

SCHEDULE

NEONATAL CARE LEAVE AND PAY

PART 3

FURTHER AMENDMENTS TO DO WITH NEONATAL CARE LEAVE AND PAY

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;

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.

Status: This is the original version (as it was originally enacted).

(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).”

Finance Act 1989

- 8 (1) Section 182 of the Finance Act 1989 (offences relating to disclosure of information relating to social security functions etc) is amended as follows.
- (2) In subsections (1)(c), (2A)(a), (4)(c)(iii) and (5)(b), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- (3) In subsection (11A)—
- (a) for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”;
 - (b) for “or Part 12ZD” substitute “, Part 12ZD or Part 12ZE”.

Social Security Contributions and Benefits Act 1992

- 9 The Social Security Contributions and Benefits Act 1992 is amended as follows.

Status: This is the original version (as it was originally enacted).

- 10 In section 1 (outline of contributory system), in subsection (5), for “and statutory parental bereavement pay” substitute “, statutory parental bereavement pay and statutory neonatal care pay”.
- 11 In section 4 (payments treated as remuneration and earnings), in subsection (1)(a)—
- (a) omit “or” at the end of sub-paragraph (vi);
 - (b) at the end of sub-paragraph (vii) (but before the “and”) insert “or (viii) statutory neonatal care pay;”.
- 12 In section 4AA (limited liability partnerships), in subsection (2), for “or 171ZZ14” substitute “, 171ZZ14 or 171ZZ24”.
- 13 In section 4C (power to make provision in consequence of provision made by or by virtue of section 4B etc), in subsection (11), in paragraph (a) of the definition of “statutory payment”, for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.

Social Security Administration Act 1992

- 14 The Social Security Administration Act 1992 is amended as follows.
- 15 In section 5 (regulations about claims for and payments of benefits), in subsection (5), for “and statutory parental bereavement pay” substitute “, statutory parental bereavement pay and statutory neonatal care pay”.
- 16 In section 122AA (disclosure of contributions information etc by HMRC), in subsection (1), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 17 In section 150 (annual up-rating of benefits), in subsection (1)(j), for “or 171ZZ9(1)” substitute “, 171ZZ9(1) or 171ZZ19(1)”.
- 18 In section 163 (general financial arrangements), in subsection (1)(d), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 19 (1) Section 165 (adjustments between the National Insurance Fund and the Consolidated Fund) is amended as follows.
- (2) In subsection (1)(b)—
 - (a) omit “and” at the end of sub-paragraph (vi);
 - (b) at the end of sub-paragraph (vii) insert “, and (viii) statutory neonatal care pay.”
 - (3) In subsection (5B)(a), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.

Employment Rights Act 1996

- 20 The Employment Rights Act 1996 is amended as follows.
- 21 In section 27 (meaning of “wages”), in subsection (1), after paragraph (cd) insert—
“(ce) statutory neonatal care pay under Part 12ZE of that Act,”.
- 22 In section 47C (leave for family and domestic reasons), in subsection (2), after paragraph (cb) (but before the “or”), insert—
“(cc) neonatal care leave,”.

Status: This is the original version (as it was originally enacted).

- 23 In section 75I (rights during and after shared parental leave), in subsection (3)—
- (a) at the end of paragraph (e) omit “and”;
 - (b) at the end of paragraph (f) insert “, and
 - (g) neonatal care leave.”
- 24 (1) Section 80C (rights during and after paternity leave) is amended as follows.
- (2) In subsection (2), after paragraph (bb) (but before the “and”) insert—
“(bc) neonatal care leave,”.
 - (3) In subsection (4), after paragraph (bb) insert—
“(bc) neonatal care leave,”.
- 25 In section 80EB (rights during and after bereavement leave), in subsection (2)—
- (a) at the end of paragraph (d) omit “and”;
 - (b) at the end of paragraph (e) insert “, and
 - (f) neonatal care leave.”
- 26 (1) Section 88 (liability of employer to pay employee during period of notice: employments with normal working hours) is amended as follows.
- (2) In subsection (1)(c), after “parental bereavement leave,” insert “neonatal care leave,”.
 - (3) In subsection (2), after “statutory parental bereavement pay,” insert “neonatal care pay, statutory neonatal care pay,”.
- 27 (1) Section 89 (effect of notice of termination: employments without normal working hours) is amended as follows.
- (2) In subsection (3)(b), after “parental bereavement leave,” insert “neonatal care leave,”.
 - (3) In subsection (4), after “statutory parental bereavement pay,” insert “neonatal care pay, statutory neonatal care pay,”.
- 28 In section 99 (leave for family reasons), in subsection (3), after paragraph (cb) (but before the “or”), insert—
“(cc) neonatal care leave,”.
- 29 In section 235 (definitions), in subsection (1)—
- (a) at the appropriate place insert—
““neonatal care leave” means leave under section 80EF,”;
 - (b) in the definition of “week”, in paragraph (b), after “80EA” insert “, 80EF”.
- Social Security Contributions (Transfer of Functions, etc.) Act 1999*
- 30 The Social Security Contributions (Transfer of Functions, etc.) Act 1999 is amended as follows.
- 31 (1) Section 8 (decisions by officers of Revenue and Customs) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (f), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”;
 - (b) in paragraph (g), for “12ZD” substitute “12ZE”;

Status: This is the original version (as it was originally enacted).

- (c) in paragraph (g), for “and statutory parental bereavement pay” substitute “, statutory parental bereavement pay and statutory neonatal care pay”;
 - (d) in paragraph (ga), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- (3) In subsection (3)(b), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 32 In section 11 (appeals against decisions of officers of Revenue and Customs), in subsection (2)(a), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 33 In section 14 (matters arising as respects decisions), in subsections (1)(a)(i) and (3), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.

Finance Act 1999

- 34 (1) Sections 132 and 133 of the Finance Act 1999 have effect as if statutory neonatal care pay were a matter which is under the care and management of the Commissioners for Revenue and Customs.
- (2) In this paragraph “statutory neonatal care pay” includes statutory pay under Northern Ireland legislation corresponding to the provisions of Part 12ZE of the Social Security Contributions and Benefits Act 1992.

Employment Act 2002

- 35 The Employment Act 2002 is amended as follows.
- 36 (1) Section 7 (funding of employers’ liabilities as regards certain statutory pay) is amended as follows.
- (2) In subsection (1), for “and statutory parental bereavement pay” substitute “, statutory parental bereavement pay and statutory neonatal care pay”.
 - (3) In subsection (2)(a) and (b), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
 - (4) In subsection (3)—
 - (a) for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”;
 - (b) omit “or” at the end of paragraph (c);
 - (c) at the end of paragraph (d) insert “, or
 - (e) the period for which the payment of statutory neonatal care pay is made,”.
- 37 In section 8 (regulations about payment), in subsections (1) and (2)(a), (b) and (d), for “and statutory parental bereavement pay” substitute “, statutory parental bereavement pay and statutory neonatal care pay”.
- 38 In section 10 (powers to require information), in subsections (1) and (2)(a), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.

Status: This is the original version (as it was originally enacted).

- 39 In section 11 (penalties for failure to comply), in subsection (6), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 40 In section 12 (penalties for fraud or negligence), in subsections (2)(a), (2)(b) and (4), for “or statutory shared parental pay” substitute “, statutory shared parental pay or statutory neonatal care pay”.
- 41 In section 13 (supply of information held by His Majesty’s Revenue and Customs), in subsection (1), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 42 In section 14 (supply of information held by the Secretary of State), in subsections (1) and (2), for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”.
- 43 In section 15 (use of information by His Majesty’s Revenue and Customs), in subsection (2)—
- (a) omit “and” at the end of paragraph (bb);
 - (b) after paragraph (bb) insert—
 - “(bc) their functions in relation to statutory neonatal care pay; and”.
- 44 In section 55 (short title etc), in subsection (8)—
- (a) for “or statutory parental bereavement pay” substitute “, statutory parental bereavement pay or statutory neonatal care pay”;
 - (b) for “or Part 12ZD” substitute “, Part 12ZD or Part 12ZE”.

Proceeds of Crime Act 2002

- 45 (1) Section 323 of the Proceeds of Crime Act 2002 (Revenue functions) is amended as follows.
- (2) In subsection (1), after paragraph (hb) insert—
- “(hc) statutory neonatal care pay;”.
- (3) In subsection (4), after paragraph (eb) insert—
- “(ec) “statutory neonatal care pay” must be construed in accordance with section 171ZZ16 of that Act;”.
- (4) In subsection (5), after paragraph (eb) insert—
- “(ec) “statutory neonatal care pay” must be construed in accordance with any Northern Ireland legislation which corresponds to Part 12ZE of that Act;”.

Income Tax (Earnings and Pensions) Act 2003

- 46 The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.
- 47 (1) Section 660 (taxable benefits: UK benefits - Table A) is amended as follows.
- (2) In subsection (1), in Table A, after the entry relating to statutory parental bereavement pay insert—

“Statutory neonatal care pay | SSCBA 1992 Section 171ZZ16

Status: This is the original version (as it was originally enacted).

Any provision made for Northern Ireland which corresponds to section 171ZZ16 of SSCBA 1992”.

- (3) In subsection (2), after the entry relating to statutory parental bereavement pay insert — “statutory neonatal care pay;”.
- 48 (1) Schedule 5 (enterprise management incentives) is amended as follows.
- (2) In paragraph 12A(4)(b)(i), for “or parental bereavement” substitute “, parental bereavement or neonatal care”.
- (3) In paragraph 26(3)(b), after “parental bereavement leave” insert “, neonatal care leave”.

Commissioners for Revenue and Customs Act 2005

- 49 In Schedule 1 to the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters where functions vest in officers of Revenue and Customs), after paragraph 26C insert—
- “26D Statutory neonatal care pay.”

Income Tax Act 2007

- 50 The Income Tax Act 2007 is amended as follows.
- 51 In section 186A (enterprise investment schemes: the number of employees requirement for an issuing company), in subsection (4)(b)(i), for “or parental bereavement” substitute “, parental bereavement or neonatal care”.
- 52 In section 257DJ (seed enterprise investment schemes: the number of employees requirement for an issuing company), in subsection (4)(b)(i), for “or parental bereavement” substitute “, parental bereavement or neonatal care”.
- 53 In section 257MH (tax relief for social investments: the number of employees requirement), in subsection (4)(b)(i), for “or parental bereavement” substitute “, parental bereavement or neonatal care”.
- 54 In section 297A (venture capital trusts: the number of employees requirement for a qualifying holding), in subsection (4)(b)(i), for “or parental bereavement” substitute “, parental bereavement or neonatal care”.

Welfare Reform Act 2007

- 55 (1) Section 20 of the Welfare Reform Act 2007 (relationship with statutory payments) is amended as follows.
- (2) After subsection (7) insert—
- “(7A) Except as regulations may provide, a person who is entitled to statutory neonatal care pay is not entitled to an employment and support allowance in respect of a day that falls within a period in respect of which statutory neonatal care pay is payable.
- (7B) Regulations may provide that—

Status: This is the original version (as it was originally enacted).

- (a) an amount equal to a person’s statutory neonatal care pay for a period shall be deducted from an employment and support allowance in respect of the same period,
 - (b) a person shall only be entitled to an employment and support allowance if there is a balance after the deduction, and
 - (c) if there is such a balance, a person shall be entitled to an employment and support allowance at a weekly rate equal to it.”
- (3) The references to an employment and support allowance in new subsections (7A) and (7B), and in sub-paragraph (4) of this paragraph, are references to an employment and support allowance payable under Part 1 of the Welfare Reform Act 2007 as amended by the Welfare Reform Act 2012.
- (4) For as long as a contributory allowance continues to be payable, new subsections (7A) and (7B) are to apply to a contributory allowance as they apply to an employment and support allowance.
- (5) In this paragraph—
- (a) “new subsections (7A) and (7B)” means subsections (7A) and (7B) inserted by this paragraph into section 20 of the Welfare Reform Act 2007;
 - (b) “contributory allowance” has the meaning given by section 1(7) of the Welfare Reform Act 2007 before its repeal by the Welfare Reform Act 2012.
- (6) In subsection (8), in the definition of “the adoption pay period”, for “that Act” substitute “the Contributions and Benefits Act”.

Pensions Act 2008

- 56 In section 13 of the Pensions Act 2008 (qualifying earnings), in subsection (3), after paragraph (eb) insert—
- “(ec) statutory neonatal care pay under Part 12ZE of that Act;”.

Corporation Tax Act 2009

- 57 In section 1058B of the Corporation Tax Act 2009 (PAYE and NIC liabilities), in subsection (5), after paragraph (e) insert—
- “(ea) statutory neonatal care pay;”.

Finance Act 2013

- 58 In Schedule 45 to the Finance Act 2013 (statutory residence test), in paragraph 145, in the definition of “parenting leave”, for “or parental bereavement leave” substitute “, parental bereavement leave or neonatal care leave”.