



Department for
Business, Energy
& Industrial Strategy

CONSULTATION ON PARENTAL BEREAVEMENT LEAVE AND PAY



March 2018

CONSULTATION ON PARENTAL BEREAVEMENT LEAVE AND PAY

The consultation can be found on the BEIS section of GOV.UK:

<https://www.gov.uk/government/consultations/parental-bereavement-leave-and-pay>

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Any enquiries regarding this publication should be sent to us at [insert contact for department].

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Foreword

The death of a child is truly traumatic for any parent and the effects can be devastating and long lasting. No bereaved parent should be put in the difficult position of desperately needing time away from work to grieve but instead having their request for time off rejected by their employer. I am pleased that many employers do act with the compassion and sensitivity needed at such a difficult time, but we have heard too many examples of employers who do not demonstrate the appropriate level of understanding.

That is why our manifesto made a commitment to ensure that all bereaved parents are able to take some time away from work to grieve for a lost child. To achieve that, the Government is supporting Kevin Hollinrake MP's Parental Bereavement (Leave and Pay) Bill. Subject to Parliamentary approval, this will require the Secretary of State to introduce regulations creating a legal requirement for all employers to grant a period of a minimum of 2 weeks of Parental Bereavement Leave, with pay (if eligible) at the statutory flat rate funded by the Government. This would give parents the opportunity to grieve without feeling the pressure of having to be at work at such a challenging time.

I am delighted that the Bill has made good progress through Parliament so far, thanks to the hard work of Kevin Hollinrake and the support of colleagues across Party lines. I look forward to continuing to work with Kevin and with Lord Knight of Weymouth, who has kindly agreed to sponsor the Bill in the House of Lords, in the hope that this important measure will pass safely into law.

The Bill leaves several important details to be set in regulations later. In this consultation we want to better understand the needs of bereaved parents and their employers so that the regulations we bring forward work for both.

I look forward to hearing your views.



Andrew Griffiths MP

Minister for Small Business, Consumers & Corporate Responsibility

General information

Purpose of this consultation

Purpose of this consultation

This consultation seeks views from stakeholders on options for Regulations to fulfil certain provisions contained in the Parental Bereavement (Leave and Pay) Bill, in the event this is passed by Parliament and becomes law.

Issued: 28 March 2018

Respond by: 8 June 2018

Enquiries to:

Parental Bereavement Leave
Labour Market Directorate
Department for Business, Energy and Industrial Strategy
1st Floor Spur, 1 Victoria Street, London, SW1H 0ET
Tel: +44 (0) 20 7215 5000
Email: enquiries@beis.gov.uk

This consultation is relevant to: working parents and their employers; groups representing working parents; groups involved in bereavement care; groups representing employers; and legal, HR and payroll professionals.

Territorial Extent

The Parental Bereavement Leave and Pay measures will apply to Great Britain only.

How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. You can reply to this consultation online at <https://beisgovuk.citizenspace.com/lm/consultation-on-parental-bereavement-leave-and-pay>

The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/parental-bereavement-leave-and-pay> (until the consultation closes).

The form can be submitted online, by email or by letter to:

Email: ParentalBereavementLeaveConsultation@Beis.gov.uk

Parental Bereavement Leave Consultation
Labour Market Directorate
Department for Business, Energy and Industrial Strategy
1st Floor Spur, 1 Victoria Street, London, SW1H 0ET

Tel: +44 (0) 20 7215 5000

Additional copies:

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No hardcopies of this document are available.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

Executive Summary

Grief following the loss of a child is an extremely personal issue which people deal with in different ways. Managing that grief in the workplace can also be extremely difficult for employers. As well as possibly needing to take time off work, employees may find their performance is affected when they return, or they may be temporarily unable to perform their role.

Kevin Hollinrake MP's Parental Bereavement (Leave and Pay) Bill is currently being considered in Parliament. If it is approved by Parliament, it will create a statutory right to time off work for employed parents, with pay where eligibility requirements are met, following the loss of a child. The Government wants to be prepared to implement the necessary regulations to set out the detail of these rights and bring them into force.

This consultation focuses on several key points outlined below. The Government is keen to hear views on each to help inform decision making, to ensure the policy is right both for those who seek to rely on it and for those who will have to administer it.

Definition of a 'bereaved parent'

The Bill envisages that the question of who qualifies as a 'bereaved parent' for the purposes of accessing Parental Bereavement Leave and Pay will be set in Regulations. The way in which this definition works is crucial to ensuring that the policy reaches the right people. The Government believes that eligibility to take Parental Bereavement Leave and Pay must be based on facts that will be clear to the employee and employer in each case, to avoid confusion.

There is also, however, a need to cater for a variety of family circumstances. During the Second Reading of the Parental Bereavement (Leave and Pay) Bill, Kevin Hollinrake MP stated '*As a society, we have moved on from mum, dad and 2.4 children*'.

Family units now look very different and the Government is determined that the law should achieve the right results in this respect. By leaving the definition of a bereaved parent to Regulations, the Bill enables a considered view to be taken, in the light of this consultation, about different groups of people who have a relationship with a child which could be said to be 'parental' in nature.

During the debates on the Bill in the House of Commons, there have been specific calls to include particular groups, such as foster parents and adoptive parents, as well as working grandparents, aunts and uncles. The title of the Bill is very specific, and focuses on 'parents' only. However, since this is a complex area, we welcome views on the parental groups to be included.

How and when to take Parental Bereavement Leave and Pay

The Bill provides for parents to take a minimum of 2 weeks of Parental Bereavement Leave within a period of at least 56 days (8 weeks), beginning with the date of the death of a child. A longer period in which to take the leave can be set in regulations.

Regulations will also prescribe how the leave and pay can be taken – for example, in a single block of 2 weeks, in separate one-week blocks or more flexibly still. Views are welcome on both of these issues.

It will be important to strike the right balance between allowing as much flexibility as possible for bereaved parents with varying needs to grieve, and the need for employers to have a degree of certainty over when and how their employees can take Parental Bereavement Leave and Pay.

Notice periods for Parental Bereavement Leave and Pay

Some parents who suffer the loss of a child may need immediate time away from work, while others may not. For existing family related leave and pay rights, such as Paternity Leave and Pay, notice is required before this leave is taken, but the unexpected nature of death will mean that it's unlikely that an employee will be able to give notice before taking bereavement leave.

The Government recognises the variation in the needs of bereaved parents. However, flexibility needs to be balanced with the needs of employers who may require a degree of certainty over when their employees will be absent from work so that they can plan and make contingencies for those absences.

We are therefore seeking views on whether it is reasonable for there to be a requirement to give notice and if so, what that notice might look like to make sure the regulations do not place undue burdens on either party.

Evidence of an employee's right to take Parental Bereavement Leave and Pay

As already set out, it is important to ensure that bereaved parents are able to take time away from work following the loss of a child if that is what they need. Again, this must be balanced with the need for employers to plan and cover absences from work where possible and to guard against any abuse.

For existing family related leave and pay rights, such as Shared Parental Leave and Pay and Statutory Paternity Pay, an employee has to provide a declaration that they meet the relevant eligibility requirements. In other situations, such as Paternity Leave and Adoption Leave, although an employee does not have to provide evidence initially, an employer is still able to request evidence from their employee of their eligibility to take leave.

However, we recognise that this is a difficult and sensitive time for parents and are keen to understand if existing provisions should be mirrored; what employers would find useful or necessary in this instance; and what parents would find reasonable.

The Current Position and the Parental Bereavement Leave and Pay Bill

Currently, there is no specific entitlement to leave or pay for employed parents following the loss of a child. An employee may be entitled to special or compassionate leave if their workplace has an internal policy which affords employees time off work in particular situations (or the employer may allow compassionate leave on a discretionary basis).

Bereaved employed parents may also be eligible for other existing types of statutory leave depending on their personal circumstances. For example, Section 57A of the Employment Rights Act 1996 gives a “day one” right for an employee to have ‘reasonable’ time off work to deal with emergencies involving a dependant. This includes unpaid time off work to make arrangements following the death of a dependant, which may include organising and attending a funeral. A ‘dependant’ includes a child (of any age). ‘Reasonable’ is not defined in the legislation and will depend on the situation.

Pregnant employees who suffer a stillbirth after at least 24 weeks of pregnancy are entitled to up to 52 weeks’ statutory Maternity Leave and (subject to eligibility) up to 39 weeks of statutory Maternity Pay or Maternity Allowance. Similarly, if a child is born alive but subsequently dies during the mother’s Maternity Leave, her right to the remainder of this leave is not affected. Employed fathers and partners can still take up to two weeks’ Paternity Leave and Pay (subject to eligibility) if the baby is stillborn from 24 weeks of pregnancy, or if the baby dies within the Paternity Leave period (8 weeks following birth).

Managing grief in the workplace can also be challenging for employers. Acas has developed guidance for employers in conjunction with CRUSE (the bereavement specialists) on managing bereavement in the workplace. It includes specific, practical advice in relation to a parent losing a child and helps employers to understand how grief may impact on their employees. It recognises the important role that employers play in relation to their employees and the effect bereavement might have on employees in undertaking their duties. It also sets out what the law is in this area and provides guidance on the steps an employer should take, including having a bereavement policy in place.

Whilst many employers act flexibly and sensitively to requests for time off in such circumstances, we know that the situation varies considerably and not all bereaved parents are afforded the right level of support at such a difficult time. The Government is aware that existing provisions, however helpful for some, do not guarantee that all employers will provide special or compassionate leave for bereaved parents.

The Government has therefore committed to ensuring that all bereaved parents are able to take some time away from work, and is supporting Kevin Hollinrake MP’s Parental Bereavement (Leave and Pay) Bill. If the Bill passes successfully through Parliament, it will ensure many bereaved parents in the future to have time away from work to grieve.

The Bill provides for a minimum of 2 weeks of leave (pro-rated for part time) to be available to all employed parents who lose a child under the age of 18. If the Bill is passed and once it has been brought into force, parents will be entitled to this leave irrespective of the length of service with their employer, and the entitlement will apply in respect of each child. Employees will have the certainty of knowing their employer has a legal obligation to grant them Parental Bereavement Leave. Employers will have clear parameters for the minimum timeframes an employee is able to be away from work on Parental Bereavement Leave following the loss of a child. This will of course not prohibit employers going beyond that and providing more generous allowances.

Parents whose average earnings over a prescribed reference period meet the Lower Earnings Limit¹ and have at least 26 weeks' continuous service with their employer (at the end of the week before the week of their child's death) will be entitled to receive Parental Bereavement Pay. This will be paid by their employer but the employer will be able to reclaim a large proportion of it from HM Revenue & Customs. It will be paid at the statutory flat rate (currently £140.98 per week and set to rise to £145.18 per week in April 2018) or 90% of weekly average earnings where that is lower.

Protections will be in place with regards to an employee's terms and conditions of employment while taking Parental Bereavement Leave. The Bill's provisions stipulate that bereaved parents will have a right to return to work following this absence. Regulations will provide that bereaved parents will have a right to redress in the event they are dismissed or suffer some other kind of detriment as a result of taking this leave or seeking to take it.

Existing provisions for other family related leave and pay rights, such as Maternity, Paternity, and Shared Parental Leave and Pay, will be unaffected by this statutory right. Parental Bereavement Leave and Pay will be a new, additional right.

The Bill provides for certain details of the provisions for Parental Bereavement Leave and Pay to be specified in regulations by the Government, subject to agreement by Parliament. The Government wants to use this consultation to seek the views of parents and employers on several of these points so that the details are right.

¹ The Lower Earnings Limit (LEL) is the amount of earnings required to allow an employee to qualify for certain state benefits. The lower earnings limit is set each tax year by the government. For 2017-2018 the LEL is set at £113 per week.

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 do you think should be included within the definition of 'bereaved parent'?

1b) Please provide reasons for your answer

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.

Flexibility around consecutive/non-consecutive weeks

2a	Which of the following options for leave-taking would be most appropriate?
	i) Leave to be taken either as one week only or two consecutive weeks
	ii) Two weeks discontinuously, e.g a week, then a further week taken at a later date
	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
	iv) An alternative arrangement (please describe)
2b	Please set out your reasons for your response
2c	Please set out potential difficulties you consider may exist with any of the options

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.² 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.

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

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
3b)	Please provide reasons for your answer

² Chief Coroner – Guidance No. 9 – Opening Inquests. (6) (27) The date for the inquest must normally be set within six months of the date on which the coroner is made aware of the death. This is because the coroner has a duty where possible to complete the inquest within six months: rule 8 <https://www.judiciary.gov.uk/wp-content/uploads/2013/09/guidance-no-9-opening-inquests.pdf>

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.

Notice required to take parental bereavement leave and pay	
4a	Do you agree that parents should be required to provide notice to their employer?
	i) If leave is taken very soon after the death of the child Yes No
	ii) If leave is taken at a later period Yes No
4b	Please provide reasons for your answer
5a	What is a reasonable notice period:
	i) Where leave is taken very soon after the death of the child?
	ii) Where leave is taken at a later period?

5b	Please provide reasons for your answer
6a	How should this notice be given:
	i) If leave is taken very soon after the death of the child?
	ii) If leave is taken at a later period?
6b	Please provide reasons for your answer

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.

Evidence required for parental bereavement leave and pay	
7a)	Should evidence requirements for this provision mirror those of existing family leave, i.e. that evidence is not required unless requested by the employer?
	<p>Yes</p> <p>No</p>
7b)	Please explain your reasons

Consultation questions

Personal (P) information

P1	Your name
P2	Your email address
P3	<p>Are you:</p> <ul style="list-style-type: none"> • An individual • An employer • Representing a trade union • Representing an industry or employer association • Other (please specify)
P4	<p>If you are an individual, are you:</p> <ul style="list-style-type: none"> • Employed • Self-employed • Unemployed • Retired • Not looking for work • Other
P5	<p>If you are in employment, what type of organisation do you work for?</p> <ul style="list-style-type: none"> • Private sector organisation • Public sector • Charity/voluntary sector <p>Other (please specify below)</p>
P6	<p>If you are in employment, how many people work for your organisation?</p> <ul style="list-style-type: none"> • Micro-business (0-9 employees) • Small business (10-49 employees) • Medium-sized business (50-249 employees) • Large business (250+ employees)

P7 If you are an employer, how would you classify your organisation?

- Private sector
- Public sector
- Charity/voluntary sector
- Other (please specify)

P8 If you are an employer, how many employees work for your organisation?

- Micro-business (0-9 employees)
- Small business (10-49 employees)
- Medium-sized business (50-249 employees)
- Large business (250+ employees)

P9 If you are responding as an individual, have you experienced the loss of a child?

Yes

No

Substantive questions

Definition of 'Bereaved Parent'

1a	Who else do you think should be included within the definition of 'bereaved parent'?
1b	Please provide reasons for your answer

Flexibility around consecutive/non-consecutive weeks

2a	Which of the following options for leave-taking would be most appropriate?
	i) Leave to be taken either as one week only or two consecutive weeks
	ii) Two weeks discontinuously, e.g a week, then a further week taken at a later date
	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
	iv) An alternative arrangement (please describe)
2b	Please set out your reasons for your response
2c	Please set out potential difficulties you consider may exist with any of the options

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

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
3b	Please provide reasons for your answer.

Notice required to take parental bereavement leave and pay

4a	Do you agree that parents should be required to provide notice to their employer?
	iii) If leave is taken very soon after the death of the child Yes No
	iv) If leave is taken at a later period Yes No
4b	Please provide reasons for your answer
5a	What is a reasonable notice period:
	iii) Where leave is taken very soon after the death of the child?
	iv) Where leave is taken at a later period?
5b	Please provide reasons for your answer
6a	How should this notice be given:
	iii) If leave is taken very soon after the death of the child?

	iv) If leave is taken at a later period?
6b	Please provide reasons for your answer

Evidence required for parental bereavement leave and pay.

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 employer requests it. Yes No
7b	Please provide reasons for your answer.

What happens next?

The Government response to this consultation will be issued after analysis of responses.

Annex A: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

BEIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Email: beis.bru@beis.gov.uk

