



## **Parental bereavement leave and pay**

Department for Business, Energy & Industrial Strategy Consultation  
March 2018

**May 2018**

## Response to Consultation on Parental Bereavement Leave and Pay

### Definition of ‘bereaved parent’

The definition of a ‘bereaved parent’ is central to the Parental Bereavement Leave and Pay policy. The Government believes that clarity over eligibility is essential: if it is clear to the employee and the employer whether an employee is eligible, based on facts that are easy to establish, it will help to avoid complications and the risk of challenge.

A bereaved parent will be defined according to the employee’s relationship with the child before the child’s death, which can include the employee’s care for the child. The question to consider is exactly what relationships and care arrangements should be included within the scope of the provisions. During the debates on the Bill in the House of Commons so far, some MPs have proposed that specific groups should be included within the scope of the provisions. In response to this, the Government made clear that, in order to be sure to get this right, more time and consultation would be necessary. The Government is aware of a number of groups which will naturally fall within scope but would like to better understand which others should be included and the possible complexities that may arise from their inclusion. When considering this point, a key fact to be kept in mind is the evidence (covered later in this consultation) which an employer may ask for in respect of the child, when a bereaved employed parent is requesting time off.

The following are examples of the kinds of relationships which the Government considers ought to be considered for inclusion within the scope of the provision. However, this is not a definitive list. The Government is keen to obtain a clear picture of all of the parental relationships which may be suitable for inclusion beyond the following:

- Legal parents e.g. biological parents (except where the child has been adopted) and adoptive parents (including those who have obtained parental orders in the context of a surrogacy arrangement).
- Others who have a long term relationship with a child which is parental in nature but who are not the child’s legal parents. One example is step parents but there could be other groups which may need to be considered for inclusion.

Definition of “Bereaved Parent”	
1a Who else you think should be included within the definition of “bereaved parent”?	As well as step parents, we consider that individuals with parental responsibility, foster parents (subject to the relationship being long term) and family members who have responsibility for bringing up a child should be included.
1b Please provide reasons for your answer	If the individual has a parental relationship with the child, they are likely to be similarly affected as if they were the legal parent. However, we consider that careful drafting is required for the category of individuals who fall into the definition of “other” to avoid employees being

	entitled to the leave by virtue of them simply being a grandparent or step-parent, rather it should cover only those who effectively have taken on a parent role in relation to the child and this would go beyond assisting with childcare.
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**How and when 2 weeks of Parental Bereavement Leave and Pay can be taken**

The Bill allows for a minimum of 2 weeks (pro-rated for part time) of Parental Bereavement Leave and Pay to be taken by eligible employees. Whether the two weeks can be taken in non-consecutive blocks of days, non-consecutive blocks of a week or only as a single block is left to be decided in regulations.

There is more freedom for regulations to determine how Parental Bereavement Leave can be taken, as distinct from Pay. (It is normal practice in legislation that statutory payments are made in blocks of a week).

**Flexibility around consecutive/non-consecutive weeks**

There have been a range of suggestions as to the level of flexibility that should be given to a parent around how to take Parental Bereavement Leave. Some have called for the weeks to be taken in non-consecutive one-week blocks; others have called for the option to take single or several days at different times, adding up to two weeks in total (pro-rated for part time).

The Bill has mirrored existing provisions for family related leave and pay rights where possible and, in particular, Paternity Leave and Pay. But where the detail is left to be set in regulations, the regulations could be different to those for existing rights. Paternity Leave and Pay cannot be taken in separate blocks of a week: a father or partner is merely able to choose whether to take just one or both of the weeks available.

As it stands, the Bill enables statutory bereavement pay to be paid only in whole weeks, and does not allow it to be paid by an employer for any week in which the employee continues to work for that employer. That means that if regulations were to allow leave to be taken in days, where an employee takes leave in that way, they would not be eligible to receive statutory bereavement pay in respect of that leave.

It may be that for some people, it is more important to be able to take time off from work at times which suit them than to receive the statutory payment. In that case, they may appreciate having the option to take the leave in single days rather than weeks.

<b>Flexibility around consecutive/non-consecutive weeks</b>	
<p>2a. Which of the following options for leave-taking would be more appropriate?</p> <ul style="list-style-type: none"> <li>i) Leave to be taken either as one week only or two consecutive weeks</li> <li>ii) Two weeks discontinuously e.g. a week then a further week taken at a</li> </ul>	<p>An alternative arrangement – two weeks that can be taken either discontinuously or provided that the employer’s agrees, as a block of two consecutive weeks.</p>

<p>later date</p> <p>iii) Two weeks, which can be taken in units of a day, recognising that only whole weeks of leave with an employer would attract the statutory payment from that employer</p> <p>iv) An alternative arrangement</p>	
<p>2b. Please set out your reasons for your response.</p>	<p>Not having to take all the leave in one block provides the employee with some flexibility, recognising that the need for time off to grieve will vary from employee to employee and that in some cases a coroner's report may be required This needs to be balanced against the operational difficulties that a sudden period of two weeks leave may present to an employer. Proposal i) and ii) seems to be an either/or situation. We would propose that the default is two weeks discontinuous leave with scope for the parties to agree that the leave can be taken continuously. Depending on when the leave falls, and having regard to the fact that little notice of the leave may well be given, an employee taking a block of two weeks off with very little notice may cause operational difficulties and be difficult to accommodate but not always and so it would be helpful that the possibility of a two week continuous block is not ruled out.</p>
<p>2c. Please set out potential difficulties you consider may exist with any of the options</p>	<p>See above. Allowing employees time off on statutory parental bereavement leave in units of a day is likely to be disruptive to a business because of the frequency of the absence. In any event if the option proposed at item iii) would not attract statutory pay, then an employer can choose to agree to such an arrangement with an employee separate from any statutory parental bereavement leave should this suit the employee and the employer is willing to accommodate the arrangements. Requiring an employee to take his or her entitlement either as a block of one week, or two consecutive weeks, may lead to some employees taking two consecutive weeks on a precautionary basis but given the reason for the leave in the first place, a long period of absence may result in some employees finding it harder to come back to work resulting in a period of sickness absence.</p>

The window within which to take 2 weeks of leave and pay

The Bill sets a minimum window of 56 days (8 weeks (pro-rated for part time)) from the date of the death of the child within which Parental Bereavement Leave and Pay can be taken. However, regulations can extend the length of this window.

For some, taking time off immediately following the death of their child may be best. Others will prefer to take their leave and pay entitlement at a later date. Stakeholders have indicated that there are several reasons outside of a parent’s control which may mean they wish to defer taking their leave and pay. For example, we understand that following the death of a child, there is often a coroner’s inquest. This can take weeks or months depending on the complexity of the case, although the expectation is that this would be concluded within 6 months of the date of the death of the child.<sup>2</sup> In addition, some parents may not immediately realise that they have an entitlement to leave and pay.

Opinions vary over how long this window should be and recommendations have included, for example, extending the window from 8 weeks to 26 or 52 weeks.

<b>The window within which to take 2 weeks of leave and pay</b>	
3a) What do you think is the optimal length for the window? I. 8 weeks II. 26 weeks III. 52 weeks IV. Other – please specify	13 weeks unless the parties agree a longer period to be extended to 12 months in the event for a parent who is subject to police investigation as a consequence of the child’s death.
3b) Please provide reasons for your answer	We consider this to be a fair balance to allow the employee time to become aware of his/her right to take leave but it provides scope for the parties to agree a longer period (but without obligation to do so) e.g. for any coroners investigation to be completed. However there are occasions when parents are suspected of having caused an injury leading to the death e.g. alleged non-accidental head injury cases. This can result in the coroner’s inquest being delayed and the complexity of the investigation process may have a significant impact on the grieving process.

**Notice required to take Parental Bereavement Leave and Pay**

Regulations can set the requirement for a bereaved parent to provide notice to their employer in order to take Parental Bereavement Leave and to claim Parental Bereavement Pay.

Again, some parents will want to take their Parental Bereavement Leave and Pay immediately following the death of their child, whilst others may not.

Where parents want to take their leave and pay at a later date, it may be reasonable to require them to provide their employer with notice of when they intend to be absent from work and be claiming

pay. The question of notice becomes more important if the window within which the leave and pay must be taken is extended and there is flexibility around how the leave can be taken.

<b>Notice required to take parental bereavement leave and pay</b>	
<p>4a. Do you agree that parents should be required to provide notice to their employer?</p> <p>i) If leave is taken very soon after the death of the child? Yes/No</p> <p>ii) If leave is taken at a later period? Yes/No</p>	<p>We would propose that for legal parents the first week of leave automatically kicks in on the date of the death of the child and no notice is required for the first week of leave. For other categories of bereaved parents, the second week of leave or leave taken at a later period then notice should be given.</p>
<p>4b. Please provide reasons for your answer</p>	<p>It is likely to be well known to the employer whether or not an employee is a legal parent and it would be unduly onerous on a legal parent to have to give notice to take statutory parental bereavement leave immediately on the occasion of the child's death. However where the employee is not the legal parent or for the second week of leave, we would propose that notice is required In order for the employer to know that the parent intends to take any leave as parental bereavement leave.</p>
<p>5a. What is a reasonable period:</p> <p>i) Where leave is taken very soon after the death of the child?</p> <p>ii) Where leave is taken at a later period?</p>	<p>i) 48 hours unless the legal parent in which case leave occurs automatically on the date of the death of the child</p> <p>ii) 14 days' notice provided that the parties can agree to a shorter notice period</p>
<p>5b. Please provide reasons for your answer</p>	<p>See above comments. Where an employee is wanting to take time off other than immediately on the death of the child then we consider that an employee should be able to provide greater notice and it allows the employer to plan for the absence.</p>
<p>6a. How should this notice be given:</p> <p>i) If leave is taken very soon after the death of the child?</p> <p>ii) If leave is taken at a later period?</p>	<p>In writing.</p>
<p>6b. Please provide reasons for your answer</p>	<p>To avoid any dispute as to whether or not the time off was Parental Bereavement leave.</p>

#### Evidence required for Parental Bereavement Leave and Pay

Parents are required to provide evidence of eligibility for existing family related leave and pay rights in some instances. In other instances, although employees are not required to provide evidence initially, an employer can request such evidence if they choose. For example, for Paternity Leave, if

an employer requests, an employee must give a declaration that they meet the eligibility requirements for paternity leave (birth) or (adoption). For Paternity Pay, an employee is obliged to provide a declaration that they meet the eligibility requirements. Similarly, for Adoption Leave, if an employer requests, an employee must provide, in the form of adoption agency documents, the name/address of the agency, the date on which the employee was notified that he had been matched with a child, and the date on which the agency expects to place the child with the employee. For Adoption Pay, an employer does not need to request evidence as an employee is already obliged to provide these documents and a declaration that eligibility requirements are met.

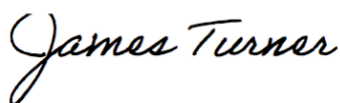
In requesting evidence, employers are expected to consider what they are going to do with the information once requested, and whether they have good reason to retain that information when taking data protection requirements into consideration.

Whilst the Government hopes that there will be no instances of fraud, it nevertheless needs to ensure that the framework for taking Parental Bereavement Leave and Pay is not open to abuse.

However, that consideration also needs to be balanced against the sensitivity of the situation and the challenging circumstances that the parent will already be facing.

7a. Should this provision mirror existing family related leave and pay rights? i.e. that the employee is not required to provide evidence unless the employee requests it. Yes/No	Yes.
7b. Please provide reasons for your answer	In many cases, it will be well known to an employer that the employee is a parent and his or her child has died and evidence will not be required. However where the relationship to the child is not that of a parent, but maybe step-parent or someone who has responsibility for bringing up the child, the entitlement may not be apparent and we consider it important that the employer can request such information.

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