



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**NIHRC Submission to Committee for Economy  
on the Parental Bereavement (Leave and Pay)  
Bill**

**August 2021**

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## Summary of Recommendations

### **The NIHRC (the Commission) recommends:**

- i. The Commission recommends the Committee suggest the Department develop guidance for employers when the Bill becomes legislation.**
- ii. The Commission recommends the Committee take into consideration the views of relevant stakeholders to explore ways in which the Department can offer better protections for NI.**
- iii. The Commission recommends the Committee suggest that the Department should continue to monitor any developments in EU law relating to the Parental Bereavement (Leave and Pay) Bill and resulting Regulations to ensure compliance with Article 2 of the Ireland/Northern Ireland Protocol.**
- iv. The Commission recommends that the commitment to change the period of time leave can be taken from 56 days to 56 weeks is upheld.**
- v. The Commission recommends that the definition of a parent is broad and open to interpretation to ensure a wide inclusion of those with a relationship to the child.**
- vi. The Commission recommends the Committee advises the Department to conduct 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.**
- vii. 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.**

## 1.0 Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(4) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). The NIHRC, pursuant to section 78A(6) of the Northern Ireland Act 1998, must advise the Assembly (or a committee of the Assembly) whether a Bill is compatible with Article 2(1) of the Ireland/Northern Ireland Protocol. In accordance with these functions, the following advice is submitted to the Committee for Economy on the Parental Bereavement (Leave and Pay) Bill.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:

- European Convention on Human Rights (ECHR);<sup>1</sup>
- UN International Covenant on Economic, Social and Cultural Rights (UN ICESCR) and;<sup>2</sup>
- UN Convention on Elimination of Discrimination against Women (UN CEDAW).<sup>3</sup>

1.3 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding, but provide further guidance in respect of specific areas. The relevant standards in this context include:

- UN CEDAW Committee Concluding Observations 2019;<sup>4</sup>
- UN ICESCR Committee General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights).<sup>5</sup>

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<sup>1</sup> Ratified by the UK 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

<sup>2</sup> Ratified by the UK 1976.

<sup>3</sup> Ratified by the UK 1986.

<sup>4</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019.

<sup>5</sup> E/C.12/GC/23, 'UN ICESCR Committee General comment No. 23: On the Right to Just and Favourable Conditions of Work', 27 April 2016.

- 1.4 The Commission welcomes the Department of Economy's introduction of the Parental Bereavement (Leave and Pay) Bill to introduce regulations creating a legal requirement for all employers to grant a period of a minimum of two weeks of Parental Bereavement Leave.

## **2.0 General Comments on the Bill**

- 2.1 The Commission welcomes the legislation to introduce a legal requirement for parental bereavement leave and pay to ensure equality of access to leave entitlement and financial security when grieving.
- 2.2 The Commission recognises the draft Bill largely mirrors provision for parental leave and pay in the UK. However, as employment is a devolved matter the Commission would highlight that this gives the Department the opportunity to introduce legislation that goes beyond the protections offered within the UK legislation to be more inclusive and progressive.
- 2.3 The Commission would highlight to the Committee that other countries have taken a more progressive and inclusive approach to parental bereavement leave and pay. For example, New Zealand has included provision for bereavement due to miscarriage. The Commission has highlighted this as a potential issue later in the submission.
- 2.4 The Commission would suggest that the Committee engage with relevant stakeholders such as civil society organisations, businesses and trade union representatives with an interest in the Bill. Furthermore, the Commission would advise the Committee call on the Department to develop draft guidance for employers when the legislation comes into operation.
- 2.5 The Commission would also highlight that Article 2 of the Ireland/Northern Ireland Protocol (the Protocol) requires the UK government to ensure no diminution of rights, safeguards and equality of opportunity, as set out in the Belfast (Good Friday) Agreement 1998, results from the UK's withdrawal from the EU. Article 2 also commits the UK government to keep pace with certain provisions of EU law concerning non-discrimination listed in Annex 1 of the Protocol. This includes the Equality Framework

Directive<sup>6</sup>, the Equal Treatment Directive<sup>7</sup> and the Social Security Directive<sup>8</sup>, which aim to combat discrimination in matters of employment and social security provision, and fall within scope of article 2. The European Union (Withdrawal) Act 2020 updates the Northern Ireland Act 1998 to reflect that a provision is outside the legislative competence of the NI Assembly if “it is incompatible with Article 2(1) of the Protocol on Ireland/Northern Ireland”. While no breach of article 2 has been identified in the text of the Bill as drafted at this stage, ongoing monitoring of changes in relevant EU law will be required in the development and implementation of the regulations which give effect to the scheme.

- 2.6 The Commission recommends the Committee suggest the Department develop guidance for employers when the Bill becomes legislation.**
- 2.7 The Commission recommends the Committee take into consideration the views of relevant stakeholders to explore ways in which the Department can offer better protections for NI.**
- 2.8 The Commission recommends the Committee suggest that the Department should continue to monitor any developments in EU law relating to the Parental Bereavement (Leave and Pay) Bill and resulting Regulations to ensure compliance with Article 2 of the Ireland/Northern Ireland Protocol.**

## **Clause 1: Parental Bereavement Leave**

- 2.9 The Commission welcomes the definition of a bereaved parent to extend to those who have had a parental relationship prior to the child’s death. The Commission would recommend the definition of a parent should be set as wide as possible. The definition should include both biological parents and those with parental responsibility but also take into account various types of parenting arrangements.
- 2.10 The Commission recognises the decision that the two weeks leave do not have to be taken consecutively and can be taken one week at any time up to at least 56 days following the date of the child’s death. The Commission

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<sup>6</sup> Directive 2006/54/EC

<sup>7</sup> Directive 2004/113/EC

<sup>8</sup> Directive 79/7/EEC

notes that the current draft Bill states 56 days but understands the Minister has committed that this will be changed to 56 weeks and this is welcome.<sup>9</sup>

2.11 On the consideration to give notice periods when taking parental leave the Commission would suggest that the Committee and Department provide for exceptions in circumstances of sudden death where notice is not possible.

**2.12 The Commission recommends that the commitment to change the period of time leave can be taken from 56 days to 56 weeks is upheld.**

**2.13 The Commission recommends that the definition of a parent is broad and open to interpretation to ensure a wide inclusion of those with a relationship to the child.**

## **Clause 2: Parental Bereavement Pay**

2.14 The Commission is concerned that the current draft Bill will only apply to those who have been in consecutive employment for 26 weeks and does not apply to employees who are employed on an agency basis or to employees on zero-hour contracts.

2.15 Article 8 ECHR provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 14 provides prohibition of discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The Commission would suggest the Committee recommend the Department conduct a human rights impact assessment to ensure that any interference with ECHR rights is justified.

2.16 The UN ICESCR Committee in its 2016 Concluding Observations on the UK noted in regards to working conditions that:

The Committee is concerned at the high incidence of part-time work, precarious self-employment, temporary employment and

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<sup>9</sup> NI Assembly, Executive Committee Business Second Stage: Parental Bereavement (Leave and Pay) Bill (NIA Bill 22/17-22) Available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2021/06/14&docID=341073#3521114>

the use of “zero hour contracts” in the State party, which particularly affect women. It is also concerned about the negative impact that all those forms of employment have on the enjoyment by workers of their right to just and favourable conditions of work.<sup>10</sup>

2.17 The UN ICESCR Committee recommended that the State party:

- a) Take all appropriate measures to progressively reduce the use of temporary employment, precarious self-employment and “zero hour contracts”, including by generating decent work opportunities that offer job security and adequate protection of labour rights;
- b) Ensure that the labour and social security rights of persons in part-time work, precarious self-employment, temporary employment and “zero-hour contracts” are fully guaranteed in law and in practice.<sup>11</sup>

2.18 The UN ICESCR Committee in its general comment No. 23 (2016) on the right to just and favourable conditions of work. The UN ICESCR Committee states that:

The right to just and favourable conditions of work is a right of everyone, without distinction of any kind. The reference to “everyone” highlights the fact that the right applies to all workers in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers, agricultural workers, refugee workers and unpaid workers. The reference to “everyone” reinforces the general prohibition on discrimination in article 2 (2) and the equality provision in article 3 of the Covenant, and is supplemented by the various references to equality and freedom from distinctions of any kind in sub-articles 7 (a) (i) and (c).<sup>12</sup>

2.19 UN ICESCR Committee also makes specific reference to workers in the informal economy, providing that:

Although these workers account for a significant percentage of the world’s workforce, they are often excluded from national statistics

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<sup>10</sup> E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report’, 16 July 2016 at para 31.

<sup>11</sup> E/C.12/GBR/CO/6, ‘UN ICESCR Committee Concluding Observations on the UK Sixth Periodic Report’, 16 July 2016 at para 32.

<sup>12</sup> E/C.12/GC/23, ‘UN ICESCR Committee General comment No. 23: On the Right to Just and Favourable Conditions of Work’, 27 April 2016 at para 5.



and legal protection, support and safeguards, exacerbating vulnerability. While the overall objective should be to formalize work, laws and policies should explicitly extend to workers in the informal economy and States parties should take steps to gather relevant disaggregated data so as to include this category of workers in the progressive realization of the right to just and favourable conditions of work. For that purpose, the informal economy should be included in the mandate of the respective monitoring and enforcement mechanism. Women are often overrepresented in the informal economy, for example, as casual workers, home workers or own-account workers, which in turn exacerbates inequalities in areas such as remuneration, health and safety, rest, leisure and paid leave.<sup>13</sup>

2.20 The UN ICESCR Committee further highlights issues in relation to female workers stating that:

Progress on the three key interrelated indicators for gender equality in the context of labour rights — the “glass ceiling”, the “gender pay gap” and the “sticky floor” — remains far from satisfactory. Intersectional discrimination and the absence of a life-cycle approach regarding the needs of women lead to accumulated disadvantages that have a negative impact on the right to just and favourable conditions of work and other rights. Particular attention is needed to address occupational segregation by sex and to achieve equal remuneration for work of equal value, as well as equal opportunity for promotion, including through the introduction of temporary special measures. Any assessment of the “value” of work must avoid gender stereotypes that could undervalue work predominantly performed by women. States parties should take into account the different requirements of male and female workers. For example, specific measures might be necessary to protect the safety and health of pregnant workers in relation to travel or night work. Day-care services in the workplace and flexible working arrangements can promote equal conditions of work in practice. Workers benefiting from gender-specific measures should not be penalized in other areas. States parties must take measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality.<sup>14</sup>

2.21 The UN CEDAW Committee 2019 Concluding Observations on the UK highlighted that women are more likely to be engaged in informal,

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<sup>13</sup> E/C.12/GC/23, 'UN ICESCR Committee General comment No. 23: On the Right to Just and Favourable Conditions of Work', 27 April 2016 at para 47(d).

<sup>14</sup> E/C.12/GC/23, 'UN ICESCR Committee General comment No. 23: On the Right to Just and Favourable Conditions of Work', 27 April 2016 at para 47(a).

temporary or precarious forms of employment, including employment with zero-hours contracts. The Committee recommended the UK government and NI Executive to take measures to increase opportunities for women to gain access to formal and secure employment and discourage the use by employers of zero-hours contracts.<sup>15</sup>

- 2.22 The UN CEDAW Committee also highlighted that while welcoming the introduction of flexible working arrangements in 2014, the Committee regrets that it can only be exercised after 26 weeks of employment. The Committee recommended that the State party consider removing the 26-week waiting period for employees who wish to apply for flexible working arrangements.<sup>16</sup>
- 2.23 While the above commentary does not directly relate to the specific issues of provision of parental leave, it highlights the views of ICESCR and CEDAW in rights terms on the impact of informal, temporary employment (including zero-hours contracts) upon women. This should be taken as context in consideration of the Bill's intention, as currently drafted, to exclude particular groups of employees from its protection. Furthermore, the Commission is concerned that due to the types of informal employment that women are more likely to hold, women will be disproportionately affected by the Bill as currently drafted.

**2.24 The Commission recommends the Committee advises the Department to conduct 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.**

## 3.0 Omissions

- 3.1 The legislation applies to those bereaved in accordance with the legal definition of stillbirth post 24 weeks pregnancy. The Commission understands that therefore the Bill does not include provision for bereavement through miscarriage.

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<sup>15</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 43.

<sup>16</sup> CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the UK Eighth Periodic Report', 8 March 2019 at para 45.

- 3.2 The Commission would highlight that New Zealand gives parents a right to three days' paid leave if they suffer a miscarriage at any time during the pregnancy, or a stillbirth. The right also applies to those who welcome a child through adoption or surrogacy. The Bill provides that the unplanned end of a pregnancy by miscarriage or stillbirth constitutes grounds for bereavement leave for the mother and her partner or spouse, and that the duration of the bereavement leave should be up to 3 days.<sup>17</sup>
- 3.3 The Commission understands the UK legislation does not extend to miscarriage however, that civil society organisations have supported the extension to include miscarriage within the UK.<sup>18</sup>
- 3.4 **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.**

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<sup>17</sup> Holidays (Bereavement Leave for Miscarriage) Amendment Bill (No 2). Available at: <https://perma.cc/K9FU-8AE2>

<sup>18</sup> For example, Maternity Action, 'Briefing: Miscarriage and Women's Rights at Work' Available at: <https://maternityaction.org.uk/wp-content/uploads/MA-briefing-on-miscarriage-Feb-2020-1.pdf>

## Contact us

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