

*Status:* This version of this cross heading contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Neonatal Care (Leave and Pay) Act 2023, Cross Heading: Social Security Act 1989. (See end of Document for details)

## SCHEDULE

### NEONATAL CARE LEAVE AND PAY

#### PART 3

##### FURTHER AMENDMENTS TO DO WITH NEONATAL CARE LEAVE AND PAY

PROSPECTIVE

##### *Social Security Act 1989*

- 7 In Schedule 5 to the Social Security Act 1989 (employment-related schemes for pensions or other benefits to comply with the principle of equal treatment), after paragraph 5D insert—

##### *“Unfair neonatal care leave provisions*

- 5E (1) Where an employment-related benefit scheme includes any unfair neonatal care leave provisions (irrespective of any differences on the basis of sex in the treatment accorded to members under those provisions), then—
- (a) the scheme is to be regarded to that extent as not complying with the principle of equal treatment; and
  - (b) subject to sub-paragraph (3), this Schedule is to apply accordingly.
- (2) In this paragraph “unfair neonatal care leave provisions”, in relation to an employment-related benefit scheme, means any provision—
- (a) which relates to continuing membership of, or the accrual of rights under, the scheme during any period of paid neonatal care leave in the case of any member who is (or who, immediately before the commencement of such a period, was) an employed earner and which treats such a member otherwise than in accordance with the normal employment requirement; or
  - (b) which requires the amount of any benefit payable under the scheme to or in respect of any such member, to the extent that it falls to be determined by reference to earnings during a period which included a period of paid neonatal care leave, to be determined otherwise than in accordance with the normal employment requirement.
- (3) In the case of any unfair neonatal care leave provision—
- (a) the more favourable treatment required by paragraph 3(1) is treatment no less favourable than would be accorded to the member in accordance with the normal employment requirement; and
  - (b) paragraph 3(2) does not authorise the making of any such election as is there mentioned;

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but, in respect of any period of paid neonatal care leave, a member is only required to pay contributions on the amount of contractual remuneration or statutory neonatal care pay actually paid to or for the member in respect of that period.

(4) In this paragraph—

“the normal employment requirement” is the requirement that any period of paid neonatal care leave is to be treated as if it were a period throughout which the member in question works normally and receives the remuneration likely to be paid for doing so;

“period of paid neonatal care leave”, in the case of a member, means any period—

(a) throughout which a member who (for the purposes of section 171ZZ16 of the Social Security Contributions and Benefits Act 1992) has a parental or other personal relationship with a child who is receiving, or has received, neonatal care is absent from work for that reason, otherwise than by virtue of a period of leave mentioned in sub-paragraph (5); and

(b) for which the employer (or if the member is no longer in that person’s employment, his former employer) pays the member any contractual remuneration or statutory neonatal care pay.

(5) The periods of leave referred to in paragraph (a) of the definition of “period of paid neonatal care leave” are—

(a) a period of paid paternity leave (within the meaning of paragraph 5A),

(b) a period of maternity leave (within the meaning of the Equality Act 2010),

(c) a period of paid adoption leave (within the meaning of paragraph 5B),

(d) a period of shared parental leave (within the meaning of paragraph 5C), or

(e) a period of parental bereavement leave (within the meaning of paragraph 5D).”

#### Commencement Information

**II** Sch. para. 7 not in force at Royal Assent, see [s. 3\(3\)](#)

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