



Northern Ireland
Assembly

Committee for the Economy

OFFICIAL REPORT (Hansard)

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

6 October 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 Keith Buchanan
Mr Stewart Dickson
Mr Stephen Dunne
Mr Mike Nesbitt
Mr John O'Dowd

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 to this morning's meeting from the Department for the Economy Colin Jack, who is the director of business and employment regulation; Kellie Sprott, who deals with employment relations policy and legislation; and Laurence Rogers, who deals with employment relations. I invite you to make an opening statement, and we will then open up the meeting to questions from Committee members.

Mr Colin Jack (Department for the Economy): I thank the Committee for inviting us to give evidence today. Kellie and Laurence are part of the Parental Bereavement (Leave and Pay) Bill team. We have been following the Committee's scrutiny of the Bill very closely so far. We have listened with interest to the evidence that you have taken from various witnesses. As a result, and in response to the various pieces of correspondence that we have received from the Committee, the Bill team has undertaken further detailed analysis of those issues that attracted greatest attention at Second Stage and thus far during the Committee sessions. As you said prior to the meeting, Chair, on 1 October, the Minister wrote outlining his thoughts on those issues. I do not have much more to say by way of introductory remarks. We are happy to take questions from the Committee and answer them as best we can.

The Chairperson (Dr Archibald): Thank you for that. I will go first to the Minister's letter. I refer to the issues that have been raised with us and the evidence; particularly that from the Human Rights Commission, about the implications of the provisions for rights and other issues. One issue that we have considered in detail so far and is referred to in the Minister's letter is the day-one right. In his letter, the Minister outlined how it would have implications for both cost and time. Can you talk us through in a bit more detail the complexity of the issue that it would raise? Other issues are the inclusion of miscarriage leave and how that leave might be taken. Can we first talk through the issue of making it a day-one right and the implications of doing that?

Mr Jack: The Bill provides for a qualifying period of 26 weeks, which is in common for many employment-related payments, such as paternity leave and maternity leave. The system that HMRC operates is based on the entitlement to parental bereavement leave and pay that has been introduced in GB. If the Assembly were to decide to do anything different, HMRC would require payment from the Executive for any separately identifiable costs of making a change. Those costs are largely for changes to the IT systems that underpin parental bereavement leave and pay. We have had significant engagement with HMRC on all the proposed changes that were suggested in the consultation exercise, that were raised in the Second Stage debate and that people who have given evidence to the Committee so far have raised. The latest estimate that we have received of the cost of making that change — it is a preliminary estimate — is £1.5 million. In considering the cost of actual parental bereavement pay that is likely to be incurred by the Executive each year, we estimate the total bill, on the basis of the current entitlement, to be around £100,000. In considering the proportion of potential applicants who might be in the position of being with their new employer for less than six months, or of not having served six months with an employer, we estimate that a maximum of 40 parents a year will likely be brought into the scope of the pay. This is about that cost of £1.5 million. It would be very difficult to justify it, given the size of the payment, which would be somewhere around £11,000 or £12,000.

The Chairperson (Dr Archibald): That is a one-off cost for systems development. That system would then be in place year after year for the estimated additional 40 parents a year.

Mr Jack: It is a one-off cost for systems development, but it also includes maintenance for five years. It would be a cost to cover a five-year period.

The Chairperson (Dr Archibald): I guess that it would therefore be a case of balancing the provision of a really important support for those individuals at a really difficult time in their lives against the cost of introducing it and having it in place for the people who need it. In the grand scheme of things, a budget of £1.5 million does not seem particularly huge, but that is for others to consider.

As I understand it, making the change for miscarriage leave could also be included in that £1.5 million for systems preparation and maintenance. Is that correct?

Mr Jack: Yes, that is correct. The cost for making that change if it were to be made with HMRC would be a figure similar to the cost for making parental bereavement pay a day-one right. On introducing miscarriage leave into the entitlement for bereavement pay, I will say that, unfortunately, a lot more parents experience a miscarriage in a year than there are parents in the scope of bereavement pay currently. The latest estimate is that around 236 children under 18 die in Northern Ireland each year. Estimates for how often miscarriages take place range from one in eight to one in four of all pregnancies, so the cost of that payment alone could be anything between a few hundred thousand pounds and £3 million, which is the highest estimate. It would therefore be a very significant increase in the scope of the payment that is in the Bill and that the Executive agreed to table in the Assembly.

Kellie, is there anything that you would like to add?

Ms Kellie Sprott (Department for the Economy): No. You covered the miscarriage issues well.

As Colin intimated, the recurring costs each year would be significantly higher. More than that, there are lots of complexities to consider when thinking about including miscarriage, not least whether it is miscarriages that are known about and how people would inform their business. For example, would it be a self-declaration? There are a lot of considerations that would need to be taken on board that were not part of the consultation. We would therefore need to consult on that to get the right answer.

Moreover, what provision would be the correct amount of time? The Bill deals with parental bereavement and allows for 10 days. Is a provision of 10 days correct for miscarriage? We all know of the high-profile law in New Zealand, which allows for three days. None of those things has been considered as yet to allow us to find the right answer for the provision of miscarriage leave in Northern Ireland.

Mr Jack: One thing to add is 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. That is attracting attention at Westminster as well as here. It may well be the case that there is further debate on the issue over the next year or two, which could lead to developments elsewhere.

One of the difficulties in the arrangements with HMRC is 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. 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.

The Chairperson (Dr Archibald): Employment issues are devolved, and we have the ability to set our own agenda, but the cost becomes a barrier to the introduction of progressive employment policy. That is something worth reflecting on.

Has it been in any way explored? If the Executive and the Assembly were minded to move ahead with either the introduction of miscarriage leave or making it an additional right, and the changes, particularly those that relate to miscarriage, because that is where the discussion is at, were to be introduced by Westminster, would the costs be refunded?

Mr Jack: That would be a matter for the Executive to discuss with the UK Government, if that were to happen. We have certainly had no discussions on that issue to date.

The Chairperson (Dr Archibald): There has been a suggestion that this could be taken forward in a departmental review of employment law. Where does that sit in current departmental priorities? You will be looking at the next mandate, and it could therefore be a different level of priority for an incoming Minister. We already know that there is significant interest in legislating for miscarriage leave, so is the Department looking at consulting on that at any time in the near future?

Mr Jack: Work on a range of employment law issues has been taken forward over the past five years by the Department for Business, Energy and Industrial Strategy in London, including 'Good Work', the Matthew Taylor review of modern working practices. We did not have an Assembly and Ministers for three years, so we were unable to do preparatory work in Northern Ireland in that period, and then, since devolution was restored early last year, we have had COVID-19 to deal with. There is also a very limited time in which to bring primary legislation through the Assembly.

It is fair to say that enacting into legislation some policy announcements in GB has taken longer than one might have expected. A lot of the changes that are likely to happen in GB will form part of an employment Bill. The UK Government have announced that, but the precise timing involved has not been announced. Ministers will need to look at a whole range of issues in the future, and it is quite possible that that will lead to a Bill in the next Assembly term. We will need to consult on those issues and on whatever other issues an incoming Minister wants to look at after the next Assembly election. The Department is doing some preparatory work in the background, however, so that we are in a position to consult on issues, and anything that is raised in the context of this Bill will be fed into that process.

The Chairperson (Dr Archibald): OK. That is useful to know.

Mr Nesbitt: I am not sure how Committee members feel about measuring rights and entitlements through the prism of finances only. When I heard the figure of £1.5 million mentioned, my first thought was what we heard last week, which is that the Department is holding back £21 million in case of an overspend on the high street stimulus scheme.

Colin, if I understand the Minister's letter correctly, we have a choice: either support the legislation as drafted so that it becomes operational in April next year, with those who qualify benefiting from that point on, or dig in over the likes of miscarriage and day-one rights, which will result in nobody getting anything for another 12 months. It would therefore be April 2023 before we could get an operational Act. That is the choice as I see it. Is that a correct interpretation?

Mr Jack: I will ask Kellie to come in in a moment, but my understanding is that it may be possible to introduce the legislation as drafted from April 2022 but that, if there were any changes made to the policy, it certainly would not be possible to bring in any of those changes before April 2023. Indeed, in our most recent discussion with HMRC, it said that we are too late even now to bring them in for April 2023, so it would be April 2024. Kellie, is my understanding correct on that?

Ms Sprott: Yes, that is accurate. It depends on what amendments are proposed to the Bill and what is written in the Bill. Certainly, if the will of the Assembly is that some form of parental bereavement leave and pay entitlement should come in in April 2022, that could be done through the Bill as drafted,

depending on the amendments. The amendments could follow later, if they were so drafted. Colin is right, however. In our most recent discussions with HMRC, it asked us to ensure that we articulate to the Committee that April 2023 is by no means guaranteed. It has high-level strategic projects ongoing with the UK Government as well, and it cannot guarantee that it will be able to introduce any of our proposed amendments by April 2023. It is therefore important that you are aware of that.

Mr Nesbitt: Would a further departmental review include looking at the call from the Coalition for Bereaved Workers for similar rights to be extended to those who have lost close relatives and partners?

Mr Jack: That would be very much up to an incoming Minister. It is incumbent on us, as officials, to feed any issue that has been raised in the context of the Bill into the development work that we will be doing for future employment legislation.

Mr Nesbitt: You mentioned the fact that, for three years, you were without a Minister to give you direction, Colin. Did you spend that time drawing up a list of issues?

Mr Jack: There are issues that are on the record as having been considered in GB. The UK Government developed the 'Good Work Plan' policy paper following the report by Matthew Taylor. The issues are largely about employment rights for people in precarious employment situations. A lot of the focus is therefore on that. There are other issues, such as carers' leave, about which there have been other UK Government announcements. We feed those in as well. A lot of this is about catching up with the position in GB. If, however, there are issues that the Assembly wants us to look at, we will certainly look at them. Clearly, if we were to do anything differently on entitlements to paid leave, there would be a cost to the Administration from HMRC. We have to bring that factor to everyone's attention. It is possible, however, to consider any issue that the Assembly wants us to look at.

Mr Nesbitt: I have one final question. Are there any issues in this area that are particular to Northern Ireland?

Mr Jack: Not that we are particularly aware of. Kellie?

Ms Sprott: No.

Mr Nesbitt: OK. That is clear. Thank you.

The Chairperson (Dr Archibald): Kellie, may I go back to Mike's question about amendments to the Bill? Is it therefore the case that the Bill could be operational as it is from April 2022 but that amendments made to it could be post-dated to come into effect once it is possible to enact them?

Mr Dickson: Yes.

The Chairperson (Dr Archibald): By that, I mean once the machinery is in place to enact them.

Mr Dickson: Yes.

Ms Sprott: I am sorry, but I can hear someone saying yes. Was the question addressed to me?

The Chairperson (Dr Archibald): Yes, Kellie. It was to you. *[Laughter.]*

Ms Sprott: OK. Sorry. That is my understanding, Chair. After the meeting, if you do not mind, I would like to take the Office of the Legislative Counsel's view on that. Depending on how any amendments were worded, it would still be possible to level up the rights and bring the Parental Bereavement (Leave and Pay) Bill into Northern Ireland in April 2022, akin to that which has been in operation in GB since 2020, and then do the necessary work with HMRC to change its systems and online forms to accommodate some of the potential amendments that the Committee is talking about. Those changes would then come about at a later date. My understanding is that it all depends on how amendments are worded, but I will check that with legal colleagues, if that is OK.

The Chairperson (Dr Archibald): Yes, if you are happy to share that advice with us once you have it, that will be very useful. Kellie. Whether that is possible is something that the Committee is keen to explore.

Ms Sprott: OK.

Mr Dickson: It was me who was saying yes, because it seems to me to be a sensible way in which to develop the legislation. We can do it as a multipart piece of legislation so that we do not fail those who have been bereaved under the initial intent of the legislation. If it is the mind of the Committee and, ultimately, the mind of the Assembly that we add the elements that relate to single days and to miscarriage, that would be a very good place for us to be in.

You have told us the HMRC costs. Thank you for that information. It is, however, now information that I and many others will simply wish to discount. We know how much money is squandered in the public sector in Northern Ireland. We know how much money is handed back annually. The price of delivering this over a number of years is of immeasurable value to the health and well-being of many people. Should the rest of the United Kingdom wish to play catch-up with us on that, we certainly should be sending the bill for our share of the development of the work from HMRC. That is an element that we should be pursuing with it.

We have now extracted from you the information that it is possible to move forward in this direction. You will find that the Committee will want to work collaboratively with you to deliver on that. We therefore look forward to your working at pace now to bring back the appropriate framing of how that can be achieved so that we can enter into a phased process that will deliver over the next number of years and so that, specifically, we do not miss the target for at least the first element of what now looks to be a three-step process.

Ms McLaughlin: Thank you very much for your update this morning. All members of the Committee will be disappointed to learn that we cannot move forward with more robust legislation. I echo what Stewart has just said. It is important that we move forward rather than pause at this particular stage. I back the sentiments that have been expressed. It is disappointing, because we wanted to lead the way in Northern Ireland so that others might follow us with this legislation. Nevertheless, it is not over yet.

The Chairperson (Dr Archibald): No other members wish to ask questions.

The Committee Clerk: I have asked the Bill Clerk to come down. If we move into closed session now, we can seek advice on how or whether the Committee would amend in the context that has been described, which is that of making an amendment that would be delayed in coming into effect.

The Chairperson (Dr Archibald): OK.