Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996 (c. 18), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Neonatal Care Leave and Miscellaneous Amendments Regulations 2025

Made - - - -	***
Coming into force - -	*6th April 2025*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 47C(2), 71, 73, 74(1), 75A(8), 75B(9), 75C(1)(a) and (2), 75E, 75G, 75H(18), 75J(1)(a) and (2), 80EF(1), (2), (3), (4), (6), (7), (8), 80EG (1), (4) and (5), 80EH, 80EI and 99 of the Employment Rights Act 1996(**a**).

In accordance with section 236(3) of the Employment Rights Act 1996(**b**), a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Neonatal Care Leave and Miscellaneous Amendments Regulations 2025.

(2) The Regulations come into force on 6th April 2025.

(3) The Regulations extend to England and Wales, and Scotland.

(**a**) 1996 c. 18. Sections 75A to 75C were inserted by s. 3 of the Employment Act 2002 (c. 22); section 75A(8) and 75B(9) were substituted by S.I. 2018/1413. Section 75C(1)(a) was substituted by section 2(3) of the Protection from Redundancy (Pregnancy and Family Leave) Act 2023 (c. 17). Sections 75H and section 75J were inserted by section 117 of the Children and Families Act 2014 (c. 6). Section 75J(1)(a) was substituted by section 2(4) of the Protection from Redundancy (Pregnancy and Family Leave) Act 2023. Sections 80EF to 80EI were inserted by paragraph 2 of Schedule 1 to the Neonatal Care (Leave and Pay) Act 2023 (c. 20).

(**b**) Section 236(3) was amended by paragraph 42(3) of schedule 4 to the Employment Relations Act 1999 (c. 26), paragraph 49 of Schedule 7 to the Employment Act 2002, section 117(2) of the Children and Families Act 2014, and paragraph 3 of the Schedule to the Neonatal Care (Leave and Pay) Act 2023. There are other amendments to section 236(3) which are not relevant to this instrument.

Application

2.—(1) The provisions in Part 1 regulation 3, Part 2 and the Schedule of these Regulations apply in respect of children who are born on or after 6th April 2025.

(2) Regulation 17 (protection from detriment) has effect only in relation to an act or failure to act which takes place on or after 6th April 2025.

(3) For the purposes of paragraph (2)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period, and

(b) a failure to act is to be treated as done when it was decided on.

(4) In the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when they do an act inconsistent with doing the failed act, or

(b) if they have done no such inconsistent act, when the period expires within which they might reasonably have been expected to do the failed act if it was to be done.

(5) Regulation 18 (unfair dismissal) has effect only in relation to dismissals where the effective date of termination (within the meaning of section 97 of the Act) falls on or after 6th April 2025.

(6) The amendment of the Maternity and Parental Leave etc. Regulations 1999(**a**) made by regulation 21 has effect where the employee's statutory maternity leave period ends on or after 6th April 2025.

(7) The amendments to the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014(**b**) made by regulation 22 have effect where the employee's adoption leave or shared parental leave ends on or after 6th April 2025.

Interpretation

3.—(1) In these Regulations—

"the Act" means the Employment Rights Act 1996;

"adopter" means a person the child has been placed with for adoption in accordance with the Adoption and Children Act 2002(**c**) or the Adoption and Children (Scotland) Act 2007(**d**);

"C" means the child in relation to whom an entitlement to neonatal care leave arises;

"intended parent" means a person who on the day of the child's birth—

(a) has applied, or intends to apply during the period of 6 months beginning with the day of the child's birth—

(i) with another person for an order under section 54 (parental orders: two applicants) of the Human Fertilisation and Embryology Act 2008(**e**) in respect of the child, or

(ii) as the sole applicant for an order under section 54A (parental orders: on application) of that Act(**f**) in respect of the child, and

(b) expects the court to make such an order on that application in respect of the child;

(**a**) S.I. 1999/3312, there are amendments not relevant to this instrument.
(**b**) S.I. 2014/3096, there are amendments not relevant to this instrument.
(**c**) 2002 c. 38.
(**d**) 2007 asp 4.
(**e**) 2008 c. 22 Section 54 was amended by paragraph 206 of Schedule 11 to the Crime and Courts Act 2013 (c. 22), Part 1 of Schedule 9 to the Justice Act (Northern Ireland) 2015 (c. 9) and S.I. 2018/1413.
(**f**) 2008 c. 22. Section 54A was inserted by article 2(5) of S.I. 2018/1413.

"overseas adopter" means a person—

(a) with whom the child is living, following the child's entry into Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and

(b) who has received official notification in respect of the child;

"partner" means a person (whether of a different sex or the same sex) who lives with P in an enduring family relationship but is not a relative of P of a kind specified in sub-paragraph (a)—

(a) the relatives of P referred to are P's child, parent, grandchild, grandparent, sibling, aunt or uncle, niece or nephew;

(b) references to relatives in sub-paragraph (a)—

(i) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and

(ii) include the relationship of a child with their adoptive, or former adoptive, parents, but do not include any other adoptive relationships;

"prospective adopter" means a person—

(a) who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005(**a**) or regulation 30B(4) of the Adoption Agencies (Wales) Regulations 2005(**b**), and

(b) with whom the child has been placed, either—

(i) in accordance with section 22C of the Children Act 1989 (ways in which looked after children are to be accommodated and maintained)(**c**) following consideration in accordance with subsection (9B)(c) of that section, or

(ii) in accordance with section 81 of the Social Services and Well-being (Wales) Act 2014(**d**);

"qualifying period" means any period of a week during which C receives neonatal care without interruption beginning(**e**)—

(a) for the first qualifying period, on the day after the day on which the care starts and,

(b) for a subsequent qualifying period, on the day after the end of the preceding qualifying period.

"statutory leave" means leave provided for in part 8 of the Act;

"tier 1 period" means the period beginning with the day C starts receiving neonatal care and ending with the 7th day after the day C stops receiving neonatal care;

"tier 2 period" means any period of time which is not a tier 1 period in which an employee is entitled to take leave in accordance with regulation 7(2).

(**a**) S.I. 2005/389. Regulation 30B was amended by S.I. 2020/909.
(**b**) S.I. 2005/1313 (W. 95) regulation 30B was inserted by S.I. 2020/163 (W. 31) and amended by S.I. 2013/985.
(**c**) 1989 c. 41. Section 22C was amended by section 8(1) of the Children and Young Persons Act 2008 (c. 23), paragraph 29(a) and (b) of Schedule 2 to, the Children and Families Act 2014 (c. 6), S.I. 2016/413 (W. 131), S.I. 2018/195 (W. 44).
(**d**) 2014 anaw 4. Section 81 was amended by S.I. 2017/1025 (W. 263).
(**e**) A week is defined in section 80EF(9) of the Employment Rights Act 1996 as a period of 7 days.

(2) In this regulation—

"official notification" means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

"P" means the child's mother or a person who is an adopter, prospective adopter or overseas adopter;

"relevant domestic authority" means—

(a) in the case of an overseas adopter to whom the Adoptions with a Foreign Element Regulations 2005(**a**) apply and who is habitually resident in Wales, the Welsh Ministers;

(b) in the case of an overseas adopter to whom the Adoptions with a Foreign Element (Scotland) Regulations 2009(**b**) apply and who is habitually resident in Scotland, the Scottish Ministers; and

(c) in any other case, the Secretary of State.

PART 2

ENTITLEMENT TO NEONATAL CARE LEAVE

Definition of neonatal care

4.—(1) The prescribed kinds of care within the meaning of "neonatal care" for the purposes of section 80EF of the Act are—

(a) medical care received in a hospital,

(b) medical care received in any other place which meets the following criteria—

(i) the child was an inpatient in hospital and the care is received upon that child leaving hospital;

(ii) the care is under the direction of a consultant; and

(iii) the care includes ongoing monitoring by, and visits to the child from, healthcare professionals arranged by the hospital referred to in paragraph (b)(i); and

(c) palliative or end of life care.

(2) For the purposes of section 80EF(5) of the Act and these Regulations, neonatal care is to be treated as being received continuously without interruption throughout any period spent being transported from one place where neonatal care is received to another place where neonatal care is received.

(3) In this regulation—

"consultant" means a registered medical practitioner who—

(a) is an NHS consultant within the meaning of section 55 of the Medical Act 1983(**c**) employed for the purposes of providing any service as part of—

(**a**) S.I. 2005/392.
(**b**) S.S.I. 2009/182.
(**c**) 1983 c. 54. Section 55 was amended by S.I. 2010/234 and S.I. 2010/478. The section defines NHS consultant to mean a consultant other than a locum consultant but including an honorary consultant.

(i) the health service as defined by section 275(1) of the National Health Service Act 2006(**a**) or section 206(1) of the National Health Service (Wales) Act 2006(**b**); or

(ii) the health service as defined by section 108(1) of the National Health Service (Scotland) Act 1978(**c**);

(b) is on the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983(**d**) and holds a consultant post, or

(c) does not fall within (a) or (b) but meets one of the following criteria—

(i) is working as a locum consultant in the NHS or in private practice;

(ii) is working as a consultant in private practice; or

(iii) is working as a consultant in the armed forces.

"hospital" means—

(a) any institution for the reception and treatment of persons suffering from illness, and

(b) any maternity home,

including clinics and out patient departments maintained in connection with any such institution or home.

Entitlement to neonatal care leave

5.—(1) An employee is entitled to be absent from work to take neonatal care leave for one week in respect of each qualifying period that C has spent in neonatal care if that employee—

(a) satisfies the condition specified in one of paragraphs (2), (3) or (4) and the condition in paragraph (5), and

(b) complies with the notice requirements in regulation 10.

(2) At the date of birth—

(a) the employee is—

(i) C's parent, or

(ii) an intended parent of C, or

(iii) the partner of C's mother, and

(b) the employee has or expects to have—

(i) if they are C's parent or intended parent, responsibility for the upbringing of C;

(ii) if they are the partner of C's mother, the main responsibility (apart from any responsibility of the mother) for the upbringing of C.

(3) At the date C is placed—

(a) the employee is—

(i) C's adopter, or

(ii) C's prospective adopter, or

(iii) the partner of C's adopter, or

(iv) the partner of C's prospective adopter, and

(**a**) 2006 c. 41.
(**b**) 2006 c. 42.
(**c**) 1978 c. 29.
(**d**) 1983 c. 54. Amended by S.I. 2019/593.

(b) the employee has or expects to have—

(i) if they are C's adopter or prospective adopter, responsibility for the upbringing of C;

(ii) if they are the partner of C's adopter or prospective adopter, the main responsibility (apart from any responsibility of their partner) for the upbringing of C.

(4) At the date C enters Great Britain—

(a) the employee is—

(i) an overseas adopter; or

(ii) the partner of an overseas adopter; and

(b) the employee has or expects to have—

(i) if they are C's overseas adopter, responsibility for the upbringing of C;

(ii) if they are the partner of C's overseas adopter, the main responsibility (apart from any responsibility of their partner) for the upbringing of C.

(5) They are taking the leave to care for C.

Entitlement to neonatal care leave in special circumstances

6.—(1) Paragraph 1 of the Schedule applies to an employee who is C's parent or the partner of C's mother where C dies before the end of the period in which neonatal care leave can be taken.

(2) Paragraph 2 of the Schedule applies to an employee who is C's adopter, prospective adopter or the partner of C's adopter or prospective adopter where before the end of the period in which neonatal care leave can be taken—

(a) C dies; or

(b) C is returned after having been placed for adoption.

(3) Paragraph 3 of the Schedule applies to an employee who is C's overseas adopter or their partner where before the end of the period in which neonatal care leave can be taken—

(a) C dies; or

(b) C ceases to live with the overseas adopter.

(4) Paragraph 4 of the Schedule applies to an employee who is the intended parent of C where before the end of the period during which neonatal care leave can be taken C dies, or the parental order does not proceed because—

(a) the intended parent does not apply for a parental order for C within the time limit in section 54(3) or 54A(2) of the Human Fertilisation and Embryology Act 2008(**a**) for making such an application; or

(b) the application is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired.

(5) Paragraph 6 of the Schedule applies to an employee who is C's parent or the partner of C's mother where before the end of the period during which neonatal care leave can be taken the parental order does not proceed because—

(a) the intended parent does not apply for a parental order for C within the time limit in section 54(3) or 54A(2) of the Human Fertilisation and Embryology Act 2008 for making such an application; or

(**a**) 2008 c. 22. Section 54A was amended by paragraph 206 of Schedule 11 to the Crime and Courts Act 2013 (c. 22), paragraph 1 of Schedule 9 to the Justice Act (Northern Ireland) 2015 (c. 9), and S.I. 2018/1413. Section 54A was inserted by S.I. 2018/1413.

(b) the application is refused, withdrawn or otherwise terminated without the order being granted and any time limit for an appeal or new application has expired.

Extent of entitlement

7.—(1) The maximum number of weeks in respect of which a person is entitled to take neonatal care leave is twelve weeks.

(2) The leave must be taken before the end of 68 weeks beginning with the date of C's birth.

(3) For an employee falling within regulation 5(3), entitlement only arises in respect of a qualifying period falling after the date that C has been placed.

(4) For an employee falling within regulation 5(4), entitlement only arises in respect of a qualifying period falling after the date C has entered Great Britain.

Options in respect of neonatal care leave

8.—(1) Where an employee takes neonatal care leave in the tier 1 period—

(a) the leave may not be taken before the day after the first qualifying period;

(b) the leave may be taken in non-consecutive weeks.

(2) Any neonatal care leave the employee does not choose to take in the tier 1 period—

(a) may be taken in the tier 2 period;

(b) must be taken consecutively.

More than one child in receipt of neonatal care

9. In a case where a person meets the conditions in regulation 5(2), (3) or (4) in respect of more than one child born as a result of the same pregnancy—

(a) references to "C" receiving neonatal care in the definition of "qualifying period" in regulation 3 (interpretation) are a reference to the same child being in receipt of neonatal care in that period;

(b) for the definition of "Tier 1 period" in regulation 3 there is substituted—

> ""Tier 1 period" means the period beginning with the first day that one or more of the children born as a result of the pregnancy starts receiving neonatal care and ending with the 7th day after the day that the last of the children to receive neonatal care stops receiving it;";

(c) subject to paragraph (d), entitlement to neonatal care leave may be accrued in respect of more than one child;

(d) for any period where more than one child is in receipt of neonatal care at the same time, entitlement can only be accrued in that period in respect of one child;

(e) the maximum number of weeks in respect of which the person is entitled to neonatal care leave remains unchanged where more than one child is receiving neonatal care.

(f) the 68 week period in which an employee may take their leave begins with the date on which the first child is born.

Notice requirements for neonatal care leave

10.—(1) An employee must give their employer notice of their intention to take any absence from work as neonatal care leave specifying—

(a) the name of the person giving notice to take neonatal care leave;

(b) C's date of birth and where relevant—

(i) in cases of adoption, the date C is placed, or

(ii) in cases of overseas adoption, the date C enters Great Britain;

(c) the date that C started to receive neonatal care or, if the notice covers each date that C started to receive neonatal care such dates that C started to receive neonatal care on;

(d) if C is no longer receiving neonatal care, the date the neonatal care ended;

(e) the date on which the employee chooses the period of absence to begin;

(f) the number of weeks of neonatal care leave the notice is being given for;

(g) that the employee is taking the leave to care for C; and

(h) if it is the first time notice is given in respect of C, confirmation that the person claiming the statutory neonatal care leave meets the condition specified in regulations 5(2), (3) or (4).

(2) Where a person has given notice to their employer before C has stopped receiving neonatal care, the person must inform their employer of the date that the neonatal care ends, as soon as is reasonably practicable after that date.

(3) Where C starts to receive neonatal care again after the employee has notified their employer that neonatal care has ended, the employee must inform their employer of the date that the neonatal care started again and the date when it ends, as soon as reasonably practicable after each date.

(4) Where an employee intends to be absent in the tier 1 period, notice must be given in respect of each week of such leave—

(a) before the employee is due to start work on the employee's first day of absence from work in that week, or

(b) in a case where it is not reasonably practicable for the employee to give notice in accordance with sub-paragraph (a), as soon as reasonably practicable.

(5) Where an employee intends to be absent in the tier 2 period, the employee must give the notice in writing in accordance with sub paragraph (a) or (b)—

(a) for a single week of neonatal care leave, notice must be given no later than 15 days before the first day of the neonatal care leave to which the notice relates;

(b) for two or more consecutive weeks of neonatal care leave, notice must be given no later than 28 days before the first day of the neonatal care leave to which the notice relates.

(6) An employee who has given notice to take leave in the tier 2 period in accordance with paragraph (5) ("the original notice") may withdraw the original notice in writing in accordance with sub paragraph (a) or (b)—

(a) where the original notice was given in relation to a single week beginning in the tier 2 period, a notice of withdrawal must be given no later than 15 days before the first day of the week to which the original notice relates;

(b) where the original notice was given in relation to two or more consecutive weeks beginning in the tier 2 period, a notice of withdrawal must be given no later than 28 days before the first day of the first week to which the original notice relates.

(7) Notwithstanding the provisions in paragraphs (1) to (6) of this regulation the employee and employer can mutually agree to waive the requirement to give notice and in such cases the employee will be treated as having given notice in accordance with this regulation.

Commencement of neonatal care leave

11.—(1) Except in the cases referred to in sub-paragraph (2) or (3), an employee's period of neonatal care leave begins on the date specified in the notice under regulation 10(1)(e).

(2) In a case where—

(a) the employee notifies their employer of their intention to begin neonatal care leave on the same day as notice is given to their employer in accordance with regulation 10(4), and

(b) they are already at work on that day,

the employee's period of neonatal care leave begins on the day after that day.

(3) In a case where the employee and employer mutually agree to waive the requirement to give notice in accordance with regulation 10(7), the employee's period of neonatal care leave begins on a day mutually agreed with the employer.

Leave which interrupts a period of neonatal care leave

12.—(1) This regulation applies when an employee has commenced a period of neonatal care leave and, before that period is due to end, the employee begins another period of statutory leave.

(2) Where neonatal care leave taken in the tier 1 period is interrupted by another period of statutory leave, the neonatal care leave ends immediately before the start of the other period of statutory leave and either—

(a) the remaining entitlement to neonatal care leave must be taken immediately after the end of the other period of statutory leave, provided the leave is still being taken in the tier 1 period; or

(b) where, following the other statutory leave, the employee is now in the tier 2 period, the remaining entitlement to neonatal care leave must be taken consecutively with any other neonatal care leave taken in the tier 2 period.

(3) An employee is not entitled to take leave in the tier 2 period where, at the time of giving notice, the employee knows that the leave will be interrupted by another statutory leave period.

(4) There is no requirement to give an additional notice for taking neonatal care leave in respect of any remaining entitlement following an interruption.

PART 3

TAKING NEONATAL CARE LEAVE

Application of terms and conditions during neonatal care leave

13.—(1) An employee who takes neonatal care leave is, during any period of leave—

(a) entitled to the benefit of all of the terms and conditions of employment which would have applied if the employee had not been absent on leave; and

(b) bound by any obligations arising under those terms and conditions, subject only to the exception in section 80EG(1)(b) of the Act(**a**).

(2) For the purposes of section 80EG of the Act, only sums payable to an employee by way of wages or salary are to be treated as remuneration.

(**a**) "terms and conditions of employment" has the meaning given by section 80EG(3) of the Employment Rights Act 1996 (c. 18), and accordingly does not include terms and conditions about remuneration.

(3) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989(**a**), nothing in paragraph (1)(a) imposes a requirement which exceeds the requirements of paragraph 5E of that Schedule.

Redundancy during neonatal care leave

14.—(1) This regulation applies where it is not practicable by reason of redundancy for an employer to continue to employ an employee under the existing contract of employment during—

(a) a period in which the employee is taking neonatal care leave; or

(b) where the employee is not on neonatal care leave, the additional protected period.

(2) For the purposes of paragraph (1)(b) the additional protected period—

(a) begins with the day after the employee has taken six consecutive weeks of neonatal care leave;

(b) continues during any period of continuous employment that includes the neonatal care leave referred to in sub-paragraph (a); and

(c) ends immediately before the relevant day.

(3) The relevant day referred to in paragraph (2)(c) is the day after a period of 18 months beginning with the day on which the child—

(a) was born, where the entitlement to neonatal care leave arises under regulation 5(2) (birth and surrogacy) of these Regulations;

(b) was placed for adoption, where the entitlement to neonatal care leave arises under regulation 5(3) (adoption and prospective adoption) of these Regulations; or

(c) entered Great Britain, where the entitlement to neonatal care leave arises under regulation 5(4) (adoption from overseas) of these Regulations.

(4) Where there is a suitable alternative vacancy, the employee is entitled to be offered (before the end of the employee's employment under the contract of employment) alternative employment with the employer, the employer's successor, or an associated employer, under a new contract of employment which complies with paragraph (5) and takes effect immediately on the ending of the employee's employment under the previous contract.

(5) The new contract of employment must be such that—

(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for the employee to do in the circumstances, and

(b) its provisions as to the capacity and place in which the employee is to be employed, and as to the other terms and conditions of the employee's employment, are not substantially less favourable to the employee than if the employee had continued to be employed under the previous contract.

(6) This regulation does not apply where either of the following regulations applies—

(a) regulation 10 of the Maternity and Parental Leave etc. Regulations 1999(**b**); or

(b) regulation 23 of the Paternity and Adoption Leave Regulations 2002(**c**).

Right to return after neonatal care leave

15.—(1) An employee who returns to work after a period of neonatal care leave which was—

(**a**) 1989 c. 24. Paragraph 5E was inserted by the Neonatal Care Leave and Pay Act (c. 20) Schedule, paragraph 7.
(**b**) S.I. 1999/3312. Regulation 10 was amended by S.I. 2024/264.
(**c**) S.I. 2002/2788. Regulation 23 was amended by S.I. 2024/264.

(a) an isolated period of neonatal care leave, or

(b) the last of two or more consecutive periods of statutory leave which did not include any period of—

(i) parental leave of more than four weeks; or

(ii) statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child as the period of neonatal care leave the employee is returning from means that the total amount of statutory leave taken in relation to that child is more than 26 weeks,

is entitled to return to the job in which the employee was employed before the absence.

(2) An employee who returns to work after any period of neonatal care leave not falling within paragraph (1)(a) or (b) is entitled to return from leave to the job in which they were employed before the absence, or, if it is not reasonably practicable for the employer to permit the employee to return to that job, to another job which is both suitable and appropriate for the employee to do in the circumstances.

(3) In this regulation—

(a) the job in which the employee was employed before the absence means the job in which the employee was employed—

(i) if the return is from an isolated period of neonatal care leave, immediately before that period;

(ii) if the return is from consecutive periods of statutory leave, immediately before the first such period.

(b) "parental leave" means leave under regulation 13(1) of the Maternity and Parental Leave etc. Regulations 1999(**a**).

Right to return from neonatal care leave: supplementary

16.—(1) The right to return under regulation 15 is a right to return—

(a) with the employee's seniority, pension and similar rights as they would have been if the employee had not been absent, and

(b) on terms and conditions not less favourable than those which would have applied if the employee had not been absent.

(2) In the case of accrual of rights under an employment-related benefit scheme within the meaning given by paragraph 7 of Schedule 5 to the Social Security Act 1989, nothing in paragraph (1)(a) above imposes a requirement which exceeds the requirements of paragraphs 5A to 6 of that Schedule(**b**).

Protection from detriment

17.—(1) An employee is entitled under section 47C of the Act not to be subjected to any detriment by any act, or any deliberate failure to act, by an employer because—

(a) the employee took, sought to take, or made use of the benefits of, neonatal care leave, or

(b) the employer believed that the employee was likely to take neonatal care leave.

(**a**) Regulation 13 was amended by S.I. 2001/4010 and S.I. 2014/3221.

(**b**) Paragraphs 5A and 5B were inserted by the Pensions Act 2004 (c. 35), section 265(1), Paragraph 5C was inserted by the Children and Families Act 2014 (c. 6) Schedule 7, paragraphs 1 and 4. Paragraph 5D was inserted by the Parental Bereavement (Leave and Pay) Act 2018 (c. 24), Schedule, paragraph 7.

(2) For the purposes of paragraph (1)(a) an employee makes use of the benefits of neonatal care leave if, during the period of neonatal care leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 13 during that period.

(3) Paragraph (1) does not apply where the detriment in question amounts to a dismissal within the meaning of Part 10 of the Act.

Unfair dismissal

18.—(1) An employee who is dismissed is entitled under Section 99 of the Act to be regarded for the purposes of Part 10 of that Act as unfairly dismissed if the reason or principal reason for the dismissal is of a kind specified in paragraph (3).

(2) An employee who is dismissed is also to be regarded for the purposes of Part 10 of the Act as unfairly dismissed if—

(a) the reason or principal reason for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more employees in the same undertaking who had positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that the reason or principal reason for which the employee was selected for dismissal was a reason of a kind specified in paragraph (3).

(3) The reasons referred to in paragraphs (1) and (2) are reasons connected with any of the following facts—

(a) that the employee took, sought to take or made use of the benefits of, neonatal care leave,

(b) that the employer believed that the employee was likely to take neonatal care leave.

(4) For the purposes of paragraph (3)(a) an employee makes use of the benefits of neonatal care leave if, during a period of neonatal care leave, the employee benefits from any of the terms and conditions of employment preserved by regulation 13 during that period.

Calculation of a weeks pay for the purposes of Chapter 2 Part 14 of the Act

19. Where—

(a) under Chapter 2 of Part 14 of the Act, the amount of a week's pay of an employee falls to be calculated by reference to the average rate of remuneration, or the average amount of remuneration, payable to the employee in respect of a period of 12 weeks ending on a particular date (referred to as the "calculation date"),

(b) during a week in that period, the employee was absent from work on neonatal care leave, and

(c) remuneration is payable to the employee in respect of that week under their contract of employment, but the amount payable is less than the amount that would be payable if he or she were working,

that week must be disregarded for the purpose of the calculation and account must be taken of remuneration in earlier weeks so as to bring up to 12 the number of weeks of which account is taken.

PART 4
CONTRACTUAL RIGHTS

Contractual rights to neonatal care leave

20. Where an employee is entitled to neonatal care leave (referred to in this regulation as "the statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise—

(a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the most favourable, and

(b) the provisions of the Act and of these Regulations relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the composite right described in paragraph (a) as they apply here to the exercise of the statutory right.

PART 5
AMENDMENTS TO SECONDARY LEGISLATION

The Maternity and Parental Leave etc. Regulations 1999

21. In regulation 20(4) (unfair dismissal) of the Maternity and Parental Leave etc. Regulations 1999(**a**) for "Paragraphs (1)(b) and (3)(b) only apply" substitute "Paragraph (3)(b) only applies".

The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014

22.—(1) The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014(**b**) are amended as follows.

(2) After regulation 17 insert—

> **"17B.** In regulation 23 (redundancy during adoption leave) of the Leave Regulations as they apply to parental order parents, paragraph (1B) shall read as if the words "is placed with the employee for adoption" were "was born".".

(3) After regulation 32 insert—

> **"32A.** In regulation 39 (redundancy during shared parental leave) of the SPL Regulations as they apply to parental order parents, sub-paragraph (1B)(b) shall read as if the words "placed with the employee for adoption" were "born".".

Name
Title
Department for Business and Trade

(**a**) S.I. 1999/3312.
(**b**) S.I. 2014/3096.

SCHEDULE

Regulation 6

NEONATAL CARE LEAVE IN SPECIAL CIRCUMSTANCES

1. Where, after the employee has accrued entitlement to statutory neonatal care leave, C dies, paragraph 5 applies in relation to the employee's entitlement to neonatal care leave beginning with the day after the day on which C dies.

2. Where, after C has been placed with the adopter or prospective adopter and the employee has accrued entitlement to statutory neonatal care leave, the placement is disrupted or C dies, paragraph 5 applies in relation to the employee's entitlement to neonatal care leave beginning with the day after the day on which the placement is disrupted or C dies.

3. Where, after C has entered Great Britain and the employee has accrued entitlement to neonatal care leave, C dies or ceases to live with the overseas adopter, paragraph 5 applies in relation to the employee's entitlement to neonatal care leave beginning with the day after the day on which C dies or ceases to live with the overseas adopter.

4. Where, after the employee has accrued entitlement to neonatal care leave, C dies or the parental order does not proceed, paragraph 5 applies in relation to the employee's entitlement to neonatal care leave beginning with the day after the day on which C dies or the parental order does not proceed.

5. Where this paragraph applies, these regulations apply as if regulation 5(5) were omitted.

6.—(1) Where the parental order does not proceed the modifications set out at sub-paragraphs (2) and (3) below apply to the employee in relation to any qualifying period C spends in neonatal care beginning with the day after the day on which the parental order does not proceed.

(2) The employee is to be regarded as falling within the definition of "partner" in regulation 5(2)(a)(iii) if they fell within the definition on the day before the day the parental order does not proceed.

(3) In paragraph (2) of regulation 5 substitute "on the day before the day the parental order does not proceed" for "at the time of C's birth" for the purpose of satisfying the condition in sub-paragraph (b).

7.—(1) In paragraphs 4 and 6, the day on which the parental order does not proceed is a reference to the day on which the time limit for:

(a) making an application under section 54 or 54A of the Human Fertilisation and Embryology Act 2008 expires, or

(b) appealing or making a new application following the refusal, withdrawal or other termination of the order expires.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exercise powers in Part 8 of the Employment Rights Act 1996 (c. 18) ("the Act"). Parts 1 – 4 exercise powers in Chapter 5, which was inserted by the Neonatal Care (Leave and Pay) Act 2023 (c. 20) to provide a new entitlement to neonatal care leave for employees with responsibility for children receiving neonatal care in that Part.

Part 1 is introductory and includes provision for application of, and definitions used in, the regulations.

Part 2 (regulations 4 to 12) sets out conditions for entitlement to neonatal care leave. Regulation 4 defines neonatal care and regulation 5 contains provisions as to entitlement for different categories of parent. Regulation 6 refers to what happens in cases of death, disruption or a parental order not proceeding as set out in the Schedule.

Regulation 7 deals with the time and period in which neonatal care leave can be taken.

Regulation 8 provides for options for taking neonatal care leave in the tier 1 and tier 2 periods. While a child is in neonatal care and for one week after they are discharged (the tier 1 period), leave can be taken in non-continuous blocks of a minimum of one week. During the remainder of the 68 week period the leave can be taken in one continuous block (the tier 2 period).

Regulation 9 contains modifications for cases where more than one child born as a result of the same pregnancy receives neonatal care.

Regulation 10 sets out provisions for giving notice to take neonatal care leave. This includes what evidence must be provided and when notice can be dispensed with.

Regulation 11 sets out when leave can begin including in urgent cases and regulation 12 deals with situations where leave is interrupted by other statutory leave.

Part 3 (regulations 13 to 19) makes provision for conditions relating to the employee's employment whilst on neonatal leave. Regulation 13 elaborates on the new section 80EG of the Act and provides that the employee remains entitled to the same terms and conditions of employment during their absence on leave, apart from the right to remuneration. Regulation 14 provides for extended redundancy protection rights to employees who have taken 6 continuous weeks of neonatal care leave so that their protection can apply for the period of their leave and for a period of time after the leave has ended. Regulations 15 and 16 provide for a right to return to work after taking a period of neonatal care leave, distinguishing the case where the leave was an isolated period of absence from the case where it followed another period of statutory leave. Regulations 17 and 18 provide protection to the employee from detriment and dismissal by reason of taking or seeking to take neonatal care leave.

Part 4 (regulation 20) contains provisions applicable where an employee has a contractual right to neonatal care leave, in addition to the statutory right contained within these Regulations.

Part 5 (regulations 21 and 22). These Regulations also amend the Maternity and Parental Leave etc. Regulations 1999 (S.I. 1999/3312), and the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 (S.I. 2014/3096). These amendments, contained in Part 5, should have been made by the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 (S.I. 2024/264), and were not included in that S.I. in error. Those

2024 Regulations made provision to extend existing requirements that apply to employers when redundancy situations arise where an employee is on maternity, adoption or shared parental leave, so that those requirements can also apply during pregnancy and for a period of time after that leave has ended. The amendment made by this S.I. to the Maternity and Parental Leave Regulations 1999 removes a cross reference in regulation 20 of the 1999 Regulations that is no longer needed; and the amendment to the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 amends references to adoption placement, to the birth of the child. The 2014 Regulations apply, with modifications, paternity and shared parental leave legislation to 'parental order parents' (those who have applied or intend to apply for a parental order under the Human Fertilisation and Embryology Act 2008) (c. 22). As explained above those taking neonatal care leave will have equivalent protection from redundancy pursuant to regulation 16 of these Regulations.

The Schedule contains provisions modifying the regulations in various cases where the child dies, an adoption placement is disrupted or a parental order does not proceed.

These Regulations are part of a package of legislative measures to implement the Neonatal Care (Leave and Pay) Act 2023. A full impact assessment of the effect that Act will have on the costs of business, the voluntary sector and the public sector was published on 23 January 2023 and is available from the Department for Business and Trade, Old Admiralty Building, London, SW1A 2PA.

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