

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, PART 1. (See end of Document for details)

SCHEDULE

NEONATAL CARE LEAVE AND PAY

PROSPECTIVE

PART 1

NEONATAL CARE LEAVE

1 The Employment Rights Act 1996 is amended as follows.

Commencement Information

II Sch. para. 1 not in force at Royal Assent, see [s. 3\(3\)](#)

2 After section 80EE insert—

“CHAPTER 5

NEONATAL CARE LEAVE

80EF Neonatal care leave

- (1) The Secretary of State must make regulations entitling an employee to be absent from work on leave under this section if the employee satisfies conditions specified in the regulations as to a parental or other personal relationship with a child who is receiving, or has received, neonatal care.
- (2) The regulations must include provision for determining—
 - (a) the extent of an employee’s entitlement to leave under this section in respect of a child;
 - (b) when leave under this section may be taken.
- (3) Provision under subsection (2)(a) must secure that where an employee is entitled to leave under this section in respect of a child the employee is entitled to at least a week’s leave.
- (4) Provision under subsection (2)(b) must secure that leave under this section must be taken before the end of a period of at least 68 weeks beginning with the date of the child’s birth.
- (5) An employee is entitled to leave under this section only if the neonatal care continues without interruption for a period of at least seven days beginning with the day after the day on which the care starts.
- (6) For the purposes of this Chapter, “neonatal care” means care—
 - (a) of a medical or palliative kind specified in the regulations, 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.

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- (7) Regulations under subsection (6)(a) may specify a kind of care by reference to the kind of place at which care is provided.
- (8) The regulations may make provision about how leave under this section is to be taken.
- (9) In this section “week” means any period of seven days.

80EG Rights during and after neonatal care 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.
- (2) The reference in subsection (1)(c) to absence on leave under section 80EF includes, where appropriate, a reference to a continuous period of absence attributable partly to leave under that section and partly to any one or more of the following—
 - (a) maternity leave,
 - (b) paternity leave,
 - (c) adoption leave,
 - (d) shared parental leave,
 - (e) parental leave, and
 - (f) parental bereavement leave.
- (3) 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.
- (4) Regulations under section 80EF may specify matters which are, or are not, to be treated as remuneration for the purposes of this section.
- (5) 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 during or after a period of leave under that section, or

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- (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 Chapter 5: supplemental

- (1) Regulations under section 80EF may—
- (a) specify circumstances where neonatal care is to be regarded as continuous despite an interruption;
 - (b) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers;
 - (c) make provision requiring employers or employees to keep records;
 - (d) make provision for the consequences of failure to give notices, to produce evidence, to keep records or to comply with other procedural requirements;
 - (e) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (b);
 - (f) 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;
 - (g) 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;
 - (h) 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;
 - (i) make different provision for different cases or circumstances;
 - (j) make consequential provision.
- (2) The cases or circumstances mentioned in subsection (1)(i) include—
- (a) more than one child (with whom an employee has a parental or other personal relationship) receiving neonatal care in specified circumstances;
 - (b) a child receiving neonatal care on two or more separate occasions;
- and regulations may, in particular, make special provision regarding the applicability and extent of the entitlement to leave in such circumstances.”

Commencement Information

I2 Sch. para. 2 not in force at Royal Assent, see **s. 3(3)**

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Commencement Information

I3 Sch. para. 3 not in force at Royal Assent, see **s. 3(3)**

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