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Panel on Public Service
Meeting on 18 February 2013

Background brief on the provision of paternity leave
to government employees

Purpose

This paper provides background information on the provision of paid paternity leave to government employees, and summarizes the concerns and views expressed by members when the subject was discussed by the Panel on Public Service ("the Panel").

Announcement of the new initiative in 2011-2012 Policy Address

2. The Chief Executive announced in the 2011-2012 Policy Address that the government would take the lead in promoting child-bearing and family-friendly practices, and would give active consideration to the provision of paid paternity leave for civil servants¹.

3. When the Panel discussed the policy initiatives of the Civil Service Bureau ("CSB") featuring in the 2011-2012 Policy Address on 17 October 2011, members in general were supportive of the provision of paid paternity leave for government employees, and urged the Administration to implement the new initiative as soon as possible. During the discussion, individual members expressed the following concerns and views—

¹ Paragraph 95 of the 2011-2012 Policy Address states that "[m]any developed countries provide paid paternity leave for employees to promote child-bearing and family-friendly practices. The Government will take the lead in promoting this good practice, beginning with a study into the provision of paid paternity leave for civil servants. In considering whether to make it a statutory requirement for all employers, we will have to carefully consider the actual circumstances in Hong Kong."

- (a) every eligible male government employee should be granted seven days paid maternity leave for each childbirth;
- (b) the consultation with stakeholders should address the issue of whether paternity leave should be granted in respect of childbirth outside Hong Kong and childbirth outside marriage;
- (c) as the provision of paternity leave for government employees would possibly create pressure on private enterprises to offer similar benefit to their employees, the Administration should extend the scope of consultation to include subvented organizations, public bodies and private sector organizations; and
- (d) the Government should legislate for the provision of paternity leave to all employees in Hong Kong.

Consultation on the provision of paternity leave to government employees in 2011

4. The Administration undertook a one-month consultation from 21 November 2011 to 20 December 2011 on the proposal to provide paid paternity leave to government employees through the established platforms². The Panel discussed the proposal on 19 December 2011. The major views and concerns expressed by Panel members and the Administration's responses were summarized in the ensuing paragraphs.

Duration of paid paternity leave and period for taking paternity leave

5. Some members called on the Administration to provide seven working days of paid paternity leave, instead of three to five working days as proposed by the Administration. A member opined that in line with the practice of some local private enterprises and public bodies, an eligible government employee should be allowed to take the leave during the period from four weeks before the expected date of childbirth to six months after the actual date of childbirth.

² According to the Administration, the established platforms include the Departmental Consultative Committees, four Central Consultative Councils, and the three advisory bodies on civil service salaries and conditions of service. The consultation paper was also uploaded onto the homepage of CSB, and individual staff might submit views to CSB direct.

6. The Administration responded that having made reference to the current practices of some local private enterprises and public bodies as well as some neighbouring economies, and taking into account the resource and staffing implications involved, a period of three to five working days of paid paternity leave was considered appropriate. As regards the period for taking paternity leave, the Administration advised that taking into account the objective of paternity leave and the maternity leave arrangement, the proposal that paid paternity leave should be taken within a period from four weeks before the expected date of childbirth to eight weeks after the actual date of childbirth was considered appropriate.

Eligibility criteria for paternity leave

Non-civil service contract staff

7. Under the Administration's proposal, all male government employees including non-civil service contract ("NCSC") staff with no less than 40 weeks' continuous service immediately before the expected or actual date of childbirth within marriage would be eligible for paid paternity leave. Some members expressed concern that some NCSC staff might be unfairly deprived of the benefit if the duration of their service was calculated on discrete contract basis and each contract's duration was less than the 40 weeks.

8. A member opined that an employee who had worked for an employer for not less than three months should be eligible for paid paternity leave, because according to the Employment Ordinance (Cap. 57), an employee under a continuous contract for not less than three months would be entitled to paid annual leave on a pro rata basis as well as to statutory holidays irrespective of his/her length of service.

9. The Administration advised that having regard to the practice on the provision of paid maternity leave to female government employees, the Administration was prepared to take into account the NCSC staff's total employment period working under consecutive contracts in assessing their eligibility for paid paternity leave. The Administration considered it reasonable to stipulate a minimum period of 40 weeks of continuous service as an eligibility criterion for paternity leave, having regard to the qualifying employment period for paid maternity leave and the minimum service requirements adopted by local enterprises and public bodies providing paid paternity leave.

Employees of contractors and service providers to the Government

10. Noting that the Administration's proposal of providing paternity leave to government employees did not cover employees of contractors and service providers to the Government nor employees of subvented organizations and public bodies, some members expressed concern that the disparity treatment might undermine social harmony.

11. The Administration responded that paternity leave, being part of civil service benefits, would not apply to employees of contractors and service providers to the Government as they were not government employees. Subvented organizations and public bodies had the autonomy to decide whether they would adopt any family-friendly employment practice in the employment terms of their staff having regard to their own circumstances.

Childbirth outside marriage and other pregnancy complications

12. On the issue of whether paternity leave should be granted in respect of childbirth outside marriage, some members considered that paid paternity leave should be granted to male employees irrespective of whether he was legally married to his partner giving birth and whether the child was born within/outside marriage. A member however expressed reservation over granting paid paternity leave in respect of childbirth outside marriage. Another member suggested that the Administration should seek advice from the Equal Opportunities Commission on whether excluding childbirth outside marriage for the grant of paternity leave would violate the spirit of equality and/or constitute discrimination against cohabiting couples and their newborns.

13. The Administration responded that as the provision of paid paternity leave was a family-friendly practice and taking into account that marital relationship was commonly accepted as the foundation of a family, the Administration considered it more appropriate to provide paternity leave for childbirth within marriage at the initial stage of the implementation of the initiative. The Administration would seek legal advice if necessary.³

14. Some members enquired whether paternity leave would be granted in the case of miscarriage or newborns with health problems. The Administration advised that while paternity leave would be provided in the case of stillbirth upon the issue of delivery certificates by registered medical practitioners, paternity leave would not apply to cases of miscarriage, abortion or newborns

³ The Administration subsequently advised that having regard to stakeholders' views received and having consulted the Department of Justice, the Administration would also consider applications for paternity leave in respect of childbirth outside marriage on a case-by-case basis. (LC Paper No. CB(1)1455/11-12(01))

with health problems. However, sick leave would be granted to female government employees in case of miscarriage or abortion.

Resource implications arising from the provision of paternity leave

15. Some members expressed concern about the staffing and financial implications of the provision of paternity leave to government employees, and called on the Administration to allocate additional resources, if needed, to ensure the efficient provision of public services when some government employees were on paternity leave. The Administration advised that according to its assessment, the provision of three to five days paternity leave to eligible government employees would not give rise to significant financial and staffing implications. In the past three years, the number of childbirth to male civil servants was around 2 700 per year, which represented a birth rate of around 2.7%.

Legislating for paternity leave

16. Some members called on the Administration to speed up the work on enacting legislation on the provision of paternity leave to employees in Hong Kong. The Administration responded that while the Government sought to take the lead in providing paternity leave for its employees to promote family-friendly practices, the Labour and Welfare Bureau would separately conduct a study on the provision of paternity leave to all employees in Hong Kong, and would consult the relevant Panel as well as the Labour Advisory Board on the matter in due course⁴.

Implementation of the initiative on 1 April 2012

17. On 28 March 2012, the Administration informed the Panel by way of an information note⁵ that the arrangements for the provision of paternity leave to government employees had been finalized for implementation on 1 April 2012. The major features of the scheme are set out in **Appendix I**.

⁴ The Administration consulted the Panel on Manpower on 25 January 2013 on the proposal to legislate for the provision of paternity leave by employers to their employees.

⁵ LC Paper No. CB(1)1455/11-12(01)

Recent development

18. The Administration will update the Panel on the provision of paternity leave to government employees at the Panel meeting on 18 February 2013.

Relevant papers

19. A list of relevant papers is in **Appendix II**.

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Major features of the scheme for provision of paternity leave to government employees

(extracted from LC Paper No. CB(1)1455/11-12(01))

The major features of the finalised scheme on the provision of paternity leave to government employees¹ are as follows –

- (a) **five working days** of paternity leave on **full-pay** basis will be provided to eligible employees on the occasion of each childbirth within marriage as a start; Secretary for the Civil Service has discretion to grant paternity leave to eligible employees on the occasion of childbirth outside of marriage on a case-by-case basis;
- (b) paternity leave will be provided to eligible employees **irrespective of the number or place of childbirth**;
- (c) all **full-time**² male government employees (including civil servants, non-civil service contract staff and political appointees) with **not less than 40 weeks' continuous service** immediately before the expected date or actual date of childbirth will be eligible for paternity leave;
- (d) paternity leave may be taken during the period from four weeks before the expected date of childbirth to eight weeks after the actual date of childbirth;
- (e) an eligible officer may take paternity leave in one stretch or in splits. The relevant Bureau / Department may specify the mode of taking paternity leave with a view to striking an appropriate balance between operational considerations and the needs of individual officers; and
- (f) any untaken paternity leave cannot be encashed or carried forward to a future childbirth.

¹ For the avoidance of doubt, government employees do not include employees of contractors and service providers to the Government.

² For the purpose of the provision of paternity leave, "full-time" means the employment is on a "continuous contract" as defined in the Employment Ordinance (Cap. 57), namely an employee who works continuously for the same employer for four weeks or more, with at least 18 hours in each week.

Appendix II

Provision of paternity leave to government employees

List of relevant papers

Committee	Date of meeting	Paper
Panel on Public Service	17 October 2011 (item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Public Service	19 December 2011 (item III)	<u>Agenda</u> <u>Minutes</u> <u>Supplementary information provided by the Administration on 28 March 2012 (LC Paper No. CB(1)1455/11-12(01))</u>

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