

# Bereavement (Leave and Pay) Bill

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[AS INTRODUCED]

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[AS INTRODUCED]

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# B I L L

TO

Make provision about leave and pay for employees of whom a close family member has died.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **1 Bereavement leave and pay**

In the Schedule—

- (a) Part 1 creates a statutory entitlement to bereavement leave for employees of whom a close family member has died.
- (b) Part 2 creates a statutory entitlement to bereavement pay for employees of whom a close family member has died.

## **2 Consequential provision**

- (1) The Secretary of State may by regulations made by statutory instrument make provision consequential on the amendments made by the Schedule.
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by modifying any provision made by or under an enactment.
- (3) Regulations under this section—
  - (a) may make transitional and saving provision;
  - (b) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

## **3 Extent, commencement and short title**

- (1) An amendment made by the Schedule has the same extent as the provision to which it relates.
- (2) Sections 1 and 2 and the Schedule come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) This section comes into force on the day on which this Act is passed.

- (4) This Act may be cited as the Bereavement (Leave and Pay) Act 2022.

## SCHEDULE

### BEREAVEMENT LEAVE AND PAY

#### PART 1

##### BEREAVEMENT LEAVE

1 The Employment Rights Act 1996 is amended as follows.

1A After section 80EE, insert—

#### “CHAPTER 5

##### BEREAVEMENT LEAVE

#### **80EF Bereavement leave for employees of whom a close family member has died**

- (1) The Secretary of State must make regulations entitling an employee who is a bereaved close family member to be absent from work on leave under this section.
- (2) For the purposes of subsection (1) an employee is a “bereaved close family member” if the employee satisfies conditions specified in the regulations as to relationship with an adult who has died.
- (3) The regulations must include provision for determining—
  - (a) the extent of an employee’s entitlement to leave under this section;
  - (b) when leave may be taken under this section.
- (4) Provision under subsection (3)(a) must secure that where an employee is entitled to leave under this section in respect of a close family member the employee is entitled to at least two weeks’ leave.
- (5) Provision under subsection (3)(b) must secure that leave under this section must be taken before the end of a period of at least 56 days beginning with the date of the close family member’s death.
- (6) The regulations must secure that where a person is eligible under subsection (1) as the result of the death of more than one adult, the person is entitled to leave in respect of each adult.
- (7) The regulations may make provision about how leave under this section is to be taken.
- (8) In this section—
  - “adult” means a person aged 18 or over;
  - “week” means any period of seven days.

### **80EG Rights during and after bereavement leave**

- (1) Regulations under section 80EF must provide –
  - (a) that an employee who is absent on leave under that section is entitled, for such purposes and to such extent as the regulations may prescribe, to the benefit of the terms and conditions of employment which would have applied but for the absence,
  - (b) that an employee who is absent on leave under that section is bound, for such purposes and to such extent as the regulations may prescribe, by obligations arising under those terms and conditions (except in so far as they are inconsistent with subsection (1) of that section), and
  - (c) that an employee who is absent on leave under that section is entitled to return from leave to a job of a kind prescribed by regulations, subject to section 80EH(1).
- (2) In subsection (1)(a), “terms and conditions of employment” –
  - (a) includes matters connected with an employee’s employment whether or not they arise under the contract of employment, but
  - (b) does not include terms and conditions about remuneration.
- (3) Regulations under section 80EF may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (4) Regulations under section 80EF may make provision, in relation to the right to return mentioned in subsection (1)(c), about –
  - (a) seniority, pension rights and similar rights;
  - (b) terms and conditions of employment on return.

### **80EH Special cases**

- (1) Regulations under section 80EF may make provision about –
  - (a) redundancy, or
  - (b) dismissal (other than by reason of redundancy),during a period of leave under that section.
- (2) Provision by virtue of subsection (1) may include –
  - (a) provision requiring an employer to offer alternative employment;
  - (b) provision for the consequences of failure to comply with the regulations (which may include provision for a dismissal to be treated as unfair for the purposes of Part 10).

### **80EI Supplemental**

Regulations under section 80EF may –

- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
  - (b) make provision requiring employers or employees to keep records;
  - (c) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
  - (d) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (e) make special provision for cases where an employee has a right which corresponds to a right under section 80EF and which arises under the person’s contract of employment or otherwise;
  - (f) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week’s pay) in relation to an employee who is or has been absent from work on leave under section 80EF;
  - (g) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions which may be specified, in relation to a person entitled to take leave under section 80EF;
  - (h) make different provision for different cases or circumstances;
  - (i) make consequential provision.”
- 3 In section 236(3) (orders and regulations subject to affirmative procedure), after “80EA” insert “, 80EF”.

## PART 2

### BEREAVEMENT PAY

- 4 The Social Security Contributions and Benefits Act 1992 is amended as follows.
- 5 After section 171ZZ15 insert –

#### “PART 12ZE

#### STATUTORY BEREAVEMENT PAY

##### **171ZZ16 Entitlement**

- (1) A person who satisfies the conditions in subsection (2) is entitled in accordance with the following provisions of this Part to payments to be known as “statutory bereavement pay”.
- (2) The conditions are –
  - (a) that the person is a bereaved close family member,

- (b) that the person has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week,
  - (c) that at the end of the relevant week the person was entitled to be in that employment,
  - (d) that the person’s normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week, and
  - (e) that the person has been in employed earner’s employment with the employer by reference to whom the condition in paragraph (b) is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the close family member dies.
- (3) For the purposes of subsection (2) an employee is a “bereaved close family member” if the employee satisfies prescribed conditions as to relationship with an adult who has died.
  - (4) In subsection (2) “relevant week” means the week immediately before the one in which the adult dies.
  - (5) Where a person satisfies the conditions in subsection (2) as a result of the death of more than one adult, the person is entitled to statutory bereavement pay in respect of each adult.

**171ZZ17 Entitlement: supplementary**

- (1) A person is entitled to payments of statutory bereavement pay in respect of any period only if the person gives notice to whoever is liable to make the payments stating the week or weeks in respect of which they are to be made.
- (2) Regulations may provide for the time by which notice under subsection (1) must be given.
- (3) The notice must be in writing if the person who is liable to pay the statutory bereavement pay so requests.
- (4) The Secretary of State may by regulations—
  - (a) provide that section 171ZZ16(2)(b), (d) or (e) has effect subject to prescribed modifications in such cases as may be prescribed;
  - (b) provide for circumstances in which section 171ZZ6(2)(c) does not have effect;
  - (c) provide that subsection (1) of this section does not have effect, or has effect subject to prescribed modifications, in such cases as may be prescribed;
  - (d) impose requirements about evidence of entitlement;

- (e) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZZ16;
- (f) provide that a person is to be treated for the purposes of section 171ZZ16 as being employed for a continuous period of at least 26 weeks where—
  - (i) the person has been employed by the same employer for at least 26 weeks under two or more separate contracts of service, and
  - (ii) those contracts were not continuous;
- (g) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZZ16;
- (h) provide that—
  - (i) the amount of a person’s earnings for any period, or
  - (ii) the amount of the person’s earnings to be treated as comprised in any payment made to the person or for the person’s benefit,

is to be calculated or estimated for the purposes of section 171ZZ16 in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of the person’s earnings.

### **171ZZ18 Liability to make payments**

- (1) The liability to make payments of statutory bereavement pay under section 171ZZ16 is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (e) of that section.
- (2) The Secretary of State must by regulations make provision as to a former employer’s liability to pay statutory bereavement pay to a former employee in any case where the employee’s contract of service with the employer has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory bereavement pay.
- (3) *The Secretary of State may, with the concurrence of the Commissioners for Her Majesty’s Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory bereavement pay is to be a liability of the Commissioners.*

### **171ZZ19 Rate and period of pay**

- (1) Statutory bereavement pay is payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.
- (2) Statutory bereavement pay is payable in respect of –
  - (a) such week within the qualifying period, or
  - (b) such number of weeks, not exceeding the prescribed number of weeks, within the qualifying period,as the person entitled may choose in accordance with regulations.
- (3) Provision under subsection (2)(b) must secure that the prescribed number of weeks is not less than two.
- (4) Regulations under subsection (2)(b) may permit a person entitled to receive statutory bereavement pay to choose to receive such pay in respect of non-consecutive periods each of which is a week or a number of weeks.
- (5) For the purposes of subsection (2), the qualifying period is to be determined in accordance with regulations, which must secure that it is a period of at least 56 days beginning with the date of the close family member's death.
- (6) A person is not liable to pay statutory bereavement pay to another in respect of any statutory pay week during any part of which the other works under a contract of service with the person.
- (7) It is immaterial for the purposes of subsection (6) whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.
- (8) Except in such cases as may be prescribed, statutory bereavement pay is not payable to a person in respect of a statutory pay week during any part of which the person works for any employer who is not liable to pay the person statutory bereavement pay.
- (9) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory bereavement pay in respect of a statutory pay week.
- (10) Where for any purpose of this Part or of regulations it is necessary to calculate the daily rate of statutory bereavement pay, the amount payable by way of statutory bereavement pay for any day is to be taken as one seventh of the weekly rate.
- (11) In this section –
  - “statutory pay week”, in relation to a person entitled to statutory parental bereavement pay, means a week chosen

by the person as a week in respect of which statutory parental bereavement pay is to be payable;  
“week” means any period of seven days.

#### **171ZZ20 Restrictions on contracting out**

- (1) An agreement is void to the extent that it purports –
  - (a) to exclude, limit or otherwise modify any provision of this Part, or
  - (b) to require a person to contribute (whether directly or indirectly) towards any costs incurred by that person’s employer or former employer under this Part.
- (2) An agreement between an employer and an employee, authorising any deductions from statutory bereavement pay which the employer is liable to pay to the employee in respect of any period, is not void by virtue of subsection (1)(a) if the employer –
  - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which the employer is liable to pay in respect of the same period, or
  - (b) would be so authorised if the employer were liable to pay contractual remuneration in respect of that period.

#### **171ZZ21 Relationship with contractual remuneration**

- (1) Subject to subsections (2) and (3), any entitlement to statutory bereavement pay does not affect any right of a person in relation to remuneration under any contract of service (“contractual remuneration”).
- (2) Subject to subsection (3) –
  - (a) any contractual remuneration paid to a person by an employer of that person in respect of any period is to go towards discharging any liability of that employer to pay statutory bereavement pay to that person in respect of that period; and
  - (b) any statutory bereavement pay paid by an employer to a person who is an employee of that employer in respect of any period is to go towards discharging any liability of that employer to pay contractual remuneration to that person in respect of that period
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of subsections (1) and (2).

### **171ZZ22 Crown employment**

The provisions of this Part apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

### **171ZZ23 Special classes of person**

- (1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part in such manner as the Secretary of State thinks proper in its application to any person who is, has been or is to be –
  - (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2).
- (2) Regulations under subsection (1) may, in particular, provide –
  - (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where the person neither is domiciled nor has a place of residence in any part of Great Britain;
  - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

### **171ZZ24 Supplementary**

- (1) In this Part –
  - “adult” means a person aged 18 or over;
  - “employer” in relation to a person who is an employee, means a person who –
    - (a) under section 6 is liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee, or
    - (b) would be liable to pay such contributions but for –
      - (i) the condition in section 6(1)(b), or
      - (ii) the employee being under the age of 16;
  - “modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;
  - “prescribed” means prescribed by regulations.

- (2) In this Part, “employee” means a person who is gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with earnings (within the meaning of Parts 1 to 5).
- (3) Regulations may provide—
  - (a) for cases where a person who falls within the definition in subsection (2) is not to be treated as an employee for the purposes of this Part, and
  - (b) for cases where a person who would not otherwise be an employee for the purposes of this Part is to be treated as an employee for those purposes.
- (4) Without prejudice to any other power to make regulations under this Part, regulations may specify cases in which, for the purposes of this Part or of such provisions of this Part as may be prescribed—
  - (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (5) In this Part, except section 171ZZ19, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.
- (6) For the purposes of this Part, a person’s normal weekly earnings are, subject to subsection (8), to be taken to be the average weekly earnings which in the relevant period have been paid to the person or paid for the person’s benefit under the contract of service with the employer in question.
- (7) For the purposes of subsection (6), “earnings” and “relevant period” have the meanings given to them by regulations.
- (8) In such cases as may be prescribed, a person’s normal weekly earnings are to be calculated in accordance with regulations.
- (9) Where in consequence of the establishment of one or more National Health Service trusts under the National Health Service (Wales) Act 2006, a person’s contract of employment is treated by a scheme under that Act as divided so as to constitute two or more contracts, regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part or such provisions of this Part as may be prescribed.
- (10) Regulations under subsection (9) may prescribe—
  - (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;

- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, the person is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of statutory bereavement pay as the person's employer under the contract.
- (11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part.
- (12) Regulations under any of subsections (4) to (10) must be made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs."
- 6 In section 176(1) of that Act (instruments subject to affirmative procedure), in paragraph (a), at the appropriate place insert – "any of sections 171ZZ16 to 171ZZ19;"

# Bereavement (Leave and Pay) Bill

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[AS INTRODUCED]

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## B I L L

TO

Make provision about leave and pay for employees of whom a close family member has died.

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