

PATERNITY LEAVE (BEREAVEMENT) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Paternity Leave (Bereavement) Bill as brought from the House of Commons on 29 April 2024 (HL Bill 70).

- These Explanatory Notes have been prepared by the Department for Business and Trade (DBT) with the consent of Baroness Anderson of Stoke-on-Trent, the Member in charge of the Private Member's Bill during its passage through the House of Lords, in order to assist the reader. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Paternity Leave (Bereavement) Bill and the Employment Rights Act 1996. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Paternity Leave (Bereavement) Bill as brought from the House of Commons on 29 April 2024 (HL Bill 70)

Overview of the Bill

- 1 The Bill amends or inserts provisions into the Employment Rights Act 1996, providing powers to make provision about Paternity Leave in cases where a mother, or a person with whom a child is placed or expected to be placed for adoption, dies.
- 2 The Bill's powers allow provision to be made for the following:
 - Paternity Leave (birth) – In cases where a child's mother dies, the existing entitlement for the child's father, or the mother's partner, to be absent from work on Paternity Leave following the birth of the child will not be subject to a continuity of service requirement; the employee may be permitted to take Paternity Leave after Shared Parental Leave; and the requirement that Paternity Leave be taken only for specified purposes can be disapplied in cases where the child also dies.
 - Paternity leave (adoption) – In relation to those who are adopting a child or are becoming parents through surrogacy arrangements, the same provision is made. If the member of a couple who has elected to take Adoption Leave (referred to for ease as "Parent A" in the remainder of these Notes) dies, the other parent (who has elected to take Paternity Leave) will not be required to have met any continuity of service requirement in order to take Paternity Leave; they may be permitted to take Paternity Leave after Shared Parental Leave; and the requirement that Paternity Leave be taken only for specified purposes can be disapplied in cases where the child also dies, or where the adoption is disrupted after the child has been placed.
 - 'Keeping in touch' (KIT) days – The Bill allows the Secretary of State to make regulations with provision concerning KIT days. KIT days enable an employee to do some work for their employer during a period of leave without bringing that particular period of leave to an end, or otherwise affecting their entitlement to that kind of leave.

Policy background

- 3 Eligibility for Maternity Leave and Adoption Leave does not require any prior period of continuous employment; both are rights that arise on the first day of an individual's employment and can be exercised immediately, provided that the individual meets the eligibility criteria, i.e. is an 'employee' and has given the correct notice.
- 4 By contrast, the Employment Rights Act 1996 requires regulations to specify a condition as to 'duration of employment' in order for an employee to qualify for Paternity Leave or Shared Parental Leave, which are the entitlements available to the father of a child or to the partner of the mother or to 'Parent A', after a child is born or placed for adoption. The relevant regulations specify that the employee must have been with their employer for at least 26 weeks by the end of the 15th week before the week in which their baby is due or the week in which they were notified that they had been matched with the child for adoption.
- 5 The Bill removes the requirement for regulations to specify a condition as to duration of employment for bereaved fathers or partners to qualify for Paternity Leave, and it permits the

regulations to allow them to take Paternity Leave even if they have already taken Shared Parental Leave (which is not something the regulations are currently able to do).

- 6 The policy intention is to ensure that a period of leave is available to all fathers and partners in cases where the mother or Parent 'A' of the child dies in the first year after birth or adoption. The Bill enables this by ensuring that bereaved fathers/partners do not need to meet any continuity of service requirements to access Paternity Leave, whilst regulations to be made under the Employment Rights Act 1996 would specify the period of leave afforded to those bereaved parents.
- 7 The Bill was originally introduced on 6 December 2023 by Chris Elmore as "A Bill to make provision about shared parental leave and pay in certain cases where a mother has died; and for connected purposes". Following an Instruction permitting certain changes to the scope of the Bill, it was amended by the Public Bill Committee so that it could deal with Paternity Leave entitlements and could extend to adoptive parents and those who become parents through surrogacy arrangements.

Legal background

- 8 The relevant legal background is explained in the Policy Background section of these Notes.

Territorial extent and application

- 9 The Bill introduces measures which will extend to the jurisdictions of England and Wales, and Scotland and will apply in England, Wales and Scotland.
- 10 Employment matters are devolved to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.
- 11 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Paternity Leave (Bereavement) Bill

Clause 1: Paternity leave: special provision in cases of bereavement

- 13 Clause 1(1) introduces amendments to the Employment Rights Act 1996.
- 14 Clause 1(2) inserts new subsection (6A) into section 80A (entitlement to paternity leave: birth) of the Employment Rights Act 1996. This subsection has the effect of, in cases where a child's mother dies:
 - a. requiring regulations to be made which establish an entitlement to Paternity Leave for an employee, without any requirement as to duration of employment;
 - b. permitting regulations to allow Paternity Leave to be taken after a period of Shared Parental Leave; and
 - c. permitting regulations to allow an employee to take Paternity Leave if the child also dies, despite the fact that the employee will not be able to meet the usual requirement that Paternity Leave can only be taken for the purpose of either caring for the child, or supporting the mother.
- 15 Clause 1(3) inserts new subsection (6C) into section 80B (entitlement to paternity leave: adoption) of the Employment Rights Act 1996. This subsection will have the effect, in cases where a person with whom a child is placed (or expected to be placed) for adoption dies, of:
 - a. requiring regulations to be made which establish an entitlement to Paternity Leave for an employee, without any requirement as to duration of employment;
 - b. permitting regulations to allow Paternity Leave to be taken after Shared Parental Leave has been taken; and
 - c. permitting regulations to allow an employee to take Paternity Leave if the child also dies or if the adoption is disrupted after the child has been placed for adoption, despite the fact that the employee will not be able to meet the usual requirement, that Paternity Leave can only be taken for the purpose of either caring for the child, or supporting the mother.
- 16 Clause 1(4)(a) inserts a new subsection (1A) into section 80D (special cases) of the Employment Rights Act 1996. This subsection allows for regulations to be made under sections 80A or 80B which may make provision, in cases where a bereaved parent takes Paternity Leave:
 - a. specifying when an employee may work for their employer whilst on Paternity Leave (known as 'Keeping in Touch' days); and
 - b. relating to redundancy of a bereaved parent who has returned to work after a period of Paternity Leave.
- 17 Keeping in Touch (or 'KIT') days enable an employee to do some work for their employer during a period of leave without bringing that particular period of leave to an end, or otherwise affecting their entitlement to that kind of leave.
- 18 Clause 1(4)(b) makes amendments to section 80D(2) of the Employment Rights Act 1996 and has the effect that the provision about redundancy can include requiring an employer to offer

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the employee alternative employment. It can also include provision for the consequences of a failure to comply with the regulations, which can include provision for dismissal of the employee to be treated as an unfair dismissal under Part 10 of the Employment Rights Act 1996.

- 19 Clause 1(4)(c) inserts a new subsection (3) into section 80D (special cases) of the Employment Rights Act 1996. This subsection defines a 'bereaved employee', used in the new subsection 80D(1A), as an employee who takes leave under section 80A in a case where the child's mother dies, or under section 80B in a case where a person with whom the child is placed or expected to be placed for adoption dies.

Clause 2: Extent, commencement and short title

- 20 Clause 2(1) provides that the Bill extends to England and Wales and Scotland. Employment Law is devolved to Northern Ireland so it will be for the Northern Ireland Assembly to decide whether to introduce a similar entitlement.
- 21 Clause 2(2) makes provision for the Bill to come into force on a day specified by the Secretary of State in commencement regulations.
- 22 Clause 2(3) provides that those commencement regulations must be made by statutory instrument.

Commencement

- 23 If the Bill successfully completes all of its parliamentary stages in 2024, then it will come into force on a date determined by the Secretary of State after Royal Assent.

Financial implications of the Bill

- 24 The estimated annual cost to the Exchequer for the amendments to Paternity Leave brought about by this Bill is insignificant. The policy reform will provide access to leave only (i.e. not to any additional statutory paternity pay entitlement); therefore, there will be no costs to HMRC associated with making IT changes to payroll systems for businesses to reclaim pay.
- 25 These changes to current Paternity Leave entitlements will need to be enforced by recourse to the Employment Tribunal (ET) system – as is currently the case with enforcing existing parental leave rights. However, given the relatively low numbers of ET claims currently being brought under the Paternity Leave jurisdiction, it is not anticipated that these reforms will significantly increase the number of employees making ET claims and any impact on the ET system, or on ACAS (conflict resolution between employer and employee), is therefore expected to be negligible.
- 26 The estimated Equivalent Annual Net Direct Costs to Business (EANDCB) will be £0.9m. The primary cost with this measure relates to business re-organisation costs associated with employee absence. There is also potential for some small familiarisation costs associated with employers taking time to understand the changes and communicating these within their organisation.

Parliamentary approval for financial costs or for charges imposed

- 27 The Bill does not contain any provisions requiring a money resolution or ways and means resolution.

Compatibility with the European Convention on Human Rights

- 28 Private Members' Bills do not require human rights statements. However, the Government has examined the compatibility of the provisions of the Bill with the European Convention on Human Rights and considers that this Bill is considered to be compatible with Convention rights. It requires the Secretary of State, by regulations, to make provision entitling certain bereaved parents to statutory Paternity Leave without any requirement for a period of continuous prior employment. There are two groups of parents who cannot benefit from this entitlement, because they are not entitled to Paternity Leave: birth mothers and those adoptive parents (and parents through surrogacy arrangements) who have already elected to be 'Parent A'. These two groups are not eligible for this particular entitlement, but they enjoy existing entitlements (to Maternity Leave and to Adoption Leave) without any requirement as to continuity of service. The Bill does not therefore place these two groups in a less favourable position but enables the creation of an entitlement for bereaved fathers / partners which is comparable to entitlements already enjoyed by birth mothers and 'Parent A's.

Annex A – Territorial extent and application in the United Kingdom

Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Yes	Yes	No	No	No	Yes	No
Yes	Yes	No	No	No	Yes	

Subject matter and legislative competence of devolved legislatures

- 29 The Bill concerns employment rights and duties, and will insert provisions into the Employment Rights Act 1996. Employment law is a reserved matter in relation to Scotland and Wales.
- 30 Employment law is a transferred matter in relation to Northern Ireland.

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