

*Status: This version of this part contains provisions that are prospective.*  
**Changes to legislation:** There are currently no known outstanding effects for the Neonatal Care (Leave and Pay) Act 2023, Paragraph 5. (See end of Document for details)

## SCHEDULE

### NEONATAL CARE LEAVE AND PAY

PROSPECTIVE

#### PART 2

##### NEONATAL CARE PAY

5 After section 171ZZ15 insert—

#### “PART 12ZE

##### STATUTORY NEONATAL CARE PAY

#### 171ZZ16 Entitlement

- (1) A person who satisfies the conditions in subsection (2) and any condition prescribed under subsection (3) is entitled in accordance with the following provisions of this Part to payments to be known as “statutory neonatal care pay”.
- (2) The conditions are—
  - (a) that—
    - (i) the person satisfies prescribed conditions as to a parental or other personal relationship with a child who is receiving, or has received, neonatal care, and
    - (ii) that care continues without interruption for a period of at least seven days beginning with the day after the day on which the care starts,
  - (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 (but see subsection (7)), and
  - (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.
- (3) Regulations may provide that a person is not entitled to pay in respect of a particular week or period of consecutive weeks unless, at the beginning of that week or period—
  - (a) the person is in employed earner’s employment with the employer by reference to whom the condition in subsection (2)(b) is satisfied, and
  - (b) that employment has been continuous from the end of the relevant week.
- (4) For the purposes of this Part, “neonatal care” means care—

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- (a) of a prescribed medical or palliative kind, and
  - (b) that starts before the end of a period of 28 days beginning with the day after the date of the child’s birth.
- (5) Regulations under subsection (4)(a) may prescribe a kind of care by reference to the kind of place at which care is provided.
- (6) In this section the “relevant week”—
- (a) in any case where the person is entitled to statutory maternity pay under section 164 in respect of the child, is the week immediately preceding the 14th week before the expected week of confinement (within the meaning of Part 12);
  - (b) in any case where the person is entitled to statutory paternity pay under section 171ZA (birth) in respect of the child, is the same week as the relevant week for the purposes of section 171ZA(2) in that case;
  - (c) in any case where the person is entitled to statutory paternity pay under section 171ZB (adoption) in respect of the child, is the same week as the relevant week for the purposes of section 171ZB(2) in that case;
  - (d) in any case where the person is entitled to statutory adoption pay under section 171ZL in respect of the child, is the same week as the relevant week for the purposes of section 171ZL(2) in that case;
  - (e) in any other case, is the week immediately before the one in which the neonatal care starts.
- (7) In relation to neonatal care that starts before the day on which section 63(3) of the Welfare Reform Act 2012 comes fully into force, subsection (2) above is to be read as if paragraph (c) were omitted.

**171ZZ17 Entitlement: supplementary**

- (1) A person is entitled to payments of statutory neonatal care 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 neonatal care pay so requests.
- (4) The Secretary of State may by regulations—
  - (a) make special provision regarding the applicability and extent of the entitlement where a person satisfies the conditions in subsection (2) and (if applicable) subsection (3) of section 171ZZ16 in respect of—
    - (i) more than one child in prescribed circumstances;
    - (ii) a child receiving neonatal care on two or more separate occasions;
  - (b) specify in what circumstances neonatal care is to be treated as continuous despite an interruption for the purposes of section 171ZZ16;

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- (c) provide that subsection (2)(b), (2)(d) or (3) of section 171ZZ16 has effect subject to prescribed modifications in such cases as may be prescribed;
- (d) provide for circumstances in which section 171ZZ16(2)(c) does not have effect;
- (e) 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;
- (f) impose requirements about evidence of entitlement;
- (g) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZZ16;
- (h) 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;
- (i) 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;
- (j) 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 neonatal care 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 subsections (2)(b) and (3) of that section.
- (2) The Secretary of State must by regulations make provision as to a former employer’s liability to pay statutory neonatal care 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 neonatal care pay.
- (3) The Secretary of State may, with the concurrence of the Commissioners for His Majesty’s Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory neonatal care pay is to be a liability of the Commissioners.

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

- (1) Statutory neonatal care 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 neonatal care 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 12.
- (4) Regulations under subsection (2)(b) may permit a person entitled to receive statutory neonatal care 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 68 weeks beginning with the date of the child's birth.
- (6) A person is not liable to pay statutory neonatal care 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 neonatal care 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 neonatal care pay.
- (9) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay statutory neonatal care 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 neonatal care pay, the amount payable by way of statutory neonatal care 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 neonatal care pay, means a week chosen by the person as a week in respect of which statutory neonatal care pay is to be payable;
  - “week” means any period of seven days.

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### **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 neonatal care 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 neonatal care 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 neonatal care pay to that person in respect of that period; and
  - (b) any statutory neonatal care 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;

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- (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—
- “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;

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- (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 neonatal care 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 His Majesty’s Revenue and Customs.”

#### **Commencement Information**

**II** Sch. para. 5 not in force at Royal Assent, see **s. 3(3)**

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