



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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**RaISe**

# Parental Bereavement (Leave and Pay) Bill

This Bill Paper is to help inform Assembly scrutiny of the Parental Bereavement (Leave and Pay) Bill, including that undertaken by the Committee for the Economy. The Bill was introduced by the Minister for the Department for the Economy on 1 June 2021, and now is at Committee Stage under Assembly Standing Orders. The Paper examines the Bill, both its policy and public finance implications. For a comparative perspective, it further provides an overview of statutory paid leave entitlements for working parents and families in other countries. Throughout the Paper, key potential issues are identified for Assembly consideration.

This information is provided in support of Assembly duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as legal or professional advice, or as a substitute for it.

## Key Points

- The Parental Bereavement Leave and Pay Bill (the PBLP Bill), as introduced by the Minister for the Department for the Economy (DfE), creates a statutory entitlement to leave and pay for working parents who suffer the death or still birth of a child;
- The PBLP Bill mirrors provisions already in force in Great Britain (GB) *via* the Parental Bereavement (Leave and Pay) Act 2018 (GB Act);
- Similar to the GB Act, it creates statutory “minimum” leave and pay entitlements for bereaved parents in the workplace. In particular, it entitles “employees” to both Statutory Parental Bereavement Leave and Pay (PBLP), and “workers” only to Statutory Parental Bereavement Pay (PBP);
- It also leaves individual employers free to go beyond the specified “minimum” entitlements and offer enhanced leave and pay benefits in this area;
- Moreover, the PBLP Bill contains powers that allow for the introduction of regulations to do a number of things aimed to implement PBLP - the Bill’s policy objective in Northern Ireland (NI).
- Under the Bill, such regulations are to define a “bereaved parent”, reflecting – as the Bill states - the caring relationship between the individual and the child prior to that child’s death;
- Under the PBLP Bill, Statutory PBLP includes the following:
  - Leave:
    - Is available to employees (not workers) from day one of their employment (see sub-section 5.2 below for the distinction between employees and workers under NI employment law);
    - Is offered only within 56 days of the child’s death;
    - Is to be taken in week blocs, not single days;
    - Is provided up to the maximum number of days specified under the regulations that the DfE is required to introduce; and,
    - Is to be taken in accordance with the specified notification requirements, including when, how and what (for example, supporting documentation to be provided).
  - Pay:
    - Is to be offered to employees and workers after 26 weeks of their employment;
    - Is to be taken at the pay rate to be specified under the regulations the the DfE is required to introduce.

### Note:

- The current weekly pay rate for GB Statutory PBP is £151.97 or 90% of an employee’s average weekly earnings, whichever is lower;

- Is to enable employers to reclaim Statutory PBP from the United Kingdom (UK) Government *via* Her Majesty's Revenue and Customs (HMRC);
- Regulations may also display or modify the required notice "in specified circumstances";
- In sum, the Bill and subsequent related regulations are to enable parents to take PBLP in NI, affording similar employment protections to those associated with other types of family-related leave in NI, such as maternity, paternity, adoption and shared parental leave;
- It is important to highlight that the PBLP Bill specifies that commencement powers are not conferred on only the DfE, but also on the Department for the Communities (DfC);
- Moreover, the Minister for the Economy intends that the subsequent related regulations could be introduced by the DfE by April 2022;

It is worth noting that an appropriate level of Assembly scrutiny will need to be applied to the proposed PBLP entitlements implemented *via* the forthcoming regulations (secondary legislation<sup>1</sup>), to ensure they are "fit for purpose" for NI workplace and societal purposes.

- In relation to the April 2022 date for introducing the regulations, it also should be noted that the Minister further stated:

*With that date in mind, it is envisaged that a transitional provision will encompass those working parents who may experience a child bereavement in the year preceding the anticipated April 2022 date;*

- At the time of writing, the details concerning the noted Transitional Power are unclear;
- This lack of clarity merits Assembly attention because so much of the detail implementing the Bill is to be defined *via* those regulations. There will need to be an appropriate level of Assembly scrutiny of those regulations, to ensure they are "fit for purpose";
- Various statutory bereavement paid leave entitlements for working parents and families are in operation outside the UK, which help to inform Assembly consideration of the Bill's clauses, despite their generic relevance;
- For example, Australia, the Netherlands, Norway and Sweden all provide paid leave for the care of non-family members;
- In New Zealand, the Holidays Act 2003, contains provisions that confer minimum statutory entitlements to, bereavement leave, and family violence leave;
- The Holidays (Bereavement Leave for Miscarriage) Amendment Act 2021 amends the New Zealand 2003 Holidays Act to include provisions relating to miscarriage;

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<sup>1</sup> <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#what-are-SRs>

- In the Republic of Ireland, despite previous attempts to legislate in this regard, there is no statutory entitlement to PBLP, this remains largely at the discretion of the employer;
  - The Bill's specified eligibility criteria for both paid and unpaid leave could impact on human rights and equality considerations for certain groups, for example, the criteria could impact low paid families to a greater extent, if they feel unable to afford unpaid periods of absence.
  - Similarly, the definition of a "parent" could impact on some working parents' rights under Articles 8 and 14 of the European Convention on Human Rights (ECHR);
- ; and,

The above potential impacts could raise issues under Section 75 of the Northern Ireland Act 1998.

- Under the current financial arrangements under the devolution settlement, NI can extend PBLP entitlements beyond those currently offered in GB;
- However, doing so would depart from the "Parity Principle" (public finance rule under current devolution settlement), potentially impacting the NI block grant, and in turn the Executive Budget;
- The estimated "one-off costs" arising from the PBLP Bill if enacted are estimated to be: £73,000 (£73K) for the public purse; and, £279,000 (£279K) for business;
- "Recurring annual costs" are estimated to be: £100K for the public purse; and, £85K for business.
- However, no explanation is detailed for these one-off and recurring costs in the PBLP Bill's accompanying Explanatory and Financial Memorandum (EFM);
- To support Assembly scrutiny of the EFM's estimated costs, RaISe's Public Finance Scrutiny Unit (PFSU) sought and obtained additional financial information from the DfE;
- That information confirmed that the assumptions and the associated methodology underpinning the above estimation of costs was based on those used in the Impact Assessment undertaken during the GB PBLP legislative process in 2018;
- The datasets used in that Impact Assessment did not consider regional variations such as the number of children who live in a separated family in NI, when compared to GB;
- That lack of regional variation consideration could impact one-off and recurring costs to the public purse and business and the public purse, if the PBLB Bill is enacted as introduced.

## Introduction

The Parental Bereavement (Leave and Pay) Bill (the PBLP Bill) was introduced to the Assembly by the Minister for the Economy on 1 June 2021. The PBLP Bill contains provisions that create minimum statutory entitlements to leave and pay for working parents in Northern Ireland (NI), following the death of a child.

This Bill Paper aims to support the Assembly, including the Committee for the Economy (the Committee), when considering the PBLP Bill, as introduced. To facilitate, Section 1 of the Paper provides background information, including: a summary of similar legislation in Great Britain (GB); a synopsis of the Department for the Economy (DfE) public consultation on the PBLP Bill; and, a brief summary of its key provisions.

Thereafter, Sections 2 and 3 of the Paper respectively analyse Clauses 1 (Leave) and 2 (Pay) of the Bill. Section 4 then presents a summary of comparative legislation from other jurisdictions. To further support engagement on the Bill, Section 5 highlights additional issues meriting consideration, including those relating to: human rights and equality; employment status; parity with entitlements already available for working parents in GB; and, estimated costs that would arise if the Bill is enacted as introduced. Finally, Section 6 concludes, drawing on findings presented earlier in the Paper:

- Section 1: Background and Overview of the PBLP Bill;
- Section 2: Clause 1 - Parental Bereavement Leave;
- Section 3: Clause 2 - Parental Bereavement Pay;
- Section 4: Bereavement Leave and Pay - A Comparative Perspective;
- Section 5: Key Issues for Consideration; and,
- Section 6: Concluding Remarks.

**Key potential issues for consideration are presented in blue boxes throughout the Paper, to support Members in their plenary capacity and the Committee.**

When relying on this Paper, note that its contents are not intended to provide legal advice or opinion.

# 1 Background and Overview of the PBLP Bill

To contextualise subsequent sections, this section provides background information on the PBLP Bill, including the DfE consultation to inform the Bill's formulation and a brief summary of the Bill provisions.

## 1.1 Background

Currently in NI, there is no specific statutory right to Parental Bereavement Leave and Pay (PBLP) from employment following the death of a child. However, in GB, provisions contained in the [Parental Bereavement \(Leave and Pay\) Act 2018](#) (the GB Act) introduced statutory obligations on employers across GB, namely England, Scotland and Wales, to offer minimum levels of leave and pay to employees in the event of the loss of a child.

The GB Act was introduced on 19 July 2017 and received Royal Assent on 13 September 2018.<sup>2</sup> The new rights and entitlements included in the GB Act became available for parents in GB, whose child had died on or after 6 April 2020.<sup>3</sup> (More detail on the GB legislative provisions is available at Section 3 of this Paper.)

The powers specified under the GB Act provided the bases to make provision for the following:<sup>4</sup>

- **Parental Bereavement Leave** - a right for employed parents to be absent from work for a prescribed period (to be set at a minimum of two weeks) following the death of a child. All employed bereaved parents who met the eligibility conditions, regardless of how long they had worked for their employer, was to be entitled to this leave.
- **Parental Bereavement Pay** – a right for those eligible parents who meet minimum requirements relating to continuity of employment (at least 26 weeks with their current employer) and earnings to be paid during that leave at the statutory flat rate (currently £140.98 a week) or 90% of average earnings (whichever is lower). In line with other entitlements to paid statutory leave, the GB Act allowed for employers to reclaim payments from the United Kingdom (UK) Government *via* Her Majesty's Revenue and Customs (HMRC).
  - **Employment protections** – parents taking PBLP were to have the same employment protections as those associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption and Shared Parental Leave). That included protection from dismissal or detriment as a result of having taken leave.

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<sup>2</sup> Briefings on the GB Parental Bereavement (Pay and Leave) Bill are available from the House of Commons Library and the House of Lords Library and are available to download [here](#) and [here](#).

<sup>3</sup> UK Government. *Statutory Parental Bereavement Pay and Leave. Guidance.* [www.gov.uk/parental-bereavement-pay-leave](http://www.gov.uk/parental-bereavement-pay-leave)

<sup>4</sup> Parental Bereavement (Leave and Pay) Act 2018: *Explanatory Notes:* <https://www.legislation.gov.uk/ukpga/2018/24/notes/division/2/index.htm>

In June 2020, the DfE opened a consultation to notify the NI public of its intention to introduce similar PBLP provisions to those provided under the GB Act for working parents in NI.

## 1.2 The DfE Consultation

The “NI Parental Bereavement Leave and Pay: Public Consultation” (the DfE Consultation) ran from 15 June to 10 August 2020, and received 36 responses from a variety of stakeholders. The DfE published its consultation response on 20 January 2021, affirming that future NI provisions would mirror those that had been introduced previously in GB.

The consultation responses focused on a number of issues in relation to PBLP. Tables 1 and 2 below summarise those issues and accompanying consultee/DfE responses; Table 1 focusing PBL; and, Table 2 Parental Bereavement Pay (PBP).

**Table 1: Parental Bereavement Leave: DfE Consultation Responses<sup>5</sup>**

Issue and DfE Consultation Question	RalSe Summary of Consultees' Responses	DfE Summary of Responses
<p><b>Definition of Bereaved Parent:</b> <i>Who else, in addition to the above, do you think should be included within the definition of 'bereaved parent'?</i></p>	<p>There were 27 responses to this question, with a broad consensus that the description for a 'bereaved parent' as set out in the consultation documentation and the GB legislation was adequately defined and broad enough in scope to address a myriad of relationships between children, parents and those with parental responsibilities.</p>	<p><i>We consider the concepts of a primary carer and parental relationship as crucial to the definition of a bereaved parent. We feel that these concepts will help to encompass the many circumstances and family relationships that make up the fabric of family life in today's society. It will extend the definition of a bereaved parent beyond biological parents and it will include any other person whose relationship has been parental in nature and who has had the parental responsibility for a child in the period immediately prior the death of that child. It is also our intention to include within our definition those parents who experience the loss of a child through stillbirth after 24 weeks of pregnancy.</i></p>
<p><b>Leave Flexibility:</b> <i>Which of the following options for leave-taking would be most appropriate?</i></p> <ul style="list-style-type: none"> <li>• <i>Leave to be taken either as one week only or two consecutive weeks;</i></li> <li>• <i>Two weeks discontinuously, e.g. a week, then a further week taken at a later date;</i></li> <li>• <i>Two weeks, which can be taken in units of a day, recognising that only whole weeks of leave with an employer would attract the</i></li> </ul>	<p>There were 30 responses to the explanatory part of the leave flexibility question. Whilst there was a broad difference in opinion in relation to the specific provision for taking leave in one or two week blocks or as single-days, there was a general preference which favoured leave-taking in weekly blocks. Whilst those in favour of single-day leave provision believed that it offered the greatest flexibility for bereaved parents, this same single-day flexibility was cited by one respondent as having the potential to lead employees into feeling pressured to return to work earlier than intended, i.e. a full-time employee might only avail of 4 days leave instead of a full week. Further issues identified by respondents who favoured single-day leave provision included the possibility that it would allow bereaved parents to take single days on specific dates such as birthdays and anniversaries and that single-day provision would better accommodate the grieving process which may</p>	<p><i>It is our belief that leave, taken in discontinuous weekly or a two week block, is more easily administered by employers whilst offering flexibility for employees. Ad hoc single days would increase the administrative burden upon employers and would also impact upon the ability for any payment to coincide with the leave taken. We also believe that regulations that are both balanced and easy to administer serve to support those at whom they are aimed and in this case will serve to support the bereaved employee. The GB Parental Bereavement Leave and Pay legislation allows bereaved parents to choose to take up to 2 weeks leave either consecutively or non-consecutively in weekly blocks and it is our intention to make the same provision for bereaved parents in Northern Ireland.</i></p>

<sup>5</sup> DfE (2021) Department Response to Public Consultation Parental Bereavement Leave and Pay: <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf>



<p><i>statutory payment from that employer; and,</i></p> <ul style="list-style-type: none"> <li>• An alternative arrangement.</li> </ul>	<p>not be 'linear' and can manifest itself in days of sudden 'acute, overwhelming grief.'</p>	
<p><b>Leave Window:</b> <i>What do you think is the optimal length for the window during which leave can be taken?</i></p> <ul style="list-style-type: none"> <li>• 8 weeks;</li> <li>• 26 weeks;</li> <li>• 56 weeks; and,</li> <li>• Other.</li> </ul>	<p>There were 26 responses to the explanatory part of the leave window question. Whilst there was near universal support for a 56 week window, there was nevertheless a recognition from some that this longer period would create a certain lack of predictability around when leave is likely to be taken and that it could therefore be somewhat challenging for a business to plan around.</p>	<p><i>We recognise that some bereaved parents may wish to take all of their parental bereavement leave in the immediate aftermath of a loss. For others, the flexibility to take leave at a later date, possibly around an anniversary or a birthday will be of more importance. Making provision for a two week block or two discontinuous weeks of leave across a 56 week period maximises the benefit for bereaved parents. It will also, importantly, encompass bereaved mothers following the completion of their maternity leave. It is our intention to replicate GB provisions and legislate for a 56 week period during which parental bereavement leave can be taken.</i></p>
<p><b>Notice Period:</b> <i>Should parents be required to provide notice to their employer if leave is taken very soon after the death of a child?</i></p>	<p>Out of 30 responses to this question, 12 respondents believed that bereaved parents should be required to provide notice to their employer if leave is taken very soon after the death of a child. These respondents generally recognized that sensitivity and understanding was necessary on the part of the employer. Some respondents felt that that notification could provide an employer who may not have been aware of a bereavement the opportunity to offer support to their employee. However, 12 respondents believed that notice should not be required believing that it might not always be possible to give notice prior to the leave to be taken. 6 respondents were not sure about their response to this question.</p>	<p><i>In addressing the issues surrounding notice periods, we recognise that expecting bereaved parents to provide notice to their employer prior to an absence may prove problematic in the period immediately following the death of a child. That is why we intend to follow the GB legislation and introduce a degree of flexibility for how notice of leave may be given if leave is taken immediately after death. There are a host of reasons why we believe that it is important for employers to be aware of an impending period of absence. Many of these reasons reach beyond the simple need to allow an employer to plan around an absence. On many occasions employers themselves may work alongside the bereaved parents and it is also important for employers to have an opportunity to support their bereaved employees and the colleagues of bereaved employees.</i></p>
<p><b>Notice Period:</b> <i>What is a reasonable notice period if leave is taken very soon after the death of a child?</i></p>	<p>There were 26 responses to this question. Most of the respondents expressed a belief that notice on the day when leave is started would be reasonable. Some suggested giving one day's notice would be sufficient and others felt one-week notice was appropriate.</p>	<p><i>Accordingly, for leave taken shortly after the death of a child, there will still be a requirement for notice to be given. However, in recognition of the impact that such a loss might have in preventing notice being given during the earlier period, we will also legislate for this notice to be given as soon as is practicable following the death if unable to be given prior to the absence. For leave taken at a later date, for example on a particular anniversary or birthday, we feel that a short notice period of one week will be appropriate and will</i></p>
<p><b>Notice Period:</b> <i>How should notice be given if leave is taken very soon after the death of a child?</i></p>	<p>The majority of the 27 responses to this question confirmed that notice should be given to either a line manager or a Human Resources (HR) department. Respondents also felt that notice could be given in whichever way best suited the bereaved parent. This included via friends and family on behalf of the employee and by phone, by email or by other appropriate means.</p>	

<p><b>Notice Period:</b> <i>Should parents be required to provide notice to their employer if leave is taken at a later period?</i></p>	<p>23 out of the 34 respondents to this question believed that yes, parents should be required to provide notice to their employer if leave is taken at a later period. 4 said no 7 did not answer and 2 replied “not sure”. Many respondents expressed the view that in a later period following bereavement, events such as birthdays or anniversaries could be anticipated and planned for. Consequently, notice of leave for such events could and should be given. However, some felt that grief is unpredictable and flexibility is needed in this regard.</p>	<p><i>fairly balance the needs of bereaved parents with those of employers.</i></p> <p><i>Whilst we intend to legislate for a notice period applicable to parental bereavement leave, the means by which that notice should be given will remain a matter for the employer and employee. We believe that this approach will best meet the requirements of individual employers and employees and will be easier to reflect within organisational policies and guidance.</i></p>
<p><b>Notice Period:</b> <i>What is a reasonable notice period if leave is taken at a later period?</i></p>	<p>There were 26 responses to this question. The largest number of respondents favoured a 1 week notice period. Others favoured a number of disparate notice periods, ranging between on the day notice to an 8 weeks’ notice period. One respondent, whilst calling for a 1 week notice period, also called for employers to be prepared to accept less than this depending upon the circumstances of the bereaved parent and their absence. For the same reason, another respondent, whilst also calling for a 1 week notice period, asked for the notice period not to be a legislative requirement.</p>	
<p><b>Notice Period:</b> <i>How should this notice be given if leave is taken at a later period?</i></p>	<p>Of the 26 responses to this part of the question. The 3 most predominant responses included the following;</p> <ul style="list-style-type: none"> <li>• Notice should explicitly be given in writing;</li> <li>• Notice should be given in accordance the employer’s procedures; and,</li> <li>• Notice to be given in a manner in which the employee sees fit or in a manner which includes phone-calls, messages and emails.</li> </ul>	
<p><b>Evidence Requirements:</b> <i>Should evidence requirements for this provision mirror those of existing family leave?</i></p>	<p>The majority of respondents (15) believed that evidence requirements should mirror those of existing family leave entitlements. 7 respondents did not believe that evidence should mirror existing family leave entitlements and 9 respondents were not sure of their position. 5 respondents chose not to respond to this question.</p>	<p><i>We believe that the notice provided by parents of their intent to take parental bereavement leave is in itself a declaration and acknowledgement of entitlement and will be recognised as such by employers.</i></p> <p><i>Whilst it is our intention not to have an evidential requirement for entitlement to parental bereavement leave, there will be a requirement for evidence of entitlement to parental bereavement pay.</i></p>

Source: DfE 2021

**Table 2: Parental Bereavement Pay: DfE Consultation Responses<sup>6</sup>**

Issue and DfE Consultation Question	RaISe Summary of Consultees' Response	DfE Summary of Responses
<p><b>The Parental Bereavement Payment.</b></p> <p><i>Please outline your thoughts concerning a requirement for a qualification period for payment of parental bereavement pay in Northern Ireland.</i></p>	<p>There were 24 responses to this question. All respondents expressed the belief that some level of payment for parental bereavement leave was appropriate and beneficial.</p> <p>9 of the respondents felt that payment for parental bereavement leave should be in line with existing statutory payments, particularly statutory Maternity Pay.</p> <p>A number of those that called for parity in payment with GB believed that it was fair that NI employees enjoy the same entitlements as their GB counterparts and that there should be no differential between GB and NI.</p> <p>However, 9 respondents felt that the GB legislative provision for payment should be increased.</p> <p>1 respondent expressed concern that there may not be wide take up amongst bereaved parents due to the level of payment. Other respondents highlighted the financial burden that many bereaved parents experience whilst caring for their child prior to their death.</p>	<p><i>Whilst we recognise that there has been a call for the statutory pay element of this provision to be increased or widened in scope and application, we believe that it is important to maintain an alignment with existing family related statutory pay provisions and for disparities between employees in Northern Ireland and the rest of the United Kingdom to be kept to a minimum whenever possible. Making a change to the amount payable would also result in a delay to the introduction of this new statutory right, which we want to avoid. The statutory payment for this provision will therefore be paid in line with other statutory payments, which presently is the lower of either £151.20 or 90% of an employee's average weekly earnings.</i></p>
<p><b>The 26-week qualification period for Parental Bereavement Pay</b></p> <p><i>Please outline your thoughts concerning a requirement for qualification period for payment of parental bereavement pay in Northern Ireland.</i></p>	<p>There were 27 responses to this question. The PBLP Bill (as introduced) provides that an employee must have been continuously working for their employer <b>for at least 26 weeks</b> by the end of the week immediately before the one in which the child dies (this is known as the 'relevant week').</p> <p>A majority of responses (17) felt that there should be no qualification period. 2 respondents felt that the qualification period should be shorter than 26 weeks on the grounds of "compassion and fairness".</p> <p>1 respondent felt due to the unplanned nature and lack of control over bereavement, a qualification period was both unnecessary and unsympathetic. Another respondent highlighted that Maternity</p>	<p><i>For most employees, taking parental bereavement leave and pay will be inextricably linked and for all employees there will be an entitlement to the leave element from day 1 of employment. However, in line with other family related statutory payments and in keeping with the GB parental leave pay provision, it is our intention that a qualifying period of 26 weeks will also apply to the statutory pay element in Northern Ireland. Maintaining this parity with GB will also avoid additional employer costs in amending existing UK wide payroll systems that implement statutory payments.</i></p>

<sup>6</sup> DfE (2021) *Department Response to Public Consultation Parental Bereavement Leave and Pay*: <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf>

	<p>Allowance provides a statutory payment to mothers who do not qualify for statutory maternity pay and that a similar provision should be made to those who fall outside the scope of the 26-week qualifying period. 8 respondents believed that a qualification period was reasonable with most of these respondents stating that the qualification period should mirror the equivalent in GB.</p>	
<p><b>Notice period and evidential requirements.</b></p> <p><i>Please outline your thoughts concerning a notice period and evidential requirements for claiming payment of parental bereavement pay in Northern Ireland.</i></p>	<p>Responses in relation to this question ranged from comments that stated that evidence and notice should not be required, to those that felt that the production of a death certificate was a reasonable evidential requirement.</p> <p>Those who felt that some evidence should be required felt that this was necessary to meet administrative and payroll aspects of the payment and to assist employers with planning for absences and for record keeping. The DfE’s consultation response paper stated that those who called for a notice period did, however, recognise the difficulties employees may face in satisfying a notice requirement in the immediate aftermath of the death of their child.</p> <p>A number of respondents called for a degree of sensitivity and pragmatism in these circumstances. Some respondents who did agree that there should be a notice period, emphasised that this should only be where it is reasonable to do so. These respondents stated that there should be no legislative obligation placed on an employee to provide written notice upon the death of a child or loss of pregnancy after 24 weeks in the immediate day(s) that follow if leave is taken immediately.</p> <p>In terms of evidential requirements, some felt that the production of a death certificate was a reasonable expectation for an employer. However, others felt that employers should take the word of their employee and there should be no legal requirement for evidence to be provided.</p> <p>A consistency with GB legislation was a dominant theme from those respondents calling for a notice period and evidential requirements.</p>	<p><i>In line with our approach to a notice period and evidential requirements for parental bereavement leave, we believe that the same considerations concerning sensitivity and practicability should apply to pay.</i></p> <p><i>Accordingly, and in line with GB provisions, there will be a requirement for those wishing to avail of parental bereavement pay to notify their employer in writing within 28 days of the commencement of any associated leave. In keeping with our previously stated intentions, we believe that this will ensure that employees can commence parental bereavement leave and pay period in the immediate aftermath of the death of their child without first having to give notice to their employer if it has not been practicable to do so.</i></p> <p><i>Our approach to the evidential requirements again takes heed of the sensitivities surrounding the bereavement and the necessity to administer payments properly. There will therefore be a light-touch requirement for evidence of entitlement – to be given in writing but limited to a declaration of entitlement by way of a relationship with the child, the name of the person claiming the payment and the date of their child’s death.</i></p>

<p><b>Widening the scope of the Bill</b></p>	<p>A number of respondents to the consultation felt that other groups should be included within the scope of the legislation such as bereaved parents who were self-employed or workers who were not considered as employees. Some respondents also felt that bereavement leave and pay should be available to all employees experiencing close family bereavement including entitlement for primary carers following the death of the person to whom they provided care.</p> <p>The DfE’s consultation response paper also states that there were other issues raised by respondents that fell outside the scope of the PBLP Bill. Such as the introduction of neo-natal leave and pay for parents whose children are in hospital for a long period following birth.</p>	<p><i>Many respondents have called for widening of the scope of the legislation and for more generous leave and pay provisions to be made available. We acknowledge these calls and appreciate the conviction and passion with which they were made.</i></p> <p><i>Many employers already have provision in place that go well beyond the statutory minimum provision that we wish to introduce and we are confident that these employers will continue to deal generously and compassionately with their employees. Our provisions will however provide the statutory minimum that will ensure that all employees are afforded a degree of compassion and support.</i></p>
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Source: DfE 2021

### 1.3 An Overview of NI Bill

In June 2021, the NI Minister for the Economy introduced the PBLP Bill in the NI Assembly. In supporting its introduction, the Minister stated:<sup>7</sup>

*...the trauma of losing a child is impossible to overstate, and it is completely understandable that working parents who experience such a bereavement will need the compassion and support of a caring employer. Whilst many employers will make provision for paid compassionate leave, it has no statutory protection and may only cover a few days. Under my proposals employees who suffer the loss of a child under the age of eighteen, or a stillbirth after 24 weeks of pregnancy, will have a statutory entitlement to two weeks' leave and, in most cases, working parents will also be entitled to a statutory payment.*

Table 3 below presents a brief summary the PBLP Bill's key provisions:

**Table 3: Key Provisions of the PBLP Bill<sup>8</sup>**

PBLP Bill Provision	DfE Summary
Parental Bereavement Leave	<i>The DfE will be under a duty to provide, by regulations, a right for employed parents to be absent from work for a prescribed period (with at least two weeks leave to be set as the minimum entitlement) following the death of a child. All employed bereaved parents who meet the eligibility conditions, regardless of how long they have worked for their employer, will be entitled to this leave.</i>
Parental Bereavement Pay	<i>A right for those eligible parents who meet minimum requirements relating to continuity of employment to receive a fixed or earnings-related weekly rate of pay (which rate is to be prescribed by regulations). In line with other entitlements to paid statutory leave, the Bill allows provision to be made for employers to reclaim payments from the Government</i>
Employment Protections	<i>Parents taking parental bereavement leave will have the same employment protections as those associated with other forms of family related leave (i.e. Maternity, Paternity, Adoption, Parental and Shared Parental Leave). This includes protection from dismissal or detriment as a result of having taken leave.</i>

Source: DfE 2021

The PBLP Bill's accompanying Explanatory and Financial Memorandum (EFM) explains how the specified provisions are to be implemented, if the PBLP Bill is enacted as introduced. The EFM states:<sup>9</sup>

<sup>7</sup> DfE (2021) *Dodds introduces Bill for Parental Bereavement Leave and Pay*: <https://www.economy-ni.gov.uk/news/dodds-introduces-bill-parental-bereavement-leave-and-pay>

<sup>8</sup> DfE (2021) *Parental Bereavement (Leave and Pay) Bill: Explanatory and Financial Memorandum*: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement-parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf>

<sup>9</sup> *Ibid.* Page 2.



*This Bill achieves this through the insertion of a number of provisions into the Employment Rights (Northern Ireland) Order 1996 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and the consequential amendment of that Order, that Act and other statutory provisions.*

At the Assembly's Second Stage the PBLP Bill, the NI Economy Minister described the Bill's contents as follows:<sup>10</sup>

*...this is a small, single-issue Bill. It contains two clauses. One deals with parental bereavement leave and the other with the pay element. The Bill contains a schedule through which broader legislative provision for the leave and pay elements is underpinned, and a transitional provision power, which will help during the period immediately following the introduction of subsequent legislation.*

## 1.4 Future Scrutiny of Subsequent DfE Regulations

As mentioned above, the PBLP Bill places a duty on the DfE to introduce regulations that provide a right for employed parents to be absent from work for a prescribed period following the death of a child. Consequently, the detail to implement the proposed PBLP entitlements are to be specified in those regulations (secondary legislation<sup>11</sup>), following the enactment of this Bill.

In that regard, an appropriate level of Assembly scrutiny will need to be applied to the proposed PBLP entitlements implemented via the forthcoming regulations (secondary legislation<sup>12</sup>), to ensure they are "fit for purpose" for NI workplace and societal purposes.

## 1.5 Commencement and Transitional Power

### *Commencement*

It is noteworthy that the commencement of the PBLP Bill, if enacted as introduced would have two elements. First, the majority of the PBLP Bill would be commenced by Order made by the DfE. Second, Clause 4 of the PBLP Bill provides that commencement powers - for Part 2 of the Schedule and Clause 3 in so far as it relates

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<sup>10</sup> NI Assembly (2021) *Official Report (14 June 2021)*:

<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/06/14&docID=341073#3521114>

<sup>11</sup> <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#what-are-SRs>

<sup>12</sup> <http://www.niassembly.gov.uk/assembly-business/covid-19-statutory-rules/faq/#what-are-SRs>

to that Part - are conferred upon the Department for Communities (DfC). The PBLP Bill's EFM explains:<sup>13</sup>

*This is to allow for the fact that there are provisions (Article 68) within the Welfare Reform (NI) Order 2015 that make reference to a person's entitlement to work, as it relates to family related statutory payments, that have yet to be commenced.*

*Responsibility for commencing these provisions rest with the Department for Communities. Through giving the commencement powers for Part 2 of the Schedule (and clause 3 in so far as it relates to that Part) to the Department for Communities, this enables the Department for Communities to commence this condition for the full range of family related statutory payments simultaneously, including parental bereavement leave and pay.*

Furthermore, the Economy Minister explained:<sup>14</sup>

*That commencement power allows for the fact that there are provisions in the Welfare Reform (Northern Ireland) Order 2015 relating to family-related statutory payments that have yet to be commenced. Giving the commencement power to the Department for Communities enables it to commence outstanding conditions for the full range of family-related statutory payments simultaneously, including parental bereavement leave and pay. I thank the Minister for Communities and her officials for their assistance and for agreeing to accept that commencement power and the associated responsibility.*

#### *Transitional Power*

It should be noted that the PBLP Bill also contains a Transitional Power. The Economy Minister, during [Second Stage](#) of the PBLP Bill on 14 June 2021, commented:<sup>15</sup>

*After much thought and careful deliberation. It was decided to include a transitional provision power in the Bill. Whilst the detail of the transitional power has yet to be fully determined, the intention is to avoid, as far as is possible, recently bereaved parents falling outside the scope of subsequent legislation due to the date on which their child died. I referred early to my optimism that, with the continued support of the House, parental bereavement leave and pay legislation could be introduced by April 2022. With that date in mind, it is envisaged that a transitional provision will*

<sup>13</sup> DfE (2021) *Parental Bereavement (Leave and Pay) Bill: Explanatory and Financial Memorandum*: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf>

<sup>14</sup> NI Assembly (2021) *Official Report* (14 June 2021): <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/06/14&docID=341073#3521114>

<sup>15</sup> Northern Ireland Assembly. *Official Report*. 14 June 2021. Second Stage: Parental Bereavement (Leave and Pay) Bill. <http://data.niassembly.gov.uk/HansardXml/plenary-14-06-2021.pdf>



*encompass those working parents who may tragically experience a child bereavement in the year preceding the anticipated April 2022 date.*

**If the PBLP Bill is enacted as introduced, the following issues arise in relation to commencement and transition:**

1. What potential challenges could arise for the DfE and/or the DfC, due to the interaction between provisions contained within the Welfare Reform (NI) Order 2015, which have not been commenced to date, and this Bill, if enacted as introduced and later commenced?
2. What options were considered by the DfE and the DfC when considering and deciding on the inclusion of the Transitional Power clause in the introduced PBLP Bill?

A summary and a detailed overview of the provisions contained in Clauses 1 and 2 of the PBLP Bill, as introduced, are presented below in Sections 2 and 3 of this Paper.

## 2 Clause 1: Parental Bereavement Leave

This section explains PBL entitlements outlined in Clause 1 of the PBLP Bill as introduced. Key issues for consideration are presented in blue boxes through this section.

### 2.1 Parental Bereavement Leave: in summary

Clause 1 creates a statutory entitlement to PBL. The PBLP Bill's accompanying EFM summarises the proposed PBL as follows:<sup>16</sup>

*...the Department will be under a duty to provide, by regulations, a right for employed parents to be absent from work for a prescribed period (with at least two weeks leave to be set as the minimum entitlement) following the death of a child. All employed bereaved parents who meet the eligibility conditions, regardless of how long they have worked for their employer, will be entitled to this leave.*

The PBLP Bill provides powers to allow for regulations to be made to determine the duration of the leave and when the leave can be taken. The leave must be taken within 56 days of the child's death. The EFM also states that parents taking PBL are to be afforded similar employment protections as those associated with other types of family leave such as Maternity, Paternity, Adoption and Shared Parental Leave.<sup>17</sup>

With regard to the flexibility with which the leave may be taken, the DfE's [Response to the Public Consultation](#) on PBLP stated:<sup>18</sup>

*The GB Parental Bereavement Leave and Pay legislation allows bereaved parents to choose to take up to 2 weeks leave either consecutively or non-consecutively in weekly blocks and it is our intention to make the same provision for bereaved parents in Northern Ireland.*

### 2.2 Parental Bereavement Leave: in detail

Clause 1 of the PBLP Bill creates a statutory entitlement to PBL by amending Part IX of the Employment Rights (Northern Ireland) Order 1996 (the 1996 Order) and inserting a new Chapter 4, consisting of Articles 112EA to 112EE. A summary of each of these proposed amending articles is outlined below.

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<sup>16</sup> Parental Bereavement (Leave and Pay) Bill. Explanatory and Financial Memorandum (as introduced). [www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf](http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf) (page 1).

<sup>17</sup> Ibid, (page 2).

<sup>18</sup> Ibid.

### 2.2.1 PBL

Article 112EA places a requirement on the DfE to make regulations to give an entitlement to employed parents time off work following the death of a child. The Article also empowers the DfE *via* future regulations, to develop a definition for the term “bereaved parent”; one that is to reflect the caring relationship between the individual and the child prior to the child’s death.

Furthermore, such regulations are to specify the duration of leave and when this leave can be taken. The leave entitlement must be a period of at least 2 weeks and the leave must be taken within a period of at least 56 days after the child’s death. The regulations must also specify that if more one child dies the employee is entitled to leave in respect of each child. Article 112EA also defines a child as being under the age of 18 and a week as 7 days.

**If the PBLP Bill is enacted as introduced, the following issues arise in regard to PBL provisions:**

3. How does the DfE intend to define “bereaved parents” in the regulations that would be introduced under the PBLP Bill? For example, does it intend to provide a broad definition that would encompass step-parents, foster parents and grandparents?
4. If not, how does the DfE intend to ensure its definition of “bereaved parents” accounts for growing numbers of working individuals within “non-traditional” family arrangements?

### 2.2.2 Rights during and after PBL

Article 112EB requires regulations made under Article 112EA, to set out employees’ rights in relation to retaining their existing terms and conditions of employment, whilst taking parental bereavement leave. Moreover, the regulations must set out the employees’ obligations with regard to those terms and conditions and the employees’ right to return to work once their leave period has ended.

Furthermore, the regulations made under Article 112EA are to set out the nature of the job to which employees are entitled to return, and the terms and conditions applicable on return. With regard to terms and conditions, the PBLP Bill’s EFM states the following:

*The reference to ‘terms and conditions’ in this context is not limited to contractual terms and conditions, but does not include remuneration. Regulations can specify what things should, or should not be, seen as ‘remuneration’ for this purpose.*

With regard to employees’ return to work, the regulations also are to make provision for matters sure and seniority and pension rights.

**If the PBLP Bill is enacted as introduced, the following issues arise in regard to rights during and after PBL:**

5. What does the DfE mean by: “*Regulations can specify what things should, or should not be, seen as ‘remuneration’ for this purpose*”? Please detail illustrative examples.

#### **2.2.4 Special Cases**

Article 112EC states:

(1) *Regulations under Article 112EA may make provision about—*

(a) *redundancy, or*

(b) *dismissal (other than by reason of redundancy), during a period of leave under that Article.*

(2) *Provision by virtue of paragraph (1) may include—*

(a) *provision requiring an employer to offer alternative employment;*

(b) *provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 11).*

The PBLP Bill’s EFM explains the provisions in Article 112EC as follows:

*Article 112EC allows the regulations to make special provision for the redundancy and dismissal of employees during a period of parental bereavement leave, including whether an employer is required to offer alternative employment, and the consequences of failing to comply with the regulations.*

**If the PBLP Bill is enacted as introduced, the following issues arise in regard to “special cases”:**

6. Does the DfE intend that the regulations will treat dismissal as “unfair” under Part XI of the Employment Rights (Northern Ireland) Order 1996,<sup>19</sup> if the reason for the leave taken was connected to the employee taking or seeking to take PBL?

7. In the DfE’s view, what would constitute “consequences of failing to comply with the regulations”? For example, would it include a financial penalty for any employer who does not comply with the regulations?

#### **2.2.5 Chapter 4 Supplemental**

<sup>19</sup> The Employment Rights (Northern Ireland) Order 1996: <https://www.legislation.gov.uk/nisi/1996/1919/contents> (Part XI).

Article 112ED refers to notice periods. It allows regulations made under Article 112EA to set out notice and evidence requirements that an employee must meet when taking/seeking such leave from their employer, including specification of procedures. It also specifies any record keeping requirements.

Regulations also are to set out the consequences of non-compliance with these notice, evidentiary and recordkeeping requirements. Additionally, the regulations are to make provision for situations where an employee also has a non-statutory right to take parental bereavement leave; for example, a right arising under their contract of employment.

Article 112ED further makes provision for calculating a week's pay. The PBLP Bill's EFM states:

*Regulations can also modify the way in which a week's pay is calculated in Chapter 4 of Part 1 of the Employment Rights (Northern Ireland) Order 1996 to take account of periods of parental bereavement leave. The concept of 'a week's pay' is widely used in that Order, for example in Article 153 which sets out how the basic Industrial Tribunal award for unfair dismissal should be calculated.*

**If the PBLP Bill is enacted as introduced, the following issue arises in regard to Chapter 4 Supplemental provisions:**

8. Can the DfE give illustrative examples of how calculations for a week's pay can be modified?

### **2.2.6 Power to extend Chapter to stillbirths**

Article 112EE provides a statutory basis to include in the regulations the parents of children stillborn after 24 weeks of pregnancy.

**If the PBLP Bill is enacted as introduced, the following issues arise in regard to the treatment of stillbirths:**

9. What consideration has the DfE given to extending the regulations to include provision for miscarriages? Please detail.
10. Will the DfE share its rationale for not extending the leave and pay entitlements in the PBLP Bill to parents suffering a miscarriage?

### 3 Clause 2: Parental Bereavement Pay

This section explains PBP entitlements outlined in Clause 2 of the PBLP Bill as introduced. Key issues for consideration are presented in blue boxes through this section.

#### 3.1 PBL: in summary

Whilst Clause 1 creates a statutory entitlement to PBL, Clause 2 creates a statutory entitlement to PBP by amending existing social security legislation. The PBLP Bill's EFM summarises the proposed PBP as follows:<sup>20</sup>

*...a right for those eligible parents who meet minimum requirements relating to continuity of employment to receive a fixed or earnings related weekly rate of pay (which rate is to be prescribed by regulations). In line with other entitlements to paid statutory leave, the Bill allows provision to be made for employers to reclaim payments from the Government.*

Whilst the PBLP Bill does not specify the amount of PBP that is payable per week (due to the need to uprate the payment when necessary), the EFM explains that:

*Employed parents would...be entitled to a fixed or earnings-related weekly rate of pay in respect of the two weeks' leave, subject to a requirement that the employee has worked for their employer continuously for at least 26 weeks by the end of the week before the week of the child's death.*

The DfE's [Response to the Public Consultation](#) on PBPL (see sub-section 1.2 above) states that the statutory payment for this provision would be paid in line with other statutory payments such as statutory Maternity and Paternity Pay.<sup>21</sup> In June 2020, the Minister for the Economy specified a desire to develop employment legislation for NI employees that would at least match the parental bereavement legislation that came into effect in GB in April 2020<sup>22</sup>. The Minister repeated this during the PBLP Bill's [Second Stage](#) on 14 January 2021, stating:<sup>23</sup>

*That provision will be subject to a 26-week qualifying period, which is in keeping with other family-related statutory payments in Northern Ireland and, again, is in line with provisions in GB.*

<sup>20</sup> Parental Bereavement (Leave and Pay) Bill. Explanatory and Financial Memorandum (as introduced). [www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf](http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf)

<sup>21</sup> Department for the Economy. Department Response to Public Consultation: Parental Bereavement Leave and Pay. [www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf](http://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf)

<sup>22</sup> Department for the Economy. Parental Bereavement Leave and Pay. Public Consultation. June 2020. [www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-consultation-paper.pdf](http://www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-consultation-paper.pdf)

<sup>23</sup> Northern Ireland Assembly Official Report. 14 June 2021. Second Stage: Parental Bereavement (Leave and Pay Bill). <http://data.niassembly.gov.uk/HansardXml/plenary-14-06-2021.pdf>

It is noteworthy that the current Statutory PBP in GB is **£151.97** per week or **90%** of an employee's average weekly earnings, whichever is lower<sup>24</sup>. That amount is the same statutory flat rate used for payments such as statutory [Maternity Pay](#) and [Paternity Pay](#) (after the first six weeks) in GB and NI.<sup>25</sup>

### 3.2 Parental Bereavement Pay: Clause 2 in detail

Clause 2 of the PBLP Bill adds a new part (Part 12ZD) to the [Social Security Contributions and Benefits \(Northern Ireland\) Act 1992](#), to create an entitlement to statutory PBP<sup>26</sup> Part 12ZD comprises a number of new sections:

- Section 167ZZ9, which sets out the **entitlement conditions**.
- Section 167ZZ10, which provides for **notification requirements**.
- Section 167ZZ11, which establishes **employer's liability** to pay statutory Parental Bereavement Pay.
- Section 167ZZ12, which makes provision for the **rate and period of pay**.
- Section 167ZZ13, which specifies that Parental Bereavement Pay **cannot be diluted or denied in an employee's contract**.
- Section 167ZZ14, which makes provision for the relationship with **contractual remuneration**.
- Section 167ZZ15 and 167ZZ16, which makes provision for **other classes of employees** to be entitled to statutory Bereavement Payment, i.e. employees of the Crown (e.g. Armed Services) and "special classes" of person (e.g. those employed on board a ship; those outside NI).

A summary of each above new section is outlined in the paragraphs below.

#### 3.2.1 Conditions of Entitlement

New Section 167ZZ9 sets out the following four conditions the employee must meet in order to be entitled for PBP:

- (1) The **employee is a bereaved parent**, i.e. they meet the conditions to be set in regulations as to their relationship with the child;
- (2) The employee must have been **continuously working for their employer for at least 26 weeks** by the end of the week immediately before the one in which the child dies (this is known as the "relevant week");

<sup>24</sup> UK Government. Statutory Parental Bereavement Pay and Leave.

<sup>25</sup> See NI Direct for Maternity Allowance [www.nidirect.gov.uk/articles/smp-how-it-worked-out](http://www.nidirect.gov.uk/articles/smp-how-it-worked-out) and Paternity Pay [www.nidirect.gov.uk/articles/statutory-paternity-pay#toc-1](http://www.nidirect.gov.uk/articles/statutory-paternity-pay#toc-1)

<sup>26</sup> The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is an Act that consolidates legislation relating to social security contributions and benefits both contributory and non-contributory in Northern Ireland [www.legislation.gov.uk/ukpga/1992/7/contents](http://www.legislation.gov.uk/ukpga/1992/7/contents). It sets out entitlement and eligibility for a range of benefits including benefits and payments for widows and widowers.

- (3) That, over an 8-week period ending with the end of the relevant week the employee's **normal weekly earnings are not less than the Lower Earnings Limit (LEL)**. The LEL is prescribed under Section 5(1)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992. LEL is set each tax year by the UK Government and is the amount an employee has to earn before they are treated as paying National Insurance Contributions; and;
- (4) The employee is **still employed** by this employer at the time of their child's death.

The LEL for 2021/2022 is £120 per week.<sup>27</sup> The UK Government's [guidance](#) on statutory PBP in GB states eligible employees must "earn on average £120 a week before tax (gross) over an 8-week period".<sup>28</sup>

In addition to conditions of entitlement, Section 167ZZ9 also makes provision that, in the event that more than one child dies, the employee is entitled to statutory PBP in respect of each child.

**With regard to the Conditions of Entitlement discussed above, the following issues arise:**

11. What research did the DfE undertake to factor in the unique conditions of the NI labour market and the payment of PBP? For example, NI's comparatively low wages?
12. Did the DfE's estimations take into account the differences between the average wage levels in GB and NI?

### 3.2.2 Conditions of Notice

Section 167ZZ10 specifies that receipt of PBP requires employees to first give notice to their employers of the week or weeks they are intending to take statutory PBL, in accordance with the specified requirements. That notice must be in writing when the employer requests same.

However, the PBLP Bill as introduced empowers the DfE to make regulations that may: (a) provide for when that notice must be given; and, (b) set out requirements for evidence relating to proof of entitlement. However, regulations also may display or modify the requirement for notice "in specified circumstances".

Regulations under the PBLP Bill as introduced also may specify that someone employed by the same employer for at least 26 weeks, but under different contracts of service which were not continuous, would nevertheless meet the test for continuous

<sup>27</sup> UK Government. Rates and Allowances: National Insurance Contributions. Updated 6 April 2021.

[www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions](http://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions)

<sup>28</sup> UK Government. Statutory Parental Bereavement Pay and Leave. [www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible](http://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible)



employment. Those regulations also may prescribe “circumstances for other employees in which employment is to be treated as continuous”.

The regulations may also specify how earnings are to be calculated or estimated for the purposes of deciding whether an employee meets the earnings threshold. That includes identifying particular types of payments that are to be excluded from the calculation. The regulations may also provide for amounts earned from the same employer under two separate contracts to be aggregated for this purpose.

**With regard to the Conditions of Notice, the following issues arise:**

13. In the DfE’s view, when would notice to take PBL not be required?
14. Please provide illustrative examples of “specified circumstances”.
15. In the DfE’s view, when would “circumstances for other employees in which employment is to be treated as continuous”? Please provide illustrative examples.
16. In the DfE’s view, what types of payments would be excluded from the calculation of earnings payment? Please specify.
17. What consideration did the DfE give to NI labour market circumstances, when considering the GB PBLP system, when seeking to develop a similar system in NI?
18. Is the DfE aware of any issues or problems that may have arisen in the GB context when calculating earnings under the GB Parental Leave and Pay system? Please detail.
19. How does the DfE intend to frame the regulatory evidential requirements to prove PBLP entitlement?
20. What assurances can be provided by the DfE that such requirements would not place an undue burden on what already would be an emotionally challenging time for parents, but nonetheless would still protect the public purse and reduce potential for fraudulent claims?

### 3.2.3 Liability to make payments

New Section 167ZZ11 contains provisions relating to liability to make payments of statutory PBP. This section provides that an employer is liable to pay statutory PBL to employees with 26 weeks’ continuous service. It provides the power to make regulations to make provision for the employer’s liability, in a case where an employee’s contract of service has been terminated to avoid paying statutory PBL.

In line with other entitlements to paid statutory leave (for example, statutory Maternity Pay), the PBLP Bill allows provision to be made for **employers to reclaim payments** either all or a proportion of the payment from the Government. In other words, parental bereavement pay is paid to the employee by the employer, the employer then reclaims

this from HMRC. The DfE's '[Parental Bereavement Leave and Pay – FAQs](#)' provides the following explanation of how this is to work in practice:<sup>29</sup>

***Isn't the new statutory payment a significant cost for employers?***

*No. Employers are able to claim back at least 92% of all statutory payments made from HMRC.*

*Small employers (those whose tax/national insurance contributions are less than £45,000 per annum) are able to claim back 100% of the statutory payments they make plus 3% towards the employer's national insurance contribution.*

Regulations brought under the PBLP Bill, if enacted as introduced, may also specify conditions where this liability is to shift from the employer to HMRC (for example, insolvency situations). This is similar to arrangements for Statutory Maternity Pay (SMP), for example, if an employer becomes insolvent, HMRC would continue to pay SMP under certain conditions.<sup>30</sup>

**With regard to the payment liability, the following issues arise:**

21. Does the DfE currently have a role in the administration of statutory payments for employees/workers? If so, would the DfE similarly administer the new PBLP entitlements? Please explain.
22. What resource implications would arise for the DfE from PBP administration, for example increased staff and/or administration costs?
23. How does the DfE intend to define the process for employers to reclaim PBP?

### 3.2.4 Rate and Period of Pay

New Section 167ZZ12 provides that statutory PBP is “payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases”. As highlighted at the beginning of this Section of the Paper, details on the exact weekly rate of pay are not contained in the PBLP Bill as introduced, due to the need to update the payment when necessary.

However, the DfE's [Response to the Public Consultation](#) on PBLP states that the statutory payment for this provision would therefore be paid in line with other statutory payments, such as statutory Maternity and Paternity Pay.<sup>31</sup> Furthermore, as stated earlier in this Paper, the Minister for the Economy has expressed a desire to develop

<sup>29</sup> Department for the Economy. Parental Bereavement Leave and Pay - FAQs. [www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-FAQs.pdf](http://www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-FAQs.pdf)

<sup>30</sup> Statutory Maternity Pay: business changes that affect payment. [www.gov.uk/guidance/statutory-maternity-pay-business-changes-that-affect-payment](http://www.gov.uk/guidance/statutory-maternity-pay-business-changes-that-affect-payment)

<sup>31</sup> Department for the Economy. Department Response to Public Consultation: Parental Bereavement Leave and Pay. [www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf](http://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf)

employment legislation for NI employees that would at least match the GB PBLP legislation.<sup>32</sup>

The current Statutory PBL in GB is £151.97 per week or 90% of an employee's average weekly earnings, whichever is lower.<sup>33</sup> That amount is the same statutory flat rate used for payments such as statutory [Maternity Pay](#) and [Paternity Pay](#) (after the first six weeks) in GB and NI<sup>34</sup>.

The PBLP Bill's EFM states that regulations are to specify the number of weeks for payment entitlement; which must be a minimum of two weeks. Regulations also are to specify the "qualifying period" within which the payment is to be claimed. The PBLP Bill as introduced states that this is to be a minimum of 56 **days** starting from the child's death.

However, it should be noted that in relation to PBL, in [evidence](#) to the Committee for the Economy on 19 May 2021, officials from the DfE stated that whilst the text of the PBLP Bill states "at least 56 **days**", within which leave should be taken, the DfE "intend to set the period at 56 **weeks** following the death of a child".<sup>35</sup>

The Committee for the Economy sought further clarity from the DfE on this issue (see NI Assembly [Official Report](#) of the 9 June 2021). In a letter to the Committee, the DfE stated that whilst the text of the PBLP Bill states "at least 56 **days**", it was the Economy Minister's intention to set this time period at 56 **weeks** following the death of a child; and that would be given effect through the subordinate package that would follow on from the PBLP Bill, if enacted.

The PBLP Bill's EFM further sets out that an **employee is to choose the week or weeks** for which payment is claimed. Regulations may also permit the payment to be claimed for non-consecutive periods, which must be in a block of a week or weeks.

Section 167ZZ12 also sets out the circumstances in which PBP is **not payable**. The PBLP Bill's EFM states:<sup>36</sup>

*Statutory Parental Bereavement Pay will not be payable for any week during which the employee works for the employer who is liable to make the payment;*

<sup>32</sup> Department for the Economy. Parental Bereavement Leave and Pay. Public Consultation. June 2020. [www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-consultation-paper.pdf](http://www.economy-ni.gov.uk/sites/default/files/consultations/economy/parental-bereavement-leave-and-pay-consultation-paper.pdf)

<sup>33</sup> UK Government. Statutory Parental Bereavement Pay and Leave.

<sup>34</sup> See NI Direct for Maternity Allowance [www.nidirect.gov.uk/articles/smp-how-it-worked-out](http://www.nidirect.gov.uk/articles/smp-how-it-worked-out) and Paternity Pay [www.nidirect.gov.uk/articles/statutory-paternity-pay#toc-1](http://www.nidirect.gov.uk/articles/statutory-paternity-pay#toc-1)

<sup>35</sup> Northern Ireland Assembly. Official Report. Committee for the Economy. Minutes of Evidence. 19 May 2021. <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=26537&evidID=13043>

<sup>36</sup> Parental Bereavement (Leave and Pay) Bill. *Explanatory and Financial Memorandum (as introduced)*. [www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf](http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf) (Page 7).

If the employee has worked for another employer who is not liable to pay Statutory Sick Pay. However, the PBLP Bill's EFM states that regulations may prescribe situations where this does not apply for weeks taken as leave. Regulations may also specify further circumstances in which an employer is not required to pay statutory PBP.

**With regard to rate and period of pay specified in the PBLP Bill as introduced, the following issues arise:**

24. Could the DfE provide illustrative examples of "further circumstances in which an employer is not required to pay statutory PBP"?
25. Could the DfE provide clarity regarding the disparity between the Minister's statements and the PBLP Bill to the 56 days?

### 3.2.5 Protection to prevent dilution or denial of employee contractual rights

Section 167ZZ13 relates to employee contracts. It specifies that PBP rights cannot be diluted or denied in an employee's contract, nor can an employee be required to contribute to the costs.<sup>37</sup>

**With regard to the proposed protection to prevent dilution or denial of employee contractual rights, as specified above, the following issue arise:**

26. What guidance would the DfE provide to protect against employers' dilution or denial of employees' contractual rights, to inform NI employers' and employees' implementation of the PBLP legislation, if enacted?

### 3.2.6 Relationship with contractual remuneration

Section 167ZZ14 deals with the relationship of statutory parental bereavement pay to contractual remuneration. It states that the entitlement to statutory PBP does not affect an employee's rights to payments associated with their contract of service. Furthermore, the EFM further states:<sup>38</sup>

*However, it allows an employer to set off any contractual remuneration paid to an employee during a period in which they are entitled to statutory pay, against the liability to make statutory payments to that employee, and vice versa. Regulations can specify particular types of payments which are to be regarded (or not regarded) as contractual remuneration*

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

**With regard to contractual remuneration specified in the introduced PBLP Bill, the following issue arises:**

27. Can the DfE provide illustrative examples of what types of payments would be regarded (or not regarded) as contractual remuneration under the PBLP legislation, if enacted as introduced?

### **3.2.7 Crown employment and special classes of persons**

The PBLP Bill inserts new section 167ZZ15 to provide that those employed by or under the Crown would be entitled to statutory PBP. Crown servants include, for example, members of the Armed Forces and diplomats in the UK.

New section 167ZZ16 provides that the DfE may “with the concurrence of the Treasury” make regulations to extend statutory PBP rights to those employed on board any ship, hovercraft or aircraft; those outside NI; or those in prescribed employment in connection with continental shelf operations.

**With regard to Crown employment and special classes of persons specified in the introduced PBLP Bill, the following issues arise:**

28. How would the DfE secure “concurrence of the Treasury” if it decides to extend statutory PBP to any of the specified groups? How would that work in practice? What would be required?

## 4 Bereavement Leave and Pay: A Comparative Perspective

This section provides a comparative perspective of statutory (paid and unpaid) bereavement leave arrangements in other jurisdictions. First, sub-section 4.1 presents paid leave arrangements for working parents and families in Organisation for Economic Cooperation and Development (OECD) countries. Whilst not directly relevant to bereavement, information about such extra-jurisdictional legislative leave arrangements could assist the Committee in their consideration of the PBLP Bill, and in turn the ultimate content included in the regulations that follow its enactment. Subsequently, sub-section 4.2 presents a further extra-jurisdictional view, highlighting the experience of other countries when attempting to introduce paid and unpaid leave arrangements for working parents who have suffered the loss of a child.

### 4.1 Statutory Leave Arrangements: Working Parents and Families

Table 4 below presents statutory paid leave entitlements for working parents and families, as explained in the (OECD) Family Database.<sup>39</sup> That Database brings together information from various existing national and international databases, both within the OECD countries and outside by external organisations:<sup>40</sup>

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<sup>39</sup> OECD (2020) *Family Database Additional leave entitlements for working parents*:  
<http://www.oecd.org/els/family/database.htm>

<sup>40</sup> Arrangements provided by individual employers or by collective agreement in addition to what is stipulated by law are not covered in the family database.

**Table 4: Paid Leave Arrangements for Working Parents and Families in OECD Countries**

Country	Entitlement	Eligibility criteria	Duration	Payment (and conditions)
Australia	Paid leave to care for an immediate family or household member	All employees other than casual employees	10 days per year	100% of earnings
Austria	Paid leave to care for a child under the age 12	-	2 weeks per year	100% of earnings
	Paid leave to care for dependants other than children	-	1 week per year	100% of earnings
Belgium	Paid leave to care for a seriously ill family member or a child younger than eight years (for a disabled child, up to age 21)	-	12 months per episode (extendable to 51 months with no payment)	€786.78 per month (taxable)
	Paid leave to provide palliative care for a family member		2 months per episode	€786.78 per month (taxable)
Canada	Paid leave to care for a family member who 'is at significant risk of death 'within the next 26 weeks	Employees who have worked 600 hours in the past 52 weeks	26 weeks per episode	Paid for 26 weeks at 55% of earnings, up to a ceiling
Chile	Paid leave to care for a child aged 1-18 at serious risk of death	Employees who have contracts and have paid at least 8 contributions to pension insurance in the past 24 months	10 days per year	100% of earnings
	Paid leave to care for a seriously ill child under age 1	-	According to the doctor's certification	100% of earnings with a taxable cap
Czech Republic	Paid leave to care for a child under the age of 10 or for seriously ill family member. (any age)	-	No limit, although a maximum of nine days can be taken consecutively. Only one parent can use the leave at any one time	Paid at 60% of earnings, up to a ceiling

Estonia	Paid leave to care for a child under age 12	-	14 calendar days per episode	80% of earnings
	Paid leave to care for an adult family member	-	7 calendar days per episode	80% of earnings
	Paid leave to care for a relative with a severe disability	-	5 working days per year	Flat-rate payment
Finland	Paid leave to care for a child under age 10	-	4 days per episode, but renewable without a limit	Payment dependent on collective agreements
France	Paid leave to care for a child under age 20 with a serious illness or disability	Employees with at least one year of service with the same employer	3 years per episode	Paid for a maximum of 310 days per 3 years. Payment depends on length of tenure and family structure
	Paid leave to care for family members with a terminal illness	-	3 months renewable once	Paid for a maximum of 3 weeks
Germany	Paid leave to care for a child under age 12	Working parents with statutory health insurance	10 days per child per year, with a maximum of 25 days per year per parent	80% of earnings
	Paid leave to care for a dependent family member with an unexpected illness	-	10 days over the lifetime of the family member in need of care	90% of income
Greece	Paid leave to care for a seriously ill child (in need of a transplant, regular transfusion or dialysis, or suffering from cancer) under age 18 or a spouse.	-	22 days per year	100% of earnings
	Paid leave to care for children or a spouse with a disability	-	1 hour per day	1 hours pay
Hungary	Paid leave to care for a child under age 12	-	Varies on age of child	50-60% of earnings
Ireland	Paid leave to care for a dependent family member	-	3 days in any 12 month period, up to a maximum of 5 days in any 36 month period	100% of earnings
Israel	Paid leave to care for a child aged under 16		8 days per year.(taken from employee's sick leave allocation); 16 days per year for a single parent	50% of earnings from the second day, 100% of earnings from the fourth day



	Paid leave to care for a child with special needs	-	18 days per year.(taken from employee's sick leave allocation); 36 days per year for a single parent	100% of earnings
	Paid leave to care for a spouse or parent over age 65	-	6 days per year (taken from employee's sick leave allocation)	100% of earnings
Italy	Paid leave for a seriously disabled ill or disabled family member	-	2 year per employee over the course of the working life	100% of earnings
Japan	Paid leave for a seriously ill dependent family member who requires constant care for a period of 2 weeks or more	-	93 days for each family member over the course of their lifetime	67% of earnings
Latvia	Paid leave to care for a child under age 14	Employed and self-employed who have paid social insurance contributions for at least 12 months in the last 2 years	14 days per episode	80% of earnings
Luxembourg	Paid leave to care for a child under age 18	-	Varies depending on the age of the child	100% of earnings
	Paid leave to care with a child under age 18 with a very serious illness/disability	-	Up to 52 weeks in any 104 week period	100% of earnings.
Netherlands	Paid leave to care for an ill child, partner, or other friends or household members.	All employees are eligible but employers can refuse on serious business grounds	10 days a year	70% of earnings.
New Zealand	Paid leave for a partner or dependent family member	Employees with at least 26 weeks services with their employer	5 days per year	100% of earnings
Norway	Paid leave to care for a child under age 12	-	Varies on the number of children	100% of earnings up to a ceiling

	Paid leave to care for terminally ill family member or a person with close ties.	Active in the labour market for the past 4 weeks	60 days per episode	100% of earnings up to a ceiling
Poland	Paid leave to care for a family member.	-	14 days per year	80% of earnings
	Paid leave to care for a child under age 12	-	30 days per year	65% of earnings
	Paid leave to care for a child over age 12	-	15 days per year	65% of earnings
	Paid leave to care for a chronically ill child.	-	6 months per episode	65% of earnings up to a ceiling
Slovak Republic	Paid leave to care for a family member	-	10 days per year	55% of earnings up to a ceiling
Slovenia	Paid leave to care for a child under age 8		15 days per episode.	80% of earnings
	Paid leave to care for a (co-resident) family member	-	7 days per episode	80% of earnings
Spain	Paid leave to care for a family member	-	2 days per episode	100% of earnings
	Paid leave to care for a seriously ill child under age 18	Social security contributions	Unlimited. Individual entitlement but only one parent can take the leave at any one time.	100% of earnings up to a ceiling
Sweden	Paid leave to care for a child under age 12, or under 15 in specific circumstances	-	120 days per child per year	77.6% of earnings up to a ceiling
	Paid leave to care for a seriously ill family member of other closely related person	-	100 days per episode	80 % of earnings up to a ceiling
Switzerland	Paid leave to care for a child	3 months service with current employer	3 days per episode	

Source: OECD 2020

In summary, the overwhelming majority of paid leave that is offered in the noted countries is aimed at providing care for dependent children. However, many countries offer additional paid leave for the care of adults. These include: Australia; Austria; Belgium; Estonia; Canada; France; Germany; Republic of Ireland (RoI); Israel; New Zealand; Poland; Slovak Republic; Slovenia; Spain; and, Sweden. Interestingly, only Israel offers explicit additional paid leave for the care of an elderly person (paid leave to care for a spouse or parent over age 65).

Table 4 above also shows that paid leave entitlements are mostly offered for the care of family members. However, there are a few interesting exceptions, i.e.: Australia; the Netherlands; Norway; and, Sweden. They all provide paid leave for the care of **non-family members**. In Australia and the Netherlands, paid leave is offered for the care of a “member of the household”. In Norway, paid leave is offered to care for terminally ill family members or a person with “close ties”. In Sweden, paid leave is offered to care for a seriously ill family member or “other closely related person”.

The paucity of non-traditional family related paid leave arrangements may lead to criticism that the provision of statutory paid leave is perhaps out of date and does not account for the growing number of working individuals within “non-traditional” family arrangements. The changing nature of what constitutes a “family” is perhaps noteworthy for consideration when formulating future policy in this area.

In terms of the duration of paid leave entitlements, the majority of the countries in the survey offer paid care leave limited to one month. Belgium offers the longest paid care leave entitlement of 12 months. This is also extendable to 51 months; however, the extension period is unpaid.

Finland, RoI, Spain and Switzerland offer the shortest periods of paid leave. Finland offer 4 days per episode for children under 10. However, this renewable without a limit. RoI offer 3 days in any 12-month period, up to a maximum of 5 days in any 36-month period for a dependent family member. Spain only offer 2 days per episode for a family member; however, there is more flexibility for caring for a seriously ill child. In Switzerland, only 3 days per episode is offered to care for a child.

In terms of the proportion of earnings offered for paid leave, the majority of countries offer 100%. Norway and Spain offer 100% of earning as paid leave, but this is capped by setting an earnings ceiling. Belgium offers a fixed taxable amount currently set at €786.78 per month. In terms of percentages of earnings, Poland (65%) and the Slovak Republic (55%) offer the least.

## 4.2 Statutory Leave and Pay Arrangements: Parental Bereavement

This sub-section presents comparable legislation from other jurisdictions regarding paid and unpaid PBL arrangements for working parents who have suffered the loss of a child. Such legislation is from GB, Rol and New Zealand.

### The Parental Bereavement (Leave and Pay) Act 2018

As mentioned above in Section 1 of this Paper, Statutory PBLP entitlements are already available to employees and workers in GB. The [Parental Bereavement \(Leave and Pay\) Act 2018](#), which applies to England, Scotland and Wales, began as a Private Members' Bill that was supported by the UK Government. The PBLP Bill was introduced on the 19 July 2017, received Royal Assent on 13 September 2018, and the new rights became available (in GB) for parents whose child had died on or after 6 April 2020.<sup>41 42</sup>

The [House of Commons Public Bill Committee](#) on the GB PBLP Bill (GB Bill) considered several proposed amendments for the Bill from 31 January and 7 February 2018. For comparative and contextual purposes, Box 1 below provides a short summary of the proposed amendments that were discussed in relation to the key statutory elements of the GB Bill. Please note, however, these amendments were either withdrawn by the Member who proposed them, or put to vote in Committee and negated and did not form part of the final Act:

#### Box 1: Proposed Amendments to the GB Parental Bereavement (Leave and Pay) Bill

House of Commons Public Bill Committee stage of the GB Parental Bereavement (Leave and Pay) Bill: amendments deliberated (but were either not moved or put to vote and negated):<sup>43</sup>

- That the Secretary of State, **within three months** of the Act being passed, review the potential of extending parental bereavement pay and leave to **self-employed people** and those on **zero-hours contracts**.
- To **change the definition of a “child” for the purposes of parental bereavement pay** (the Bill defined a child as those under the age of 18). There were several proposals to amend the Bill's definition of a child:
  - “a **son or daughter of any age**” for the purposes of parental bereavement pay.
  - a child **over the age of 18 but in full-time education**.

<sup>41</sup> UK Government. Statutory Parental Bereavement Pay and Leave. Guidance. [www.gov.uk/parental-bereavement-pay-leave](http://www.gov.uk/parental-bereavement-pay-leave)

<sup>42</sup> Briefings on the GB Parental Bereavement (Pay and Leave) Bill are available from the House of Commons Library and the House of Lords Library and are available to download [here](#) and [here](#).

<sup>43</sup> [https://hansard.parliament.uk/commons/2018-02-07/debates/830784ba-0189-4beb-aa3c-84c842d482e2/ParentalBereavement\(LeaveAndPay\)Bill\(SecondSitting\)](https://hansard.parliament.uk/commons/2018-02-07/debates/830784ba-0189-4beb-aa3c-84c842d482e2/ParentalBereavement(LeaveAndPay)Bill(SecondSitting))

- those over the age of 18 with a **lifelong disability and recognised dependency**.
- Those **under the age of 25 but with a lifelong disability and recognised dependency**
- To **remove the condition that an employee needs to be with an employer for a continuous period of 26 weeks** in order to receive parental bereavement pay.
- Remove the power to set in regulations the rate of parental bereavement pay and to **enable the employee to be entitled to parental bereavement pay at their full pay rate**.

It is perhaps noteworthy that the GB Public Bill Committee deliberated upon many of the same issues in relation to PBP as those raised by respondents to the DfE public consultation (see Section 1). That is, the rate of payment, the 26-week employment qualifying period, the definition of a “child”, and the extension to the legislation for those who are self-employed or on zero-hours contracts.

The full Official Report of the Public Bill Committee’s deliberations is available to download [here](#)<sup>44</sup>.

In many instances, the Bill Sponsor and the then Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy - whilst sympathetic to the sentiments underpinning the potential amendments - they expressed concerns about, for example:

- The potential financial impact on the Exchequer and/or employers;
- The ability of the HMRC system to cope with changes to how and when payments are made; and/or,
- Whether such amendments could lead to a delay in the Bill passing through Westminster before the end of the Parliamentary session.

Also noteworthy is that the end of the UK Parliamentary session was two years away at that stage. However, there was concern about the time it would take to research and assess the impact of the amendments, and then to ensure that the relevant regulations made their way through the UK Parliament in time.

With regard to the extension of payment rights to other workers, such as the self-employed and zero-hours contract workers, then Minister for Business, Energy and Industrial Strategy stated to the Bill’s Committee that the Government’s response to the [Taylor Review](#) may address some of the points raised by the Committee on this issue.<sup>45</sup> The Taylor Review was an independent review of modern working practices;

<sup>44</sup> House of Commons. Official Report. Public Bill Committee. Parental Bereavement (Leave and Pay) Bill. First Sitting: 31 January 2018. Second Sitting: 7 February 2018.

[https://publications.parliament.uk/pa/cm201719/cmpublic/Parental/PBC14\\_Combined\\_1-2\\_31\\_01\\_2018.pdf](https://publications.parliament.uk/pa/cm201719/cmpublic/Parental/PBC14_Combined_1-2_31_01_2018.pdf)

<sup>45</sup> House of Commons. Official Report. Public Bill Committee. Parental Bereavement (Leave and Pay) Bill. First Sitting: 31 January 2018. Second Sitting: 7 February 2018.

[https://publications.parliament.uk/pa/cm201719/cmpublic/Parental/PBC14\\_Combined\\_1-2\\_31\\_01\\_2018.pdf](https://publications.parliament.uk/pa/cm201719/cmpublic/Parental/PBC14_Combined_1-2_31_01_2018.pdf)

the report of which was published in July 2017.<sup>46</sup> The Government's response to the Review is available to download [here](#).<sup>47</sup>

The response does not appear to specifically address the issue of PBLP rights for such workers, but does discuss the issue of the rights of the self-employed, zero-hours contract workers and agency workers in more broad terms, including proposals to consult wider on the Review's recommendations.

#### 4.2.2 RoI

The Parental Bereavement Leave (Amendment) Bill 2019 (RoI Bill) was introduced in Dáil Éireann on 26 March 2019.<sup>48</sup> However, the RoI Bill lapsed with the dissolution of the Dáil and Seanad on 14 January 2020. The RoI Bill intended to amend both the existing Parental Leave Acts of 1998 and 2006, to make provision for entitlement to bereavement leave to bereaved parents for a period of not less than 10 working days on the death of their child. A child was defined in the Bill as a person younger than the age of 18 and included a stillborn baby after 24 weeks of pregnancy.<sup>49</sup> However, the Bill lapsed with the dissolution of the Dáil and Seanad on the 14 January 2020.

There remains no statutory entitlement to PBLP in the RoI. In, PBLP remains largely at the discretion of the employer. Some employers may provide compassionate leave with full pay and others may for "Force Majeure Leave", which is a form of leave introduced by the Parental Leave Act 1998. Force Majeure Leave provides a right to leave for the employees to deal with urgent family situations. It does not specifically provide entitlement to leave following the death of a close family member (for example, a child, husband, sibling etc). But some employers will permit bereaved parents to use this right. The maximum amount of leave is 3 days in any 12-month period or 5 days in a 36-month period. A person is entitled to full pay whilst on this leave and are protected from unfair dismissal for having taken this leave entitlement.<sup>50</sup>

Lidl Ireland has recently announced its own bespoke policy around bereavement for employees both north and south. It has been reported to have introduced compassionate leave with pay for employees who have experienced or been directly impact early pregnancy loss or miscarriage.<sup>51</sup>

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<sup>46</sup> Good Work. The Taylor Review of Modern Working Practices.

<sup>47</sup> Good Work: a response to the Taylor Review of modern working practices. 21 December 2018.

[www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices/good-work-a-response-to-the-taylor-review-of-modern-working-practices](http://www.gov.uk/government/publications/government-response-to-the-taylor-review-of-modern-working-practices/good-work-a-response-to-the-taylor-review-of-modern-working-practices)

<sup>48</sup> Parental Bereavement Leave (Amendment) Bill 2019.

<https://data.oireachtas.ie/ie/oireachtas/bill/2019/23/eng/initiated/b2319d.pdf>

<sup>49</sup> Parental Bereavement Leave (Amendment) Bill 2019: First Stage. [www.oireachtas.ie/en/debates/debate/dail/2019-03-26/8/](http://www.oireachtas.ie/en/debates/debate/dail/2019-03-26/8/)

<sup>50</sup> Citizens Information. Other types of leave from work.

[www.citizensinformation.ie/en/employment/employment\\_rights\\_and\\_conditions/leave\\_and\\_holidays/types\\_of\\_leave\\_from\\_work.html](http://www.citizensinformation.ie/en/employment/employment_rights_and_conditions/leave_and_holidays/types_of_leave_from_work.html)

<sup>51</sup> Irish Times. Lidl leads the way with paid leave after pregnancy loss or miscarriage. 2 June 2021. [www.irishtimes.com/life-and-style/health-family/parenting/lidl-leads-way-with-paid-leave-after-pregnancy-loss-or-miscarriage-1.4583389](http://www.irishtimes.com/life-and-style/health-family/parenting/lidl-leads-way-with-paid-leave-after-pregnancy-loss-or-miscarriage-1.4583389)

### 4.2.3 New Zealand

In New Zealand, the Holidays Act 2003 (the 2003 New Zealand Act) contains provisions that confer minimum entitlements to annual holidays, public holidays, sick leave, bereavement leave, and family violence leave. The 2003 New Zealand Act also contains provisions dealing with how holiday pay and leave pay (including bereavement) is calculated in various circumstances and when it must be paid.

Under the 2003 Act, all employees (permanent, fixed-term, part-time and casual) can use bereavement leave if they have worked for the employer continuously for six months or they have worked for the employer for six months for an average of 10 hours per week, and at least one hour in every week or 40 hours in every month.<sup>52</sup>

All employees are entitled to paid bereavement leave for a minimum of three days per bereavement, if the following apply:<sup>53</sup>

- The employee's immediate family member dies (for example, parents, child, partner or spouse, grandparents, grandchildren, brother, sister and parents-in-law);
- The employee has a miscarriage (see sub-section 4.3.1 below) or stillbirth;
- Another person has a miscarriage or stillbirth, and the employee;
  - (1) is the person's partner;
  - (2) is the person's former partner and would have been a biological parent of a child born as a result of the pregnancy;
  - (3) had agreed to be the primary carer of a child born as a result of the pregnancy (e.g. through a formal adoption or a "whangai arrangement")<sup>54</sup>; and,
  - (4) is the partner of a person who had agreed to be the primary carer of a child born as a result of the pregnancy.

Each employee is entitled to bereavement leave for a minimum of one day per bereavement if another person dies and their employer accepts they have had a bereavement. This is based on:<sup>55</sup>

- How close they were with the deceased person;
- Whether they have to take a lot of the responsibility for all or any of the arrangements for the ceremonies relating to the death;
- If they have any cultural responsibilities in relation to the death.

Employees are entitled to bereavement leave every 12 months, if they meet the above criteria. If they do not meet the above criteria due to changes in work, they are not

<sup>52</sup> New Zealand Government (2021) *Bereavement Leave*: <https://www.govt.nz/browse/work/bereavement-leave/>

<sup>53</sup> Employment New Zealand: <https://www.employment.govt.nz/leave-and-holidays/bereavement-leave/#scrollto-payment-for-bereavement-leave>

<sup>54</sup> Whāngai is the Māori tradition of children being raised by someone other than their birth parents — usually a relative.

<sup>55</sup> Employment New Zealand: <https://www.employment.govt.nz/leave-and-holidays/bereavement-leave/#scrollto-payment-for-bereavement-leave>

entitled to bereavement leave. However, the employees may re-qualify when they do meet the 6-month requirement.

The Holidays (Bereavement Leave for Miscarriage) Amendment Act 2021 (the 2021 New Zealand Act) amends the 2003 New Zealand Act, to include provisions relating to miscarriage.<sup>56</sup> Prior to the 2021 New Zealand Act, provisions for PBLP extended to the death of a child (including stillborn), but did not allow for miscarriages.

The 2021 New Zealand Act (as amended) defines “miscarriage” as follows:<sup>57</sup>

*...the end of a pregnancy in the first 20 weeks of pregnancy other than as a result of abortion services provided in accordance with the Contraception, Sterilisation, and Abortion Act 1977.*

The 2021 New Zealand Act began its legislative journey in 2019 as the Holidays (Bereavement Leave for Miscarriage) Amendment Bill (No 2) (the 2019 New Zealand Bill).<sup>58</sup> Originally, on introduction to Parliament, the 2019 New Zealand Bill contained a clause that required a mother’s prior knowledge of the pregnancy, i.e. Clause 4(2)c contained the term “confirmed pregnancy”. However, during Committee Stage of the Parliament’s consideration of the Bill, the New Zealand Education and Workforce Committee recommended amending this term, stating:<sup>59</sup>

*We recommend amending clause 4(2) to make it clear that the mother does not need to have known they were pregnant. Miscarriages can occur before a person is aware of the pregnancy. As introduced, the clause refers to the unplanned end of a “confirmed pregnancy”. The word “confirmed” implies that the person should have prior knowledge of their pregnancy. People can suffer bereavement due to the end of a pregnancy even if they had not known beforehand that they were pregnant. We believe it would not be consistent with the intent of the bill to stop people from taking bereavement leave because they had been unaware of their pregnancy. Our recommendation would remove the word “confirmed” from clause 4(2)(c) to make clear that the intent of the bill is to provide people with access to bereavement leave after experiencing the end of a pregnancy, whether or not they had prior knowledge of the pregnancy.*

The Committee’s amendment was adopted, and the wording of the Bill altered accordingly.

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<sup>56</sup> Holidays (Bereavement Leave for Miscarriage) Amendment Act 2021:

<https://www.legislation.govt.nz/act/public/2021/0010/latest/whole.html#LMS220711>

<sup>57</sup> Holidays (Bereavement Leave for Miscarriage) Amendment Act 2021:

<https://www.legislation.govt.nz/act/public/2021/0010/latest/whole.html#LMS220711>

<sup>58</sup> Holidays (Bereavement Leave for Miscarriage) Amendment Bill 2019:

<https://www.legislation.govt.nz/bill/member/2019/0159/latest/whole.html#contents>

<sup>59</sup> Ibid.



## 5 Key Issues for Consideration

This section highlights key issues arising from the PBLP Bill as introduced, enabling consideration about:

- Human Rights and Equality;
- Employment Status - Employees and Workers;
- PBP and the Parity Principle; and,
- Review of Bill Costs.

### 5.1 Human Rights and Equality Considerations

Key human rights and equality consideration concern the eligibility criteria for both paid and unpaid leave. First, the definition of a “parent” and that definition’s possible impact to Article 8 and 14 of the European Convention on Human Rights (ECHR) is considered. Article 8 guarantees protection of the right to respect for private and family life, home and correspondence.<sup>60</sup> Article 14 prohibits discrimination.<sup>61</sup> Moreover, potential impacts to Section 75 of the Northern Ireland Act 1998<sup>62</sup> in relation to race/religion and gender are also discussed below.

#### 5.1.1 Definition and recognition of parents

During the PBLP Bill’s consultation process, respondents called for recognition of different definitions of family.<sup>63</sup> They also highlighted the importance of ensuring equal rights for unmarried parents and parents in same sex relationships.<sup>64</sup> Furthermore, eligibility criteria for those in informal kinship care arrangements also was highlighted, for example, when a sibling has parental responsibility for brothers and sisters.

As noted in a recent paper entitled “Understanding Informal Kinship Care: A critical narrative review of theory and research”, many children are cared for on a full-time basis by relatives or adult friends, rather than their biological parents.<sup>65</sup> This is often in response to family crises.<sup>66</sup> They note that informal kinship care is the full-time care of a child by kin, other than a parent. These carers are not formally recognised foster carers and often the arrangements may not be known to social services.<sup>67</sup>

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<sup>60</sup> [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf)

<sup>61</sup> <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>

<sup>62</sup> <https://www.legislation.gov.uk/ukpga/1998/47/contents>

<sup>63</sup> <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf> p 21

<sup>64</sup> Ibid.

<sup>65</sup> [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/18072644/FRS\\_final\\_non\\_anon\\_Understanding\\_informal\\_kinship\\_care.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/18072644/FRS_final_non_anon_Understanding_informal_kinship_care.pdf) p 71

<sup>66</sup> Ibid.

<sup>67</sup> [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/18072644/FRS\\_final\\_non\\_anon\\_Understanding\\_informal\\_kinship\\_care.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/18072644/FRS_final_non_anon_Understanding_informal_kinship_care.pdf) p 72

In addition, it should be noted that the Equality Impact Assessment of the PBLP Policy acknowledged that there is a difficulty with identifying bereaved parents within the Section 75 category of “persons with dependents”.<sup>68</sup>

The importance of definitional clarity is essential. Eligibility issues, in relation to other bereavement benefits, have been raised at recent judicial review cases. For example, in *R (Jackson and Simpson) v Secretary of State for Work and Pensions [2020]*,<sup>69</sup> **two families were refused bereavement benefit after the mother had died. At judicial review, the legislation was found to be discriminatory. The High Court case highlighted that approximately 2,000 bereaved families per year are unable to claim** higher rate bereavement support payment, if the parents were not married. The Justice expressed that this legislation was manifestly unjustified, and incompatible with the UK’s obligations under the ECHR.<sup>70</sup>

The Justice’s findings echoed the sentiment of the previous case of *Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018]*<sup>71</sup> UKSC 48. This case related to Widowed Parent’s Allowance (WPA), which is a contributory, non-means-tested, social security benefit payable to men and women with dependent children, who were widowed before March 2017.<sup>72</sup>

Under Section 39A of the Social Security Contributions and Benefits (NI) Act 1992, the widowed parent could claim the allowance only if the parent was married to or the civil partner of the deceased.<sup>73</sup>

The issue in the *McLaughlin* Supreme Court case was whether this requirement unjustifiably discriminated against the survivor and/or the children on the basis of their marital or birth status, contrary to Article 14 of the ECHR when read with either the right to respect for family life under Article 8, or the protection of property rights in Article 1 of the First Protocol.<sup>74</sup>

The Supreme Court, by a majority of 4 to 1, declared that Section 39A was incompatible with Article 14 of the ECHR when read with Article 8, insofar as it precluded any entitlement to WPA by a surviving unmarried partner of the deceased.<sup>75</sup>

Clear definitions of eligible claimants and anti-discrimination clauses in the development of the PBLP regulations would ensure clarity for employers and employees and help protect the rights of bereaved parents. The DfE Response to

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<sup>68</sup> <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/equality-impact-assessment-parental-bereavement-leave-and-pay.pdf> p 5

<sup>69</sup> *R (Jackson and Simpson) v Secretary of State for Work and Pensions [2020]* EWHC 183 (Admin) (7 February 2020)

<sup>70</sup> <https://www.gcncchambers.co.uk/bereavement-benefit-rules-discriminatory-and-incompatible-with-echr-rights-rules-high-court/>

<sup>71</sup> *Siobhan McLaughlin for Judicial Review (Northern Ireland) [2018]* UKSC 48

<sup>72</sup> <https://www.gov.uk/widowed-parents-allowance>

<sup>73</sup> <https://www.legislation.gov.uk/ukpga/1992/7/contents>

<sup>74</sup> <https://www.supremecourt.uk/cases/docs/uksc-2017-0035-press-summary.pdf> p 1

<sup>75</sup> <https://www.supremecourt.uk/cases/docs/uksc-2017-0035-press-summary.pdf> p1

Public Consultation<sup>76</sup> noted that the definition that would be set out in NI legislation would mirror that of the corresponding GB legislation.<sup>77</sup> The GB guidance for those who are eligible for statutory PBLP states:<sup>78</sup>

*You may be eligible if at the time of the child's death or stillbirth, if you were:*

- *the child or baby's parent - either biological, adoptive or parent of a child born to a surrogate*
- *the partner of the child or baby's parent.*

Importantly, it notes that biological parents of the child or baby is not be eligible for PBLP after an adoption or parental order is made, unless a Contact Order is in place.<sup>79</sup>

In addition, persons may be eligible: if the child or baby was living at their home for 4 continuous weeks, ending with the date of death; or, if persons or their partners had day to day responsibility for the child or baby's care during that time.<sup>80</sup>

Further restrictions include that there is no qualification for PBLP if persons or their partners were paid to look after the child or baby. This is unless they: were foster parents; reimbursed for expenses related to caring for the child or baby; or, getting payments under the terms of a will or trust for the child or baby's care.<sup>81</sup>

Adoptive parents are also eligible for pay and leave following granting of an adoption order. Eligibility also extends to those families where a child has been placed before an adoption order is granted, given that the placement had not been stopped or disrupted.<sup>82</sup>

For those adopting a child from outside the UK, eligibility depends on if the child was living with the claimants after entering the UK and official notification confirming the adoption has been received. In cases where surrogate parents have been used to have a baby, eligibility is granted once a parental order has been made or there has been an application or intention to apply for a parental order within 6 months of the child's birth, which is expected it to be granted.<sup>83</sup>

**With regard to the definition and recognition of parents, the following issues arise:**

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<sup>76</sup> <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf>

<sup>77</sup> <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf> p 8

<sup>78</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

<sup>79</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

<sup>80</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

<sup>81</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

<sup>82</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

<sup>83</sup> <https://www.gov.uk/parental-bereavement-pay-leave/check-if-youre-eligible>

29. In relation to the DfE definition of “” and the eligibility criteria under the PBLP Bill, what is their juxtaposition to informal kinship care arrangements?
30. What consideration did the DfE give to informal kinship care arrangements specific to those in NI when it considered the GB PBLP system, to inform its development of a similar system in NI?
31. Is the DfE aware of any issues or problems that may have arisen in the GB context in relation to the definition and recognition of parents?
32. How does the DfE intend to frame the regulatory evidential requirements with regard to the definition and recognition of parents?
33. What assurances can the DfE provide that specified requirements would not place an undue burden on what is already an emotionally challenging time for parents, but nonetheless would protect the public purse and reduce potential for fraudulent claims?

### 5.1.2 Race or Religious Discrimination

Additional legal commentary<sup>84</sup> notes that there could be a risk of race or religious discrimination claims arising from refused requests for time off for specific religious observances on the death of a child. Some note that certain religions require a set time for mourning, for example, observant Jews might need to mourn at home for seven days to “sit shiva”, or practising Muslims have certain set mourning periods.<sup>85</sup> This should be duly considered in the context of this Bill, given, for example, Section 75 requirements under the Northern Ireland Act 1998.<sup>86</sup> If the introduced is enacted, it should be further appropriately considered and factored in when developing governmental and organisational policies, including those embodied in the regulations to be introduced under the PBLP Bill and related guidance.

**With regard to race or religious discrimination, the following issues arise:**

34. What research has the DfE undertaken to examine the potential impact on families observing religious and cultural practices? If so, please share its findings with the Committee for the Economy.
35. What consideration did the DfE give to the specific race and religious make up of NI when considering the GB PBLP system and developing a similar system in NI?
36. Is the DfE aware of any issues or problems that may have arisen with regard to race of religious discrimination under the GB PBLP system?

<sup>84</sup> <https://www.lewissilkin.com/en/insights/parental-bereavement-leave>

<sup>85</sup> <https://www.lewissilkin.com/en/insights/parental-bereavement-leave>

<sup>86</sup> <https://www.legislation.gov.uk/ukpga/1998/47/contents>

### 5.1.3 Gender and Socio-Economic Impact

While the PBLP Bill grants eligibility to take time off work from the first day of employment; qualification for paid parental leave only commences following 26 weeks of employment. As stated in the DfE Response to Public Consultation: <sup>87</sup>

*For most employees, taking parental bereavement leave and pay will be inextricably linked and for all employees there will be an entitlement to the leave element from day 1 of employment. However, in line with other family related statutory payments and in keeping with the GB parental bereavement pay provision, it is our intention that a qualifying period of 26 weeks will also apply to the statutory pay element in Northern Ireland.*

This may impact the social and economic rights of many low paid families, who feel they are unable to afford an unpaid period of absence. This may, additionally, have an inequitable impact on women. According to The Living Wage Foundation, women make up nearly two thirds (62%) of workers currently struggling to make ends meet on less than the real Living Wage.<sup>88</sup> They add that women's employment in the UK is highly concentrated in particular industries and occupations and this concentration is a major cause of low pay for women.<sup>89</sup>

The Women's Resource and Development Agency state: <sup>90</sup>

*Women's employment in Northern Ireland is characterised by gender segregated labour-markets, gender gaps in pay, higher levels of part-time work and a high concentration in low paying and precarious sectors such as caring, cleaning and the service/hospitality industry.*

These women may be unable to avail of unpaid leave due to additional caring and financial responsibilities. As a result, this may indirectly raise Section 75 considerations for the introduced PBLP Bill in respect to gender equality.

Additionally, as highlighted by People Management,<sup>91</sup> in the case of other forms of unpaid parental leave, uptake is poor. They add that this may not just be down to the fact that it is unpaid or to a lack of awareness. They report that nearly half of men (47%) and 31 % of women worry about taking unpaid leave and how it may impact their career, for example, it will be perceived negatively by their employers and colleagues.<sup>92</sup>

<sup>87</sup> <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf> p 21

<sup>88</sup> Living Wage Foundation (2021) *Women continue to be hit hardest by low wages in UK*: <https://www.livingwage.org.uk/news/news-women-continue-be-hit-hardest-low-wages-uk>

<sup>89</sup> Ibid.

<sup>90</sup> <https://wrda.net/2020/02/07/gender-inequality-in-northern-ireland-where-are-we-in-2020/>

<sup>91</sup> People Management (2021) *Navigating Parental Leave Rights*: <https://www.peoplemanagement.co.uk/experts/legal/parental-leave-rights>

<sup>92</sup> Ibid

In response to the DfE PBLP consultation, one respondent made reference to Maternity Allowance, which provides a statutory payment to mothers who do not qualify for Statutory Maternity Pay. This respondent called for the introduction of a similar type of statutory provision for bereaved parents who could fall outside of the scope of a 26 week qualifying period.<sup>93</sup> The creation of such a statutory allowance would enable low paid parents to avail of PBL and mitigate the impact to Section 75.

**With regard to potential gender and socio-economic impacts of the PBLP Bill as introduced, the following issues arise:**

37. Has the DfE undertaken any research on the impact of the 26 weeks of employment provision on low paid families in NI? If so, please share its findings with the Committee for the Economy

38. Has the DfE considered the potential inequitable impact of the 26-week qualifying period on female workers, in light of Section 75 obligations? If so, what were its findings?

39. What consideration did the DfE give to NI labour market circumstances, when considering the GB PBLP system and seeking to develop a similar system in NI?

40. Is the DfE aware of any issues or problems with regard to gender or socio-economic impacts that may have arisen under the GB PBLP system?

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<sup>93</sup> DfE (2021) *Department Response to Public Consultation Parental Bereavement Leave and Pay*. <https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/Parental-bereavement-leave-and-pay-departmental-response.pdf> page 18.

## 5.2 Employment Status: “Employees” and “Workers”

To contextualise discussion of the PBLP Bill’s leave and pay entitlements, this subsection briefly provides a layperson’s explanation of prevailing definitions for the terms “employee and “worker” under NI employment law. It is important to note that there is a third category under such law – i.e. “self-employed” – which falls outside the intended scope of application of this Bill.

### 5.2.1 Current NI Provision on Employment Status

The distinction between employees and workers under NI employment law is defined by Article 3 of the Employment Rights (NI) Order 1996 (the 1996 NI Order) and related case law.

Part I Chapter II Article 3 of the 1996 Order states:

- 3.—(1) In this Order “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
- (2) In this Order “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Order “worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
- (a) a contract of employment, or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

Moreover, in 2014, the then NI Department for Employment and Learning (DEL) explained the distinction between the two, stating:

*A ‘worker’ generally means an individual who has a contract or other arrangement to do work or services personally for a reward. This category is often perceived as a hybrid of employee and self-employed status. ‘Workers’ have fewer protections than ‘employees’ in domestic employment law. All employees are workers. However not all workers are employees.*

A key distinction arising from their different employment status is “fewer protections”, for example, employees are entitled to Maternity, Paternity and Adoption pay and leave. Workers, however, are entitled only to pay for each, not leave. An individual’s

employment status defines their employment rights and entitlements. In that regard, the OECD stated in 2019:<sup>94</sup>

*Employment status acts as a gateway to various worker rights and protections. Classifying correctly the status of workers and tackling misclassification are essential to ensure that workers have access to labour and social protection, as well as to collective bargaining and lifelong learning.*

### 5.2.2 Employment Status under the PBLP Bill

In evidence to the Committee for the Economy on 19 May 2021, a DfE official gave the following explanation as to why workers and employees are treated differently under the PBLP Bill:<sup>95</sup>

*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.*

And:

*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.*

Put simply, under the introduced Bill, if enacted, workers would be treated differently to employees in terms of bereavement **leave** entitlement. However, the bereaved worker **would be** entitled to statutory parental bereavement “**pay**”: Employers would pay their workers, the statutory amount for absence taken due to the death of a child, assuming workers meet the specified definition for “bereaved parent”. That amount is to be defined by the regulations that are to be introduced by the DfE following the PBLP Bill’s

<sup>94</sup> OECD (2019) *Policy responses to new forms of work*: <https://www.oecd.org/g20/summits/osaka/g20-policy-responses-to-new-forms-of-work-OECD-2ndEWG%20meeting.pdf>

<sup>95</sup> Committee for the Economy (2021) Official Report: Minutes of Evidence:: Parental Bereavement (Leave and Pay) Bill 19 May 2021: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=26537&evidID=13043>



enactment. Moreover, employers then are able to reclaim some in not all of that amount from HMRC (see subsection 3.2.3 above **liability of payment**).

The application of this provision could prove challenging, for example, in the context of the “gig economy”, where establishing employment status sometimes may not be a straightforward matter, for example, Uber workers.<sup>96</sup>

**In that regard, the following issue arises:**

41. How did the DfE factor in those working in the so-called “gig” economy in NI when developing the PBLP Bill? Please explain in detail.

### 5.3 Parental Bereavement Pay and the “Parity Principle”

The DfE’s consultation highlighted its desire to mirror the leave and pay provisions that were introduced in GB in April 2020, stating:<sup>97</sup>

*an overriding aim is to ensure employees in Northern Ireland are afforded the same entitlements to parental bereavement leave and pay as their fellow citizens throughout the rest of the United Kingdom.*

This aim is in keeping with the “parity principle” in relation to social security, child support and pensions, as set out in [Section 87](#) of the Northern Ireland Act 1998.<sup>98</sup> Section 87<sup>99</sup> requires the Minister [for Communities] and the Secretary of State for Work and Pensions to consult with one another in order to ensure that relevant legislation achieves, as far as possible, a single system of social security, child support and pensions across the UK. Underpinning the principle of parity is the argument that people in NI pay the same rate of income tax and national insurance contributions as those in GB and are therefore entitled to the same benefits and rights.<sup>100</sup>

However, Section 87 does not explicitly place a statutory requirement on the Minister to always maintain parity with GB. Rather, it places a requirement on the Minister to “consult” with the Secretary of State for Work and Pensions, in order to maintain single systems of social security, child maintenance and pensions. In more recent years, NI has deviated from parity in response to the UK Government’s welfare reforms. Those deviations have included, for example, the provision of Welfare Supplementary payments (to mitigate against the “bedroom tax” and the benefit cap). Generally speaking, such deviations are funded from the NI Block Grant, i.e. the Executive would fund the departure with a “top up” using the Block Grant (DEL) or other allocations such

<sup>96</sup> Uber BV and others (Appellants) v Aslam and others (Respondents): <https://www.supremecourt.uk/cases/uksc-2019-0029.html>

<sup>97</sup> Department for the Economy Parental Bereavement Leave and Pay. Public Consultation. June 2020.

<sup>98</sup> Northern Ireland Assembly Research and Information Service. Briefing Paper. Parity and Social Security in Northern Ireland. 24 May 2011. [www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/social-development/9911.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/social-development/9911.pdf)

<sup>99</sup> Section 87. Northern Ireland Act 1998. [www.legislation.gov.uk/ukpga/1998/47/section/87](http://www.legislation.gov.uk/ukpga/1998/47/section/87)

<sup>100</sup> Explanatory Memorandum to the Northern Ireland Act (1998) (Modification) Order 2009.

as those from a one-off agreement from Treasury, **not** AME. The provisions that would mirror GB would be funded non-Block (i.e. AME).<sup>101 102</sup> The public finance arrangements under devolution specify these rules as noted above.

A number of responses to the consultation on this Bill called for an increase to the PBP currently provided in GB. Other respondents felt eligibility for PBP should be available from Day 1 of employment, rather than the 26<sup>th</sup> week of employment, as outlined in the introduced Bill. This course of action, if enacted would deviate from parity in relation to the rate of PBP and its eligibility criteria.

It would be possible to make such a deviation from parity under the rules. As noted earlier in this subsection, Section 87 under the Northern Ireland Act 1998 requires the Minister [for Communities] to “consult” with the Secretary of State for Work and Pensions to maintain a single system of social security. However, Box 2 below highlights further applicable rules when parity departures occur, outlining a relevant extract from HM Treasury’s “Statement of Funding Policy” for the devolved administrations.<sup>103</sup>

**Box 2: Extract from the UK Statement of Funding Policy**

*The majority of responsibilities relating to welfare are devolved matters in Northern Ireland. However, the Northern Ireland Act 1998 commits the relevant UK government and Northern Ireland Executive ministers to seek to secure, to the extent agreed between them, single system of social security, child support and pensions.*

*The UK government is therefore committed to ensuring that the Northern Ireland Executive has sufficient funding available to maintain welfare payments to recipients in Northern Ireland to the same level as those funded by the equivalent UK government departments and agencies in Great Britain.*

*This is achieved by budgeting for the relevant welfare payments in AME, based on forecasts agreed between the relevant Northern Ireland departments and HM Treasury. It is important, therefore, that Northern Ireland Executive departments provide detailed evidence-based forecasts and update them regularly in light of emerging information.*

*If the Northern Ireland Executive opts to depart from arrangements in place in Great Britain such that the AME costs borne centrally by the UK Government are greater than the equivalent costs borne by the relevant UK government departments, HM Treasury will seek to recover additional costs from the Executive’s block grant, in line with the general principle outlined at paragraph 2.5, subparagraph 10.*

<sup>101</sup> Further information on Welfare Supplementary Payments is available from the NI Direct website [www.nidirect.gov.uk/articles/support-for-those-affected](http://www.nidirect.gov.uk/articles/support-for-those-affected)

<sup>102</sup> Northern Ireland Audit Office. Welfare Reforms in Northern Ireland. January 2019. [www.niauditoffice.gov.uk/sites/niao/files/media-files/Welfare%20Reform%20Report%202019.pdf](http://www.niauditoffice.gov.uk/sites/niao/files/media-files/Welfare%20Reform%20Report%202019.pdf)

<sup>103</sup> HM Treasury. Statement of funding policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive. November 2020. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/943689/Statement\\_of\\_Funding\\_Policy\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943689/Statement_of_Funding_Policy_2020.pdf)

*The Northern Ireland Executive retains the capacity to provide additional funding to recipients in line with its own priorities, if it can meet the costs from the DEL block grant or from other available sources of funding”*

Extract: HM Treasury. Statement of Funding Policy: Funding the Scottish Government, Welsh Government and Northern Ireland Executive. November 2020. Paragraphs 7.9 to 7.13, p21.

The EFM for the PBLP Bill explains consideration was given to the option of making PBP a Day 1 right, rather than requiring a 26-week qualifying period of employment. It states further that the DfC consulted with HMRC on this matter, and that whilst it was technically possible, the change would have a significant one-off cost to the Executive Budget and would have cost implications for payroll providers and potentially employers. The EFM states.<sup>104</sup>

*...consideration was given to the option of making parental bereavement pay (PBP) a Day 1 right rather than requiring a 26 week qualifying period of employment. The Department consulted with HMRC on this matter and they confirmed that whilst making the change was technically possible, the change would result in a significant one off cost to the NI Budget.*

*It was determined that this upfront cost made the possibility of making PBP a Day 1 right disproportionate given the, thankfully, small number of parents who suffer the loss of a child in NI each year (average of 245 child deaths in NI over 5 years from 2014-18) and the even smaller number of bereaved parents who would not meet the 26 week qualifying provision.*

*In addition to this upfront cost, consideration was given to the fact that should PBP in NI be introduced as a Day 1 right, payroll software developers would need to consider reflecting for the introduction of the entire Parental Bereavement Leave and Pay Bill and would have cost implications for payroll providers. It could also impact NI employers if payroll providers decided not to make adjustments to accommodate the change in NI. The current GB PBP system is already set up to include NI but only on an equivalent basis to GB.*

Consequently, the PBLP Bill's EFM states:

*Accordingly, it was decided that parental bereavement leave and pay provisions in Northern Ireland would mirror the provision in GB and that there would be no deviation”.*

<sup>104</sup> Parental Bereavement (Leave and Pay) Bill. Explanatory Memorandum (as introduced). [www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf](http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf)

The EFM further states:<sup>105</sup>

*Whilst there has been some deviation in employment legislation between NI and GB in recent years, this has not been the case for family related policy and legislation entitlements, where effort has been made to broadly maintain a parity between both jurisdictions.*

**With regard to statutory payments and parity, the following issues arise:**

42. How are statutory payments for employees/workers (such as maternity pay, sick pay) currently funded in NI?
43. What is the procedure to offset these payments in public finance terms, and how will this impact on the Executive Budget?
44. Will the DfE share with the Committee details of any engagement with HM Treasury in this regard?
45. Is the DfE satisfied that due consideration was given to:(i) increased PBP in NI when compared to GB; and, (ii) the implications of day 1 entitlement for parents that receive other payments (such as Tax Credit or Universal Credit payments)?
46. It is ultimately for the Assembly to decide whether the introduced PBLP Bill would provide a basis for the Executive to deviate from parity in its PBP provision in NI. When considering the matter, there are a number of considerations to factor in, such as: a) the relatively small number of bereaved parents in NI each year; b) the potential budgetary and logistical issues for government departments, employers and pay roll providers if the Executive was to depart from parity; and, c) the Economy Minister's intention to enshrine leave and payment rights for bereaved parents in legislation before the end of the current Assembly mandate.
47. Is the Executive, including the DfE, satisfied that due consideration was given to each of the above?

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<sup>105</sup> Parental Bereavement (Leave and Pay) Bill. Explanatory Memorandum (as introduced). (page 2).

## 5.4 Review of Bill Costs<sup>106</sup>

To facilitate financial scrutiny of the PBLP Bill, as undertaken by the Assembly, this sub-section provides a review of the PBLP Bill's implementation costs, if the PBLP Bill, as introduced, and the forthcoming regulations, as indicated, are enacted. Moreover, it considers the financial implications identified by the DfE in the PBLP Bill's EFM, at paragraphs 19 to 20. It also draws on previous sections of this Paper, wherein policy issues were addressed, amongst other sources.

The PBLP Bill's EFM states:<sup>107</sup>

*...Introductory one-off costs, such as familiarisation, are estimated at £279k for business. One off costs for Government are estimated at £73k.*

And:

*Recurring annual costs for business are estimated at £85k and for Government are estimated at £100k.*

However, no explanation of these costs was included in the EFM. To support the Assembly's scrutiny of the EFM's high-level estimated costs, RaISe's Public Finance Scrutiny Unit (PFSU) sought and obtained additional financial information from the DfE. That information concerns both one-off and recurring annual costs, which are explained below.

### 5.4.1 One-off Costs

The EFM states that one-off costs for the NI Executive are estimated at £73k and £279K to business. The DfE advised the PFSU that:<sup>108</sup>

*...costs for NI Government were extrapolated from the 2018 GB Parental Bereavement Leave and Pay (PBLP) Impact Assessment...*

The GB PBLP legislation noted earlier in this Paper and its related Impact Assessment stated:<sup>109</sup>

*An estimate provided by HMRC of the one-of cost that would be incurred to set up the necessary IT solution, including resource costs and telephony costs, suggests costs will be around £2.1m.*

<sup>106</sup> This 'Review of Costs' has been prepared by the Public Finance Scrutiny Unit (PFSU) of the Finance & Economics Research Team, located with the Assembly's Research and Information Service (RaISe)

<sup>107</sup> <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf> page 10

<sup>108</sup> Email from DfE to RaISe, 27 July 2021

<sup>109</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk) page 17

The DfE advised the PFSU that the £73k estimation is based on the assumption of an approximate 3.5% share of the estimated £2.1m HMRC cost of updating its systems. The PBLP Bill's EFM states:<sup>110</sup>

*The current GB PBP system is already set up to include NI but only on an equivalent basis to GB.*

**With regard to one-off costs, the following issues arise:**

51. Please detail the DfE methodology – i.e. how it arrived at the approximate percentage - 3.5% - for sharing estimated one-off costs to be incurred when implementing PBLP legislation in NI?
52. The GB PBLP Impact Assessment estimated one-off costs in 2018, while relying on data available at that time. That estimation was compiled pre-enactment of the GB PBLP legislation. What consideration did the DfE give to those estimated one-off costs when compared to the actual that have been incurred?
53. If the DfE did, how comparable were those actual one-off costs to the estimation?
54. Did the DfE identify any unique requirements/challenges/needs in NI, not GB, which could impact NI one-off implementation costs? For example, would further modifications/resources be required due to regional variations in NI?
55. Factoring in GB experience to date in this area and NI-specific considerations, does the DfE believe the approximated 3.5% share provides a robust, reliable and realistic basis to estimate one-off costs of implementing PBLP in NI, as introduced by the PBLP Bill and forthcoming regulations?

#### 5.4.2 Recurring Annual Costs

The EFM states that recurring annual costs for NI Executive are estimated at **£100k**. As above, the DfE advised the PFSU that these costs were extrapolated from the 2018 GB PBLP Impact Assessment.<sup>111</sup> That Impact Assessment outlines the methodology used to calculate the GB estimation, including the following assumptions used:

- Assumption 1: The number of eligible parents; and,
- Assumption 2: The take-up of payments.

The methodology used for each is summarised in the following paragraphs.

##### **Assumption 1: Number of Eligible Parents**

Estimates of the number of eligible parents are based on data for the number of child deaths and stillbirths each year. The number of child deaths and stillbirths in GB in

<sup>110</sup> <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf> page 2

<sup>111</sup> Email from DfE to RalSe, 27 July 2021

2016 was reported in the Impact Assessment as approximately 7,600. That figure is calculated using the following datasets:

- Annual data on death registrations by single year of age for the UK (Office of National Statistics (ONS) 2016);<sup>112</sup>
- NI Deaths by Age Northern Ireland Statistical Research Agency (NISRA) 2015);<sup>113</sup>
- Births in England and Wales (ONS 2016);<sup>114</sup> and,
- Births, Deaths and Other Vital Events (National Records of Scotland 2016).<sup>115</sup>

The DfE advised the PFSU that the calculation for the recurring annual costs were based upon a figure of 225 child deaths per annum. That figure was calculated using the following two datasets published by NISRA:

- NI Deaths by Age;<sup>116</sup> and,
- Stillbirth and Infant Death Numbers.<sup>117</sup>

The figure represents 146 deaths of children between the ages of 0 and 17, and 79 stillbirths in 2018, which equates to a total figure of 225 child deaths per annum. It should be noted that at the time of writing, 2019 data is available. In 2019, there were 148 deaths of children between the ages of 0 and 17, and 67 stillbirths, which equates to a total figure of 215 child deaths per annum.

The estimate assumes there are two parents/legal guardians for each child who dies. The estimate of the number of parents affected accounts for the less traditional family set up, where biological parents/adoptive parents of the child may have separated and have new partners involved in the child's life.

The GB PBLP Impact Assessment uses data from the Whitehall Department of Work and Pensions (DWP),<sup>118</sup> which states that in 2012, one-third of children in the UK lived in a separated family. The estimate therefore assumes that approximately one-third of parents experiencing a child bereavement might have separated. The estimate also assumes that all of these parents have a new partner. Furthermore, the total number of people with a relationship to the child is estimated at a maximum to be a ratio of 2.67 per child death.

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<sup>112</sup> [Deaths registered by single year of age, UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>113</sup> [Death Statistics | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](https://nisra.gov.uk)

<sup>114</sup> [Births in England and Wales: summary tables - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

<sup>115</sup> [Births, Deaths and Other Vital Events - Quarterly Figures | National Records of Scotland \(nrscotland.gov.uk\)](https://nrscotland.gov.uk)

<sup>116</sup> [Death Statistics | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](https://nisra.gov.uk)

<sup>117</sup> [Stillbirth and Infant Death Numbers | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](https://nisra.gov.uk)

<sup>118</sup> [Help for separating parents at their fingertips as new web app launches. A third of children now live in separated families - GOV.UK \(www.gov.uk\)](https://www.gov.uk) An estimate for the number of separated parents and children living in a separated family in Britain is derived from the Labour Force Survey - a survey of households conducted quarterly. We have selected all households where there is either a lone parent or a couple where a step relationship between a parent and child is reported.



It is noteworthy that the GB PBLP Impact Assessment stated: <sup>119</sup>

*We expect this estimate of parents to be an upper limit as we use the cautiously high assumption that 100% of those parents that have separated will have a new partner. This may be a high estimate as we know the majority (67%) of child deaths occur in the first year (with 71% of deaths in the first year occurring in the first 28 days) and we consider the likelihood of separation to be cumulative through time: hence separation seems less likely for new parents. It also seems less likely that separated families with young babies will have a new partner. However, in the absence of more specific evidence, we maintain this is the best way to estimate the potential number of people with a relationship with the child.*

**With regard to the number of eligible parents, the following issues arise:**

56. In 2018, the DWP relied on 2012 data to estimate one-third of children in the UK lived in a separated family. That estimation was compiled pre-enactment of the GB PBLP legislation. Can the DfE confirm that there are no more recent data available to compile such an estimation?

57. Did DfE consider potential regional variations and using NI data? For instance, are there regional variations on the number of children who live in a separated family in NI, when compared to GB?

### **Number of Eligible Parents: Employment status considerations**

Employment status has an impact on the eligibility of parents for PBLP, as would be implemented under the PBLP Bill and related regulations. The Impact Assessment for the GB legislation uses data on the employment rate, the self-employment rate, and the duration of employment to estimate the number of eligible parents.

Using ONS Labour Market Statistics from 2016, the Impact Assessment assumes that 81.6% of parents in the UK are employed,<sup>120</sup> and 15% of all people in work are self-employed. Self-employed parents would not be eligible to apply and so a self-employment rate of 15% is assumed, and deducted from the estimation.

Under the provisions in the PBLP Bill, employees need 26 weeks of continuous employment with their employer in order to be eligible to apply. The Impact Assessment stated: <sup>121</sup>

*Analysis of the Labour Force Survey suggests the proportion of employees with sufficient tenure will be 91.1%.*

<sup>119</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk) page 9

<sup>120</sup> [Employment rates of people by parental status: Table P - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk)

<sup>121</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk) page 10



Given above, which is calculated on a UK basis, the total number of people fulfilling the employment criteria was estimated to be a ratio of 0.63 per child death. Moreover, on a UK basis, the total number of people with a relationship to the child, as well as fulfil the employment criteria is estimated to be a ratio of 1.69 per child death.

**With regard to the number of eligible parents and employment status, the following issues arise:**

58. Did the DfE consider more recent data to estimate parents in the UK who are employed? For example, ONS Labour Market Statistics reported in 2016 that 81.6% of parents in the UK were employed, and in 2021 83.9%.
59. When considering employment status in terms of PBLP eligibility criteria for parents, did the DfE take into account potential regional variation in employment statistics for NI, when compared to the UK? For example: the proportion of parents employed; self-employment; and, employment tenure?

### **Assumption 2: Take-up**

With regard to take up, the DWP Impact Assessment for GB PBLP stated:<sup>122</sup>

*Estimates of the proportion of eligible parents who would take up Parental Bereavement Leave are subject to a large degree of uncertainty as take-up decisions will depend crucially on family circumstances, household income, workplace culture and how each individual parent reacts to the loss of their child, which decisions greatly depending on the individual. There is no direct, immediately applicable, evidence on likely take-up rates so we provide a range, based loosely on take-up of existing leave.*

Moreover, it provided illustrative calculations of three scenarios:

- **High Estimate:** 100% of eligible parents take 2 weeks of leave and pay – this is the maximum estimate, or 100% take-up of the policy;
- **Best Estimate:** 100% of eligible parents take the first week of leave and pay available and 75% of parents also take the second week available (87.5% take-up of the policy); and,
- **Low Estimate:** 75% of parents take the first week of leave and pay available and 50% of parents also take the second week of leave and pay available (62.5% take-up of the policy).<sup>123</sup>

The DWP Impact Assessment further stated:<sup>124</sup>

*Although taken under very different circumstances, these assumptions are consistent with data on take-up for Statutory Paternity Leave and Pay, an*

<sup>122</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](#) page 10

<sup>123</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](#) page 10

<sup>124</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](#) page 11

*entitlement of similar duration and level of pay. During consultations, bereavement charities agreed it was sensible to take this approach, due to the similarities in the entitlement in terms both of the duration of leave and the level of pay.*

The DfE estimation of annual costs is based on the assumption of the best estimate proposed – grounded in the Impact Assessment’s methodology – i.e. 87.5% policy uptake. Combining the above, the DfE have estimated that employed parents would be eligible for parental bereavement pay at a ratio of 1.69 per child death, with a best estimate uptake of 87.5%. That equates to an estimated annual cost for the NI Executive of approximately £100,000.

**With regard to take up, the following issues arise:**

60. Given that the GB estimation was pre-enactment of the GB PBLP legislation, what consideration did the DfE give to estimated recurring costs when compared to the actual costs that have been incurred?
61. If the DfE did consider (60) above, how comparable were those actual recurring costs to the Impact Assessment estimation compiled in 2018?
62. What consideration did the DfE give to actual uptake figures under the GB PBLP legislation in its first year, when compared to those estimated by the Impact Assessment, pre-enactment of the GB PBLP legislation?
63. If the DfE did consider (62) above, how comparable were the actual and estimated figures?
64. Did the above comparisons require adjustments for NI purposes?

### 5.4.3 Other Costs: Options Considered

The PBLP Bill’s EFM states that consideration was given to the option of making Parental Bereavement Pay a Day 1 right, rather than requiring a 26-week qualifying period of employment. It further states that the DfE consulted with HMRC; and that whilst it was technically possible, the change would have significant cost implications to the NI Budget. The EFM further states:

*It was determined that this upfront cost made the possibility of making PBO a Day 1 right disproportionate given the, thankfully, small number of parents who suffer the loss of a child in NI each year (average of 245 child deaths in NI over 5 years from 2014-2018) and the even smaller number of bereaved parents who would not meet the 26 week qualifying provision.<sup>125</sup>*

<sup>125</sup> <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf> page 2

The EFM highlighted a number of other potential cost implications:<sup>126</sup>

*...should PBP in NI be introduced as a Day 1 right, payroll software developers would need to consider reflecting this change within their payroll systems. This would have timing implications for the introduction of the entire Parental Bereavement Leave and Pay Bill and would have cost implications for payroll providers.*

This point was discussed further during the Committee for the Economy meeting on 10 February 2021. During that meeting, a DfE official stated:<sup>127</sup>

*...hopefully, a very small number of parents will suffer the loss of a child under the age of 18 in the first 26 weeks of employment with their employer.*

It should be noted that the DWP methodology to calculate costs in the GB PBLP Impact Assessment (discussed at length in the previous section), assumed less than nine per cent of employees would have insufficient employment tenure to qualify for Parental Bereavement Pay. It is noteworthy that that Impact Assessment stated:

*Analysis of the Labour Force Survey suggests the proportion of employees with sufficient tenure will be 91.1%<sup>128</sup>*

For illustrative purposes, using the 2018 figures quoted in the introduced Bill's EFM and the information provided to RaISe (that is 225 child deaths per annum), if eligibility was given on day 1 of employment; the number of parents who would be eligible for parental bereavement pay would be estimated at a ratio of 1.85 per child death (equating to 416 parents). This is instead of a ratio of 1.69 (equating to 380 parents). Even with maximum uptake and the assumption that these parents earn enough per week to hit the £150.20 threshold, payments to 36 additional parents would be approximately £11,000. The DfE official further stated to the Committee for the Economy:<sup>129</sup>

*If we did not maintain parity with GB in this regard, there would be a one-off fee from HMRC of £180,000. Because of the very small number of parents who would suffer this loss outside the qualification period, it would be economically unviable to pay that; it would not be value for money for public funds.*

And in relation to the £180,000, the DfE official further explained:

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<sup>126</sup> <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf> page 2

<sup>127</sup> [Minutes Of Evidence Report \(niassembly.gov.uk\)](#)

<sup>128</sup> [The Parental Bereavement Leave Regulations 2020 \(legislation.gov.uk\)](#) page 10

<sup>129</sup> [Minutes Of Evidence Report \(niassembly.gov.uk\)](#)

*HMRC would be required to make changes. There are three or four different forms with regard to parental bereavement leave and pay. HMRC would have to make changes to those forms on the gov.uk platform. The £180,000 is related directly to the costs associated with that.*

It was noted by the official that parents who could not meet the qualification period criteria for the proposed PBP, they could avail of the DfC's existing discretionary support scheme, assuming its criteria is met.

**With regard to other costs, the following issues arise:**

65. Did the DfE consider how many parents would be ineligible under the PBLP Scheme, and instead would be eligible under the DfC Scheme?
66. How many would not be eligible under either scheme?
67. What are the costs associated with the additional payments that the DfC would be making?
68. Would parents be eligible to the same monetary award under the DfC Scheme as those who are receiving the PBP?
69. Are there any costs associated with updating the administration of the existing DfC Scheme? For example, recruitment of new staff members (if required); training of existing staff; expansion of current job roles to include new duties; and, costs associated with updating the terms of the scheme (if required)?

## 6 Concluding Remarks

The PBLP Bill, as introduced, contains provisions that empower the DfE to introduce regulations creating a right for employed parents to be absent from work for a prescribed period (with at least 2 weeks leave to be set as the minimum entitlement), following the death of their child. All employed bereaved parents who meet the eligibility conditions, regardless of how long they have worked for their employers, are to be entitled to this leave.<sup>130</sup>

The introduced Bill also contains a right for eligible parents meeting the minimum specified continuity of employment requirements to receive a fixed or earnings-related weekly rate of pay (the rate is to be prescribed by regulations). In line with other entitlements to paid statutory leave in NI such as maternity leave and pay, the PBLP Bill also specifies that employers would reclaim payments from the Government *via* the HMRC.

Parents taking parental bereavement leave would have the same employment protections as those associated with other forms of family-related leave (i.e. maternity, paternity, adoption, parental and shared parental leave), if enacted as proposed. Those protections include protection from dismissal or detriment as a result of having to take such leave.

The DfE in its public consultation have expressed a desire that employees in NI are afforded the same entitlements to PBLP as their fellow citizens throughout the rest of the UK. And accordingly, the provisions in the PBLP Bill outlined above, mirror those already in place in GB under the Westminster Parental Bereavement (Leave and Pay) Act 2018. However, during the PBLP Bill's Second Stage in the Assembly, some Members expressed a view that the entitlements to PBLP in NI should go beyond those currently available in GB. For example, widening the scope of the PBLP Bill to include miscarriages and/or extending statutory PBL entitlement to workers, not just employees.

However, it would appear that if NI extended entitlements to PBLP beyond those currently available in GB -i.e. departed from parity – then some of that departure in public finance terms, would need to be paid by out of the Executive Budget, using Block Grant monies, presenting public finance considerations meriting Assembly attention as explained in Section 5.3 above.

Statutory bereavement leave and pay arrangements for working parents can be found outside NI and GB. Most notably New Zealand has recently legislated to include provisions relating to miscarriage into its, already existing, statutory bereavement leave and pay entitlements. In addition, various jurisdictions have statutory leave and pay

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<sup>130</sup> DfE (2021) *Parental Bereavement (Leave and Pay) Bill: Explanatory and Financial Memorandum*:

<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2017-2022/parental-bereavement/parental-bereavement-leave-and-pay-bill---efm---as-introduced.pdf>

entitlement for working families that go beyond the provisions in the PBLP Bill (as evidenced in the OECD family database survey). Although not directly related to bereavement leave, various leave and pay entitlements in OECD countries for working parents and families include a broad definition of the term “parent”. In Norway paid leave is offered to care for terminally ill family members or a person with “close ties”. In Sweden, paid leave is offered to care for a seriously ill family member or “other closely related person”. This is notable here as the accepted definition of a “parent” in the GB legislation is perhaps out of date and does not account for the growing number of working individuals within “non-traditional” family arrangements in NI.

As stated above, when legislating in this area, the importance of definitional clarity is essential and eligibility issues in relation to other bereavement benefits have been raised at recent judicial review cases. This is perhaps particularly relevant with regard to potential impacts under Section 75 of the Northern Ireland Act 1998 131 in relation to race/religion and gender. If the introduced Bill is enacted, the Assembly then would need to ensure that future regulations brought forward under it are broad enough in scope not to discriminate against certain religious observances on the death of a child as some religions require a set time for mourning. Equally, regulations would need to be cognisant that some women in the NI labour market may be unable to avail of unpaid leave due to additional caring and financial responsibilities.

The estimated one-off costs, to business arising from the provisions in the PBLP Bill if enacted, are estimated at £279K. For the Executive, one-off costs, post enactment are estimated at £73K. Recurring annual costs for business are estimated at £85k and for Government recurring annual costs are estimated at £100k. However, the assumptions and the associated methodology underpinning these cost estimations are based on those taken from the 2018 GB PBLP Impact Assessment. Consideration of NI only datasets potentially would provide more robust and accurate estimations when determining the one-off and recurring costs to business and the public purse following enactment of the PBLB Bill and related regulations.

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<sup>131</sup> <https://www.legislation.gov.uk/ukpga/1998/47/contents>