

From the Office of the Minister
Gordon Lyons MLA



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Dear Caoimhe

Parental Bereavement Leave and Pay Bill

I am writing to you and the Committee in relation to the Parental Bereavement Leave and Pay Bill that the Committee is presently scrutinising.

I have followed with interest the debate during 2nd reading and the Committee deliberations thus far and would wish to put on record my thanks to the Committee for the continued priority and interest that it has shown towards the Bill.

Departmental officials have now completed their response to the issues identified in the RaSe report and they have also provided me with further detailed analysis around some of the issues that have been raised by the Committee and Assembly members over recent months.

Without prejudice to the Committee and its continuing scrutiny of the Bill, I thought that it would be helpful at this point to open a dialogue with you in order to share the further analysis that I have received, the potential impact this could have on the Bill and agree an approach to the wider issues that the Committee and others have raised.

As you will appreciate, the policy intent behind introducing the Parental Bereavement Leave and Pay Bill was to ensure that employees and workers in Northern Ireland are afforded the same rights and protections as those afforded to employees and workers in Great Britain, following the introduction of paid parental bereavement leave there in April 2020.

To that end, the Parental Bereavement Leave and Pay Bill that you are presently scrutinising was purposefully single focused in order to achieve that aim within the current mandate and in the hope that it could become operational by April 2022.

Whilst many issues have been raised by the Committee, Assembly members and stakeholders, I believe that the two issues that have attracted greatest attention from

the Committee and members alike, concern the subjects of miscarriage and day 1 rights to pay. A further issue that also appears to have attracted attention is the ability to take parental bereavement leave in single days rather than the proposed week long blocks.

Due to the significance attached to these three issues during the 2nd reading debate and ongoing Committee scrutiny, Departmental officials have obtained detailed costings from HMRC. Whilst it ultimately remains for the Assembly to determine its support or otherwise for the Bill, were the Bill to be amended to reflect any or all of the above, the effect would be the same, namely it would not be possible to make provision for parental bereavement leave and pay in this mandate, with the most likely introduction date for secondary legislation being April 2023.

The reason for a delay to enacting the Bill would be twofold. Firstly, the additional cost of any of these amendments would be such a significant increase to the costs originally presented to the Executive that it is possible that the Bill may need to be referred back for further Executive consideration and approval. Whilst we would of course endeavour to secure the necessary Executive consideration for an amended Bill, there is no guarantee that this consideration could in fact be secured in a timely enough manner to return the Bill for further scrutiny and secure Royal Assent within the timeframe necessary to facilitate the hoped for April 2022 introduction date.

Secondly, Departmental officials have been advised by HMRC that in order to make the requisite changes to reflect and accommodate the above amendments, system development lead-in times and other considerations (such as payroll software development) would render an April 2022 introduction date impossible. The earliest introduction date identified by HMRC following any of the amendments, would be April 2023. I am sure that you would share my frustration and reluctance to countenance a delay of the introduction of parental bereavement leave and pay until this time.

I would suggest that the issues of miscarriage and day 1 rights for pay could be included within a wider Departmental review of the employment law framework in Northern Ireland. These are significant and complex issues, deserving of the same sensitivity and due consideration as that which has already been afforded to this Bill. By committing to their inclusion within a wider employment law framework review, we can help to ensure continued passage of this Bill without undue delay. As was highlighted at your Committee meeting of 15 September, the Parental Bereavement Leave and Pay Bill could be considered a foundational Bill upon which future parental bereavement entitlements and protections could be built, if so desired.

Departmental officials sought detailed costings from HMRC in consideration of potential amendments to the Bill which could bring paid miscarriage leave within scope and change the 26 week qualifying period for the pay element to a day 1 entitlement. Costings were also sought in consideration of amending the taking of leave from 1 week blocks to single days. It should be noted that, given at this stage these costings are speculative, HMRC has been clear to indicate that further, revised costings would need to be provided should any of these amendments be included in the Bill.

One-off costs for system preparation and maintenance to accommodate the inclusion of miscarriage and/or a day 1 entitlement to pay within the Bill have been estimated by HMRC as £1,530,000. The one-off costs for amending the taking of leave to

single days has been estimated as costing £2,820,000. All three amendments together would also cost £2,820,000. These figures only include the one-off costs payable to HMRC. There would also be additional yearly cost implications for the actual ongoing payment of miscarriage leave.

An earlier estimation, at policy development stage, from HMRC had attached a £180,000 cost to accommodating a day 1 entitlement to pay. The substantial increase in the most recent estimated cost has followed from a more in-depth assessment by the HMRC impacting team and includes five years support and maintenance of the system.

Whilst sharing my frustration at not being able to accommodate single day leave and pay, I am confident that the Committee will also share my particular reticence to committing close to £3 million in order to secure the ability to take parental bereavement leave and pay in single days rather than week long blocks; hence my reasoning for not proposing to include such a change within a Departmental review of the Northern Ireland employment law framework. This also takes me back to the point that this Bill provides a statutory minimum entitlement for employers and workers: I would encourage all employers, as many already do, to seek to accommodate by other means requests for individual days off in the circumstances highlighted in the consultation responses.

Departmental officials are in front of the Committee on 06 October and will be able to furnish you with further detail around the overall costs of potential amendments to the Bill.

It is obvious that we all share the same desire to see at least the same level of support for working parents introduced here as has been the case for working parents in GB since April 2020 and that we are all conscious of the very real risk that any delay to the passage of the Bill could have for the provision of support for bereaved parents.

Departmental officials remain at your disposal as you continue your scrutiny of the Bill and I look forward to the Committee's thoughts around the inclusion of miscarriage and day 1 rights to pay within a wider Departmental review of the employment law framework.

Yours sincerely,



GORDON LYONS MLA
Minister for the Economy

Parental Bereavement Leave and Pay Bill – Further Committee Queries		
1 - Definition to be wide as possible to ensure inclusion of those with a relationship to a child	DfE to provide further comment	DfE to advise on detail to support articles/regulations
<p>a) - Should include primary carers, step-parents, foster parents, adoptive parents and kinship carers.</p> <p>b) - Custody arrangements of parents should not impact entitlement.</p> <p>c) - Should take into account that some parents will be non-resident and that this should not impact on entitlement.</p> <p>d) - Extension beyond 18 years; citing disability and or illness; other existing legislation differentiates between young people aged under and over 25 in terms of income-related benefits and support.</p>	<p>a) - There will not be a specific definition of a “bereaved parent” within the regulations to be introduced under the PBLP Bill. Rather, we intend to broadly define the entitlement to Parental Bereavement Leave and Pay. Accordingly, in addition to the parents of the child, entitlement will be conferred upon step-parents, foster parents, adoptive parents and kinship carers.</p> <p>b) - The custody arrangements of parents will not impact upon entitlement.</p> <p>c) – Parents who do not share residency with a child will be entitled to PBLP.</p> <p>d) – The focus of the PBLP Bill has been to confer equal entitlement to PBLP on working parents as that afforded to working parents in GB. As such the Bill makes provision for bereaved parents of children under the age of 18. The Department has not examined an extension of the provision to encompass older children with a disability or illness.</p>	<p>Clause 1 of the Bill amends Part 9 of the Employment Rights (Northern Ireland) Order 1996 by inserting a new Chapter 4, consisting of Articles 112EA to 112EE, which will result in the provision of an entitlement to parental bereavement leave.</p> <p>Article 112EA requires the Department to make regulations to give an entitlement to employed parents to time off work following the death of a child. It provides for the conditions of entitlement to be defined in regulations by reference to the employee’s relationship with the child who has died, including by reference to caring for the child prior to the child’s death.</p>
2 – Consideration of Miscarriage		
<p>a) - There was a commonly held view that there should be provision for the loss of any child before birth prior to 24 weeks. The NI Human Rights Commission highlighted</p>	<p>a) - From the outset, the focus of the PBLP Bill has been to mirror the same PBLP provisions that have been afforded in GB since April 2020. For the purpose of maintaining this focus,</p>	<p>There is no power within the Bill to extend the provision of PBLP to include miscarriage.</p>

legislation introduced in New Zealand to include miscarriage.

miscarriage was considered as lying outside of the scope of any potential PBLP legislation. However, there has been an increasing awareness amongst policy officials of the significance of miscarriage in the discourse surrounding the PBLP Bill and this awareness grew following the second reading debate and engagement with the committee.

Therefore a detailed exploration into extending the PBLP regulations, to include provision for miscarriage, has been undertaken. IT changes required by HMRC have been estimated at circa £1.53m. This change would also make the anticipated introduction date of April 2022 impossible. The recurring resource costs for government would also be significantly higher than planned for under the current draft of the Bill. Depending on rate of uptake, extent of entitlement and number of miscarriages in NI each year we have estimated this increase to be in a range between £490,000 and £3m per year.

It has subsequently been determined that the impact of including a miscarriage provision or power within the PBLP Bill, would involve a significant departure from the original policy intent in terms of scope and costs and that it would not be possible to give it legislative effect by April 2022, thus delaying the introduction of PBLP.

	<p>The Minister has now determined that the issue of miscarriage should be explored in greater detail by the Department and that it should be included within the scope of a future wider review of employment law in Northern Ireland.</p> <p>The Committee should note that all costs received from HMRC thus far have been provided with the caveat that: they are very high-level estimates given that the requirements are at an early stage.</p>	
3 - Extension of rights to all workers		
a) - Whilst recognised as being outside the scope of the Bill, there is no such legislative provision for those impacted by the death of a close relative or partner.	a) – Wider legislative provision for those impacted by the death of a close relative or partner has not been the subject of recent Departmental consideration.	There is no power within the Bill to extend the provision of PBLP to include those impacted by the death of a close relative or partner.
4 - 2 weeks provision		
<p>a) - Many felt 2 weeks was inadequate, given the circumstances of the loss of a child were especially distressing. 6-8 weeks was suggested.</p> <p>b) - Concerns raised by Trade Unions that neither sick leave, nor annual leave, should have to compensate; highlighted the impact on both the employee and employer of returning to work too soon.</p>	<p>a) – This PBLP Bill, introducing 2 weeks entitlement to PBLP, will provide a statutory minimum level of support for working parents who experience the loss of a child. Many employers offer greater levels of provision and support for their staff beyond the statutory minimum and all employers are encouraged to do likewise.</p> <p>b) - Whilst it is for each individual to decide if they are fit to return to work following a bereavement, good employers will offer ongoing support and flexibility at what will be an undoubtedly difficult time.</p> <p>If, following a bereavement, an employee or worker find</p>	<p>Article 112EA sets out that Regulations must set the duration of leave and that the leave entitlement must be a period of at least 2 weeks; and the regulations must establish a period within which the leave may be taken, which must extend to at least 56 days after the child's death.</p>

	<p>themselves needing to take sick absence, they are entitled to the same levels of statutory and contractual levels of sick pay and support that they are normally entitled to.</p>	
5 - Blocks in one or two weeks		
<p>a) - Strong views expressed, including from individuals, women's groups that leave should be flexible, with options to take single days. This would be practically problematic for small businesses; the FSB favours blocks in one or two weeks.</p>	<p>a) – Changing the Bill to allow employees to take their leave in units of days as opposed to weeks would require HMRC to create a new Parental Bereavement Pay calculator within the Basic PAYE tool, in addition to other IT changes. HMRC has indicated that the cost of this potential amendment would be circa £2.82m. It would also make an introduction date of April 2022 impossible.</p> <p>Whilst there would undoubtedly be benefits to taking PBLP in single days, the costs for enabling this are disproportionate. The PBLP entitlement is intended to be a statutory minimum, and employers will be encouraged to be compassionate in considering requests for single additional days of leave to cover the types of purpose highlighted in consultation responses.</p>	<p>Article 112EA sets out that Regulations must set the duration of leave and that the leave entitlement must be a period of at least 2 weeks.</p>
6 - 56 week's period		
<p>a) - The 56 weeks' window in which to take leave was widely welcomed, there is expectation that this will follow through in legislation without delay.</p> <p>b) - The 56 weeks is accepted as a minimum but some suggest no time limit to acknowledge that grief can re-emerge and in order that leave can be taken around events such as anniversaries.</p>	<p>a) – The 56 week window in which to take leave will be legislated for.</p> <p>b) - Having no time limit would be difficult to legislate for and would also be difficult for employers to administer.</p> <p>Whilst it is for each individual to decide if they are fit to</p>	<p>Article 112EA sets out that Regulations must establish a period within which the leave may be taken, which must extend to at least 56 days after the child's death.</p>

	return to work following a bereavement, good employers will offer continued support and flexibility at what will be an undoubtedly difficult time.	
7 - Rate of pay		
a) - Suggestion that bereavement leave to be paid at the full rate of pay or should be at earnings-related rates highlighting that the low rate of pay may be a barrier to taking the leave.	a) – This PBLP Bill, introducing 2 weeks entitlement to PBLP, will provide a statutory minimum level of support for working parents who experience the loss of a child. Many employers offer greater levels of provision and support for their staff beyond the statutory minimum and all employers are encouraged to do likewise.	Clause 2 of the Bill adds Part 12ZD (containing sections 167ZZ9 to 167ZZ18) to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to create an entitlement to parental bereavement pay. Section 167ZZ12 provides for the rate of statutory parental bereavement pay to be prescribed by the Department.
8 – Notice period		
a) - Strong and widely held views, including from Unions, that notice periods should not be required, especially after the sudden death of a child, also at a later period as grief is often spontaneous and cannot be planned. The FSB does not consider notice should be required in the aftermath of a death of a child; smaller employers need notice for leave at a later date for workforce planning.	a) - Notice to take PBL must be given to an employer prior to the taking of the leave. However it is understood that this may not always be possible. Accordingly, during the first 56 days following the death of a child, notice to take PBL would not be required in a case where it is not reasonably practicable for the employee to give that notice. In such a case, notice must be given as soon as is reasonably practicable. After 56 days following the death of a child, notice must be given one week in advance of taking leave. We believe that this achieves a balance between the needs of bereaved parents and employers.	Article 112EA sets out that regulations may make provision about the notice period to be given.
9 - Day-1 right		
a) - Strong consensus that pay should be a Day 1 right and with no qualification period. The impact on those in the	a) – From the outset, the focus of the PBLP Bill has been to mirror the same PBLP provisions that have been	Clause 2 of the Bill adds Part 12ZD (containing sections 167ZZ9 to 167ZZ18) to the Social Security Contributions

<p>'gig' economy, also zero hour contracts was voiced, also on women in particular, and the human rights aspect to this.</p>	<p>afforded in GB since April 2020.</p> <p>Despite this fact, the Department did explore the practicalities of making pay a Day 1 right but, following receipt of an early cost estimate from HMRC of £180,000, it was decided that this cost was above what would be commensurate with the number of additional persons that the change would benefit.</p> <p>However, due to the attention that was brought to the issue at 2nd reading and during Committee scrutiny, a further, detailed exploration into extending the PBLP regulations to include provision for a Day 1 right was undertaken. Following this more detailed exploration, HMRC costs for making this change have increased significantly, now estimated at circa £1.53m. It would also not be possible to introduce the new employment right in April 2022.</p> <p>The Minister has now indicated that the wider issue of 'Day 1' rights should be explored in greater detail by the Department and that this should be included within the scope of a future wider review of employment law in Northern Ireland.</p> <p>In an effort to mitigate against this decision we have engaged with our Department for Communities (DfC) colleagues to ascertain what welfare support is available for the small number of parents who</p>	<p>and Benefits (Northern Ireland) Act 1992 to create an entitlement to parental bereavement pay.</p> <p>Section 167ZZ9 sets out the conditions of entitlement to statutory parental bereavement pay which includes a 26 week qualifying period.</p>
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<p>b) - NIHRC recommends that the Department carries out a human rights impact assessment to consider any interference with Article 8 and Article 14 ECHR, as well as compliance with international human rights standards and recommendations of the UN ICESCR and UN CEDAW Committees as referenced in the Human Rights Act.</p>	<p>would not meet the qualifying period for PBP. DfC provides a discretionary support scheme for situations such as these and, providing the wider conditions of the discretionary support scheme are met, this scheme could provide a safety net for bereaved parents who cannot avail of the SBP entitlement.</p> <p>b) - The Department did not carry out a separate Human Rights Impact Assessment on the Bill. However an Equality Screening of the Bill was carried out in line with section 75 of the Northern Ireland Act. A Regulatory Impact Assessment and Rural Needs Impact Assessment were also carried out. The screening exercises did not identify any indicators that the policy would disproportionately impact on any of the Section 75 categories.</p> <p>In addition and as per normal procedure, in order to ensure that the Bill was within the legislative competence of the Northern Ireland Assembly, the Department did assess the Bill on whether it was in line with Section 6(1) of the Northern Ireland Act 1998. Each clause of the Bill was scrutinised within the framework of this section: this includes an assessment of whether or not a provision within the Bill is ultra vires in terms of compatibility with the European Convention on Human Rights. The Bill was found to be within the legislative competence of the Northern Ireland Assembly.</p>	
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	<p>It is for the above reasons that the Department did not deem it necessary to complete a separate Human Rights Impact Assessment on the Bill. This conforms to the joint NICS and NIHRC guidance that a Human Rights Impact Assessment is only required if this initial screening exercise indicates that the policy could engage any of the rights in the Human Rights Act.</p> <p>The Department has noted the Northern Ireland Human Rights Commission's suggestion that the Department should conduct a human rights impact assessment to consider any interference with Article 8 and Article 14 of the ECHR. Subject to Assembly approval of the Bill, the Department will consider this suggestion when advancing to the next stage of operationalising the policy, if required.</p>	
<p>10 - Inclusion of Self-employed</p>		
<p>a) - The FSB advocates for Day 1 rights; also that the provisions of the Bill be extended to those who are self-employed. Suggest that some parents may have deliberately chosen the flexibility of self-employment to enable them to care for a child with a long-term sickness or disability.</p>	<p>a) - From the outset, the focus of the PBLP Bill has been to mirror the same PBLP provisions that have been afforded in GB since April 2020. Extending employment rights to those in self-employment has not been considered.</p>	<p>There is no power within the Bill to extend the provision of PBLP to include the self-employed.</p>
<p>11 – Evidence requirements</p>		
<p>a) - There was a universal view that this must be sensitively handled, must be minimum bureaucracy. There were strong views from individuals that a death occurring was evidence in itself.</p>	<p>a) – In recognition of the particularly sensitive nature of parental bereavement, evidential and administrative requirements have both been kept to an absolute minimum.</p>	<p>Article 112EA sets out that the Department must make regulations entitling an employee who is a bereaved parent to be absent from work on leave and Article 112ED provides for the regulations to</p>

	<p>Evidence of entitlement for both leave and pay will be by self-declaration.</p> <p>Employees and workers must ask their employer in writing to receive parental bereavement pay. They must confirm:</p> <ul style="list-style-type: none"> • their name • their entitlement to Statutory Parental Bereavement Pay • the start and end dates of the leave they want to claim the pay for • the date of their child's death • their relationship with the child 	<p>include detail of the evidence required to take PBLP.</p>
12 - NIHRC Recommendations		
<p>a) - The NIHRC recommended that the Department develop guidance for employers when the Bill becomes legislation.</p> <p>b) - The NIHRC recommended that the Department should continue to monitor any developments in EU law relating to the Bill and resulting Regulations to ensure compliance with Article 2 of the Ireland/Northern Ireland Protocol.</p> <p>c) - The NIHRC recommended that the Department conduct a human rights impact assessment to consider any interference with Article 8</p>	<p>a) - The Department will develop guidance for employers and will publish this directly on NIDirect and NIBusinessinfo. Other organisations such as the LRA, Legal Island and CIPD are also likely to publicise their own guidance material.</p> <p>b) - The Department routinely monitors developments in EU law and elsewhere and will follow this NIHRC recommendation.</p> <p>c) – Response is as per 9 (b).</p>	

<p>and Article 14 ECHR. As well as compliance with international human rights standards and recommendations of the UN ICESCR and UN CEDAW Committees as referenced in the Human Rights Act.</p> <p>d) - The Commission recommends the Committee consider other countries' approach to parental bereavement leave, particularly in relation to miscarriage and stillbirth, including New Zealand's inclusion of bereavement through miscarriage, as well as relevant civil society organisations' recommendations on the inclusion of miscarriage within parental bereavement leave.</p>	<p>d) – The Bill as drafted includes provision for those parents who suffer a still birth. From the outset, the focus of the PBLP Bill has been to mirror the same PBLP provisions that have been afforded in GB since April 2020. For the purpose of maintaining this focus, miscarriage was considered as lying outside of the scope of any potential PBLP legislation. However, there has been an increasing awareness amongst policy officials of the significance of miscarriage in the discourse surrounding the PBLP Bill and this awareness grew following the second reading debate and engagement with the committee.</p> <p>Therefore a detailed exploration into extending the PBLP regulations, to include provision for miscarriage, has been undertaken. IT changes required by HMRC have been estimated at circa £1.53m. This change would also make the anticipated introduction date of April 2022 impossible. The recurring resource costs for government would also be significantly higher than planned for under the current draft of the Bill.</p> <p>It has subsequently been determined that the impact of including a miscarriage</p>	
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	<p>provision or power within the PBLP Bill, would involve a significant departure from the original policy intent in terms of scope and costs and that it would not be possible to give it legislative effect by April 2022, thus delaying the introduction of PBLP.</p> <p>The Minister has now determined that the issue of miscarriage should be explored in greater detail by the Department and that it should be included within the scope of a future wider review of employment law in Northern Ireland.</p>	
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Department for the Economy – RalSe Q & A response document – Parental Bereavement Leave and Pay Bill

<p>Q1 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?</p>	<p>We do not believe that there is a risk of potential challenge arising for either DfE or DfC in the circumstances described. The commencement power conferred upon DfC is simply a mechanism which will enable DfC to commence the relevant outstanding PBLP provisions at the same time that they wish to commence the relevant outstanding Welfare Reform (Northern Ireland) Order 2015 provisions.</p>
<p>Q2 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?</p>	<p>The two options considered by DfE were to include a transitional provision or not. The rationale behind the inclusion of a transitional provision power was to attempt to support parents who may suffer a bereavement in the 12 month period preceding the anticipated introduction date of 06 April 2022.</p> <p>We hoped to be able to facilitate (should a bereaved parent wish to avail of it) the taking of Parental Bereavement Leave and Pay within the proposed 56 week reference period, whilst at the same time ensuring that it is taken after the anticipated introduction date for PBLP of 6 April 2022.</p> <p>Due to the fact that this is primarily a DfE Bill, DfC were not part of the Transitional Power clause consideration. DfC’s involvement with the PBLP Bill was limited to the commencement power for those provisions related to the outstanding Welfare Reform (Northern Ireland) Order 2015.</p> <p>The only other option was to not provide a transitional power at all (as is the norm with family related employment rights) and introduce the new right at 6 April 2022 with no consideration or provision for parents who had lost a child in the preceding year to the right coming into force.</p>
<p>Q3 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?</p>	<p>There will not be a specific definition of a “bereaved parent” within the regulations to be introduced under the PBLP Bill. Rather, we intend to broadly define the entitlement to Parental Bereavement Leave and Pay. Accordingly, in addition to the parents of the child, entitlement will be conferred upon others in certain circumstances. For example, partners of parents who live with the child and the parent in an enduring family relationship. The regulations will also encompass circumstances in which a child has been adopted or placed for adoption.</p> <p>There are a number of other circumstances in which entitlement to PBLP will be conferred, with the broadest scope for entitlement being known as the child’s “parent in fact”. This will confer entitlement to any person who, for a continuous period of at least four weeks ending with the day on which a child dies, lived with the child and had day to day responsibility for the child’s care. The only caveat being, that the child was in the care of the “parent in fact” in premises in which no actual parent of the child, or any other person who had responsibility for the child was living.</p>

Department for the Economy – RaiSe Q & A response document – Parental Bereavement Leave and Pay Bill

<p>Q4 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?</p>	<p>The primary focus for the PBLP Bill is to make provision for bereaved parents. We are confident that our broad definition of entitlement will ensure that bereaved parents and those with “parental responsibility” for a child, regardless of specific family arrangements, will qualify for PBLP.</p>
<p>Q5 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.</p>	<p>Only sums payable to an employee by way of wages or salary will be treated as remuneration within the regulations. Accordingly, examples of what should not be treated as remuneration include: travel expenses, uniform expenses, healthcare costs and weighting allowances.</p>
<p>Q6 Does the DfE intend that the regulations will treat dismissal as “unfair” under Part XI of the Employment Rights (Northern Ireland) Order 1996, if the reason for the leave taken was connected to the employee taking or seeking to take PBL?</p>	<p>We intend for the regulations to treat a dismissal as unfair, if it is shown that the reason or principal reason for which an employee is dismissed is due to the employee taking, seeking to take, or making use of the benefits of parental bereavement leave or if the employer believed that the employee was likely to take parental bereavement leave.</p>
<p>Q7 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?</p>	<p>The regulations will bring PBLP within scope of the Industrial Tribunal jurisdiction. The consequences for an employer who failed to comply with the regulations would be subject to a determination at an Industrial Tribunal and the remedy (outcome) in such a Tribunal case would be for an Employment Judge to decide based upon the particulars of any given case. This will be in keeping with the consequences for failing to comply with other family related employment regulations. Accordingly, the regulations will not include a “financial penalty” or similar due to the pre-eminence given to Industrial Tribunals for employment dispute resolution in Northern Ireland.</p>
<p>Q8 Can the DfE give illustrative examples of how calculations for a week’s pay can be modified?</p>	<p>Under Chapter 4 of Part 1 of the Employment Rights (Northern Ireland) Order 1996, the amount of a week’s pay of an employee is calculated by reference to the average rate or amount of remuneration payable to an employee in respect of a period of 12 weeks ending on the calculation date. The PBLP regulations will ensure that if the amount of remuneration received by an employee in any given week during the 12 week reference period is less than the amount the employee would have received had the employee not been on Parental Bereavement Leave, then that week must be disregarded for the purpose of the calculation and account should be taken of remuneration in earlier weeks.</p>
<p>Q9 What consideration has the DfE given to extending the regulations to include provision for miscarriages? Please detail.</p>	<p>From the outset, the focus of the PBLP Bill has been to mirror the same PBLP provisions that have been afforded in GB since April 2020. For the purpose of maintaining this focus, miscarriage was considered as lying outside of the scope of any potential PBLP legislation.</p>

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	<p>However, there has been an increasing awareness amongst policy officials of the significance of miscarriage in the discourse surrounding the PBLP Bill and this awareness grew following the second reading debate and engagement with the committee.</p> <p>Therefore a detailed exploration into extending the PBLP regulations, to include provision for miscarriage, has been undertaken.</p> <p>It has subsequently been determined that the impact of including a miscarriage provision or power within the PBLP Bill, would involve a significant departure from the original policy intent in terms of scope and costs and that it would not be possible to give it legislative effect by April 2022, thus delaying the introduction of PBLP on the anticipated and likely introduction date.</p> <p>The Minister has now determined that the issue of miscarriage should be explored in greater detail by the Department and that it should be included within the scope of a future wider review of employment law in Northern Ireland.</p>
<p>Q10 Will the DfE share its rationale for not extending the leave and pay entitlements in the PBLP Bill to parents suffering a miscarriage?</p>	<p>Due to the limited amount of time left in the current mandate following the re-instatement of devolution in January 2020, decisions were made based on what could or could not be achieved in that timeframe. The rationale for not extending the leave and pay entitlements in the PBLP Bill to parents who suffer a miscarriage was due to the wish to mirror the PBLP provisions introduced in GB in April 2020. The Minister has written separately to the committee detailing his thoughts on the matter and has expressed his wish that the issue of miscarriage should be explored in greater detail by the Department and be included within the scope of a wider review of employment law in Northern Ireland in the next mandate.</p>
<p>Q11 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?</p>	<p>With the introduction of PBP in NI, an intention was to ensure that NI employees were afforded the same entitlement to PBP as that afforded to employees in the rest of the UK. All employment related family statutory payments are the same across NI and GB.</p> <p>Wage disparity between NI and GB and the conditions of the NI labour market are issues that may warrant examination in their own right; however, these were not issues that were researched as part of the development of the PBLP Bill.</p>
<p>Q12 Did the DfE’s estimations take into account the differences between the average wage levels in GB and NI?</p>	<p>Our estimations did not take into account any differences between average wage levels in GB and NI.</p>
<p>Q13 In the DfE’s view, when would notice to take PBL not be required?</p>	<p>Notice to take PBL must be given to an employer prior to the taking of the leave. However it is understood that this may not always be possible. Accordingly, during the first 56 days following the death of a child, notice to take PBL would not be required in a case where it is not reasonably</p>

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	practicable for the employee to give that notice. In such a case, notice must be given as soon as is reasonably practicable.
Q14 Please provide illustrative examples of “specified circumstances”.	The “specified circumstances” refer to any circumstance within the first 56 days following the death of a child, where it has not been reasonably practicable for an employee to give notice of intention to take PBL or PBP prior to actually taking it.
Q15 In the DfE’s view, when would “circumstances for other employees in which employment is to be treated as continuous”? Please provide illustrative examples.	An example of such a circumstance includes; a period where a person does not work for any week or part of a week because there is a stoppage of work at that person’s place of employment due to a trade dispute. A further example would involve an employee who has been reinstated with an employer following service with the armed forces.
Q16 In the DfE’s view, what types of payments would be excluded from the calculation of earnings payment? Please specify	The types of payments which would be excluded from the calculation of earnings include a range of payments detailed in regulation 27 of and Schedule 3 to the Social Security (Contributions) Regulations 2001. Specific examples of such payments could include pension contribution payments and childcare voucher payments.
Q17 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?	With the introduction of PBP in NI, an intention was to ensure that NI employees were afforded the same entitlement to PBP as that afforded to employees in the rest of the UK. All employment related family statutory payments are currently the same across NI and GB. The NI labour market circumstances were not considered as part of the development of the PBLP Bill.
Q18 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.	The Department for the Economy is not aware of any issues or problems that have arisen in GB in relation to calculating earnings under PBLP.
Q19 How does the DfE intend to frame the regulatory evidential requirements to prove PBLP entitlement?	The regulatory evidential requirements will be framed in such a way so that evidence will not be required for exercising the right to Parental Bereavement leave. However, in order to be eligible for Parental Bereavement pay, a bereaved parent will need to provide minimal evidence in the form of a written self-declaration that he/she meets any eligibility conditions for pay, together with confirmation of the name of the person claiming, and the date of the child’s death.
Q20 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?	The Department is confident that the written self-declaration referenced in answer 19 is a minimal evidential requirement which sensitively balances the needs of bereaved parents, employers and the protection of the public purse. It is also considered to be proportionate in respect of the anticipated number of potential PBLP claimants.

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<p>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.</p>	<p>The Department for the Economy does not perform any role in the administration of the statutory payments for employees/workers. Statutory payments are made, in most cases, by the employer. Employers then, in turn, would notify and confirm to HMRC that they have made a statutory payment - this will then have the follow on effect of reducing that employer’s NICs bill for the period, in so far as the percentage of the statutory payment that they have paid (92% for larger businesses and 103% for smaller businesses in terms of NICs payments).</p>
<p>22. What resource implications would arise for the DfE from PBP administration, for example increased staff and/ or administration costs?</p>	<p>The Department for the Economy does not anticipate any resource implication arising from PBP administration. Statutory payments are currently paid by employers who can then claim back an allocated percentage of the costs through the NICs system as provided for by HMRC at a UK wide level.</p>
<p>23. How does the DfE intend to define the process for employers to reclaim PBP?</p>	<p>PBP will be reclaimed in the same way as other statutory payments are reclaimed, through a system administered by HMRC. The process by which employers will reclaim PBP will be defined by HMRC.</p>
<p>24. Could the DfE provide illustrative examples of “further circumstances in which an employer is not required to pay statutory PBP”?</p>	<p>Examples of “further circumstances in which an employer is not required to pay statutory PBP” include circumstances in which a person has been in receipt of statutory sick pay and circumstances in which a person has been detained in legal custody during any part of a week for which PBP has been claimed.</p>
<p>25. Could the DfE provide clarity regarding the disparity between the Minister’s statements and the PBLP Bill to the 56 days?</p>	<p>Through amending the Employment Rights (Northern Ireland) Order 1996, the PBLP Bill compels the Department for the Economy to set out in regulations provision that PBLP must be taken “before the end of a period of at least 56 days beginning with the date of the child’s death”. This means that whilst the Department must legislate for a minimum period of 56 days during which PBLP can be taken – it can also legislate for a period of a longer duration during which PBLP can be taken. There has not been any disparity between what is contained within the Bill and the Ministers intention to set the period at 56 weeks.</p>
<p>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?</p>	<p>Advice and guidance related to the implementation of the Parental Bereavement Leave and Pay Policy will be provided to Employers, Workers and Employees via the NI Direct, the NI Business Info and the Labour Relations Agency websites. The Labour Relations Agency will also be able to provide advice and guidance to employees and employers directly via their dedicated employment helpline. The Department will also engage with a range of stakeholders such as Legal Island, with the intention of reaching and educating a wide range of businesses and HR professionals.</p>
<p>27. Can the DfE provide illustrative examples of what types of payments would be regarded (or not regarded)</p>	<p>Examples of payments that would be regarded as contractual remuneration under PBLP legislation include payments such as normal pay, sick pay and Maternity pay.</p>

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<p>as contractual remuneration under the PBLP legislation, if enacted as introduced?</p>	
<p>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?</p>	<p>There is a well-rehearsed procedure through which the Department can secure the “concurrence of the treasury” should it decide to extend PBP to specified groups. Departmental officials would liaise with Treasury officials in advance in order to secure the necessary concurrence and agree the timing of such concurrence for legislative purposes.</p>
<p>29. In relation to the DfE definition of “” [sic] and the eligibility criteria under the PBLP Bill, what is their juxtaposition to informal kinship care arrangements?</p>	<p>The eligibility criteria for the purposes of entitlement to Parental Bereavement Leave and Pay will be broad enough to include informal kinship care arrangements. Broadly speaking, a kinship carer would qualify as a “parent-in-fact” if, for a continuous period of at least four weeks ending with the day on which the child dies, that kinship carer lived with the child and had day to day responsibility for the child’s care.</p>
<p>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?</p>	<p>As the policy intention from the outset was to align the rights and entitlements of workers and employees in Northern Ireland to their counterparts in Great Britain in the area of Parental Bereavement Leave and pay, the Department for the Economy did not examine informal kinship care arrangements that may be specific to NI. Parental Bereavement Leave and Pay will be available to all Employees and Workers that meet the eligibility criteria in Northern Ireland.</p>
<p>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?</p>	<p>The Department for the Economy is not aware of any issues that have arisen in GB in relation to the definition and recognition of Parents within the context of the GB Statutory Parental Leave and Pay.</p>
<p>32. How does the DfE intend to frame the regulatory evidential requirements with regard to the definition and recognition of parents?</p>	<p>The regulatory evidential requirements will be framed in such a way so that evidence will not be required for exercising the right to Parental Bereavement leave. However, in order to be eligible for Parental Bereavement pay, a bereaved parent will need to provide minimal evidence in the form of a written self-declaration that he/she meets any eligibility conditions for pay, together with confirmation of the name of the person claiming, and the date of the child’s death.</p>
<p>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?</p>	<p>The Department is confident that the written self-declaration referenced in answer 32 is a minimal evidential requirement which sensitively balances the needs of bereaved parents, employers and the protection of the public purse. It is also considered to be proportionate in respect of the anticipated number of potential PBLP claimants.</p>
<p>34. What research has the DfE undertaken to examine the potential impact on families observing religious and</p>	<p>A Section 75 Equality Screening was completed for PBLP and it was determined that there would be no impact upon equality of opportunity for any person on the grounds of religious belief. Whilst the</p>

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<p>cultural practices? If so, please share its findings with the Committee for the Economy.</p>	<p>Department for the Economy did not specifically research the potential impact on families observing religious or cultural practices, the 56 week period during which it is proposed that PBLP can be taken is considered to be sufficient in length to encompass a wide range of bereaved parental needs.</p>
<p>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?</p>	<p>A Section 75 Equality Screening was completed for PBLP and it was determined that there would be no impact upon equality of opportunity for any person on the grounds of religious belief or race. The Department for the Economy did not give consideration to the specific race and religious make up of NI when considering the GB PBLP system and developing a similar system in NI.</p>
<p>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?</p>	<p>The Department for the Economy is not aware of any issues that have arisen in GB in relation to race or religious discrimination within the context of the GB Statutory Parental Leave and Pay.</p>
<p>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</p>	<p>The Department has not undertaken research on the impact of the 26 week qualifying period on low paid families in NI.</p>
<p>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?</p>	<p>A Section 75 Equality Screening was completed for PBLP and it was determined that there would be no impact upon equality of opportunity for men or women generally. The Department did not give specific consideration to a potential inequitable impact of the 26 week qualifying period on female workers.</p>
<p>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?</p>	<p>With the introduction of PBLP in NI, an intention was to ensure that NI employees were afforded the same entitlement to PBLP as that afforded to employees in the rest of the UK. All employment related family statutory payments are the same across NI and GB. The circumstances of the NI labour market is an issue that may warrant examination in its own right, however this was not an issue that was considered as part of the development of the PBLP Bill.</p>
<p>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?</p>	<p>The Department for the Economy is not aware of any issues or problems that have arisen in GB in regard to gender or socio economic impacts within the context of the GB Statutory Parental Leave and Pay.</p>
<p>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.</p>	<p>The Department for the Economy approached the development of this Bill based upon the Minister’s intention to create a Bill that would provide for the same allowances, rights and entitlements for employees and workers in Northern Ireland as that afforded to employees and workers in Great Britain. The issue of those working in the so-called “gig” economy in NI was not factored into the development of the Bill.</p>

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<p>42. How are statutory payments for employees/workers (such as maternity pay, sick pay) currently funded in NI?</p>	<p>Statutory Payments across the UK are funded through the Annually Managed Expenditure (AME) Budget; the Northern Ireland Executive is allocated the proportion of the expenditure that it is responsible for through the Government Actuary’s Department.</p>
<p>43. What is the procedure to offset these payments in public finance terms, and how will this impact on the Executive Budget?</p>	<p>The Annually Managed Expenditure Budget will take account of the introduction of PBLP in NI and the Northern Ireland Executive will be allocated the proportion of the expenditure that it is responsible for through the Government Actuary’s Department.</p>
<p>44. Will the DfE share with the Committee details of any engagement with HM Treasury in this regard?</p>	<p>There has not been a requirement for the Department to engage directly with HM Treasury in this regard. However, the Department will, with the permission of the Minister, share details of the engagement with the Department of Finance, Department for Communities, the Government Actuary’s Department and HMRC.</p>
<p>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)?</p>	<p>With the introduction of PBLP in NI, the intention was to ensure that NI employees were afforded the same entitlement to PBLP as that afforded to employees in the rest of the UK. All employment related family statutory payments are currently the same across NI and GB. As such, (i) consideration was not given to increasing the amount of PBP in NI when compared to GB. (ii) Consideration was given to the implication of bereaved parents not qualifying for PBP and a possible mitigation was identified through provision from the DfC discretionary support scheme.</p>
<p>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.</p>	<p>N/A</p>
<p>47. Is the Executive, including the DfE, satisfied that due consideration was given to each of the above?</p>	<p>At its meeting of 13 May 2020, the Executive agreed to the policy intent and detail behind the introduction of the PBLP in the Assembly.</p>

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<p>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?</p>	<p>The approximate percentage of 3.5% was arrived at as a reflection of relative population size together with an uplift from 2.8% to 3.5% in order to modestly account for then unforeseen variables connected with joining the HMRC PBLP regime at a later date. However, following engagement with HMRC and the Government Actuary’s Department (GAD), it has subsequently been determined that, the actual HMRC one-off system costs attributed as NI’s cost share if implementing PBLP in Northern Ireland on a par with GB, will in effect be zero, with the GAD indicating that the NI costs associated with Parental Bereavement Pay may be rounded to zero in the annual GAD report.</p>
<p>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?</p>	<p>Due to the relatively small sums under consideration, consideration was not given to the difference between estimated one-off and actual one-off costs which were incurred.</p>
<p>53. If the DfE did, how comparable were those actual one-off costs to the estimation?</p>	<p>n/a</p>
<p>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?</p>	<p>The Department did not identify any unique requirements/challenges/needs in NI, not GB, which could impact NI one-off implementation costs. However, following engagement with HMRC and GAD, it has been determined that the actual NI one-off implementation costs attributed as NI’s cost share if implementing PBLP in Northern Ireland, on a par with GB, will in effect be zero, with the GAD indicating that the NI costs associated with Parental Bereavement Pay may be rounded to zero in the annual GAD report.</p>
<p>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?</p>	<p>The Department is confident that the approximated 3.5% share would have provided a reliable basis with which to cover estimated one-off costs had there not been a determination that the actual NI one-off implementation costs will in effect be zero.</p>
<p>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</p>	<p>There is more recent data available, however the number of children living in a separated family has remained at around one-third of the overall total.</p>

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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?	The Department did not consider regional variations.
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%.	The Department has considered more recent data as part of its further consideration following the second stage debate, however it is considered that any difference in the number of employed parents will not have a significant impact on the out workings of the Bill.
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?	The policy aim of the Parental Bereavement (Leave and Pay) Bill is to provide a minimum level of support for workers and employees who have suffered the loss of a child or a stillbirth. It was also a policy aim that employees and workers would have the same levels of entitlement and support as their counterparts in Great Britain. Parental Bereavement Pay will be available to all Employees and Workers that meet the eligibility criteria in Northern Ireland.
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?	Due to the relatively small sums under consideration, consideration was not given to the difference between estimated recurring costs and actual recurring costs which were incurred.
61. If the DfE did consider (60) above, how comparable were those actual recurring costs to the Impact Assessment estimation compiled in 2018?	n/a
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?	These figures were not available.
63. If the DfE did consider (62) above, how comparable were the actual and estimated figures?	n/a
64. Did the above comparisons require adjustments for NI purposes?	n/a

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65. Did the DfE consider how many parents would be ineligible under the PBLP Scheme, and instead would be eligible under the DfC Scheme?	The Department for the Economy has estimated that up to 9% of bereaved parents in employment may not qualify for PBP. This is based upon the average percentage of job changers in any given year.
66. How many would not be eligible under either scheme?	The Department has not considered how many parents may not be eligible under either scheme.
67. What are the costs associated with the additional payments that the DfC would be making?	The Department of the Economy is unaware of the potential costs of payments that DfC may make in supporting those that meet the eligibility for their fund or provision.
68. Would parents be eligible to the same monetary award under the DfC Scheme as those who are receiving the PBP?	The Department for Communities would be responsible for determining the amount that a bereaved parent would be entitled to under the DfC scheme.
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)?	The Department for the Economy has not considered specific updating of the DfC scheme for PBLP purposes.

Numbers 48-50 missing: