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Panel on Public Service
Meeting on 19 May 2014

**Updated background brief on the implementation of paternity leave
in the Government and Government-funded public bodies**

Purpose

This paper provides background information on the implementation of paternity leave in the Government and Government-funded public bodies, and summarizes the concerns and views expressed by members when the subject was discussed by the Panel on Public Service ("the Panel").

Background

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 servants. Following consultation with the Panel and the staff sides through the established platforms¹, the Administration implemented the provision of five working days of full-pay paternity leave to eligible government employees with effect from 1 April 2012. The major features of the scheme are set out at **Appendix I**.

3. During the 18 months between 1 April 2012 and 30 September 2013, a total of 4 175 eligible government employees have taken paternity leave². The staffing implications arising from the initiative have been absorbed by the relevant bureaux/departments without requiring additional resources.

¹ 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 webpage of Civil Service Bureau ("CSB"), and individual staff might submit views to CSB direct.

² Reply Serial No. CSB003 of the Controlling Officer's reply to the Examination of Estimates of Expenditure 2014-2015.

Discussion at the Panel

4. The Panel was briefed on the implementation of the scheme on 18 February 2013. The major views and concerns expressed by Panel members and the Administration's responses are summarized in the ensuing paragraphs.

Eligibility criteria for paternity leave

Childbirths outside marriage and other pregnancy complications

5. Some members considered that paid paternity leave should be granted to male employees irrespective of whether the childbirths concerned were given within or outside marriage. A member suggested that the Administration should seek advice from the Equal Opportunities Commission on whether excluding childbirths outside marriage for the grant of paternity leave would violate the spirit of equality and/or constitute discrimination against cohabiting couples and their newborns.

6. The Administration advised that the Civil Service Bureau ("CSB") would consider applications for paternity leave in respect of childbirths outside marriage on a case-by-case basis having regard to all relevant factors, including the relationship between the applicant and the newborn, relationship between the applicant and the newborn's mother, financial responsibility of the applicant over the caring of the newborn, etc. The arrangement should be consistent with the spirit of equal opportunities.

7. Noting that paternity leave would only be granted with the proof of a delivery certificate, some members opined that the Administration should exercise discretion in a sympathetic and flexible manner and grant paternity leave on the occasion of miscarriage or abortion on grounds of poor health condition of the mother or the foetus concerned. The Administration responded that relevant overseas practices indicated that the proof of delivery was often a determining factor in granting paternity leave. The male government employees could consider taking vacation leave to deal with various childbirth related needs.

Non-civil service contract staff

8. Under the scheme, 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 40 weeks.

9. 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.

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

Implementing paternity leave in subvented organizations and public bodies

11. On members' concern about the provision of paternity leave in subvented organizations and public bodies, the Administration advised that subvented organizations and public bodies had the autonomy to decide the terms and conditions of employment of their staff having regard to their own operation. The Labour and Welfare Bureau ("LWB") was considering legislating for the provision of paternity leave to all employees in Hong Kong³.

Resource implications

12. On the Administration's advice that the provision of paternity leave to government employees did not have significant staffing and financial implications, members enquired how far the private sector could draw reference from the Government's experience. The Administration explained that as the biggest employer in Hong Kong, the Government had greater flexibility in staff deployment and was able to absorb the manpower implications arising from the provision of paternity leave without incurring additional resources despite the existing tight manpower situation. Therefore, the experience of the Government

³ The Panel subsequently wrote to LWB for information on the practices of Government-funded public bodies on the provision of paternity leave to their employees. The Labour Department replied that the Administration did not have ready information in this regard, but would conduct a survey among the relevant public bodies and would provide the Panel with the requested information.

might not be fully applicable to the private sector, as individual employers had to consider their own circumstances and manpower situation in providing paternity leave for their employees.

Council question

13. Hon WONG Kwok-hing raised an oral question at the Council meeting of 17 October 2012 regarding the implementation of paternity leave in the Government and government-funded public organizations and the progress on legislating for paternity leave. The hyperlink to the relevant Hansard is provided in **Appendix II**.

Recent developments

14. The Administration introduced the Employment (Amendment) Bill 2014 ("the Bill") into the Legislative Council on 26 March 2014. The Bill's main object is to provide for a male employee's entitlement, in respect of the birth of a child of the employee, to paternity leave of up to three days and paternity leave pay at a daily rate of four-fifths of the employee's average daily wages. Under the proposal, the statutory paternity leave does not apply to a miscarriage but applies to a stillbirth. Further, the statutory paternity leave applies to a childbirth given outside marriage and/or outside Hong Kong provided that relevant documentary proof is produced by the employee concerned. The Bill is being scrutinized by a bills committee.

15. The Administration will update the Panel on the implementation of paternity leave in the Government and government-funded public bodies at the Panel meeting on 19 May 2014.

Relevant papers

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

**Major features of paternity leave scheme for
Government employees**

(extracted from LC Paper No. CB(4)395/12-13(05))

- (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. The 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-time¹ 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 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

Implementation of paternity leave in the Government and Government-funded public bodies

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>
Council meeting	17 October 2012	<u>Official Record of Proceedings Pages 88 - 100 (Oral question raised by Hon WONG Kwok-hing)</u>
Panel on Public Service	18 February 2013 (item V)	<u>Agenda</u> <u>Minutes</u> <u>Supplementary information provided by the Administration on 5 April 2013 (LC Paper No. CB(4)548/12-13(01))</u>