



DEPARTMENT FOR THE ECONOMY

CONSULTATION ON PARENTAL BEREAVEMENT LEAVE AND PAY

**NIPSA RESPONSE
AUGUST 2020**

Contact Details

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Introduction

1. NIPSA is the largest trade union in Northern Ireland representing over 41,500 members employed across the whole of the public services in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education Authority, the Health Trusts, the NI Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the Voluntary Sector.
2. In paragraph 4 of the Foreword it states that the provisions will “*at least match (our emphasis) the parental bereavement legislation which came into effect across the rest of the United Kingdom on 6 April 2020*”. We believe the proposed legislative framework for Northern Ireland must deliver, as a minimum, the provisions applicable in the United Kingdom (UK). We also believe this consultation provides us with a unique opportunity in Northern Ireland to ensure the most generous parental bereavement leave and pay provisions apply to Northern Ireland and go beyond the new UK statutory provision.
3. As employment law is a devolved matter we would expect the Northern Ireland Executive to show a commitment to developing and maintaining an employment rights system that is consistent with best practice and enhances Northern Ireland’s reputation and competitiveness in a global economy. In the UK a number of private and public sector organisations go above and beyond the new statutory provision by offering this leave at full pay. Several, including Rolls-Royce and the Cambridgeshire Fire and Rescue do not have a qualifying period for the entitlement to kick in, unlike the 26 weeks’ service required by the UK law.
4. The starting point for this consultation must be that the death of a child is a tragedy which is likely to cast a shadow over a parent for the rest of their life and that the period immediately after a bereavement is a time when a bereaved parent may be in shock, may have practical considerations to attend to such as coroner’s inquests and funeral arrangements, and is likely to need time to grieve without having to worry about their job security or their income.
5. However, it should also be noted that there is no set pattern for grief and that some people who suffer a bereavement choose to go back to work at the earliest opportunity as they need the company of their colleagues and the comfort of a routine and keeping busy. Grief and depression can strike at a later date, when someone is least expecting it. By its very nature, it is difficult to legislate for a grieving period when there is no set pattern and the person affected cannot predict how they will feel from one day to the next. We therefore believe employers should take as flexible and compassionate an approach as possible.

6. We believe the consultation is limited in that it does not consider flexible working. We would expect that employers should in addition be required to consider temporary changes to employment arrangements such as flexible working/ reasonable adjustments if requested by the employee.
7. We therefore believe the Northern Ireland Executive have a responsibility and an opportunity now, if they are really serious about supporting employees in Northern Ireland who experience such a tragic loss, to lead the way and send a clear message to unsupportive employers who fail to display even a basic level of compassion and support to employees faced with such personal tragedy, that this is unacceptable and their reputation and competitiveness in the local and global economy will be undermined.
8. NIPSA welcomes the opportunity to respond to this consultation and our views are set out below.

Definition of “Bereaved Parent”

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

The age of the child or young person who dies

10. All bereaved parents need time to grieve away from work, regardless of the age of their child. We would like **all** to have a right to paid leave. As such, the definition should also not be restricted to children under the age of 18. We would recommend the definition of “child” should be “a son or daughter of any age”. This we believe would bring about an ideal system of bereavement leave and allow all bereaved parents time to grieve away from work, regardless of the age of their child.
11. However, as a minimum, we ask that the upper age threshold in the legislation is 25.
12. There are several good reasons for this: when the worst happens, parents forced to come to terms with the impact of losing their child must also contend with a number of other issues. If the young person dies with a long-term disability, parents may also have to endure significant short-term financial hardship caused by the immediate loss of their income. This could be due to the end of benefits such as carer’s allowance, disability living allowance and child benefit. This can

often compound the debt legacy which families of children with life-limiting or life-threatening conditions may have incurred as a result of the additional costs of caring for their child over a long period of time.

13. In addition to the extra financial pressures of caring for a child with a life-limiting or life-threatening condition, parents must also pay for a funeral for their child. Unlike England we do not have the Children's Funeral Fund to cover the cost of burials or cremations. Therefore, until such times as a similar Fund is established in Northern Ireland we do not believe parents grieving following the loss of their child should have to worry about the financial cost of being away from work.
14. Existing legislation differentiates between those aged under and over 25 in relation to income-related benefits, recognising that most young people are not independent at the age of 18, but most are independent by the age of 25. The special educational needs and disability (SEND) system in Northern Ireland also extends to 25, recognising that many young people continue to need support during their transition to adulthood. We ask that this Bill reflects this existing precedent.

How and when 2 weeks of Parental Bereavement Leave and Pay can be taken

15. The Loss Foundation states that 'each person's grief is unique to them and to each lost relationship' and that it is not uncommon for acute grief to re-emerge particularly around the time of significant events, such as holidays, birthdays, anniversaries, another loss, or a particularly stressful time.¹ Or when a parent is simply struggling with their loss and needs time to grieve. It is therefore important that there is maximum flexibility in how leave is taken.
16. We recommend that bereaved parents have the opportunity to take two weeks leave but should not have to take the leave in one-week blocks. They should have the opportunity to take leave in single days throughout the period – when the parent felt it was needed – and for this to be paid.
17. We recognise that payments such as the one proposed can only be taken in multiples of one-week because of the payment systems operated by Her Majesty's Revenue and Customs (HMRC). However, we would urge that work is undertaken with the HMRC to seek a solution allowing for one day periods of leave to be taken without losing pay. Indeed, ACAS good practice guidance states, 'Grief does not have predicted stages and phases. Everyone reacts differently to bereavement, and this should be understood and respected by both employers and colleagues'.²

¹ Coping with Grief. The Loss Foundation. URL: <https://www.thelossfoundation.org/phases-of-grief/>

² Managing bereavement in the workplace – a good practice guide. ACAS, 2014. URL: <http://www.acas.org.uk/media/pdf/7/a/Managing-bereavement-in-the-workplace-a-good-practice-guide.pdf>

Please set out potential difficulties you consider may exist with any of the options

18. NIPSA understands that a lack of predictability around when leave is taken can be challenging for a business and that there are administrative difficulties in leave taken in less than one-week blocks. However, we feel that a supportive and flexible policy is ultimately the most appropriate option for an employer. Additionally, if leave is allowed over a 56-week period, the number of days to incorporate as bereavement are relatively low.

The window in which to take 2 weeks of leave and statutory pay

19. NIPSA would like to see no limit to the time over which the leave can be taken, in recognition of the ongoing impact of grief on parents. However, as a starting point we would prefer the minimum window of opportunity to be 56 weeks to give parents greater choice about when they take their leave.

20. This is in order that where acute grief re-emerges around the time of significant events parents are still able to access the leave. It is also important in circumstances where parents whose child's death is subject to inquest or other proceedings or investigations, which may be delayed beyond this 56-week period. These parents may need a longer window in which to take their leave.

21. We are conscious that employers need to plan to cover their employees' absence. However, we do not believe that extending the window during which leave can be taken would have a significant impact on employers. Many child deaths are unexpected and so whatever the length of the window, many parental bereavement absences will be arranged at very short notice.

22. We believe that the benefits to bereaved parents of extending the window to 56 weeks outweigh the implications for employers. Extending the window would incur no extra cost to the taxpayer.

Notice required to take parental bereavement leave and pay

23. NIPSA strongly objects to any notice requirement. In many instances the death of a child will be unexpected, whether it is as a result of Sudden Infant Death Syndrome or an accident or murder. It is therefore unreasonable to expect a parent to give notice of the event or the need for leave. Furthermore, it is insensitive and places unnecessary bureaucratic burdens on parents at a time of extreme distress. The inclusion of a notice period would send the wrong message about the government's intentions in introducing this right. Whilst it may be possible to give notice of certain planned events e.g. a funeral this would be good practice rather than a necessary legal requirement.

How should this notice be given?

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

Evidence required for Parental Bereavement Leave and Pay

25. NIPSA does not believe it is appropriate to require evidence from grieving parents in order to access parental bereavement leave and pay. In the initial stages of grief the parent is likely to be in shock and consumed by grief including feeling a number of physical reactions they may not have felt before.³ In practical terms there may be delays and issues in obtaining death certificates; it would be insensitive to expect a parent already dealing with difficult bureaucratic processes following a death to add further requirements for evidence.

26. We also do not believe that employers/managers would feel comfortable requesting evidence from an employee who is newly bereaved, indeed the National Council for Palliative Care states colleagues ‘can be anxious about how to acknowledge what has happened and how to respond: worrying about making things worse, saying the wrong thing, or getting upset and overwhelmed themselves’.⁴

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

Parental bereavement statutory provision for payment

The exclusion of many workers who are not “employees”

28. While the consultation document does not specifically ask for views on the scope of this proposal in terms of which workers are entitled to the leave and pay, we would like to place on record that NIPSA believe that the right to leave and pay should extend to all workers, and should not be limited to employees.

29. In Northern Ireland thousands of working people are at risk of missing out on key employment rights because of their employment status, including zero-hours contract workers, agency workers, and freelancers. As the TUC report *The Gig is Up* highlighted, uncertainty about employment status means those most in need of protection are the very ones who do not benefit from rights⁵.

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

⁴ Life After Death. The National Council for Palliative Care, 2014. URL: <http://www.ncpc.org.uk/sites/default/files/LifeAfterDeath.pdf>

⁵ <https://www.tuc.org.uk/sites/default/files/the-gig-is-up.pdf>

30. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, redundancy pay when their work dries up and protection from unfair dismissal. They also experience a significant pay penalty and do not benefit from enhanced workplace policies.
31. Many people on zero hour contracts or in insecure temporary work do not qualify for statutory sick pay because they do not meet the income tests to qualify for these benefits. These workers are also excluded from full maternity pay and have no right to paternity pay. If the purpose of this legislation is to allow bereaved parents time off work to grieve, there can be no justification to excluding large numbers of working parents from the scope of these provisions.
32. NIPSA believes that all workers should benefit from the right to take bereavement leave and to return to their job afterwards. Those who are self-employed should also benefit from bereavement related pay.

The Qualifying Period

33. NIPSA is also concerned that only employees who have been employed for six months will be entitled to the right to bereavement pay (although the right to leave will be a Day One right). This seems arbitrary and punitive. A qualifying period would have the effect of excluding zero-hours contract workers, agency workers and those on temporary contracts from the right. Such workers face significant difficulties accruing sufficient continuous service qualifying for key statutory rights.
34. In *Carmichael v National Power PLC*⁶, the House of Lords confirmed that when at work, casual workers qualify as employees. But their contract ceases to exist as soon as the working day comes to an end, due to a lack of mutuality of employment. This means that if a zero-hours contract worker has a gap of more than one week between work, their service will be broken, and they will not qualify for statutory rights. This will be the case even where they have worked for the same employer over several years.
35. The courts have tried to resolve with this problem by finding that an umbrella contract spans any gaps between work.⁷ This has assisted some zero-hours contract workers who work relatively regularly and have a genuine expectation of future hours. But those with more varied or random working patterns continue to lose out. And the problems with continuity of employment are not limited to those employed in highly insecure work. Staff employed on a succession of fixed term contracts, term-time only contracts and sessional work can also face significant difficulties accruing sufficient continuous service to qualify for key statutory rights.

⁶ *Carmichael v National Power plc* [1999] UKHL 47

⁷ *Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 Others* UKEAT/0123/12/BA

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

The low rate of pay

37. The proposals set the statutory rate of pay at £150.20 or 90% of weekly earnings (whichever is lower). While NIPSA and other unions will bargain for the leave to be paid at full pay, there will be many employees in non-unionised workplaces for whom this low rate of pay may be a barrier to taking the leave. The purpose of the leave and pay should be to allow parents time to grieve without fearing for their job stability or income, but this low rate of pay will cause financial worries for some parents who are already struggling to make ends meet and will also be contending with high funeral costs. Lessons can be learned from the poor take up of Shared Parental Leave due to the low rates of pay.
38. There is evidence in countries such as Iceland and Sweden⁸ where there are significant reserved periods of leave paid at earnings replacement where the rates of take up are higher. There is also international evidence to support this claim.⁹ Successive reforms of our family leave system have focused on extending or redesigning periods of low paid or unpaid leave which in practice have benefited and given more choice to wealthier families while low income families continue to struggle to balance work with family commitments and this is going to get harder as financial pressures on families intensify due to Covid-19.
39. NIPSA therefore calls for the payment of parental leave to be at earnings-related rates. However, as a minimum the statutory rate of pay should be raised to the level of the Real Living Wage.

Strategic vision for Employment Law in NI

40. In response to the question of suggestions for potential improvement in Northern Ireland employment law, NIPSA would recommend the following:
- (i) **Consultation on other forms of bereavement** - Many people suffer greatly at the death of another family member such as a partner, parent or sibling, and their bereavement necessitates them taking time off work. The costs of this to society are hidden as many people will be signed off with stress, depression or anxiety rather than bereavement. We would like to see a consultation opened on the wider circumstances in which employees should be entitled to leave and pay following a close family bereavement.
 - (ii) **Family Leave Frameworks** - NIPSA has long argued that tinkering around the edges of policy will fail to solve persistent gender equalities. Instead what is needed is a comprehensive strategy to systematically tackle these issues, including a women's employment strategy which

⁸ Moss et al, International Review of Leave Policies (BID 2010)

⁹ Moss et al (2010)

considers all of the issues which hold women back in work and in society. Part of this consideration must be the system of support for working parents and carers. The Covid-19 pandemic has thrown into stark relief the totally inadequate childcare support system in Northern Ireland, a system which sees childcare as an individual responsibility rather than a public good.

It has also shown the urgent requirement to overhaul the legislative framework for flexible working and parental leave. NIPSA supports recommendations from the TUC on flexible working which include the recognition of¹⁰:

'Flexibility at work can take lots of different forms, including the right to predictable hours, working from home, job-sharing, compressed hours and term time working.

Currently, employees have the right to request flexible working arrangements, as long as they have been with their employer for at least 26 weeks. However, analysis by the TUC shows this right is limited and not fit for purpose.

Flexi-time is unavailable to over half (58%) of the UK workforce. This number rises to nearly two-thirds (64%) for people in working-class occupations.

We need to reform the right to flexible working, making it a day one right for all workers. Government should introduce a duty on employers to publish flexible working options in job adverts and give workers the right to take up the advertised flexibility from day one. If employers feel that a role cannot accommodate any form of flexibility, they should be required to transparently set out the exceptional circumstances that justify this.'

- (iii) Low Pay and Zero Hour Contracts** - Northern Ireland undoubtedly has a problem with low pay. The Nevin Economic Research Institute estimated that in 2018, 28% of workers in Northern Ireland earned below the Real Living Wage with 10% earning below the National Living Wage. They further identify workers from accommodation and food sectors being particularly at risk of low pay¹¹.

The COVID-19 virus has caused governments to shut down large sections of the economy in order to contain infection whilst also being clear that there are essential services necessary to have a functioning society. In these sectors, workers have been expected to report to work as normal in order to maintain life, health and recovery, food and energy

¹⁰ <https://www.tuc.org.uk/sites/default/files/2020-06/ForcedOut3.pdf>

¹¹ See NERI research: https://www.nerinstitute.net/sites/default/files/research/2019/neri_research_inbrief_low_pay_in_ni.pdf

supply as well as vital public services. What the crisis has shown, is that there are thousands of workers who are essential to our economy.

Our society cannot survive without the labour that these workers provide, this is surely the definition of an 'essential worker'. Given this definition, one would expect that a society which recognises the indispensability of these workers would seek to ensure that we have an economy which rewards these workers commensurate with the value that we place on their labour. This is not the case.

Instead, we have an economy where essential workers are among the lowest paid people in employment. In many instances, some of these workers also face the most precarious forms of employment so that the inadequate reward they receive for their Labour is also highly uncertain.

In many cases, these low paid but essential workers are women and this is the driving force behind the persistent gender inequalities in our labour market. The Irish Congress of Trade Unions has identified workers in food manufacturing, residential care and workplace cleaning as being especially vulnerable to low pay¹² with women in those sectors particularly vulnerable. 62% of women working in food manufacturing earn below the Real Living Wage¹³, 55% of women in residential care earn below the RLW, whilst it is estimated that around 60% of women working as office cleaners earn below the RLW.

In other words, workers who we deem to be essential are not paid a wage that is sufficient to support a basic standard of living. Therefore, in order for our economy to grow and prosper, especially in the aftermath of Covid-19, we need to bring in legislation to address our low wage economy and precarious work.

(iv) Violence and Harassment in the World of Work - In June 2019, at the Centenary Conference of the International Labour Organization (ILO)¹⁴, the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted. The global community has made it clear that violence and harassment in the world of work will not be tolerated and must end.

These landmark instruments were developed by the key world of work actors (representatives of governments, employers and workers), and set out a common framework to prevent and address violence and harassment, based on an inclusive, integrated and gender-responsive approach. The Convention and the Recommendation also refer to domestic violence and its impact in the world of work.

¹² See: https://www.ictu.ie/download/pdf/no_going_back_final_document_may_2020.pdf

¹³ See: https://www.nerinstitute.net/sites/default/files/research/2019/neri_research_inbrief_low_pay_in_ni.pdf

¹⁴ https://www.ilo.org/global/publications/meeting-reports/WCMS_721160/lang--en/index.htm

The Preamble to the Convention notes that “domestic violence can affect employment, productivity and health and safety, and that governments, employers’ and workers’ organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of domestic violence”. As such, the Convention requires Members to “take appropriate measures to ... recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work” (Art. 10(f)), and the Recommendation provides further guidance.

The inclusion of provisions regarding domestic violence in Convention No. 190 and Recommendation No. 206 reflects a fundamental change: historically, domestic violence was relegated as a “private” issue, with no connection to work, and it is now being acknowledged as having real consequences for workers, enterprises and the society at large.

The new instruments finally recognise the negative spill over effects that domestic violence can have on the world of work and the positive contribution that work can make towards improving the well-being of victims of domestic violence.

NIPSA would call on the government to introduce a proactive duty on employers, supported by a Code of Practice which outlines the employer responsibility to ensure workplaces are harassment free zones. To include, among other areas of action, mandatory and comprehensive training for all staff, including managers and human resource personnel.

- (v) **Paid Carers Leave** - Support working carers more through employers and by Government - Employers, and the NI Assembly, should ensure that there are carer-friendly policies in place that enable working carers to balance their caring responsibilities with work. The Government’s should bring forward legislation to introduce an entitlement to take paid carer leave for working carers.

These are only some of the many areas for improvement needed in NI Employment Law. NIPSA would welcome an opportunity to engage with the Department on their strategic vision for Employment Law in NI.