



Northern Ireland  
Assembly

Committee for the Economy

# OFFICIAL REPORT (Hansard)

Parental Bereavement Leave and Pay:  
Department for the Economy

10 February 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for the Economy

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**Members present for all or part of the proceedings:**

Dr Caoimhe Archibald (Chairperson)  
Ms Sinead McLaughlin (Deputy Chairperson)  
Mr Stewart Dickson  
Mr Gordon Dunne  
Mr Paul Givan  
Mr John O'Dowd  
Mr Christopher Stalford  
Mr John Stewart

**Witnesses:**

Mr Colin Jack	Department for the Economy
Mr Laurence Rogers	Department for the Economy
Ms Kellie Sprott	Department for the Economy

**The Chairperson (Dr Archibald):** I welcome Colin Jack, director of business and employment regulation; Kellie Sprott, employment relations; and Laurence Rogers, employment relations. I hand over to the officials to make an opening statement, and then we will open it up to members for questions.

**Mr Colin Jack (Department for the Economy):** Thank you for the opportunity to update the Committee on the departmental response to parental bereavement leave and pay. I am accompanied today by Kellie Sprott, who is the policy lead on work-life balance issues; and Laurence Rogers from her team.

The departmental consultation response paper was published on 20 January. The team has done a lot of work since the Minister briefed you on her intention to bring forward legislation. It launched a consultation exercise in June 2020, which ran over the summer period. We had 24 responses to that consultation exercise. You have the response paper. I will give a high-level overview of the responses that we had and our plans for legislation, and then we will be happy to address any queries from members. There were 36 responses to the consultation. Respondents represented a cross section of organisations, individuals and employee and employer representative bodies. Although there were some differences of opinion among the respondents and some comments on the detail of the proposals, there was, overall, clear support for employees and workers in Northern Ireland to have at least the same right to parental bereavement leave and pay as that afforded to employees and workers across the rest of the UK.

The consultation sought opinion on four main pillars of the legislation: first, the definition of "bereaved parent"; secondly, defining how and when parental bereavement leave can be taken; thirdly,

identifying the level and length of notice period that would be necessary; and, finally, establishing what evidence may be required to show that the employee is entitled to leave and pay under the legislation.

On the definition of "bereaved parent", there was broad consensus that the definition that was set out in the consultation document was appropriate and broad enough to address the range of relationships between children, parents and others who have parental responsibility. It is also our intention to include in the definition parents who experience the loss of a child through stillbirth after 24 weeks of pregnancy. There were questions about whether the leave could be taken in single days or in blocks of a week at a time. There was a general preference in favour of weekly blocks. That not only allows businesses to plan more effectively for absences; it also helps to relieve any perceived pressure on employees to return to work before they are ready.

There was strong support for a 56-week window within which parental bereavement leave could be taken, although there were a few responses that expressed some misgivings about the potential impact of that on employers. The Minister agrees that 56 weeks is the appropriate period and recognises that bereaved parents' needs may vary greatly on a case-by-case basis. A 56-week window would also allow bereaved mothers who have had a stillbirth very late in pregnancy to complete their maternity leave and then take a short additional period of parental bereavement leave at the end.

A range of opinions was expressed about whether parents should be required, or would be able, to provide notice to their employer prior to taking parental bereavement leave. Clearly, that would be problematic in the immediate aftermath of the death of a child; in that case, the legislation will stipulate that notice should be given as soon as is practicable. The consensus was that a short notice period of a week would be appropriate and would fairly balance the need of bereaved parents with those employers.

All respondents expressed the belief that some payment for parental bereavement leave would be appropriate and beneficial. Some respondents called for an increase on the level that applies in Great Britain. That would differ from any existing family-related statutory leave payment. In all those cases, the rate that applies is £151.20 per week or 90% of an employee's average weekly earnings, whichever is lower. We will go with £151.20 in the legislation.

I will move on to the qualifying period. Almost half the respondents raised the issue of whether payment of parental bereavement pay should be a day-one right, which was not what was proposed. The proposal was that there would be a six-month or 26-week qualifying period before those claiming parental bereavement pay would be eligible to receive it. The Minister gave quite a lot of consideration to the responses that we received on that issue, and we, as a team, did quite a lot of work in detail, working with Her Majesty's Revenue and Customs (HMRC) and the Department for Business, Energy and Industrial Strategy (BEIS) to look at the potential implications if Northern Ireland were to adopt this as a day-one right rather than using the 26-week qualifying period in Great Britain.

After full consideration of the issues, including timing, the cost of departing and the, fortunately, very small number of parents who might lose a child under the age of 18 during the first 26 weeks with a new employer, the Minister has decided to maintain the requirement for a 26-week qualifying period. However, we will be looking at whether there might be scope for those in that position to get a payment through the discretionary funding scheme from Department for Communities. We will want to look further at that issue.

There was a broad spectrum of opinions amongst respondents about whether bereaved parents should be expected to give notice and provide evidence of the child's death. There was a belief that notice and evidence would be necessary in order to meet the administrative and payroll aspects of the payment, and consistency with the legislation in Great Britain featured heavily among the responses. Our view is that the same considerations concerning sensitivity and practicability should apply in relation to parental bereavement pay, as they do with parental bereavement leave. Any parents who wish to receive the payment will have 28 days to notify their employer after the commencement of any parental bereavement leave. The evidential requirements will be light-touch. There should be a declaration of entitlement in terms of the relationship with the child, the name of the parent claiming the payment, and the date of the child's death.

Introducing statutory parental bereavement leave and pay will require the development of both primary and subordinate legislation. The primary legislation will provide the relevant entitlements, and the subordinate regulations will make provision in more detail. We are on target to have a Bill ready for introduction to the Assembly in May of this year. That should allow time for the Bill to complete its

passage and become law before the end of the current mandate, and there will then be a further three-month period for the subsequent regulations to be progressed.

There was unanimity in the consultation exercise that the introduction of parental bereavement leave and pay is the right thing to do. That was echoed across all the respondent groups. It is important to emphasise that many employers already have provisions in place to deal with the needs of parents in that situation that go well beyond the statutory minimum provisions that the legislation will introduce. The Minister has recognised that and encourages that good practice to continue. It is a statutory minimum for employers to provide that, and it will ensure that all employees are afforded a degree of compassion and support at a time of need. Following the consultation, we intend to introduce legislation that very closely follows the legislation in Great Britain on the issue. I welcome any questions that the Committee might have.

**The Chairperson (Dr Archibald):** Colin, thank you very much for that. In your opening statement, you addressed a number of the points that I wanted to take up with you. It is welcome that you have given the predicted timeline in respect of the legislation. There are some things that I would like to explore in a bit more detail, but the appropriate time to do that may be later down the line when we have the Bill in front of us.

One specific issue is agency workers, who are not included in the proposals; they are for employees only. In terms of the rights of agency workers, as legislated for, where do the provisions for them intersect?

**Mr Jack:** Kellie, do you want to come in on that question?

**Ms Kellie Sprott (Department for the Economy):** Yes. You are quite right, Chair; that the legislation is for employees and workers but in different ways. Employees will be entitled to parental bereavement leave and pay whereas workers will be entitled to parental bereavement pay only because they are not under an employment of contract and so there is no mutuality of obligation for them to be in work on certain days and at certain times. So, they would not be entitled to leave but would be entitled to pay.

**The Chairperson (Dr Archibald):** OK. Will you give me a wee bit of clarification on why that is?

**Ms Sprott:** The reason is historic with regard to employment law and dates back to the 1960s and 1970s. Employment law has always been drafted with employees who have employment contracts with their employers in mind. So, if we were to include workers and agency workers, we would be changing the protocol for all family-related payments. It is something that we would need to consider in much more detail and look at in the round. It would not be right or prudent to do it for one family-related payment only.

**The Chairperson (Dr Archibald):** OK. That is something that we might want to look at in more detail down the line.

There are a couple of other things that I want to pick up on. On the qualification period, I would flip it around and say that if the number of people who find themselves in such circumstances is, fortunately, likely to be very small, the provision should be there, as a day-one right, for employees to access. I do not know whether you have a view on that.

**Ms Sprott:** You are right: hopefully, a very small number of parents will suffer the loss of a child under the age of 18 in the first 26 weeks of employment with their employer. We looked at this issue in some detail. If we did not maintain parity with GB in this regard, there would be a one-off fee from HMRC of £180,000. Because of the very small number of parents who would suffer this loss outside the qualification period, it would be economically unviable to pay that; it would not be value for money for public funds.

Recouping £180,000 would take 20 to 30 years of payments, which is why we went to the Department for Communities. Our Minister was keen for us to check if there would be support for the small number of families who found themselves in that position. The Department for Communities has a discretionary support scheme that parents who could not avail of the parental bereavement pay because of the qualification period could avail of if they met the conditions of the scheme.

**The Chairperson (Dr Archibald):** OK. What is that £180,000 for?

**Ms Sprott:** It is because HMRC would be required to make changes. There are three or four different forms with regard to parental bereavement leave and pay. HMRC would have to make changes to those forms on the gov.uk platform. The £180,000 is related directly to the costs associated with that.

**The Chairperson (Dr Archibald):** So, it is an admin fee, essentially?

**Ms Sprott:** Yes. It would require IT changes from HMRC.

**The Chairperson (Dr Archibald):** OK. Thanks for the explanation.

Finally from me, the inclusion of miscarriages in the entitlement to the leave and payment was raised in the consultation responses. What was the consideration in respect of that?

**Ms Sprott:** The consideration in respect of that was that we are very much in agreement with what is in place in GB: that parents who lose a child after 24 weeks of pregnancy will be included. We maintain the GB line that it does not go any further than that.

**The Chairperson (Dr Archibald):** OK. I will come back to that in a wee sec.

**Mr Dickson:** I appreciate and welcome this sensitive and important legislation. As you say, hopefully, it will affect only a very small number of people. As the Chair said, we will work our way through it when the legislation comes to the Chamber.

I have already written to the Minister in respect of this, but what are the prospects for widening the issue of paid bereavement leave for employees in Northern Ireland? Currently, the law entitles an employer to give time off for a bereavement, but even that is not particularly clear. Nowadays, family and other relationships can be much wider than just a parent or child. I appreciate that this is specifically in respect of a child, but there is a need to look at the wider issue of bereavement leave in the workplace. As far as I am concerned, it should be for a paid period at the cost of the employer. In your consultation, what, if any, consideration was given to, or representations were made on, the wider issue of bereavement leave beyond that of just parental bereavement leave?

**Mr Jack:** This particular consultation exercise was very narrowly focused on the specific proposal. Clearly, rights to leave and pay in a situation such as bereavement more generally is a devolved competence. Employment law and the Executive and Assembly could legislate for that. If it were a statutory payment, the Executive would have to find the money for any divergence from the policy at UK level.

Employers have quite a range of policies on these issues, and many employers go well beyond the statutory entitlement. It is not uncommon for an employer to give someone leave on full pay for this or, indeed, any bereavement. I suppose that those of us who benefit from public-sector terms and conditions of employment do not need to worry too much. In a sense, COVID-19 has shone a light on those in the workforce who have lower levels of rights. Statutory sick pay is at a lower rate than statutory bereavement pay; it is less than £100 a week. It is an issue for DFC.

There are people whose employers have policies that mean that if they have had to take time off due to COVID they have been able to do so on full pay. Part of the challenge is to send out the message to employers that having policies that support staff will help them to retain their staff, who will have a better general state of health and not suffer stress because of worries about financial issues and so on. A wider right to bereavement leave and pay is certainly something that the Assembly could consider in future.

In bringing forward this proposal, and in discussion with the Minister, we were mindful that there is a limited time left in the current mandate. While it is practicable to bring this new set of rights into being in the current mandate, to go further than that would probably be beyond what is possible.

**Mr Dickson:** Thank you for that information; it has been very helpful. Some of us may look to see whether the legislation, if you introduce it, might be amended to allow for a wider scope. As you rightly say, the public sector has very good schemes to deal with the sensitive issue of bereavement and time off and pay for that time off. Sadly, however, there are a number of employers in Northern Ireland whose provision is, at best, minimal. Indeed, there are even occasions when people are refused time off in those very difficult circumstances.

The issue is now on the agenda, and we need to start making improvements to it. There is movement on it at Westminster. The trade union movement, and a number of individuals in it, has been particularly active in taking this forward. It also follows broader international movements in New Zealand and in Europe, particularly France, where these issues are now on the legislative books. That is an area that we need to look at in the future.

**Mr Dunne:** Stewart covered this in some way, but do you see a real need for this in the public sector? A lot of work has gone into the public sector to create a sympathetic line-management system and approachable line managers who know their staff and what is going on. Having worked in the public sector, we are aware that, in the main, there is quite a bit of sympathy with staff who have personal problems, but is there perhaps an issue of inconsistency across various Departments and that needs to be streamlined and seen to be more consistent?

**Mr Jack:** It is not just the public sector; many good private-sector employers take similar approaches to sensitive issues. There are challenges for very small businesses in supporting their staff in this type of situation.

You mentioned inconsistencies in the public sector. There can be inconsistencies in entitlements that go over and above the statutory minimum. The statutory entitlement for paternity leave is two weeks at £151.20, and that is what will apply to parental bereavement leave. Some employers, such as the Civil Service, give two days of those two weeks on full pay. Others in the public sector and some in the private sector give the full two weeks on full pay. Those are issues of people's contractual entitlements, and it is within the scope of employers to make decisions on what package of benefits to offer their staff. A lot of the advice that comes from HR is that employers who are generous with entitlements hold onto their staff longer and probably have lower rates of sick absence, and so on.

**Mr Dunne:** Under the proposed legislation, the private sector will be obliged to allow this leave. Is that the intention?

**Mr Jack:** Yes. It will be obliged to give the leave, but the statutory payment will come from the National Insurance fund. Employers can top it up, if they wish to.

**Mr Dunne:** Just to clarify, how is that fund administered? How does the employee get that funding or get access to it? Is it the employer's responsibility?

**Mr Jack:** It is administered between the employer and HM Revenue and Customs.

**Mr Dunne:** The employer?

**Mr Jack:** Yes. The employer would pay it to the employee and claim it back.

**Mr Dunne:** Does the public sector have an entitlement to claim back? Does it exercise it?

**Mr Jack:** Yes. It is done through the administrative processes — the relationship that every employer has with HMRC.

**Mr Dunne:** Do they actually do it? Do public-sector governing bodies accept it as a cost? Do they claim it back?

**Mr Jack:** The systems are in place, and HMRC operates them pretty rigorously. Kellie, do you want to come in with a bit more detail on how they do that? You had discussions with them.

**Ms Sprott:** I can certainly give you a bit more detail on the HMRC processes and how employers claim payments back. Whether the public sector actually does that, I cannot say. I would have to ask DOF to get clarity for you.

What we do in this legislation is set out a statutory minimum that employers must provide. All good employers, such as the public sector, are much more generous with employees who suffer the death of a child. It may be in their terms and conditions already. They may not have to avail of statutory bereavement leave and pay, but, knowing the public sector as I do, if this statutory minimum came into

law, each Department would accurately reflect it in people's payslips and P60s. With HMRC, it would be properly recorded as such.

**Mr Dunne:** Thank you very much, folks.

**The Chairperson (Dr Archibald):** Kellie, can I go back to the question about miscarriages? Would there be provision under other leaves and, potentially, payments to provide for those who found themselves in those circumstances, for example, in relation to maternity leave?

**Ms Sprott:** I might need assistance from Colin on that, or Laurence might be more attuned to the law on maternity leave. I assume that you are asking about miscarriages that happen before 24 weeks. At the moment, we are not looking at introducing any special leave or pay entitlements under the employment law framework to accommodate those people. Colin, do you know a little bit more about the maternity regulations, or is it something that we need to check with the Department for Communities?

**Mr Jack:** As I understand it, the 24-week time frame triggers maternity leave. If a woman suffers a miscarriage after 24 weeks, she is entitled to maternity leave. That is an additional entitlement. There is a wide range of other rights that may be at the discretion of the employer, such as contractual sick pay, for example. It is likely that a woman in that position would need to take sick leave. Many employers have sick leave policies, where sick leave is paid at the full rate of pay for a significant period, potentially, and then it may reduce to half pay. However, those are contractual entitlements. The statutory minimum sick pay is £93 and something a week.

**The Chairperson (Dr Archibald):** OK. Thank you for that clarification.

As I say, there are some things that we may want to look at in more detail when the legislation comes to the Committee. Thank you very much for the briefing. It was a useful overview and update on the consultation. We look forward to the Bill coming to us in May. Thank you.

**Mr Jack:** Thank you. We look forward to seeing you then.