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15 June 2020

Dear Sir/Madam

Public Consultation on Parental Bereavement Leave and Pay

Please find enclosed a copy of a public consultation document on Parental Bereavement Leave and Pay issued by the Department on 15 June 2020. The 8 week consultation will close on 10 August 2020.

The consultation document can also be viewed, and returns completed and submitted, via <https://consultations.nidirect.gov.uk/df-e-employee-relations-policy-and-legislation-1/parental-bereavement-leave-and-pay>.

Alternatively the consultation document and a response document can be viewed and downloaded from the Department for the Economy's website at <https://www.economy-ni.gov.uk/consultations/parental-bereavement-leave-and-pay>.

I understand that you will forward this consultation document to the Committee for the Economy and to the Assembly Library. I would be most grateful if this could also be included on the 'Papers Presented' list.

Yours faithfully



Kellie Spratt
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PARENTAL BEREAVEMENT LEAVE AND PAY

Public Consultation

June 2020

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Foreword

Parental bereavement and the death of a child is a truly traumatic experience. For the majority of employees in Northern Ireland who experience such a tragic loss, the support that they receive from employers is compassionate and understanding.

However, a very small number of employees who experience such tragedy also face the additional burden of an unsupportive employer failing to display even a basic level of compassion and support that most of us would simply take for granted.

Upon taking office, I was truly saddened to discover that in Northern Ireland we do not have a statutory provision that can help bereaved parents when they find themselves having to cope with such a difficult loss whilst struggling to secure even the most basic of rights from their employer.

I therefore asked my officials, as a priority, to develop employment legislation for Northern Ireland employees that will at least match the parental bereavement legislation which came into effect across the rest of the United Kingdom on 6 April 2020.

In the interests of securing these rights for employees in Northern Ireland as soon as possible, I have also asked my officials to focus this consultation exercise in order to allow Northern Ireland Parental Bereavement (Leave and Pay) legislation to progress with the minimum of delay.

Subject to Assembly approval, I envisage that parental bereavement provisions in Northern Ireland will mirror those in the rest of the United Kingdom. In particular, I anticipate that the new legislation will create a legal requirement for employers to grant a period of a minimum of 2 weeks of Parental Bereavement Leave, with pay (if eligible) at a statutory rate funded by Government.

It is my belief that the impact of parental bereavement, whilst uniquely personal, is also a shared experience no matter where an employee lives or works. However, for this consultation we want to fully understand the needs



Diane Dodds MLA, Minister for the Economy

of bereaved parents and their employers in Northern Ireland so that the regulations that we do bring forward work for us and address our needs.

I feel that it is important to draw your attention to the UK Government Parental Bereavement Leave and Pay Consultation and response paper. A great deal of time and work has been invested in this important matter by Parliamentarians, advocate groups and by parents who have experienced the loss of a child. The passage of the legislation at Westminster enjoyed near unanimous cross party and stakeholder support. Many of the most salient issues surrounding Parental Bereavement have been examined, considered and debated in detail and this work will help to inform and provide insight for our own consultation.

Finally, whilst my Department develops appropriate legislation, as Minister, I would encourage all employers to ensure that they treat their employees with fairness and compassion when faced with personal tragedy.

I look forward to hearing your views.

Diane Dodds MLA

June 2020

General Information

Purpose of this consultation

This consultation seeks to inform the public about the government's intention to introduce Parental Bereavement Leave and Pay entitlements into Northern Ireland Employment Law akin to the entitlements that came into force in Great Britain on 6 April 2020. We are seeking views from stakeholders on these provisions and wish to open a discussion as to how best we can mirror the legislation in GB while being cognisant of our specific needs in Northern Ireland. Any suggestions that differ from the provision in GB will be taken on board for consideration whether in the immediate term where practicable or as part of a longer term strategic review of a range of employment rights issues in Northern Ireland.

Issued: 15 June 2020

Respond by: 10 August 2020

Enquiries to:

Parental Bereavement Leave and Pay

Employment Relations Policy and Legislation 1

Department for the Economy

Adelaide House

39-49 Adelaide Street

Belfast, BT2 8FD

Email:

pblpconsultation@economy-ni.gov.uk

Web: [Department for the Economy website](#)

In the current circumstances, we would welcome queries by e-mail where possible.

This consultation is relevant to: working parents and their employers; groups representing employers and employees; groups involved in bereavement care; and legal, HR and payroll professionals.

How to Respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form.

Your response will be most useful if it is framed in direct response to the questions asked, though further comments and evidence are also welcome.

We would encourage you to complete your response online, at our dedicated [consultation page](#). However, a consultation response form is also available for download from the [Department for the Economy website](#).

The downloaded form may be submitted by email or by letter to:

Email: pblpconsultation@economy-ni.gov.uk

Postal Address: Parental Bereavement Leave and Pay Consultation

Employment Relations Policy and Legislation 1

Department for the Economy

Adelaide House

39-49 Adelaide Street

Belfast, BT2 8FD

Alternative format and additional copies: Please contact us if you require this document in an alternative format. You may make copies of this document without permission. **This consultation paper contains public sector information licensed under the Open Government Licence v3.0**

Confidentiality and data protection

We will summarise all responses received and place this summary on the Department for the Economy website. This will include a list of the organisations that responded but will not include people's personal names, addresses or other contact details.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure under access to information legislation (primarily the Data Protection Act 2018/the General Data Protection Regulation 2018; Freedom of Information Act 2000; and the Environmental Information Regulations 2004).

For this reason you should identify in your response any information which you do not wish to be disclosed and explain why this is the case. Please note that an automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

If we receive a request for disclosure of this information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

For further information about how we process your personal data, please see our [Privacy Notice](#).

Consultation Process

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to: Kellie Sprott at kellie.sprott@economy-ni.gov.uk or to the Departmental Complaints Officer at DfEmail@economy-ni.gov.uk. Details of the Department's Complaint Process can be found at:

- [Customer Service Complaints Procedure](#)

Impact Assessments

Equality, Regulatory and Rural impact assessments have been conducted for this policy proposal. Currently we do not anticipate the policy to result in any adverse impacts on any of the Section 75 groups or for those who live rurally. However, if any potential issues are raised as part of this consultation process we will review our impact assessments at that stage and amend if required.

Our initial regulatory impact assessment will be reviewed at legislation drafting stage where we can assess in more detail the regulatory impact of the policy proposal.

The Equality, Regulatory, and Rural Impact Assessment documents can be viewed on the [Department for the Economy website](#).

Introduction

The GB proposals for Parental Bereavement Leave and Pay and the UK Government response were laid out in the following documents:

- [Consultation on Parental Bereavement Leave and Pay](#)
- [Parental Bereavement Leave and Pay Consultation Government Response](#)

These documents explore and explain the key policy decisions taken following the public consultation process in Great Britain. They are insightful and informative for us as we develop similar legislation for Northern Ireland and we would recommend that you consider them as you develop your response to this consultation.

Links to the GB Legislation can be found below:

- [Parental Bereavement \(Leave and Pay\) Act 2018](#)
- [The Parental Bereavement Leave Regulations 2020](#)
- [The Statutory Parental Bereavement Pay \(General\) Regulations 2020](#)

The Current Position in Northern Ireland

At the moment in Northern Ireland there is no specific entitlement to Parental Bereavement leave or pay for employed parents following the loss of a child. In such circumstances, most employers offer their employees some form of compassionate paid leave, either on a discretionary basis through an internal policy, or by means of a contractual entitlement.

Presently, bereaved employed parents who do not have the compassionate support outlined above may be eligible for statutory leave provision under the Employment Rights (Northern Ireland) Order 1996. This provision however only confers a right to a "... reasonable amount of time off during the employee's working hours... in order to take action which is necessary in consequence of the death of a dependant." Under this provision, a "reasonable" amount of time is not defined.

Unfortunately, grief, sadness and coping with loss is not a focus for this provision. It instead focuses more upon the inevitable practicalities of dealing with the death of a dependent, such as organising a funeral and registering a death.

Overview

Coping with grief in the workplace following the loss of a child is a particularly personal issue and bereaved parents deal with personal grief in different ways. Most working parents who find themselves having to deal with such a tragedy will receive decent and compassionate support and care from their employer.

Just as in wider society, the majority of employers are acutely sensitive to the particular impact that child bereavement can have on parents. Many employers are also likely to be fortunate enough not to experience at first hand such loss within their workplace, due to the relatively small number of Northern Ireland employees that experience the loss of a young child each year.

Conversely and unfortunately, a very small number of employers are not sensitive, caring or compassionate when their employees experience personal tragedy.

The Parental Bereavement Leave and Pay legislation that was introduced in the rest of the United Kingdom on 6 April 2020 encompasses all employers, including those employers who, until now, have failed, been unwilling or unable to provide compassionate paid bereavement leave for their employees.

Our proposed Parental Bereavement Leave and Pay legislation for Northern Ireland is likely to mirror the legislation in the rest of the UK, underpinning the already compassionate and caring provision that the majority of Northern Ireland employers already provide, or would wish to provide, in the event of parental bereavement and the loss of a child.

More importantly, it will provide a minimum level of support for bereaved parents following the loss of a child and will offer a degree of protection for all that previously has been missing.

Equally important will be the drafting of a legal framework which will ensure that employees and employers alike share a clear understanding of the legislative provisions and obligations under Parental Bereavement Leave and Pay legislation.

This is why it is important that our legislation clearly identifies important matters such as:

- the definition of a 'bereaved parent';
- defining how and when Parental Bereavement Pay and Leave can be taken;
- identifying what level and length of notice period would be necessary; and
- establishing what evidence may be required to show that an employee is entitled to leave and pay under the regulations.

To this end, our consultation will focus upon what we believe to be these four essential pillars of Parental Bereavement Leave and Pay legislation and the questions in the following pages will explore your thoughts on these matters.

In line with GB provision, the Minister for the Economy has committed to ensuring that all bereaved parents who experience the loss of a child will be able to take some time away from work to grieve and will, in most cases, be entitled to a statutory provision for payment during that time. The statutory payment made in GB in 2020 is £150.20 or 90% of weekly earnings, whichever is lower. This consultation will also seek your views on that statutory payment.

Definition of ‘bereaved parent’

Establishing a definition of a ‘bereaved parent’ is central to the Parental Bereavement Leave and Pay policy. It will provide clarity for employers when determining eligibility and will help to avoid complications and the risk of challenge when faced with requests and making decisions.

Following the GB consultation about Parental Bereavement Leave and Pay, it was determined by the UK Government that the definition of a ‘bereaved parent’ should be centred on the notion of a ‘primary carer whose relationship with the child is parental in nature’.

This broader definition of a bereaved parent extends the scope of GB Parental Bereavement Leave and Pay beyond legally recognised parents. It ensures that people such as legal guardians and others who have a legally recognised ‘parental’ relationship with a child will also be eligible.

Moving beyond legally recognised relationships, the GB provisions have also encompassed groups such as kinship carers. Entitlement has been conferred on these groups by reference to the nature of a person’s caring responsibility for the child, with the guiding principle being that it should be parental in nature.

As part of our consultation, we are keen to understand all of the parental relationships, in addition to those detailed below, which should be included in the Northern Ireland Parental Bereavement Leave and Pay legislation;

- Legal parents, biological parents (except where a child has been adopted) and adoptive parents (including those who have obtained parental orders in the context of a surrogacy arrangement);
- Others, who are not the child’s legal parents but who have a long-term relationship with a child which is parental in nature and who have provided day to day care in place of the child’s legal parents.

Definition of “Bereaved parent”

1a) Who else do you think should be included within the definition of ‘bereaved parent’?

b) Please provide reasons for your answer

How and when 2 weeks of Parental Bereavement Leave and Pay can be taken

It is important to strike the right balance between allowing as much flexibility as possible for bereaved parents with varying needs to grieve, and the need for employers to have a degree of certainty over when and how their employees can take Parental Bereavement Leave and Pay.

GB Parental Bereavement Leave and Pay legislation provides eligible bereaved parents with 2 weeks statutory paid leave, and allows bereaved parents to decide to take the 2 weeks consecutively or non-consecutively over a period of 56 weeks from the death of a child.

We wish to understand if similar provisions would be right for Northern Ireland or if there are alternative provisions that would be more suitable for bereaved parents and employers here.

Flexibility around consecutive/non-consecutive weeks

2a) Which of the following options for leave-taking would be most appropriate?

- I. Leave to be taken either as one week only or two consecutive weeks
- II. Two weeks discontinuously, e.g. a week, then a further week taken at a later date
- III. Two weeks, which can be taken in units of a day, recognising that only whole weeks of leave with an employer would attract the statutory payment from that employer
- IV. An alternative arrangement (please describe)

2b) Please set out your reasons for your response and any potential difficulties you consider may exist with any of the options

The window in which to take 2 weeks of leave and statutory pay

3a) What do you think is the optimal length for the window during which leave can be taken?

- I. 8 weeks
- II. 26 weeks
- III. 56 weeks
- IV. Other – please specify

3b) Please set out your reasons for your response

Notice required to take Parental Bereavement Leave and Pay

The GB legislation recognises that most bereaved parents will, understandably, need immediate time away from work. It also recognises that some parents may need or wish to take time off later on or to take a combination of 'immediate' and 'later' leave, depending upon personal circumstances and individual needs.

The provision is also sensitive to the fact that death can be sudden or unpredictable and that bereavement is highly personal and subjective and it may not always be practicable for an employee to notify their employer of their intention to take Parental Bereavement Leave and Pay in the initial period following their loss.

However, the GB consultation also recognised the need to balance flexibility for employees with the needs of employers who may require a certain amount of certainty about an employee's intention to be absent in order to allow for adequate planning and cover.

Accordingly, provision has been made for a notice requirement of at least one week if an employee wishes to take Parental Bereavement Leave and Pay after the first 8 weeks of bereavement.

The notice period for taking Parental Bereavement Leave and Pay is detailed below:-

Notice Period

An employee has 56 weeks during which to take Parental Bereavement Leave. This starts from the date of the child's death.

The 56 weeks is split into 2 periods:

- from the date of the child's death or stillbirth to 8 weeks later; and
- between 9 and 56 weeks after the date of the child's death or stillbirth.

The 2 weeks' leave may be taken in one block or as 2 separate blocks of one week.

The period of notice required depends on when an employee is taking Parental Bereavement Leave.

0 to 8 weeks after the child's death or stillbirth

An employee must give notice before the time they would normally start work on the first day of the period they want to take off work or, in the case where it is not reasonably practicable for the employee to give such notice, then notice should be given as soon as it is reasonably practicable.

9 to 56 weeks after the child's death or stillbirth

An employee must give at least one week's notice before the start of the week or weeks they want to take off work.

We wish to understand if similar provisions would be right for Northern Ireland or if there are alternative provisions that would be more suitable for bereaved parents and employers here.

Notice required to take parental bereavement leave and pay

4a) Should parents be required to provide notice to their employer:

I. If leave is taken very soon after the death of a child?

Yes

No

Not sure

II. If leave is taken at a later period?

Yes

No

Not sure

4b) Please provide reasons for your answer

5a) What is a reasonable notice period:

i. If leave is taken very soon after the death of a child?

ii. If leave is taken at a later period?

5b) Please provide reasons for your answer

6a) How should this notice be given:

i. If leave is taken very soon after the death of a child?

ii. If leave is taken at a later period?

6b) Please provide reasons for your answer

Evidence required for Parental Bereavement Leave and Pay

The GB consultation sought views on what evidential requirement would be needed for an employee wishing to take Parental Bereavement Leave and Pay. The vast majority of respondents answered that evidence should mirror existing family leave entitlements. For some family leave entitlements, an employee must provide a written declaration of entitlement and in others, an employee is only required to provide evidence of entitlement if their employer asks for it.

We wish to understand what, if any, evidential requirement for entitlement to Parental Bereavement Leave and Pay would be right for Northern Ireland.

Evidence required for parental bereavement leave and pay

7a) Should evidence requirements for this provision mirror those of existing family leave?

Yes

No

Not sure

7b) Please explain your reasons

Parental bereavement statutory provision for payment

Employment related statutory payments closely align across GB and NI. This provides consistency and simplifies payment processes and payroll systems across the UK as a whole.

Parental Bereavement Pay in GB (for 2020) is paid at a statutory rate of £150.20 or 90% of weekly earnings (whichever is lower).

To be eligible to receive the statutory payment in GB you must have served at least 26 weeks, known as a qualification period, with your employer.

Parental bereavement statutory provision for payment

8) Please outline your thoughts concerning:

- a requirement for a qualification period for payment of parental bereavement pay;
- the payment for parental bereavement pay; and
- a notice period and evidential requirements for claiming payment of parental bereavement pay in Northern Ireland.

Please insert comments:

Strategic vision for Employment Law in NI

Whilst this consultation is primarily about aligning NI legislation with that in GB (for Parental Bereavement Leave and Pay) we would still like to use this opportunity to garner suggestions for potential improvement in NI employment law.

Strategic vision for Employment Regulation in NI

9) Please take this opportunity to inform us of any other issues we should consider when making the Parental Bereavement Leave and Pay legislation.

Please insert comments:

Information provided in this section will also help to form part of our long term strategic goal of assessing a range of employment issues in NI.