



DEBATE PACK

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Parental Bereavement Leave (Statutory Entitlement) Bill 2016-17

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Summary

The [*Parental Bereavement Leave \(Statutory Entitlement\) Bill 2016-17*](#) is a Private Members' Bill, which is expected to have its Second Reading debate on 28 October 2016. The Bill was introduced by Will Quince MP on 6 September 2016, under the Ten Minute Rule.

The Bill is sponsored by a number of Members: Will Quince, Johnny Mercer, Frank Field, Dr Sarah Wollaston, Stewart Malcolm McDonald, Suella Fernandes, Wes Streeting, James Cartlidge, Greg Mulholland, Mike Wood, James Cleverly and Stella Creasy.

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1. Background

There is no specific statutory right in the United Kingdom to parental or any other form of bereavement leave from employment, although a number of areas of law are relevant.

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

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.¹

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 roundly 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.²

¹ [HL Deb 8 July 1999 cc1084-1085](#)

² Para 18

Other relevant law

In circumstances where an employee is too incapacitated through bereavement to be capable of working, they may be able to claim Statutory Sick Pay.

To the extent that any incapacity constitutes a disability under the *Equality Act 2010*, or exacerbates an existing disability, the employer would be required to make reasonable adjustments.

Additionally, the employer's health and safety obligations may be engaged; for example, bereavement affecting concentration may impact an employee's ability safely to operate heavy machinery.

1.1 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 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.³

³ National Council for Palliative Care, [Life After Death – Six steps to improve support for bereavement](#), 2014, p7

2. The Bill

Clause 1 of the Bill would amend the *Employment Rights Act 1996* to include a new Chapter IV with the heading 'Parental Bereavement Leave'.

A new section 80E1(1) in the 1996 Act would provide:

The Secretary of State must make regulations entitling an employee who satisfies specified conditions—

(a) as to duration of employment, and

(b) as to their relationship with the deceased child

to be absent from work on leave under this section for the purpose of grieving for a deceased child and supporting the other parent or parents

Employees must be entitled to at least two week's leave.⁴

Provision for leave under the section must include a right to pay of at least £139.58 or 90% of weekly earnings, whichever is lower; this mirrors the rates of Paternity, Maternity and Shared Parental Leave Pay.⁵

⁴ See clause 1(2), new section 80E1(6)

⁵ See clause 1(2), new section 80E1(7)

3. First reading

The Bill was introduced by Will Quince MP under the Ten Minute Rule, which enables a Member to make a case for a bill by way of a speech lasting up to ten minutes. If the House supports the motion for leave to bring the Bill, the bill is taken to have received its First Reading, as was the case here. In his speech, Mr Quince described the Bill as follows:

I seek leave to introduce a Bill to amend the Employment Rights Act 1996 to give parents who have suffered the loss of a child a statutory right to two weeks' paid leave. May I start by paying tribute to the former Member for Glasgow South, who campaigned for this change, and to the many hon. and right hon. Members across the House who support this campaign?

Every Member of the House will agree that there can be few more distressing life events than the loss of a child. Yet, with up to 5,000 children dying every year, many thousands of parents go through this personal tragedy. As the House is aware, my wife and I lost our son, who was stillborn full term, in October 2014, and I was entitled to two weeks off work, protected by statute under the paternity rules. As it happened, I had a very understanding employer, so my legal rights did not come into question. However, it was comforting to know that I was entitled to two weeks off work by law—that I could take that time as needed to come to terms with the incredible loss. I know how valuable it was to spend precious time with my wife coming to terms with what had just happened, registering the death, making the arrangements for the funeral and preparing to say goodbye.

I cannot begin to understand what it would feel like to lose a child at seven months or at two, five, 10 or 15 years old. The grief must be unbearable, and my heart goes out to any parent who has had to go through this most terrible of life events. Yet, why should those parents not have the same protection in law as those who lose a baby through stillbirth or in the first few days and months of life? In such situations, a bereaved mother and father are entitled to full maternity and paternity leave, but if someone loses a child or an older baby—nothing. Surely that cannot be right.

At present, there is no statutory right to take time off on compassionate or bereavement grounds. However, all employees have the right to take immediate time off for dependants; in effect, that is a legal right to take time off unpaid to take the necessary action. Yet, there is no set limit on how many days can be taken as leave and a rather vague definition of a reasonable amount of time. Further, there is no statutory right to be paid during this reasonable amount of time. The reference to taking action distinguishes this form of leave from bereavement or compassionate leave. The type of action contemplated by the relevant provision is arranging and attending a funeral, registering the death and so on; it does not provide a right to leave to cope with the emotional reaction to the child's death. An employee's right to bereavement leave is therefore not protected by law in this respect, and the duty to show compassion is left entirely to the employer's better judgment.

To be clear, most employers are excellent; they act with compassion and kindness, offering their bereaved staff the time they need to come to terms with their loss. However, some do

not, and they behave in a manner that falls well short of what we would expect of them. Of course, we expect employers to act with sensitivity and flexibility in situations like this. Yet, given the countless examples of organisations acting without sensitivity and with utter inflexibility, surely it is time for the Government to act.

I am certainly alive to the pressures on businesses at the moment—especially small businesses—and I am loth to introduce any additional regulatory burden. However, given the relatively and thankfully small number of bereaved parents annually, the cost to business would be small. There is also an argument that such a proposal is beneficial to business. Most employers already go out of their way to treat their staff with compassion and often give them fully paid leave. This change would allow them to recover some of the cost of doing so.

So how much would this cost? It is difficult to say, because it would largely come down to the eligibility criteria, but research conducted by the House of Commons Library suggests that the cost could be as little as £2 million per year. However, the reality is that every bereaved parent is different; some will want to take time off, and others will want to get straight back to work. In the same way, not everyone takes their full maternity or paternity rights. The issue, however, is that they have the choice and protection by law.

Some will come at this from a religious perspective. In Hinduism, for example, when a death occurs, relatives are required to observe a 13-day mourning period after cremation. In Judaism, family members are required to stay at home for seven days of mourning after a death.

Statutory bereavement leave is a common right across Europe and in many countries across the world. While the exact conditions vary in terms of total time off and whether said leave is paid or unpaid, it is remarkable that one can argue that Albania or Bosnia and Herzegovina have better worker rights in this area than us. My proposal would give UK workers some of the best bereavement rights in the world in terms of the length of leave possible. While other countries, such as Israel, offer leave with full salary, longer leave at a lower statutory rate is a good starting point.

This is also a popular idea. The 2014 report “Life After Death” from the National Bereavement Alliance and the National Council for Palliative Care quoted research from ComRes, which showed that 81% of people agreed that there should be a legal right to receive paid bereavement leave. The Government e-petition calling for bereavement leave for parents, organised by campaigner Lucy Herd, has over 25,000 signatures, and a Change.org petition has over 165,000 signatures. The campaign also has the support of many organisations, including Child Bereavement UK, the Lullaby Trust, Working Families, Cruse Bereavement Care, Dying Matters—the list goes on.

I fully appreciate the concerns the Government and other Members of the House may have over such a Bill. It will not be perfect. There will always be sincere disagreements over the length of time given and the eligibility criteria. However, let us not make the perfect the enemy of the good. This Bill would be an important first step, giving thousands of bereaved parents up and down the country the opportunity to come to terms with their

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grief without feeling the pressure of having to return to work. I commend the Bill to the House.⁶

⁶ [HC Deb 6 September 2016 cc 215-217](#)

4. Bereavement leave in other countries

The table on the following pages provides a summary of the availability of parental bereavement leave in a number of other, mainly EU countries, compiled following contact with research services in other parliaments. There are a few points to note about the table.

First, it does not cover the interaction between maternity and bereavement leave. Many states make express statutory provision for this. In the UK, death of a child during maternity leave does not cancel the leave; the mother may use up her remaining leave as she would have absent the child's death. The position is similar in the countries whose parliaments the Library contacted.

Second, the table assumes that "paid leave" means that the leave is paid by the employer unless otherwise stated by the responding parliament.

Third, without exception, the bereavement leave provisions in the countries surveyed, where they exist, are not limited to parental bereavement. Some countries provide different minimum lengths of leave depending on the relationship with the deceased. Where this is the case the table identifies the duration of leave that would apply if the deceased were the employee's child.

Fourth, the table does not include rights flowing from collective labour agreements, except in the case of Greece, where private sector employees' rights are subject to a national agreement. In many EU countries bereavement leave, additional to or in place of a statutory entitlement, is derived from collective agreements negotiated with trade unions.

Last, where a cell is blank this indicates that the corresponding parliament did not provide the relevant information.

	Bereavement leave/leave for family reasons	An alternative form of leave that could be used	Duration of leave for child's death (days)	Paid	Paid at full wage	Paid by employer	Paid by state
Albania	✓	N/A	5	✓	✓	✓	
Andorra	✗	Leave due to force majeure; temporary medical leave		✓		✗	✓
Austria	✗	Leave due to important reasons, not resulting from fault of employee	Generally less than one week	✓		✓	✗
Belgium	✓	N/A	3	✓	✓	✓	✗
Bosnia and Herzegovina	✓	N/A	7	✓	✓	✓	✗
Canada	✓	N/A	3. If death is result of a crime: 104 wks. If child missing: 52 wks.	✓ (unpaid if employee has <3 months service)	✓	✓ (generally)	✓ (if death is result of a crime)
Croatia	✓	N/A	7	✓	✓	✓	✗
Estonia	✗	Leave where the employee cannot perform work, due to a reason not caused intentionally/negligently	Reasonable period	✓	✓	✓	✗
Finland	✓	N/A	"temporary absence"	✗	N/A	N/A	N/A
France	✓	N/A	2	✓	✓	✓	✗

	Bereavement leave/leave for family reasons	An alternative form of leave that could be used	Duration of leave for child's death (days)	Paid	Paid at full wage	Paid by employer	Paid by state
Georgia	✓	N/A	15	✗ (civil servants paid at a reduced rate)	✗	N/A	N/A
Germany	✗	Leave where the employee cannot perform work, due to a reason not caused intentionally/negligently	Not defined. Collective labour agreements may limit	✓	✓	✓	✗
Greece	✓ (for civil servants; private sector has national collective agreement)	N/A	Civil service: 3; private sector: 2	✓	✓	✓	✗
Hungary	✓	N/A	2	✓	✓	✓	✗
Israel	✓	N/A	7	✓ (unpaid if employee has <3 months service)	✓	✓	✗
Lithuania	✓	N/A	3	✗ (civil servants are paid full pay)	N/A		
Luxembourg	✓	N/A	3	✓	✓	✓	✗
Montenegro	✓	N/A	7	✓	✓	✓	✗

	Bereavement leave/leave for family reasons	An alternative form of leave that could be used	Duration of leave for child's death (days)	Paid	Paid at full wage	Paid by employer	Paid by state
The Netherlands	x	✓	4	✓	✓	✓	x
Norway	x	Sick leave is generally used	N/A	✓ (sick pay)	Sick pay capped at approx £4260pm	For the first 16 days	From day 17, for up to one year
Poland	✓	N/A	2	✓	✓	✓	x
Romania	✓	N/A	5	✓	✓	x	✓
Russia	✓	N/A	5	x	N/A	N/A	N/A
Slovakia	✓	N/A	2 upon death; 1 for funeral	✓	✓	✓	x
Slovenia	✓	N/A	1	✓	✓	✓	x
Spain	✓	N/A	Private sector: 2-4. Public sector: 3-5.	✓	✓	✓	x

	Bereavement leave/leave for family reasons	An alternative form of leave that could be used	Duration of leave for child's death (days)	Paid	Paid at full wage	Paid by employer	Paid by state
Sweden	x	Sick leave is generally used	N/A	✓ (sick pay, plus parental benefit)		For the first 13 days	✓
Switzerland	✓	N/A	Not specified, but generally 3	✓ (unpaid if employee has <3 months service)	✓	✓	x
Turkey	✓	N/A	3	✓	✓	✓	x

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