stages. The longer the period that the mother has to revoke her notice following birth, the greater the uncertainty. Consequently, we are consulting on the length of time after the birth that it would be reasonable for the mother to be able to revoke her notice. If a mother revokes her notice following the birth she will be able to give her employer binding notice to end her maternity leave and opt into the shared parental system at a later date.

Q.3. Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth?

72. Eligible adopters, and intended parents in surrogacy arrangements will be able to give notice to access the shared parental leave system once they have accessed the adoption leave and pay system. Adopters will be able to give notice from the day of the placement of the looked after child, to enable them to share the whole of the 52 weeks of leave and 39 weeks of pay. This would be done using a similar form to the ShPL1 form.
73. We do not intend to give adopters or intended parents in surrogacy arrangements a grace period to revoke their notice to end adoption leave and pay.

Information contained in the notification to access the shared parental leave system

74. The current additional paternity leave and pay notification form contains the names and National Insurance numbers of both the applicant (i.e. the father or the mother's partner) and the mother. It also contains information about how much leave and pay or allowance the mother has taken in order to determine the remaining entitlement for the father or partner to take as additional paternity leave and pay. We envisage that the notification process for shared parental leave and pay will include similar information to the additional paternity leave and pay (SC7) form, as well as information relating to the maximum number of weeks of leave and pay available to the employees and how this will be divided between them. Each parent entitled to leave or pay will need to complete the form and both parents/carers will then need to sign these notifications. Each will then submit their notification to their employer. This will enable the parent or parents who qualify for

leave and or pay to take the balance of untaken statutory maternity pay or leave or maternity allowance entitlement as shared parental leave and pay in line with their individual entitlement.

75. The notification will not contain information about each parent/carer's employer, and employers will not be required to contact the employer of the other parent to make checks. However, as with additional paternity leave and pay, employers will be able to request this information from their employee if they choose to do so, and the employee must provide this information if they wish to take the leave. Additional paternity leave and pay currently uses a system of self certification, whereby a father declares that he meets the qualifying criteria to access the additional paternity leave and pay provisions. The employer can also ask the employee to provide a birth certificate of the child as evidence if they wish. We propose rolling forward this approach under the new shared parental system. Parents will self-declare their eligibility to access the system, and employers will be able to request the birth certificate as evidence. As now, there will be no statutory process for requesting this information, but employees should be given sufficient time to produce the information requested before their leave is due to be taken.

76. A draft of the information we expect the form to include in the new form (ShPL1) is included in Annex D.

Q.4. Do you agree that this level of information is sufficient from an employee? If not, please explain why and what information you would like to be required.

77. If at a later date the parent/carers want to change how the total shared parental leave and pay entitlement is divided between them, then they can both agree to transfer their share of the weeks of leave and pay from one parent/carer to the other. We propose that the parent/carer transferring the leave would notify his or her employer of the reduction in the total amount available to him or her; and the parent receiving the leave would notify their employer of the increase in the leave (and pay) available to him or her. We propose a form for these notifications, similar to the initial notification form (ShPL1), but will include a section where each parent sets out the amount of shared parental leave and pay they have already taken. We think that the majority of parents will not want to change their entitlement once they have submitted their initial notification to their employers. However, we understand that there may be circumstances in which it is important that parents are able to make changes to the way they have divided the leave. We do not therefore propose to limit the number of times parents can transfer leave and pay entitlements between them.

78. The same process as outlined above would be used where an employee was requesting a change to their leave pattern.

Requesting shared parental leave

79. On the shared parental leave form (ShPL1), parents will set out how the balance of shared parental leave and pay will be divided between them. This will form each individual's maximum entitlement.
80. We propose to allow an employee to notify their employer of individual periods of leave up to their maximum entitlement. This would enable parents to only request leave that they planned to use and keep leave in reserve to enable them to adapt to changing circumstances.
81. We did consider requiring employees to set out their plans for their entire entitlement to leave when they request their first period of leave. Whilst we can see that this approach could be seen to give an employer more certainty over how an employee intends to take their entitlement to shared parental leave we are concerned that it could create false certainty for employers.
82. If parents were required to notify their employer of how they intend to use their entire entitlement to leave when they request their first period of leave, employees may feel compelled to set out leave plans when they don't intend to use it all in order to ensure that they don't lose any leave.
83. The current average duration of maternity leave is 33 weeks. We expect that the introduction of shared parental leave will mean that families may take more of the leave in total, but we do not expect this to be the full 52 weeks of leave. Requiring all leave periods to be notified upfront will mean that parent/carers may request more leave than they intend to take in order to ensure that they don't lose it.
84. Additionally we are concerned that requiring all leave periods to be notified upfront could deter the mother's/primary adopter's partner in particular from taking longer periods of shared parental leave. For example fathers may wish to wait and see how the mother recuperates from childbirth before using their entire entitlement; in case they need to transfer leave back to the mother. If they had to notify all leave periods upfront they may ask for less leave than they originally intended, just in case.
85. We propose that employees will be required to give their employer 8 weeks notice before taking a period of leave when requesting new blocks of leave or varying leave that has already been requested.

Q.5. We are proposing to allow parents to notify their employer of their leave intentions as they require them. Do you agree? (please explain)

Agreement of patterns of leave

86. The initial notification that the employee is intending to take shared parental leave (ShPL1) will contain information about each parent/carer's

total entitlement to leave and pay, but not the pattern of leave they would like to take. Once the parent/carers have indicated how the shared parental leave and pay will be divided between them, each will then have an individual right to that portion of shared parental leave and pay. It then becomes the responsibility of each employee to agree with their employer the dates and pattern of when their individual leave entitlement is taken. Whilst we would encourage an employee to consider and notify their employer as early as possible of their leave requirements across the whole period, we are not requiring an employee to request all the leave at the same point. So long as 8 weeks notice is given for each period of leave, we anticipate that in some cases there may be more than one request for leave.

87. We would encourage employees to begin discussions with their employers about the dates and pattern of leave they plan to take as soon as possible. In the vast majority of cases, we expect employers and employees to be able to discuss and agree a pattern of leave that works well for all parties. In the rare cases where it is not possible to agree a pattern of leave, we propose that the default position will be for the employee to take the total amount of leave they have requested as one block, to begin on a date of their choosing, but no earlier than 8 weeks from the date of submission of the notice proposing their original pattern of leave. We propose that the minimum notice period to take any period of shared parental leave, or to change an existing leave pattern, as 8 weeks.

88. We propose that there should be a restricted period of time for employers and employees to discuss patterns of leave, followed by a 'sign-off' period by the employees to agree. We propose that the discussion period should be 2 weeks, followed by employee sign-off of the agreement. (See below)

Week	Action
1	Notice given and discussion period started
2	End of discussion period and employee sign off.
3	}
4	}
5	} Notice period runs to end of 8 week period
6	}
7	}
8	} ↓
9	Leave starts

89. At the employee sign-off point an employee will have 2 options:

- agree to the pattern of leave that they have negotiated with their employer;
- withdraw their request for leave.

90. This will ensure that both employers have over 6 weeks notice of the exact pattern of leave that employees are taking. If an employee cannot agree to the pattern of leave that they had originally requested, because their partner's employer has refused their pattern of leave. The employee would need to withdraw their request and put in a new request for a single period of leave or request a new pattern of leave that accommodates their partner's agreed leave request. The employee would need to give 8 weeks notice of their new request.

Q.6. To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, we propose setting the negotiation period at 2 weeks. Do you agree that a 2 week negotiation period is appropriate?

Change requests and new notifications

91. We propose that employees will be able to request additional periods (and patterns) of leave, within their maximum entitlement that they have set out in the ShPL1, or changes to existing patterns of leave with 8 weeks notice. This could also include returning early from leave.

92. We propose that change requests and new notifications of leave will be treated the same and will follow the process outlined above. If an employee requests a different pattern of leave for a period that has already been agreed, the employer and employee will discuss whether that can be accommodated in the 2 week discussion period. The employer and employee can agree any arrangement that works for them during this period.

93. However, if the employer cannot accommodate the pattern of leave, they can insist that the leave will be taken in a single block of leave, starting on a date of the employee's choosing. This would apply to all shared parental leave that the employee has notified to date, except leave that has been agreed and occurs before the end of the 8 weeks notice period for the request.

94. As with the initial request the employee would have 2 options at the sign-off point:

- agree to the pattern of leave that they have negotiated with their employer;
- withdraw their request for leave.

95. If an employee chooses to withdraw their request at the employee sign-off point, the previously agreed pattern of leave would remain in place.

96. As now, employers and employees will be able to agree to waive notice periods if they wish to in order to accommodate unforeseen circumstances.

97. Concerns have been raised with us that parents/carers could make frequent change requests to their patterns of leave, which would create uncertainty for the employer. We do not consider this to be a significant risk, as parents will need to give 8 weeks notice for each change request. We did consider two approaches to restrict the number of change requests that parents can make.
- a) The first approach would be to stipulate a maximum number of change requests that an employee can make. For example restricting the employee to a maximum of 4 change or new notifications of leave requests over the total period of leave.
 - b) The second approach would be to restrict the frequency that an employee can make change or new notification requests. For example stating that an employee cannot make a change request until the notice period of the previous request has expired. (I.e. and employee would only be able to request a change once every 8 weeks).
98. We have decided against applying either of these restrictions. We believe that restricting change and new notice requests in this way would reduce the flexibility of the shared parental leave system and could have perverse consequences. Restricting the number of change or new notification requests could mean that parent/carers were able to transfer leave and pay entitlement between them, but would not be able to request additional leave because they had used all their notifications. Restricting the frequency of change or new notification requests could stop an employee from giving their employer early notice of their leave plans to their employer.
99. We intend to produce extensive guidance for employees on how to use the shared parental leave system and we will encourage employees to set out their full plans for leave for their employer as soon as they know them.

Time limit in which to use the shared parental system

100. Currently, a woman's maternity leave runs for 52 continuous weeks. Although a woman may start maternity leave up to 11 weeks before her expected due date, she will not be absent from the workplace for more than one calendar year. A father or mother's/primary adopter's partner who is taking additional paternity leave and pay may take up to 26 weeks of continuous leave up until the child's first birthday. Under the shared parental system, there are two options for the cut-off point after which parents will no longer be able to use any outstanding shared parental leave or pay entitlement. This point could either be:
- a) 52 weeks from the start of the woman's maternity leave; or
 - b) up until the child's first birthday. (This would potentially extend the

maximum period to take leave by around 13 weeks)

Q.7. Do you think that the cut-off point for parents taking shared parental leave should be:

- (a) 52 weeks from the start of maternity leave, or**
- (b) 52 weeks from birth?**

101. This principle will be applied to adopters who are currently able to start adoption leave and pay up to 2 weeks before the placement of the child.

KIT days

102. Currently, mothers on maternity leave are entitled to take up to 10 'Keeping in Touch' (KIT) days during their maternity leave. Adopters are entitled to take up to 10 'Keeping in Touch' (KIT) days during their adoption leave. These days are designed to enable a mother, or primary adopter to stay in touch with their workplace during their maternity leave. She can return to work for up to 10 days without ending their maternity or adoption leave or losing statutory maternity or adoption pay or maternity allowance. These KIT days support employers and employees in planning return dates and enable the woman to keep in touch with work whilst on maternity leave. Both the employer and the employee must agree to the use of KIT days, and there is no statutory requirement for employers to pay more than the statutory pay (if the employee is eligible for statutory pay) for each day the employee is in work. However, many employers choose to remunerate their employees at a full day's pay. This is a matter for agreement between the employer and the employee. As now we do not propose introducing any statutory procedures for agreeing the use of KIT days.

103. Under the new shared parental leave system we intend to retain the 10 KIT days for mothers on maternity leave. We would also like to introduce KIT days for parents to take whilst on shared parental leave. These will enable both parents to keep in touch with their workplaces whilst on leave.

104. KIT days could also be used, with the consent of the employer, to test out a new pattern of working before making a formal request for flexible working, or to assist the parent in building up to returning to work full time. This could mean that a parent/carer could return to work for 3 days a week for 3 weeks before they formally return to work, or could build up returning to work starting by returning 1 day a week and gradually increasing their working days. This gives parent/carers and their employers' greater flexibility in managing the return to work.

105. We propose to allow up to 10 KIT days per parent for use whilst on shared parental leave. This will be in addition to the current entitlement of 10 KIT days for mothers on maternity leave.

Q.8. Is 10 KIT days per parent for shared parental leave the right number?

Right to return to the same job

The principles that underpin our approach to a return to work

106. The current policy for ordinary maternity leave and additional maternity leave was developed on the assumption that for shorter periods of absence, employers should be able to ensure that employees can return to the same job. This principle was applied to additional paternity leave which cannot be taken for more than 26 weeks. If an employee is absent for longer periods, the nature of the work may change significantly and the organisation is more likely to have undergone a process of organisational change. Employers may need more flexibility in how they reorganise their workforce in order to meet business needs.
107. For the new system of shared parental leave, we now have to strike a balance of incentivising parents to take leave with the current levels of protection.
108. Under the current system, a mother returning from ordinary maternity leave (within the first 26 weeks of leave) has the right to return to the same job she had before her absence. When a mother returns from a period of additional maternity leave (weeks 27 to 52 of maternity leave) she has the right to return to the same or similar job (employers must offer the mother the same job she had before her absence or, if it is not reasonably practicable, another job which is both suitable for her, or the same seniority and remuneration and appropriate for her to do in the circumstances). Mother's partner's taking additional paternity leave have the right to return to the same job.
109. This ensures that mothers taking maternity leave and mother's partner taking additional paternity leave can be certain that they will return to the same job following a period of leave less than 26 weeks. This minimum level of protection is provided for employees to enable them to feel confident in taking leave, whilst recognising that employers need some flexibility to reorganise the workplace when managing longer periods of leave. We want to maintain these principles for the new system of shared parental leave.
110. In developing our approach to this issue, we need to ensure that mothers who are eligible for shared parental leave are not placed in a more advantageous position than mothers who are not eligible for shared parental leave or who choose only to take maternity leave. We also need to ensure we don't disincentivise fathers who want to take time out of the workplace to care for their child.

111. The right to return to the same or similar job does not allow an employer to place a returning parent in any job they choose. The returning parent continues to have the right to return to the same job, unless this is not reasonably practical, in which case the employer must offer the employee a job of equal standing and remuneration.
112. Shared parental leave is a new entitlement, which can be taken in weekly blocks that do not have to be continuous. The arrangements for the right to return to a same or similar job must be considered in the light of this new model of taking leave. It is vital that the new system provides the right balance of incentives and minimum level of protection.
113. We are consulting on two approaches to maintaining a balance between incentives and protection when returning from shared parental leave.
- a) Option a): The **right to return to the same job** would be maintained for employees returning from the first continuous block of leave of 26 weeks or less. This period of leave could be made up of:
- **For mother/primary adopter:** a combination of maternity or adoption leave and shared parental leave
 - **For mother's/primary adopter's partner:** a combined period just shared parental leave and paternity leave.

Employees returning from subsequent periods of shared parental leave would have the **right to return to the same or similar job**.

A standalone period of paternity leave would not count as a first block of leave. This is because paternity leave must be taken within the first 8 weeks after birth, a period where the mother or primary adopter is highly likely to still be on leave.

Under this proposal, where paternity leave is taken as a standalone period, an employee will be able to take a further period of shared parental leave of up to 26 weeks and maintain the right to return to the same job. If paternity leave is combined with shared parental leave this will count towards the entitlement.

- b) **Option b):** The **right to return to the same job** would be maintained for employees returning from leave that totals 26 weeks or less in aggregate; even if the leave is taken in discontinuous blocks. This would include periods of maternity, adoption, paternity and shared parental leave. This would operate in the same way for adoptive parents.

What are the advantages and disadvantages of each option?

The benefits and limitations of option a & b

Option a

114. A system that provides a right to return to the same job based upon the first period of leave for the child, (as set out in option a), may have the unintended consequence of encouraging employees to take leave in patterns that do not fully meet their needs, thereby undermining the principles of flexibility which underpin the system. For example, an employee may feel it is better to take a first block of leave equalling 26 weeks, in order to maximise the period in which they can return to the same job, rather than taking discontinuous periods of leave which may better suit the needs of the employee and the employer.
115. The benefit of option a is that it is a straightforward model that largely rolls forward the existing protections for ordinary and additional maternity leave, ordinary and additional adoption leave and additional paternity leave. It reduces the need for record-keeping by employers and employees and the likelihood that administrative errors are made.

Option b

116. For business reasons, an employer may find it difficult to hold an employee's existing position open for long periods of time whilst an employee is taking discontinuous periods of leave, even if those periods are individually short. Additionally, an employer may only be more able to accommodate an employee's proposed specific pattern of leave if they are able to offer the employee another role. Equally, the reverse may be true as the new system provides more flexibility and choice.
117. This means that the aggregate approach (option b) may, in some cases, limit the flexibility of the employee. An employer would not even be able to come to an arrangement with an employee to return to another job in the certain knowledge that the employee will agree to it. An employee cannot waive his or her statutory employment rights, and the employer could therefore not be certain that the employee would not exercise their right to return to the same job even if an alternative agreement had been reached with the employer. This may restrict an employer's ability to agree to pattern of leave requests.

118. In practice, we would anticipate that the vast majority of parents taking short, discontinuous blocks of leave would return to the same job regardless of whether this was the employee's statutory right. However, this aggregate model does support the taking of leave in shorter blocks after the maternity period, which may be particularly useful for women who wish to use shared parental leave to mix periods of work with periods of leave.

Q.9. Which “right to return to the same job” option would you prefer be applied to shared parental leave; a) or b)? Please explain.

119. We have rejected the suggestion that employees should have the right to return to the same job for every single period of leave that is 26 weeks or less because this could put a mother eligible for shared parental leave in a more advantageous position than mothers who are not eligible, or those who choose to take maternity leave only. For instance, mother A who qualified for shared parental leave would be able take 26 weeks of ordinary maternity leave and then return to work for a week and take 25 weeks of shared parental leave and have the right to return to the same job after both periods of leave. Mother B, who doesn't qualify for shared parental leave, or who has chosen to stay on maternity leave, would only have the right to return to the same job if she returned after ordinary maternity leave. In our view, it would not be right to introduce disparity in the rights available to women, and it would place an additional burden on an employer whose employee has chosen to take shared parental leave as opposed to maternity leave only.

120. We do not intend to change the right to return to the same job employment right for the EU-derived unpaid parental leave. An employee will continue to have the right to return to the same job when taking a period of unpaid parental leave of less than 4 weeks, and would have the right to return to the same or similar job following a period of unpaid parental leave of more than 4 weeks.

Section 3: Adoption and surrogacy

Changes to adoption entitlements

121. The Government response to the Modern Workplaces consultation announced the following changes to adoption provisions:

- Adoption leave will become a “day one” right - we will abolish the qualifying requirement of 26 continuous weeks with the same employer into the week in which the adopter was notified of the match to access adoption leave and pay.
- We will enhance statutory adoption pay to 90% of the adopter's salary for the first 6 weeks.

- Adopters (including prospective adopters with whom a child is placed under a “fostering for adoption” arrangement) will be eligible for paid or unpaid time off to attend “adoption appointments” set up by the local authority between the matching and placement of the child, in order to bond with the child and to meet with relevant professionals in connection with the proposed adoption.
- Intended parents in surrogacy arrangements who are entitled and intend to apply for a Parental Order under the Human Embryology and Fertilisation Act 2008 will become eligible for adoption leave and pay and for paternity leave and pay.

122. Adoptive parents (including parents in surrogacy arrangements who are eligible for adoption leave and pay and paternity leave and pay) will also be able to access the shared parental leave and pay system. The qualifying conditions will be as close as possible to those for birth parents. Where both adopters meet the qualifying conditions, the primary adopter will give notice to end adoption leave and pay and notify their employer that they intend to give rise to shared parental leave and pay. The couple will then be entitled to shared parental leave and pay equal to the remaining weeks of adoption leave and pay.

123. Prospective adoptive parents who hope to adopt children via the ‘fostering to adopt’ and/or ‘concurrent planning’ processes will also be eligible for adoption leave and pay once the “fostering to adopt” or “concurrent planning” match has been made by the relevant local authority.

Adoption Appointments

124. A single adopter, or the adopter in a joint adoptive couple who has elected to take paid leave, will be entitled to take paid time off work to attend up to 5 appointments. The other joint adopter is entitled to take unpaid time off to attend up to 2 appointments. Time off for each appointment will be limited to six and half hours.
125. In the majority of cases, a decision by a local authority to match a child with parents who are expected to adopt a child will be accompanied by some form of plan that provides for introductory meetings with the child. The purpose of these meetings is for the looked after child and its prospective parents to get to know each other and to bond, and ensure the adoption is a successful one. Usually, the introductory meetings will take place in a 2-4 week period. The time may also be used for any other meeting fixed by the local authority in connection with the prospective adoption, for example but not exclusively, meeting with the child’s social worker, current carer, and education or health professionals.
126. The adoptive parents will need to decide which of them is to take the paid time off and which is to take the unpaid time off. When requested, the

adoptive parents will need to provide evidence to their employers that the local authority has requested their attendance at the introductory meetings.

Adoption Leave and Pay and access to shared parental leave for adopters

127. Adoption leave and pay will continue to operate with the same notification and entitlement conditions. However, adoption leave will become a “day one right” and statutory adoption pay will be enhanced to 90% of average weekly pay for the first 6 weeks, bringing it into line with statutory maternity pay. Adoption leave and pay will continue to only be available for primary adopter; the primary adopter must be the same person for adoption leave and pay and the pre adoption appointments. As with the arrangements for birth parents, in order to gain access to the shared parental leave and pay system, the person who took the adoption leave (the “primary adopter”) will have to have 26 weeks’ continuous service ending with the week in which they were notified of the match, and will have to bring their adoption leave period to an end before they or their partner are entitled to take shared parental leave. Both the primary adopter and their partner will need to meet the economic activity criteria, and each individual will then receive leave and pay based on their own eligibility for leave and pay.

128. Therefore, the new parental leave and pay system will operate in a very similar way to the current system for adoptive parents, apart from the new and enhanced benefits and the eligibility of certain intended parents in cases of surrogacy.

Fostering for adoption

129. The Government is making changes to the adoption process with the aim of speeding up the process and enabling more successful adoptions to take place. Local Authorities will now have a duty to consider using ‘fostering to adopt’ placements when dealing with looked after children, whereby a child will be matched with a prospective adopter who is also an approved foster parent, under a new matching process. We expect that in the majority of cases these placements will lead to a subsequent match for formal adoption and it is therefore important that we support this route to adoption by providing statutory leave and pay entitlements (both adoption and paternity leave) at the point at which the child is first placed with the prospective adopter(s).

130. Parents will have to already be approved adopters before any looked after children are placed with them on a fostering to adopt basis. Therefore, we hope that parents who are planning to become approved adopters will engage with their employers at an early stage, so that they can discuss the type of arrangements that may be necessary at the time they are identified as a potential match for a looked after child. This will also aid the planning

for attendance at adoption appointments (if necessary) – these appointments will normally take place in a 2-4 week period before the child is placed in a fostering to adopt arrangement. Concurrent planning will take an identical approach.

131. In a small number of cases, however, the child could be placed with foster parents who have also been approved as prospective adopters shortly after the decision is made by the local authority to match the child with the carers, and with little notice of the placement, or they may be cases where the child is relinquished and he or she will need to be placed with the carers from birth. The entitlement to introductory appointments will cease when the child is placed, and so in practice in these rare cases there will be no time for meaningful introductory appointments to be arranged, as there will not be a period during which the child and the carers will have the opportunity to meet and get to know each other before the placement is made. We estimate that there will be no more than 50 such cases per year.

Q.10. In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay?

9. Consultation questions

Q.1. Do you have any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

Q.2. Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth(or within 7 days of being matched with a child for adopters)? If not, please explain why.

Q.3. Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth?

Q.4. Do you agree that this level of information is sufficient from an employee? If not, please explain why and what information you would like to be required.

Q.5. We are proposing to allow parents to notify their employer of their leave intentions as they require them. Do you agree? (please explain)

Q.6. To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, we propose setting the negotiation period at 2 weeks. Do you agree that a 2 week negotiation period is appropriate?

Q.7. Do you think that the cut-off point for parents taking shared parental leave should be:

- (a) 52 weeks from the start of maternity leave, or**
- (b) 52 weeks from birth?**

Q.8. Is 10 KIT days per parent for shared parental leave the right number?

Q.9. Which “right to return to the same job” option would you prefer be applied to shared parental leave; Option A) or Option B)? Please explain.

Q.10. In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay?

10. What happens next?

- We will analyse the responses to the consultation over the summer and expect to publish the Government's response to the consultation late summer.

Annex A: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone: 020 7215 6402
Email: john.conway@bis.gsi.gov.uk

Annex B: List of Individuals/Organisations consulted

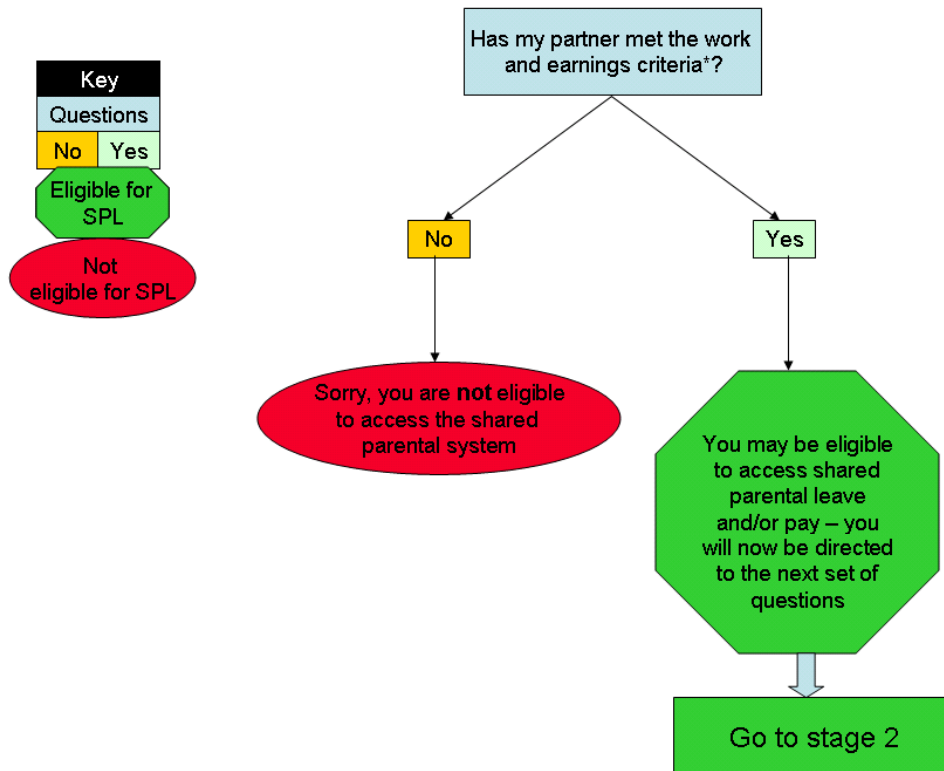
Attach a list of all those who are being consulted and ask individuals/organisations for names of others who should also receive the consultation.

Adoption UK
British Chamber of Commerce (<i>BCC</i>)
BT
CBI (<i>Confederation of British Industries</i>)
CIPD (<i>Chartered Institute of Personnel and Development</i>)
CISCO
EEF (<i>The manufacturers' organisation</i>)
Family and Parenting Institute
Fatherhood Institute
Federation of Small Business (<i>FSB</i>)
Ford of Britain
Gingerbread
Grandparents Plus
Maternity Action
MITIE
Mothers Union
MTM Labels
Mumsnet
Natalie Gamble Associates
National Childbirth Trust
NHS Employers
Surrogacy UK
Tesco Stores Ltd
The Fawcett Society
The Institute of Directors (<i>IoD</i>)
Trade Union Congress (<i>TUC</i>)
Working Families

Annex C: Shared Parental Leave Eligibility flow chart.

Eligibility flow chart – stage 1

Eligibility flow chart – stage 1

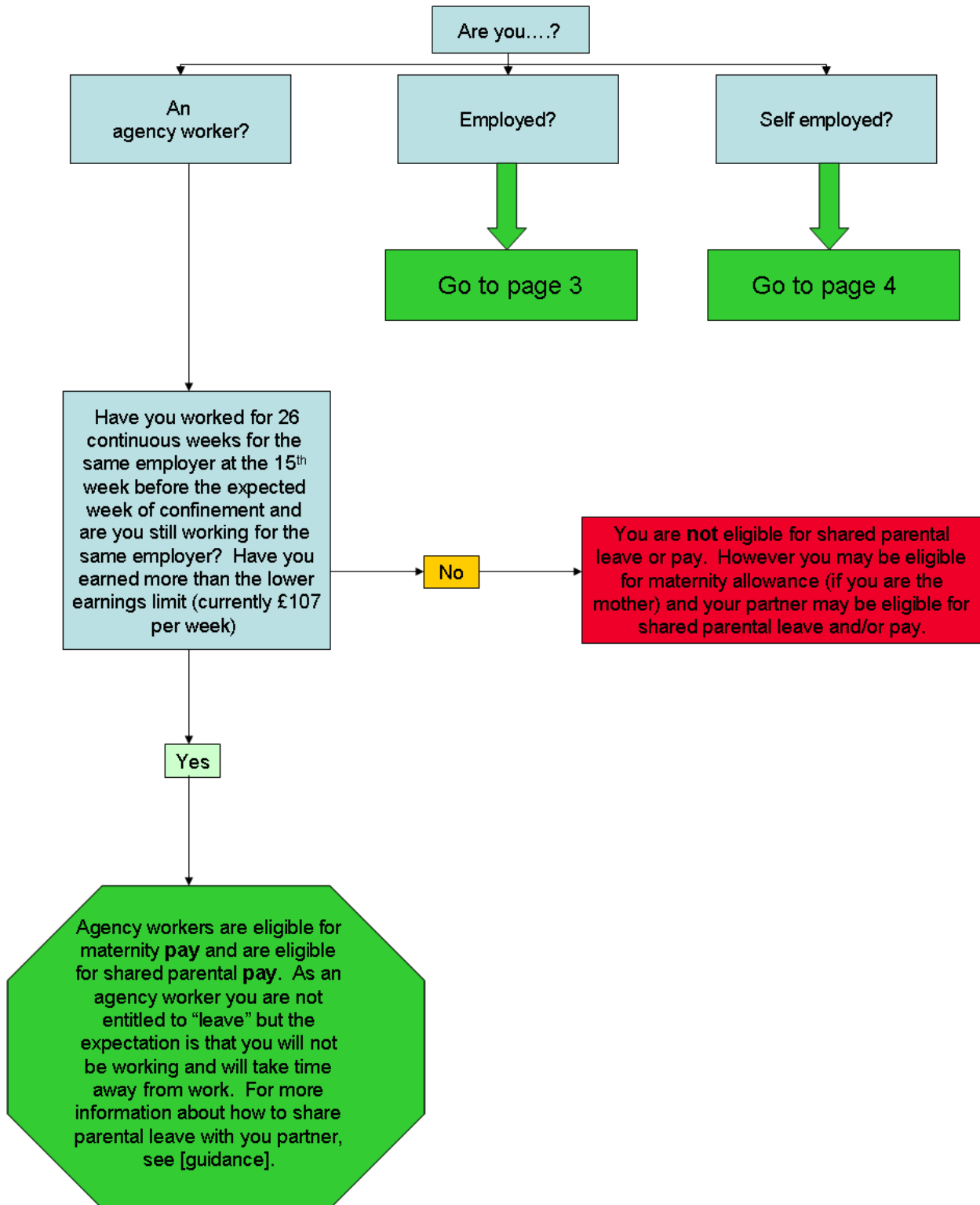


***Work and Earnings criteria: Have you worked for any 26 out of the 66 weeks preceding the baby's due date (this is the Expected Week of Confinement date that you will be given by your doctor or midwife) and have you earned at least £30 gross salary per week for any 13 of these weeks?**

Eligibility flow chart – stage 2

Eligibility flow chart – Stage 2 – what shared parental leave and what shared parental pay can I receive?

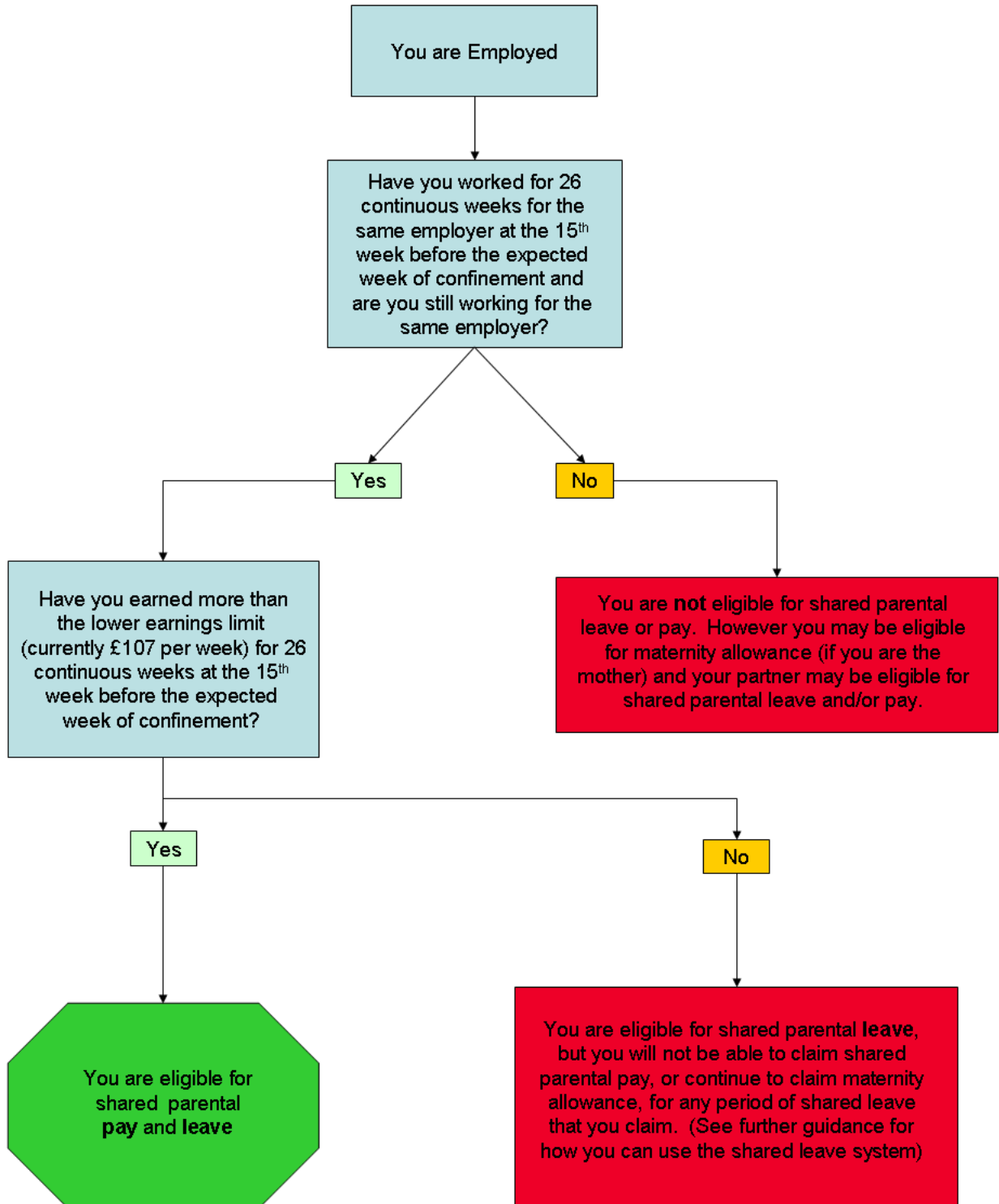
NB – this flow chart will be used by each, individual parent to work out what they can access



Eligibility flow chart – stage 2 – page 3

Eligibility flow chart – Stage 2 – what shared parental leave and what shared parental pay can I receive?

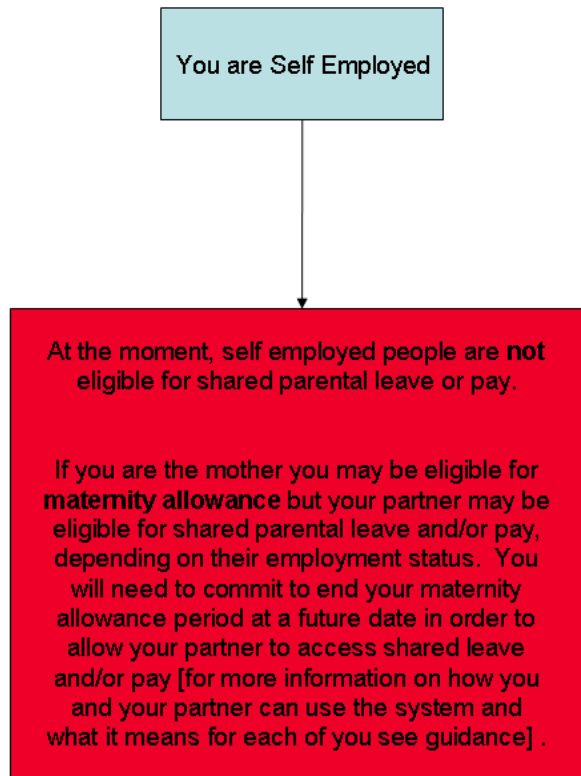
Page 3



Eligibility flow chart – stage 2 – page 4

Eligibility flow chart – Stage 2 – what shared parental leave and what shared parental pay can I receive?

Page 4



Annex D: (Draft) Shared Parental Leave Form (ShPL1)

Below is an indication of the information that we would expect to be included on the shared parental leave form (ShPL1)

Date started maternity leave
Date started maternity pay

Date ended maternity leave
Date ended maternity pay

Balance of leave remaining (total)
Balance of pay remaining (total)

Partner 1 Maximum shared parental leave entitlement (individual)
Maximum shared parental pay entitlement (individual)

Partner 2 Maximum shared parental leave entitlement (individual)
Maximum shared parental pay entitlement (individual)

Declaration

I declare I have met the qualifying conditions for shared parental leave / shared parental pay [delete as appropriate] and I agree to this division of leave and pay.

Signed partner 1

Signed partner 2

Annex E: Shared Parental Leave Administration Consultation - Response Form



Department for Business, Innovation & Skills

MODERN WORKPLACES: Shared Parental Leave and Pay - Administration Consultation: Response Form

A copy of the consultation on **MODERN WORKPLACES: Shared parental leave and pay – administration** can be found at:

<https://www.gov.uk/government/consultations/>

You can complete your response online through Survey Monkey:

<https://www.surveymonkey.com/s/Y8BZBFL>

Alternatively, you can email, post or fax this completed response form to:

Email: modernworkplacesconsultation@bis.gsi.gov.uk

Postal Address:

Sammy Harvey
Abbey 2
3rd floor
Department for Business, Innovation and Skills
1Victoria Street
London
SW1H 0ET

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **17 May 2013**

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

Your details

Name:

Organisation (if applicable):

Address:

Telephone:

Email:

Please tick the boxes below that best describe you as a respondent to this consultation

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe)

Question 1: Do you have any evidence on any administrative difficulties that the different notice periods for paternity leave and pay currently cause employers?

Please explain your response:

Question 2: Do you agree with the proposal to align the notice period for paternity leave and pay at the end of the 15th week before the expected week of child birth (or within 7 days of being matched with a child for adopters)? If not, please explain why.

Yes No

Please explain your response:

Question 3: Do you think that a woman should have 4 or 6 weeks from birth to revoke her notice to end maternity leave and opt into the shared parental system where the notice has been given prior to birth?

4 weeks

6 weeks

Please explain your response:

Question 4: Do you agree that this level of information is sufficient from an employee? If not, please explain why and what information you would like to be required. Set out in paragraphs 74 – 76 of the consultation document.

Yes No

If not, please explain why and what information you would like to be required

Question 5: We are proposing to allow parents to notify their employer of their leave intentions as they require them. Do you agree? (please explain)

Yes No

Please explain your response:

Question 6: To allow employers to know their employees' definite leave plans at least 6 weeks before any leave starts, we propose setting the negotiation period at 2 weeks. Do you agree that a 2 week negotiation period is appropriate?

Yes No

Please explain your response:

Question 7: Do you think that the cut-off point for parents taking shared parental leave should be:

a) 52 weeks from the start of maternity leave, or

b) 52 weeks from birth?

Question 8: Is 10 KIT days per parent for shared parental leave the right number?

Yes No

Please explain your response:

Question 9: Which "right to return to the same job" option would you prefer be applied to shared parental leave; a) or b)? Set out in paragraphs 109 – 121 in the consultation document.

Option A

Option B

Please explain your response:

Question 10: In cases of fostering to adopt where the child is matched and placed with the prospective adoptive parents on the same day, how can we provide realistic notification for employers of the need to take adoption leave and pay?

Please explain your response:

Question 11: Do you have any other comments that might aid the consultation process as a whole?

Question 12: Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Question 13: Thank you for taking the time to let us have your views on this consultation. We do not acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

Annex F: Summary of changes

Activity	Current System	Proposed system
Maternity Leave		
Notice period to take Maternity Leave	15 weeks before EWC Or earliest practical date	15 weeks before EWC Or earliest practical date
Change of start date	28 Days notice	28 Days notice
Documents of proof	MATB1	MATB1
Employer handling/ obligations	Write in 28 days to confirm entitlement and end date of leave	Write in 28 days to confirm entitlement and end date of leave
Early return notice	8 weeks	8 weeks
Notification of taking SMP	28 days before start date	28 days before start date
Ante-natal father or mother's/primary adopter's partner		
Document of proof	N/A	Employer can request a signed declaration
Employer handling/ obligations	N/A	Informal discussion – no written obligations
Ante-natal surrogacy		
Document of proof	N/A	Employer can request a signed declaration
Employer handling/ obligations	N/A	Informal discussion – no written obligations
Pre adoption appointments		
Document of proof	N/A	Placement plan from social worker [??]
Employer handling/ obligations	N/A	Informal discussion – no written obligations
Paternity Leave		
Notice period to take Paternity Leave	15 weeks before EWC	15 weeks before EWC
Change of start date	28 days	28 days
Documents of proof	Declaration of relationship status and responsibility for child's upbringing	Declaration of relationship status and responsibility for child's upbringing
Employer handling/ obligations	Informal meeting – no written obligations	Informal meeting – no written obligations
Early return notice	No provision	No provision
Notification of taking SPP	28 days	15 weeks before EWC
Additional Paternity & Shared Parental		
Notice period to take share leave	Father only	Both parents within defined minimum notice period
Women returning	After H & S period but must give	Same but also can commit to

	6 weeks notice (but father can not take APL until 20 weeks)	end early at a future date. Binding notice to return early at later date. 8 weeks notice. Notice given pre-birth can be withdrawn within 4 or 6 weeks?
Documents of proof	APL form including name, NI of applicant, mothers name, information on mothers Mat Leave and pay. Father signs.	Same plus parents total entitlement and self declaration on how balance is divided between parents (but not pattern of how it will be taken). Both sign
Employee handling/ obligations	Father submits to his employer	Both parents submit to respective employers
Parents obligations	Self declaration on eligibility	Self declaration on eligibility
Employer handling/ obligations	Employer can ask for birth certificate and partner's employer details	Same but mothers employer can ask for fathers employer details
Negotiation over pattern of leave	None	Yes
Notice period for a change in leave	6 weeks	8 weeks
Employee/employer handling	N/A	Notice to change overall leave entitlement. Nothing if returning early or changing within pre agreed entitlement.
HMRC Forms for Additional Paternity Leave		
P11	Deductions working sheet	
P14	Amount of ASPP paid to employee	
P35	ASPP recovered and amount of NIC compensation	
ASP Recovery	ASPP recovery from NIC	
Advanced Funding		
Compliance Audit Checks	1% and 5% of firms	
P30C/P32	Complete when deductions payments made to HMRC	Will be amended to include shared parental pay
SC3 Application for ASPP	Mainly storage costs	Will be replaces by the ShPP1
Employer Checklist	Assesses entitlement	Will be amended to include shared parental pay
ASPP2 Record Sheet	Employer's record of ASPP payments made	A new form will be created to record the payments made under shared parental pay
New forms		
ShPP1	N/A	The form for parents to submit to their employer setting out how they have agreed to split their entitlement to leave and pay

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BIS/13/619