



Department for
Business, Energy
& Industrial Strategy

PARENTAL BEREAVEMENT LEAVE AND PAY CONSULTATION

Government Response

November 2018

PARENTAL BEREAVEMENT LEAVE AND PAY

The consultation document and Impact Assessment 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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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 has completed its passage through Parliament, receiving Royal Assent on 13 September 2018. Now that the Bill has become an Act it creates 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 bring forward the necessary Regulations to set out the detail of these rights and bring them into force.

The Government undertook a public consultation, seeking views on several key aspects that the Regulations will need to cover, outlined below. The Government sought to hear views on each to help inform decision making, and to ensure the policy is right both for those who seek to rely on it and for those who will have to administer it.

The Government's response to the main points of the consultation and the options that we consulted on are summarised here under the following four themes:

- Definition of a 'bereaved parent'
- How and when to take Parental Bereavement Leave and Pay
- Notice periods for Parental Bereavement Leave and Pay
- Evidence required for Parental Bereavement Leave and Pay

Definition of a 'bereaved parent'

Under the Act, the question of who qualifies as a 'bereaved parent' for the purposes of accessing Parental Bereavement Leave and Pay must be set in Regulations. The Government believes that eligibility to take Parental Bereavement Leave and Pay should as far as possible be based on facts that will be clear to the employee and their employer in each case, to avoid confusion or disagreements which will have to be adjudicated by Employment Tribunals.

There is also, however, a need to cater for a variety of family circumstances. Modern family units take a variety of forms and the Government is determined that the law should achieve the right results in this respect.

The long title of the Act is very specific and focuses on 'parents' only. However, since this is a complex area, we have welcomed views on the different groups of people who have a

relationship with a child which could be said to be 'parental' in nature, and who may need to be included in the definition of a 'bereaved parent'.

The majority of responses to the consultation proposed that all individuals who acted as the 'primary carer' to the child should be included in the definition of a 'bereaved parent'. A large number of responses distinguished this from the concept of legal parental status or legally defined parental responsibility, representing the view that entitlement should not depend on such an arrangement. The majority of arguments in favour of extending rights to a wider class of people than those that had legal parental status centred on the emotional impact that would be felt by a primary carer in the event of a bereavement.

Government response

This measure applies to employed parents who lose a child below the age of 18. Following an amendment made in the House of Commons, the provision has been extended to include parents who suffer a stillbirth after twenty-four weeks of pregnancy.

The Act requires the Government to define a 'bereaved parent' according to the employee's relationship with the child before the child's death, which can be done by reference to the employee's caring responsibilities for the child. The Government agrees that the specification of who is eligible should be centred on the notion of a 'primary carer', whose relationship with the child is 'parental' in nature.

Many people who act as a child's primary carer do so by virtue of a legally defined status and are therefore easy for employers and employees to identify, as there are readily understood, objective tests which can be applied. For example, it is our intention to include all legal parents in the definition of a 'bereaved parent'. We also intend to include those categories of people who are not the child's legal parents, but who have a 'parental' relationship with the child which is recognised in law, for example, legal guardians and individuals who have obtained court orders which give them day to day responsibility for caring for the child.

However, it is apparent that confining the definition of a 'bereaved parent' to the groups mentioned above will exclude some individuals (such as foster parents, kinship carers and others) who are, in fact, acting as a child's 'parent'. We agree that, where these people are substantively acting as the child's 'parent', they should be able to take Parental Bereavement Leave and Pay (subject to eligibility).

Our intention is to extend entitlement to these additional groups by reference to the nature of their caring responsibilities for the child (the guiding principle being that it should be parental in nature).

How and when to take Parental Bereavement Leave and Pay

The Act provides for parents to take a minimum of two weeks of Parental Bereavement Leave and Pay within a period of *at least* 56 days (8 weeks), beginning with the date of the death of a child, and enables the Secretary of State to make provision for a longer period of time over which the leave and pay can be taken in Regulations.

The Act also enables the Secretary of State to prescribe how the leave and pay can be taken – for example, in a single block of two weeks, in separate one-week blocks or more flexibly still – in Regulations. The consultation sought views on the approach that Government should take.

It is 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.

The majority of respondents to the consultation favoured giving employees the option to take their leave (and pay) in units of a week. Respondents and stakeholders at round-table sessions expressed a desire for flexibility, whilst also acknowledging employers' need for certainty and administrative practicability.

The majority of respondents supported the option of a 52-week window in which to take the leave. Stakeholders at round-table sessions proposed a 56-week window: they argued this would give employees more flexibility.

Government response

The Government will proceed by enabling the leave to be taken either as a single block of two weeks or as two separate blocks of one week each at different times (the employee can take one single week if they wish). This approach ensures that employees who are eligible for Statutory Parental Bereavement Pay will receive statutory pay for each week of Parental Bereavement Leave that they take, since statutory payments can only be made in respect of whole weeks.

The intention is that allowing the leave to be taken in one-week blocks will enable employees to take paid leave from work at times which best match their individual needs.

The Government is committed to ensuring that employers are able to deliver this provision to their employees with the least administrative burden.

The Government has decided to extend the window in which the two weeks of leave and pay can be taken to 56 weeks from the date of the death of the child. This will offer bereaved parents the flexibility to take the leave and pay at the times when they most need it to support their grieving, including around the first anniversary of the child's death.

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 need time off later on. For existing family related leave and pay rights, such as Paternity Leave and Pay, notice is required before the leave and pay can be taken. However, the unpredictable nature of death and the subjective nature of grief means that it would often be impractical for an employee to give notice before taking Parental Bereavement Leave (some individuals will wish to begin their leave immediately following the death, others, for example those who are already on another type of family related leave, may prefer to take time off work later).

The Government recognises the subjective nature of 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 contingency arrangements for those absences.

We have therefore sought views on whether it is reasonable for there to be a requirement to give notice and, if so, what form that notice might take so that the Regulations do not place undue burdens on either party.

85 per cent of respondents believed that employees should not be required to provide prior notice to their employer when taking leave very soon after the death of the child. Stakeholders at round-table meetings also favoured a no prior notice provision for leave taken at this point.

Two thirds of respondents said that prior notice should be required for leave taken at a later date. The majority of stakeholders at round-table meetings also expressed this view.

Government response

The Government intends to take a two-tiered approach in the Regulations to the requirement for notice.

No notice will be required for leave taken very soon after the date of the death. This will apply for a set period of a few weeks after the child's death, in recognition that in this early stage employees are likely to need to take leave at little or no notice.

Employees will, however, be required to tell their employer that they are absent from work because they are exercising their entitlement to Parental Bereavement Leave. Informal notification will be acceptable.

If leave is taken after the initial period following the death, a notice requirement will apply. We propose that the employee will be required to give at least one week's notice to their employer before taking Parental Bereavement Leave.

Evidence required for Parental Bereavement Leave and Pay

For some existing family related leave and pay rights, such as Statutory Paternity Pay, an employee has to provide a written declaration in advance that they meet the relevant eligibility requirements. In other situations, such as Paternity Leave and Adoption Leave, the employee only needs to provide evidence if their employer requests this.

Given that bereavement is a difficult and sensitive time for parents, the Government has sought to understand if existing provisions should be mirrored; what employers would find useful or necessary in the case of a bereavement; and what it would be reasonably practicable for parents to do in these difficult circumstances.

The vast majority of respondents answered that evidence requirements for Parental Bereavement Leave and Pay should mirror existing family leave entitlements.

Government response

The Government has decided to mirror, where appropriate, the evidence requirements used in other family leave and pay rights, recognising the special circumstances that apply to bereaved parents.

For existing family *leave* rights, a declaration confirming entitlement to leave is only required if the employer requests it. The Government proposes to mirror this approach for Parental Bereavement Leave, as far as practicable, minimising burdens on the employee. We are considering whether it would be appropriate to allow an employer to request a written declaration in particular circumstances, but are clear that an employee who needs to take time off work to grieve in the initial period after the death of their child will not need to provide a written declaration confirming their entitlement to the leave before taking time off work.

For existing family *pay* rights, the employee is required to provide their employer with a written declaration confirming that they meet the eligibility requirements for the pay, irrespective of whether their employer asks for this or not. The Government intends to mirror this arrangement for Parental Bereavement Pay, allowing a reasonable timeframe for the employee to provide the declaration. This will not interfere with the employee's right to Parental Bereavement Leave. As this is a paid statutory entitlement, there needs to be sensitivity and flexibility for bereaved parents, whilst also ensuring a safeguard is in place to protect employers and the Exchequer from potential abuse.

Mirroring existing procedures, where appropriate, will help to avoid confusion for employers, which, given how infrequently an employer will need to administer this provision, will enable the employer to act in the best interests of their staff.

Background to the consultation

Kevin Hollinrake MP's Parental Bereavement (Leave and Pay) Bill received Royal Assent and became an Act of Parliament on 13 September 2018. The Act creates 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. To this end, the Department for Business, Energy and Industrial Strategy (BEIS) launched a public consultation on 28th March 2018, focusing on key details of the Government's policy on Parental Bereavement Leave and Pay. The public consultation closed on 8th June 2018.

The consultation comprised an online public consultation and round-table meetings with stakeholder groups. We have also taken account of views expressed by interested parties during the passage of the Act through Parliament.

Through their engagement, all participants in the consultation have raised important issues for consideration and have informed the Government's proposals for implementation.

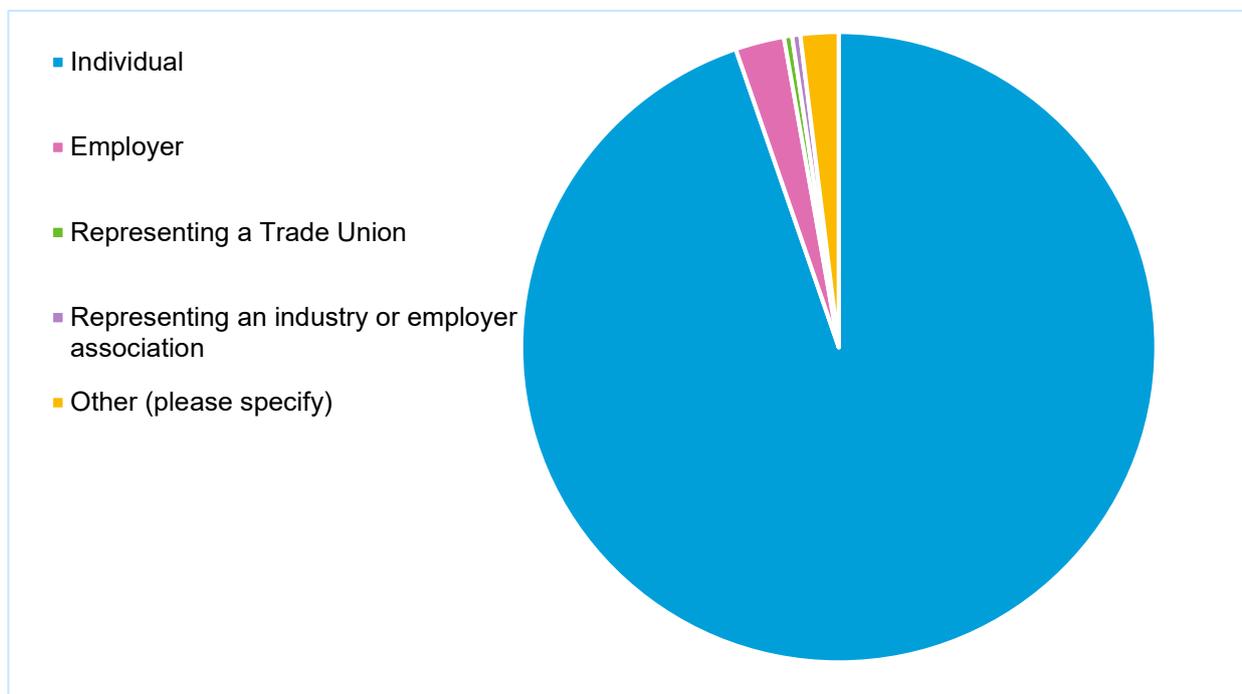
This document summarises the responses to the consultation's questions, and sets out the Government's response, including the next steps for developing the Regulations.

The Government will continue to engage with stakeholders up to the point of laying the Regulations formally for approval by Parliament. The Government will also work closely with the Advisory, Conciliation and Arbitration Service (ACAS) to develop guidance for employees and employers to support the Regulations.

Summary of respondents

In total, we received 1448 responses to the consultation. The largest proportion was via the online public consultation, which received 1429 responses. 19 responses were received by email from businesses, business services, charities, professional groups and trade unions. In total, 95 per cent of responses were from individuals, 2 per cent from employers, and just under 1 per cent from representatives of a trade union, or an industry or employer association. The full break down of the types of respondents to the online consultation is found in figure 1. Not all respondents answered all of the consultation questions.

Figure 1: Type of respondents



Of the 1369 individuals who responded to the consultation, 76 per cent were employed (see figure 2). Of these, 43 per cent were employed in the private sector, 48 per cent in the public sector and 7 per cent in the charity sector (see figure 3). The majority of these employees worked for large organisations (those with 250+ employees), with the smallest number working for micro-businesses (0-9 employees).

Figure 2: The employment status of 'individuals' who responded (%)

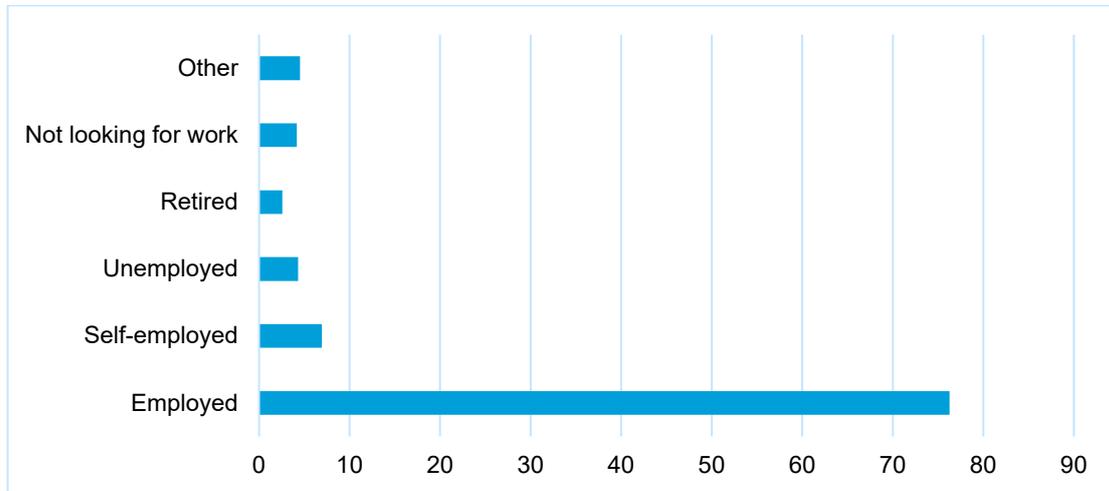
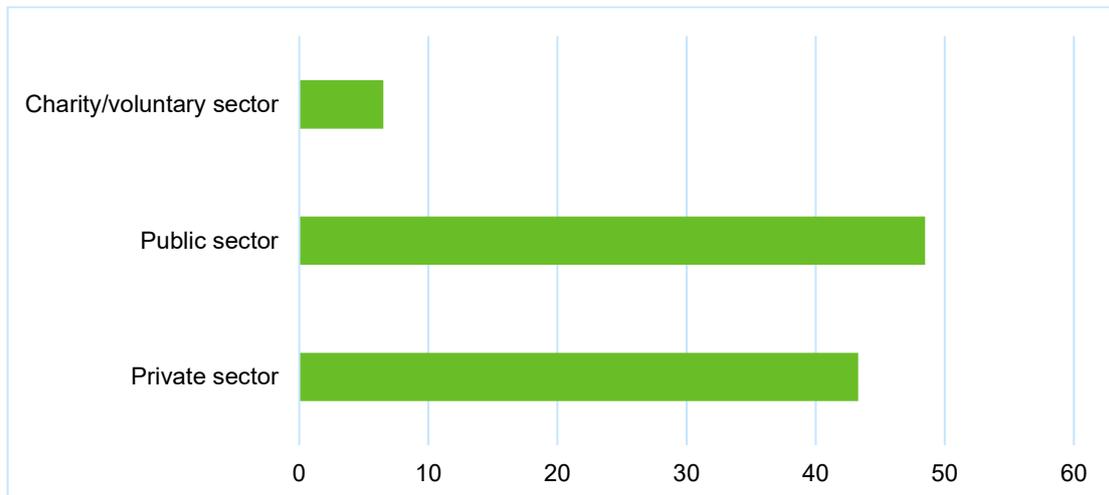
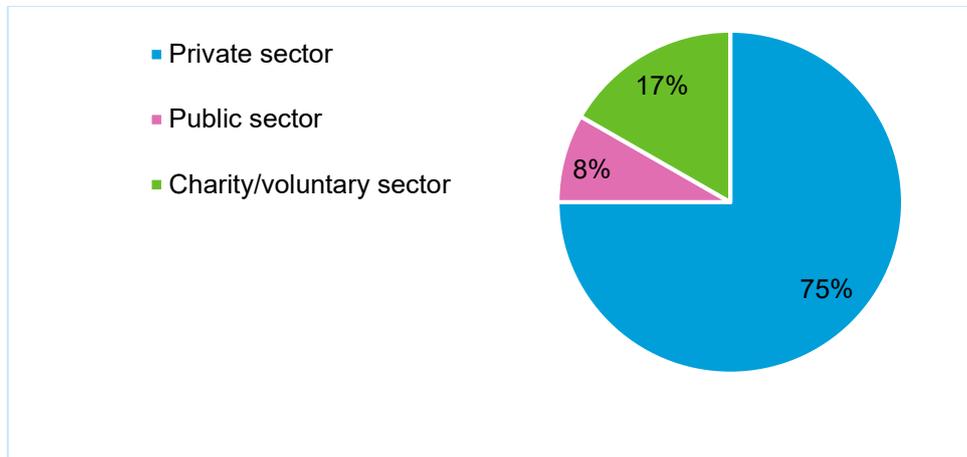


Figure 3: The sectors of employment which employed respondents belonged to (%)



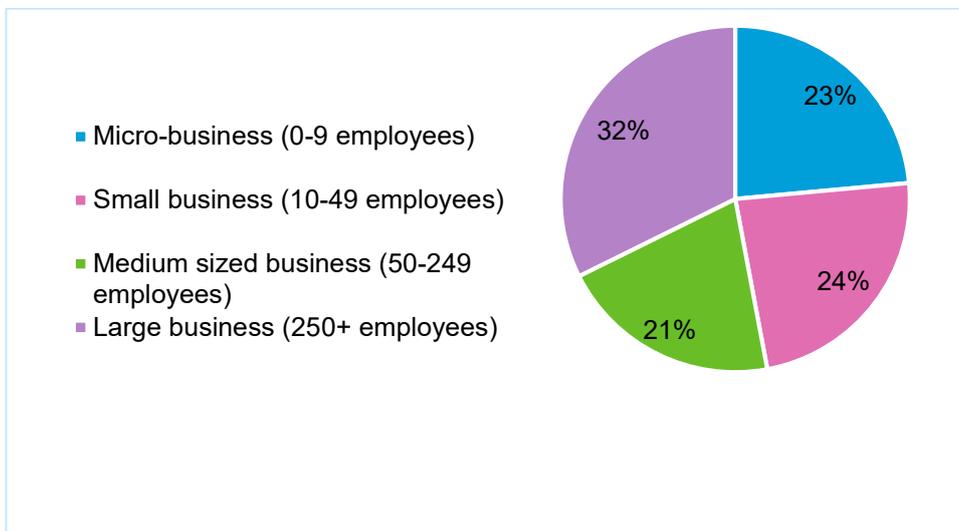
Of the 36 employers who responded to the consultation, 75 per cent were private sector employers (see figure 4).

Figure 4: Types of employers



In terms of the size of the 36 employers who responded to the consultation, there was an almost even distribution between micro-businesses (0-9 employees) through to medium businesses (50-249 employees), with a slight majority being large businesses (250+ employees) (see figure 5).

Figure 5. Size of employers



The majority of respondents to the consultation (65 per cent) had experienced the loss of a child. A small number said that they had experienced a close family member or friend lose a child.

The round-table sessions engaged stakeholders from charity and business groups, and from other Government departments and the Devolved Administrations. The full list of stakeholders involved in the stakeholder round-table sessions is found in figure 6.

Figure 6: Stakeholders involved in the round-table sessions

Organisation name
National Bereavement Alliance
Cruse Bereavement Care
SANDS
Bliss
Together for Short Lives
Working Families
The Lullaby Trust
The Employment Lawyers Association
CBI
TUC
ACAS
Department of Health and Social Care
Department for Education
Her Majesty's Revenue and Customs
Ministry of Justice
Her Majesty's Treasury

Summary of responses

In total, we received 1448 responses to the consultation. The largest proportion was via the online public consultation, which received 1429 responses. 19 responses were received by email from businesses, business services, charities, professional groups and trade unions.

The consultation asked seven substantive questions relating to key points that are to be set in Regulations. These questions were organised under four themes:

- Definition of a 'bereaved parent'
- How and when to take Parental Bereavement Leave and Pay
- Notice periods for Parental Bereavement Leave and Pay
- Evidence required for Parental Bereavement Leave and Pay

This section provides a summary of the responses received to each question from stakeholders involved in all parts of the consultation. The Government's response is given to questions grouped under the four themes, and then summarised in the conclusion.

Definition of 'bereaved parent'

The definition of a 'bereaved parent' is central to Government policy on Parental Bereavement Leave and Pay. The Government believes that clarity as to eligibility is crucial: it must be clear to the employee and their employer whether an employee is eligible, based on facts that are easy to establish. This will help to avoid complications and the risk of dispute or challenge.

According to the Act, 'bereaved parent' is to 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 consultation sought views on exactly what relationships and care arrangements should be included within the scope of the provisions, beyond the following:

- Legal parents e.g. biological parents (except where the child has been adopted or a Parental Order has been made); adoptive parents and parents who have obtained a Parental Order in the context of a surrogacy arrangement.
- Others who have a relationship with a child which is parental in nature but who are not the child's legal parents. One example is step-parents who are caring for the child but there could be other groups which might need to be considered for inclusion.

The questions asked were as follows:

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

Summary of responses

Grandparents received the most support from respondents to this question. Those who argued for the inclusion of grandparents were almost four times more likely to reference the emotional impact on this group than the fact they could be the main carer of the child. Another key concern was that grandparents fulfilled a practical role in supporting the parents and other children after the bereavement, so should be afforded leave and pay to enable them to do this. This particular view was echoed by a key stakeholder at a round-table session.

By contrast, many respondents referred to the fact that in some cases grandparents are the primary carers of their grandchildren, and are in fact the ones undertaking the parenting of the child. Respondents felt that non-traditional family structures must be acknowledged in this provision, as there are a multitude of circumstances in which people other than the biological parents fulfil the role of 'parent'. This was a strong theme running through the consultation responses in relation to grandparents as well as other groups.

The second largest proportion of respondents felt that a 'bereaved parent' should be explicitly defined by reference to their care for the child, which should be 'parental' in nature. This was distinct from the holding of a legal parental status or legally defined parental responsibility, representing the view that entitlement should not depend solely on the existence of such legal status. The majority of arguments for including this category of people centred on the emotional impact that would be felt by a 'primary care-giver' in the event of a bereavement. Just under half of respondents who supported the inclusion of 'primary care-givers' argued that non-traditional family structures must be considered for inclusion in the definition of 'bereaved parent'.

Reasons for the inclusion of 'primary care-givers', including those without legal status, focused on the sentiment that whoever was parenting the child should be entitled to this provision.

Many stakeholders at round-table sessions supported the inclusion of 'primary care-givers', for similar reasons. A smaller number of stakeholders also supported the inclusion of anyone with some level of caring responsibility for the child, which was not necessarily limited to the *primary* care-giver.

On the other hand, stakeholders representing employer and business groups showed more support for the inclusion of those with a legally defined parental status than for groups who do not have this legal status. There was a strong view that using existing legal definitions and maintaining consistency with other family leave and pay rights would minimise complexity and uncertainty for employers, who will be administering the leave and pay arrangements.

Many respondents felt that step-parents, both married and unmarried or in civil partnerships, and including same-sex couples, should be included in the definition of 'bereaved parent'. Of these, more than half felt that the emotional impact on these groups, in particular where they shared the primary caring responsibility for the child, would be profound. About a third of respondents in support of these groups repeated the concern that non-traditional family structures need to be acknowledged and included.

Respondents also supported the inclusion of step-parents, civil partners or same-sex partners of the parent, with one specifying that this should be through marriage or civil partnership. Many referred to the 'parenting' done by these individuals, suggesting that these groups might have given significant care to the child throughout the child's life, some without obtaining legal status.

Smaller numbers of respondents proposed the inclusion of foster carers, arguing that grief had a significant impact on 'primary care-givers', even if they were not biologically related. Around a third drew attention to the fact that foster families are a common type of modern family. No consistent distinction was made between different types of foster carers nor the legal variations between them. At round-table meetings stakeholders supported the inclusion of all types of foster carer. This would include long-term foster carers, those fostering to adopt and formal kinship carers (all of which have some legal status), as well as informal kinship carers and private foster carers (excluding those who are being paid for this role). Some respondents also supported the need to consider types of foster carers who were not formally recognised.

The other significant group supported in the consultation was those who did have legal status as a child's carer in a parental role, including those with a Special Guardianship

Order and certain types of Child Arrangement Orders. Support centred on the idea that these groups would experience the emotional impact of the bereavement, and that care-givers would be responsible for arrangements following the death. Again, the view that whoever was delivering the primary care for the child should be considered for inclusion in the definition of a 'bereaved parent' was argued by stakeholders.

Government response

The Government is keen to define the relationship between a 'bereaved parent' and a child with reference to (amongst other factors) the employee's care for the child before the child's death (as is permitted by the Act). We agree with the general objective that 'primary carers', whose relationship with the child was 'parental' in nature before the child died, should be entitled to this provision.

We sought views from respondents on the question of exactly which relationships and care arrangements should be included, and the responses we have received have highlighted the variety of arrangements that exist. The unifying theme among the majority of these responses has been that whoever was 'parenting' the child should be included, irrespective of legal status as 'parent'.

The emotional impact on these people will be profound, as a result of their relationship with and care of the child, so the right to Parental Bereavement Leave and Pay in order to have time away from work to grieve will be profoundly needed and valued.

Many groups who fulfil the role of 'parent' or 'primary carer' do so as a result of an underlying legal relationship with the child, and are therefore easy to identify, based on objective tests, by parents and their employers. It is the Government's intention to include these groups, for example:

- Biological/Birth parents (unless an Adoption Order or Parental Order has been made) including those who suffer a stillbirth after twenty-four weeks of pregnancy
- Adoptive parents¹, and those fostering to adopt², from the point of placement (although the birth parents' entitlement would continue up to the point the Adoption Order was made).

In addition, we intend to ensure that the specification of a 'bereaved parent' captures other groups who are not legally 'parents' but who have a 'parental' relationship with the child which is recognised in law, for example:

- Legal guardians
- Those with a Special Guardianship Order³
- Individuals with a Child Arrangement Order⁴ under which the child lives with them.

Most foster parents will also fall within the scope of the provision. But the complication in this case is that there is a spectrum of situations from emergency foster care, expected to last only overnight or for a few days, to long-term foster care, intended to continue until the child reaches adulthood. At one end of the spectrum the foster carers would not expect to form a deep emotional bond with the child; at the other the foster carers' relationship with

¹ Including those who adopted in Northern Ireland and have moved to the UK

² Or the equivalent in Wales and Scotland

³ Or the equivalent in Wales and Scotland

⁴ Or the equivalent in Wales and Scotland

the child might be similar to that of adoptive parents. Foster placements that were originally intended to be short-term can turn out to be longer term and *vice versa*.

The Government is determined that other non-traditional family structures should not be overlooked by the law. The complexity in this area poses a challenge in terms of formulating an appropriate definition so that, as far as is practical, the right people are both included and excluded.

At the same time, 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 the employer in order to minimise confusion and dispute. A number of stakeholders have expressed concern for clarity and certainty in terms of who will be entitled to this provision.

There is no existing legal mechanism, which would be appropriate to use to identify individuals who are 'primary carers' for a child on an informal basis, such as informal kinship carers. This refers to cases where a child is being cared for by a person who is not their biological parent, but may be a relative or close family friend. This person is typically acting as the parent of the child for the time being, yet without any legal status as such.

The Government's intention is to include such carers in the definition of 'bereaved parent', according to their care of the child, which must be 'parental' in nature. So, when a child dies, their 'primary carer(s)' - whether they have legal status as a 'parent' or not – who were caring and providing for the child will be captured by this provision.

We intend to differentiate between extended care arrangements that are 'parental' in nature and should be included in this provision, and those that are more temporary or commercial in nature (such as a host family that cares for an overseas student at a UK boarding school during the school holidays).

How and when Parental Bereavement Leave and Pay can be taken

The Act allows for a minimum of two weeks of Parental Bereavement Leave and Pay to be taken by eligible employees. Whether the two weeks can be taken only in a single block, in non-consecutive blocks of a week or (in the case of leave) more flexibly still. This 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, and the amount of the payment is set per week).

The Act sets a *minimum* window of 56 days 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.

We asked two key questions on this issue. The first asked respondents to select which they felt was the most appropriate level of flexibility for how the two weeks of leave and pay could be taken, and the second asked what would be the optimal length of the window in which to take the leave and pay. The summarised responses and Government response are given below in respect of each question.

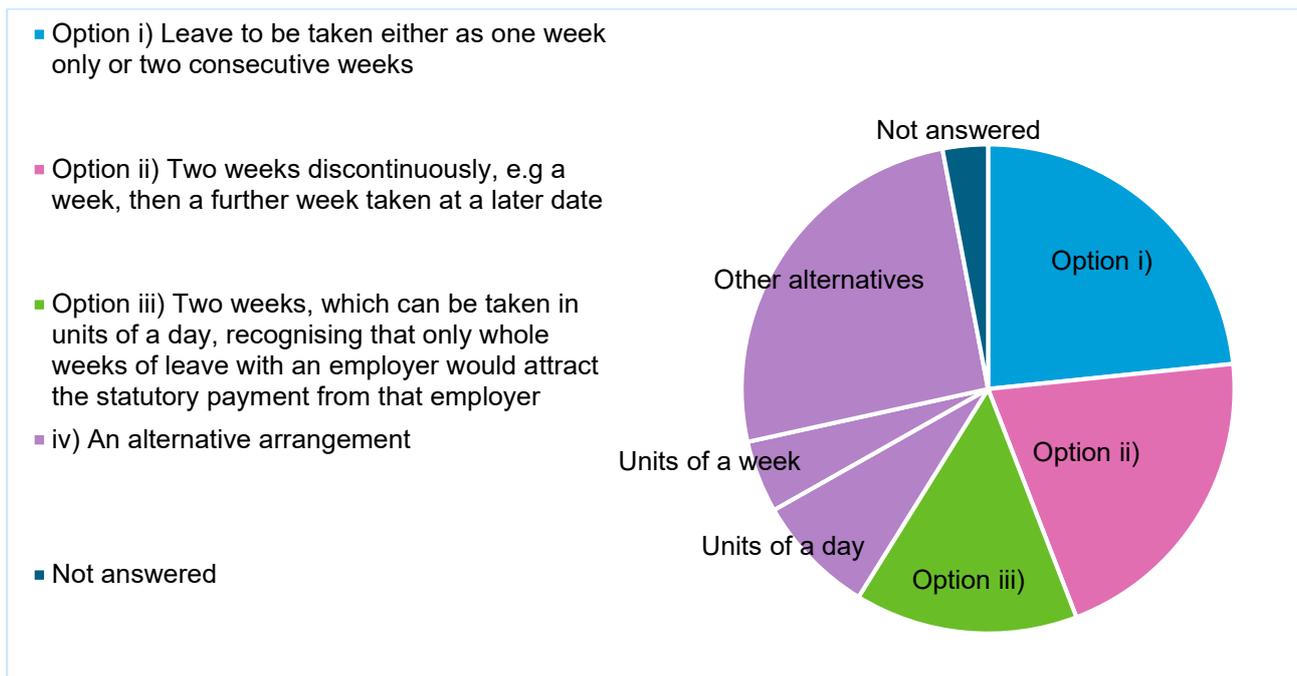
Flexibility around consecutive/non-consecutive weeks

The questions asked were as follows:

Flexibility around consecutive/non-consecutive weeks	
3.	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) Leave to taken in individual weeks, consecutively or non-consecutively
	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
	v) Please set out your reasons for your response
	vi) Please set out potential difficulties you consider may exist with any of the options

Summary of responses

Figure 7: The flexibility of the two weeks of leave



The majority of respondents, 61 per cent, opted for options (i) to (iii) for leave-taking suggested in question 3 of the consultation document.

Of the three options, option i (leave to be taken either as one week only or two consecutive weeks) was the most supported among respondents. A large proportion of these respondents believed that the leave and pay would be needed most immediately following the death and would be of most benefit to the grieving process if taken as a continuous block.

However, around 10 per cent of respondents felt that a 'one-size fits all' model would not be suitable, given that there is no set pattern of grief. Many were concerned that, if the leave could be taken only in a single block, it would not be available to a parent wanting to take it to attend a funeral which fell later than two weeks after the death.

In a similar vein, stakeholders anticipated that if Parental Bereavement Leave and Pay could not be taken flexibly, bereaved parents would take sick leave instead, which could be disruptive and costly to employers.

Option ii (leave to be taken in individual weeks, consecutively or non-consecutively) received the support of 35 per cent of respondents. This support was in large part attributable to the flexibility offered by discontinuous weeks. Many felt that two separate weeks would best support the grieving process.

In addition to those who selected option ii, when suggesting an alternative arrangement (option iv) a further 68 people suggested that leave should be available as discontinuous units of a week.

A primary concern of respondents and stakeholders was that the funeral did not always take place within two weeks of the death, and in some cases could be delayed for several months. Moreover, if there was a post-mortem, and/or a coroner's investigation and inquest, the family might have to wait up to a year for these to take place and find closure. The parent might wish to save one or both weeks of their Parental Bereavement Leave and Pay to enable them to be away from work at that later stage.

Furthermore, some respondents and stakeholders expressed the view that discontinuous weeks would allow employees to match their leave to times when they were not coping so well. For example, the time around the anniversary of the child's death, or significant dates such as birthdays might be particularly difficult for bereaved parents and might require them to be away from work.

A strong preference for leave to be taken in units of a week was expressed by a number of stakeholders representing business groups, who noted that this would be far more manageable for small employers to administer through their payroll systems than if leave were to be taken in units of a day. They felt that discontinuous units of a week would strike a balance between flexibility for bereaved parents and manageability for employers.

As outlined in the consultation document, normal practice in legislation is to make statutory payments in blocks of a week. Under the Act, smaller units cannot attract the statutory payment. Stakeholders representing charities expressed particular concern that leave should be paid when it was taken, as otherwise bereaved parents may be disadvantaged. In support of units of a week, one stakeholder representing a charity expressed a willingness to forfeit some flexibility in how the leave can be taken to ensure that it was paid.

Of those who answered question 3, 39 per cent suggested an alternative arrangement to the suggested options. Within these responses, 30 percent argued that the provision for Parental Bereavement Leave and Pay should be longer than two weeks.

Of the alternative arrangements suggested, 25 per cent wanted the bereaved parents to be able to take the leave in whatever way they chose, but gave no indication of whether this would be as units of a week or of a day. This was corroborated by a large proportion of responses that stated that they wanted to see as much flexibility in the Regulations as possible on this issue.

15 per cent of suggestions for an alternative arrangement stated a desire for leave to be taken in discontinuous units of a day, with half of these respondents urging that individual days should attract a statutory payment. The reasons given largely mirrored those given in support of taking leave as discontinuous weeks, although there was significant number of references to the additional flexibility brought by discontinuous days.

Almost all stakeholders supported the option of being able to take leave in units of a day. Whilst reasons mirrored those for taking discontinuous weeks of leave, stakeholders also noted that units of a day were reflective of the on-going nature of grief, as they would allow leave to be used to take 'ad hoc' days akin to 'sick days', or to facilitate a phased return to work.

Nevertheless, a number of stakeholders representing business groups highlighted a concern that small employers would face a significant administrative burden if leave and pay were to be offered in units of a day. They argued that the benefits of offering this extra flexibility were outweighed by the impracticability for smaller employers of delivering this provision.

16 per cent of respondents raised the disruption to employers caused by taking leave in 'ad hoc' units of a day, along with concerns about how it would be managed.

Government response

The Government's position remains that the policy must be right for both those who will seek to rely on it and for those who will have to administer it. In light of the responses to the consultation, we will enable the leave to be taken either as a single two-week block or in two separate blocks of one week each. (Parents will be able to choose to take only one week).

We feel that this option balances parents' need for flexibility with employers' need for certainty and practicability.

The Government acknowledges that the circumstances of bereavement are very different from those of Paternity Leave and Pay, for example, in which leave can be taken only in a single block. We understand that a rigid model such as this would not appropriately support the grieving process and events following the death of a child in some cases.

We understand that many employees will wish to take their entitlement in a block of two weeks very soon after the death, but this will not meet the needs of everyone. To this end, we have sought to accommodate employees who may wish to split their leave and return to work in between periods of Parental Bereavement Leave.

It is our intention that, in enabling the leave to be taken as discontinuous weeks, employees will be able to take paid leave from work in order to accommodate their various needs (for example, attending the funeral or inquest or dealing with administrative matters); to match their leave to times when the weight of grief becomes too much to bear; or to have time to reflect and grieve on special dates or anniversaries.

The Government is equally committed to ensuring that employers are able to deliver this provision to their employees with the least administrative burden. We have heard from stakeholders that offering leave in discontinuous units of a week will be easily manageable even for small employers and will facilitate effective delivery and management of the provision. The Government believes that an entitlement that is easy for employers to administer will serve to support the bereaved employee.

The Government agrees that there should not be a discrepancy between when leave is taken and the payment received. We want employees to have the option to take leave with a degree of flexibility whilst still protecting their statutory payment. As highlighted in the consultation document, normal practice is for statutory payments to be paid in respect of weeks, and the Act reflects this. Therefore, the decision has been taken that leave should be taken in whole weeks only, in order to ensure that bereaved parents who qualify for Statutory Parental Bereavement Pay can claim pay in respect of the period that they are on Parental Bereavement Leave.

We would emphasise that this entitlement is the minimum that an employee should expect, and we would encourage all employers to consider enhancing this offer in their own workplace bereavement or special leave policies. Where an employer feels able, they could consider allowing employees the option to take additional discontinuous days of paid leave, over and above the two week statutory entitlement.

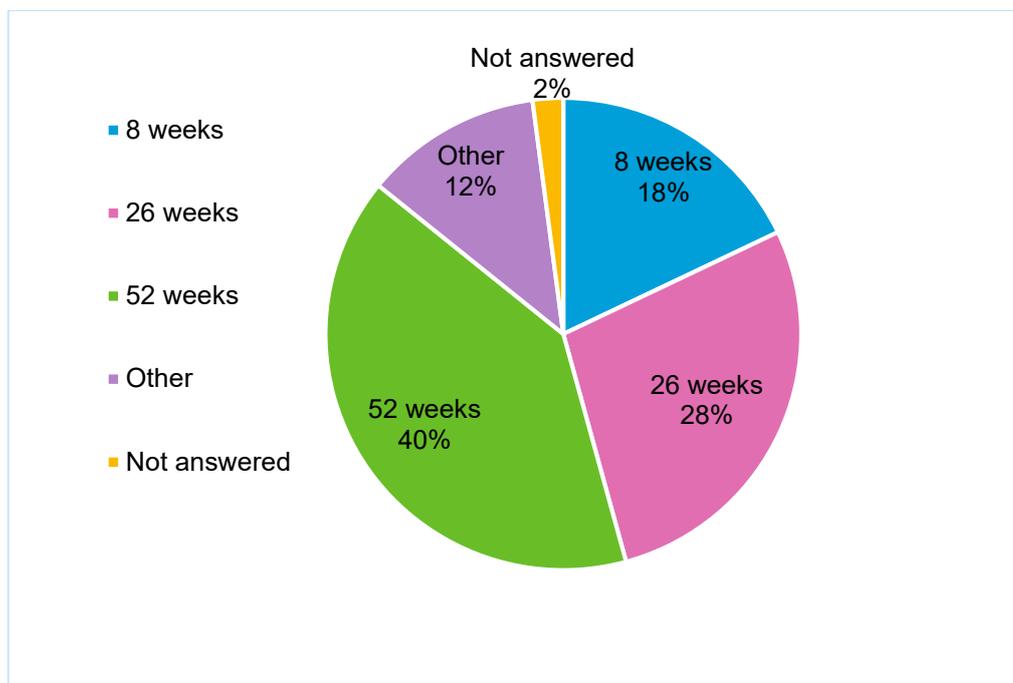
The window in which to take two weeks of leave and pay

The questions asked were as follows:

The window within which to take 2 weeks of leave and pay	
4a)	What do you think is the optimal length for the window?
	I. 8 weeks
	II. 26 weeks
	III. 52 Weeks
	IV. Other – please specify
4b)	Please provide reasons for your answer

Summary of responses

Figure 8: The window in which to take the leave



There was a range of responses to the question of what should be the length of the window, with 18 per cent of respondents stating the optimal length of the window as 56 days (8 weeks), as provided for in the Act. However, the vast majority of responses proposed extending the window beyond this to allow Parental Bereavement Leave and Pay to be taken at a later point after the death of the child. This was reflected in opinions captured in round-table meetings with stakeholders.

The largest proportion of responses to the consultation, 40 per cent, supported a window of 52 weeks, whereas the majority of stakeholders at the round-table meetings supported a window of 56 weeks (which was not one of the options in the consultation document).

Those in favour of a 52-week window felt that this would appropriately accommodate the grieving process over the first year and would be long enough to cover certain events after the death, such as the funeral, or coroner's inquest, which can be delayed by other investigations into the death.

40 per cent of calls to extend the window raised concerns that the process of grieving can be delayed or protracted, particularly within the first year after the death. A large number of respondents pointed out the personal nature of grief and expressed the view that the window for taking Parental Bereavement Leave must be flexible enough to accommodate individual circumstances.

A further consideration referred to by a large number of respondents who were in favour of 52 weeks or more was the particular intensity of grief felt on the anniversary of the death, and other significant dates in the child's or family's lives, which may require time away from work to grieve.

Indeed, the majority of stakeholders at round-table meetings cited the first year anniversary of the death as the primary reason for wanting to extend to 56 weeks, as this

is a particularly difficult time for the parents. They posited that 56 weeks would allow parents to take a period of leave *around* the anniversary, whereas a window of 52 weeks would expire on the anniversary, not allowing any further leave to be taken after that day. So these stakeholders' view was that a window of 56 weeks would best support the parents' grieving process.

Government response

The Government plans to extend the window to 56 weeks in Regulations. This means that those who meet the eligibility criteria will be able to take two discontinuous weeks of paid leave at a point that suits them, from the date of the death of the child up to the 56th week after the death.

This will offer bereaved parents the flexibility to take the leave and pay at the times when they most need it to support their grieving, within the first 13 months following death, including around the first anniversary.

The Government recognises that not all bereaved parents will want to take the two weeks' leave and pay immediately following the death, and some would benefit from having the option to use part of their entitlement to cover difficult periods at a later point during the first 56 weeks.

The Government acknowledges that the process of grief is not linear, and that there is a need to set an appropriate window in which this can be taken. Grief can affect bereaved parents intensely at particular times not immediately after the death, such as around the time of the funeral, inquest, birthdays, or anniversaries. This is especially true in the first year following the loss.

The Government anticipates that many bereaved parents will want to use some of their entitlement to leave and pay to mark the first anniversary of the death. A window of 52 weeks would not have allowed for this, as the entitlement would expire on the anniversary itself. We believe that 56 weeks accommodates the first anniversary more appropriately and enables a period of leave to extend after that date.

The funeral, or coroner's inquest may take place some time after the death of the child. Many bereaved parents find that processing their grief is delayed until these events have taken place, and that they experience a newfound sense of bereavement afterwards. By extending the window to 56 weeks, we ensure that the bereaved parents are able to use Parental Bereavement Leave and Pay to be away from work at these times.

The intention here is to enable eligible bereaved parents to defer part or all of their entitlement to leave and pay to a later period in accordance with their own individual circumstances, and to empower them to use these two weeks to support their grieving in whatever way will be best for them.

The Government appreciates that the grief experienced by parents who have lost a child does not necessarily disappear after a set period of time, such as 56 weeks. The hope is that this provision will support bereaved parents in the initial stages of their grief, and through the wider cultural shift that it helps to create, that they will experience improved bereavement support at work and in society.

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.

We asked whether employees should be required to provide their employer with notice of when they intend to be absent from work and be claiming pay, what a reasonable notice period may be, and how notice should be given in respect of two cases:

- Where parents take their Parental Bereavement Leave and Pay immediately following the death of their child; and
- Where parents take their leave and pay at a later date.

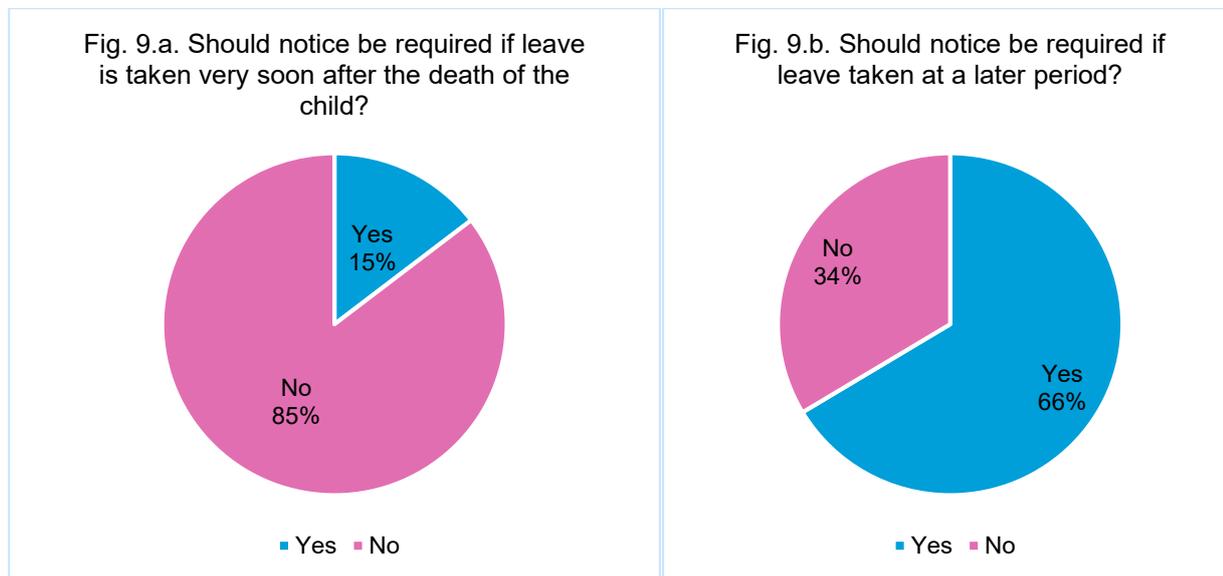
The question of notice becomes more important if the window within which the leave and pay must be taken is extended and there is flexibility around how the leave can be taken.

The questions asked were as follows:

Notice required to take parental bereavement leave and pay	
5a	Do you agree that parents should be required to provide notice to their employer?
	<p>i) If leave is taken very soon after the death of the child</p> <p>Yes</p> <p>No</p>
	<p>ii) If leave is taken at a later period</p> <p>Yes</p> <p>No</p>
5b	Please provide reasons for your answer
6a	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
6b	Please provide reasons for your answer
7	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
8	Please provide reasons for your answer

Summary of responses

Figure 9: Notice requirements for Parental Bereavement Leave (and Pay)



85 per cent of respondents believed that employees should not be required to provide prior notice to their employer when taking leave very soon after the death of the child. Among employers, 83 per cent felt that no notice should be required if leave is taken at this time. Stakeholders at round-tables also unanimously agreed that no notice should be required.

The leading reason given for this was that a bereavement cannot be predicted, and it would be unreasonable to expect employees to continue working through a notice period before being able to take leave. There was a strong sense among respondents and stakeholders alike that any notice requirement should aim to make access to this leave easy for the bereaved employee.

A common view was that, if the notice period were too prescriptive, it might create negative consequences for employees: for example, their entitlement might be disputed by an employer, or they might suffer disciplinary action as a result of failing to comply.

When asked what a reasonable notice period would be if leave were to be taken very soon after the death, 54 per cent stated that no notice should be required, enabling employees to leave work immediately.

Of the 210 respondents who answered 'yes' to question 5a(i) on notice for leave taken very soon, 32 per cent stated later that the employee should nevertheless be expected to notify the employer of the fact that they were exercising their statutory entitlement. Of these respondents, a fifth supported the employee having up to 7 days to notify their employer from the first day of absence.

In terms of how notice should be given to the employer if taking leave very soon after the death of the child, the vast majority of respondents supported informal notification by phone, or in person. Around 7 per cent of respondents proposed that this notification could be given by a close friend or relative on the employee's behalf.

If leave were taken at a later period, 66 per cent of respondents agreed that employees should be required to provide notice to their employer. Of employers, 89 per cent supported a notice requirement when leave was taken at a later period.

A majority of stakeholders at round-tables agreed with a notice requirement for leave taken later, but maintained that there should be built-in flexibility to allow for leave to be taken at very short notice in order to deal with grief. However, they put forward the view that, where an employee knew in advance the dates for which leave would be needed, it was reasonable for the employee to provide notice to their employer. Stakeholders were keen that the provision achieved balance between supporting the bereaved employee and the employer's need to plan ahead.

Respondents also expressed a view that all notice periods should be 'reasonable' and the Regulations should not expect employees to comply with prescriptive notice requirements, as this might create a barrier to access.

In answer to the question of what constitutes a reasonable notice period when leave is taken at a later period, most respondents opted for one week, with the next most popular answer being fewer than 7 days. Stakeholders at round-tables were less specific in their responses, instead suggesting that leave for different purposes – for relief from work if the bereaved employee was not coping well, as opposed to leave requested for dates which were known in advance (for example for an anniversary or to attend an inquest) – should be treated differently in the Regulations, with distinct notice periods for each.

There was consensus that, as time went on, notice became easier to give to an employer as bereaved parents became more able to plan their leave. Nevertheless, many respondents highlighted the fact that grief was unpredictable, and so an element of flexibility should be retained in notice requirements for leave at a later period.

Much as with leave taken shortly after the child's death, the majority of respondents were in favour of notice being given in an informal manner, with a phone-call or verbal notification being sufficient. A large minority believed that notice given for leave at a later date should be in writing, as for many employers this was standard procedure used for other types of planned leave. Stakeholders were keen that notice requirements were less onerous than existing requirements for taking other types of leave.

Government response

The Government intends to take a two-tiered approach to notice requirements in order to accommodate leave taken very soon after the death, and at a later period. The Regulations will set separate notice requirements based on *when* Parental Bereavement Leave and Pay is taken, rather than the purpose for which it is taken.

The Government understands that there is no set timeline of grief, and that bereaved parents may want to take this entitlement at different times. This is facilitated by the provisions allowing flexibility in taking the leave, allowing parents to take this in separate units of a week within a window of 56 weeks following the death. It is therefore important that the notice requirements are suited to this.

Leave taken soon after the death

No prior notice will be required for leave taken very soon after the death. This will apply within a set number of weeks following the death. We are working to establish the exact length of this period.

Whilst there will be no expectation of prior notice during this initial period, there will be a requirement for the bereaved parent to tell the employer the reason for their absence from work and that they wish to take Parental Bereavement Leave. Informal notification will be acceptable. The Government intends for this notification to be as flexible as possible in order to accommodate the employee's individual circumstances.

Due to the unpredictability of bereavement, we feel this approach supports employees to take leave from work immediately without detriment to their employment. It also recognises the need for employers to be kept informed so that they can plan appropriately in the employee's absence. Consultation with stakeholders representing business and employer groups, as well as responses from individual businesses, have given the Government confidence that this approach will generally be welcomed and supported by employers. Whilst the requirement puts the bereaved parents' needs first, it also allows for a degree of certainty for employers.

Leave taken after the initial period

If leave (and pay) is taken at a later period after the initial 'no prior notice period', but within the 56 week window, a notice requirement will apply. We are working to establish the exact point within the 56 week window at which this requirement will commence. The employee will be required to give their employer notice of their intention to take Parental Bereavement Leave (and Pay) at least one week before they intend their leave to start. The Government is exploring whether this short notice period will be feasible for pay, too. The notice period will be for the purpose of providing information to the employer, to enable them to plan contingencies for the staff absence.

It was evident in responses to the consultation that many people considered it reasonable to require notice for leave taken at a later period after the death. At this point, respondents felt that the bereaved parent would be more capable of planning their leave, and might plan it specifically to coincide with specific dates or the anniversary of the child's death.

We believe that employers need the certainty that a notice period provides in order to effectively plan for the employee's absence. At a later period, the dates on which the employee intends to take the leave are likely to be known to them in advance, so it is only reasonable that this intention is shared with the employer. We believe that effective communication will enable the employer to support the bereaved parent better and will help to engender a more caring response to bereavement in the workplace.

The Government acknowledges that dates for inquests, or other appointments to do with the administration of the death, can be given at short notice and are subject to change. This makes it very difficult to give notice with certainty to the employer but employees

should be able to give their employer an indication of when they will be off work. As such we consider that the employee should give reasonable notice in these circumstances.

Nevertheless, Government guidance will recommend that, where possible, the employee should give reasonable notice to the employer, and that best practice would be to keep the employer informed of upcoming dates and changes to these in a timely manner. This will ensure that where it is possible, the employer is given the chance to plan.

Even during this later period, the Government will endeavour to ensure that the notice requirement for leave is formulated with sufficient flexibility, in order to accommodate the variety of circumstances in which bereaved parents may find themselves.

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.

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.

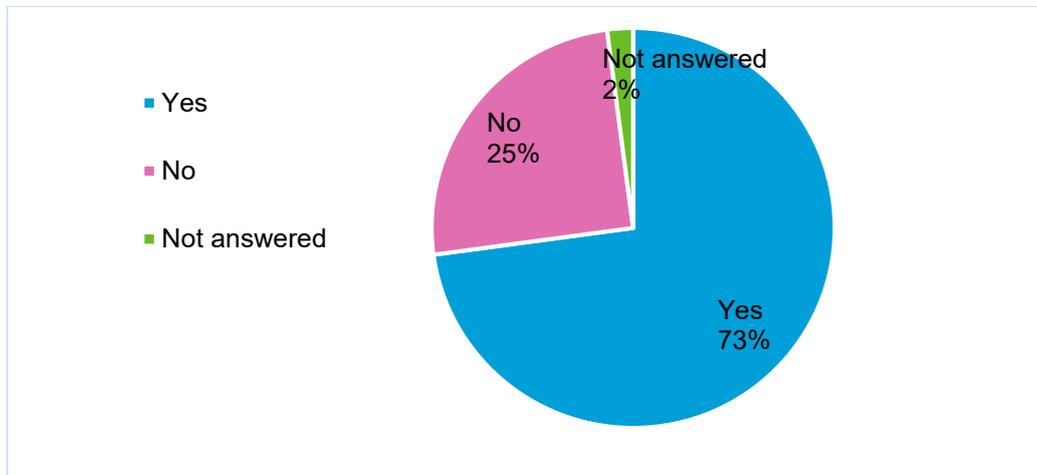
We asked whether evidence requirements for Parental Bereavement Leave and Pay should mirror those of some existing family leave rights, i.e. that evidence is not required unless requested by the employer.

The questions asked were as follows:

Evidence required for parental bereavement leave and pay	
9a)	Should evidence requirements for this provision mirror those of existing family leave, i.e. that evidence is not required unless requested by the employer?
	Yes
	No
9b)	Please explain your reasons

Summary of responses

Figure 10: Evidence requirements for Parental Bereavement Leave (and Pay)



The vast majority of respondents answered that evidentiary requirements for Parental Bereavement Leave and Pay should mirror most existing family leave entitlements, i.e. that evidence should not be required unless requested by the employer.

The very high proportion of respondents who chose to answer this question suggests that evidence, and whether it should be provided to employers, is a sensitive issue.

A high proportion of respondents were in favour of evidence requirements for this provision mirroring those for existing family leave entitlements. The main reason given was that following a familiar procedure would be easier for the employee and would protect the employer by conferring the right to ask if necessary. This was echoed in stakeholder sessions with representatives of employers or trade organisations, who were keen to reduce stress for the parents at a difficult time as well as supporting employers to deliver this entitlement with compassion and confidence.

Respondents also cited reasons why an employer may need to request evidence in certain circumstances, as an argument in support of mirroring existing requirements. For example, in cases where employers have reason to believe that an employee may not qualify for Parental Bereavement Leave and Pay, they should have the right to verify this with evidence of some sort. Also, respondents acknowledged that in some corporate environments or large organisations, the employer or HR department may not have knowledge of employees' personal lives, and there should therefore be the ability to check eligibility, albeit retrospectively.

A number of counter-arguments were made by the 26 per cent of respondents who answered 'no', along with the majority of stakeholders at round-table sessions who felt that there should be no evidence requirement. It was argued that requiring evidence in all cases showed a lack of compassion to bereaved parents. Stakeholders raised a concern that, if an employer were to request evidence from the employee to verify their entitlement in every case, it would make the employee feel unsupported at a very vulnerable time and could irrevocably damage their relationship.

Respondents also argued that the practicality of providing evidence of the child's death to their employer would be difficult, especially if the evidence was to be required at the point of taking the leave when it might not yet be available.

There was concern that such a requirement would prohibit the employee from taking the entitlement until sufficient evidence had been produced, which could be very traumatic.

A number of respondents who answered 'no' to question 9a said they thought it would be highly unlikely that anyone would seek to abuse this entitlement, so there was no need for any evidence requirement.

Government response

The Government agrees with the majority of respondents that it is appropriate to mirror existing family leave entitlements. So, the Government intends to mirror the existing evidence requirements, where appropriate, for Paternity Leave and Pay. This means that a written declaration will always be required for Parental Bereavement Pay. We are considering whether there should be a requirement to provide evidence on request for Parental Bereavement Leave in certain circumstances, recognising that the employee may need to take leave at short notice. However, a bereaved parent will never be prevented from taking time off work in the initial period after the death of their child by any such requirement.

Where evidence is required for Parental Bereavement Leave or Pay, the Government expects this to be in the form of a similar written declaration to evidence entitlement to that used for Paternity Leave and Pay. Importantly, this means that the employee will not be required to produce any evidence of the child's death. Nor will the employer be entitled to request evidence of the relationship to the child.

Through discussions with stakeholders it was clear that in the majority of cases employers would not need to, nor want to, ask bereaved parents for any form of evidence of their loss, however there was nervousness about having no safeguard in place. In requesting a declaration that they meet eligibility criteria from the employee, employers will be able to act sensitively towards their staff.

Leave and pay taken in the initial period

Needing to provide evidence of a loss before being able to take their Parental Bereavement Leave would not be consistent with the Government's intention to make this entitlement easy for a bereaved parent to take. We propose that evidence requirements are flexible; no bereaved parent will be required to produce any form of evidence before exercising their right to leave when taken very soon after the death of the child.

For existing family leave rights, a written declaration confirming entitlement to leave is only required if the employer requests it. The Government agrees that we should mirror existing evidence requirements where it is practicable to do so. We are considering whether it would be appropriate for an employer to be able to request a written declaration of entitlement to Parental Bereavement Leave in certain circumstances. However, we are clear that an employee who needs to take time off work to grieve in the initial period after the death will not be required to provide a written declaration of entitlement before taking Parental Bereavement Leave.

The Government believes that ensuring ease for the employee is particularly important when leave is taken very soon after the death and will consider this when drafting the Regulations for evidence requirements for Parental Bereavement Leave.

As this is a paid statutory entitlement, there needs to be a safeguard in place to protect the Exchequer from potential abuse, whilst also ensuring sensitivity and flexibility for bereaved parents.

The employee will only be required to comply with evidence requirements - where these apply - once and will not be required to repeat the process if they decide to take the second week of their entitlement at a later period.

Leave and pay taken after the initial period

We are considering whether it would be appropriate to require an employee to provide evidence (in the form of a written declaration) on request when Parental Bereavement Leave is taken after the initial period following the death. If evidence is required, we propose that this will be provided at the same time as notice is given.

A written declaration will always be required for Parental Bereavement Pay (i.e. irrespective of whether the employer asks for this). This mirrors existing arrangements for Statutory Paternity Pay.

In mirroring, where appropriate, evidence requirements for existing entitlement to family-related leave and pay, the Government hopes to ensure ease for both employers and employees, whilst also addressing the need to protect against abuse.

Contributions to the debate on introducing a statutory entitlement to Parental Bereavement Leave and Pay

Contributions made by various MPs who spoke in debates during the passage of the Act through the House of Commons can be found in the Official Report at the links in figure 11. The views expressed have been considered when crafting this Government response.

Figure 11: Hansards

Debate	Link to Hansard
Second Reading: 20 October 2017	https://hansard.parliament.uk/commons/2017-10-20/debates/3DED3C9D-E118-43C1-861A-8B5593114E79/ParentalBereavement(LeaveAndPay)Bill
Committee stage: 31 January 2018 and 7 February, 2018	https://publications.parliament.uk/pa/cm201719/cmpublic/Parental/PBC14_Combined_1-2_31_01_2018.pdf
Report stage and Third Reading: 11 May 2018	https://hansard.parliament.uk/commons/2018-05-11/debates/A3B10E8B-5139-4404-8E8F-3E89665A477F/ParentalBereavement(LeaveAndPay)Bill

Next steps

The Government would like to thank everyone who has contributed to this consultation. The views expressed by all those involved have informed the decisions taken in this Government response.

The Parental Bereavement Leave (and Pay) Bill has now completed its Parliamentary passage and received Royal Assent on 13 September 2018 to become an Act.

The Government will bring forward Regulations to give effect to the decisions taken as a result of the consultation. We will continue to work with relevant stakeholders as we finalise the Secondary Legislation and prepare for implementation.

The relevant guidance will be updated to reflect the changes to legislation made by this Act, to ensure that employees and employers are aware of this new right.

Territorial extent

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

Contact details

Any enquiries regarding this publication should be sent to ParentalBereavementLeaveconsultation@beis.gov.uk.