



Committee for the Economy

OFFICIAL REPORT (Hansard)

Parental Bereavement (Leave and Pay) Bill:
Department for the Economy

19 May 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 Gary Middleton
Mr John O'Dowd
Mr Christopher Stalford
Mr John Stewart
Ms Claire Sugden

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, Kellie Sprott and Laurence Rogers from the Department to the meeting. I will hand over to you to give us a background briefing. After that, we will open up for members' questions.

Mr Colin Jack (Department for the Economy): OK. Thank you, Chair, for inviting us to provide the Committee with details of the Parental Bereavement (Leave and Pay) Bill. It has been drafted since the last time we appeared before the Committee in February, when we briefed members on the departmental response to the consultation exercise. I believe that copies of the Bill and the explanatory and financial memorandum have been made available to you.

The Minister intends to introduce the Bill in the Assembly in the next couple of weeks. That date is dependent on the Speaker being able to carry out all his required checks on receipt of formal consent from the Secretary of State. In summary, the Bill will allow for the introduction of legislation that will provide for a statutory entitlement of two weeks' bereavement leave and pay for employees who suffer the loss of a child and two weeks' bereavement pay for workers who suffer the loss of a child. That new statutory entitlement will also be provided to those parents who suffer a stillbirth. It is a relatively small single-issue Bill, so it can be accommodated in what is a really quite narrow window of opportunity for legislative change in the current Assembly mandate.

The Bill contains powers to allow for regulations related to employment protections for people whilst on parental bereavement leave. That mirrors similar regulations associated with other forms of family related leave, such as maternity and paternity leave. In that regard, it is akin to the Parental Bereavement (Leave and Pay) Act in Great Britain, which was given Royal Assent in 2018 and became operational last year. The Bill contains a transitional power that will enable working parents

who lose a child in the 12 months prior to the legislation becoming operational — all being well, that means a date from last month — to avail themselves of the new employment right. That is one element of the Bill that diverges from the GB entitlement, which did not include a transitional provision.

I will now give a quick description of the Bill and its various clause. Clause 1 amends Part IX of the Employment Rights (Northern Ireland) Order 1996 by inserting a new chapter that will result in the provision of an entitlement to parental bereavement leave. The changes to the 1996 order set the terms on which the parent will be entitled to the leave component. They also define the minimum period of leave that must be legislated for, and that period will be set at two weeks. The changes to the order also set the time frame within which the leave must be taken, which will be 56 weeks after the child's death. The Committee should note that while the text of the Bill states "at least 56 days", we intend to set the period at 56 weeks following the death of a child.

The order will also be amended to confirm that an employee's terms and conditions and obligations will not be affected by taking the leave. The insertion made by clause 1 will also allow for regulations to be made that cover special provisions, such as matters related to redundancy and alternative employment and the consequences of failing to comply with the regulations.

Clause 1 also covers the insertions necessary to allow for regulations to set the administrative standards and procedures that employers and employees have to follow if they are claiming and processing that period of leave and the consequences of not complying. From a technical approach, it also sets out how regulations can modify the way in which a week's pay is calculated to take parental bereavement leave into account. The clause also creates the power for regulations to be made to expand the rights of those parents who suffer a stillbirth. That is recognised in law as happening after 24 full weeks of pregnancy.

Clause 2 adds Part 12ZD to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to create an entitlement to parental bereavement pay. Similar to how the changes are proposed to the Employment Rights (Northern Ireland) Order 1996 to give entitlement to the leave aspect of the entitlement, the changes in clause 2 are necessary to give entitlement to the pay aspect.

Clause 2 provides that an employee or worker who meets the defined conditions will be eligible for parental bereavement pay. The conditions in that regard include the relationship with the child; the relevant week, which is the week after the 26-week period that they have been working for their employer before becoming eligible; that they are still employed with the same employer; and that over an eight-week period prior to the relevant week, their normal weekly earnings are not less than the lower earnings limit of £120.

The proposed insertion by clause 2 also specifies that the entitlement is applicable for each deceased child in the event that a parent has suffered the loss of more than one child. The Act will be amended to allow for regulations that will set the conditions and standards necessary for the administration of payment.

Clause 2 ensures that, through the insertion into the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the costs of the parental bereavement pay cannot be passed on to the employee or their entitlement to it denied.

While it is envisaged that the majority of the Bill will be commenced at the same time, the Bill also sets out how the Department for Communities will have the ability to commence a certain aspect of the schedule that references the Welfare Reform (Northern Ireland) Order 2015. In that case, there is an amendment to a piece of legislation that has not been commenced by DFC at this point, and DFC is aware of that and is in concurrence with it.

The schedule to the Bill sets out a number of amendments to other pieces of primary legislation that are necessary to incorporate fully parental bereavement leave and pay into various pieces of employment law and social security legislation. That includes references to the statutory pay and leave as well as the proposed new articles and sections of the Employment Rights (Northern Ireland) Order 1996 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 from clauses 1 and 2.

The Bill's main purpose is to create the correct architecture in law that will enable the creation of a new employment right for parents who suffer the loss of a child and those who suffer stillbirth to a statutory entitlement to two weeks' leave and to receive a statutory payment whilst on that leave. It will also create the power that is needed to allow regulations to be made to give the legislation effect.

Our main focus up to now has been the drafting of the Bill and getting it to this stage, but we will be required to develop a suite of secondary legislation to give the Bill full effect. We will be starting work on drafting that secondary legislation shortly. We will be looking to run the passage of the primary legislation and the drafting of the secondary legislation in parallel.

We hope to be in a position to extend the new entitlement to workers and employees in Northern Ireland by 6 April 2022. In order to meet that time frame, we will need, if at all possible, to secure Royal Assent by December of this year to allow for the subsequent process and scrutiny of the secondary legislation, which will take three months.

This is a demanding timetable, but we are very focused on making sure that we are able to introduce the new employment right as soon as possible so that those who may benefit from the changes can do so without delay. We will make the regulations available for scrutiny later in the year when we are at the appropriate stage of the drafting process.

We will be in front of the Committee again once we reach Committee Stage, when we can discuss the Bill in more detail. We hope to be able to do that before the summer recess.

That is all that I would like to say by way of introduction. My colleagues and I are happy to take any comments or questions.

The Chairperson (Dr Archibald): Thanks very much for that. As you are aware, the Committee is very supportive of the Bill, and I think that the Assembly more generally is very supportive of it.

I have just a couple of points, and I raised most of them the last day that you were in with us. You will be aware that, since you were last with us, New Zealand has moved to bring cover for miscarriage, even early miscarriage, into legislation. Have you had any further consideration of including that in the Bill? Obviously, it would be a very compassionate addition to the legislation, if it was possible.

In the same vein of supporting parents who find themselves in these difficult circumstances, how can the leave be taken? I think that was included in the consultation. It is being proposed that it be taken in weekly blocks, but there may be requirements for parents to make arrangements for post-mortems, for example. Paediatric post-mortems are carried out in England, so there may be a requirement to have a day or two here or there to deal with some of the practical difficulties with the death of a child. It was considered as part of the consultation, but is it something that you will potentially be open to looking at and having more flexibility on?

Mr Jack: I will take the question on miscarriages first. We are aware that the New Zealand Government have introduced entitlement to, I think, three days of leave in the case of miscarriage. The Minister is aware that the issue has been raised, and she is sympathetic to people in that position. There are a lot more miscarriages each year than there are either deaths of children or stillbirths. My understanding is that around one in eight pregnancies ends in miscarriage, so we have done some work on looking at what the potential issues would be with including miscarriage. Our estimates of the costs and so on that are associated with the Bill are based on the information that there are approximately 225 child deaths per year in Northern Ireland. There are probably 2,800 or so miscarriages, so adding miscarriages to the Bill would be a quite significant change to the Bill. The Minister is not minded to include miscarriages in the Bill at this stage, but she would be open to monitoring developments elsewhere, particularly in GB. If there are developments elsewhere, she would be sympathetic to following them. We would need to consult if we were to introduce an entitlement to leave as a result of miscarriage, but we are aware of the issue and can discuss it further at a later stage.

Kellie, do you want to pick up on post-mortems and so on?

Ms Kellie Sprott (Department for the Economy): You are right, Chair. In the consultation, we looked at how the leave should be taken. Should it be single days, should it be in blocks of weeks, or should you have to take the two weeks all at once? We came to the decision that you could take two weeks as one full block, or take one week and, at a subsequent time, another week. The main reasons for that are certainty for the employee and the employer, accommodation of the administrative processes for an employer and the administration of the statutory pay element. All the processes with HMRC are premised on the fact that it would be taken as a block week. If we were to change that and break it down into single days, it would make the statutory pay element difficult to administer.

The Chairperson (Dr Archibald): Thanks for that. You mentioned monitoring what is done elsewhere on miscarriages. Employment is a devolved issue. If we can have the opportunity to lead in some things, we should take it. This issue is about providing compassionate leave to people in really difficult circumstances, and I will argue in respect of that.

I have one more question before bringing in other members. Can you speak to why there is a difference between employees and workers?

Ms Sprott: I will come in on that. I will very briefly recap so that everybody is absolutely clear. The intention in the Bill is to have the same as all other family rights in employment law, so employees will be entitled to the leave and pay element of the Bill and workers will be entitled to the pay element only. I just want to make everybody aware of that. The reasoning for that goes back decades in employment law, but it comes down to employment status. An employee will have an employment contract with their employer, so there is a mutuality of obligation between the employee and employer about when they should be in work, how many days a week and how many hours. For them not to be in work, they must discuss and agree that with their employer.

For someone who does not have an employment contract and who is not an employee, that same mutuality of obligation is not there for them to be in work on a certain day at a certain time. That is where the distinction is and has been made for many years in employment law. So, whilst someone who does not have an employment contract does not have set hours, they may need time away from work if they ever suffer the loss of a child. They would still be able to access the form of statutory pay, whilst they may not have to formally request the leave from their employer. I use that word even though they do not have an employment contract. That is the reasoning for it.

The Chairperson (Dr Archibald): OK. Thanks for that. That is useful. Does anyone else want to come in on that? No members want to ask questions. Thanks for the update. We look forward to the Bill coming to the Assembly and to the further discussions on it once it comes back to Committee.

Ms Sprott: Thank you.