Draft Regulations laid before Parliament under section 176(1) of the Social Security Contributions and Benefits Act 1992 (c. 4), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Neonatal Care Pay (General) Regulations 2025

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 171ZZ16(2)(a), (3), (4)(a) and (5), 171ZZ17(2) and (4)(a) to (c) and (e) to (j), 171ZZ18(2) and (3), 171ZZ19(1) to (5), (8) and (9), 171ZZ21(3), 171ZZ24(3) to (5), (7) and (8), and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 5(1)(g), (i), (l) and (p), and 189(1), (4), (5) and (6) of the Social Security Administration Act 1992(**b**), with the concurrence of the Commissioners for His Majesty's Revenue and Customs in so far as such concurrence is required.

A draft of these Regulations was laid before Parliament in accordance with section 176(1) of the Social Security Contributions and Benefits Act 1992(**c**) and approved by a resolution of each House of Parliament.

This instrument contains only regulations made by virtue of, or consequential upon, the Schedule to the Neonatal Care (Leave and Pay) Act 2023 and is made before the end of the period of 6 months beginning with the coming into force of that Act(**d**).

(**a**) 1992 c. 4. Sections 171ZZ16 to 171ZZ24 were inserted by Part 2 of the Schedule to the Neonatal Care (Leave and Pay) Act 2023 (c. 20). See section 171ZZ24(1) for the definition of "prescribed". Section 175 was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(**b**) 1992 c. 5. Section 5(1)(g) was amended by section 98(4) of the Welfare Reform Act 2012 (c. 5). Section 189 was amended by paragraph 57 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2); Schedule 6 to the Tax Credits Act 2002 (c. 21) and S.I. 2013/252.

(**c**) Section 176(1) was amended by paragraph 6 of the Schedule to the Neonatal Care (Leave and Pay) Act 2023. There are further amendments not relevant to this instrument.

(**d**) See sections 172(1) and 173(5) of the Social Security Administration Act 1992.

PART 1
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Statutory Neonatal Care Pay (General) Regulations 2025.

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

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

Application

2. These Regulations apply in respect of children who are born on or after 6th April 2025.

Interpretation

3. In these Regulations—

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992(**a**);

"the 1996 Act" means the Employment Rights Act 1996(**b**);

"associated employer" is to be construed in accordance with section 231 of the 1996 Act;

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

"the Commissioners" means the Commissioners for His Majesty's Revenue and Customs;

"relevant week" has the meaning given in section 171ZZ16(6) of the 1992 Act;

"statutory neonatal care pay" means statutory neonatal care pay payable in accordance with Part 12ZE of the 1992 Act;

"statutory pay week" has the meaning given in section 171ZZ19(11) of the 1992 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 in the qualifying period specified in regulation 10 (qualifying period) which is not a tier 1 period;

"week", except in Part 3, means a period of seven days(**c**).

Definition of neonatal care

4.—(1) The prescribed kinds of care within the meaning of "neonatal care" for the purposes of Part 12ZE of the 1992 Act are—

(a) medical care received in a hospital;

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

(**a**) 1992 c. 4.
(**b**) 1996 c. 18.
(**c**) For the meaning of "week" in Part 3 of these Regulations, see section 171ZZ24(5) of the 1992 Act.

(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 (i); and

(c) palliative or end-of-life care.

(2) For the purposes of Part 12ZE of the 1992 Act and these Regulations, neonatal care is to be treated as continuing without interruption throughout any period spent by C 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(**a**) employed for the purposes of providing any service as part of—

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

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

(b) is on the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983(**e**) 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.

PART 2

ENTITLEMENT

Conditions of entitlement relating to parental or other personal relationship

5.—(1) The conditions prescribed for the purposes of section 171ZZ16(2)(a)(i) of the 1992 Act (as to parental or personal relationship with a child receiving neonatal care) are the conditions in paragraph (2) or (3).

(**a**) 1983 c. 54. Section 55 was amended by S.I. 2010/234 and 2010/478. The section defines NHS consultant to mean a consultant other than a locum consultant but including an honorary consultant.
(**b**) 2006 c. 41.
(**c**) 2006 c. 42.
(**d**) 1978 c. 29.
(**e**) 1983 c. 54. Amended by S.I. 2019/593.

(2) A person satisfies the conditions of this paragraph if—

(a) the person is—

(i) C's parent,

(ii) the partner of C's mother, or

(iii) an intended parent of C, and

(b) at the time of C's birth, the person has or expects to have—

(i) if the person is the parent or intended parent of C, responsibility for the upbringing of C;

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

(3) A person satisfies the conditions of this paragraph if the person is—

(a) C's adopter,

(b) C's overseas adopter,

(c) C's prospective adopter,

(d) the partner of C's adopter or prospective adopter and at the time C is placed with the adopter or prospective adopter, the person has or expects to have the main responsibility (apart from any responsibility of their partner) for the upbringing of C, or

(e) the partner of C's overseas adopter and at the time of C's entry into Great Britain, the person has or expects to have the main responsibility (apart from any responsibility of their partner) for the upbringing of C.

(4) In this regulation and in regulation 6 and the Schedule—

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

"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(**c**) in respect of C, or

(ii) as the sole applicant for an order under section 54A (parental orders: one applicant) of that Act(**d**) in respect of C, and

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

"official notification" means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certification 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 overseas adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;

"overseas adopter" means a person—

(**a**) 2002 c. 38.
(**b**) 2007 asp 4.
(**c**) 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.
(**d**) Section 54A was inserted by S.I. 2018/1413.

(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;

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

"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 paragraph (5);

"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(**c**) (ways in which looked after children are to be accommodated and maintained), 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**);

"relevant domestic authority" means—

(a) in the case of an overseas adopter to whom Part 3 of the Adoptions with a Foreign Element Regulations 2005(**e**) 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(**f**) apply and who is habitually resident in Scotland, the Scottish Ministers, and

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

(5) The relatives of P referred to in the definition of "partner" in paragraph (4) are P's parent, grandparent, grandchild, sibling, aunt, uncle, niece or nephew.

(6) References to the relatives of P in paragraph (5)—

(a) are references to relationships of the full blood or half blood,

(b) in the case of an adopted person, include such of those relationships as would exist but for the adoption, and

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

(**a**) S.I. 2005/389; regulation 30B was inserted by S.I. 2013/985.
(**b**) S.I. 2005/1313 (W. 95); regulation 30B was inserted by S.I. 2020/163.
(**c**) 1989 c. 41. Section 22C was inserted by section 8 of the Children and Young Persons Act 2008 (c. 23) and amended by section 2, and paragraph 29 of Schedule 2, to the Children and Families Act 2014 (c. 6), S.I. 2016/413 (W. 131) and S.I. 2018/195 (W. 44).
(**d**) 2014 anaw. 4. Section 81 was amended by S.I. 2017/1025 (W. 263).
(**e**) S.I. 2005/392, to which there are amendments not relevant to these Regulations.
(**f**) S.S.I. 2009/182, to which there are amendments not relevant to these Regulations.

Entitlement to statutory neonatal care pay 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 qualifying period.

(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 qualifying period,—

(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 qualifying period,—

(a) C dies; or

(b) 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 qualifying period, 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 section 54A(2) of the Human Fertilisation and Embryology Act 2008 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 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 section 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.

Number of weeks pay

7.—(1) Subject to paragraph (3), the period in respect of which a person is entitled to statutory neonatal care pay is one week for every period of 7 days that C is in receipt of neonatal care without interruption.

(2) The maximum number of weeks in respect of which a person is entitled to payments of statutory neonatal care pay is 12 weeks.

(3) In a case where a person only meets the conditions in regulation 5(3) after C has already been in receipt of neonatal care, the period in respect of which that person is entitled to statutory neonatal care pay is one week for every period of 7 days that C is in receipt of neonatal care without interruption after the person met those conditions.

(4) Entitlement to statutory neonatal care pay may be accrued in respect of two or more separate occasions that C receives neonatal care if on each occasion C is in receipt of neonatal care for at least 7 days without interruption.

(5) For the purposes of this regulation and in relation to each separate occasion that C receives neonatal care, the first period of 7 days begins with the day after the day on which the neonatal care starts.

(**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 6B. by S.I. 2018/1413.

More than one child in receipt of neonatal care

8. In a case where a person meets the conditions in regulation 5 in respect of more than one child born as a result of the same pregnancy—

(a) for the definition of "Tier 1 period" in regulation 3 (interpretation) 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;";

(b) the references to C being in receipt of neonatal care in regulation 7 are references to the same child being in receipt of neonatal care for a period of 7 days without interruption;

(c) subject to paragraph (d), entitlement to statutory neonatal care pay 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 payments of statutory neonatal care pay remains unchanged where more than one child is receiving neonatal care.

Options in respect of payment of statutory neonatal care pay

9.—(1) A person may choose for statutory neonatal care pay to be paid for a week only if that person cared for or intends to care for C during that week.

(2) A person may choose for statutory neonatal care pay to be paid—

(a) in a tier 1 period for a single week or for a number of weeks, whether or not consecutively, or

(b) in a tier 2 period for a single week or for a consecutive period of weeks.

Qualifying period

10.—(1) Subject to paragraph (2), the qualifying period for the purposes of section 171ZZ19(2) of the 1992 Act (period within which statutory neonatal care pay is payable) is a period of 68 weeks beginning with the date of C's birth.

(2) Where a person meets the conditions in regulation 5 in respect of more than one child born as a result of the same pregnancy, the qualifying period for the purposes of section 171ZZ19(2) of the 1992 Act is a period of 68 weeks beginning with the date of birth of the first child born as a result of the pregnancy.

Notice and evidence requirements for statutory neonatal care pay

11.—(1) The notice provided for in section 171ZZ17(1) of the 1992 Act (notice to be given stating the week or weeks in respect of which payments are to be made) must be given to whoever will be liable to pay statutory neonatal care pay—

(a) where the notice relates to a statutory pay week that begins in the Tier 1 period, in accordance with paragraph (2);

(b) where the notice relates to a statutory pay week that begins in the Tier 2 period, in accordance with paragraph (3) or (4);

(c) in a case where it is not reasonably practicable for the person to give the notice in accordance with paragraphs (2) to (4), as soon as reasonably practicable.

(2) For statutory pay weeks beginning in the Tier 1 period, notice must be given before the end of the period of 28 days beginning with the first day of the first statutory pay week to which the notice relates.

(3) For a single statutory pay week beginning in the Tier 2 period, notice must be given no later than 15 days before the first day of the statutory pay week to which the notice relates.

(4) For two or more consecutive statutory pay weeks beginning in the Tier 2 period, notice must be given no later than 28 days before the first day of the first statutory pay week to which the notice relates.

(5) The following evidence of entitlement to statutory neonatal care pay must be provided in writing when notice is given under paragraph (1)—

(a) the name of the person claiming statutory neonatal care pay;

(b) the date of C's birth;

(c) where evidence is provided by a person satisfying the conditions in regulation 5(3)—

(i) the date of C's placement with C's adopter or prospective adopter, or

(ii) the date of C's entry into Great Britain to live with C's overseas adopter;

(d) the date that C started to receive neonatal care or each such date if C has received neonatal care on two or more separate occasions;

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

(f) a declaration that the person has cared or intends to care for C during the statutory pay weeks to which the notice under paragraph (1) relates;

(g) if it is the first time notice is given under paragraph (1) in respect of C, a declaration that the person claiming the statutory neonatal care pay meets the conditions prescribed in regulation 5(2) or (3).

(6) Where a person has given notice under paragraph (1) before C has stopped receiving neonatal care, the person must inform the person liable to pay statutory neonatal care pay of the date that the neonatal care ends, as soon as is reasonably practicable after that date.

(7) Where a person has given notice under paragraph (1) relating to a statutory pay week that begins in the Tier 2 period ("the original notice"), the person may withdraw the original notice by giving notice of withdrawal in writing to the person who will be liable to pay statutory neonatal care pay in accordance with paragraph (8) or (9).

(8) Where the original notice was given in relation to a single statutory pay 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.

(9) Where the original notice was given in relation to two or more consecutive statutory pay 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 statutory pay week to which the original notice relates.

(10) Notwithstanding the provisions in paragraphs (1) to (9) of this regulation, section 171ZZ17(1) of the 1992 Act does not have effect where paragraph (11) applies.

(11) The employee and employer can mutually agree to waive the requirement to give notice and the employee will be treated as having given notice in accordance with this regulation.

Cases where there is no liability to pay statutory neonatal care pay

12.—(1) There is no liability to pay statutory neonatal care pay to a person in respect of any week—

(a) during any part of which the person who is entitled to that pay is entitled to statutory sick pay under Part 11 of the 1992 Act,

(b) following that in which the person entitled to it has died, or

(c) during any part of which the person who is entitled to that pay is—

(i) detained in legal custody, unless one of the circumstances in paragraph (2) applies, or

(ii) sentenced to a term of imprisonment and the sentence is not suspended.

(2) There is liability to pay statutory neonatal care pay in respect of any week during any part of which the person who is entitled to that pay is detained in legal custody where that person is—

(a) subsequently released without charge,

(b) subsequently found not guilty of any offence and is released, or

(c) convicted of an offence but does not receive a custodial sentence.

Work during period of payment of statutory neonatal care pay

13.—(1) Despite section 171ZZ19(8) of the 1992 Act (statutory neonatal care pay not payable to a person in respect of a week during any part of which the person works for any employer who is not liable to pay the person statutory neonatal care pay), statutory neonatal care pay is payable to a person in respect of a statutory pay week during any part of which the person works only for an employer—

(a) who is not liable to pay the person statutory neonatal care pay, and

(b) for whom the person has worked in the relevant week.

(2) Where a person works for an employer falling within paragraph (1)(a) but not paragraph (1)(b) for any part of a week or weeks specified by that person in a notice under regulation 11(1), the person must notify the employer liable to pay neonatal care pay of the fact of that work within 7 days of the first day during which the person does such work.

(3) The notification mentioned in paragraph (2) must be in writing, if the employer who has been liable to pay statutory neonatal care pay so requests.

PART 3

CONDITIONS OF ENTITLEMENT RELATING TO EMPLOYMENT AND EARNINGS

Treatment of persons as employees

14.—(1) A person is treated as an employee for the purposes of Part 12ZE of the 1992 Act (despite not falling within the definition of "employee" in section 171ZZ24(2) of that Act) where, and in so far as, that person is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978(**a**)("the 1978 Regulations").

(2) A person is not to be treated as an employee for the purposes of Part 12ZE of the 1992 Act (despite falling within the definition of "employee" in section 171ZZ24(2) of that Act) where, and in so far as, that person is not treated as an employed earner by virtue of the 1978 Regulations.

(3) Paragraphs (1) and (2) have effect in relation to a person who—

(**a**) S.I. 1978/1689; amended by section 6 of the National Insurance Contributions Act 2015 (c. 5) and by S.I. 1980/1713, 1984/350, 1990/1894, 1994/726, 1998/1728, 2003/736, 2003/2420, 2004/770, 2005/3133, 2006/1530, 2012/816, 2014/635, 2015/478 and 2017/307.

(a) is under the age of 16, and

(b) would, or as the case may be, would not have been treated as an employed earner by virtue of the 1978 Regulations had they been over that age,

as they have effect in relation to a person who is, or as the case may be, is not treated as an employed earner by virtue of those Regulations.

(4) A person is treated as an employee for the purposes of Part 12ZE of the 1992 Act (despite not falling within the definition of "employee" in section 171ZZ24(2) of that Act) where that person is in employed earner's employment under a contract of apprenticeship.

(5) A person is not to be treated as an employee for the purposes of Part 12ZE of the 1992 Act (despite falling within the definition of "employee" in section 171ZZ24(2) of that Act) where that person is in employed earner's employment but that person's employer—

(a) does not fulfil the conditions prescribed in regulation 145(1) of the Social Security (Contributions) Regulations 2001(**a**) in so far as that provision relates to residence or presence in Great Britain, or

(b) is a person who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—

(i) is exempt from the provisions of the 1992 Act, or

(ii) is a person against whom the provisions of the 1992 Act are not enforceable.

Continuous employment from the end of the relevant week

15.—(1) Except in a case falling within regulation 27(1) (avoidance of liability by a former employer), a person is not entitled to statutory neonatal care pay in respect of a particular week or period of consecutive weeks unless the week before that week or that period—

(a) the person is in employed earner's employment with the employer by reference to whom the condition in section 171ZZ16(2)(b) of the 1992 Act is satisfied, and

(b) that employment has been continuous from the end of the relevant week.

(2) In a case where C is born before the relevant week, sub-paragraph (1)(b) has effect as if for "end of the relevant week" there were substituted "date of C's birth".

Continuous employment even though no contract of service exists

16.—(1) A week is to be treated for the purposes of section 171ZZ16 of the 1992 Act as part of a period of continuous employment with the employer even though no contract of service exists with that employer in respect of that week in the circumstances mentioned in paragraph (2).

(2) The circumstances mentioned in paragraph (1) are that in any week the person is, for the whole or part of the week—

(a) incapable of work in consequence of sickness or injury,

(b) absent from work on account of a temporary cessation of work, or

(c) absent from work in circumstances such that, by arrangement or custom, that person is regarded as continuing in the employment of their employer for all or any purposes,

and returns to work for their employer after the incapacity for or absence from work.

(3) Incapacity for work which lasts more than 26 consecutive weeks does not count for the purposes of paragraph (2)(a).

(**a**) S.I. 2001/1004; regulation 145 was amended by S.I. 2012/817 and S.I. 2024/377.

(4) Where a person—

(a) is an employee in employed earner's employment in which the custom is for the employer—

(i) to offer work for a fixed period of not more than 26 consecutive weeks,

(ii) to offer work for such period on two or more occasions in a year for periods which do not overlap, and

(iii) to offer the work available to those persons who had worked for the employer during the last or a recent such period, but

(b) is absent from work because of incapacity arising from some specific disease or bodily or mental disablement,

then in that case paragraph (2) applies as if the words "and returns to work for their employer after the incapacity for or absence from work" were omitted.

Continuous employment and unfair dismissal

17.—(1) Where in consequence of specified action in relation to a person's dismissal, the person is reinstated or re-engaged by their employer or by a successor or associated employer of that employer then—

(a) the continuity of their employment is preserved for the purposes of section 171ZZ16 of the 1992 Act for the period beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, and

(b) any week which falls within the interval beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, as the case may be, counts in the computation of their period of continuous employment.

(2) In this regulation—

"dismissal procedures agreement" has the same meaning as in section 235 of the 1996 Act(**a**);

"specified action in relation to a person's dismissal" means action which consists of—

(a) the presentation by that person of a complaint under section 111(1) (complaints to employment tribunal) of the 1996 Act(**b**),

(b) that person making a claim in accordance with a dismissal procedures agreement designated by an order under section 110 of the 1996 Act(**c**), or

(c) any action taken by a conciliation officer under sections 18A to 18C (conciliation) of the Employment Tribunals Act 1996(**d**);

"successor"has the same meaning as in section 235 of the 1996 Act.

Continuous employment and stoppages of work

18.—(1) Where a person does not work for any week or part of a week because there is a stoppage of work at that person's place of employment due to a trade dispute within the meaning of section 35(1) of the Jobseekers Act 1995(**e**) then—

(**a**) There are amendments to section 235 not relevant to these Regulations.
(**b**) Section 111(1) was amended by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).
(**c**) Section 110 was amended by sections 1 and 12 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) and paragraph 52 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).
(**d**) 1996 c. 17. Sections 18A to 18C were inserted by section 7 of, and paragraph 6 of Schedule 1 to, the Enterprise and Regulatory Reform Act 2013.
(**e**) 1995 c. 18. There are amendments to section 35(1) not relevant to these Regulations.

(a) that person's continuity of employment is treated as continuing throughout the stoppage for the purposes of section 171ZZ16 of the 1992 Act, and

(b) no such week counts in the computation of their period of continuous employment.

(2) Where during the stoppage of work a person is dismissed from their employment, that person's continuity of employment is not to be treated under paragraph (1) as continuing beyond the commencement of the day that person stopped work.

(3) Paragraph (1)(b) and paragraph (2) do not apply to a person who proves that at no time did they have a direct interest in the trade dispute in question.

Modification for periods of employment between 25 and 26 weeks

19.—(1) This regulation applies where a person—

(a) has not been in employed earner's employment with the same employer for more than 26 weeks ending with the relevant week, but

(b) has been in employed earner's employment with the same employer in each of the 26 weeks in the 26 week period ending with the relevant week.

(2) To determine whether that person's employment amounts to a continuous period of at least 26 weeks for the purposes of section 171ZZ16 of the 1992 Act, the first of those 26 weeks is a period commencing on the first day of the person's employment with the employer ("the start date") and ending at midnight on—

(a) the first Saturday after the start date, or

(b) where the start date is a Saturday, that day.

Change of employer

20. Where a person's employer changes, a person's employment is to be treated for the purposes of section 171ZZ16 of the 1992 Act as continuous employment with the second employer in the following circumstances—

(a) the employer's trade or business or an undertaking (whether or not the undertaking is established by or under an Act of Parliament) is transferred from one person to another,

(b) a contract of employment between any body corporate and the person is modified by or under an Act of Parliament, whether public or local and whenever passed and some other body corporate is substituted as that person's employer,

(c) on the death of an employer, the person is taken into the employment of the personal representatives or trustees of the deceased,

(d) the person is employed by partners, personal representatives or trustees and there is a change in the partners or as the case may be, personal representatives or trustees,

(e) the person is taken into the employment of an employer who is, at the time the person entered into the employer's employment, an associated employer of the person's previous employer, or

(f) on the termination of the person's employment with one employer that person is taken into the employment of another employer and those employers are—

(i) governors of a school maintained by a local authority, within the meaning of section 579(1) of the Education Act 1996(**a**),

(ii) that local authority.

(**a**) 1996 c. 56. The definition of "local authority" in section 579(1) was amended by S.I. 2010/1158. There are other amending instruments but none is relevant.

Reinstatement after service with the armed forces

21. Where a person—

(a) is entitled to apply to their former employer for reinstatement under the Reserve Forces (Safeguard of Employment) Act 1985(**a**), and

(b) is taken into the employment of that employer within the six month period mentioned in section 1(4)(b) (obligation to reinstate) of that Act,

that person's previous period of employment with that employer, or if there was more than one such period, the last of those periods, and the period of employment beginning in that six month period, is to be treated as continuous for the purposes of section 171ZZ16 of the 1992 Act.

Treatment of two or more employers or two or more contracts of service as one

22.—(1) In a case where the earnings paid to a person in respect of two or more employments are aggregated and treated as a single payment of earnings under regulation 15(1) (aggregation of earnings paid in respect of different employed earner's employments by different persons) of the Social Security (Contributions) Regulations 2001, the employers of that person in respect of those employments must be treated as one for the purposes of Part 12ZE of the 1992 Act and these Regulations.

(2) Where two or more employers are treated as one under the provisions of paragraph (1), liability for statutory neonatal care pay must be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the person's normal weekly earnings from each employment bear to the amount of the aggregated normal weekly earnings over the relevant period as defined in regulation 23(4).

(3) Where two or more contracts of service exist concurrently between one employer and one employee, they must be treated as one for the purposes of Part 12ZE of the 1992 Act and these Regulations except where, by virtue of regulation 14 (aggregation of earnings paid in respect of separate employed earner's employments under the same employer) of the Social Security (Contributions) Regulations 2001, the earnings from those contracts of service are not aggregated for the purpose of earnings-related contributions.

Normal weekly earnings

23.—(1) For the purposes of section 171ZZ24(6) (which defines normal weekly earnings for the purposes of Part 12ZE of the 1992 Act) "earnings" and "relevant period" have the meanings given in this regulation.

(2) The expression "earnings" refers to gross earnings and includes any remuneration or profit derived from a person's employment except any amount which—

(a) is excluded from the computation of a person's earnings under regulation 25 of, and Schedule 3 (payments to be disregarded)(**b**) to, the Social Security (Contributions) Regulations 2001, or under regulation 27 (payments to directors to be disregarded)(**c**) of those Regulations; or

(b) would have been excluded under sub-paragraph (a) had the payments not been made when the person was under the age of 16, or

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(**a**) 1985 c. 17.

(**b**) Schedule 3 was amended by S.I. 2001/2412, 2001/3629, 2002/307, 2002/2924, 2003/1059, 2003/2085, 2003/2340, 2003/2958, 2004/173, 2004/770, 2004/2096, 2005/728, 2005/778, 2005/2422, 2005/3130, 2006/576, 2006/883, 2006/2003, 2006/2829, 2007/2091, 2007/2401, 2007/2905, 2008/607, 2008/1431, 2008/2624, 2009/600, 2010/188, 2011/225, 2011/797, 2011/1000, 2011/2700, 2012/817, 2013/622, 2013/1142, 2013/1907, 2014/608, 2014/3159, 2014/3228, 2015/478, 2015/543, 2016/352, 2016/647, 2016/1067, 2017/307, 2017/373, 2018/120, 2019/1009, 2020/320, 2020/923, 2023/186, 2023/773, 2023/823, 2023/1172, 2024/187, 2024/289.

(**c**) Regulation 27 was amended by S.I. 2004/770 and 2005/3130.

(c) is a chargeable emolument under section 10A (class 1B contributions) of the 1992 Act(**a**) except where in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory neonatal care pay, or

(d) would have been excluded under sub-paragraph (c) had the person not been under the age of 16.

(3) The expression "earnings" includes—

(a) any amount retrospectively treated as earnings by regulations made under section 4B(2) of the 1992 Act(**b**);

(b) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the 1996 Act;

(c) any sum payable by way of pay in pursuance of an order made under the 1996 Act for the continuation of a contract of employment;

(d) any sum payable by way of remuneration in pursuance of a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992(**c**);

(e) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 151(6) of the 1992 Act(**d**);

(f) any sum payable by way of—

(i) statutory maternity pay;

(ii) statutory paternity pay;

(iii) statutory shared parental pay;

(iv) statutory adoption pay;

(v) statutory parental bereavement pay;

(vi) statutory neonatal care pay.

(4) The "relevant period" is the period—

(a) ending on the last normal pay day to fall before the appropriate date, and

(b) beginning with the day following the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a).

(5) In a case where a person has no identifiable normal pay day, paragraph (4) has effect as if the words "day of payment" were substituted for the words "normal pay day" in each place where they occur.

(6) In a case where a person has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) that person's normal weekly earnings are calculated by dividing their earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(7) In a case in which paragraph (6) does not apply and the relevant period is not an exact number of weeks, the person's normal weekly earnings is calculated by dividing their earnings in the relevant period by the number of days in the relevant period and multiplying the result by 7.

(**a**) Section 10A was inserted by section 53 of the Social Security Act 1998 (c. 14) and amended by paragraph 177 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 1 of Schedule 1 to the National Insurance Contributions and Statutory Payments Act 2004 (c. 3) and paragraph 11 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). There are other amending instruments but none is relevant.

(**b**) Section 4B was inserted by section 1 of the National Insurance Contributions Act 2006 (c. 10) and amended by section 14 of the National Insurance Contributions Act 2014 (c. 7).

(**c**) 1992 c. 52. Relevant amendments to section 189 are S.I. 1999/1925 and 1999/2587.

(**d**) Section 151(6) was amended by paragraph 9 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(8) In any case where a person receives a back-dated pay increase which includes a sum in respect of a relevant period, normal weekly earnings is calculated as if such a sum was paid in that relevant period even though received after that period.

(9) In paragraphs (4) to (6)—

"the appropriate date" means—

(a) in any case where the person is entitled to statutory maternity pay under section 164 of the 1992 Act in respect of C, the same date as the appropriate date for the purposes of regulation 21(2) of the Statutory Maternity Pay (General) Regulations 1986(**a**);

(b) in any case where the person is entitled to statutory paternity pay under section 171ZA (birth) or section 171ZB (adoption) of the 1992 Act or statutory adoption pay under section 171ZL of the 1992 Act(**b**) in respect of C, the same date as the appropriate date for the purposes of that pay under regulation 40(2) of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**c**);

(c) in any other case, the first day of the week in which the neonatal care starts;

"day of payment" means a day on which a person is paid;

"normal pay day" means a day on which—

(a) the terms of a person's contract of service require the person to be paid, or

(b) the practice in that person's employment is for that person to be paid,

if any payment is due to them.

Modification of entitlement conditions: early birth

24.—(1) This regulation applies in any case where the relevant week is determined by reference to C's expected week of birth and C's birth occurs earlier than the relevant week.

(2) Section 171ZZ16(2)(b) has effect as if for the condition there set out there were substituted the condition that the person would, but for the date on which the birth occurred, have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week.

(3) Section 171ZZ16(2)(d) has effect as if for the condition there set out there were substituted the condition that the person's normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week in which C is born are not less than the lower earnings limit in force under section 5(1)(a) of the 1992 Act immediately before the commencement of the week in which C is born.

(**a**) S.I. 1986/1960; regulation 21 was amended by S.I. 1994/1367.

(**b**) Sections 171ZA to 171ZK were inserted by section 2 of the Employment Act 2002 (c. 22). Section 171ZA was amended by paragraph 12 of Schedule 7 to the Children and Families Act 2014 (c. 6) ("the 2014 Act") and paragraph 12 of Schedule 1 to the Work and Families Act 2006 (c. 18) ("the 2006 Act"). Section 171ZB was amended by paragraph 13 of Schedule 7 to the 2014 Act, paragraph 13 of Schedule 1 to the 2006 Act and S.I. 2016/413. Section 171ZL was inserted by section 4 of the Employment Act 2002 and amended by section 121(5) of the 2014 Act and S.I. 2006/413 and 2012, 2011/1740, and 2019/1514.

(**c**) S.I. 2002/2822. The definition of "appropriate date" in regulation 40(2) is modified as it applies to section 54 parental order parents and section 54A parental order parents by S.I. 2014/2934; and modified as it applies to adoptions from overseas by S.I. 2003/1194; there are other amendments to regulation 40 but none is relevant.

PART 4

PAYMENT OF STATUTORY NEONATAL CARE PAY

Weekly rate of payment

25.—(1) The weekly rate of payment of statutory neonatal care pay is the smaller of the following two amounts—

(a) £187.18;

(b) 90% of the normal weekly earnings of the person claiming statutory neonatal care pay determined in accordance with section 171ZZ24(6) of the Act and regulation 23.

(2) Where the amount of any payment of statutory neonatal care pay is calculated by reference to—

(a) the weekly rate specified in paragraph (1)(b), or

(b) the daily rate of one-seventh of the weekly rate specified in paragraph (1)(a) or (b),

and that amount includes a fraction of a penny, the payment must be rounded up to the nearest whole number of pence.

Statutory neonatal care pay and contractual remuneration

26. For the purposes of section 171ZZ21(1) and (2) of the 1992 Act (relationship with contractual remuneration), the payments which are to be treated as contractual remuneration are sums payable under a contract of service—

(a) by way of remuneration,

(b) for incapacity for work due to sickness or injury, or

(c) by reason of the birth, adoption, care or death of a child.

Avoidance of liability for statutory neonatal care pay

27.—(1) A former employer is liable to make payments of statutory neonatal care pay to a former employee in any case where the employee had been employed for a continuous period of at least 8 weeks and the employee's contract of service was brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory neonatal care pay.

(2) In a case falling within paragraph (1)—

(a) the employee must be treated as if the employee had been employed for a continuous period ending with the relevant week, and

(b) regulation 23 (4) (relevant period for the purpose of the calculation of normal weekly earnings) applies as if it read—

"(4) The relevant period is the period—

(a) ending on the last day of payment under the former contract of employment, and

(b) beginning with the day following the day of payment under that contract to fall at least 8 weeks earlier than the day of payment mentioned in sub-paragraph (a).".

Payment of statutory neonatal care pay

28. Payments of statutory neonatal care pay may be made in a like manner to payments of remuneration but must not include payment in kind or by way of provision of board or lodgings.

Payment following a decision by an officer of Revenue and Customs

29.—(1) In any case where—

(a) a decision has been made by an officer of Revenue and Customs under section 8(1) (decisions by officers) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(**a**) or by an appellate authority, as a result of which a person is entitled to an amount of statutory neonatal care pay, and

(b) the time for bringing an appeal against the decision has expired and either—

(i) no such appeal has been brought,

(ii) leave to appeal against the decision has been refused and there remains no further opportunity to apply for leave, or

(iii) such appeal has been brought and has been withdrawn or has otherwise been finally disposed of,

that amount of statutory neonatal care pay must be paid by the employer within the time specified in paragraph (2).

(2) Subject to paragraphs (3) and (4), payment must be made no later than the first pay day after the following days—

(a) where an appeal has been brought, the day on which the employer receives notification that it has been withdrawn or otherwise ceases to have effect,

(b) where leave to appeal has been refused, the day on which the employer receives notification of the refusal or the day on which the time to make a further application for leave expires, whichever is later, and

(c) in any other case, the day on which the time for bringing an appeal expires.

(3) Subject to paragraph (4), where it is impracticable, in view of the employer's methods of accounting for and paying remuneration, to pay the amount by the pay day referred to in paragraph (2), the payment must be made by the employer no later than the next following pay day.

(4) Where the employer would not have remunerated the employee for their work in the week in respect of which statutory neonatal care pay is payable as early as the pay day specified in paragraph (2), or, if it applies, paragraph (3), the payment must be made by the employer on the first day on which the employee would have been remunerated for work in that week.

(5) In this regulation—

"appellate authority" means the First-Tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court.

"pay day" means a day on which it has been agreed, or it is normal practice between an employer and their employee, that payments of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a calendar month.

Liability of the Commissioners to pay statutory neonatal care pay

30.—(1) Despite section 171ZZ18(1) of the 1992 Act (liability to make payments of statutory neonatal care pay is liability of the employer), liability to make payment of statutory neonatal care pay to a person is a liability of the Commissioners and not the employer in the circumstances specified in this regulation.

(**a**) 1999 c. 2. Section 8 was amended by section 9 of the Employment Act 2002 (c. 22); paragraph 45 of Schedule 7 to the Children and Families Act 2014 (c. 6), paragraph 30 of Schedule 1 to the Parental Bereavement Act (Leave and Pay) Act 2018 (c. 24) and paragraph 31 of Schedule 1 to the Neonatal Care (Leave and Pay) Act 2023 (c. 20). There are other amendments not relevant to these Regulations.

(2) In the case referred to in regulation 29(1), the Commissioners are liable to make payments of statutory neonatal care pay to a person for—

(a) any week in respect of which the employer was liable to pay statutory neonatal care pay to that person but did not do so, and

(b) for any subsequent week that person is entitled to payments of statutory neonatal care pay.

(3) Where the person entitled to statutory neonatal care pay has been detained in legal custody or sentenced to a term of imprisonment, the Commissioners are liable to make payments of statutory neonatal care pay—

(a) in respect of a period which is subsequent to a period mentioned in regulation 12(1)(c) (cases where there is no liability to pay statutory neonatal care pay), and

(b) during a period of detention in legal custody where there is liability to make payments by virtue of regulation 12(2).

(4) Where the employer becomes insolvent, the Commissioners are liable to make payments of statutory neonatal care pay to a person from the week in which the employer first becomes insolvent until the last week that person is entitled to payment of statutory neonatal care pay.

(5) For the purposes of paragraph (4) an employer must be taken to be insolvent if, and only if, in England and Wales—

(a) the employer has been adjudged bankrupt or has made a composition or arrangement with its creditors,

(b) the employer has died and the employer's estate falls to be administered in accordance with an order made under section 421 of the Insolvency Act 1986(**a**), or

(c) where an employer is a company or a limited liability partnership—

(i) a winding-up order is made or a resolution for a voluntary winding-up is passed (or, in the case of a limited liability partnership, a determination for voluntary winding-up has been made) with respect to it,

(ii) it enters administration,

(iii) a receiver or manager of its undertaking is duly appointed,

(iv) a possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company or limited liability partnership comprised in or subject to the charge, or

(v) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986 is approved under that Part.

(6) For the purposes of paragraph (4) an employer must be taken to be insolvent if and only if, in Scotland—

(a) an award of sequestration is made on the employer's estate,

(b) the employer executes a trust deed for its creditors,

(c) the employer enters into a composition contract,

(d) the employer has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889(**b**) is required by that section to divide the employer's insolvent estate among the employer's creditors, or

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(**a**) 1986 c. 45. Section 421 was amended by section 12(2) of the Insolvency Act 2000 (c. 39), paragraph 192 of Schedule 4 to the Constitutional Reform Act 2005 (c. 4), and S.I. 2002/1037, 2017/702 and 2019/146.

(**b**) 1889 c. 39 (52 & 53 Vict). Section 11A was inserted by paragraph 4 of Schedule 7 to the Bankruptcy (Scotland) Act 1985 (c. 66) and amended by paragraph 5 of Schedule 5 and Part 1 of Schedule 6 to the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) and paragraph 1 of Schedule 8 to the Bankruptcy (Scotland) Act 2016 (asp 21).

(e) where the employer is a company or limited liability partnership—

(i) a winding-up order is made or a resolution for a voluntary winding-up is passed (or in the case of a limited liability partnership, a determination for a voluntary winding-up is made) with respect to it,

(ii) it enters administration,

(iii) a receiver of its undertaking is duly appointed, or

(iv) a voluntary arrangement proposed for the purposes of Part 1 of the Insolvency Act 1986 is approved under that Part.

Payments by the Commissioners

31. Where the Commissioners become liable in accordance with regulation 30 (liability of the Commissioners to pay statutory neonatal care pay) then payment is to be made as soon as reasonably practicable after they become so liable, by means of an instrument of payment or by such other means as appears to the Commissioners to be appropriate in the circumstances of any particular case.

Persons unable to act

32.—(1) This regulation applies where—

(a) statutory neonatal care pay is payable to a person or it is alleged that statutory neonatal care pay is payable to a person,

(b) that person is unable for the time being to act,

(c) no deputy has been appointed by the Court of Protection with power to receive statutory neonatal care pay on their behalf or, in Scotland, their estate is not being administered by a guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000(**a**), and

(d) a written application has been made to the Commissioners by a person, who, if a natural person, is over the age of 18, to exercise any right or deal with any sums payable under Part 12ZE of the 1992 Act, on behalf of the person unable to act.

(2) Where this regulation applies the Commissioners may appoint the person referred to in paragraph (1)(d)—

(a) to exercise, on behalf of the person unable to act, any right to which the person unable to act may be entitled under Part 12ZE of the 1992 Act, and

(b) to deal, on behalf of the person unable to act, with any sums payable to the person unable to act under Part 12ZE of the 1992 Act.

(3) Where the Commissioners have made an appointment under paragraph (2)—

(a) they may at any time revoke it,

(b) the person appointed may resign their office after having given one month's notice in writing to the Commissioners of that person's intention to do so, and

(c) the appointment ends when the Commissioners are notified that a deputy or other person to whom paragraph (1)(c) refers has been appointed.

(4) Anything required by Part 12ZE of the 1992 Act to be done by or to the person who is unable to act may be done by or to the person appointed under this regulation to act on behalf of the person unable to act and the receipt of the person so appointed of any sum paid under that Part is a good discharge to the employer of the person unable to act for any such sum paid.

(**a**) 2000 asp 4.

Service of notices

33.—(1) Where a notice is to be given under these Regulations, it may be given by—

(a) electronic means,

(b) prepaid post in an envelope which is properly addressed, or

(c) personal delivery.

(2) Where a notice under these Regulations is given in accordance with paragraph (1), it is to be taken to have been given—

(a) if sent by electronic means, on the day of transmission;

(b) if sent by prepaid post, on the day in which it is posted;

(c) if delivered personally, on the day of delivery.

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SCHEDULE

Regulation 6

STATUTORY NEONATAL CARE PAY IN SPECIAL CIRCUMSTANCES

1. Where, after the employee has accrued entitlement to statutory neonatal care pay, C dies, paragraph 5 applies in relation to the employee's entitlement to statutory neonatal care pay 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 pay, the placement is disrupted or C dies, paragraph 5 applies in relation to the employee's entitlement to statutory neonatal care pay 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 pay, C dies or ceases to live with the overseas adopter, paragraph 5 applies in relation to the employee's entitlement to statutory neonatal care pay 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 pay, C dies or the parental order does not proceed, paragraph 5 applies in relation to the employee's entitlement to statutory neonatal care pay 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 the condition that the employee intends to care for C in regulation 9(1) and 11(5)(f) 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 satisfying the conditions of entitlement in regulation 5 in respect of any period of 7 days that C is in receipt of neonatal care without interruption 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(4) if that person fell within the definition on the day before the day the parental order does not proceed.

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

7. 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 12ZE of the Social Security Contributions and Benefits Act 1992 (c. 4) ("the 1992 Act"), which was inserted by the Neonatal Care (Leave and Pay) Act 2023 (c. 20) to provide a new entitlement to statutory neonatal care pay for employees with responsibility for children receiving neonatal care.

Part 1 is introductory and includes provision specifying when the new entitlement arises.

Part 2 (regulations 5 to 12) relate to the conditions for entitlement to statutory neonatal care pay. Regulation 5 sets out the parental relationship required to be able to become entitled.

Regulation 6 introduces the Schedule where provision is made to modify the conditions for special circumstances where the child dies, adoption is disrupted or a parental order is not proceeded with. Regulation 7 sets out how the number of weeks of statutory neonatal care pay are determined and sets a maximum of 12 weeks of pay. Regulation 8 makes provision for cases where more than one child is in receipt of neonatal care. Regulation 9 sets out whether a person can choose to receive statutory neonatal care pay in a single block of one or more weeks or in non-consecutive blocks. Regulation 10 provides a qualifying period, during which a person can choose to receive the statutory neonatal care pay they are entitled to, of 68 weeks from the child's birth.

Regulation 11 provides for when notice must be given of the week or weeks in respect of which statutory neonatal care pay is to be paid. This regulation also sets out the evidence that must be provided with a notice and includes provision for withdrawing a notice.

Regulation 12 sets out when there is no liability to make payments, including for example when the person is entitled to statutory sick pay or has died. Regulation 13 makes provision for when statutory neonatal care pay will remain payable despite a person working for an employer who is not liable to pay statutory neonatal care pay.

Part 3 (regulations 14 to 24) makes further provision in relation to the conditions of entitlement relating to employment and earnings. Regulation 14 provides that certain people are, or are not, to be regarded as "employees" for the purposes of entitlement to statutory neonatal care pay under Part 12ZE of the 1992 Act, regardless of whether or not they would otherwise meet the relevant definition of "employee" in that Act. Regulation 15 requires a person to remain in continuous employment with the employer that is liable to pay statutory neonatal care pay until the period of payment. Regulations 16 to 18 and 20 to 21 make provision for employment to be treated as continuous in particular circumstances, including for example where there is a stoppage of work due to a trade dispute or a person is reinstated following service with the armed forces. Regulation 19 makes special provision for periods of employment between 25 and 26 weeks' long.

Regulation 22 sets out when two or more employers should be treated as a single employer and when two or more contracts of service with the same employer should be treated as a single contract. Regulation 23 provides the meanings of the terms "earnings" and "relevant period" for the purposes of calculating a person's normal weekly earnings under Part 12ZE of the 1992 Act.

Regulation 24 applies to early births to modify the conditions of entitlement relating to employment in the period before a child's expected week of birth, if the child is born before that period.

Part 4 (regulations 25 to 33) makes provision in relation to payment of statutory neonatal care pay. Regulation 25 sets the weekly rate of payment and regulation 26 sets out which types of

contractual pay can be set off against statutory neonatal care pay. Regulation 27 deals with where an employer ends a contract of employment in order to avoid liability for statutory neonatal care pay to provide that they remain liable. Regulation 28 allows payments of statutory neonatal care pay to be made in the same way as remuneration but excludes payments in kind or the provision of board and lodging as a form of payment. Regulation 29 sets out when payment must be made by an employer following a decision by an officer of Revenue and Customs or a decision of the relevant tribunal or court. Regulation 30 sets out the circumstances when liability to make payments of statutory neonatal care pay is the liability of the Commissioners for Revenue and Customs, and not the employer. Regulation 31 makes provision for when those payments are to be made. Regulation 32 allows the Commissioners to appoint someone else to act and receive payments on behalf of a person who is entitled to statutory neonatal care pay but is for the time being incapacitated. Regulation 33 provides details of when notices are to be regarded as given.

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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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

ISBN 978-0-34-826804-1

£8.14

http://www.legislation.gov.uk/id/ukdsi/2025/9780348268041