



**Committee for the Economy**

# **Report on the Parental Bereavement (Leave and Pay) Bill**

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Report: NIA 125/17-22 Committee for the Economy.

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## Powers and Membership

The Committee for the Economy is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One, of the Belfast Agreement, and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for the Economy, and has a role in the initiation of legislation. The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five.

The Committee has power to:

- consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for the Economy.

## Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows

- Dr Caoímhíne Archibald MLA (Chairperson)
- Mr Matthew O'Toole (Deputy Chairperson)
- Mr Keith Buchanan MLA
- Mr Stewart Dickson MLA
- Mr Stephen Dunne MLA
- Mr Michael Nesbitt MLA
- Mr John O'Dowd MLA
- Ms Claire Sugden MLA
- Mr Peter Weir MLA

## Report on the Parental Bereavement (Leave and Pay) Bill

<sup>1</sup> With effect from 10 February 2020 Mr John Stewart replaced Mr Alan Chambers

<sup>2</sup> With effect from 8 February 2021 Mr Paul Givan replaced Mr Gary Middleton

<sup>3</sup> With effect from 19 March 2021 Mr Gary Middleton replaced Mr Paul Givan

<sup>4</sup> With effect from 12 April 2021 Mr Mervyn Storey replaced Mr Gordon Dunne

<sup>5</sup> With effect from 1 June 2021 Mr Mike Nesbitt replaced Mr John Stewart

<sup>6</sup> With effect from 21 June 2021 Mr Peter Weir replaced Mr Christopher Stalford

<sup>7</sup> With effect from 21 June 2021 Mr Keith Buchanan replaced Mr Mervyn Storey

<sup>8</sup> With effect from 5th July 2021 Mr Stephen Dunne replaced Mr Gary Middleton

<sup>9</sup> With effect from 18th October 2021 Mr Matthew O'Toole replaced Ms Sinead McLaughlin

## List of Abbreviations and Acronyms used in the Report

Abbreviation/Acronym	Full explanation of Abbreviation/Acronym
FSB	Federation of Small Businesses
NIHRC	Northern Ireland Human Rights Commission
UN ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights
WPG	Women's Policy Group
WRC	Women's Regional Consortium
WRDA	Women's Resource Development Agency

## Executive Summary

1. This report sets out the Committee for the Economy's consideration of the Parental Bereavement (Leave and Pay) Bill. The Bill consists of 5 clauses which insert a number of provisions into the Employment Rights (Northern Ireland) Order 1996 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and the consequential amendment of that Order, that Act and other statutory provisions.
2. The Bill follows the introduction of Parental Bereavement Leave and Pay legislation by the UK Parliament in April 2021 via the Parental Bereavement (Leave and Pay) Act 2018, after which the Minister for the Economy here gave a commitment to introduce similar provisions for working parents in Northern Ireland.
3. The Bill has three main parts and creates a statutory entitlement to leave and pay for working parents who suffer the death or still birth of a child. The Bill creates statutory "minimum" leave and pay entitlements for bereaved parents in the workplace. In particular, it entitles "employees" to both Statutory Parental Bereavement Leave and Pay, and "workers" only to Statutory Parental Bereavement Pay.
4. The Bill leaves individual employers free to go beyond the specified "minimum" entitlements and offer enhanced leave and pay benefits in this area. The Bill contains powers that allow for the introduction of regulations. Such regulations are to define a "bereaved parent", reflecting the caring relationship between the individual and the child prior to that child's death.
5. The Committee requested evidence from a range of interested organisations and carried out a detailed online survey to which it received 382 responses from organisations and representative bodies as well as a significant number from individuals with personal experience of bereavement.

6. Throughout its consideration of the Bill, the Committee was particularly mindful of the invaluable testimony it received from individuals who had personal experience of parental bereavement and strived to ensure that the legislation was fit for purpose and would offer appropriate protections for people in the most difficult of circumstances.
7. The Committee held a number of oral evidence sessions with representative organisations, including the Coalition of Bereaved Workers and the Human Rights Commission. The Committee also took briefings from the Assembly's Research and Information Service (RaISe) and from the Assembly Bill Office.
8. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and was satisfied with the rule making powers provided for in the Bill.
9. The Committee explored the wide range of issues raised in the written and oral evidence with Department for the Economy officials through oral briefings and written responses. The Committee then considered and deliberated on the provisions of the Bill and the proposed amendments at 17 meetings, concluding with its formal clause by clause consideration on 8<sup>th</sup> November 2021.
10. There was overwhelming support for the introduction of the Bill from the written and oral evidence received. All 382 survey responses were positive about the introduction of a legal entitlement to employee parental leave and pay with the expectation that this would be a minimum provision in ensuring that parents and carers are supported in the event of a parental bereavement. There was a general recognition that, whilst most employers are compassionate in such circumstances, these protections could not be left to individual discretion and should be guaranteed statutory rights.
11. A number of individuals and stakeholders called for the Bill to be widened to extend bereavement leave and pay rights in the event of miscarriage. The issue of the removal of the 26-week qualifying period for pay and the insertion of day-

one rights to parental bereavement pay was also raised consistently by representative bodies across key sectors including trade unions, human rights, bereavement charities and business representatives.

12. As a result of the written and oral evidence it received, the Committee wrote to the Minister for the Economy requesting that a number of amendments be brought forward by the Department to extend the Bill to miscarriage and to remove the 26-week qualifying period for pay. The Committee also made a similar request of the Assembly Bill Office as is normal protocol.
13. The Committee heard that the Department considered that miscarriage was outside the scope of the Bill and that its intention had been to mirror the GB legislation.
14. After correspondence and discussions with the Department, the Committee proceeded to work with the Bill Office to draft its own amendments which are set out in detail in the main body of this report. The Committee also makes a number of recommendations for further work to be taken forward by the Department for the Economy, including: allowing the leave to be taken as single days rather than one week blocks; and to consider widening the provision of the Bill to include everyone impacted by the death of a close relative or partner.
15. The Committee formally requested that the Department bring forward an amendment to extend the provisions of the Bill to miscarriage within 12-months of commencement of the Bill. The Committee wished to provide for a 12-month delay in order to allow for the necessary consultation to take place around miscarriage without delaying the introduction of the main provisions of the Bill.
16. The Department acknowledged the strength of feeling on miscarriage as the Committee Stage progressed and proposed an amendment, insertion of a Clause 3A, to place a statutory obligation on the Department to consult on policy options for miscarriage and to bring forward a report within two years.
17. The Committee is grateful to the Department for working with the Committee to bring forward an amendment to provide for miscarriage; however, it was of the

view that the Department's amendment did not fulfil the Committee's desire to place a firm obligation on the Minister to provide for a scheme for miscarriage on the same terms as provided in the Bill. The Committee therefore proceeded with its own amendments.

18. The Committee agreed amendments to allow for regulations to be brought forward within 12-months of Royal Assent and also agreed that the amendment should allow the Department scope for modifications. The inclusion of miscarriage requires 6 amendments across Clauses 1, 2 and 4 of the Bill and to the Schedule.
19. The Committee also engaged in detailed written correspondence with the Department around the issue of the 26-week qualifying period for pay. The Department decided that the cost was above what would be commensurate with the estimated 40 additional persons that the change would benefit. The Committee heard that HMRC costs for making this change were estimated at circa £1.53m. The Department also outlined a concern that that this change made unilaterally by the NI Executive presented a real legal risk with significant financial liability due to breaking with the parity principle.
20. The Committee voted on an amendment from the Assembly Bill Office to provide for a week-one right to pay rather than day-one which, it was concluded, was more practicable to implement. The Committee divided on this amendment and the amendment was carried.
21. There were a range of additional views on elements of Clause 1 of the Bill around the definition of a bereaved parent and the application of the Bill only to parents/primary carers of a child up to the age of 18. There were strong views that the definition of a bereaved parent should be as wide as possible to include all those who hold parental or caring responsibilities. The Department confirmed that it intends to broadly define the entitlement to Parental Bereavement Leave and Pay.

22. Whilst a majority supported the premise that the Bill should apply to parents/primary carers of a child up to the age of 18 there were some views expressed that the Bill should not be limited to up to the age of 18, highlighting that the depth of loss following the death of a child is the same regardless of age. The Department stated that the focus of the Bill had been to confer equal entitlement to parental bereavement leave and pay to that provided in GB and that it did not examine an extension of the provision to encompass older children with a disability or illness.
23. Clause 2 of the Bill creates an entitlement to parental bereavement pay. There were a range of other issues raised in relation to Clause 2 including on the requirement to take leave as two-weeks together or separate blocks of one-week and regarding the qualifying period for bereavement pay of 26 weeks' continuous employment. Other comments were on issues such as: the notice periods; evidence requirements; the rate of pay; and the extension of the Bill to the self-employed.
24. Whilst the evidence indicated strong support for the provision within the Bill to allow for two weeks to be taken together or in separate blocks of one week, there were concerns that this was, at best, a minimum provision. The Department indicated that amending the Bill to allow employees to take their leave in units of days as opposed to weeks would require HMRC to make complex changes to PAYE in addition to other IT changes and that it would delay introduction.
25. **The Committee therefore agreed to recommend that the Department should undertake work to scope and bring forward proposals to allow leave to be taken in single days rather than two weeks to be taken together or in separate blocks of one week as specified in the Bill.**
26. The Committee heard calls from a range of stakeholders and within its survey in relation to the extension of the Bill to all bereaved workers. The Committee held an oral evidence session with the Coalition of Bereaved Workers who advocated

for the introduction of two weeks' statutory bereavement leave and pay for everyone impacted by the death of a close relative or partner.

27. The Committee was supportive of the call for widening the provision of the Bill to include everyone impacted by the death of a close relative or partner. However, it recognised that this significantly widens the scope of the Bill and did not wish to risk any delay in implementing its main provisions. **The Committee therefore agreed to recommend that this should be part of a wider review of employment law by the Department.**
28. The Committee also recommends that the Department considers, as part of a wider review of employment law, how workers such as sub-contractors and those on zero-hour contracts can be guaranteed the same protections under this Bill as that afforded to employees.
29. The Committee supported a call from the Northern Ireland Human Rights Commission's for a human rights impact assessment on the Bill to consider any interference with Article 8 and Article 14 of the ECHR. **The Committee agreed to recommend that the Department conduct a Human Rights Impact Assessment where necessary before the policy within this Bill is operationalised.**

# Introduction

## Background to the Bill

30. The Parental Bereavement (Leave and Pay) Bill was introduced to the NI Assembly by the Minister for the Economy on 1 June 2021 and was referred to the Committee for the Economy for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 14 June 2021.
  - 1.
  31. At introduction, the Minister for the Economy made the following statement under section 9 of the Northern Ireland Act 1998: 'In my view the Parental Bereavement (Leave and Pay) Bill would be within the legislative competence of the NI Assembly'.
  - 2.
  32. The Bill as introduced creates a statutory entitlement to leave and pay for working parents who suffer the death or still birth of a child. The Bill mirrors provisions already in force in Great Britain via the Parental Bereavement (Leave and Pay) Act 2018.
  - 3.
  33. Similar to the GB Act, it creates statutory "minimum" leave and pay entitlements for bereaved parents in the workplace. In particular, it entitles "employees" to both Statutory Parental Bereavement Leave and Pay, and "workers" only to Statutory Parental Bereavement Pay.
  - 4.
  34. It also leaves individual employers free to go beyond the specified "minimum" entitlements and offer enhanced leave and pay benefits in this area. Moreover, the Bill contains powers that allow for the introduction of regulations. Such regulations are to define a "bereaved parent", reflecting the caring relationship between the individual and the child prior to that child's death.
  - 5.

35. The Bill contains 5 clauses, and a two-part amending schedule. The Bill has three main parts as follows:

6.

36. Parental Bereavement Leave - the Department will be under a duty to provide, by regulations, a right for employed parents to be absent from work for a prescribed period (with at least two weeks leave to be set as the minimum entitlement) following the death of a child. All employed bereaved parents who meet the eligibility conditions, regardless of how long they have worked for their employer, will be entitled to this leave.

7.

37. Parental Bereavement Pay - a right for those eligible parents who meet minimum requirements relating to continuity of employment to receive a fixed or earnings related weekly rate of pay (which rate is to be prescribed by regulations). In line with other entitlements to paid statutory leave, the Bill allows provision to be made for employers to reclaim payments from the Government.

8.

38. Employment protections - parents taking parental bereavement leave will have the same employment protections as those associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption, Parental and Shared Parental Leave). This includes protection from dismissal or detriment as a result of having taken leave.

9.

### **Committee approach**

39. The Committee took oral evidence from Department for the Economy officials on 10<sup>th</sup> February 2021 following the Department's consultation on the Bill. Departmental officials provided a further briefing on 19<sup>th</sup> May 2021 on the main principles of the Bill prior to its introduction to the Assembly on 1<sup>st</sup> June 2021.

10.

40. The Committee published a media sign posting notice in the Belfast Telegraph, Irish News and Newsletter seeking responses to its Bill survey. The Committee carried out an eight-week consultation on the Parental Bereavement (Leave and

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Pay) Bill from 23rd June to 16th August 2021. The Committee received 382 responses to its survey along with a number of separate written submissions from organisations and representative bodies. A large number of the responses were from individuals with personal experience of bereavement. The Committee would like to place on record its thanks to all who responded. Copies of the written submissions are included at **Appendix 3**. A copy of the survey summary report is provided at **Annex 5**.

11.

41. The Committee also agreed a social media strategy to raise awareness of and engage with the public via social media to encourage participation in the Committee Stage of the Bill. Four social media platforms (NI Assembly Blog, Facebook, Twitter and Instagram) were used to disseminate information on the Bill using text, graphics and a video.

12.

42. During the period covered by this report the Committee considered the Bill and related issues at 12 meetings. The Minutes of Proceedings are included at **Appendix 1**.

13.

43. The Committee had before it the Parental Bereavement (Leave and Pay) Bill (NIA 22/17-22) and the Explanatory and Financial Memorandum that accompanied the Bill.

14.

44. At its meeting on 9 June 2021, the Committee agreed a motion to extend the Committee Stage of the Bill to 15 November 2021. The extension requested by the Committee reflected need to progress the legislation in a timely manner but also to ensure robust and detailed scrutiny by the Committee. The motion to extend was supported by the Assembly on 28 June 2020.

15.

45. The Committee held oral evidence sessions with the Coalition of Bereaved Workers (encompassing Marie Curie, Action Mental Health, Alzheimer's Society, Carers NI, Chartered Institute of Personnel and Development, Cruse

Bereavement Care, NIPSA and the Irish Congress of Trade Unions). The Committee received invaluable testimony from individuals impacted by parental bereavement as part of its call for written evidence but took the decision that it was not necessary to place an unnecessary burden on individuals to give oral evidence. The Minutes of Evidence are included at **Appendix 2**.

16.

46. The written and oral evidence provided to the Committee indicated strong support for the introduction of a Parental Bereavement Bill with many respondents highlighting that the legislation is long overdue given that, up until now, there has been no statutory entitlement to parental bereavement leave and pay in what must be the most difficult circumstances. The written and oral evidence also raised a number of issues, particularly in relation to miscarriage; the issue of a day-one right to pay as well as leave, with no qualification period; and a need for flexibility in taking leave in single days and not restricted to two weeks taken in blocks of one week. The Written Submissions are included at **Appendix 3**.

17.

47. The Committee explored the issues raised in further detail in oral evidence sessions with a number of organisations. The Committee also sought further information and clarification from the Department for the Economy both in writing and in oral evidence sessions. Memoranda and papers from the Department of Justice on the provisions of the Bill and proposed amendments are at **Appendix 4**.

18.

48. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered the Bill and Explanatory and Financial Memorandum and was satisfied with the rule making powers provided for in the Bill

19.

49. To assist consideration of specific issues highlighted in the evidence, the Committee commissioned a research paper from the NI Assembly Research

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and Information Service on the provisions of the Bill and international comparisons.

20.

50. The Committee carried out informal deliberations on the Clauses of the Bill at its meetings on 13<sup>th</sup> and 20<sup>th</sup> October and 3<sup>rd</sup> November 2021 and undertook its formal clause by clause scrutiny of the Bill on 10<sup>th</sup> November 2021.

21.

51. At its meeting on 10<sup>th</sup> November 2021 the Committee agreed its report on the Parental Bereavement (Leave and Pay) Bill and ordered that it should be published.

22.

## Consideration of the Provisions of the Bill

52. The Parental Bereavement (Leave and Pay) Bill will provide statutory entitlements to parental bereavement leave and pay allowing for two weeks' parental bereavement leave following the death of a child for employees and a statutory paid element to the leave for employees and workers with 26 weeks' service. The Bill contains five clauses and is divided into three parts.
53. The Committee is aware that bereavement leave and pay legislation in GB provides the same statutory entitlements as outlined in this Bill. Child deaths affect approximately 450 employed parents each year in Northern Ireland. To date there has been no NI equivalent statutory parental bereavement leave and pay provision in Northern Ireland.
54. A summary of the evidence received in relation to each Clause of the Bill and the Committee's consideration of the issues raised in written and oral evidence is set out below. The Committee's consideration of the clauses of the Bill was informed by its online survey and the written and oral evidence it received throughout the Committee Stage of the Bill. A copy of the results of the Committee's online survey can be found at [Appendix 5](#).
55. The Committee explored the issues raised in detail and sought further information and clarification from the Department for the Economy both in writing and in oral briefing sessions. The Department's response to the issues raised in written and oral evidence can be found at [Appendix 4](#).

### Response to Call for Evidence

56. In response to the call for evidence, the Committee received 382 responses to its online survey which ran from 23<sup>rd</sup> June to 16<sup>th</sup> August 2021. A significant proportion, 77 responses were from individuals, including those who had suffered the loss of a child. The Committee received a further ten written submissions from representative organisations encompassing trade unions, bereavement support charities, workers' rights, and employer bodies. The

Committee appreciates the time, effort and care that was taken to submit the evidence, especially from those who shared very personal experiences. The written submissions can be found at Appendix 3.

### **General Comments**

57. There were widely expressed views on the critical importance of this legislation, that it was a long overdue and that it should be introduced as soon as possible, given the already existing provisions in GB.
58. There was overwhelming support for the introduction of the Bill from those responding to the survey. All 382 survey responses answered yes to the question of whether there should be a legal entitlement to employee parental leave and pay (if eligible) in NI, describing it as a minimum in order to ensure parents and carers are supported in the most difficult of circumstances. It was recognised that many employers will be compassionate and understanding of people in such circumstances. However, examples were cited of cases where inappropriate levels of support were given. There was therefore support for these protections to be put in place to ensure that decisions in relation to leave and pay are not left to the discretion of individual employers.
59. Respondents stressed that the roll-out of this legislation should be straightforward and not onerous with as much burden as possible removed from the employee. This extended to consideration of employers, with a respondent citing that the more complex the requirements for notice, pay, qualifying periods, leave entitlement and so on, it is likely to confuse employers and potentially dissuade them from supporting the legislation.
60. Many of the survey respondents shared that they had personally suffered the loss of a child, and that support was not always of a consistent standard. Some were comfortable with the compassion and understanding provided by their employers, others felt there was less flexibility, including feeling a pressure to or being obliged to return to work.

61. Whilst there was widespread support for the introduction of the Bill, the written and oral evidence raised a number of issues. A number of respondents called for the removal of the 26-week qualifying period and for a day-one right to pay as well as leave. There were also views expressed that there should be flexibility in taking leave in single days and not restricted to two weeks, or blocks of one week. A number of stakeholders and individuals believed that the Bill should also provide for parental bereavement leave and pay entitlements in the event of miscarriage and that its scope should be widened to include all workers who suffer the bereavement of a close relative or partner.

62. The Committee also engaged extensively with the Human Rights Commission through both written and oral evidence on the Bill. The Committee sought clarification from the Department on the human rights compliance aspect of the Bill.

### **Clause 1: Parental Bereavement Leave**

63. Clause 1 inserts a new Chapter 4, containing Articles 112EA to 112EE into the Employment Rights (Northern Ireland) Order 1996, which will result in the provision of an entitlement to parental bereavement leave.

64. There was widespread support for the definition of a parent to be all encompassing to ensure inclusion of those with a relationship to a child and in recognition of the various kinship relationships, living arrangements, and caring support that may be provided.

65. The main comments on Clause 1 were in relation to:

- Extending the definition beyond biological parents to primary carers
- Application to parents/primary carers up to the age of 18

#### **Extending the definition beyond biological parents to primary carers**

66. There was close to universal support that the definition be extended beyond biological parents, with 96% of survey responses indicating agreement. This was equally endorsed by representative organisations that support bereaved parents, and those encompassing workers' rights.

67. Together for Short Lives stated that it would consider the following groups should be explicitly included within the definition of ‘parent/ primary carers’: biological parents, step-parents, adoptive parents, foster parents, kinship carers (this would need to include caring for a child in informal arrangements as well as those who hold a Special Guardianship Order, a Child Arrangements Order or are kinship foster carers).
68. Bliss similarly expressed the same inclusions to be made in the definition to allow all those who have a relationship with a child which is parental in nature including grand-parents, and with the addition that it is important to explicitly ensure parents within same-sex couples will be entitled to Bereavement Leave and Pay. Bliss also said that the definition should be extended to include surrogate mothers, at least in circumstances where a baby dies before, during or shortly after birth, in recognition that the loss will be extremely traumatic for them also.
69. UNISON stated too that the definition of ‘parent’ or ‘primary carer’ should incorporate the many people in a child’s life that hold parental or caring responsibilities including step-parents, grandparents (both biological and non-biological) adoptive parents, foster parents and those with caring responsibilities for the child.
70. The Women’s Resource and Development Agency (WRDA) echoed this approach, that the definition of ‘parent’ should be as wide as possible to include primary carers, stepparents, foster parents, adoptive parents and kinship carers.
71. NIPSA also agreed that the definition should be as wide as possible highlighting that many children live in more than one family home where there is joint custody or shared parenting arrangements, including step-parents. NIPSA highlighted that some parents will be resident, others will be non-resident, and that this should not affect entitlement. The issue of residency was also raised by the Women’s Policy Group and Together for Short Lives.

72. Furthermore, The Northern Ireland Human Rights Commission (NIHRC) has recommended that the definition should include both biological parents and those with parental responsibility but also take into account various types of parenting arrangements.
73. The Committee wrote to the Department to share the concerns of stakeholders that the definition of a parent should be as wide as possible in the context of the Bill. The Department outlined that there will not be a specific definition of a "bereaved parent" within the regulations to be introduced under the Bill. The Department intends to broadly define the entitlement to Parental Bereavement Leave and Pay.
74. Accordingly, in addition to the parents of the child, entitlement will be conferred upon step-parents, foster parents, adoptive parents and kinship carers. The custody arrangements of parents will not impact upon entitlement. Parents who do not share residency with a child will be eligible to the entitlements.
- Application to parents/primary carers up to the age of 18**
75. Around 84% of survey responses agreed with the premise that the Bill should apply to parents/primary carers of a child up to the age of 18.
76. The survey enquired in what circumstances might there be disagreement with this, with 62 respondents providing reasons to why they considered the Bill should not be limited to up to the age of 18, highlighting that the depth of loss following the death of a child is the same regardless of age. Poignantly, it was said that the death of a younger child was unbearable to think about, and the death of an adult child would be as devastating.
77. Reasons cited for an extension beyond 18 years included circumstances of illness or disability. It was suggested from the survey responses that the age limit be raised to 25 so as to encompass young adults.
78. A number of organisations highlighted that other existing legislation differentiates between young people aged over 25 in terms of income-related benefits and support.

79. NIPSA highlighted existing legislation differentiates between those aged under and over 25 in relation to income-related benefits, recognising that most young people are not independent at the age of 18, but most are independent by the age of 25. As a minimum, NIPSA has suggested that the upper age threshold in the legislation should be 25.
80. UNISON, in its written submission, referred to the fact that the loss of a child can lead to a loss of benefit for parents or care givers if the child has been in receipt of Disability Living Allowance or Personal Independence Payment, or the parent or care giver has been in receipt of Carers Allowance and Child Benefit. It highlighted that these benefits do not cease when a child turns 18. Furthermore, UNISON believes the legislation should allow all parents or care givers the time off to grieve with dignity and with no loss of income, regardless of their child's age.
81. The Women's Regional Consortium (WRC), Women's Policy Group (WPG) and Women's Resource Development Agency (WRDA) also suggested that the legislation should apply no matter the age of the child. The WPG stated that setting an upper age limit of 18 risks creating a new precedent in the treatment of young people given other existing legislation.
82. The Committee also raised the issue of the extension beyond 18 years with the Department; citing the issues raised by stakeholders such as disability and or illness; and that other existing legislation differentiates between young people aged under and over 25 in terms of income-related benefits and support.
83. The Department stated that the focus of the Bill had been to confer equal entitlement to parental bereavement leave and pay on working parents as that afforded to working parents in GB and, as such, the Bill makes provision for bereaved parents of children under the age of 18. The Department did not examine an extension of the provision to encompass older children with a disability or illness.

## Miscarriage

84. A significant number of individuals raised the issue of miscarriage in responding to the Committee's survey on the Bill. The issue of provision for miscarriage was also raised by a number of stakeholders as part of their written submission on the Bill.
85. The NIHRC suggested that other countries have taken a more progressive and inclusive approach to parental bereavement leave and pay. The NIHRC recommended that the Department consider other countries' approach to parental bereavement leave, particularly in relation to miscarriage and stillbirth, including New Zealand's inclusion of bereavement through miscarriage, as well as relevant civil society organisations' recommendations on the inclusion of miscarriage within parental bereavement leave.
86. UNISON also called for the legislation to be extended to the loss of any child before birth through either still born or miscarriage stating that these parents should be afforded the same legal rights and protections to paid bereavement leave in the same manner as any other parent or care giver experiencing the loss of a child.
87. The WPG and WRDA also believe that the leave entitlement should be extended to those who have suffered a miscarriage stating that this is a policy being enacted in other countries such as New Zealand, as well as throughout organisations in Northern Ireland, such as the Women's Resource and Development Agency.
88. The Miscarriage Association suggested that future consultations should include the possibility of extending parental bereavement leave and pay after pregnancy loss before 24 weeks (miscarriage, ectopic pregnancy and molar pregnancy).
89. The Committee engaged in a series of detailed written and oral communications with the Department in relation to the issue of miscarriage. The Minister responded to the Committee on 1<sup>st</sup> October stating that, in his view, miscarriage could be included within a wider Departmental review of the employment law framework in Northern Ireland. The Minister stated that these are significant and

complex issues, deserving of the same sensitivity and due consideration as that which has already been afforded to this Bill. He added that by committing to their inclusion within a wider employment law framework review, we can help to ensure continued passage of this Bill without undue delay.

90. The Department further stated that, from the outset, the focus of the Bill has been to mirror the same provisions that have been afforded in GB since April 2020. For the purpose of maintaining this focus, miscarriage was considered as lying outside of the scope of this legislation. However, the Department recognised the significance of miscarriage in the discourse surrounding the Bill and this awareness grew following the second stage debate and engagement with the Committee.
91. The Department explained that a detailed exploration into extending the regulations, to include provision for miscarriage, has been undertaken. It stated that IT changes required by HMRC have been estimated at circa £1.53m and that this change would also make the anticipated introduction date of April 2022 impossible. The Department added that the recurring resource costs for government would also be significantly higher than planned for under the current draft of the Bill. Depending on rate of uptake, extent of entitlement and number of miscarriages in NI each year the Department estimated this increase to be in a range between £490,000 and £3m per year.
92. The Department subsequently determined that the impact of including a miscarriage provision or power within the Bill, would involve a significant departure from the original policy intent in terms of scope and costs and that it would not be possible to give it legislative effect by April 2022, thus delaying the introduction of the Bill.
93. At its meeting on 6<sup>th</sup> October, the Department in an oral briefing repeated the explanations above in relation to why miscarriage was not initially included within the scope of the Bill and the potential impact of its inclusion. The Department also highlighted that miscarriage leave and pay has risen up the agenda with the introduction of the three-day entitlement in New Zealand since

this Bill was introduced. It was also suggested that there is a possibility of further developments in relation to miscarriage at Westminster. The Department stated that if we in Northern Ireland ‘plough our own furrow’ on these family-related leave entitlements, a lot of the cost for systems development will fall on the Executive. However, when we follow or move in tandem with entitlements that are being introduced in GB, we do not incur the same implementation costs with HMRC.

94. At its meeting on 20<sup>th</sup> October, the Committee considered further correspondence from the Minister on the issue of miscarriage. The Minister outlined that he shares the Committee’s belief that working parents should be supported through the trauma and loss following a miscarriage. However, he reiterated that he did not believe that the Bill was the appropriate vehicle without having consulted on the practicalities either with parents or with employers, and that there is clearly a risk of arriving at hastily constructed and flawed legislation, however well-intentioned.

95. The Committee wished to balance the need to ensure that the statutory rights to parental bereavement leave and pay would be enacted within the current mandate with the desire to afford these protections to as many parents as possible. The Committee was mindful of the fact that, as stated by the Department, amendments to a Bill could be written in such a way that they could be brought into effect at a later date.

96. The Committee agreed to request that the Department bring forward amendments to provide a scheme for leave and pay for miscarriage to be introduced within 12-months of the commencement of the Bill. The Bill Office was also provided with the same request, as is normal procedure. The Committee’s reasoning for the 12-month delay was to allow adequate time for consultation on the issue of miscarriage without delaying the commencement of the main provisions of the Bill.

97. At its meeting on 3<sup>rd</sup> November, the Committee considered further correspondence from the Department including a draft amendment and the draft amendments from the Bill Clerks to include miscarriage within the Bill.

98. The Department stated that, in light of the significance of the issue of miscarriage and the Minister’s desire to listen to the call for action from Committee members, the Department drafted an amendment on miscarriage. The Department’s amendment would place a statutory obligation on the Department to consult on policy options for miscarriage (as it relates to this Bill) within two years of the associated regulations coming into effect.
99. The Committee wished to place an explicit obligation on the Department to bring forward a scheme to provide for leave and pay for miscarriage to be introduced 12 months from Royal Assent. Some Members, however, favoured the approach suggested by the Department stating that they wanted to allow adequate time for consultation around what is a sensitive and important matter. The Committee was of the view that the department’s amendment did not fulfil the Committee’s desire to place a firm obligation on the Department to provide for a scheme for miscarriage on the same terms as provided in the Bill.
100. The Committee discussed the Bill Office amendments in relation to miscarriage and was satisfied that they were drafted in order that the Department would have 12 months from Royal Assent to allow for consultation and that there was scope for modification.
101. Further correspondence was received from the Department on 9<sup>th</sup> November setting out the Department’s views on the estimated costs of the Committee amendments, including the potential repercucessive costs from the UK Government. The Committee noted this correspondence and agreed that, having already finalised its proposed amendments, the merits of these amendments would now be appropriately debated on the floor of the Assembly.
102. The Bill Office amendments in relation to miscarriage require amendments to Clauses 1, 2, 4 and Schedule 1. The amendment required to Clause 1 of the Bill relates to the leave element of this amendment. The remaining amendments are set out under the appropriate clauses throughout this report.

**Amendment**

**Clause 1, page 3, line 42, at end insert -**

**Application in relation to miscarriage**

**112EF. The Department must by regulations provide that regulations under this Chapter apply in relation to a person who has experienced a miscarriage as they apply in relation to a bereaved parent, with such modifications, if any, as specified in regulations**

103. The Committee agreed to take forward the amendment to Clause 1 to bring forward scheme to provide for leave for miscarriage to be introduced 12 months from Royal Assent.

**Clause 2: Defining how and when parental leave and pay can be taken**

104. Clause 2 adds Part 12ZD (containing sections 167ZZ9 to 167ZZ18 to the Social Security Contribution and Benefits (Northern Ireland) Act 1992 to create an entitlement to parental bereavement pay.

105. Part 1: This will provide for Parental Bereavement Leave for employed parents to be absent for work for a prescribed period (with at least two weeks leave to be set as the minimum entitlement) following the death of a child.

106. Part 2: This will provide a right for those eligible parents who meet minimum requirements relating to continuity of employment to receive a fixed or earnings-related week rate of pay.

107. Part 3: Parents taking bereavement leave will have the same employment protections as those associated with other forms of family related leave. This includes protection from dismissal or detriment as a result of taking leave.

108. The main comments on Clause 2 were in relation to:

- The two-week entitlement

- The requirement to take leave as two-weeks together or separate blocks of one-week.
- The 56 weeks for leave to be taken
- The qualifying period for bereavement pay of 26 weeks' continuous employment.
- The rate of pay
- Extension to the self-employed
- The requirements in relation to notice periods
- The evidence requirements

109. The following is a summary of the views raised by stakeholders; the Committee's deliberations on each of the issues; and the response from the Department.

### **The two-week entitlement**

110. Around 86% of survey responses agreed that leave entitlement should be at least two weeks. However, many wished to convey that two weeks were an absolute minimum. Although recognising that a timescale cannot be put on the grieving process, there were several suggestions that a minimum should be more in the region of between four to eight weeks.

111. Overall this clause evoked a very strong reaction to the trauma of experiencing the loss of a child from survey respondents. Whilst two weeks' entitlement was considered to be better than no provision, it was felt it did not adequately take into account the depth of shock of such a life-changing loss, and that the grieving process would have barely begun. Some pointed out that it would have taken up to a week alone to have made the necessary funeral arrangements.

112. Many also cited the impact of a return to work too soon on mental health and well-being, potentially driven by financial worries at losing pay. It was advised that such situations arising would be detrimental to both the employee and employer where a person returning to work is suffering such emotional distress.

113. As such it was considered that the burden to return to work when not fit to do so may mean that employees will have little choice other than to rely on sick leave, an unsatisfactory option, and which could exacerbate distress in the event of a risk of potential disciplinary action due to pro-longed sick absence.
114. In its written evidence to the Committee, in a reiteration of those views expressed by survey respondents, UNISON called for consideration of a longer period than two weeks leave. This would be to ensure that parents or carers could feel better prepared to return to work following bereavement leave, and without feeling the need to use sick leave or annual leave to cope with their grief.
115. Furthermore, UNISON's evidence concurred with views as to the detrimental consequences of returning to work too soon, saying this would increase the likelihood of further leave being required. In turn, this would impact on workforce planning.
116. The WRC echoed that there are issues for both employer and employee if a bereaved employee returns to work too quickly after bereavement. The WRC suggested this would impact on their productivity, motivation and sickness levels and in some cases may lead to employees leaving their jobs.
117. Bliss said whilst it recognised many employers will go above and beyond to ensure their employees can take the time they need, many do not. The introduction of two weeks leave will go some way to ensure parents are entitled to minimum support.
118. From the perspective of businesses, the FSB NI outlines that dealing with grief at work can be challenging for all employers, but this is particularly true for small business owners who operate in smaller teams, and reminded that often their employees are close colleagues and friends.
119. The FSB NI highlighted that these matters will be more easily accommodated by large organisations, but it is manifestly more onerous and time-consuming for the smallest of firms who do not have Human Resource departments.

120. The Committee wrote to the Department to outline the view from some stakeholders that two weeks was inadequate, given the circumstances of the loss of a child were especially distressing. The Departmental response outlined that introducing two weeks' entitlement will provide a statutory minimum level of support for working parents who experience the loss of a child. The Department stated that employers offer greater levels of provision and support for their staff beyond the statutory minimum and that all employers are encouraged to do likewise.

**Requirement to take leave as two-week or one-week blocks**

121. There was strong support from 83% of survey responses that the Bill will allow for two weeks to be taken together or in separate blocks of one week, notwithstanding concerns expressed that this is minimum provision at best. However, many of those commenting as part of the survey stressed that it was vital that parents can take leave when they most need it.

122. The bereavement charity Bliss outlined that depending on the circumstances, the aftermath of a baby or child's death can be very complicated. Funerals can take a long time to organise, especially if there is a post-mortem or other investigations underway. Many child deaths will also involve an inquest process, requiring intermittent and unpredictable days in Court. If a parent wants to use their leave around any of these events, any requirement which means Bereavement Leave has to be taken in one go or in blocks of a full-week is not going to suit their circumstances. The charity also advised that grief is also not a linear process and it is common for parents to experience days of acute, overwhelming grief without warning, resulting in the need to take days away from work in a way that cannot be predicted.

123. From an employers' perspective the FSB recommends that to enable small employers to plan their workforce and ensure that there is a reduced administrative burden leave should be taken in either a single block of two weeks or in two separate one week blocks.

124. By contrast, the WRDA believes that bereaved parents should have the opportunity to take two weeks leave but that this should not have to be taken in one-week blocks. They should be afforded the opportunity to take leave in single days throughout the period. Furthermore, this should be paid leave. The WRC has called too for maximum flexibility around how the leave is taken, ideally in smaller units of one day without loss of pay.

125. The Committee raised the issue of the requirement to take leave in blocks of one or two weeks which was highlighted by some individuals and women's groups who were of the view that leave should be flexible, with options to take single days. The Committee also acknowledged the views of the FSB that this would be practically problematic for small businesses.

126. The Department responded to outline that changing the Bill to allow employees to take their leave in units of days as opposed to weeks would require HMRC to create a new Parental Bereavement Pay calculator within the Basic PAYE tool, in addition to other IT changes. HMRC has indicated that the cost of this potential amendment would be circa £2.82m. It would also make an introduction date of April 2022 impossible. Whilst there would undoubtedly be benefits to taking PBLP in single days, the costs for enabling this are disproportionate. The PBLP entitlement is intended to be a statutory minimum, and employers will be encouraged to be compassionate in considering requests for single additional days of leave to cover the types of purpose highlighted in consultation responses.

127. **The Committee, having considered the views of stakeholders and the response of the Department and the Minister, agreed to bring forward a recommendation that the Department should undertake work to scope and bring proposals to allow leave to be taken in single days rather than two weeks to be taken together or in separate blocks of one week as specified in the Bill.**

## 56 weeks for leave to be taken

128. 89% of survey responses agreed that it was appropriate that regulations, to follow at a later date, intend to allow for leave to be taken up to 56 weeks after

the death of a child. However, some suggested that a longer period in which to be able to take leave would be more conducive to supporting the grieving process. It was highlighted that this would allow for time off around anniversaries, which were especially distressing. Bliss said that for families who experience baby loss or stillbirth, milestones such as due date and other pregnancy specific milestones may be equally painful.

129. The Committee raised the suggestion of no time-limit with the Department to allow for different stages in the grieving process. The Department stated that having no time limit would be difficult to legislate for and would also be difficult for employers to administer. The Department added that good employers will offer continued support and flexibility at what will be an undoubtedly difficult time.

### **The Rate of Pay**

130. [NIPSA](#) has called for bereavement leave to be paid at the full rate of pay. It has suggested that the payment of parental leave should be at earnings-related rates, highlighting that the low rate of pay may be a barrier to taking the leave.
131. The [WRDA](#) believes that all bereaved parents and carers should have the right to parental bereavement leave and pay and agreed with the viewpoint that this should be at the full rate of pay.
132. The [WRC](#) warned that the lower rate of pay will mean financial worries for some parents especially those on the lowest incomes who will struggle to make ends meet as well as having the financial worry of affording high funeral costs. As such the WRC has called for the leave to be paid more generously than the statutory rate.
133. The [WPG](#) firmly believes that this leave should be at full pay, as this reduced rate of pay will act as a barrier to may in taking the leave at a time when parents and carers should not have to fear their job stability or income, particularly for those already struggling to make ends meet.

134. Bliss provided insight from its experiences with parents dealing with premature birth and subsequent loss of a baby, saying that a birth up to four months premature may result in a significant reduction in opportunity to save, and an unexpected and immediate shift to a reduced income. For babies who die after an extended stay in neonatal care, their family may already be experiencing these additional financial pressures, and the requirement to fulfil a qualifying period may prevent parents from taking the leave they are entitled to. Statutory payment levels are also significantly less than average wages, which can be another barrier to parents taking leave they are entitled to, due to being unable to cover the cost of the shortfall.

135. The Committee raised the views of stakeholders around the rate of pay with the Department and the suggestion that bereavement leave should be paid at the full rate of pay or should be at earnings-related rates highlighting that the low rate of pay may be a barrier to taking the leave.

136. The Department responded to indicate that the Bill will provide a statutory minimum level of support for working parents who experience the loss of a child. The Department added that many employers offer greater levels of provision and support for their staff beyond the statutory minimum and all employers are encouraged to do likewise.

### **Extension to Self-employed**

137. It was considered by some unfair that those parents who have opted to become self-employed to enable them to care for a child with a long-term disability should not receive a period of paid statutory leave if their child dies. As such the protections offered by the regulations should be extended to these groups.

138. The [FSB](#), whilst supporting the proposed policy on parental bereavement leave and pay, has urged that it also be extended to the self-employed. Furthermore, that the administration process be made as simple as possible. The FSB NI highlighted that other bereavement payments have also been

extended to self-employed people, with the Bereavement Support Payment tied to Class 1 and Class 2 National Insurance contributions.

139. The FSB is of the view that a bereaved parent is no less bereaved because they are self-employed highlighting that some parents may have deliberately chosen the flexibility of self-employment to enable them to care for a child with a long-term sickness or disability. It stated that those parents should not be penalised.
140. This outlook was shared by Together for Short Lives who would like to see protections offered to the self-employed, saying in particular they felt that it is unfair that those parents who have opted to become self-employed to enable them to care for a child with a long-term disability should not receive a period of paid statutory leave if their child dies.
141. Employers for Childcare would also encourage provision to be extended to cover those who are self-employed. Having an entitlement to statutory pay could in taking the time that need to grieve and would support financially during a difficult time and when facing potentially experience a decrease in income.
142. The Committee asked the Department what consideration had been given to the self-employed and the suggestion that some parents may have deliberately chosen the flexibility of self-employment to enable them to care for a child with a long-term sickness or disability.
143. The Department indicated that the focus of the Bill has been to mirror the same provisions that have been afforded in GB since April 2020. The Department had not considered extending employment rights to those in self-employment.

**Identifying what level and length of notice period would be necessary**

Notice period for leave after the death of a child

144. Close to 80% of responses indicated there should no requirement to give notice for leave in the immediate aftermath of a bereavement, with the next level of responses, 13%, suggesting within one week.
145. It was widely acknowledged in the survey responses that giving notice in these circumstances should not be necessary, nor was it appropriate. It was suggested that a medical professional, such as a bereavement nurse could inform an employer if necessary. The feeling for minimising processes at such a time was expressed frequently.
146. It was noted that with the death of a child it would most likely be assumed that an employee would be taking leave, with some suggesting there should be provision for employers to set up such a policy of assumed leave, in the event of such tragic circumstances.
147. The FSB does not consider notice should be required in the aftermath of a death of a child; smaller employers need notice for leave at a later date for workforce planning.

#### Notice period for leave at a later date

148. Whilst just over 50% of responses agreed that notice should be given for leave taken at a later date, 30% of responses indicated disagreement, and a further 17% neither agreed or disagreed.
149. Whilst there was a stronger consensus that it would be more reasonable for employers to request notice to take leave at a later date, it was reiterated that ease of application should the case without too onerous a process. Respondents to the survey who disagreed with notice being given expressed concern that grief could overwhelm at any time and not only in the immediate aftermath of a death. As such there was a call for rules around provision to be less strict, citing that there so many possible and individual circumstances with the loss of a child.

#### Notice period in order to receive pay

150. The survey further probed potential issues that may arise around notice periods in the context of pay, given the Bill makes a distinction between offering a right to leave but not a right to pay without a qualifying period being met.

151. A majority of responses to the survey disagreed overall with any requirement that a notice period should be given to receive pay. Of those 59% responses, 36% expressed strong disagreement. By contrast, a further 30% of responses agreed with the requirement for notice, within that cohort 11% expressed strong agreement.

152. Following on from the strong opposition to the 26 week qualifying period for pay, the WRDA was also opposed to employees only receiving payments by giving notice of when they are intending to take leave.

153. The Committee raised with the Department the view that notice periods should not be required, especially after the sudden death of a child. The Department clarified that notice must be given to an employer prior to the taking of the leave. However, it is understood that this may not always be possible. Accordingly, during the first 56 days following the death of a child, notice to take leave would not be required in a case where it is not reasonably practicable for the employee to give that notice. In such a case, notice must be given as soon as is reasonably practicable. After 56 days following the death of a child, notice must be given one week in advance of taking leave. The Department believes that this achieves a balance between the needs of bereaved parents and employers.

**Establishing what evidence may be required to show that an employee is entitled to leave and to pay**

154. The Bill makes provision for leave from day 1 for employees, by contrast the provision to receive pay is for 26 weeks' continuous employment. The survey sought to probe whether this may suggest a greater burden of proof required to receive pay, mindful of this being required at a time of loss.

155. Also, an assumption was made that the Bill may inform the review and development of employer guidance in due course. There was, however, no

definitive consensus with regard to providing evidence for leave in line with employer guidance. Around 47% of survey responses agreed there should be a requirement, 30% disagreed, and 22% neither agreed or disagreed. A call was made that government should set out clear guidance on evidence that all employers should adhere to.

156. With regard to pay, by comparison with leave, marginally more survey responses, 51% agreed there should be a requirement to provide evidence to receive pay, 27% disagreed, and 21% neither agreed or disagreed.

157. Some said that a death and funeral was evidence in itself, there was a comment made that being reminded of the loved one's passing is traumatic enough without having to show employers a death certificate, just to get paid.

158. In summary, the comments by survey respondents stressed strongly and consistently that the evidence process should not be onerous and importantly should be handled with care and sensitivity. There was concern with respecting mental health and well-being. Employers for Child Care wrote that it would strongly advocate that evidence requirements should be kept to a minimum given the sensitive nature of this leave. Furthermore, it would suggest that clear statutory guidelines should be in place, so that employers do not have to rely on their discretion on such a sensitive issue, and employees are treated compassionately.

159. The Committee sought clarification from the Department in relation to the issue of evidence. The Department stated that, in recognition of the particularly sensitive nature of parental bereavement, evidential and administrative requirements have both been kept to an absolute minimum. The Department explained that evidence of entitlement for both leave and pay will be by self-declaration. Employees and workers must ask their employer in writing to receive parental bereavement pay.

#### Human Rights Compliance

160. As recommended by the [NIHRC](#), the Committee asked the Department for information of its analysis of the Bill for human rights compliance. In response the Department stated that an Equality Screening of the Bill was carried out in line with section 75 of the Northern Ireland Act. A Regulatory Impact Assessment and Rural Needs Impact Assessment were also carried out. The screening exercises did not identify any indicators that the policy would disproportionately impact on any of the Section 75 categories.
161. In addition, and as per normal procedure, in order to ensure that the Bill was within the legislative competence of the Northern Ireland Assembly, the Department did assess the Bill on whether it was in line with Section 6(1) of the Northern Ireland Act 1998.
162. The Department therefore did not deem it necessary to carry out a Human Rights Impact Assessment. This conforms to the joint NICS and NIHRC guidance that a Human Rights Impact Assessment is only required *if this initial screening exercise indicates that the policy could engage any of the rights in the Human Rights Act.*
163. The Department noted the Northern Ireland Human Rights Commission's suggestion that it should conduct a human rights impact assessment to consider any interference with Article 8 and Article 14 of the ECHR. Subject to Assembly approval of the Bill, the Department will consider this suggestion when advancing to the next stage of operationalising the policy, if required.
164. **The Committee agreed to recommend that the Department conduct a Human Rights Impact Assessment where necessary before the policy within this Bill is operationalised.**

**Qualifying period for bereavement pay - 26 weeks' continuous employment**

165. Consideration of the survey responses indicated that close to 54% broadly agreed with the qualifying period, which is not as definitive an agreement as that expressed for other provisions in the Bill. A further and notable 38% of responses either disagreed or strongly disagreed; a further 9% of responses neither agreed or disagreed.
166. The comments provided by survey respondents provided insight into the reasons given by those not in support of the 26-week qualifying period. It was said that it was inappropriate to apply a qualifying period in such circumstances, that how long you worked for a company should not be a factor. Furthermore, that parental bereavement should be treated with the utmost respect and sensitivity, that parents who lose a child should not be stressed any further by loss of income or pressure to return to work.
167. A suggestion was made that full pay should be available for at least six weeks following a death of a child. Also, that there should be the right to be paid at a worker's flat wage rate and not considerably lower, especially given the impact on those on lower incomes. This was likely to exclude people most in need of the financial support i.e. those on zero hours' contracts or temporary contracts.
168. The issue of a day-one right was raised consistently by representative bodies across key sectors, including trade unions, human rights, and bereavement charities. This is a view not only held by those representing employees, it was expressed by business representatives too. Bliss put it that Bereavement Pay which comes attached with stringent qualifying criteria will present a significant challenge to parents being able to take the Bereavement Leave they are entitled to.
169. In its written evidence the FSB stated that the death of a child can be unexpected and, therefore, the right should be available to parents from day one of their employment and not linked to length of service. It also highlighted that some recently bereaved parents may have changed jobs in order to gain greater working flexibility to enable them both to work and care for a sick child.

Consequently, the FSB is of the view that all parents facing the trauma of losing a child require support and compassion, not just those who have been in employment for 26 weeks.

170. Employers for Childcare strongly believes that parental bereavement pay, as is the case for parental bereavement leave, should be a day one entitlement for parents, making the point that unlike other types of leave (such as holiday or unpaid leave) this cannot be scheduled, and parents who have experienced a bereavement must be given time to grieve.
171. The risks posed of returning to work too soon were outlined extensively in evidence given on leave entitlement. Similarly, Employers for Childcare raised this in the context of returning to work too soon because of ineligibility for pay, saying it is an imperative that this policy is available to all parents regardless of the length of time they have been with their employer to prevent financial hardship for families during such a difficult time.
172. The ICTU believes that a statutory entitlement to bereavement leave and pay should be available to all workers as a day-one right and should not be subject to a qualifying period. Also, that payment should be at earnings related rate so that workers are not penalised financially at this very difficult time.
173. NIPSA drew attention to the impact of the qualifying period on excluding zero-hours contract workers, agency workers and those on temporary contracts from the provision. It is of the view that such workers already face significant difficulties accruing sufficient continuous service qualifying for key statutory rights.
174. UNISON stated that whilst it welcomed that Bereavement Leave will be a day one right, it calls for Bereavement Pay to also be a day one right, and in line with other trade unions and representative bodies, refers to the potential impact on agency workers, temporary workers and those on zero-hours.

175. This resonated with the WRC, WPG and WRDA who expressed their firm belief that entitlement to bereavement leave and pay should be a day-one right. The WRDA said that the qualifying period seemed arbitrary and punitive and would exclude many zero-hours contract workers, agency workers and those on temporary contracts, pointing out that the majority of those on such precarious contracts are women.
176. Together for Short Lives set out its concerns for those on zero hours' contracts and those who had been employed for less than 26 weeks and wished to see regulation extended to cover them, and also including the self-employed.
177. Bliss has suggested that a new payment process should be established which will allow parents to take paid leave in units of a single day, possibly building on the flexibility built into the payment systems through the furlough scheme. This would enable the leave to be fully flexible to the individual needs and circumstances of the family. Bliss reiterated the frequently expressed view that parental bereavement leave is not comparable to other types of parental leave which can be planned in advance and are positive by their nature.
178. The Human Rights Commission referred to the UN ICESCR Committee in its 2016 Concluding Observations on the UK that noted its concern in regard to working conditions at the high incidence of part-time work, precarious self-employment and the use of 'zero hour contracts', which particularly impact women.
179. The Committee engaged in detailed written correspondence with the Department around the issue of the 26-week qualifying period for pay. The Committee highlighted to the Department the strong consensus from across stakeholder organisations that this should be a day-one right.
180. The Department stated that it had explored the practicalities of making pay a day-one right but, following receipt of an early cost estimate from HMRC of £180,000, it was decided that this cost was above what would be commensurate with the number of additional persons that the change would benefit. The

Department estimated that a maximum of 40 parents would be impacted by the 26 week qualifying period and that in reality this number may be somewhat smaller. This is due to the fact that most employers already make provision for paid leave in the event of bereavement and would continue to do so in the case of employees not qualifying for the statutory payment. However, given the Committee scrutiny, the Department carried out a further, detailed exploration into extending the regulations to include provision for a day-one right.

181. The Department outlined that, following this more detailed exploration, HMRC costs for making this change have increased significantly, now estimated at circa £1.53m. It stated that it would also not be possible to introduce the new employment right in April 2022. The Minister indicated that the wider issue of day-one rights should be explored in greater detail by the Department and that this should be included within the scope of a future wider review of employment law in Northern Ireland.
182. The Department stated that, in an effort to mitigate against this decision, it engaged with Department for Communities colleagues to ascertain what welfare support is available for the small number of parents who would not meet the qualifying period for PBP. The Department for Communities provides a discretionary support scheme for situations such as these and, providing the wider conditions of the discretionary support scheme are met, this scheme could provide a safety net for bereaved parents who cannot avail of the Bill entitlements.
183. At its meeting on 6<sup>th</sup> October 2021, the Committee considered the Department's response in relation to the issue of the 26-week qualifying period for pay and the call for a day-one right to leave and pay. The Committee also received an oral briefing from officials on the issues raised in the response. In addition, the Department outlined, during its oral briefing that it would be possible to introduce the legislation as drafted from April 2022, but that other amendments to the Bill could be written in such a way that they could be brought into effect at a later date. The Committee sought further written clarification on this from the Department.

184. At its meeting on 20<sup>th</sup> October, the Committee considered further correspondence from the Minister which reiterated the views already expressed by the Department in relation to the issue of a day-one right citing the disproportionate impact and pointing to the Department for Communities Scheme.
185. The Committee carefully considered the views of the Minister and, whilst the Committee was clear that they did not wish to see any delay to the implementation of the main provisions of the Bill, it would not be deterred from pursuing additional rights for employees and workers because of any barriers of pressures of time or by the prospect of increased costs.
186. The Committee therefore maintained its view, as highlighted by stakeholders, that there should be full consideration of a day-one right and agreed to consider options to be brought forward with a view to amending the Bill in this regard.
187. At its meeting on 20<sup>th</sup> October, the Committee instructed the Bill Clerks to draft amendments in respect of removing the 26-week qualifying period for pay and to introduce a day-one right for all staff and workers. As is normal procedure, the Committee also wrote to the Department providing it with the same request to bring forward an amendment.
188. At its meeting on 3<sup>rd</sup> November, the Committee considered draft amendments from the Bill Clerks. The Committee also considered further correspondence from the Department in relation to the issue of day-one rights which restated again that the Department would not be bringing forward an amendment for a day one right to pay.
189. The Department stated that it remains concerned that any change to day one entitlements made unilaterally by the NI Executive presents a real legal risk with significant financial liability due to breaking with the parity principle. It outlined that it is a well understood principle that breaking parity could render NI liable for

any subsequent increases introduced by the UK Government attempting to restore parity.

190. The Committee questioned officials in detail in relation to the principle of breaking parity and the potential financial liability. Officials were unable to cite any precedent or previous legal advice in this regard.

191. The Committee therefore progressed to consider the draft amendment from the Bill Office. The Bill Clerks explained that whilst it was the instruction of the Committee for the amendment to be drafted to provide for a day-one right, it would in fact be more practicable to provide for a week-one right. The Bill Clerks outlined that the pay element of the Bill required a pay comparison to be made with normal weekly earnings which would not be possible if it were defined as a day-one right. The Committee therefore considered the amendment as drafted in relation to a week-one right.

192. The following amendment was considered:

**Amendment**

- Clause 2, page 4, line 12

**Leave out paragraph (b)**

193. The Committee did not reach a consensus in relation to the amendment to remove the 26-week eligibility criteria and to provide for a week-one right. Whilst some Members indicated their support for the amendment other Members were concerned around breaking parity and the potential financial implications as highlighted by the Department.

194. The Chairperson informed Members that they needed to take a vote.

195. The question was put that the Committee is content with the amendment. The Committee divided:

**Ayes 5; Noes 3; Abstain 0**

AYES: Dr Caoimhe Archibald, Mr John O'Dowd, Mr Matthew O'Toole, Mr Mike Nesbitt, Mr Stewart Dickson.

NOES: Mr Peter Weir, Mr Stephen Dunne, Mr Keith Buchanan.

The amendment was carried.

### **Miscarriage**

196. As outlined at paragraphs 83-100 above, the Committee considered a number of amendments from the Bill Office to provide for leave and pay for miscarriage to be introduced 12 months from Royal Assent. The amendment required to Clause 2 of the Bill relates to the **pay** element of this amendment.

197. The following amendment was considered:

#### **Amendment**

- Clause 2, page 10, line 17, at end insert -

#### **'Application in relation to miscarriage'**

**167ZZ19. The Department must by regulations provide that this Part and regulations under it apply in relation to a person who has experienced a miscarriage as they apply in relation to a bereaved parent as set out in section 167ZZ9 (Entitlement) with such modifications, if any, as specified in regulations'**

198. The Committee agreed to take forward the amendment to Clause 2 to bring forward a scheme to provide for **pay** for miscarriage to be introduced 12 months from Royal Assent.

### **Clause 3: Further amendments to do with parental bereavement leave and pay**

199. Clause 3 contains amendments that are related to the statutory entitlements created by Sections 1 and 2.

200. The Committee did not receive any views or comments relating to Clause 3 of the Bill.

201. As outlined above, the Department's proposed a new clause in relation to miscarriage which would place a statutory obligation on the Department to consult on policy options for miscarriage (as it relates to this Bill) within two years of the associated regulations coming into effect. The Committee acknowledged that the Department's amendment would conflict with its own amendments for miscarriage already agreed under Clauses 1 and 2.

202. The following amendment was considered:

**Amendment**

**New clause**

After clause 3 insert—

‘Consultation on leave and pay in cases of miscarriage

3A.—(1) The Department must consult such persons as it considers appropriate 5 as to whether the entitlements relating to—

(a) leave;

(b) pay;

that are given under this Act where a child has died should also be given where a person has had a miscarriage.

10 (2) The consultation may include, in particular, consultation as to—

(a) whether the entitlements should be given in all cases in which a person has had a miscarriage, or only in some cases;

(b) whether the entitlements to be given in such cases should be the same as, or different from, the entitlements that are given where a child has died;

15 (c) whether anyone other than the person who has had the miscarriage should also be entitled to leave or pay;

(d) whether different entitlements should be given in different cases of miscarriage.

(3) The Department must prepare a report on the consultation and—

20 (a) lay the report before the Assembly, and

(b) publish it in such manner as the Department considers appropriate.

(4) The Department must lay and publish the report under subsection (3) before the end of the period of 2 years beginning with the date on which the first regulations made under the provisions inserted by sections 1 and 2 come into operation.'

203. The Committee did not accept the departmental amendment as outlined above.

#### Clause 4: Commencement

204. Clause 4 is a standard clause relating to commencement.

205. As noted above, the Bill Office amendments in relation to miscarriage required two amendments to Clause 4 to require regulations for miscarriage to come into operation within 12 months of Royal Assent.

206. The following amendments were considered.

#### Amendment

- Clause 4, page 10, line 24, at end insert-

'but this is subject to subsection (2)(a)'

- Clause 4, page 10, line 27, at end insert-

'(2)(a) Regulations under Chapter 4 of the Employment Rights (Northern Ireland) Order 1996 and regulations under Part 12ZD of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (including regulations under Article 112EF and regulations under Section 167ZZ19) must come into operation within 12 months of Royal Assent.'

207. The Committee agreed to take forward the amendments to Clause 4.

#### Clause 5: Short Title

208. Clauses 4 and 5 are standard and short title clauses respectively.

209. The Committee did not receive any views or comments in relation to Clause 5.

**Schedule: Further amendments to do with parental bereavement leave and pay**

210. As noted above, the Bill Office amendments in relation to miscarriage required two amendments to Schedule 1 in respect of the Assembly procedures applied to the amendment on the application of miscarriage pay made to Clause 1 and Clause 2.

211. The following amendments were considered.

**Amendment**

- Schedule 1, page 13, line 16, at end insert-

‘8A. Regulations made under section 167ZZ19 must not be made unless a draft has been laid before, and approved by a resolution of, the Assembly.’

- Schedule 1, page 15, line 2, at end insert-

‘24A. In Article 251(5A) (regulations that are subject to approval by the Assembly), after “107AB(4),” insert “112EF”

212. The Committee agreed to take forward the amendments to Schedule 1.

## Other issues raised in the consideration of the Bill

### Extension to all bereaved workers

213. The Committee heard evidence from the Coalition for Bereaved Workers that, whilst this legislation is an important step, it believes there are still significant gaps. It highlighted that people aged under-20 accounted for just 1% of all deaths recorded in Northern Ireland in 2019, so the overwhelming majority of deaths - and by extension, the bereaved people left behind - are not covered by the policy. The Coalition for Bereaved Workers is calling for the introduction of two weeks' statutory bereavement leave and pay for everyone impacted by the death of a close relative or partner in Northern Ireland. The Coalition believe this statutory provision would help to level the playing field for bereaved workers and ensure those who are currently falling through the cracks are afforded sufficient and paid time off when they lose a close loved one.

214. The Women's Policy Group were also of the view that the right to bereavement leave and pay should be extended to all employees experiencing close family bereavement.

215. Both UNISON and NIPSA suggest that the entitlements within the Bill should be extended to everyone (all workers and employees) bereaved of a close relative or partner in Northern Ireland. This view is also expressed by the WRDA.

216. NIPSA stated that the proposals for parental bereavement leave and pay risk creating an uneven playing field and a hierarchy of bereavement where the vast majority of workers are not protected following the death of a loved one.

217. The Committee raised the issue with the Department that, whilst recognised as being outside the scope of the Bill, there is no such legislative provision for those impacted by the death of a close relative or partner. The Department responded indicating that wider legislative provision for those impacted by the

death of a close relative or partner has not been the subject of recent Departmental consideration and that there is no power within the Bill to extend the provision of parental bereavement leave and pay to include those impacted by the death of a close relative or partner.

- 218. The Committee was supportive of the call for widening the provision of the Bill to include everyone impacted by the death of a close relative or partner in Northern Ireland. The Committee agreed to recommend that this should be part of a wider review of employment law by the Department.**
- 219. The Committee also recommends that the Department considers, as part of a wider review of employment law, how workers such as sub-contractors and those on zero-hour contracts can be guaranteed the same protections under this Bill as that afforded to employees.**

# Clause by Clause Consideration of the Bill

Having considered the written and oral evidence received on the Bill, the Committee undertook its formal Clause-by-Clause consideration at its meeting on 8<sup>th</sup> November 2021 - see Minutes of Proceedings in **Appendix 1** and Minutes of Evidence in **Appendix 2**.

Information on the Committee's deliberations on the individual Clauses in the Bill and on proposed amendments can be found in the previous two sections of this report.

## **Clause 1 -Parental bereavement leave**

220. The Committee was content with Clause 1 as amended by the Committee.

## **Clause 2 -Parental bereavement pay**

### **Amendment on the removal of the 26-week eligibility criteria for parental bereavement pay**

The Committee considered the amendment as drafted by the Committee Bill Office. The question was put that the Committee is content with Clause 2 as amended.

The Committee divided.

### **Ayes 5; Noes 3; Abstain 0**

AYES: Dr Caoimhe Archibald, Mr John O'Dowd, Mr Matthew O'Toole, Mr Mike Nesbitt.

NOES: Mr Peter Weir, Mr Stephen Dunne, Mr Keith Buchanan.

221. The Committee was content with Clause 2 as amended.

### **Amendment on 'Application in relation to miscarriage'**

222. The Committee was content with Clause 2 as amended.

**Clause 3 -Further amendments to do with parental bereavement leave and pay**

223. The Committee was content with Clause 3 as drafted by the Department.

**Clause 4 -Commencement**

224. The Committee was content with Clause 4 as amended by the Committee.

**Clause 5 -Short Title**

225. The Committee was content with Clause 5 as drafted by the Department.

**Schedule - Further amendments to do with parental bereavement leave and pay**

226. The Committee was content with the Schedule as amended by the Committee.

**Long Title**

227. The Committee was content with the Long Title of the Bill.

# List of Appendices

## Appendix 1 - Minutes of Proceedings

- [10<sup>th</sup> February 2021](#)
- [12<sup>th</sup> May 2021](#)
- [19<sup>th</sup> May 2021](#)
- [9<sup>th</sup> June 2021](#)
- [16<sup>th</sup> June 2021](#)
- [23<sup>rd</sup> June 2021](#)
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- [20<sup>th</sup> October 2021](#)
- [3<sup>rd</sup> November 2021](#)
- [8<sup>th</sup> November 2021](#)
- [10<sup>th</sup> November 2021](#)

## Appendix 2 - Minutes of Evidence

Date of Meeting	Link to Minutes of Evidence
Wednesday 10 <sup>th</sup> November	<a href="#">Committee for the Economy</a>
Monday 8 <sup>th</sup> November	<a href="#">Committee for the Economy</a>
Wednesday 3 <sup>rd</sup> November	<a href="#">Committee for the Economy</a>
Wednesday 3 <sup>rd</sup> November	<a href="#">Department for the Economy</a>
Wednesday 20 <sup>th</sup> October	<a href="#">Department for the Economy</a>
Wednesday 13 <sup>th</sup> October	<a href="#">Committee for the Economy</a>
Wednesday, 6 <sup>th</sup> October 2021	<a href="#">Department for the Economy</a>
Wednesday, 22 September 2021	<a href="#">Northern Ireland Human Rights Commission</a>
Wednesday, 15 September 2021	<a href="#">RaSe Briefing</a>
Wednesday, 15 September 2021	<a href="#">Coalition for Bereaved Workers</a>
Wednesday, 09 June 2021	<a href="#">Department for the Economy</a>
Wednesday, 19 May 2021	<a href="#">Department for the Economy</a>
Wednesday, 10 February 2021	<a href="#">Department for the Economy</a>

## Appendix 3 - List of Written Submissions

- [Coalition of Bereaved Workers](#)
- [NI Human Rights Commission](#)
- [NIPSA](#)
- [UNISON](#)
- [Women's Policy Group NI](#)
- [Women's Regional Consortium](#)
- [Women's Resource and Development Agency](#)
- [Department for Justice](#)
- [Committee for Infrastructure](#)
- [FSB](#)

## Appendix 4 - Memoranda and papers from the Department for the Economy

- **21st May 2020:** [Ministerial Letter - Parental Bereavement \(Leave and Pay\) intention to bring forward proposals](#)
- **15th June 2020:** [Departmental Response - Parental Bereavement \(Leave Pay\) Bill - Public Consultation](#)
- **15th January 2021:** [Ministerial Letter - Parental Bereavement \(Leave and Pay\) Bill Consultation](#)
- **10th May 2021:** [Ministerial Letter - Executive Paper - Parental Bereavement \(Leave and Pay\) Bill](#)
- **8th June 2021:** [Departmental Response - Parental Bereavement \(Leave Pay\) Bill](#)
- **1st October 2021:** [Departmental Response - Queries raised by the NI Human Rights Commission](#)
- **1st October 2021:** [Parental Bereavement Leave and Pay Bill - Table of Committee Queries](#)
- **13th October 2021:** [Departmental position and OLC clarification](#)
- **19th October 2021:** [Ministerial Letter - Parental Bereavement \(Leave and Pay\) Bill Committee Amendments](#)
- **2nd November 2021:** [Ministerial Letter - Parental Bereavement \(Leave and Pay\) Bill Committee Amendments](#)
- **5th November 2021:** [Bill Office Letter - Parental Bereavement \(Leave and Pay\) Bill Amendments](#)
- **9th November 2021:** [Ministerial Letter - Parental Bereavement \(Leave and Pay\) Bill Committee Amendments Costs](#)

## Appendix 5 - Other Memoranda and papers from others

- **27<sup>th</sup> August 2021:** [A Citizen Space Report on the Outcome of the Committee Consultation](#)
- **20<sup>th</sup> October 2021:** [Derry City and Strabane Council](#)

## Appendix 6 - Research Papers

### List of Links to RaISe papers considered

- 10th September 2021: [Research and Information Service Briefing Paper](#)

## Appendix 7 - List of Witnesses

### **List of Witnesses who gave evidence to the Committee**

#### Coalition of Bereaved Workers

Ms Bernadine McCrory Alzheimer's Society Northern Ireland  
Mr Marek Zemanik Chartered Institute of Personnel and Development  
Mr Craig Harrison Marie Curie

#### NI Human Rights Commission

Ms Alyson Kilpatrick Northern Ireland Human Rights Commission  
Ms Sarah Simms Northern Ireland Human Rights Commission