



Committee for the Economy

OFFICIAL REPORT (Hansard)

Parental Bereavement (Leave and Pay) Bill

9 June 2021

NORTHERN IRELAND ASSEMBLY

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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 Mike Nesbitt
Mr John O'Dowd
Mr Christopher Stalford
Ms Claire Sugden

The Chairperson (Dr Archibald): Members, included in your tabled papers is the Department's response to the Committee's request for a copy of the statistics and figures referenced by the Department when considering miscarriage within the scope of the Bill. The Department's response states:

"There is a distinction in law between miscarriages and stillbirths: if a baby dies before 24 weeks, it's known as a miscarriage, whilst a stillbirth occurs after 24 completed weeks of pregnancy. The Department of Health, as the policy holder for the definitions of Stillbirth and Miscarriage, would be responsible for redefining or amending the statutory recognised periods for both – the last change, which was from 28 weeks to 24 weeks, was made in 1992.

Currently the definition of a stillbirth is the basis for the entitlement to certain benefits and leave allowances – for example, those who have suffered a stillbirth qualify for maternity leave and pay whilst those that have suffered a miscarriage do not."

I remind members that, during the pre-introductory briefing with officials, we discussed whether the Minister intended to legislate for leave to be taken within 56 weeks or 56 days of a child's death. The early version of the Bill had referenced 56 days. The version of the Bill in members' papers and the memorandum refer to leave being taken within 56 days of the death. The Clerk sought clarity from the Department, and it provided the following explanation by email:

"The Committee should note that whilst the text of the Bill says 'at least 56 days', it is the Minister's intention to set this time period at 56 weeks following the death of a child; this extension, which is beyond the minimum that the Bill requires the Department to make provisions for, will be given effect through the subordinate legislation package that will follow on from the Parental Bereavement Leave and Pay Bill."

Members will obviously have the opportunity to return to both of these issues in more detail as part of the consideration of the Bill once Committee Stage has formally commenced. I seek agreement from

members to ask the Department for a formal written response to clarify the wording of "at least 56 days" that is contained in the Bill.

The Bill was introduced on 1 June. The Second Stage debate is on Monday 14 June, and, if the Bill passes Second Stage, it will be referred to the Committee on 15 June. The Committee has 30 working days to take evidence, consider and report its opinion on a Bill. The 30-day period for the Parental Bereavement (Pay and Leave) Bill ends on Monday 20 September. That takes accounts of summer recess, which begins on 10 July and ends on 5 September.

It is advised that the Committee seek extension to the Committee Stage. A motion requesting that must be considered in a plenary sitting before the end of the 30-day period. Given the limited time before summer recess, the motion to extend Committee Stage is being considered at today's meeting, with an expected date for plenary debate before summer recess. I advise members that the draft timeline includes an extension of Committee Stage to 15 November. However, it is hoped that the Committee will be able to report on the Bill before that date.

Are members are content with the draft timeline and the motion? Christopher, do you want to come in?

Mr Stalford: There are a few things. First, the move from 28 weeks to 24 weeks in the definitions came about as a consequence of advances in science. The advance of science relating to fetal development and the health of unborn children will continue. We should examine that important area.

Obviously, clarity is required on the issue of 56 days or 56 weeks. From my perspective, it is really important — I hope that we can get to it — that we speak with one voice as a Committee on this.

I have my copy of Standing Orders here — I always keep it with me. In progressing the legislation, there are rules governing Committee processes. In respect of our deliberations and discussions, it is no skin off my nose if we have additional meetings during recess in order to have conversations with interested parties. I would like us to progress this much sooner than the middle of November.

The Chairperson (Dr Archibald): Peter will speak to that.

The Committee Clerk: Chair, 15 November is a bit arbitrary. It just means that we are secure in completing. We are acutely aware that the Department wants completion prior to Christmas so that the Bill can get Royal Assent before the end of the year, which allows it to start making the subordinate legislation. We have a process ready to roll out. We are finalising a survey and call for evidence. As soon as the Bill is referred to the Committee, we can send that out. That will all start working over the summer.

The summer will be really helpful for us. We can do a lot of the preparatory work then, when it does not count towards our time total. When we come back in September, we will be able to get right into evidence sessions, clause-by-clause scrutiny, looking at amendments and so on. I anticipate that we will finish well before mid-November; that is just a safety zone in case of other issues that we had not anticipated. I do not intend that we get anywhere near it, if possible. It just gives the Department that period to complete and issue the key regulation work.

It is worth reflecting on the 56-day/56-week issue. Members may even recall something similar in last night's discussions on the Licensing Bill. It is to provide a floor. If you put 56 days into the Bill, it will be very difficult to change, expand or modify. That is why it goes into regulations. The 56-day period provides an absolute minimum, and it is so that an employer cannot say, "It says up to 56 weeks, but I need you to do it now, this week". "At least 56 days" provides that floor, and the regulations will then provide for 56 weeks initially. That period is allowed to be flexible because it can be changed through regulation, without having to amend the Bill. That will become a lot more apparent when we go through the Bill and have the briefings with officials.

I suspect that we will need to get a lot of legal advice on what we can do on definitions. The extent of the Health anchor makes it more complex. It is about going as far as we can.

The Chairperson (Dr Archibald): We are not seeking to redefine stillbirth. The provision would include leave for those who suffer miscarriage, so we are not in any way, shape or form suggesting a redefinition. It is providing additional leave for those who are in that situation.

The Committee Clerk: Chair, I am very conscious that we are most familiar with the leave, support and so on that the public sector offers. There are no real supports in the private sector, other than the bare minimum that law provides. The Bill is an opportunity to put safeguards in place for people who do not have anywhere else to look for support. As we go through and start talking to sectors that do not have that kind of support written into their terms and conditions, members may be shocked by what exactly the practice is. This is an opportunity to provide the floor on which you can then build.

Mr Stalford: Thank you. That is fair enough, as long as it is understood that 15 November is absolutely the latest date for this process. It will be really important for the Committee to hear the testimony of people — I am sure that there are charities and voluntary organisations that work with people who have gone through it — who have lived experience of not being given the protections that the public sector gives. That will underscore to everyone on the Committee and to the public why this initiative is so important and why it is important that we get it on to the statute book.

The Chairperson (Dr Archibald): I completely concur with your view, Christopher. We want to progress this as quickly as we can, but we want to give it the consideration that it needs.

Mr O'Dowd: The Clerk has just clarified that we do not need to sit over the summer. My point relates to the Speaker's letter of last week. A huge amount of staff leave has built up over the past year. The public do not care whether politicians get a break, which is fair enough, but we should do everything to try to avoid staff not getting a break. Assembly staff deserve to get a break. The Clerk has clarified that we may not have to sit over the summer to allow the Bill to be brought forward as soon as possible.

The Committee Clerk: Over the summer recess, we will try to do all of our processes around our call for evidence and planning for stakeholder events. Various innovations are evolving. One part of the Committee Stage of many Bills is the holding of large-scale stakeholder events that we never would have contemplated before. Mr Stalford talked about some of the groups and people involved. We need to think of less intimidating ways for them to give evidence than doing so in a Committee session. Other Committees have started to do that, and it is within the rules. We are looking at how we can be sensitive to people who have stories to tell but would be intimidated by having to do so in a Committee situation via a formal briefing. We are gathering information on that. We will do a lot over the summer. That will allow us to hit the ground running for those final stages in September.

The Chairperson (Dr Archibald): Is the Committee content with a motion being tabled that, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 15 November 2021 in relation to the Committee Stage of the Parental Bereavement (Leave and Pay) Bill [NIA Bill 22/17-22]?

Members indicated assent.