



**PARENTAL BEREAVEMENT
(LEAVE AND PAY) BILL**

CALL FOR EVIDENCE

**NIPSA RESPONSE
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Contact Details

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Introduction

1. NIPSA is the largest trade union in Northern Ireland representing over 41,500 members employed across the whole of the public services in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education Authority, the Health Trusts, the NI Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the Voluntary Sector.
2. NIPSA believe the Northern Ireland Executive have a responsibility and an opportunity now, if they are really serious about supporting employees in Northern Ireland who experience such a tragic loss, to lead the way and send a clear message to unsupportive employers who fail to display even a basic level of compassion and support to employees faced with such personal tragedy, that this is unacceptable and their reputation and competitiveness in the local and global economy will be undermined.
3. NIPSA welcomes the opportunity to respond to this call for evidence and our views in relation to the questions are as follows.

There should be a legal entitlement to employee parental leave and pay (if eligible) in NI?

4. While NIPSA welcomes proposals for parental bereavement leave and pay as an important step forward, we believe that entitlement should be extended to everyone (all workers) bereaved of a close relative or partner in Northern Ireland.
5. One in 10 employees are estimated to be impacted by a bereavement at any one time. The current system, where access to paid bereavement leave is entirely at the discretion of employers, has created a severely uneven playing field, with too many people missing out on the time, space and financial security they need to begin grieving away from the workplace. Unfortunately, while well intended, the Department for the Economy's (DfE) proposals for parental bereavement leave and pay risk making this playing field even more uneven; creating a hierarchy of bereavement where the vast majority of workers are not protected following the death of a loved one.
6. Mercifully, people aged under-20 accounted for just 1% of all deaths recorded in Northern Ireland in 2019, so the overwhelming majority of deaths – and by extension, the bereaved employees left behind – are not covered by the policy.

The definition of ‘a parent’ should extend beyond biological parents to ‘primary carers’. What is your view?

7. 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 the fact that many children live in more than one family home where there is joint custody or shared parenting arrangements including step-parents. Adoptive parents, foster parents and kinship carers (this would need to include caring for a child in informal arrangements as well as those who hold a Special Guardianship Order, a Child Arrangements Order or are kinship foster carers) should also be included. Some parents will be resident, others will be non-resident, and this should not affect entitlement. We would also recommend the inclusion of others with caring responsibilities for a child, for example, grandparents and older siblings to be included in the definition.

The Bill should apply to parents/ primary carers of a child up to the age of 18? What is your view?

8. All bereaved parents need time to grieve away from work, regardless of the age of their child. We would like **all** to have a right to paid leave. As such, the definition should also not be restricted to children under the age of 18. We would recommend the definition of “child” should be “a son or daughter of any age”. This we believe would bring about an ideal system of bereavement leave and allow all bereaved parents time to grieve away from work, regardless of the age of their child.
9. However, as a minimum, we ask that the upper age threshold in the legislation is 25.
10. There are several good reasons for this: when the worst happens, parents forced to come to terms with the impact of losing their child must also contend with a number of other issues. If the young person dies with a long-term disability, parents may also have to endure significant short-term financial hardship caused by the immediate loss of their income. This could be due to the end of benefits such as carer’s allowance, disability living allowance and child benefit. This can often compound the debt legacy which families of children with life-limiting or life-threatening conditions may have incurred as a result of the additional costs of caring for their child over a long period of time.
11. In addition to the extra financial pressures of caring for a child with a life-limiting or life-threatening condition, parents must also pay for a funeral for their child. Unlike England we do not have the Children’s Funeral Fund to cover the cost of burials or cremations. Therefore, until such times as a similar Fund is established in Northern Ireland we do not believe parents grieving following the loss of their child should have to worry about the financial cost of being away from work.
12. Existing legislation differentiates between those aged under and over 25 in relation to income-related benefits, recognising that most young people are not independent at the age of 18, but most are independent by the age of 25. The

special educational needs and disability (SEND) system in Northern Ireland also extends to 25, recognising that many young people continue to need support during their transition to adulthood. We ask that this Bill reflects this existing precedent.

The leave entitlement is for a period of at least two weeks. What is your view?

13. The proposals set the statutory rate of pay at £150.20 or 90% of weekly earnings (whichever is lower). While NIPSA and other unions will bargain for the leave to be paid at full pay, there will be many employees in non-unionised workplaces for whom this low rate of pay may be a barrier to taking the leave. The purpose of the leave and pay should be to allow parents time to grieve without fearing for their job stability or income, but this low rate of pay will cause financial worries for some parents who are already struggling to make ends meet and will also be contending with high funeral costs. Lessons can be learned from the poor take up of Shared Parental Leave due to the low rates of pay.
14. There is evidence in countries such as Iceland and Sweden¹ where there are significant reserved periods of leave paid at earnings replacement where the rates of take up are higher. There is also international evidence to support this claim.² Successive reforms of our family leave system have focused on extending or redesigning periods of low paid or unpaid leave which in practice have benefited and given more choice to wealthier families while low income families continue to struggle to balance work with family commitments and this is going to get harder as financial pressures on families intensify due to Covid-19.
15. NIPSA therefore calls for the payment of parental leave to be at earnings-related rates.
16. In the context of this latter point, it is important to remember the significant business and economic upsides to ensuring bereaved workers are properly supported. It is well evidenced that employees who do not feel sufficiently supported by their employer following a bereavement will be more likely to become disillusioned, more likely to take sick days and, in the worse cases, leave their job entirely. Worker productivity also suffers when staff return to work too soon after a bereavement, and all of these issues can carry significant costs for businesses and the wider economy. Access to sufficient and paid bereavement leave is not only good for workers, but good for their employers as well.

The Bill will allow for two weeks leave to be taken together or in separate blocks of one week. What is your view?

17. The Loss Foundation states that ‘each person’s grief is unique to them and to each lost relationship’ and that it is not uncommon for acute grief to re-emerge particularly around the time of significant events, such as holidays, birthdays, anniversaries, another loss, or a particularly stressful time.³ Or when a parent

¹ Moss et al, International Review of Leave Policies (BID 2010)

² Moss et al (2010)

³ Coping with Grief. The Loss Foundation. URL: <https://www.thelossfoundation.org/phases-of-grief/>

is simply struggling with their loss and needs time to grieve. It is therefore important that there is maximum flexibility in how leave is taken.

18. We recommend that bereaved parents have the opportunity to take two weeks leave but should not have to take the leave in one-week blocks. They should have the opportunity to take leave in single days throughout the period – when the parent felt it was needed – and for this to be paid.
19. We recognise that payments such as the one proposed can only be taken in multiples of one-week because of the payment systems operated by Her Majesty's Revenue and Customs (HMRC). However, we would urge that work is undertaken with the HMRC to seek a solution allowing for one day periods of leave to be taken without losing pay. Indeed, ACAS good practice guidance states, 'Grief does not have predicted stages and phases. Everyone reacts differently to bereavement, and this should be understood and respected by both employers and colleagues'.⁴

Regulations to follow at a later date intend to allow for leave to be taken up to 56 weeks after the death of a child. Is this appropriate?

20. NIPSA would like to see no limit to the time over which the leave can be taken, in recognition of the ongoing impact of grief on parents. However, as a starting point we would prefer the minimum window of opportunity to be 56 weeks to give parents greater choice about when they take their leave.
21. This is in order that where acute grief re-emerges around the time of significant events parents are still able to access the leave. It is also important in circumstances where parents whose child's death is subject to inquest or other proceedings or investigations, which may be delayed beyond this 56-week period. These parents may need a longer window in which to take their leave.
22. We are conscious that employers need to plan to cover their employees' absence. However, we do not believe that extending the window during which leave can be taken would have a significant impact on employers. Many child deaths are unexpected and so whatever the length of the window, many parental bereavement absences will be arranged at very short notice.
23. We believe that the benefits to bereaved parents of extending the window to 56 weeks outweigh the implications for employers. Extending the window would incur no extra cost to the taxpayer.

What notice should be required very soon after the death of a child?

24. NIPSA strongly objects to any notice requirement. In many instances the death of a child will be unexpected, whether it is as a result of Sudden Infant Death Syndrome or an accident or murder. It is therefore unreasonable to expect a

⁴ Managing bereavement in the workplace – a good practice guide. ACAS, 2014. URL: <http://www.acas.org.uk/media/pdf/7/a/Managing-bereavement-in-the-workplace-a-good-practice-guide.pdf>

parent to give notice of the event or the need for leave. Furthermore, it is insensitive and places unnecessary bureaucratic burdens on parents at a time of extreme distress. The inclusion of a notice period would send the wrong message about the government's intentions in introducing this right. Whilst it may be possible to give notice of certain planned events e.g. a funeral this would be good practice rather than a necessary legal requirement.

25. Sudden manifestations of grief can be distressing and debilitating. In such situations the priority should be care and compassion from the broader support network of the bereaved. As set out above NIPSA does not believe that any notice period would be reasonable. However, in terms of how to advise your employer in such tragic circumstances, the kindest and compassionate requirement would be a simple phone call, message or email.

Do you consider that notice should be required if leave is taken at a later date?

26. Comments as per 24 and 25 above.

The qualifying period for bereavement pay will be 26 weeks' continuous employment. What is your view?

27. NIPSA is also concerned that only employees who have been employed for six months will be entitled to the right to bereavement pay (although the right to leave will be a Day One right). This seems arbitrary and punitive. A qualifying period would have the effect of excluding zero-hours contract workers, agency workers and those on temporary contracts from the right. Such workers face significant difficulties accruing sufficient continuous service qualifying for key statutory rights.
28. In *Carmichael v National Power PLC*⁵, the House of Lords confirmed that when at work, casual workers qualify as employees. But their contract ceases to exist as soon as the working day comes to an end, due to a lack of mutuality of employment. This means that if a zero-hours contract worker has a gap of more than one week between work, their service will be broken, and they will not qualify for statutory rights. This will be the case even where they have worked for the same employer over several years.
29. The courts have tried to resolve with this problem by finding that an umbrella contract spans any gaps between work.⁶ This has assisted some zero-hours contract workers who work relatively regularly and have a genuine expectation of future hours. But those with more varied or random working patterns continue to lose out. And the problems with continuity of employment are not limited to those employed in highly insecure work. Staff employed on a succession of fixed term contracts, term-time only contracts and sessional work can also face significant difficulties accruing sufficient continuous service to qualify for key statutory rights.

⁵ *Carmichael v National Power plc* [1999] UKHL 47

⁶ *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 Others* UKEAT/0123/12/BA

30. NIPSA therefore urges the government to make both the leave and pay a Day One right.

What is your view that in order to receive payments an employee must give notice of when they are intending to take leave?

31. Comments as per 24 and 25 above.

What is your view that evidence to be provided for parental bereavement PAY should be in line with employer guidance?

32. NIPSA does not believe it is appropriate to require evidence from grieving parents in order to access parental bereavement leave and pay. In the initial stages of grief the parent is likely to be in shock and consumed by grief including feeling a number of physical reactions they may not have felt before.⁷ In practical terms there may be delays and issues in obtaining death certificates; it would be insensitive to expect a parent already dealing with difficult bureaucratic processes following a death to add further requirements for evidence.

33. We also do not believe that employers/managers would feel comfortable requesting evidence from an employee who is newly bereaved, indeed the National Council for Palliative Care states colleagues 'can be anxious about how to acknowledge what has happened and how to respond: worrying about making things worse, saying the wrong thing, or getting upset and overwhelmed themselves'.⁸

34. We believe the intent of the legislation must be to support employees and improve the relationship between employee and employer at what is an extremely emotional and challenging time. To place more burden on the employee by requesting the supply of evidence undermines the spirit of the Bill.

⁷ Coping with Grief. The Loss Foundation. URL: <https://www.thelossfoundation.org/phases-of-grief/>

⁸ Life After Death. The National Council for Palliative Care, 2014. URL: <http://www.ncpc.org.uk/sites/default/files/LifeAfterDeath.pdf>