EXPLANATORY MEMORANDUM TO

THE NEONATAL CARE LEAVE AND MISCELLANEOUS AMENDMENTS REGULATIONS 2025

2025 No. [XXXX]

AND

THE STATUTORY NEONATAL CARE PAY (GENERAL) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Business and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Justin Madders MP, Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Jayne McCann, Deputy Director for Participation and Individual Rights, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tolulope Odeleye at the Department for Business and Trade, Telephone: 07795 440845 or email: tolulope.odeleye@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These instruments make provision to implement a new statutory entitlement, as introduced by the Neonatal Care (Leave and Pay) Act 2023. Neonatal Care Leave and Pay will be available to employed parents if their child receives neonatal care starting within 28 days of birth, and goes on to spend seven or more continuous days in this care. The entitlement will apply to employed parents of children born on or after 6 April 2025 and provide these parents with up to twelve weeks of paid leave. Together, the package will ensure that parents who are employees will be supported to take time away from work to care for their child who is receiving or has received Neonatal Care.

4.2 Specifically:

- The Neonatal Care Leave and Miscellaneous Amendments Regulations (the "Leave Regulations") implement a new entitlement for employed parents to take up to twelve weeks leave from their job if their child receives neonatal care starting within 28 days of birth and goes on to spend seven or more continuous days in care. It also deals with a drafting correction to the Paternity, Adoption and Shared Parental Leave (Parental Order Cases) Regulations 2014 and the Maternity and Parental Leave Regulations 1999, and
- The Statutory Neonatal Care Pay (General) Regulations 2025 (the "Pay Regulations") implement a new entitlement for employed parents, of children who receive neonatal care, and who meet certain eligibility criteria, to receive a statutory payment (paid at either the statutory flat rate of £187.18 per week for 2025/2026, or 90% of average earnings calculated over a set reference period, whichever is lower whilst absent from work).

Where does the legislation extend to, and apply?

4.3 The extent of these instruments (that is, the jurisdiction(s) which the instruments form part of the law of) is England and Wales, and Scotland; as employment matters are not devolved in relation to Wales and Scotland. However, employment matters are devolved in Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.

4.4 The territorial application of these instruments (that is, where the instrument produces a practical effect) is Great Britain.

5. Policy Context

What is being done and why?

5.1 The objectives of the Neonatal Care Leave and Pay policy are to:

- give employed parents a statutory right to leave in circumstances where their child is admitted to neonatal care, ensuring they are no longer in the incredibly difficult position of having to choose between risking their job and spending time with their baby at a period which is already worrying and stressful for parents.
- give such parents a statutory right to pay for any leave taken, providing eligibility requirements are met.
- to send a signal to employees and employers about the importance and value of recognising this stressful period and providing adequate support for parents in such circumstances.

5.2 The Leave Regulations set a statutory minimum entitlement for all employees - regardless of how long they have worked for their employer - to up to twelve weeks off work in the event of their child receiving neonatal care, provided they have spent seven or more continuous days in care. A parent would be entitled to one week's leave for every week their child spends in neonatal care capped at a maximum of twelve weeks. The parent can take the leave when their child is still receiving neonatal care or after any other parental leave that the parent may be eligible for, to allow time to bond with the child after leaving neonatal care.

5.3 The Leave Regulations also deal with a drafting correction to The Paternity, Adoption and Shared Parental Leave (Parental Order Cases) 2014 (the 2014 Regulations). The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 established an extended redundancy protected period for Maternity

Leave, Adoption Leave and Shared Parental Leave. Two changes are also required to regulations 17A and 32A of the Regulations so that for Parental Order parents (those who have their children via a surrogacy arrangement), the period of enhanced redundancy protection starts from the child's birth (not the date of placement) as that is when Adoption Leave for Parental Order parents begin. The Leave Regulations also amend the Maternity and Parental Leave Regulations 1999 to remove a redundant cross reference.

5.4 The Pay Regulations implement a new statutory payment for parents taking time away from work following a child's admission into neonatal care (paid subject to eligibility criteria, as for all other statutory payments). The payment will provide a measure of earnings replacement which will support parents to take this time away from work to care for their baby. Whilst employers will administer the statutory payment on behalf of Government, they will be entitled to reclaim a proportion of the amount through setting payments off against deductions which they remit regularly to HMRC.

5.5 Using legislation to do this is the only way to guarantee that the desired policy effect is realised. If the provisions made in these instruments were not made, Statutory Neonatal Care Leave and Pay would not be available to parents whose child spends time in neonatal care. The legislation will ensure that parents are no longer in the incredibly difficult position of having to choose between risking their job and spending time with their child. The legislation also ensures consistency with other family-related statutory leave and pay rights with respect to the administration of the payment, and the entitlement of certain categories of parent workers to the leave and pay.

5.6 Around 40,000 babies spend over 1 week in neonatal care each year. We estimate that around 60,000 parents will be eligible and around 34,000 parents will take up paid Neonatal Care Leave every year.

What was the previous policy, how is this different?

5.7 There was no specific statutory entitlement to leave and/or pay for parents of children who require neonatal care. Parents in this situation may have been able to use a portion of their other existing rights to family-related leave and pay (eg maternity, paternity or shared parental leave / pay) to care for the baby in the hospital or at another agreed care setting. However this approach has a range of problematic impacts: some mothers reported they have to leave work because they were not ready to return at the end of their maternity leave; and because paternity leave is limited to two weeks, some fathers and partners have to rely on statutory unpaid parental leave or compassionate leave in order to take time off work when their child is in hospital or at another care setting.

6. Legislative and Legal Context

How has the law changed?

6.1 The powers being exercised here originated in a Private Member's Bill, which was supported by the previous Government. This Private Member's Bill received Royal Assent in 2023 to become the Neonatal Care (Leave and Pay) Act 2023 (the "2023 Act").

6.2 Part 1 of the Schedule to the 2023 Act inserted new Chapter 5 into the Employment Rights Act 1996, with provisions requiring the Secretary of State to make regulations to entitle an employee to take leave if they satisfy conditions specified in the

regulations as to their parental or other relationship with a child who is receiving or has received neonatal care.

6.3 Part 2 to the Schedule of the 2023 Act inserts a new Part 12ZE into the Social Security Contributions and Benefits Act 1992, giving the Secretary of State power to prescribe various matters, including eligibility conditions, relating to the new entitlement to Statutory Neonatal Care Pay, which was created by the 2023 Act.

6.4 The Leave Regulations and the Pay Regulations are the first use of these new regulation making powers.

6.5 The Government will make further regulations to provide for the administration of Statutory Neonatal Care Pay, the entitlement of persons abroad and mariners to this payment, and to make amendments to subordinate legislation that are consequential upon the introduction of the new entitlements. These forthcoming regulations will be laid before both Houses under the negative resolution procedure.

Why was this approach taken to change the law?

6.6 This approach was taken to implement the provisions of the 2023 Act to ensure that parents of children who require neonatal care have statutory rights to leave and, where eligible pay, to care for their children during a stressful period of their lives.

7. Consultation

Summary of consultation outcome and methodology

7.1 In July 2019, the previous Government published the Proposals to Support Families consultation[1] which closed on 11 October 2019. In total the public consultation received 1,364 responses – 91% of which were from individuals. The consultation also received representations from stakeholders representing parents and employers. Government consulted key stakeholder groups including parents, business/trade representatives, employers, legal representatives, trade or staff unions, charities and not for profit organisations in order to understand the impact that the new statutory entitlement to Neonatal Care Leave and Pay would have on them and held a series of workshops with stakeholder groups representing the interests of businesses and parents.

7.2 These groups expressed the view that, as far as possible, the new entitlement should maintain consistency with existing entitlements to family-related leave and pay. This would ensure the fair treatment of parents, whose children receive neonatal care, when compared with other parents in receipt of other entitlements, which are usually associated with the birth or adoption of a child. In addition, maintaining consistency would keep additional burdens on business to a minimum, as they are already familiar with the existing framework.

7.3 The consultation specifically asked about; eligibility and qualifying conditions, the length of entitlement and when the entitlement can be taken, notice and evidence requirements; and employment protections and parents' rights to return to the same job.

Eligibility and qualifying conditions

7.4 The Government proposed in the consultation that access to Neonatal Care Leave and Pay should be restricted to parents whose baby or babies have been in neonatal care

[1] https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families

for two weeks or more (a 'minimum stay'). However, 47% of all respondents disagreed with this: with many calling for the minimum stay to be removed entirely, or if there was to be a minimum requirement that a one-week stay should be considered. Therefore, it was decided that parents of babies who are admitted into neonatal care (aged 28 days old or less) will be eligible for Neonatal Care Leave and Pay if the admission lasts for a continuous period of seven days or more.

The length of entitlement and when the entitlement can be taken

7.5 For parents to be eligible for Neonatal Care Leave and Pay, their baby needs to be admitted into neonatal care within 28 days of birth. This condition relates to the NHS's definition of a neonate. The consultation highlighted that 67% of all respondents did not support capping the amount of Neonatal Care Leave available to parents but the most popular proposal selected was a cap of 12 weeks (29%). We have therefore concluded that the total amount of statutory Neonatal Care Leave and Pay available to parents should be capped at a maximum of 12 weeks.

Notice and evidence requirements

7.6 The Government will adopt a two-tiered approach for notice requirements for Neonatal Care Leave and Pay. For Statutory Neonatal Care Pay, employees will be required to give written notice to their employer for the period in which the employee is claiming. Evidence requirement for eligibility for Statutory Neonatal Care Pay has been set out in the regulations.

Employment protections and parents' right to return to the same job

7.7 During the consultation, 90% of individuals and 81% of employers and business representative organisations agreed that parents taking Neonatal Care Leave should have the same protections, and right to return to work as those employees taking other forms of parental leave. Parents who qualify for Neonatal Care Leave will be afforded the same employment rights and protections as parents taking other relevant family-related leave. This means that they will be protected from detriment or discrimination arising from them taking, or seeking to take, Neonatal Care Leave. In line with arrangements for other relevant family-related leave, employees who are eligible for Neonatal Care Leave will also have a right to return to the same job after a period of Neonatal Care Leave or a combined period of Neonatal and other forms of qualifying family-related statutory leave if they are absent from work for a total period of 26 weeks or less.

7.8 The full response to the consultation which was published in March 2020 can be found on GOV.UK[2]. A copy can also be obtained from the Department for Business and Trade, Employment Rights Directorate, Old Admiralty Building, London, SW1A 2DY.

Information Commissioner's Office consultation

7.9 In November 2024, the information Commissioner's Office (ICO) was consulted in accordance with the requirements of Article 36(4) of the General Data Protection Regulation. This is regarding some provisions relating to the processing of personal data within the package of Statutory Instruments, including the Leave and Pay Regulations, which will implement the entitlement to Neonatal Care Leave and Pay.

[2] https://assets.publishing.service.gov.uk/media/5e6a0db5d3bf7f26989028f1/neonatal-leave-and-pay-government_response.pdf

7.10 The ICO was content with the proposed arrangements for processing personal data which aligns closely with the current processes and legislative frameworks for other existing parental leave and pay. The obligation to consult with the ICO is a continuing one, therefore a further consultation would take place if there are plans to change the arrangements for processing of personal data in the future.

8. Applicable Guidance

8.1 Guidance will be available on GOV.UK, ahead of the instruments coming into force on 6th April 2025. This will comprise of an employer guide and guidance for employees, in the same format as is provided for other similar rights.

8.2 The Advisory, Conciliation and Arbitration Service will publish guidance on this new entitlement for employers when the legislation is in force.

8.3 The Government will work with relevant stakeholders, including charities to ensure that their guidance reflects the new entitlement, so that parents of children receiving neonatal care are made aware of it and understand how to access it.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment for Neonatal Care Leave and Pay is published alongside the Explanatory Memorandum on the legislation.gov.uk website. This is the same Impact Assessment that accompanied the 2023 Act[3], and the policy set by these regulations has no impact on the costs identified in that Impact Assessment.

Impact on businesses, charities and voluntary bodies

9.2 The equivalent annual net direct cost on business is approximately £18.6m net. There is no quantifiable impact on charities or voluntary bodies and the instrument imposes no new obligations on them, except in their capacity as employers.

9.3 The legislation does impact small or micro businesses; it applies to activities that are undertaken by small businesses.

9.4 No special measures apply to small businesses. However, as is the case for all statutory parental payments, small businesses (defined as those who pay less than £45,000 in gross National Insurance Contributions in the preceding tax year) will be able to claim back 103% of the payment made to the employee by setting those amounts off against deductions which they remit regularly to HMRC.

9.5 The forthcoming Administration Regulations referred to at 6.5 above confer powers on the Commissioners for HMRC, which creates a small additional administrative burden on them. Otherwise, the impact on the public sector is limited to the extent to which they may need to administer this entitlement to an employee – and these impacts are proportionate to organisations in the private sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is consistent with other, similar entitlements to family-related leave and pay. Data and information will be monitored

[3] https://bills.parliament.uk/publications/49446/documents/2770

post-implementation using administrative data from HMRC and discussions with key stakeholders. We will conduct a non-statutory Post-Implementation Review (PIR) after at least five years following introduction, once the new entitlement has been established sufficiently. This would likely be in 2030.

10.2 In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Justin Madders MP has made the following statement:

"Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that to make provision for a statutory review in these instruments would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate. The Department for Business and Trade will undertake a non-statutory review of the policy in 2030 using data from HMRC to monitor take-up, as well as qualitative interviews to assess the effectiveness of the legislation and guidance."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Neonatal Care Leave and Miscellaneous Amendments Regulations 2025 and the Statutory Neonatal Care Pay (General) Regulations 2025 are the first use of the new regulation making powers on Neonatal Care Leave and Pay set out in the Neonatal Care Leave and Pay Act 2023. These regulations, which are subject to the affirmative resolution procedure, implement the main provisions of the new entitlement to Neonatal Care Leave and Pay. They are part of a package of measures required to give effect to the entitlement. These other regulations, which are subject to the negative resolution procedure, address the administration of the new pay entitlement, the entitlement of mariners and persons abroad and consequential amendments to secondary legislation.

11.2 The Department has consulted with the SI Registrar whether the free issue should apply to this instrument in accordance with paragraph 4.7.6 of Statutory Instrument Practice in light of certain corrective provisions being made. Since the corrective provisions only represent a minor part of the overall instrument, the Department proposes that the free procedure will not apply to this instrument.

12. European Convention on Human Rights

12.1 Justin Madders MP, the Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets has made the following statement regarding Human Rights:

"In my view the provisions of the Neonatal Care Leave and Miscellaneous Amendments Regulations 2025 and the Statutory Neonatal Care Pay (General) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").