

Research Briefing

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By Patrick Brione

# Paternity Leave (Bereavement) Bill 2023-24 [formerly the Shared Parental Leave and Pay (Bereavement) Bill]: Progress



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## Summary

The Paternity Leave (Bereavement) Bill 2023-24 is a Private Member's Bill, Bill 19 of the 2023-24 session. It is sponsored by Labour MP Chris Elmore who came second in the Private Members' Bill ballot for the 2023-24 session.

The Bill was originally titled the Shared Parental Leave and Pay (Bereavement) Bill 2023-24. It was renamed following amendment at committee stage.

The Bill had its first reading on 6 December 2023 and passed second reading on 26 January 2024. The Bill completed its committee stage on 20 March 2024. It is listed for remaining stages on Friday 26 April 2024.

## Background

[Shared Parental Leave \(SPL\) and Shared Parental Pay \(ShPP\)](#) allow the birth parent (or adopting parent) to curtail the amount of Maternity Leave and Statutory Maternity Pay or Maternity Allowance (or Statutory Adoption Leave and Pay) that they would have been eligible for, and instead transfer that balance to the other parent.

As noted in [guidance from the Advisory, Conciliation and Arbitration Service \(Acas\)](#), in order to be eligible to receive SPL or ShPP, someone must have been continuously employed by the same employer for at least 26 weeks by the end of the 15<sup>th</sup> week before the baby's due date.

In cases where the birth parent dies in childbirth or soon afterwards, [the entire remaining SPL or ShPP balance can be taken by the surviving parent](#). However, they must still meet the continuity of employment test to do so.

Likewise, [paternity leave and pay](#) is available to the father or the partner of the mother of a child, but only in cases where they meet the same continuity of employment test. Paternity leave is up to two weeks.

## Parliamentary interest

In November 2022 a case was [reported in the media](#) of a man from Nottinghamshire who found he was not eligible for SPL or ShPP after he had recently changed jobs before his wife died in childbirth. He had taken the issue to his MP, Darren Henry (Con), who had raised it in Parliament.

On 20 December 2022 Darren Henry introduced a Private Member's Bill, the [Shared Parental Leave and Pay \(Bereavement\) Bill](#), under the [Ten Minute](#)

[Rule](#), to remove the qualifying period of employment in cases where the birth or adopting parent had died. The Bill did not receive a second reading.

On 6 December 2023 there was a [Westminster Hall Debate on fatalities in childbirth and statutory leave and pay](#), opened by Darren Henry MP. A cross-party selection of MPs spoke in favour of extending eligibility to parental leave in cases where partners had died in childbirth.

[Responding for the Government](#), Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake, expressed sympathies for parents in such situations but also noted that the number of people denied access to SPL due to the continuity of employment test would be very small, anticipating this would be “around 10 per annum”.

## What does the Bill do?

The Bill would make changes to the Employment Rights Act 1996, removing the continuity of employment test for the surviving partner to take Paternity Leave in the case where a child’s mother (or adopting parents) dies.

In such cases where a child’s mother dies, the Bill would also allow the surviving parent to take Paternity Leave even if they have already taken Shared Parental Leave, despite that usually not being permitted.

This Bill would only affect Paternity Leave and not Statutory Paternity Pay.

Such changes would, if made, mean that access to Paternity Leave became a day one right for partners of a mother who has died, with no continuity of employment test. However, all the usual tests would continue to apply for Paternity Pay.

## Parliamentary progress

The Bill passed second reading with cross-party support on 26 January 2024. There was a Motion passed in the Commons on 5 March giving instructions to the Public Bill Committee allowing the scope of the Bill to be altered. In Public Bill Committee on 20 March, at the suggestion of the Bill’s sponsor Chris Elmore, the committee voted against clauses 1 and 2, removing them from the Bill and instead inserted a new clause 1, along with several other amendments.

This changed the nature of the Bill from being about extending eligibility of Shared Parental Leave in case of maternal bereavement, to being about extending eligibility of Paternity Leave in cases of bereavement. Consequential amendments also changed the long and short title of the Bill to match this change.

# 1

## Introduction

The [Paternity Leave \(Bereavement\) Bill 2023-24](#), Bill 19 of the 2023-24 session, was introduced on 6 December 2023 by Labour MP Chris Elmore as a Private Member's Bill, presented to Parliament through the ballot procedure. Its original title was the Shared Parental Leave and Pay (Bereavement) Bill 2023-24.

The Bill extends to England, Scotland and Wales but not Northern Ireland where employment law is devolved.

No explanatory notes for the Bill have been published.

The Bill would take effect on a date to be appointed by the Secretary of State by regulations.

The Bill is not noted as requiring a money resolution.

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## 2 Background

### 2.1 Shared Parental Leave and Pay

Shared Parental Leave (SPL) and Shared Parental Pay (ShPP) were introduced in 2015 as a way for eligible parents to share their existing parental leave entitlements more flexibly between them. The details of the right to SPL are set out in the [Shared Parental Leave Regulations 2014](#) and details of the right to ShPP in the [Statutory Shared Parental Pay \(General\) Regulations 2014](#).

The birth parent (or adopting parent) can curtail the amount of Maternity Leave and Statutory Maternity Pay or Maternity Allowance (or Statutory Adoption Leave and Pay) that they would have been eligible for, and instead transfer that balance to the other parent. Up to 50 weeks of leave and up to 37 weeks of pay can be shared in this way.<sup>1</sup>

As noted by the Advisory, Conciliation and Arbitration Service (Acas), to be eligible to take SPL and ShPP, the receiving parent must pass three qualifying tests:

- be sharing responsibility with the other parent from the day of the child's birth or adoption placement
- be legally classed as an employee
- pass the 'continuity of employment test' and their partner must pass the 'employment and earnings test'<sup>2</sup>

The continuity of employment test means someone must have been continuously employed by the same employer for at least 26 weeks by the end of the 15<sup>th</sup> week before the baby's due date.<sup>3</sup>

The employment and earnings test means that someone must have been an employed or self-employed earner for at least 26 (not necessarily continuous) of the 66 weeks before the baby's due date and must have earned an average of at least £30 a week in any 13 of the 66 weeks.<sup>4</sup>

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<sup>1</sup> [Shared Parental Leave and Pay](#), GOV.UK [accessed 19 January 2024]

<sup>2</sup> Acas, [Shared parental leave and pay: Checking eligibility](#), 11 October 2023

<sup>3</sup> [Shared Parental Leave and Pay](#), GOV.UK [accessed 19 January 2024]

<sup>4</sup> Acas, [Shared parental leave and pay: Checking eligibility](#), 11 October 2023

In addition there is one further eligibility criteria just for ShPP – that the person claiming it must earn on average at least £123 a week.<sup>5</sup>

## SPL in cases of parental death

As noted by the Advisory, Conciliation and Arbitration Service (Acas) in their [guidance on planning to take SPL and ShPP](#), these can still be taken by the other partner, even if the birth parent dies in childbirth or soon afterwards:

If a parent is eligible for shared parental leave and the other parent dies, they can:

- still take shared parental leave as planned
- transfer and use any shared parental leave due to be taken by the parent who died<sup>6</sup>

In such cases, the amount of leave the surviving partner can take is 52 weeks and the amount of pay is 39 weeks, minus the number of weeks already taken by the birth parent or adopting parent before their death.<sup>7</sup>

Likewise, if a birth parent's partner dies after notice has been given of the intention to curtail maternity leave or maternity allowance and to take SPL and ShPP instead, the birth parent can cancel that and revert to their maternity leave/allowance, or remain opted into SPL and simply have the remaining balance of SPL and ShPP default back to her. The usual notification requirements for booking days of leave are suspended in such cases.<sup>8</sup>

The eligibility rules for taking SPL and ShPP do not change in cases where one parent dies – the other parent must still meet the continuity of employment test in order to take any of the leave and pay.

## Calls for change in eligibility test for bereaved partners

In November 2022 it was reported that Aaron Horsey, a father from Nottinghamshire, was calling for a change in the law, after he found he was not eligible for SPL following his wife's death during childbirth.<sup>9</sup>

According to ITV News, Mr Horsey had recently changed jobs when his wife died while undergoing a C-Section, meaning he did not meet the continuity of employment test:

Mr Horsey said he was "surprised" by the legal loophole.

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<sup>5</sup> GOV.UK, [Shared Parental Leave and Pay: Eligibility for birth parents](#) [accessed 24 January 2024]

<sup>6</sup> Acas, [Shared parental leave and pay: Planning leave](#), 11 October 2023

<sup>7</sup> BEIS, [Shared Parental Leave and Pay: Employers' technical guide](#) (PDF), April 2020, p54

<sup>8</sup> As above

<sup>9</sup> ITV News, [Nottinghamshire dad 'not eligible' for paternity leave despite death of his wife during childbirth](#), 29 November 2022



"There was not actually anything to replace that in the case of bereavement," he said, before adding: "It was not the best time to be finding that out just after having lost your wife and gaining a lovely baby."

"This should be the last thing anyone is worrying about, whether they can actually take the time to look after a newborn."

His local MP, Darren Henry, has taken up the issue and raised it in parliament.<sup>10</sup>

Darren Henry MP (Con), raised Mr Horsey's case at Prime Minister's Questions on 2 November 2022. He asked the Prime Minister if he would "ensure that my constituent and I can meet the relevant Minister to make sure that we move towards a future where parents are not in this position?" In response, Prime Minister Rishi Sunak expressed his condolences, adding:

Employed parents can benefit from statutory support depending on personal circumstances, and I am concerned to hear that that is not happening in this case. I will of course ensure that he gets a meeting with the relevant Minister as soon as possible to resolve this issue.<sup>11</sup>

## 2.2

## Paternity Leave and Pay

Up to two weeks of [Paternity Leave and Pay](#) are available to employees who are the father of a new child, or to the partner of the child's mother or adopter, providing they are taking time off work to care for the child.

To qualify for Pay or Leave, the employee must meet the same continuity of employment test as for SPL outlined above. To qualify for Pay the employee must also meet the earnings test of earning at least £123 a week.<sup>12</sup>

From 6 April 2024 changes were introduced to how Paternity Leave and Pay can be taken as a result of the [Paternity Leave \(Amendment\) Regulations 2024](#).

The two weeks' entitlement can now be split into two separate one-week blocks, rather than having to take them both together. Parents can also take their two weeks at any time within the first year after their child's birth, rather than within only the first eight weeks after birth as previously required.

Employees now have to give employers 28 days' notice for each week of leave, down from 15-weeks' notice previously, before taking leave. However, they still need to give notice of their upcoming entitlement 15 weeks before the expected date of birth.

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<sup>10</sup> As above

<sup>11</sup> [HC Deb 2 November 2022](#), c864

<sup>12</sup> GOV.UK, [Paternity Leave and Pay: Eligibility](#) [accessed 22 April 2024]

## 2.3 Additional support for bereaved partners

Regardless of their eligibility or otherwise for SPL or ShPP, bereaved partners may separately be eligible to claim Bereavement Support Payment from the Government. For more details on eligibility and entitlement see the GOV.UK page [Bereavement Support Payment](#).

## 2.4 Shared Parental Leave and Pay (Bereavement) Bill 2022-23

On 20 December 2022 Darren Henry MP (Con) introduced a Private Member's Bill, the [Shared Parental Leave and Pay \(Bereavement\) Bill](#), under the [Ten Minute Rule](#). The Bill's long title was:

A Bill to make provision about shared parental leave and pay in certain cases where one or both of a child's parents has died; and for connected purposes.<sup>13</sup>

The Bill, as introduced, would have removed the continuity of employment test for taking SPL and ShPP in cases where the birth mother or adopting parent had died, thus making it a day-one right for parents who had lost their partner.

The Bill would have achieved this by making amendments directly to the Schedule to the Shared Parental Leave Regulations 2014 and to the Schedule to the Statutory Shared Parental Pay (General) Regulations 2014.

While introducing the Bill to the Commons, Darren Henry spoke about the experience of his constituent, Aaron Horsey, adding that "During the process of securing this ten-minute rule Bill, I have been contacted by other individuals around the UK with similar stories to Aaron".<sup>14</sup> He called on Members from across the House to support his Bill, saying:

This Bill is not contentious. It simply seeks to allow individuals the right, under circumstances beyond their control, to take leave and be with their child. As I have mentioned, it would affect not a vast amount of our population, but a small number in our society who need the help of the Government and their employers.<sup>15</sup>

The Bill did not receive a second reading and fell at the end of the 2022-23 parliamentary session.

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<sup>13</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill 2022-23](#)

<sup>14</sup> [HC Deb 20 December 2022](#), c172

<sup>15</sup> [HC Deb 20 December 2022](#), c173

## 2.5

## Westminster Hall debate

On 6 December 2023 there was a Westminster Hall Debate on fatalities in childbirth and statutory leave and pay. The debate was opened by Darren Henry. Darren Henry raised again the story of his constituent, Aaron Horsey, saying that:

Aaron found himself in the agonising position of losing a loved one and having to raise a new-born child alone. That situation was made worse when he realised he did not qualify for shared parental leave and pay. Aaron was fortunate in that he worked for an incredibly understanding employer, who allowed Aaron the leave and pay he required to look after Tim. Others may not be so lucky.<sup>16</sup>

Anticipating potential concerns from businesses about the cost of such a measure, he said that such impact would likely be extremely small and potentially outweighed by benefits to businesses in employee retention:

an incredibly small number of people and businesses would be affected. It is not an issue that affects thousands. Furthermore, if such leave is not allowed, those businesses could be faced with losing their valued employee—a situation that I am sure many would seek to avoid.<sup>17</sup>

He also expressed his gratitude to Labour MP Chris Elmore for agreeing to take the issue on in this Private Member's Bill, following the recent ballot. Chris Elmore, the current Bill's sponsor, responded to the expression of thanks, noting that such changes had cross-party support:

The hon. Gentleman has said several times that this is cross-party. It is not a political issue; it is basically one of conscience. Allowing such a change does not impact thousands of people. I hope that in the course of the passage of my private Member's Bill we can work constructively.

During the debate, Jim Shannon MP (DUP), Theo Clarke MP (Con) and Patricia Gibson MP (SNP) also spoke in favour of extending rights in such cases. Patricia Gibson noted that she would go further, instead advocating for two weeks' paid bereavement leave for anyone who loses a close family member, as proposed by her in the unsuccessful [Bereavement \(Leave and Pay\) Bill 2021-22](#).

Shadow Minister for Employment Rights, Justin Madders, expressed general support for proposed changes to SPL and ShPP in cases of bereavement, but also spoke more widely about the Labour Party's desire for paternity pay, paternity leave, maternity leave and shared parental leave “to become day one rights”, not just in cases of bereavement.<sup>18</sup>

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<sup>16</sup> [HC Deb 6 December 2023](#), c142WH

<sup>17</sup> [HC Deb 6 December 2023](#), c144WH

<sup>18</sup> [HC Deb 6 December 2023](#), c151WH

Responding for the Government, Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake, talked about his work bringing forward the Bill which became the Parental Bereavement (Leave and Pay) Act 2018, providing bereavement leave and pay to parents whose child dies before the age of 18.

In terms of access to SPL for bereaved partners, the Minister noted that the number of people denied access due to the continuity of employment test would be very small, saying:

the majority of fathers or partners who find themselves in the dreadful situation of the child's mother having died at or soon after birth are likely to qualify for shared parental and paternity leave, as they will have completed the six months of continuous service with their employer necessary to qualify.

[...] we anticipate that covering about 100 cases where the mother has passed away per annum. The vast majority of those will be covered because the father has the relevant level of service—26 weeks—which gives them entitlement to take leave.

We think that the number of people who would be affected as Aaron was is around 10 per annum.<sup>19</sup>

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<sup>19</sup> [HC Deb 6 December 2023](#), c152WH

## 3

# Parliamentary progress

First reading of the Paternity Leave (Bereavement) Bill 2023-24 (then titled the Shared Parental Leave and Pay (Bereavement) Bill 2023-24) was on 6 December 2023. The long title of the Bill is:

A Bill to make provision about paternity leave in cases where a mother, or a person with whom a child is placed or expected to be placed for adoption, dies.

This differs from the original long title as introduced, which was:

A Bill to make provision about shared parental leave and pay in certain cases where a mother has died; and for connected purposes.

The Bill passed second reading on 26 January 2024 and completed its committee stage on 20 March 2024. It is listed for remaining stages on Friday 26 April 2024.

## 3.1

# Second reading debate

The Bill's second reading debate took place on Friday 26 January 2024. For a description of the Bill's original clauses as debated at second reading, see Annex 2.

The Bill's sponsor, Chris Elmore MP (Lab), opened the debate by explaining the purpose of the Bill as being to support new parents who have suffered the loss of a partner in childbirth, saying:

The Bill I have tabled seeks to give a day-one right to leave for parents in the most tragic of circumstances who do not meet current continuity of service requirements, so that they have a guaranteed leave entitlement to process the grief and change in personal circumstances, along with a job to return to when they are able to do so.<sup>20</sup>

Gavin Robinson (DUP) also spoke in favour of the Bill, though noted that the Bill would not extend to Northern Ireland and suggested “if, indeed, it is procedurally possible—whether the Bill, if it completes Second Reading, could be amended to include Orders in Council” in order to allow an Order in Council to be made to extend equivalent provisions to Northern Ireland.<sup>21</sup>

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<sup>20</sup> [HC Deb 26 January 2024](#), c506

<sup>21</sup> [HC Deb 26 January 2024](#), c512

Darren Henry (Con), the sponsor of the previously unsuccessful Shared Parental Leave and Pay (Bereavement) Bill 2022-23 (see above), spoke in favour of the Bill, saying:

The evidence is clear that individuals who have lost their partner in childbirth being able to take leave is a necessity for themselves and their child. We have a duty to ensure that that right is written in law and not left up to the good will of individual companies.<sup>22</sup>

Darren Henry repeated the story of his constituent Aaron (see above), who was in the public gallery to watch the debate. Darren Henry also added that “It is my hope that we do get to a stage where leave and pay are granted to those who find themselves in situations such as Aaron’s, and it is regrettable that pay is not included today”.<sup>23</sup>

Other Conservative MPs Fiona Bruce, Jack Brereton and James Daly also spoke in favour of the Bill.

Shadow Minister for Trade, Gareth Thomas, expressed support for the Bill on behalf of the Labour Party, saying “Labour Members want his Bill to make progress today, and perhaps to open up a broader debate about employment rights.”<sup>24</sup>

In response to an intervention from James Daly MP (Con), the Shadow Minister also said he hoped that the House would further consider the related question of bereavement leave, saying that “perhaps the Backbench Business Committee will be receptive to the case for one”.<sup>25</sup>

The Shadow Minister concluded by noting some concerns about take-up of Shared Parental Leave, saying:

My understanding is that the Government’s evaluation of shared parental leave has noted a series of problems. Some seven in 10 employers, while being aware of shared parental leave, are not actively promoting it to their employees, and a third of mothers and nearly half of fathers who did not take shared parental leave had not even heard of it. There are clearly issues with the take-up of shared parental leave and, if not today, it would be good to hear from the Minister how the Government plan to address those issues.<sup>26</sup>

Responding for the Government, Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake, gave a revised estimate of the small number of people likely to be affected by the legislation, saying:

Maternal deaths—the number of people who pass away during pregnancy or within 42 days of that—are around 290, as he said. Some will have continuity of service requirements. We therefore think that this legislation will benefit just under 50 people a year. That is our best guesstimate, because there are so

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<sup>22</sup> [HC Deb 26 January 2024](#), c513

<sup>23</sup> [HC Deb 26 January 2024](#), c514

<sup>24</sup> [HC Deb 26 January 2024](#), c518

<sup>25</sup> [HC Deb 26 January 2024](#), c520

<sup>26</sup> [HC Deb 26 January 2024](#), c520

many different moving parts, but that is the kind of number we are talking about. That is not a huge number, but the legislation is very important to those affected by it.<sup>27</sup>

In response to concerns about pay not being included, the Minister commented that this was a first step, saying:

I noted the hon. Member's points principally about pay. It is a first step on the road, but it is a very important step, and future Governments—of whatever colour they may be—may go further.<sup>28</sup>

In response to questions about the complexity and take-up of SPL, he noted work the Government had done, saying:

Take-up is in line with estimates and has doubled over the past few years. In July 2021, the shared parental leave tool was deployed. The tool enables parents to check their eligibility and plan their leave, and it has been well received.

In response to the question from Gavin Robinson MP about the application of the law to Northern Ireland, the Minister noted that “employment law is a devolved matter for the Northern Ireland” but added that “I note his point about an Order in Council, and we will take forward discussion on that.”<sup>29</sup>

The Minister concluded by stating Government support for “the Bill’s intent” and praising the cross-party support on this issue.<sup>30</sup>

The question was put and agreed to without division.

## 3.2 Instruction to committee

On 5 March 2024 the Government moved a motion in the House to issue an instruction to allow the Public Bill Committee on the Bill to consider amendments that would otherwise be out of scope. Specifically, the motion proposed:

...that the Committee have leave to make provision about paternity leave in cases involving the death of—

(a) the mother of a child,

(b) a person with whom a child is, or is expected to be, placed for adoption, or

(c) an applicant or intended applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008.<sup>31</sup>

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<sup>27</sup> [HC Deb 26 January 2024](#), c524

<sup>28</sup> [HC Deb 26 January 2024](#), c525

<sup>29</sup> [HC Deb 26 January 2024](#), c526

<sup>30</sup> [HC Deb 26 January 2024](#), c526

<sup>31</sup> [HC Deb 5 March 2024](#), c803

The Parliamentary Under-Secretary of State for Business and Trade, moving the motion, explained the purpose of this motion as being to allow the Committee to consider Paternity Leave as an alternative vehicle to Shared Parental Leave in delivering on the Bill's objectives:

My officials are working to complete a comparative analysis of shared parental leave and paternity leave entitlements to establish which mechanism is best to achieve the Bill's intent. To ensure we use the best available mechanism to deliver this entitlement, we are seeking to broaden the scope of the Bill to include paternity leave. In that way, both shared parental leave and paternity leave can be considered in Committee.

What is more, the instruction would enable a Committee to consider amendments that would extend the measures to new parents who have their children through other routes, such as adoption or surrogacy arrangements.<sup>32</sup>

Responding for the Labour Party, Shadow Minister for Employment Rights, Justin Madders, commended the Bill's sponsor Chris Elmore for securing Government support and added that Labour would support the motion, saying: "We look forward to the Bill hopefully being amended in Committee to take on board the intentions set out today. We welcome the motion, and we wish it all the best."<sup>33</sup> The Bill's sponsor, Chris Elmore, also spoke in favour of the motion.

The question was put and agreed to.

### 3.3 Committee stage

On 20 March 2024 the Bill was [considered by a Public Bill Committee](#) chaired by DUP MP Ian Paisley. See Annex 1 to this paper for the full membership. One new clause and five amendments were tabled, of which three were selected for debate and all passed without opposition. At the suggestion of the Bill's sponsor, Chris Elmore MP, the committee voted against the original clauses 1 and 2 standing part of the Bill, instead voting for a new clause 1.

The effect of these amendments has been to completely replace both the substantive clauses of the Bill (as introduced) with one new clause, as well as changing both the long and short titles of the Bill.

The Bill's sponsor, Chris Elmore MP, explained the purpose of these changes, achieved through the proposed insertion of new clause 1, as being to change the type of leave through which the Bill delivered its aims from Shared Parental Leave to Paternity Leave:

Having discussed that matter with the Government, I have concluded that paternity leave is a more appropriate vehicle to deliver the entitlement, a key reason being that the central feature of a shared parental leave scheme is that

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<sup>32</sup> [HC Deb 5 March 2024](#), c803

<sup>33</sup> [HC Deb 5 March 2024](#), c804



the mother or adoptive parent is already entitled to maternity or adoption leave or pay, and curtails that entitlement in order to create an entitlement to shared parental leave. For a bereaved partner to qualify for shared parental leave, then, the deceased parent must have had a recent history of employment. If the deceased parent did not have such a history—for example, in the case of a stay-at-home mum—there would be no shared parental leave entitlement for the surviving parent to access. By contrast, paternity leave entitlements are independent of whatever entitlement the other parent has, so the choice of this mechanism brings more parents, such as surviving partners of deceased stay-at-home mums, into the scope of the entitlement.<sup>34</sup>

Chris Elmore also explained other effects of replacing the Bill’s original clauses with new clause 1, including the removal of Henry VIII powers from the original clause 2, saying:

I am sure the Committee will agree that the removal of such a broad Henry VIII power is a good thing. Clause 2 also includes other unnecessary provisions, such as a power to make transitional and saving provisions, and a stipulation that the affirmative procedure will apply to the regulations. To clarify to the Committee, that stipulation is unnecessary because the powers of the Employment Rights Act 1996 that are being amended by the Bill are already subject to the affirmative procedure.<sup>35</sup>

Several Conservative MPs spoke during the debate, in favour of the Bill, including Darren Henry MP who had previously campaigned on this issue and was the sponsor of the unsuccessful Shared Parental Leave and Pay (Bereavement) Bill 2022-23 (see above). He did, however, express his disappointment that the Bill as amended would only cover Paternity Leave and not Statutory Paternity Pay, saying: “I have previously placed on record my thoughts on the matter so I will not do so at length today, but I hope that pay will be added to the legislation in future”. Alicia Kearns MP (Con) also spoke in favour of the idea of including pay with this legislation.

Responding for the Government, Parliamentary Under-Secretary of State for Business and Trade, Kevin Hollinrake, explained why the Government did not feel it was appropriate to include pay with this measure, saying:

Let me address the point that my hon. Friend the Member for Broxtowe made about pay. Again, he has been a doughty campaigner on this issue. I understand his concern, but we do not believe that it is right. Currently, no statutory pay entitlements, including statutory maternity pay, are available on the first day of a job. This is because employers, apart from small businesses, are required to contribute towards the cost of statutory parental pay, as well as meeting the costs associated with their employee’s absence from work, and new employees have not yet had time to make reasonable contributions towards their employers’ businesses.<sup>36</sup>

In summing up, Chris Elmore expressed his thanks to the Government for “been incredibly constructive in working with me to ensure that we do not let the perfect get in the way of the good” and noted that the Bill represented “a

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<sup>34</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, c6

<sup>35</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, c7

<sup>36</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, c10

significant step in the right direction” adding that “throughout the course of employment rights legislation, these things often started as leave, and then moved to the next step, and so on and so forth.”<sup>37</sup> He also paid tribute to Darren Henry MP for previous campaigning on this subject and having convinced him “to take on the Bill”.<sup>38</sup>

Chris Elmore explained that he had tabled amendments 1 and 2 (which were not selected) purely to “indicate my intention to vote against” clauses 1 and 2.<sup>39</sup> He encouraged other members of the committee to vote against clauses 1 and 2 of the Bill, and to instead vote for new clause 1 which had been tabled, along with amendments 3, 4 and 5 which made other minor technical changes such as to the Bill’s titles. This was agreed to and the Bill was consequently amended as proposed.

The Bill’s remaining stages are listed for Friday 26 April 2024.

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<sup>37</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, c11

<sup>38</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, c11

<sup>39</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill Deb](#), 20 March 2024, cc6-7

## 4

# The Bill

For a description of the Bill's original clauses prior to amendment by Public Bill Committee, see Annex 2.

### 4.1

## Clause 1: Paternity leave, special provision in cases of bereavement

**Clause 1** would make several amendments to the Employment Rights Act 1996 (ERA). Primarily it would amend section 80A (entitlement to paternity leave: birth) by adding new subsection 6A. This would mean that, in cases where a child's mother dies, regulations specifying the duration of employment a father or partner must meet in order to qualify for Paternity Leave would be disapplied.

Such changes would, if made, mean that access to Paternity Leave becomes a day one right for partners of a mother who has died, with no continuity of employment test (though they would still have to be employees somewhere). However, all the usual tests would continue to apply for Statutory Paternity Pay.

New subsection 6A would also disapply in cases of maternal death the rule that Paternity Leave cannot normally be taken after a period of Shared Parental Leave has already been taken.

New subsection 6A would also allow regulations to provide for Paternity Leave to be taken in cases where both the mother and child die, despite the fact that Paternity Leave can usually only be taken for the purposes of caring for a child.

Other amendments made by clause 1 to section 80B of the ERA would extend eligibility to paternity leave in a similar way in cases of adoption where an adoptive parent dies.

Finally, clause 1 would allow regulations to make provision for bereaved employees to work on some 'keeping-in-touch' days during their period of Paternity Leave, without this automatically ending their Paternity Leave. Regulations would also be allowed to make provision about redundancy in cases of a bereaved employee returning from Paternity Leave.

## 4.2

### Clause 2: Extent, commencement and citation

**Clause 2** sets out that the Bill would apply to England, Wales and Scotland, but not Northern Ireland where employment law is devolved. The Bill would come into force on a day to be appointed by the Secretary of State through future regulations.

Clause 2 was amended at committee stage so that the new title of the Bill if passed would be the Paternity Leave (Bereavement) Act 2024.

## Annex 1

### Composition of Public Bill Committee, Wednesday 20 March 2022

*Chair:* † Ian Paisley

Aiken, Nickie (*Cities of London and Westminster*) (Con)

† Bradley, Dame Karen (*Staffordshire Moorlands*) (Con)

† Clarke, Theo (*Stafford*) (Con)

† Crouch, Tracey (*Chatham and Aylesford*) (Con)

Dixon, Samantha (*City of Chester*) (Lab)

† Elmore, Chris (*Ogmore*) (Lab)

† Fellows, Marion (*Motherwell and Wishaw*) (SNP)

† Henry, Darren (*Broxtowe*) (Con)

† Hollern, Kate (*Blackburn*) (Lab)

† Hollinrake, Kevin (*Parliamentary Under-Secretary of State for Business and Trade*)

Hunt, Jane (*Loughborough*) (Con)

† Jones, Ruth (*Newport West*) (Lab)

† Kearns, Alicia (*Rutland and Melton*) (Con)

† Lake, Ben (*Ceredigion*) (PC)

Morrissey, Joy (*Lord Commissioner of His Majesty's Treasury*)

Murray, Ian (*Edinburgh South*) (Lab)

† Stafford, Alexander (*Rother Valley*) (Con)

Katya Cassidy, *Committee Clerk*

† attended the Committee

## Annex 2: Bill’s original clauses prior to amendment

### Clause 1: Shared parental leave: entitlement in the event of death of mother

**Clause 1** would have required the Secretary of State to make regulations to remove “continuity of employment conditions in respect of the entitlement of a father or partner to shared parental leave in cases where a mother has died.”<sup>40</sup>

This would have required regulations to be made to amend the Schedule to the Shared Parental Leave Regulations 2014, where entitlement to SPL is defined.

The Bill differed from the unsuccessful 2022-23 Bill in two main ways:

- Firstly in that it would only have affected SPL and not ShPP.
- Secondly in that it would have required the Government to make amendments to the 2014 Regulations through other secondary legislation, rather than the Bill directly amending them in the primary legislation itself.

Such changes would, if made, have meant that access to SPL became a day one right for partners of a mother who has died, with no continuity of employment test (though they would still have to be employees somewhere). However, all the usual tests would have continued to apply for ShPP.

### Clause 2: Regulations

**Clause 2** would have allowed regulations made under the Bill do amend any previous Act of Parliament. **This was a Henry VIII power.** Any regulations made using these powers would have had to use the [draft affirmative procedure](#), requiring a positive vote from both Houses of Parliament.

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<sup>40</sup> [Shared Parental Leave and Pay \(Bereavement\) Bill 2023-24 \(as introduced\) \(PDF\)](#)

## Clause 3: Extent, commencement and citation

**Clause 3** set out that the Bill would apply to England, Wales and Scotland, but not Northern Ireland where employment law is devolved. The Bill would come into force on a day to be appointed by the Secretary of State through future regulations.

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