

Women's Policy Group NI

Miscarriage Leave and Pay Consultation Questions

Deadline: 19th December

Eligibility

1) Do you agree that the existing conditions within parental bereavement leave and pay regulations which give definition and set entitlement should be modified to extend to workers and employees who have experienced a miscarriage up to the end of the twenty-third week of pregnancy?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly agree

Duration of Miscarriage Leave and Pay and how and when it can be taken

2) Do you agree that miscarriage leave and pay entitlement should be two weeks, which can be taken at any time within 56 weeks from the date of a miscarriage as single weeks or as a two week block?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly agree

Notice required to take Miscarriage Leave and Pay

3) Do you agree that notice requirements for miscarriage leave and pay should mirror existing parental bereavement leave and pay requirements?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly agree

Evidence required for Miscarriage Leave and Pay

4) Do you agree that it should be a requirement for a person intending to claim miscarriage leave and/or pay to provide medical confirmation of a miscarriage up to the end of the twenty-third week of pregnancy?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly disagree

Statutory provision for payment and day 1 entitlement

5a) Do you agree that the statutory payment for miscarriage should be the same as that which is paid for stillbirth and child death?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly agree

5b) Do you agree that workers and employees should be entitled to statutory parental bereavement pay for miscarriage, stillbirth and child death from the first day of their employment?

[Strongly agree, Agree, Disagree, Strongly disagree, Don't know, No opinion]

- Strongly agree

Additional information

6) Please use the space below if you wish to provide any additional comments about any aspect of this consultation.

Please note, we may choose to take and anonymise excerpts from comments by individuals made in the additional comments text box below. You are not required to provide further information in this box or any personal information. Excerpts from responses made on behalf of organisations may be published in a future departmental response unless the organisation makes it clear they do not wish for this to happen.

WPG Response:

The extension of the parental bereavement leave and pay regulations to cover miscarriage is a welcome proposal. This will have an immediate impact on people who may not otherwise have the financial security to take unpaid time off work to recover from pregnancy loss, physically, emotionally, or both. The WPG warmly welcomes this progressive move from the Department, and recognises the significant difference that this will make to individual lives.

With that said, we note from the “introduction and overview” section, this proposal seems to have been framed quite consciously to ensure that it does not apply to everyone who loses a pregnancy. This is disappointing and there is no clear reason offered for the position the Department has adopted.

The “introduction and overview” section specifically defines “miscarriage” as an “unintentional miscarriage”. This is quite a conscious choice to move away from the medical use of the term and towards something exclusive of those who end their pregnancies via medical intervention. This includes, definitionally, much wanted pregnancies that are ectopic and non-viable and therefore require termination to save the life of the pregnant person, as well as abortion for non-medical reasons. Abortion has been decriminalised in Northern Ireland since 2019 and services have recently been commissioned. There is no reason why other Government Departments should seek not to extend the same compassionate leave to people who have experienced pregnancy loss without judgement or discrimination. CEDAW specifies that legislation in all parts of the UK must not further exacerbate the stigma that surrounds abortion, and by explicitly excluding pregnancy loss that requires medical intervention, for any reason, this provision does exactly this. We urge the rewording of this preamble to include all pregnancy loss, whatever the cause.

We note also that the same section refers to “pregnant women and their partners”. The Department will be aware that children can and do experience pregnancy, as can many non-binary people and transgender men. On a purely semantic note, by the time a person needs to access this provision, they will generally no longer be pregnant, and this form of words may be more harmful than helpful. A more inclusive form of words might be “people who experience pregnancy loss and their partners”. Clarity on what counts as a “partner” would be welcome also; do the couple have to live in the same house, and can we be sure that same sex parents are included? It should be a straightforward process to amend the language to include any and all individuals and couples impacted by pregnancy loss.

Related to this, it would be valuable to ensure that this provision explicitly covers the loss of a pregnancy where conception occurred through IVF, and failed implantation of an embryo transfer. The physical and emotional challenges of couples who have fertility issues and need medical assistance to conceive are well understood, and the loss of such a pregnancy, including through failed implantation, can be devastating to those who experience it. Extending this provision - explicitly - to cover these cases would be a significant improvement to the current proposal.

With regards to the allowance of two weeks that people can take up to 56 weeks after the date of the miscarriage; the nature of pregnancy loss is such that the affected couple may need to take this leave immediately, the freedom to choose when and how to take it is important and it must be a personal choice for the individuals affected.

With regards to the required notice period, the nature of miscarriage is such that most of the time individuals do not know when they will need this provision, and more often than not they will choose to use the leave immediately. In those circumstances, notice may not be possible and the right to paid leave should be guaranteed regardless.

Given that the provision also covers the possibility of splitting the 10 days into two parts or delaying the taking of leave, notice should be possible before taking delayed leave - even if this is a small minority of cases.

The WPG strongly disagrees that medical evidence should be required before this leave and pay provision becomes accessible; to require this would be a break with the Parental Bereavement leave and pay regulations that this provision is intended to extend, rather than a continuation. If self-certification is an acceptable standard for parental bereavement entitlements, it should also be the acceptable standard in the case of miscarriage leave and pay.

As the consultation notes, there is no requirement to register a miscarriage, and at the time that a miscarriage occurs a pregnant person may not have attended a maternity unit or seen their GP for routine appointments, as it may be early in the pregnancy. Therefore to require medical confirmation would exclude many people who experience miscarriage unnecessarily. In addition, in the context of an abusive relationship, the requirement to notify a miscarriage may bring further risk or harm to a victim/survivor when they are already suffering a bereavement.

With regards to pay parity with provisions for miscarriage having parity with similar provisions for bereavement, the WPG is supportive of this approach. The benefit of keeping these payments the same is twofold; firstly that they do not, inadvertently, create a hierarchy of bereavement or suffering, and secondly that they will be sufficient so that people will not need to go into debt or suffer financially while grieving, nor indeed will they be forced to choose between grieving and working because of financial concerns.

We also support making this a day one right for all employees; as with stillbirth, child death, and indeed leave and pay for survivors of domestic abuse, these are provisions intended for anyone who experiences these tragic and disruptive life events, not just those with more secure employment statuses. It is right that the same philosophy, motivated by compassion and fairness, apply to provisions for miscarriage leave and pay.

Overall, this is a welcome and important proposal that would make Northern Ireland a more compassionate place, providing support when people may need it most. However we urge the following improvements to this proposal so that it benefits anyone who may need it:

1. Use the medical definition of miscarriage rather than the one constructed for this consultation; anybody who experiences pregnancy loss should be covered by these provisions.
2. Amend the language around “pregnant women” to include all those people who may need this leave, including children, non-binary people and transgender men. Define “partner” and ensure that this includes same sex partners and couples who do not share a home.
3. Explicitly include the loss of a pregnancy conceived through IVF, including failed implantation.