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| Title: Miscarriage Leave and Pay Consultation Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 and Parental Bereavement Leave and Pay Regulations (Northern Ireland) 2022 | Regulatory Impact Assessment (RIA) |
| | Date: 20 October 2022 |
| | Type of measure: Secondary Legislation |
| Lead department or agency: Department for the Economy (DfE) | Stage: Initial |
| | Source of intervention: Domestic NI |
| Other departments or agencies: Department for Communities Department of Finance His Majesty's Revenue & Customs Department of Business, Energy and Industrial Strategy | Contact details: Gareth Dillon |
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Summary Intervention and Options

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| What is the problem under consideration? Why is government intervention necessary? (7 lines maximum) The Department for the Economy is under a statutory obligation to change the entitlement criteria for Statutory Parental Bereavement Pay to make it a "day one" right by removing the eligibility requirement for 26 weeks of continuous employment, and to also introduce Miscarriage Leave and Pay as an amendment to the existing policy of Parental Bereavement Leave and Pay (PBLP); these changes will require subordinate legislation. Associated legislation comprises the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022, (The Act); and the package of Parental Bereavement Leave and Pay Regulations which first came into operation on 6 April 2022. | |
| What are the policy objectives and the intended effects? (7 lines maximum) To extend parental bereavement leave to eligible employees and pay to eligible workers and employees who experience a miscarriage up to the end of the 23 rd week of pregnancy and to ensure all rights under the PBLP legislation in NI will be a day 1 right, removing the current 26 weeks of continuous employment qualification period – the intention is to operationalise these changes for 6 th April 2024. This will allow those that experience a miscarriage, along with their partners, to receive Statutory Parental Bereavement Pay for two weeks. Employees will have a statutory right to both the leave and pay entitlements, workers will be entitled to the Pay element only - this replicates the current arrangement for Parental Bereavement Leave and Pay. | |
| What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) The Department is under a statutory obligation to regulate, therefore the do noting option is not appropriate. A consultation on various policy options in terms of who should be eligible for the leave and pay entitlement, how and when it should be taken and the number of days available will be undertaken shortly. This will inform the finalisation of options. PBLP is available to those eligible workers and employees, the Department is under a statutory obligation to extend and modify, if necessary, the current legislative framework to include those that suffer a miscarriage - the statutory obligation must be fulfilled by 6 th April 2026. The Department will seek to provide for and operationalise these changes in line with a Ministerial commitment for April 2024. The requirements and processes would remain the same if the Department were to have selected the later timeframe – there are a series of knowns in the current timeframe e.g. costs, project requirements and lead times; however, these are unknown for a 2026 timeframe. | |
| Will the policy be reviewed? It will be reviewed | If applicable, set review date: January 2023 |

| Cost of Preferred (or more likely) Option – Option 2 | | | | |
|--|---|---|---|---|
| Total outlay cost for business £m | Total net cost to business per year £m | | Annual cost for implementation by Regulator £m | |
| 0.279 approx TBC | Unknown - needs | | £0.07 systems element tbc | |
| Does Implementation go beyond minimum EU requirements? | | | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| Is this measure likely to impact on trade and investment? | | | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> |
| Are any of these organisations in scope? | Micro | Small | Medium | Large |
| | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Colin Jack Date: 20 October 2022

Summary: Analysis and Evidence Policy Option 1

Description: Do nothing - do not introduce Miscarriage Leave and Pay

ECONOMIC ASSESSMENT All costs are based upon an extrapolation of costs estimated with the introduction of Parental bereavement Leave and Pay

| Costs (£m) | Total Transitional (Policy) | | Average Annual (recurring) (excl. transitional) (constant price) | Total Cost (Present Value) |
|----------------------|-----------------------------|-------|---|-------------------------------|
| | (constant price) | Years | | |
| Low | Optional | | Optional | Optional |
| High | Optional | | Optional | Optional |
| Best Estimate | | | | |

Description and scale of key monetised costs by 'main affected groups'
 No additional costs are incurred under this option.

There may however be legal costs and charges to the Department for failing to meet the statutory obligation - Section 5 of the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022 requires the Department to end temporary modifications in Section 3, which allow the 26 week continuous employment criteria; it also links the ending of that modification to the extension of the eligibility criteria to those that suffer a miscarriage.

Other key non-monetised costs by 'main affected groups'
 No change.

| Benefits (£m) | Total Transitional (Policy) | | Average Annual (recurring) (excl. transitional) (constant price) | Total Benefit (Present Value) |
|----------------------|-----------------------------|-------|---|----------------------------------|
| | (constant price) | Years | | |
| Low | Optional | | Optional | Optional |
| High | Optional | | Optional | Optional |
| Best Estimate | | | | |

Description and scale of key monetised benefits by 'main affected groups' Maximum 5 lines
 No change.

Other key non-monetised benefits by 'main affected groups' Maximum 5 lines
 No change.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
 The Department is under a legal obligation to extend PBLP to include cases of miscarriage with the option for modifications, and to also extend the scheme to make it a day one right for the pay element (the leave element is currently a day one right). There may be a risk of legal challenge if the Department does not follow this statutory obligation.

BUSINESS ASSESSMENT

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|---|---------------------|---------------|--|--|
| Direct Impact on business (Equivalent Annual) £m | | | | |
| Costs: £0 | Benefits: £0 | Net:£0 | | |

Cross Border Issues

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 Current form of PBLP is line with the scheme in Great Britain.
 No similar particular right exists in the Republic of Ireland. As is the case in the UK, many employers will offer "compassionate leave" to employees in similar circumstances.

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce Miscarriage Leave and Pay in line with **Parental Bereavement Leave and Pay Regulations (Northern Ireland) 2022**

ECONOMIC ASSESSMENT All costs are based upon an extrapolation of costs estimated with the introduction of Parental bereavement Leave and Pay

| Costs (£m) | Total Transitional (Policy) | | Average Annual (recurring) (excl. transitional) (constant price) | Total Cost (Present Value) |
|----------------------|-----------------------------|-------|---|-------------------------------|
| | (constant price) | Years | | |
| Low | Optional | | Optional | Optional |
| High | Optional | | Optional | Optional |
| Best Estimate | £1.490529m | | £1.57m | £8.8m |

Description and scale of key monetised costs by 'main affected groups'

One-off costs (best estimate) transitional/familiarisation cost for employers of £279,000 - to be confirmed - will be investigated fully at policy finalisation and legislative drafting stage.
 NI Govt (DfE): HMRC change charges to facilitate the day one and eligibility criteria changed - £1.49m
 Recurring annual costs - NI Govt: £70,000 annual recurring maintenance costs for HMRC systems – this is in addition to costs incurred through the existing framework for SPBP that mirrors GB.
 Increase in charges to AME fund of approximately £1.5m p.a. - This will be investigated further at policy finalisation and legislative drafting stage. The current projection is based up a rate of 1 in 8 pregnancies ending in miscarriage, uptake of 2 claims for SPBP per case of miscarriage and the current rate of employment which is at 69.9%- using a rate of £156.66 per week per employee. We have then added the cost of changing the current expected costs of SPBP to add a further 10% - this is due to job movers being at around 9% of employees - these employees and workers will now qualify where the previously would not have due to the 26 weeks of continuous employment eligibility criteria.
 Total discounted cost is based on estimated costs until 2028/29.

Other key non-monetised costs by 'main affected groups'

Employers may also be impacted by employee absence during a period of leave - this may have implications for productivity, staff availability and training needs; these may be short term non-monetised costs and would already be experienced by employers during periods of short notice leaves of absence under statutory entitlements.

| Benefits (£m) | Total Transitional (Policy) | | Average Annual (recurring) (excl. transitional) (constant price) | Total Benefit (Present Value) |
|----------------------|-----------------------------|-------|---|----------------------------------|
| | (constant price) | Years | | |
| Low | Optional | | Optional | Optional |
| High | Optional | | Optional | Optional |
| Best Estimate | | | | |

Description and scale of key monetised benefits by 'main affected groups' Maximum 5 lines

Employees, who do not have an above statutory minimum contract allowance for this type of absence, will be able to avail of a more generous scheme than what is currently available under Statutory Sick Pay – this currently sits at £99.35 per week with the first 3 days being unpaid waiting days.
 Employers will be able to claim 92% or 103% of the cost of the payment for this statutory payment - this is counter to the current position where an employer is responsible for 100% of the payment of SSP.

Other key non-monetised benefits by 'main affected groups' Maximum 5 lines

Enables the Northern Ireland Executive to provide much needed support and sets a minimum standard and provides guidance for employers to adhere to on such a sensitive issue.
 Will allow employees and workers that experience a miscarriage a period of time to grieve without the worry of being expected to be present in work.

Key Assumptions, Sensitivities, Risks Maximum 5 lines

A degree of uncertainty still exists around the take-up assumptions – this will be a demand led statutory payment; the overall costs will be dependent upon affected employees availing of their right. There are also a number of issues being considered which will be reviewed after the consultation has completed e.g. including evidence requirements for the extended scheme, Costs incurred by employers will be the time required to familiarise themselves with HMRC systems in order to claim reimbursement and subsequent processing of claims by employees.

BUSINESS ASSESSMENT

| Direct Impact on business (Equivalent Annual) £m | | | |
|--|--------------|--------|--|
| Costs: £0 | Benefits: £0 | Net:£0 | |

Cross Border Issues

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines

This option is the first of its kind in the UK, it is also not provided for in the EU by any member state.

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business;
- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Problem under consideration

The Department for the Economy introduced an entitlement to Parental Bereavement Leave and Pay in April 2022. The statutory right and entitlement gave employees who lose a child aged under 18 years a day one right to 2 weeks leave. Eligible employees who have served at least 26 weeks with their employer are also be entitled to a statutory payment. The legislation ensures that grieving working parents can have time and space away from work following their loss.

These rights were created by the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022. The Act also created a legal obligation on the Department for the Economy to introduce, before 6th April 2026, an extension of the qualifying criteria of the rights to include an entitlement from those that have experienced a miscarriage, this may include an entitlement that has been altered through modifications.

Based upon available NHS data, there are approximately 3000 miscarriages each year in Northern Ireland and presently there is no specific entitlement to Bereavement leave or pay for employees and workers that suffer a miscarriage.

The Minister for the Economy wishes to ensure that those employees and workers who experience an unintentional miscarriage will be able to access the rights ahead of the statutory required date of April 2026 and has instructed officials to prepare the necessary work to meet the obligation for April 2024, two years ahead of this legal requirement. This will ensure that those eligible workers and employees are afforded the same level of support as those parents that lose a child or who have suffered a stillbirth as urgently as possible.

Rationale for intervention

The Assembly passed the legislation providing for miscarriage leave and pay on the basis that the right to paid time off for employees and workers following a miscarriage is a basic but necessary compassionate and caring provision that will support employees and workers at a sensitive time.

Whilst the majority of employers are compassionate and do support their employees during these sensitive times, there is anecdotal evidence which shows that a very small number of employers are not compassionate or supportive.

The Northern Ireland Assembly passed a number of amendments to the Parental Bereavement Leave and Pay Bill before its final passing as an Act in March 2022 which created a requirement to provide for an appropriate minimum statutory entitlement for employees and workers that experience a miscarriage. The Department for the Economy, in line with the Minister's commitment and instruction, intends to create this entitlement in advance of 2026, and plans on the introduction for April 2024.

Policy Objective

The expansion of Parental Bereavement Leave and Pay to include eligibility for cases of unintentional miscarriage on the same level of entitlement as those bereaved parents currently eligible for Parental Bereavement Leave and Statutory Parental Bereavement Pay.

Description of options considered (including do nothing), with reference to the evidence base to support the option selection

Option 1 – Do Nothing – not a viable option as the Department is obliged to introduce legislation that provides leave and pay to employees and workers that experience a miscarriage as they apply in relation to bereaved parents. The Minister has also given a commitment to introduce the legislation ahead of the final date for implementation - April 2024 as opposed to April 2026.

Option 2 - Introduce legislation that expands the eligibility of the current framework for Parental Bereavement Leave and Pay to include cases of unintentional miscarriages with the rights given on the same level of entitlement as is currently in place for Parental Bereavement Leave and Pay– this will be informed during the consultation. Proceed with the introduction of the expansion of eligibility criteria for Parental Bereavement Leave and Pay to include unintentional miscarriage in line with Minister’s previous commitments to aim for introduction by 6th April 2024.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

The impact assessment is, in large part, drawn from the impact assessment previously undertaken by the department in preparation of the introduction for Parental Bereavement Leave and Pay in Northern Ireland. The costs and benefits below reflect an extrapolation of the situation envisaged in the event of maximum uptake by employees that suffer a miscarriage based up a figure of 1 in 8 pregnancies ending in miscarriage based upon available NHS statistics.

The figures used in the RIA assessment and their sources are set out below:

| Cost | 22/23 | 23/24 | 24/25 | 25/26 | 26/27 | 27/28 | 28/29 | Source/Assumptions |
|--------------------------|--------|---------|-------|-------|-------|-------|-------|---|
| HMT Implementation Costs | £0.02m | £1.49m | £0.5m | | | | | HMT Provided |
| Business Familiarisation | | £0.279m | | | | | | This assumption is based upon the £4.8M cost that GB businesses would have incurred for the familiarisation for PBLP – the NI cost was extrapolated to £279k due to population size and business environment; the assumption is made again due to similar changes being required for processing [day one calculations] and increased uptake under new eligibility [miscarriage] |

| | | | | | | | | |
|-----------------|--|--|-------|-------|-------|-------|-------|--|
| Ongoing Cost | | | £0.7m | £0.7m | £0.7m | £0.7m | £0.7m | HMT Provided |
| Cost of support | | | £1.5m | £1.5m | £1.5m | £1.5m | £1.5m | Overall, this will likely be cost-neutral for employers due to how the statutory payment will be recouped by employers under the existing arrangement for most statutory payments. |

Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach)

The analysis is based upon a series of extrapolations from the average number of miscarriages in a year over the previous 3 years of statistics available to the department, and the percentage of the population in employment.

A detailed analysis will be undertaken upon completion of the consultation exercise and prior to further evaluation of policy options.

Risks and assumptions

Medium risk policy. From a financial perspective, there are a series of unknowns associated with the expansion of the eligibility criteria for Parental Bereavement Leave and Pay to include unintentional miscarriages. A range of potential annual recurring costs was presented to the Committee for the Economy and the Northern Ireland Assembly during the passage of the Parental Bereavement Leave and Pay Bill, the amendments to introduce the expansion of entitlement criteria were passed by the Assembly after this information was presented.

Direct costs and benefits to business

Any extension of the PBLP policy to incorporate an entitlement under miscarriage and a day one right will increase the amount of claims to be processed and therefore to be paid by employers. The increased payments will be made under the current framework whereby employers make the payment and then claim back a proportion which is based upon the business' total NICs 1 costs: >£45,000 - will receive 92% of the cost, and <£45,000 – will receive 103% of the cost. It should also be noted that due to this model of recouping costs, the expected overall impact on businesses is likely to be negligible, as while larger businesses will be impacted by paying 8% of the payment, smaller and medium businesses will be compensated for the administrative burden placed upon them.

The overall costs and impact to business will be affected by any additional change to eligibility, which will lead to further claims that in turn will lead to some businesses being responsible for more cases and paying out the extra 8% of the cost for the payment, while other businesses will be in receipt of an additional 3% per claim to assist in mitigating the additional administration processes/costs.

Employers will also benefit from the provision of a statutory entitlement that creates a standardised process for managing paid leave in these difficult circumstances. It will also allow employers that have existing contractual arrangements with their employees for leave in these circumstances to be wholly or partially reimbursed.

A further detailed analysis of direct costs and benefits to business will be undertaken upon completion of the consultation exercise and prior to further evaluation of policy options.

Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

The benefit of this project will be the meeting of statutory obligation and enhancement of rights for eligible workers and employees who experience an unintentional miscarriage up to the end of the twenty-third week of pregnancy. Northern Ireland will be the first country in the northern hemisphere to provide these rights on a statutory footing to its citizens. It will enable all workers and employees to commence the grieving process with a level of financial and occupational security. In addition, it will bring into alignment the rights and entitlements with parents who experience a stillbirth or death of a child.

Further impacts will be considered upon completion of the consultation exercise and prior to further evaluation of policy options.