



Northern Ireland  
Assembly

Committee for the Economy

# OFFICIAL REPORT (Hansard)

Parental Bereavement (Leave and Pay) Bill

13 October 2021

# NORTHERN IRELAND ASSEMBLY

## Committee for the Economy

### Parental Bereavement (Leave and Pay) Bill

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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 Stephen Dunne  
Mr Mike Nesbitt  
Mr John O'Dowd  
Ms Claire Sugden

**The Deputy Chairperson (Ms McLaughlin):** Members, you will recall that, at last week's meeting, the Committee agreed to return to the potential amendments to the Bill with respect to three specific issues. Those were: to include provision for miscarriage; to include pay from day one of employment, rather than having a qualifying period of 26 weeks; and to allow more leave to be taken in single days rather than blocks of at least a week. The majority of respondents appear to be content with the arrangements as drafted. If any members would like to add anything to that, that would be fine. The Committee Clerk will provide an outline of the options around the potential amendments to the Bill.

**The Committee Clerk:** Thank you, Deputy Chair. I have given you a multicoloured options grid. Please do not be afraid. A lot of those options are simply there because they are options and not necessarily because the Committee is likely to want to take them or has to take them or anything like that. I will give you a general outline first, and then members can begin discussion after that.

With regard to miscarriage, there are 10 options provided for in the paper. It was not specifically included as part of the Committee's survey, although it came across in our options to change the Bill, modify the Bill or add additional comments. The idea is that any provision on miscarriage would likely be based on a declaration by the mother that a miscarriage has happened. There are a number of options. I will not bore you to death going through the pros and cons, but I will go through the headline options.

Option 1 is to do nothing, leave the Bill as it is and take no further action around that issue.

Option 2 is to make a recommendation in the Bill report where the Committee would say that it has a desire to have the Bill amended at a future date or to have a new Bill include this provision. Members will recall that the Department has already indicated, and the Minister has reiterated, that they will look at including miscarriage in a future employment Bill.

Option 3 is to make an agreed Committee amendment through the Department to include miscarriage in the full scope of the Bill. That would mean that all aspects of the Bill applied to miscarriage, as well as the 24 weeks to 18 years. As part of that, a further option is to do it in real time so that it becomes

part of the Bill. Again, it is important to flag up that the Minister has indicated that timescales do not allow for a real-time amendment and inclusion of that in the Bill.

Option 4 is to make an agreed amendment through the Department, again in real time, on the basis of the provision in New Zealand, which is three days' leave not paid, or some variation of that.

Option 5 is to make an agreed amendment, again, through the Department, that includes miscarriage in the full scope of the Bill, but to do that in delayed time. The option raised at last week's meeting was to make the amendment and subsequently put that into law when the Department had done appropriate consultation and due diligence. The Department has flagged up that its preference for any inclusion of miscarriage in legislation is that it goes through the same process as the rest of the Bill. That would be miscarriage, full provisions and delayed time. I see that the Chair is back again.

Option 6 is, again, to make an agreed amendment through the Department on the New Zealand terms or a variation of those, again, in delayed time; that is, an amendment for the Department to put into law and regulation at a future date, once it has done all consultation and due diligence.

We are moving to the options that would be as a result of the Department not making the amendment. Option 7 is to make a Committee amendment to have miscarriage included in the full provisions of the Bill, so all the provisions that are already there, and, again, to do that in real time. As members are already aware, doing that in real time would mean that the Bill would probably be unlikely to pass as it is.

Option 8 is to make a Committee amendment based on the New Zealand terms or a variation of those, again, in real time.

Option 9 is to make a Committee amendment to include miscarriage in the full scope of the Bill, but in delayed time. As before, that would mean that the Department would be asked to take that away, go through the process and put it into law at a future date.

Option 10 is to make an amendment on New Zealand terms, in delayed time. Again, that would mean instructing the Department to go away and make that arrangement in law following due diligence and consultation.

Those are the amendment options, or the options more generally, for miscarriage.

I will move on to the day-one issue. Within the scope of the Bill at the minute, there is leave from day one — there is no lie-in or qualifying period for leave — whereas for pay, as is not an unusual case in law, there is a 26-week qualifying period. The day-one issue is essentially about bringing the pay element into the same category as the leave element so that it starts from day one. The Department has corresponded on that and indicated that it would have a cost and time impact and might have an impact on other benefits. I will go through the potential options.

There is the option to do nothing and leave the Bill as it is. There is the option, again, to make a recommendation that the Department legislate for this at a future date. That can be a recommendation coming out of the Bill report. The third option is to make an agreed Committee amendment through the Department to include the day-one provision in real time. Again, doing that in real time would mean that the Department probably would not be able to get the Bill through within the remainder of this mandate. The fourth option is to make an agreed amendment through the Department to include the day-one option in delayed time; that is, the Department brings forward an amendment indicating that it will bring this through in legislation at a future point. If the Department does not agree to make an amendment, the fifth option is for the Committee to make an amendment on the day-one issue in real time; again, the real-time issues would apply. The sixth option is to make a Committee amendment on the day-one issue in delayed time. Those are the six options for the day-one issue.

The third issue is leave being taken in single days. Again, I flag up the fact that over 80% of respondents to the Committee's survey and call for evidence said that they were content with the leave arrangements as they are, which is two weeks taken in blocks of a week. A variety of reasons were given for that, which are included in the annex to the paper in members' packs. Those include that it is easier for employers to plan around a block and that, if an individual only takes a day, there may be a level of pressure for them: "Sure, could you not just do a bit of the morning or a bit of the afternoon?", and so on. The clear block was seen as a much easier, defensible period that would be much easier for everyone to plan around.

However, as this was one of the issues that was referenced, we have brought forward options on it. Option 1 is, as before, to do nothing. Option 2 is, as before, to make a recommendation in the Bill report that an option like this be explored going forward. Option 3 is an agreed amendment proposed through the Department in real time; again, the real-time issues would apply. Option 4 is to propose an agreed amendment through the Department in delayed time, as discussed before. If the Department is not willing to propose an amendment, option 5 is for the Committee to propose a Committee amendment in real time, to which real-time issues would apply. Finally, option 6 is to propose a Committee amendment in delayed time. I restate that there is no pressure from our consultation to make any amendments to that part of the legislation. Members may want to bear that in mind.

That is an overview of the options. If members or the Chair want to raise any issues or make any comments, they can do so. Thank you, Deputy Chair. Hopefully, the Chair can hear us. *[Long Pause.]* Or not. I will go back to the Deputy Chair. Deputy Chair, do you want to make any comments? We can then move to other members.

**The Deputy Chairperson (Ms McLaughlin):** Thank you very much for outlining that. The options are pretty comprehensive and will require a great deal of study. At last week's meeting, it was widely felt that we would like to include provisions for miscarriage leave and day-one rights in the Bill, but it looks like time is not on our side. Those are the areas that we need to consider when we look at all the various options and the pros and cons for each. It is a pretty compressive paper from the Department. I will open it up to other members to discuss the next steps.

**Mr O'Dowd:** The Committee Clerk may have covered this already, but what timescale does the Committee have to consider its amendments?

**The Committee Clerk:** Hopefully, today, we will get to a point where the Committee decides on what it might want to ask the Department to propose amendments on. We would then ask the Department to bring those amendments next week. Simultaneously, the Bill Office will begin drafting such amendments and have those ready in case they are needed.

We have a cut-off point on this Bill of mid-November. Ideally, we really need to go into at least informal clause-by-clause consideration next week, which would include making final decisions or, at least, fairly final decisions about amendments. The ideal situation would be that, today, members would decide whether they wanted to move forward on particular options, and that, if they wanted to ask the Department to make amendments, we would be in a position to flag those up today, even if we did not have exact wording, in order for them to start work on them or, at least, indicate to the Committee that they were not willing to take them forward, how they would like to take them forward etc. I suppose that the short answer is that we do not have a great deal of time.

*(The Chairperson [Dr Archibald] in the Chair)*

**The Chairperson (Dr Archibald):** Can you hear me?

**The Committee Clerk:** Yes, Chair, we can hear you again.

**The Chairperson (Dr Archibald):** Good. I do not know what the problem was there. It keeps putting me out of StarLeaf this morning. I am not sure whether there is a security issue or something.

I heard most of what the Committee Clerk said about the options for amendments. From having a look at it, it seems to me that the best option is to have the delayed amendments, if that is what we are calling them — the ones that are not in real time — to be taken through on the same basis as the Bill. Is that what the Department has indicated is its preference?

**The Committee Clerk:** The Department has indicated that its preference is to move forward with the Bill as it is, and then to look at other issues to legislate on in a future employment Bill. What the Department is willing or able to do will be based on the Committee making a decision on what it wants and asking the Department whether it can do it. You will recall that, last week, officials talked about the idea of delayed time. They were talking about it specifically around the issues of miscarriage and day one, not the issue of changing the blocks of leave, because, as I say, we have had no evidence that there is popular support for changing those blocks of two weeks. The Department has talked about how delayed amendments can be made. It is important to stress that the Department was not saying that that was any kind of preference.

With regard to correspondence that we have had, I emailed a further response this morning on the delayed time issue. It is quasi-legal advice, so we cannot disclose it, but members will have the email and can look at that. Essentially, it would be a case of asking the Department whether it was willing to make those delayed time amendments, if that was where the Committee wanted to go, and we would then ask it to respond on that within the week. That is miscarriage and day one, rather than changing the blocks of leave to single days, because, as I reiterate, we did not get evidence of support for that.

**The Chairperson (Dr Archibald):** OK. So the Committee needs to make a decision now as to whether we want to go forward with the miscarriage and day-one rights in delayed time?

**The Committee Clerk:** Absolutely, Chair. It might be easier to eliminate options that the Committee does not want to consider. For example, for each, there is a do-nothing option. If we look at that for miscarriage, and if there is an appetite for that — if any members want to indicate that they are content to do nothing. I appreciate that this is very live and pressurised. It is really coming down to timescale; we do not have a huge amount of time and, if there is a desire to amend or change, that needs to be looked at. What I might suggest is that, obviously, we can ask the Department to do these things. There is no requirement for a final decision. That will come, ultimately, when the Committee has seen what the Department is willing to do. If you want to move forward today on the basis of consensus, rather than getting into any form of voting, then, when there are more people here and in the room, the Committee may then want to move to the basis of making decisions, potentially, through voting. If we were able to move forward with consensus today — and it might be helpful for me to suggest, from observation, where consensus may be. Obviously I am more than willing to be told that that is not the case at any point, so do please interrupt me and do that. I am getting the suggestion on miscarriage that there is a consensus on seeing whether the Department can make an amendment in delayed time and that a decision on that will not be made today, so that is asking the Department to do that and to show how it would do that, with the Committee making a decision subsequently. Am I right in thinking that there is a consensus on moving forward and doing that?

**The Chairperson (Dr Archibald):** I certainly support that.

**The Committee Clerk:** That would be miscarriage as a full part of the Bill on the same terms as the 24 weeks to 18 years. *[Pause.]* OK.

**Ms McLaughlin:** Chair, what is the exact timescale for the decision-making process now? We are asking the Bill Office to commence more work on that area. Is that up until next week?

**The Committee Clerk:** Chair, if I may respond to that, we essentially have today and next week's meeting. We have no meeting during recess, so, by next week, we need to be at a point where we are at least doing informal clause-by-clause consideration. That requires knowing what sort of amendments are possible and which amendments the Committee may want to make. Following the recess week, we have essentially two weeks to go through and finalise formal clause-by-clause consideration and approve a Bill report. The Bill report must be completed in advance of Monday 15 November.

**Ms McLaughlin:** Right, OK.

**The Committee Clerk:** Our process, essentially, is that now we are at a stage where every week counts. Again, I apologise; it is the pressure of time, largely because of the rapidly approaching end of the mandate and the need stated by the Department to get the Bill through in a timescale that allows it to make the regulations so that the Bill is operational by the start of the next financial year — April 2022.

I appreciate that it is very difficult, especially when we are doing this in a hybrid way, with some people here and some not here. That makes it incredibly difficult. Ideally, we would be able to move forward today with some level of decision. However, I appreciate that members may want to have more time for thought, and the important thing is trying to move forward with a consensus and doing things right. I suggest that members take the information away and give it further consideration and that we find a way to carve out time next week to do this when we are likely to have more, if not all, members in attendance. I am very conscious that we have three members who are not here and that this is a really key decision to make. I also appreciate that the options table is very extensive and that members have not had long to look at it. Members may also want to take time to consider what came through from the Department this morning.

**Mr Dickson:** Yes.

**The Committee Clerk:** I feel that we need to give members time to look at it and come back to it. We will work out a way to do that efficiently next week.

**Ms McLaughlin:** I am probably expressing what everyone at the meeting is expressing. There is a desire to make good law, and I hate the fact that I feel so rushed in that process. We know that, if we just let the Bill go through as it is, it will not be perfect; it is far from perfect. A lot of young women and parents who experience dreadful loss will not be adequately served through the Bill's content. I am reluctant to call out preferences on the options until I absolutely know that the Bill Office cannot proceed within this mandate with the better parts of the Bill that we have already suggested. I know that time is not on our side. There is reluctance around the table — I can hear it in the silence — because people are unwilling to push through something that they know is just not adequate for the purposes that we all envisaged. That is where I am coming from. I need more time to talk through it before I can call it, for want of a better term.

**The Chairperson (Dr Archibald):** Will asking the Department whether it is willing to make the amendments in no way hold up the progress of the Bill as it stands?

**The Committee Clerk:** No, it will not. The crucial issue is making a decision on what amendments you want to make and, then, whether the Department is willing to make those amendments. That would have been the ideal today, but I think members would be very uncomfortable, as I would, moving forward until we have had an opportunity to discuss this at greater length.

**The Chairperson (Dr Archibald):** OK.

**Mr Dickson:** It is also fair to say that, whatever the Department decides to do and, indeed, whatever the Committee decides to do, when the Bill comes back to the Floor of the Assembly, individual Members may also wish to make amendments.

**The Chairperson (Dr Archibald):** Yes.

**The Committee Clerk:** That is an option that could have gone down but did not; as always, any individual Member is in a position to bring an amendment. There is no requirement for Members to hold back. The Committee has a number of processes that it must go through, whereas individual Members are not bound by that, as they are not part of the Committee.

Members now have the options. They can take those away and talk to each other, and we will find a way to make the time to get this done appropriately. We will talk to members further about how we will do that. Members can take this away for now, consider it and talk to each other and their parties — however they want to approach that — and we will then bring it back with a plan to bring our timetable back on track appropriately. Ideally, we want to be in a position next week to make a decision as to what the Committee wants to ask the Department to do, if anything. I ask members to be in a position to come back with those thoughts next week. OK?

**The Chairperson (Dr Archibald):** OK.