



**WORK AND FAMILIES**

Additional Paternity Leave  
and Pay Administration  
Consultation

MAY 2007

## **ADMINISTRATION OF ADDITIONAL PATERNITY LEAVE AND PAY**

The Government is publishing this consultation on the administration of Additional Paternity Leave and Pay following commitments made in the November 2006 Government Response to the consultation on Additional Paternity Leave and Pay in March 2006.

Additional Paternity Leave and Pay will enable employed fathers to take up to 26 weeks Additional Paternity Leave, some of which can be paid if the mother of the child has returned to work. This new provision will be available during the second six months of the child's life, providing parents with more choice in child care responsibilities and for the first time ever, the option of dividing a period of paid leave entitlement between them.

The purpose of this consultation is to invite practical comments on the preferred administration process and some of the remaining detail of the scheme to ensure that burdens on business are minimised, whilst providing more choice for parents and allowing fathers a greater opportunity to be involved in raising their child.

Previous consultations can be found at:-

[www.dti.gov.uk/employment/workandfamilies/](http://www.dti.gov.uk/employment/workandfamilies/)

**URN 07/788**

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<b>Respond By</b>	3 August 2007
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## CONTENTS

	<b>Page</b>
<b>CHAPTER 1 – EXECUTIVE SUMMARY</b>	
Executive Summary	- 4
How to Respond	- 7
<b>CHAPTER 2 – ADMINISTRATION OF ADDITIONAL PATERNITY LEAVE AND PAY</b>	
Range of claims	- 12
Self-certification of eligibility by the father and mother	- 13
Self-certification of eligibility by the parents with confirmation of entitlement from mother’s employer	- 13
Self-certification of eligibility by the father and mother time-line	- 15
Responsibility of the father’s employer	- 18
Notice period for confirmation of father’s entitlement	- 19
Form for claiming Additional Paternity Leave and Pay	- 20
Checklist for the father’s employer	- 21
Multiple employments	- 23

Administration for the situation where the mother dies	-	24
--	---	----

### **CHAPTER 3 – OUTSTANDING POLICY ISSUES**

Change of Circumstances	-	26
-------------------------	---	----

### **CHAPTER 4 – NEXT STEPS**

Next steps	-	30
------------	---	----

Timing of introduction	-	31
------------------------	---	----

<b>Annex A</b> – Summary of questions	-	32
---------------------------------------	---	----

<b>Annex B</b> – Consultation code of practice	-	34
--	---	----

<b>Annex C</b> – Draft form for Additional Paternity Leave And Pay	-	35
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<b>Annex D</b> – Draft checklist for a father’s employer	-	39
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## **CHAPTER 1**

### **EXECUTIVE SUMMARY**

1.1 On 9 March 2006 the Secretary of State for Trade and Industry published a consultation on Additional Paternity Leave and Pay seeking views on a number of aspects of the scheme including who is eligible; when Additional Paternity Leave and Pay could be taken; and some aspects of the administration.

1.2 A Government Response was published on 22 November 2006 and set out the way forward on some of the details of the scheme. The response acknowledged that there were still aspects of Additional Paternity Leave and Pay that we should continue to work on, namely the administration, before draft regulations are published.

1.3 It is the Government's intention to keep the Additional Paternity Leave and Pay scheme as straightforward as possible for employers and employees, so that employers are prepared for the introduction of the scheme and their employees can be confident in taking this new provision.

1.4 This consultation invites views on the practicalities of the administration of the scheme and will provide valuable information for drafting secondary legislation. There will be a further consultation on the draft regulations before they are laid in Parliament and come into force.

#### **Timing of Introduction of Additional Paternity Leave and Pay**

1.5 The Government's goal is to bring in Additional Paternity Leave and Pay alongside the extension of Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP) from 39 weeks to 52

weeks, by the end of this Parliament. This will enable an equal division of paid leave if the parents so choose. The earliest date that Additional Paternity Leave and Pay will be implemented will be for babies due on or after 5 April 2009. However, this is not a firm date for introduction.

### **Administration of the scheme**

1.6 The administration of Additional Paternity Leave and Pay will require fathers to notify their employers of their intention to take Additional Paternity Leave and Pay and for mothers to notify their employers when they intend to return to work. Although the term 'father' is used throughout this document, Additional Paternity Leave and Pay will also be available to partners and civil partners of mothers and members of adopting couples who are employed and where there is an entitlement to Statutory Adoption Leave and Pay<sup>1</sup>. We wish to keep this as simple and straightforward as possible. We therefore propose that the father and the mother should self-certify to the father's employer that the father is eligible for Additional Paternity Leave and Pay. There would be no need for the mother's employer or Her Majesty's Revenue and Customs to be involved in the process. This consultation sets out how this process would work in practice, identifying what is required of the father, the mother and the father's employer. This consultation seeks views on the practicalities of this process; the notification period for a father's employer to confirm their employee's entitlement; the form that may be used by an employee wishing to take Additional Paternity Leave and Pay; and the use of a checklist to help employers.

### **Change of circumstances**

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<sup>1</sup> 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 to adopting couples wishing to take Additional Paternity Leave and Pay.

1.7 We recognise that a father, and/or a mother, may have a change in circumstances that could affect entitlement to Additional Paternity Leave and Pay. This change of circumstance, if close to the proposed time for taking up entitlement, could have a detrimental effect on the father's employer in providing little time to deal with the change. We recognise that in some situations it may be entirely unreasonable to expect employers to manage this burden with very little advance notice. We seek views on the notice period that should be required for a change of circumstance. We propose to enable employers, where it is genuinely not reasonably practicable to cope with a late change, to require an employee to take the period of Additional Paternity Leave for which they had previously given notice, potentially without Additional Statutory Paternity Pay.

### **Regulatory Impact Assessment**

1.8 A partial Regulatory Impact Assessment has been published alongside this document. This sets out the estimated costs and benefits of the preferred administration process (URN 07/992).

## **How to respond**

1.9 The closing date for this consultation, by which all responses should be submitted, is **3 August 2007**.

1.10 When responding, please state whether you are responding as an individual (and in what capacity – e.g. employee, parent, carer, employer etc) or representing the views of an organisation. If responding on behalf of an organisation, please make clear whom the organisation represents and, where applicable, how the views of members were assembled.

Responses should be submitted to:

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Employment Relations Directorate  
Department of Trade and Industry  
Room 4104  
1 Victoria Street  
London  
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## **Additional copies**

You may make copies of this document without seeking permission.

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

## **Regulatory Impact Assessment**

1.11 A partial Regulatory Impact Assessment (RIA) has been published alongside this consultation, and sets out estimates of the costs and benefits of the proposals (URN 07/992).

## **Confidentiality**

1.12 Information provided in response to this consultation, including personal information, may be subject to publication or 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 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.

1.13 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

1.14 However, 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.

**If you have comments or complaints about the way this consultation has been conducted, these should be sent to:**

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London SW1H 0ET

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A copy of the Code of Practice on Consultation is at Annex B (See page 34).

## **CHAPTER 2**

### **ADMINISTRATION OF ADDITIONAL PATERNITY LEAVE AND PAY**

2.1 Additional Paternity Leave and Pay is a new entitlement for fathers<sup>2</sup> and will provide greater choice for parents in how they divide childcare responsibilities between them. It will enable employed fathers to have a greater involvement in raising their child in the first year of the child's life. We recognise that any new leave entitlement brings potential added pressures on business and we are keen to minimise these.

2.2 Employers need to be able to plan and manage their workforce effectively while their employees are absent from the workplace. Taxpayers also need to have confidence in the integrity of the system. The Government has a responsibility to ensure that appropriate checks are put in place so that taxpayers' confidence in the system is assured.

2.3 We have listened to the concerns of employers and employees regarding the administration of Additional Paternity Leave and Pay and have made a commitment to keep the administration "light touch". We aim to keep the process as straightforward as possible, whilst trying to ensure that it is also robust.

2.4 In order to keep the administration as straightforward as possible we believe it is right to build on existing arrangements for employees who take up maternity, paternity and adoption leave and pay entitlements. This has been a consistent message throughout previous consultations.

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<sup>2</sup> Although the term 'father' is used throughout this document, Additional Paternity Leave and Pay will also be available to partners and civil partners of mothers, and members of adopting couples who are employed and 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 to adopting couples wishing to take Additional Paternity Leave and Pay.

2.5 The “Work and Families: Choice and Flexibility” consultation published in February 2005 offered three broad options for how the administration of Additional Paternity Leave and Pay might work. These were:

1. Self-certification of eligibility by the father and mother
2. Self-certification combined with confirmation by the mother’s employer
3. Compliance checks by Her Majesty’s Revenue & Customs (HMRC)<sup>3</sup>

2.6 There was virtually no support for option three and in the Government response that followed in October 2005 we indicated that we would envisage some HMRC compliance checks being carried out, but not in every case. It was felt that HMRC being involved in an information exchange with employees and employers to check and approve every case in a tight time frame would make the administration of Additional Paternity Leave and Pay particularly cumbersome. This would be expensive for Government and employers.

2.7 The further consultation on Additional Paternity Leave and Pay, published in March 2006, concentrated on administration via a self-certification process. The Government response in November 2006 highlighted that we had received a range of views on how certain elements of the administration of Additional Paternity Leave and Pay should be carried out. We agreed to explore the practicalities and detail of the administration further before making any firm commitments.

2.8 We have heard from employers that they have concerns about fraudulent claims and about employers being held liable for any wrongful

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<sup>3</sup> Formerly the Inland Revenue

payments of Additional Statutory Paternity Pay. Employers have also raised concerns about the impact that the administration will have on them. These are all legitimate concerns and it is therefore important that we take account of both the level of risk of fraud and the impact on employers of our response to that risk. We also need to consider the impact of our response on legitimate employee take up of Additional Paternity Leave and Pay. Under existing statutory payments, an employer will not be penalised for making a genuine mistake or making a payment in good faith. We intend the same to apply in the case of Additional Statutory Paternity Pay and to further support the employer in getting it right, we have developed an 'employer checklist' (See Annex D).

### **Range of claims**

2.9 We believe the majority of employee claims for Additional Paternity Leave and Pay will be genuine and that employers will want to administer those claims with minimum effort and take recoveries and compensation on those Additional Statutory Paternity Pay payments properly. We propose to make the process as straightforward as we can and HMRC will provide suitable support in the form of user-friendly guidance, help lines and forms.

2.10 However, we accept that there may be some fraudulent claims and that some employers may take recoveries and compensation improperly. HMRC, who have been responsible for the administration of the other Statutory Payments, regard the risk of such fraud as relatively low, with minimal consequences for taxpayers' funds. We therefore propose to minimise the risk and level of abuse in an appropriate and proportionate way, with HMRC conducting compliance checks on some employees and employers, and sanctions in the form of financial penalties for those who abuse the system.

2.11 This process is in line with better regulation principles, making the administrative burdens and costs proportionate to the risk and likelihood of fraud. This ought not to reduce legitimate take-up by employees, but we will monitor the effect of the administration to see if there are any practical problems and any adverse effect on take-up numbers.

### **Self-certification of eligibility by the father and mother**

2.12 Our preferred approach to the administration of Additional Paternity Leave and Pay is for the father and mother to self-certify to the father's employer key personal facts affecting the father's eligibility. This approach would place the onus of responsibility for providing the necessary information within set timescales on the father and mother alone. There would be no need for the father's employer to carry out checks with third parties (for example, the mother's employer) and no risk of communications breaking down.

### **Self-certification of eligibility by the parents with confirmation of entitlement from mother's employer**

2.13 We recognise however that an employer will require sufficient information to check their employee's eligibility, determine the period of Additional Paternity Leave and Pay and calculate the amounts payable. We also recognise that while some of this information may come from an employer's own records, other information must come from the employee and from the mother. It is here that the risk of fraud exists.

2.14 We have considered an alternative approach to the administration whereby the mother's employer is involved in every case, however, we do not consider this process to be the best practical approach. This process would, in the main, mirror the self-certification process outlined in this document. There would be an additional step that would involve the mother's

employer. It would require the mother to give the completed self-certified form (or a part of it) to her employer, who would then check and certify the information on the form (in relation to the mother) and return it to her for her to pass to the father, for him to pass to his employer. We do not think that this would substantially reduce the risk of abuse as the certified form could be manipulated by either parent before passing the form to the father's employer.

2.15 Alternatively, the mother's employer could be required to pass the form direct to the father's employer after certifying the information. This would reduce the risk of abuse, but it would require contact between employers. Either of these options would impose a burden on the mother's employer and would increase the risk of delays, which might prevent the notification reaching the father's employer on time. There would be an increased risk of a breakdown in communication between the parties involved, which could impact on both the mother and father and their employers.

2.16 There would be an additional administration cost to employers if either of these approaches were chosen and we do not believe that the added burden placed on the mother's employer would significantly reduce the risk or likelihood of fraudulent activity. Similarly, whilst checking every case with HMRC may reduce the risk of fraudulent activity to some degree, it would not eliminate it completely. Such arrangements would also be more cumbersome and costly to employers and to the Government; and communications might break down during the tightly time-constrained process. Reduced fraud in some cases would not justify the extra complexity and cost for all fathers' employers, nor the new burdens placed on mothers' employers. Indeed it would seem in many ways inappropriate to involve in every case a mother's employer in attempting to reduce fraud in a claim by a father when the father is not even (in the majority of cases) their employee and when the potential

fraud is carried out against the father's employer and ultimately against the State. We have therefore rejected checks with third parties.

2.17 We therefore favour the self-certification by the father and the mother of eligibility process. The rest of this document focuses on this preferred approach.

### **Self-certification of eligibility by the father and mother time-line**

2.18 The following time-line sets out a working example of how, under a self-certification process, the father would notify his employer of his entitlement to Additional Paternity Leave and Pay, the role of the mother, the information required by the father's employer and the checks that the father's employer would have to carry out. This is based on a mother being entitled to 52 weeks Statutory Maternity Pay.



## Self-certification by the father and mother for Additional Paternity Leave and Pay (APL & P)<sup>4</sup>

### Example – BABY DUE 14/05

29/01 (Wk -15)	Latest date mother should notify employer she wishes to start maternity leave, baby due 14/05. Notification must be by the end of the 15th week before her Expected Week of Childbirth (EWC), unless this is not reasonably practicable.
29/01 (Wk -15)	Father notifies his employer that he wishes to take Ordinary Paternity Leave (OPL) <sup>5</sup> (minimum notice at the end of the fifteenth week before the baby is due) and Ordinary Statutory Paternity Pay (OSPP) <sup>6</sup> (minimum 28 days before payment and must have declaration of family commitment)  Provides evidence of entitlement (self-certified) via Form SC3 or suitable substitute for OSPP.  For leave the employee must tell the employer the expected week of childbirth; the number of weeks leave (one or two); the date the leave is expected to start.  For pay the employee must certify he is taking leave either to care for his child or to support the mother or both; has or expects to have responsibility for the upbringing of the child; is the father of the child and/or the partner, civil partner or husband of the mother.
17/04 (Wk -4)	Mother begins maternity leave and receives Statutory Maternity Pay (SMP) (will be entitled to 52 weeks maximum)
14/05 (Wk 0)	Baby born
15/05	Father starts OPL and OSPP (entitled to two weeks maximum)

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<sup>4</sup> Process based on a pregnant mother who was entitled to Statutory Maternity Pay. Mother could be entitled to Maternity Allowance instead of Statutory Maternity Pay. Process would also be similar in the case of adoption whereby an adopter could be entitled to Statutory Adoption Pay and the member of the couple not receiving Statutory Adoption Pay could take Additional Paternity Leave and Pay.

<sup>5</sup> Currently known as Paternity Leave

<sup>6</sup> Currently known as Statutory Paternity Pay

29/05 (Wk 2)

Father ends OPL and OSPP and returns to work

06/8 (Wk 12)

Mother notifies her employer that she wishes to return to work early (minimum 8 weeks notice)

06/08  
(Wk 12)

Father notifies his employer that he wishes to take Additional Paternity Leave (APL) and Additional Statutory Paternity Pay (ASPP) (minimum 8 weeks notice) by completing APL & P section on Form SC3 in conjunction with the mother. Mother and father each sign separate declarations.

Information required on form:

- Date to start APL/ASPP
- Date to finish APL/ASPP
- Date of birth of the child
- What the Expected Week of Childbirth (EWC) was
- Date SMP started
- Date SMP to finish
- Date mother intends to return to work/end her maternity leave

Declaration from mother will confirm that she was entitled to maternity leave and/or maternity pay and that she intends to return to work and end her maternity leave.

Declaration from father confirms he is taking leave to care for his child; has or expects to have responsibility for the upbringing of the child; is the father of the child and/or the partner, civil partner or husband of the mother.

Employer is authorised to accept information on the form if he holds no contrary information and checks eligibility for APL and ASPP as follows:

- If father had already taken OPL or OSPP from the same employer, no check on employment history or average earnings to calculate pay required by the employer.
- If father had not taken OPL or OSPP, an employer would need to check the employment history and average earnings calculation.

- In carrying out these checks, father's employer will be required to complete a HMRC checklist to assist the employer in reducing errors.

03/09  
(Wk 16)

Father's employer confirms with employee that he is entitled to APL and ASPP (minimum 4 weeks before start date) and confirms date of their return to work.

Father begins APL & P on 1 October (Wk 20)

**Question – are there any practical problems with this process and if so, what can be done differently to overcome these problems?**

### **Responsibility of the father's employer**

2.19 The father's employer will be responsible for checking his entitlement to Additional Paternity Leave and Pay, confirming entitlement and also dates and amounts of Additional Statutory Paternity Pay to their employee. In the majority of cases, the employer need not look at employment history or make a new calculation as information based on when the father took Ordinary Paternity Leave and Ordinary Statutory Paternity Pay can be re-used. If an employee had not previously taken Ordinary Paternity Leave or Ordinary Statutory Paternity Pay then the employer would need to check the following:

- For Additional Paternity Leave, whether the employee would have qualified for Ordinary Paternity Leave, i.e. that he has worked continuously for the same employer for twenty-six weeks ending with the fifteenth week before the baby is due (the 'qualifying week') and from the fifteenth week before the baby is due up to the date of birth and remained in the same employment up to the intended date of taking Additional Paternity Leave.
- For Additional Statutory Paternity Pay, an employer would need to check, in addition to Ordinary Paternity Leave requirements above, that

the employee had average weekly earnings at or above the Lower Earnings Limit for National Insurance at the end of his qualifying week for Ordinary Statutory Paternity Pay.

2.20 If an employer finds that his employee is not eligible for Additional Paternity Leave and/or Pay, he will be required to notify the employee why they cannot take leave or receive pay. Under current Statutory Paternity Pay arrangements, an employer should inform their employee in writing why they do not have an entitlement to Statutory Paternity Pay and it is suggested they use the form SPP1 Exclusion form (or a suitable substitute). To keep proceedings simple we are minded to require an employer to provide notice in writing of why an employee is not eligible for Additional Paternity Leave and/or Pay and we propose to amend the form SPP1.

#### **Notice period for confirmation of father's entitlement**

2.21 We have indicated previously that an employee will be required to give a minimum of eight weeks notice of his intention to take Additional Paternity Leave and Pay. This will mirror the minimum notice period required by a mother to indicate that she wishes to return to work early from her maternity leave. It is also important that an employee who has given an indication that they wish to take Additional Paternity Leave and Pay receives confirmation of their eligibility and the timing of their leave and pay in good time before they are due to begin the leave.

2.22 For maternity leave there is a requirement for an employer to respond to the notification from their employee within 28 days. We propose that an employer is required to confirm the employee's entitlement to Additional Paternity Leave and Pay and the timing of this confirmation is a minimum of 28 days from the date the employee notified they wish to take Additional

Paternity Leave and Pay. This should provide sufficient time for an employer to check entitlement and make any necessary calculations.

**Question – 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?**

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

### **Form for claiming Additional Paternity Leave and Additional Statutory Paternity Pay**

2.23 The information needed to claim Ordinary Paternity Leave must be put in writing if the employer requests it. For Ordinary Statutory Paternity Pay, an employee is required to provide their employer with a self-certificate of the personal facts relevant to their entitlement to Ordinary Statutory Paternity Pay. It is suggested therefore that an employee provide a completed self-certificate for both Ordinary Paternity Leave and Ordinary Statutory Paternity Pay when giving his notice, but this is not a formal requirement. A model self-certificate for employers and employees to use is provided by HMRC, entitled SC3 Statutory Paternity Pay/Paternity Leave. This form is not a formal requirement; a substitute may be provided as long as the relevant information is present.

2.24 As Additional Paternity Leave and Pay requires information with regards to both the mother and father, we propose that completion of a form be required for both Additional Paternity Leave and Additional Statutory Paternity Pay purposes. We propose to amend the existing SC3 form so that it (or an acceptable substitute) may be used for claiming Ordinary Statutory

Paternity Leave, Ordinary Statutory Paternity Pay, Additional Paternity Leave and Additional Statutory Paternity Pay. A suggested draft of the form is enclosed at Annex C. As this is a new entitlement and information in relation to both the father and mother is required, it may however be more appropriate to develop a brand new form, rather than amend existing form.

2.25 As there is certain information required in relation to the mother and the father, it is further proposed that completion of the amended SC3 (or a substitute) be a mandatory requirement for Additional Paternity Leave and Additional Statutory Paternity Pay and that the father's employer should retain it for three years after the end of the tax year to which it relates so that HMRC would be able to conduct compliance checks.

**Question – Should an entirely new form be developed purely for Additional Paternity Leave and Additional Statutory Paternity Pay, instead of amending the existing SC3 (see the draft at Annex C)?**

**Question – 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?**

### **Checklist for the father's employer**

2.26 At the suggestion of employer representative groups, HMRC has developed a draft employer checklist to help the father's employer make the correct decisions on the father's eligibility, timing and amounts of Additional Statutory Paternity Pay. This checklist will also enable employers to show that they have carried out the required checks before allowing Additional Paternity Leave and Pay. The checklist would cover the following:

- Employee has notified within time (8 weeks before intended start date)
- Employee has worked for the employer long enough
- Pay calculation – employee’s average weekly earnings for the relevant period
- The employee has made a declaration of family commitment
- The mother is receiving Statutory Maternity Pay or Statutory Adoption Pay or Maternity allowance
- Start and intended stop dates for SMP, SAP or MA
- The baby will be 20 weeks old when the employee starts Additional Paternity Leave & Pay
- The baby will be less than one year old when the employee stops APL & P
- Employee’s APL & P must not exceed 26 weeks

2.27 A draft of the checklist can be found at Annex D. HMRC will be continuing to work with representative groups and with employers to develop this checklist and ensure that it is user-friendly.

**Question – Is there anything else that should be included in the checklist for employers?**

2.28 It would assist in HMRC compliance checking and fraud reduction if completion of this employer checklist (or a substitute) were made a mandatory requirement in the case of an employee wishing to claim Additional Paternity Leave and Pay. However, although intended to help employers get things right, we recognise that this might appear as an additional burden on employers and some employers might not wish to use such a checklist. It would however be some evidence the employer could produce to demonstrate they had taken reasonable care in granting Additional

Paternity Leave and Pay and recovering Additional Statutory Paternity Pay from the State (especially in any rare case where the employer had been deceived into granting the employee Additional Paternity Leave and Pay and therefore making a recovery from the State in error).

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

2.29 It is proposed that if completion of a checklist (or a substitute) is a mandatory requirement, then a copy must be kept for a minimum of three years by the employer in case of HMRC compliance checks, as for the form SC3 (or substitute). This would enable employers, by completion of the checklist, in most cases to show reasonable care in granting Additional Paternity Leave and Pay. If this were to be carried out in what turned out to be a fraudulent claim then the Government would underwrite the loss of that payment. If the checklist is not mandatory then employers would need to be able to demonstrate by alternative means reasonable care in granting Additional Paternity Leave and Pay for compliance check purposes.

**Multiple employments**

2.30 Under existing maternity (and paternity/adoption) pay provisions a mother (father/adopter) who has more than one employment and meets the eligibility requirement under each employment will receive Statutory Maternity Pay (Statutory Paternity Pay/Statutory Adoption Pay) from each employer. In order to keep Additional Paternity Leave and Pay simple and consistent with these provisions, we will mirror this to enable a father who has multiple employments to receive Additional Statutory Paternity Pay from each employer if he is eligible under each employment. Under the administration arrangements outlined above, an employee would have to



provide a certified form for each employer (each form being certified by the mother appropriately) in order to claim entitlement from each employer for Additional Paternity Leave and Pay.

### **Administration for the situation where a mother dies**

2.31 In the Government response published in November 2006 we indicated that we would enable a father, in the situation where a mother dies during childbirth or soon afterwards, to be able to start Additional Paternity Leave and Pay early. This could be from the date the mother died, or a suitable date thereafter (even if before the normal earliest date of 20 weeks after the birth of the baby). We also indicated that leave could be taken for longer than the maximum 26 weeks prescribed under normal circumstances. This leave could also be paid for the remaining length of time that the mother would have been entitled to Statutory Maternity Pay, Statutory Adoption pay or Maternity Allowance.

2.32 In these exceptional circumstances we would not expect the normal administration procedures to apply and employers would have to make arrangements quickly to facilitate an employee's absence. For example, we would expect the eight week notice period required under normal circumstances to be waived so that an employee could begin the leave immediately if they wished. Although the time frames set out above would not apply in these circumstances, we would still expect a form SC3 (or suitable substitute) to be completed at some point by the father. We would also expect an employer to check eligibility and confirm dates to the employee, completing the employer checklist and retaining this for their records. Again, we would not expect this to be done in the normal timescales outlined above, but would expect a reasonable period to be exercised before completing. We will provide guidance to assist both employees and employers in this situation appropriately.

## **Administration summary**

2.33 This chapter has set out how the administration of Additional Paternity Leave and Pay might work under a self-certification process by the father and mother. This is the Government's preferred approach to the administration of Additional Paternity Leave and Pay as we believe it to be straightforward and 'light touch', building on existing administration arrangements for maternity and paternity entitlements. We would be grateful for your answers to the specific questions and your views on whether there are any practical problems with the process outlined which need to be addressed. If so, we would be grateful if you could suggest what could be done differently to overcome these problems.

## **CHAPTER 3**

### **OUTSTANDING POLICY ISSUES**

#### **Change of circumstances**

3.1 We anticipate that in the vast majority of cases, once both parties have given the necessary notice to their respective employers there will be no further changes to the planned arrangement before the father takes up his entitlement to Additional Paternity Leave and Pay and the mother returns to work. However, it is likely that there will, in some cases, be last-minute changes in circumstances which could affect the timing of a father's leave or his entitlement to it after he has given notice that he wishes to take Additional Paternity Leave and Pay but before he has actually taken up the entitlement.

3.2 We also envisage that in the majority of cases, once a father has taken up his entitlement to Additional Paternity Leave and Pay, he will not make any changes to his end date. Where a father does wish to change his end date, we propose he should give his employer eight weeks notice, mirroring the notice period required for a mother to change her end date under existing maternity leave.

3.3 A father who had been entitled to a period of Additional Paternity Leave and Pay but who then decides not to (or is unable to) take up this entitlement, or wishes to take up his entitlement early or late, may be in this position for a number of possible reasons. His partner may have decided not to, or been unable to, return to work. Alternatively the father may simply decide, when it comes to the point at which he was due to take up his entitlement, that he no longer wished to do so. A father may wish to take up

Additional Paternity Leave and Pay early if the mother wanted to bring her return to work date forward.

3.4 Depending on the reason, the effect will be either that the father is no longer entitled to Additional Statutory Paternity Pay (if the mother has not returned to work), or he may still be entitled but unwilling to take it at the agreed time. In all cases there is likely to be a common effect: there will be an impact on the father's employer, who, depending on the length of the period that the father had been expected to be away and the timing of the change of circumstance, may have made arrangements to cover his absence. If the required period of notice for this change to the father's intended dates of absence is not given it may cause the father's employer a significant additional burden.

3.5 Although it may be considered more likely that any change will involve leave being postponed or cancelled, it is also possible that a father might wish to bring his Additional Paternity Leave and Pay period forward. In many cases for this to be possible, the mother will have had to return to work earlier and have given the required eight weeks' notice of her intention to do so, which would obviously give the father opportunity to give notice to his employer that he wished to vary his start date. We also recognise that there may be cases where the mother has not provided the required notice (with the agreement of her employer). We will ensure that there is clear guidance to support employers and employees in managing the range of situations that may arise.

3.6 The point at which both parties give notice will obviously vary. If notice is given several weeks ahead of any change of plan that might call into question the father's entitlement, there should be time for the father's employer to adjust their planning. Given that the mother is, in any event, required to give eight weeks' notice of her intention to change her date of

return to work, we consider it reasonable to prescribe in regulations a period of notice the father must give his employer should he wish to change the dates of the leave and pay, or cancel them altogether.

3.7 In this consultation we invite views on two alternative options for the length of this period of notice that the father should give. We consider that eight weeks – effectively mirroring that of the mother notifying her employer of an early return to work – would allow the father too little time to inform his employer of any change in plans, as in many cases this will have been caused by the mother changing her return dates. We believe that either six or four weeks would be appropriate and still allow the father’s employer sufficient time to alter any arrangements he might have put in place to cover the father’s absence from work.

**Question – 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?**

3.8 If less than this period of notice remained before the father was due to start his Additional Paternity Leave and Pay, we would expect his employer to be as flexible as they were able, and if possible to accommodate a late change request.

3.9 However, we recognise that in some situations it may be entirely unreasonable to expect employers to manage this burden with very little advance notice. In the case of a father wishing to take leave and pay earlier than previously advised, if he did not give sufficient notice the employer would simply not be obliged to allow him to take up his entitlement early (although he could do so at his discretion). This reflects the position in maternity leave where an employer can prevent a woman beginning her

maternity leave early if she does not give the correct notice. Where a father wishes to postpone or cancel his leave or pay without giving proper notice (whatever the reason) the Government sees one possible option as giving the father's employer a power, where it is genuinely not reasonably practicable to cope with a late change of this sort, to require an employee to take the period of Additional Paternity Leave for which he had previously given notice.

3.10 Where a father wishes to postpone or cancel his leave or pay without giving proper notice and the mother has returned to work, the Government sees one possible option as giving the father's employer a power, where it is genuinely not reasonably practicable to cope with a late change of this sort, to require an employee to take Additional Paternity Leave for the periods of notice that he has failed to provide. Because the mother has returned to work, the father would be eligible for Additional Statutory Paternity Pay during this period of Additional Paternity Leave. Any period of Additional Paternity Leave taken in this way would count as part of his total entitlement as Additional Paternity Leave and Pay can only be taken in one continuous block.

3.11 However, if an employee wishes to postpone or cancel Additional Paternity Leave because his partner has not returned to work and is continuing to receive Statutory Maternity Pay, then he would have no entitlement to Additional Statutory Paternity Pay. In this situation, his employer could require him to take unpaid leave for the period of notice he has failed to provide.

3.12 There are clearly a range of possible circumstances that might cause either the mother or father to change their plans, and we do not consider it appropriate to require the father's employer to make a judgment as to where the real cause of the late change lies. In keeping with the principle of self-certification of entitlement, it will be up to the individual employee to notify his employer should they no longer be entitled to Additional Statutory

Paternity Pay in respect of a particular week (for example if his partner is still receiving Statutory Maternity Pay for the same week). A couple planning to take advantage of Additional Paternity Leave and Pay, in most cases, will have planned it together and taken the decision jointly, so for the purposes of regulations we are minded to leave with the father the onus of declaring any change in his entitlement. The father's employer will assume the father remains entitled to Additional Statutory Paternity Pay unless he declares otherwise.

**Question – 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?**

**Question – Can you identify any other, preferable means of achieving the same result?**

## **CHAPTER 4**

### **NEXT STEPS**

4.1 This consultation will close on 3 August 2007. We will analyse the responses fully before issuing a summary of responses. Leading on from this we will publish a full Government response to the consultation along with a consultation on draft regulations.

## **Timing of introduction**

4.2 The Government's goal is to bring in Additional Paternity Leave and Pay alongside the extension of Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance from 39 weeks to 52 weeks, by the end of this Parliament. This will enable an equal division of paid leave if the parents so choose. The earliest date that Additional Paternity Leave and Pay will be implemented will be for babies due on or after 5 April 2009. However, this is not a firm date for introduction.

4.3 Once Additional Paternity Leave and Pay is introduced we will monitor the scheme closely to see whether employers and employees encounter any problems with the administration. We hope to work with representative groups to ensure that we receive feedback on the process in order to assist in this monitoring and identification of any problems, and to work closely with these groups on possible solutions.



## **ANNEX A**

### **Summary of 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 (see the draft at Annex C)?
- 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?

## **ANNEX B**

### **The consultation code of practice criteria**

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address:

<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>



Draft

## Becoming a parent

**Note:** the term 'father' includes 'civil partner' and 'partner who is not the biological father of the child'.

### Taking time off from work

If you want to take time off work to support the mother of a baby or look after the baby you may be entitled to:

- Statutory Paternity Pay (SPP) - at least part of your wages will be paid for two weeks. You will get the weekly rate of SPP current at the time of your paternity leave, or 90% of your average weekly earnings, whichever is less
- Additional Statutory Paternity Pay (ASPP), payable at the same rate as your SPP
- paternity leave - up to two weeks' time off
- **additional paternity leave.**

Depending on your circumstances you may not qualify for SPP, ASPP and/or paternity leave. Your employer will let you know. If this is the case, you will get more advice and information at the time.

If you need help with this form, please contact any HM Revenue & Customs office. Look up 'Inland Revenue' or 'HM Revenue & Customs' in your local phone book.

Please read through the terms and conditions on page 2 and if you think you might qualify, then:

- complete page 3
- if you think you may qualify of ASPP, ask the mother/adopter to complete page 4
- give the completed pages 3 and 4 to your employer.

### Other help

The Department of Trade and Industry (DTI) website gives more information about these rights and other employment protection at [www.dti.gov.uk/employment/index](http://www.dti.gov.uk/employment/index)

The DTI publications:

1. *Working Fathers*, and
  2. *Paternity Leave and Pay - a basic summary*
- give information on these rights.

The second publication also gives details of other booklets about employment protection and related equal opportunities legislation. These are available from:

[www.dti.gov.uk/workingparents](http://www.dti.gov.uk/workingparents)

The Department for Work and Pensions (DWP) publication NI17A *A guide to Maternity benefits* also has details of other booklets covering social security benefits and some brief information on paternity. Go to:

[www.dwp.gov.uk/advisers/#techguides](http://www.dwp.gov.uk/advisers/#techguides) to see these.

You can also contact:

- any HM Revenue & Customs office for more information about Statutory Paternity Pay and Additional Statutory Paternity Pay
- any Advisory, Conciliation and Arbitration Service (ACAS) office for more information about paternity leave and other employment rights (telephone ACAS on **08457 47 47 47** or go to [www.acas.org.uk](http://www.acas.org.uk) for details)
- go to [www.direct.gov.uk/employee](http://www.direct.gov.uk/employee)

Information on all aspects of employment legislation is also usually available from any Citizens Advice Bureau, low pay units and Trade Unions.

If you are not entitled to SPP/ASPP you may be entitled to other government help. Contact your local Jobcentre Plus office for further information.

## Becoming a parent continued

### Terms and conditions

On this form we have not covered all of the law that relates to Statutory Paternity Pay (SPP), Additional Statutory Paternity Pay (ASPP) and paternity leave. So if you are in any doubt about your entitlement, talk to your employer or contact any HM Revenue & Customs office.

SPP, ASPP and paternity leave are available to:

- a biological father
- a partner, husband or civil partner that is not the baby's biological father
- a female partner in a same sex couple.

You must be able to declare that:

- you are:
  - the baby's biological father, or
  - married to, or in a civil partnership with, the mother, or
  - living with the mother in an enduring family relationship, but are not an immediate relative, and
- you will be responsible for the child's upbringing, and
- you will take time off work to support the mother or care for the child.

You must be continuously employed by the same employer during the whole of the pregnancy.

To get SPP you must also have average earnings over a set period above a set amount - your employer will work this out for you. You cannot start your paternity leave before a child is born.

You can choose to take one or two whole weeks' leave, but not two separate weeks, which must end by the 56th day after the date of birth. If the baby is born early you can choose to take your leave any time between the actual date of birth and the end of an eight week period starting from the Sunday of the week the baby was originally due. You cannot take odd days off work, but the weeks can start on any day, for example, from Tuesday to Monday.

**To get ASPP you must also have average earnings over a set period above a set amount - your employer will work this out for you. You cannot start your paternity leave before a child is born.**

You must discuss your leave plans with your employer and tell them what time off you want by the 15th week before the week the baby is due. Your employer can tell you when this is if you are not sure. You can change your mind but you must give your employer 28 days notice of the dates. You and your employer may find it helpful if you fill in a new copy of this form.

If you cannot tell your employer what time off you want in time, or the baby is born sooner or later than expected, please discuss the situation with your employer. If you are unable to resolve any disagreement, contact any HM Revenue & Customs office for advice.

### Disagreements

If your employer tells you that you are not entitled to SPP/ASPP and/or paternity leave you can challenge that decision. If you need help with this, for:

- SPP/ASPP - contact your HM Revenue & Customs office
- Paternity leave - contact the Advisory Conciliation and Arbitration Service (ACAS) helpline on **08457 47 47 47**. In Northern Ireland, contact the Labour Relations Agency on **028 9032 1442**.

### Penalties

Penalties may be charged where a person, either fraudulently or negligently, gives incorrect information or makes a false statement or declaration for the purpose of claiming entitlement to Statutory Adoption, Paternity, Additional Paternity, Maternity or Sick Pay.



**Note:** in this form the term 'father' includes 'civil partner' and 'partner who is not the biological father of the child'.  
Complete this page, get the mother/adopter to complete page 4 and give pages 3 and 4 to your employer.  
Keep pages 1 and 2 for your records.

### About you

1 Surname

2 First name(s)

3 National Insurance number

4 Your employer's pay or reference number for you

### Your dates for pay and leave

5 The baby is/was due on (DD MM YYYY)

6 If the baby has been born, please enter the actual date of birth here and enter the date the baby was due in box 1 (DD MM YYYY)

### Working out paternity leave and Statutory Paternity Pay

7 I would like my ordinary SPP and/or ordinary paternity leave to start on: (DD MM YYYY)

8 I want to be away from work for:  
one week  or two weeks

### Working out additional paternity leave and Additional Statutory Paternity Pay

9 I would like my ASPP and/or additional paternity leave to start on (DD MM YYYY)

10 I would like my ASPP and/or additional paternity leave to stop on (DD MM YYYY)

### Declaration

You must be able to tick all three boxes below to get:  
• Ordinary or Additional Statutory Paternity Pay, and  
• ordinary or additional paternity leave.  
If this declaration is incorrect, you could be liable for a penalty of up to ?? £3,000.

11 I declare that:

1. I am:

- the baby's biological father, or
- married to, or in a civil partnership with, the mother, or
- in an enduring family relationship, but I am not an immediate relative

2. I have responsibility for the child's upbringing

3. I will have to take time off work to support the mother or care for the child (OPL and OSPP only), OR  
I will take time off work to care for the child (APL and ASPP only)

Signature

Date (DD MM YYYY)



Complete this page and give it to the person who will be claiming Additional Statutory Paternity Pay so they can give it to their employer.

Keep pages 1 and 2 for your records.

About you

1 Surname

2 First name(s)

3 National Insurance number

4 Employer's tax reference number

5 Employee's pay or reference number with employer

6 Department for Work and Pensions identifier  
(Maternity Allowance cases only)

Declaration

If this Declaration is incorrect, you could be liable to a penalty of up to ?? £3,000.

7 I declare that:

- The date my Statutory Maternity Pay, or Statutory Adoption Pay or Maternity Allowance started was (DD MM YYYY)

The date from which I told my employer or DWP that my Statutory Maternity or Statutory Adoption Leave would end, and to stop paying me Statutory Maternity Pay, or Statutory Adoption Pay, or Maternity Allowance is: (DD MM YYYY)

Signature

Date (DD MM YYYY)

Before you pay your employee any Additional Statutory Paternity Pay you must complete this checklist to make sure the qualifying conditions are met.

**Note:** in this checklist the term 'father' includes 'civil partner' and 'partner who is not the biological father of the child'. *Please keep this checklist as evidence of your checks.*

Use this information to decide	Conditions relate to	Conditions	Forms of evidence
1 Father's eligibility	Father	<b>Time-limit:</b> has your employee notified their wish to take APL and ASPP, specifying start and stop dates - by eight weeks before intended start date and on Form SC3?	1 Original notification may be made verbally or in writing. 2 Form SC3 (amended version) with employee's declaration with given to you by the time limit. <input type="checkbox"/>
2 Father's eligibility	Father	<b>Employment history:</b> has your employee worked for you for long enough?	Your records of their employment with you. <input type="checkbox"/>
3 Father's eligibility	Father	<b>Earnings record</b> <ul style="list-style-type: none"> <li>What are the father's average weekly earnings for the employee's relevant period?</li> <li>Have they been at or over the LEL for NICs purposes ?</li> <li>If employee has already claimed OSPP, use same pay calculation information that you calculated for OSPP.</li> </ul>	You can calculate this from your pay records using <ul style="list-style-type: none"> <li>the electronic ASPP calculators on the Employer CD-ROM, or on the HMRC Internet site</li> <li>the Employer Helpline calculation service. <input type="checkbox"/></li> </ul>
4 Father's eligibility	Baby and mother/adopter	Has the claimant signed a declaration of family commitment?	Form SC3 (amended version) includes a declaration of family commitment by the father. <input type="checkbox"/>
5 Father's eligibility	Mother/adopter	Are they receiving Statutory Maternity Pay or Statutory Adoption Pay from their employer, or Maternity Allowance from DWP?	Form SC3 (amended version) at Mother's/adopter's declaration shows the date their SMP, SAP or MA started. <input type="checkbox"/>
6 Father's eligibility - mother/adopter must have used up less than 52 weeks of SMP, SAP or MA.	Mother/adopter	Start and stop dates for SMP, SAP or MA: <ul style="list-style-type: none"> <li>When did their SMP, SAP or MA start?</li> <li>Have they told their employer or DWP to stop paying them SMP, SAP or MA?</li> </ul>	Form SC3 (amended version) at Mother's declaration shows <ul style="list-style-type: none"> <li>the date of their SMP, SAP or MA started</li> <li>the date from which they told their employer/DWP to stop paying SMP, SAP or MA. <input type="checkbox"/></li> </ul>
5 Father's period of APL/ASPP	Baby (or child for adoption)	<b>Age limits; birth</b> <ol style="list-style-type: none"> <li>Will the baby be 20 weeks old, or more, when the father starts his APL and ASPP?</li> <li>Will the baby be less than one year old when the father stops APL and ASPP?</li> </ol> <b>Age limits; adoption</b> <ol style="list-style-type: none"> <li>Will the child have been in placement for 20 weeks, or more, when the father starts his APL and ASPP?</li> <li>Will the child have been in a placement for less than one year when the father stops APL and ASPP?</li> </ol>	Form SC3 (amended version) shows: <ul style="list-style-type: none"> <li>when the father wants APL/ASPP to start</li> <li>when they want APL/ASPP to stop the baby's date of birth or child's date of placement</li> </ul> You are entitled to require to see the baby's birth certificate or, in the case of adoption, certificate of placement. <input type="checkbox"/>



Use this information to decide	Conditions relate to	Conditions	Forms of evidence
8 Period of APL/ASPP: <ul style="list-style-type: none"> <li>cannot start before her SMP/MA has stopped</li> <li>his APL/ASPP period and her SMP/MA period must not together exceed 52 weeks.</li> </ul>	Mother/adopter	Start and stop dates for SMP, SAP or MA: <ul style="list-style-type: none"> <li>When did their SMP, SAP or MA start?</li> <li>Has they told their employer or DWP to stop paying them SMP, SAP or MA?</li> </ul> <p><b>Note:</b> the calculator on the Employer CD-ROM and HMRC's Internet, or the Employer Helpline calculation service will calculate the father's period of APL/ASPP for you.</p>	Form SC3 (amended version) at Mother's/adopter's declaration shows: <ul style="list-style-type: none"> <li>the date their SMP, SAP or MA started</li> <li>the date from which she told their employer/DWP to stop paying SMP, SAP or MA.</li> </ul> <input type="checkbox"/>
9 Father's period of APL/ASPP	Father	Father's APL/ASPP period must not exceed 26 weeks	See APL/ASPP period as calculated above <input type="checkbox"/>
10 Amount of ASPP due	Father	<b>Earnings record</b> <ul style="list-style-type: none"> <li>What are the father's average weekly earnings for the relevant period?</li> <li>Have they been at or over the LEL for NICs purposes?</li> <li>If employee has already claimed OSPP, use same pay calculation information that you calculated for OSPP</li> </ul>	You can calculate this from your pay records using: <ul style="list-style-type: none"> <li>the electronic ASPP calculators on the Employer CD-ROM, or on the HMRC Internet site</li> <li>the Employer Helpline calculation service.</li> </ul> <input type="checkbox"/>

