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Parental Bereavement (Leave and Pay) Bill 2017- 19

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Summary

The [Parental Bereavement \(Leave and Pay\) Bill 2017-19](#) would introduce a right to paid parental bereavement leave. It is a Private Members' Bill sponsored by Kevin Hollinrake MP and supported by the Government.

The provisions of the Bill reflect those of the [Parental Bereavement Leave \(Statutory Entitlement\) Bill 2016-17](#), sponsored by Will Quince MP, which was introduced in the last session of Parliament although failed to progress before the 2017 General Election.

The Bill comprises two clauses and one Schedule. Its substantive content is contained in the Schedule. The Schedule has three parts:

- **Part 1** creates a statutory entitlement to parental bereavement leave by amending the *Employment Rights Act 1996*. The details will be set out in regulations subject to the affirmative resolution procedure. The period of leave provided for by such regulations must be **at least two weeks**. It will be possible to split the leave period such that two week-long periods of leave may be taken separately.
- **Part 2** creates a statutory entitlement to parental bereavement pay by amending social security legislation. While the Bill does not identify the amount of pay per week of leave, the Explanatory Notes and Impact Assessment indicate that this will be the statutory flat rate used for similar types of leave (e.g. paternity leave and maternity leave after the first six weeks), which is **£140.98 or 90% of weekly earnings**, whichever is lower.
- **Part 3** would make consequential amendments. One of these would be to section 7 of the *Employment Act 2002*, providing that employers could recover from HM Revenue and Customs amounts paid in statutory parental bereavement pay. Large firms with annual National Insurance contributions of over £45,000 would be entitled to recover 92% of money paid; all other employers would be entitled to recover 103%.

1. Background

There is no specific statutory right in the United Kingdom to parental or any other form of bereavement leave from employment. The [Parental Bereavement \(Leave and Pay\) Bill 2017-19](#) would introduce such a right. It is a Private Members' Bill sponsored by Kevin Hollinrake MP.

The Bill was presented to Parliament via the ballot procedure on 19 July 2017¹ and received its first reading at the same time.² The Government supports it.³ The Department for Business, Energy and Industrial Strategy has produced Explanatory Notes and an Impact Assessment, both available [here](#).⁴

The Bill reflects the Government's 2017 manifesto commitment to introduce bereavement leave:

We will ensure all families who lose a baby are given the bereavement support they need, including a new entitlement to child bereavement leave.⁵

The Labour Party manifesto contained a commitment to consult on the introduction of legislation for bereavement leave "after the death of close family members".⁶

These manifesto commitments followed earlier attempts to legislate on the issue. The [Parental Bereavement Leave \(Statutory Entitlement\) Bill 2016-17](#), sponsored by Will Quince MP,⁷ was introduced in the last session of Parliament although failed to progress before the 2017 General Election. The [Parental Bereavement Leave \(Statutory Entitlement\) Bill 2013-14](#), sponsored by the former Labour MP for Glasgow South (Tom Harris) was withdrawn without Second Reading debate.

1.1 The legal framework

While employees do not have the right to paid bereavement leave, a number of areas of law are relevant, as set out below.

Employment Rights Act 1996

A form of unpaid leave available following the death of a dependant is provided for by [section 57A](#) of the *Employment Rights Act 1996*:

(1) An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order **to take action** which is necessary—

...

(c) in consequence of the death of a dependant

¹ [HC Deb 19 July 2017 c876](#)

² See [Standing Order No. 57](#)

³ [HC Deb 12 September 2017 c285WH](#)

⁴ Bill documents — Parental Bereavement (Leave and Pay) Bill 2017-19, Parliament website [accessed 13 October 2017]

⁵ [Conservative Party Manifesto 2017](#), p70

⁶ [Labour Party Manifesto 2017](#), p50

⁷ [Ten Minute Rule Bills](#), Parliament website [accessed 13 October 2017]

What constitutes “a reasonable amount of time off” depends on the circumstances of the case. An employer does not have to pay for leave under the provision.

The reference in section 57A to taking “action” distinguishes it from bereavement or compassionate leave. The type of action contemplated by the provision is arranging and attending a funeral, registering the death, etc. Section 57A does not provide a right to leave to cope with an emotional reaction to a child’s death, as indicated by Lord Sainsbury of Turville during the House of Lords debate on the section:

We intend the right to apply where a dependant becomes sick or has an accident, or is assaulted, including where the victim is distressed rather than physically injured. It provides for reasonable time off, if an employee suffers a bereavement of a family member, **to deal with the consequences** of that bereavement, such as making funeral arrangements, as well as to take time off to attend the funeral.⁸

The application of section 57A to bereavement scenarios was considered by the Employment Appeal Tribunal (EAT) in *Forster v Cartwright Black* [2004] IRLR 781. In that case the claimant had contended that section 57A covered “time off to come to terms with the emotions caused by the death of a parent”. The EAT rejected this:

the death of a dependant may affect the person who has taken time off, but we consider that effect in itself does not trigger the section. Moreover, although it is to be expected that the death of a dependant will produce sadness, bereavement and unhappiness, the section was not intended to introduce the right to compassionate leave as a result of a bereavement.⁹

Other relevant law

If a parent loses a child during a period in which they are accessing maternity, paternity or shared parental leave, they will be entitled to continue that leave notwithstanding the child’s death. In circumstances where an employee is too incapacitated through bereavement to be capable of working, they may be able to claim Statutory Sick Pay. In the event that bereavement-related incapacity constitutes a disability under the *Equality Act 2010*, or exacerbates an existing disability, the employer would be required to make reasonable adjustments to the requirement to attend work/its absence policy. The employer’s statutory and common law health and safety duties may also be engaged. For example, bereavement affecting concentration may impact an employee’s ability safely to operate heavy machinery.

1.2 Research and guidance

Acas guidance

In 2014 the Advisory, Conciliation and Arbitration Service (Acas) produced a guidance document entitled [Managing bereavement in the workplace – a good practice guide](#). The document provides a short

⁸ HL Deb 8 July 1999 cc1084-1085

⁹ Para 18

overview of the relevant law; sets out examples of best practice; contains an FAQ; and includes a model bereavement policy.

National Council for Palliative Care

During January 2014 the National Council for Palliative Care published [*Life After Death – Six steps to improve support for bereavement*](#), which, among other things, called for better support at work for bereaved employees. Research commissioned by the Council and undertaken by ComRes found:

The overwhelming majority of British adults (87%) agreed that all employers should have a compassionate employment policy, which includes paid bereavement leave, flexible working and a range of other support available.

More than four in five people (81%) agreed that there should be a legal right to receive paid bereavement leave where someone close to the person in question (such as a child, parent or partner) has just died.

82% of people agreed that providing employees with paid bereavement leave is likely to be beneficial to the employer in the long term.

The majority of people (56%) said they would consider leaving their job if their employer did not provide proper support if someone close to them died.

Almost a third (32%) of people who had been bereaved in the past five years who were in a job at the time said that they were not treated with compassion by their employer.¹⁰

1.3 Westminster Hall debate

On 12 September 2017 there was a Westminster Hall debate on the subject of 'bereavement leave: loss of a child'. In opening the debate, Paul Masterson made the case for a statutory right to paid parental bereavement leave:

We may want to believe that all employers, large and small, will be sympathetic to employees—indeed, many do provide discretionary compassionate leave—but the truth is that not all are. A recent survey run on behalf of Child Bereavement UK found that almost a third of those who had suffered the loss of a loved one in the past five years felt they had not been treated compassionately by their employer. A father of a baby born at 26 weeks, who died aged three days, was called during his two-week paternity leave by his employer and told that, because his son was dead, there was no child to look after, so he was being treated as absent without leave and asked when he would be returning to work. The man did not work for a small business that was perhaps a bit backward in its approach to human resources; he worked for a large multinational company with more than 20,000 employees in the UK. Some form of statutory protection is therefore needed.¹¹

¹⁰ National Council for Palliative Care, *Life After Death – Six steps to improve support for bereavement*, 2014, p7

¹¹ [HC Deb 12 September 2017 c270WH](#)

Will Quince, who, as noted above, sponsored the [*Parental Bereavement Leave \(Statutory Entitlement\) Bill 2016-17*](#) in the last session of Parliament, said:

Although the vast majority of employers up and down this country are excellent employers that act with compassion, kindness and understanding when one of their employees loses a child, sadly there are employers out there that do not act with compassion and act with huge insensitivity. The examples are all out there. Sadly, it is not even just small employers; it is often large employers and, I am sorry to say, even some Government agencies and large public sector bodies. Although people are entitled under law at the moment to some immediate time off and a reasonable amount of time, that is wholly subjective, and sadly there are employers that put huge pressure on their employees to go back to work too soon. That creates huge social and emotional problems for the individual. The leave is really important, because you need that time to grieve and to come to terms with what has just happened, but you also need the time to make some really important arrangements.

I am delighted that my hon. Friend the Member for Thirsk and Malton (Kevin Hollinrake) has taken the baton and run with it, with his private Member's Bill, and that the Government have been so supportive. I would particularly like to praise the Minister and the Secretary of State, who have both been hugely supportive, and indeed the Prime Minister, for ensuring that this went in the Conservative party manifesto. As we all know, private Members' Bills are very difficult to get through and are nearly always destined to fail without Government support.

This is a common right across Europe. Indeed, it is a relatively common right across the world, to varying degrees. We have an opportunity here, with this private Member's Bill, to have world-leading rights in this area, by having two weeks' paid leave for any parent who loses a child. That is an incredible ambition. It is a real statement of intent, not only for the Government but for the House, that we take so seriously the trauma of losing a child.¹²

The then Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, Margot James, said that the Government would support Mr Hollinrake's Bill:

I reassure all hon. Members that the Government remain committed to supporting the private Member's Bill of my hon. Friend the Member for Thirsk and Malton (Kevin Hollinrake) on parental bereavement leave and pay, which comes on the heels of a similar Bill brought last year by my hon. Friend the Member for Colchester (Will Quince), to whom I shall return in my remarks. I met the two of them today to flesh out some of the details of the issue.

Unquestionably, the death of a child is traumatic and deeply upsetting for any parent. I agree wholeheartedly with the hon. Member for Strangford (Jim Shannon) that the loss of a child or baby is the worst form of bereavement that a human can suffer, a point reinforced by other Members in their contributions. It consigns most sufferers to a lifetime of grief, which, at best, if they are fortunate, they learn to live with over time. That was powerfully put by the hon. Member for North Ayrshire and Arran (Patricia Gibson) in a speech of great impact. I extend my heartfelt

¹² [HC Deb 12 September 2017 cc276WH](#)

condolences to her and to all Members, and all observers of this debate, who have been personally affected by this terrible, life-changing event.

The Government expect employers to be sympathetic and flexible when employees request leave in such circumstances, but acknowledge that that is not always the case. I have been upset to hear from several hon. Members about the survey, and about individual instances of inhumane behaviour that I do not think that any amount of human resources training could begin to address. We recognise that without a statutory entitlement to time off following the death of a child, the situation will not rectify itself.

Our manifesto committed to ensuring that bereaved parents can take time away from work to grieve for a lost child. As I have mentioned, the Government remain fully committed to that. I pay tribute to my hon. Friend the Member for Colchester for the huge amount of work that he did during the last Parliament, which led directly to the making of that commitment in the Conservative party manifesto. I know that a similar commitment was made in the Labour party manifesto.

The particulars of the Bill are being carefully considered, so it would be premature to go into too much detail about the proposals, but I will of course bear in mind the detailed questions and suggestions from the shadow Minister and discuss them with my hon. Friend the Member for Thirsk and Malton and with Treasury officials. Officials in my Department met interested stakeholders over the summer and had some fruitful discussions, which have helped to shape our thinking. I was heartened to hear that there is wide support for the Bill among employer and employee groups, charitable organisations and parents alike.

Many hon. Members have mentioned the importance of bereavement services. The quality of care that bereaved families receive can have long-lasting effects. The Government have invested £35 million to improve birthing environments from that perspective. The improvements include better bereavement rooms and quiet area spaces at 40 hospitals. There is, of course, more to do, as the hon. Member for Paisley and Renfrewshire North (Gavin Newlands) amply demonstrated in his contribution.¹³

¹³ Ibid., cc285-286WH

2. The Bill

Clause 1 introduces the Schedule to the Bill. It is the Schedule, discussed below, that contains the Bill's substance.

Clause 2 deals with extent and commencement. It provides that section 1 and the Schedule will commence on a day or days appointed by regulations.

The Bill would apply to England, Wales and Scotland. Employment law is devolved to Northern Ireland; as such, it will be for the Northern Ireland Assembly to decide whether to introduce a system of bereavement leave and pay.

The **Schedule** comprises three parts:

- **Part 1** creates a statutory entitlement to parental bereavement leave by amending the *Employment Rights Act 1996*
- **Part 2** creates a statutory entitlement to parental bereavement pay by amending social security legislation¹⁴
- **Part 3** makes consequential amendments

The [Explanatory Notes](#) set out the detail of these amendments. The following summarises them.

Part 1

Part 1 of the Schedule would insert into the *Employment Rights Act 1996* new sections 80EA to 80EE. These would provide for the system of leave.

Section 80EA would require the Secretary of State to make regulations entitling employees¹⁵ who are bereaved parents to a period of leave. The regulations would define "bereaved parent" by reference to the relationship with the child, which may include conditions as to the employee's care of the child before the child's death. "Child" in this context would mean a person under the age of 18.

The regulations must include provision for determining the extent of the employee's entitlement to leave and when that leave must be taken. The employee must be entitled to **at least two weeks' leave**. Regulations may specify the period within which leave must be taken following the child's death, which cannot be fewer than 56 days. If more than one child dies, the parent is entitled to leave in respect of each child (i.e. the period of leave would multiply).

Section 80EB requires that the regulations must identify the employee's rights and obligations under their terms and conditions of employment during the period of leave. The regulations must define the nature of the job to which the employee is entitled to return after taking leave,

¹⁴ Where employment law provides rights to leave and pay it deals with the leave element in employment legislation and the pay element in social security legislation

¹⁵ For an explanation of the distinction between employees, workers and independent contractors, see the Library's briefing: [Employment Status](#), Commons Briefing papers CBP-8045

which may include matters such as terms and conditions of employment, seniority, pension rights “and similar rights”.¹⁶

Under **section 80EC** the regulations may make provision for what happens if the employee is made redundant or dismissed during leave, including whether the employer is required to offer alternative employment, and define the consequences of failing to comply with the regulations (which may include treating a dismissal as automatically unfair).

Section 80ED deals with supplemental matters, including providing that the regulations may define the notices and evidence required to access leave, and the consequences of failure to produce the same.

Under **section 80EE**, regulations may provide for entitlement to leave where a child is stillborn after 24 weeks of pregnancy.

Paragraph 3 of the Schedule provides that the regulations described above would be subject to the affirmative resolution procedure.

Part 2

Part 2 of the Schedule would amend the *Social Security Contributions and Benefits Act 1992*, inserting a new **Part 12ZD**, to provide for the system of statutory parental bereavement pay (SPBP).

Section 171ZZ6(2) identifies the conditions which the employee must meet in order to access SPBP. The key elements of this are that:

- the person must have been in employed earner’s employment with the employer for at least 26 weeks; and
- their earnings in the eight weeks ending immediately before the one in which the child dies must not be less than the lower earnings limit prescribed under section 5(1)(a) of the 1992 Act, currently £113 per week.¹⁷

As with the period of leave, in the event that more than one child dies, the person is entitled to SPBP in respect of each.

Under **section 171ZZ7** a person would be required to give notice to their employer, identifying when they are intending to take leave. This must be in writing if the employer so requests.

Section 171ZZ8 provides that an employer is liable to pay SPBP to employees with 26 weeks’ continuous service. Regulations may make provision for the employer’s liability in the case where the employee’s contract of service has been brought to an end to avoid paying SPBP.

Pursuant to **section 171ZZ8(3)**, the Secretary of State may by regulations specify circumstances in which liability to pay SPBP transfers to HM Revenue and Customs (e.g. in insolvency situations¹⁸).

¹⁶ Section 80EB(5)(a)

¹⁷ This is a standard condition of statutory pay entitlements, e.g. maternity/paternity pay and statutory sick pay

¹⁸ In the event of an employer becoming insolvent HMRC is currently liable to pay any monies owed for maternity, paternity, adoption and sick pay. See: [Employment rights and insolvency](#), Commons Briefing papers SN00651

Section 171ZZ9 deals with the rate and period of pay. The rate of pay will be set by way of regulations. The Explanatory Notes indicate that this will be the statutory flat rate - currently £140.98 - or 90% of pay, whichever is lower (i.e. the same as paternity pay, and maternity pay after the first six weeks).¹⁹ Regulations will identify the period for which SPBP is available and the period within which it must be claimed. SPBP will not be payable for any week during which the employee works.

Section 171ZZ10 restricts 'contracting out'. It would prevent an employer from denying SPBP, or requiring the employee to contribute towards costs of paying it, through terms in a contract.

Section 171ZZ11 would provide that while SPBP does not affect any entitlement to remuneration under their contract, any contractual remuneration paid to the employee during the period in which they are entitled to SPBP can be set off against the liability to pay SPBP.

Under **section 171ZZ12** those employed by or under the Crown would be entitled to SPBP rights. **Section 171ZZ13** provides that the Secretary of State may extend SPBP rights to those employed on board any ship, hovercraft or aircraft; those outside Great Britain; or those in prescribed employment in connection with continental shelf operations.

Section 171ZZ14 would make a series of supplementary provisions.

Section 171ZZ15 would, as with the provisions in the Bill dealing with the leave element, provide a power for the Secretary of State to extend SPBP rights to parents of stillborn children, where the child is stillborn after 24 weeks of pregnancy.

Under **paragraph 6** of the Schedule, any regulations required to introduce SPBP would be subject to the affirmative resolution procedure.

Part 3

Part 3 of the Schedule would make consequential amendments to a range of Acts.

Importantly, paragraphs 35-44 amend the *Employment Act 2002*. Section 7 of the Act provides for the funding of employer's liabilities by HM Revenue and Customs. The Impact Assessment for the Bill explains how this will work in the context of SPBP:

Employers administer statutory pay on behalf of Government and small employers can recover 103% of statutory payments that they make to their employees from HMRC. Larger employers (defined as those with a National Insurance contributions bill of £45,000 or more) can recover 92% of Parental Bereavement Leave payments made to their employees and so will incur wage-like costs equivalent to 8% of the statutory payments they make.²⁰

¹⁹ [Parental Bereavement \(Leave and Pay\) Bill \[HC\] Explanatory Notes](#), p2, para 2

²⁰ Department for Business, Energy and Industrial Strategy, [Parental Bereavement Leave and Pay Impact Assessment](#), October 2017, p15

3. Comment

3.1 Response to the Bill

The Bill has been welcomed by commentators. The Impact Assessment (IA) states:

Consultation with organisations that support bereaved parents revealed a great deal of support for a statutory entitlement to Parental Bereavement Leave and Pay to provide a standard level of entitlement for employees. Employee representative groups were also keen to support a statutory minimum and emphasised the need for entitlements to be clear and straight forward for employers and employees to follow, in particular in relation to interaction with existing leave and employee support policies (i.e. time off for dependants).²¹

The IA goes on to note that the Chartered Institute of Personnel and Development sent a survey (unpublished) to its members, and followers on social media, which found that 88% of respondents “were in support of a Parental Bereavement Leave policy”.²² The CIPD itself supports the Bill. The CIPD’s ‘People Management’ website reported:

Charles Cotton, performance and reward adviser at the CIPD, said the bill’s introduction was an opportunity for HR departments to rethink their current bereavement policies and consider more broadly “how we should as an organisation deal with a colleague who’s unfortunately suffering from a child bereavement, and how we treat [them]”.²³

Charities in the area also support the Bill. Child Bereavement UK, Care for the Family and the Lullaby Trust have all welcomed the introduction of paid leave for bereaved parents.²⁴

Neil Carberry, CBI Managing Director of People & Infrastructure, stated that “great businesses support employees in tough times” and that the CBI would support the passage of the Bill through Parliament.²⁵

3.2 Impact

The IA estimates (from Office for National Statistics and Northern Ireland Statistics and Research Agency data) that 4,300 children died in Great Britain in 2016, affecting 8,000 parents.²⁶ Department for Work and Pensions research from 2012 indicates that approximately a third of

²¹ Department for Business, Energy and Industrial Strategy, [Parental Bereavement Leave and Pay Impact Assessment](#), October 2017, p5

²² Ibid., p6

²³ [Bereaved parents bill is ‘valuable opportunity’ to reconsider HR policies](#), *People Management*, 20 July 2017

²⁴ [We welcome the Parental Bereavement \(Pay and Leave\) Bill introduced to Parliament](#), The Lullaby Trust website, 20 July 2017 [accessed 17 October 2017]; [Employed Parents Could Soon Be Entitled To ‘Paid Leave To Grieve’ After The Death Of A Child](#), *HuffPost*, 19 July 2017

²⁵ Neil Carberry [Twitter post](#), 13 October 2017

²⁶ Department for Business, Energy and Industrial Strategy, [Parental Bereavement Leave and Pay Impact Assessment](#), October 2017, pp9-10

children live in a separated family.²⁷ Based on an assumption that some parents may have a new partner with parental responsibilities, the IA estimates that up to 11,500 people may have direct parental responsibility for a child. Based on this, together with employment data, the IA estimates that up to 8,000 parents will be eligible for leave, and 7,300 of those will be eligible for leave and pay:²⁸

No. of childhood deaths per year in UK	4300
Max no. of people that could be eligible	11,500
Proportion of parents that are employed	81.6%
Proportion of employees working continually for 6 months or more with their current employer	91.1%
Proportion of parents who are self employed	15%
Number of parents eligible for leave excl. self employed	8000
Number of parents eligible for leave and pay excl. self employed	7300

The IA estimates the one-off familiarisation costs to business to be £4.8m, with annual wage-like costs²⁹ of £0.1m, re-organisations costs of £1.8m and recurring administrative costs of £0.06m.³⁰

As noted above, the Exchequer will reimburse large businesses 92% of the amount paid in SPBP, and all other businesses 103%. The IA estimates the annual cost to the Exchequer of making these payments to be £1.7m.³¹ It estimates the one-off administrative costs of setting up the necessary IT and telephony system to be £1.25m, with recurring administrative costs of £0.075m per year.³²

²⁷ [Help for separating parents at their fingertips as new web app launches. A third of children now live in separated families](#), Gov.uk, 29 November 2012 [accessed 17 October 2017]

²⁸ Department for Business, Energy and Industrial Strategy, [Parental Bereavement Leave and Pay Impact Assessment](#), October 2017, p10

²⁹ Large employers will only recover 92% of payments, as such they will incur an 8% “wage-like” cost – see above discussion of Part 3 of the Schedule

³⁰ Department for Business, Energy and Industrial Strategy, [Parental Bereavement Leave and Pay Impact Assessment](#), October 2017, pp14-15

³¹ Ibid., p18

³² Ibid.

4. Debate in Parliament

4.1 Second reading

The Bill's Second Reading debate took place on 20 October 2017, during which it attracted cross-party support.³³ Several Members recounted their own experience of parental bereavement. The Bill's sponsor, Kevin Hollinrake, noted evidence that some employers did not provide leave to employees that lose children:

During our consultations on the Bill, our excellent parliamentary digital engagement team facilitated a Facebook debate, in which I took part. Some charities and the campaign organisation, 38 Degrees, also provided us with a number of examples of employers and line managers who offered inappropriate levels of support. For instance, a parent told us that their employer— a NHS body—offered them only five days' leave following the sudden passing of their youngest daughter, with any additional time having to be taken as annual leave. Brendan from Newcastle told us that he did not get any paid leave and was sacked nine months later.

...

No employee should even have to think about being at work when they desperately need some time away to grieve for a lost child. Yet according to a Rainbow Trust survey, around 9% of parents said that their employer was not at all supportive.³⁴

Members asked about the definition of "parent" that would be used for the leave entitlement, and whether this would, for example, cover adoptive parents.³⁵ Mr Hollinrake said:

We have left some details out of the Bill to allow more time for consultation on topics just like that one. Clearly the legislation cannot just be about biological parents. Adoptive parents should get the same benefits that the Bill provides. There are other such circumstances to discuss, so we want the maximum possible opportunity for consultation and submission of evidence, and for debate on these matters so that we ensure that we get the Bill right.³⁶

The Government is currently [consulting](#) on this and other aspects of the Bill. The consultation will run until 8 June 2018.³⁷

Other areas of the Bill questioned by Members were whether the age criteria for the child could be raised for disabled children, in recognition of parents' lifelong caring responsibilities;³⁸ and whether the entitlements could be extended to the self-employed or 'workers' (i.e. persons who do not have 'employee' status).³⁹

³³ [HC Deb 20 October 2017 cc1158-1180](#)

³⁴ *Ibid.*, c1159

³⁵ *Ibid.*, c1160

³⁶ *Ibid.*

³⁷ [Consultation on parental bereavement leave and pay](#), Gov.uk

³⁸ *Ibid.*, c1162

³⁹ *Ibid.*

The Minister responded on the issue of entitlement for those with worker status:

The hon. Member for Lincoln (Ms Lee) asked about those on zero-hours contracts and those whose status is that of a worker rather than an employee. I very much sympathise with the point she made. It is helpful that the Bill mirrors existing employment provisions, thereby minimising any additional complexity for employers and parents. Nevertheless, I accept that the hours of some workers—in fact, many—are really under the control of their employer in many ways, even if the hours are flexible and the workers can take time off. Of course, they do not have an entitlement to pay during that period. We heard from the hon. Member for Washington and Sunderland West (Mrs Hodgson) about her personal experience of having to take off the time that she desperately needed without pay. I assure the House that, in line with the recommendations made by Matthew Taylor, we will consider this and other matters raised in the debate when we respond to the Taylor review before the end of the year.⁴⁰

The Government has since responded to the Taylor Review and is consulting on the issue of employment status.⁴¹

4.2 Committee Stage

The Bill was debated in Committee on 31 January and 7 February 2018.⁴² Again, the Bill attracted cross-party support. Being that the substance of the Bill is contained in its Schedule, this was the subject of the Committee's focus, with clauses 1 and 2 – which introduce the Schedule and provide for the Bill's commencement and extent - agreed to without debate.

First sitting

Patricia Gibson moved a proposed new clause 2, which would have required the Secretary of State, within three-months of the Bill's enactment, to “lay a report before Parliament reviewing the extension of entitlement to parental bereavement leave and pay to people who are self-employed or are employed on zero-hours contracts”.⁴³ The Minister responded stating that those on zero-hours contracts may – depending on the circumstances of their employment – already be classed as employees and therefore entitled to the leave and pay rights provided by the Bill. He also noted that the employment rights afforded to the self-employed and workers would be considered as part of the Government's response to the Taylor Review.⁴⁴ Ms Gibson withdrew the proposed new clause.

The Committee then considered a group of amendments that sought to define what constitutes a “parent” for the purpose of the Bill's entitlements. The amendments proposed that this should cover step-parents; adoptive parents; and foster parents. The Minister responded explaining that the definition of parent would be one of the main issues

⁴⁰ Ibid., c1176

⁴¹ See: [Employment status](#), Commons Briefing papers CBP-8045

⁴² [PBC Deb 31 January 2018 c1-26](#); [PBC Deb 7 February 2018 c27-62](#)

⁴³ PBC Deb 31 January 2018 c12

⁴⁴ Ibid., c17

covered by the Government's consultation on the Bill, and that addressing the issue in Committee without the benefit of the consultation evidence, would be undesirable.⁴⁵ The amendments were withdrawn.

Second sitting

Patricia Gibson moved an amendment that sought to provide flexibility about when the leave could be taken, by requiring the regulations to include "arrangements for taking the entitled leave at different points":

it is not appropriate or desirable to set an early timeframe as to when bereavement leave should be taken. Some parents may feel the need of leave only some months later, when the enormity and the reality of the loss have truly sunk in. Others may prefer a phased return to work instead of taking the leave in one set block.⁴⁶

The amendment was grouped with others for debate, all proposing similar flexibility for when leave could be taken. As with earlier debate about the definition of "parent", the Minister said this would be an issue explored in the consultation. The Minister undertook that the consultation would report its findings in advance of the Bill's Report Stage.⁴⁷ As noted above, the [consultation](#) is due to conclude on 8 June 2018. Considering the Minister's assurances about the consultation, the amendments were withdrawn.

David Linden moved an amendment that would have provided a day of leave, additional to the Bill's existing two-week leave entitlement, for the day on which the child's funeral takes place.⁴⁸ Mr Hollinrake stated that, while he had sympathy with the amendment, the need to redraft the Bill to incorporate it "would be difficult at this point, because of the fragility of private Member's Bills".⁴⁹ In particular, Mr Hollinrake said that creating a single day's paid leave would cause difficulties:

There are issues with HMRC to do with how payments are made and the ability to look at a single day, rather than two single-week blocks or a two-week block. It makes things more complicated for both the provisions and the regulations.⁵⁰

Will Quince argued that most employers would already provide a day's leave, often at full pay for this, and thus a statutory entitlement providing a lower rate of pay, may result in "penalising the people we are trying to protect".⁵¹ The amendment was pressed to a vote, and defeated by eight votes to five.

Patricia Gibson then moved an amendment that would have extended the bereavement leave and pay entitlement to parents who lose a son or daughter of any age" rather than limiting the rights to parents of those under 18. The amendment was grouped with several others,

⁴⁵ Ibid., cc24-26

⁴⁶ PBC Deb 7 February 2018 c30

⁴⁷ Ibid., c36

⁴⁸ Ibid., c39

⁴⁹ Ibid.

⁵⁰ Ibid., c40

⁵¹ Ibid.

including one moved by Laura Pidcock, which sought to extend the age limit in cases where the 'child' had a lifelong disability.

Will Quince stated that the amendment would "increase the cost sixfold compared with the Treasury's current modelling will kill this Bill; the Government would have to withdraw their support".⁵² Mr Hollinrake expressed concern about the implications for employers "in terms of cost and logistics".⁵³ The Minister said that

setting the definition of a child as someone under the age of 18 is logical for the provisions of this Bill. As I said, we are not disregarding the needs of parents with dependent children over 18, but we must ensure that the focus of the Bill is clear. I believe that the definition as drafted goes far enough in setting a minimum level of protection that employers that must adhere to when engaging with bereaved employees.⁵⁴

Patricia Gibson withdrew her amendment, although Laura Pidcock pressed hers to a vote. The amendment was defeated by nine votes to six.⁵⁵

Will Quince then moved an amendment that sought to extend the definition of child to cover children still-born after 24 weeks pregnancy. Mr Quince stated:

As the Bill is drafted, the parents of babies that draw breath would be entitled to statutory parental bereavement leave in addition to their statutory paternity and maternity leave, whereas the parents of stillborn babies would not. The Bill by its nature must have arbitrary cut-offs. We have just debated eligibility in terms of definition, and to some extent this is no different. There is currently a disparity between parents of a child who drew breath and those of a child who did not. Luckily, parents of all babies, whether stillborn or those who die neonatally, would be entitled to those rights afforded at present as part of the statutory maternity and paternity; the discrepancy is between a stillbirth and a live birth. There is a piece of work to be done on including parents of stillborn children, because at the moment there is an unfairness between them and those who lose a child neonatally.⁵⁶

The Minister said that the Government would support the amendment:

My hon. Friend included in the Bill a power to extend the entitlement to include the parents of stillborn children, and explained, very clearly, the rationale for doing exactly that. I have thought about this long and hard, and I am supportive of the rationale and the position. The reasoning, to my mind, was clear, coherent and sound. I just add that, by including stillbirth—which affects 3,300 children a year—more than 6,000 additional parents will be covered by the provisions in the amendment.⁵⁷

The amendment and those consequential on it were agreed to without division.⁵⁸

⁵² Ibid., c45

⁵³ Ibid., c47

⁵⁴ Ibid., c52

⁵⁵ Ibid., c53

⁵⁶ Ibid., c54

⁵⁷ Ibid., c55

⁵⁸ Ibid., c57

18 Parental Bereavement (Leave and Pay) Bill 2017-19

David Linden then moved two amendments: an amendment that would have extended leave and pay rights to employees from day one (rather than requiring 26 weeks' employment); and one that would have provided the right to full pay rather than the statutory flat rate. Both were withdrawn without division.

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