



Northern Ireland
Assembly

Committee for the Economy

OFFICIAL REPORT (Hansard)

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

20 October 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Dr Caoimhe Archibald (Chairperson)
Mr Keith Buchanan
Mr Stewart Dickson
Mr Stephen Dunne
Mr Mike Nesbitt
Mr John O'Dowd
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. Is there anything you want to outline to us in response to the proposed amendments that the Committee is pursuing?

Mr Colin Jack (Department for the Economy): The Minister wrote to you, Chair, to outline his position. We have subsequently had some discussions with him before coming before the Committee today. The Minister's preferred position, as outlined in his letter, is that he make a commitment in the House to do some work on miscarriage leave. That is a different issue in many ways in that it affects quite a high proportion of parents, whereas, with parental bereavement, only 1% of children die before the age of 18, so those are exceptional circumstances. Clearly, the Committee has decided what it intends to do, and we will need to take the issues back to the Minister.

We have discussed the day-one right with the Committee, and there is some information on that in the Minister's letter. We have had further discussions with the Department for Communities in the last couple of days that have further reassured us that its discretionary support scheme is a suitable vehicle that would be open to parents who, in their first 26 weeks of new employment, lose a child. That scheme is intended for "extreme, exceptional or crisis" circumstances. DFC has confirmed to us that it very much sees that situation as falling into that category. That scheme is open to anyone on a net income of up to just under £21,000. That equates to about £27,000 in most circumstances, which is about the median income. That provision is there.

Kellie, is there anything you would like to add?

Ms Kellie Sprott (Department for the Economy): No thanks.

The Chairperson (Dr Archibald): Thank you. I just want to put it on record that we on the Committee are very supportive of the Bill and want to see it progressed. We have sought to amend it before it commences given the information that was shared with us. We have taken that information on board. The day-one right and the discretionary support that was outlined in the Minister's letter were considered by the Committee, and, obviously, as you outlined, there are other eligibility criteria that apply to the discretionary support scheme. There is also the complexity of any application that would have to be completed. The Committee was of the view that it would prefer that to be a day-one right. The Bill Office will advise us of any other complexity on that amendment, which we will consider when it is brought back to us.

Mr K Buchanan: Thank you very much for the information. Has the Department done any work on implementing provisions on miscarriage? I know that you have not consulted, but have you done any work at all with groups or on costings?

Mr Jack: We have done some costing work since miscarriage was raised in the Second Stage debate. However, we have not had any consultation on miscarriage with groups.

Mr K Buchanan: Can you disclose the costings? Have you any approximate idea of what they would be?

Mr Jack: We have a range of costings. One of the issues with the number of miscarriages a year is that there is a lot that is not totally understood. Many miscarriages are not documented, or the pregnancy is never confirmed. There is a range of estimates that go up to around £3 million a year.

Mr K Buchanan: You talked about the number of miscarriages that happen each year. Where are you getting that information? Is it from medical professionals? Where are you getting those figures?

Mr Jack: Estimates about the number of miscarriages that happen seem to vary a lot depending on the country or the source that those estimates come from. There is an official Office for National Statistics (ONS) estimate of one in eight, but some of the miscarriage charities say they believe that it is about one in four pregnancies.

Mr K Buchanan: Are you saying that that is an approximate figure and that to include provision on miscarriage will be approximately an additional £3 million?

Mr Jack: Yes.

Mr K Buchanan: OK. Per year?

Mr Jack: Yes.

Mr K Buchanan: OK. Is that just to add on the miscarriage aspect and not for what we are currently talking about in the Bill? Is that additional?

Mr Jack: We will need to look at the provision the Committee puts into the Bill. That estimate was based on extending the entitlement to parental bereavement leave and pay to people who have suffered a miscarriage.

Mr K Buchanan: What is the approximate figure for stillbirths and children up to the age of 18? What would be the cost under the Bill if you did not include the miscarriage aspect, which, as we talked about, is approximately £3 million? What would that financial aspect be?

Mr Jack: That would be about £100,000 per annum.

Mr K Buchanan: OK. The bill ultimately increases from £100,000 to over £3 million purely because of including miscarriage? OK. We are talking about approximately one in four pregnancies, on the basis of what we know. That is a high figure. I am not taking the figure away from the issue, but there is a big difference between £100,000 and £3 million. Does that concern the Department in any way, Colin?

Mr Jack: Our concern is to make sure that whatever legislation is brought in will be effective and will work to meet the intended objectives. A concern I have is that we consulted, as did the Committee, on

parental bereavement leave with the qualifications that were set out, namely the death of a child under 18 or a stillbirth after 24 weeks, which affects only 236 children per annum. Employers and everyone else who responded to the consultation did so on that basis. Unfortunately, miscarriage affects a high proportion of prospective parents, so I imagine that its inclusion would affect almost every employer, if not every year then on a relatively frequent basis. It will have a much bigger impact in many ways, so there are a lot of issues that need to be properly scoped out before legislation that will be effective and that will work can be made. The Minister is concerned to make sure that any legislation is not rushed and, as a result, flawed. Certainly, he is sympathetic to the issue being raised. He has asked us to do scoping work on it and is prepared to make a commitment to it in the House.

Mr K Buchanan: I know that you have not consulted formally, but have any miscarriage charities communicated with the Department about the Bill to say that miscarriage needs to be added?

Mr Jack: No.

Mr K Buchanan: OK. Obviously, if you consult, you will get that feedback naturally.

Mr Jack: Yes.

Mr K Buchanan: Apologies, Chair; I have one final question. Do you have any evidence that employers in general are not treating miscarriage or the loss of a child in any circumstances sympathetically? Is there concern in your Department that there is an issue out there?

Mr Jack: It is hard to say. Many employers — probably most of them — have a system of contractual sick pay whereby people who have had a miscarriage or, indeed, any health issue receive full pay for a period of time. However, there are people on statutory sick pay who do not receive the same level of pay. We do not have access to a specific Northern Ireland estimate, but, certainly, I have seen a UK estimate that just under 60% of employers have a system of contractual sick pay that is over and above statutory sick pay. Typically, that would be full pay for a period of time. There are people who are not supported as well as they might be in that situation, but we would need to scope that out properly, work out and consult on options and hear views on what the appropriate model of miscarriage leave and pay would be.

Mr K Buchanan: Chair, apologies; I have one final question, if I may. Colin, maybe you know the answer to this, and maybe you do not. Considering the difference in finance — I do not want it to seem like I am saying it is always about the money, because it is not — does this need to go back to the Executive, given that the cost was originally agreed? The Bill was going to cost x, but this is the first time that I have heard the figure of £3 million a year, unless I missed it last week. Does that need to go back to the Executive for agreement?

Mr Jack: Any Bill that has financial implications needs to be approved by the Department of Finance and the Executive. The more important issue, as far as the Minister is concerned, is making sure that the legislation is effective and meets its objectives. It is important that we do not undermine the intention behind the original Bill, which is to recognise the circumstances of people who have lost a child, and that we bring forward further proposals on miscarriage that suit those circumstances and the needs of parents who have suffered miscarriage.

Mr K Buchanan: Thanks, Colin. I welcome, to be fair to the Minister, his commitment to the Bill. We will see how it develops. Thanks to the officials.

Mr Nesbitt: Colin, before I come to what I wanted to ask you, you said in your last answer that the issue would have to go to Finance and the Executive. Are you sticking with that position?

Mr Jack: All legislation that has financial implications needs to be approved by the Department of Finance. All legislation needs to be brought to the Executive. The Bill was brought to the Executive on its original basis, but, I suppose, with the inclusion of miscarriage leave, it would be a different Bill from the one that was introduced.

Mr Nesbitt: That is a subjective view that I would disagree with. However —.

Mr Jack: We would need to take further advice to be absolutely clear on that.

Mr Nesbitt: OK. With regard to the letter from the Minister to the Committee, you mentioned the commitment that he is offering to make on the Floor of the Assembly that his Department will include miscarriage in wider work for the next mandate. Surely there is no means by which a Minister can make a binding commitment or put a binding obligation on his Department for the next mandate. Is that not the case?

Mr Jack: All parties in the Assembly are represented on the Committee. The Minister would be making a clear commitment. We would probably initiate work on the issue before then, albeit there is a lot of work to be done on secondary legislation to introduce parental bereavement leave and pay. That will have to be the immediate focus after the Bill's passage through the Assembly. Certainly, we envisage getting started on that work.

Mr Nesbitt: I understand that, Colin, but that is the answer to a different question. My question is this: as a matter of principle, is it not the case that no Minister can put a binding obligation on a future mandate?

Mr Jack: That is probably correct; there could not be a binding commitment, but it would be a clear commitment.

Mr Nesbitt: OK. The other issue with the letter relates to the inclusion of miscarriage. The letter says that the Committee is trying to "shoehorn" it in. Do you accept that that is an inaccurate and inappropriate use of language?

Mr Jack: It is the addition of a different issue into a Bill that has been developed for a particular set of circumstances. However, both sets of circumstances are unfortunate for the people who are in them. All use of language is a matter of opinion. If that language is considered inappropriate, I am sure we could consider whether alternative language could be used.

Mr Nesbitt: I consider it to be inaccurate and inappropriate, and I have not heard any member of the Committee disagree with that assessment. I will leave it there, Chair.

Mr O'Dowd: Hello, Colin, Kellie and Laurence. Colin, you are in the unfortunate position that many civil servants find themselves in when they have to defend the position of their Minister. That is your role. That view may be contrary to the view of the majority of the Committee. I do not see the purpose of the briefing as being my need to convince you of the merits of the Committee's amendments. The Committee has come to a decision and has informed the Department of its amendments in writing. The Department will come to a view on that, and the Minister will express it in the Chamber. As the debate develops in the Chamber, individual Committee members may, as is their right, decide to take a different position after hearing further evidence. I am slightly concerned that we are getting to a position where I almost feel that I have to convince departmental officials of the merits of a Committee amendment. I will not get into that position, I can assure you.

Mr Jack: We are officials. We understand our role. We are not the ones who need to be convinced.

Mr O'Dowd: The Bill has now left the Executive and is in the hands of the legislature. The Assembly will decide the outworkings of the Bill. The Minister could decide at various stages not to move it. Whether the amendments are competent is a matter for the Speaker, who will decide whether they are within the scope of the Bill. I experienced as a Minister that, once you bring legislation to the Assembly, you lose control of it. The legislature takes it over, and it may take a different path from the one that you originally intended. The Committee has made its views clear today.

Mr Dunne: Thank you, Colin, for your presentation. I appreciate the points that you have made. You are highlighting that miscarriage is such a sensitive issue and how it is so important to get the legislation right. That is certainly where the Department and the Minister are coming from in that it justifies a focused, bespoke approach to make sure that they get it right.

Has the Department done any research on the issue in the rest of the UK, the Republic of Ireland or anywhere else? New Zealand and India were mentioned. It would be interesting to know if any lessons could be learned to ensure that Northern Ireland gets it right.

Mr Jack: There is not very much experience of there being a specific entitlement to miscarriage leave. New Zealand and India are the only two countries that we are aware of that have that in place. I

believe that there are private Members' Bills in process in Westminster on the issue, so there is a certain amount of information about those.

Ms Spratt: In the Republic of Ireland, there is a private Member's Bill on the matter, although its progress seems to be stalled, according to reports. A public commitment was made in the Republic of Ireland just last week to look at exploring the issue, consulting and looking at what the appropriate provision might be, so something might come of that.

Mr Dunne: As you mentioned, consultation is key to getting it right due to the complexities and costs and so on. Hearing directly from the miscarriage charities would form a key part of any consultation.

I have one other point to make. Is there evidence that employers are not handling the issue with the sensitivity and sympathy required, given that it is such a delicate issue?

Mr Jack: Because we have not consulted on miscarriage, we do not have any robust evidence for that. As I said, there are those who suffer miscarriages who are in receipt only of statutory sick pay. Most employers — I think that I said that it was about 60% of employers — offer contractual sick pay on full pay, so a minority of people are not getting support. Nonetheless, those people are there, we believe, but we would need to do more work on understanding the scale of the problem.

Mr Dunne: I appreciate that. Thank you, folks.

The Chairperson (Dr Archibald): No other members are looking to get in. Thank you.