

Neonatal Care (Leave and Pay) legislation update.

FAQ document

Document history

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FAQs

Following the webinar held on 12th March 2025, we have put together an FAQ document which answers many of the questions you may have.

- 1. We know the baby can be up to 28 days old when they are admitted into neonatal care. Which means, potentially, the baby might be admitted into neonatal care 2 or 3 times within that timeframe;
Neonatal 1 – admitted for 9 days, released and home for 2 days.
Neonatal 2 – admitted for 9 days, released and home for 2.
Neonatal 3 – admitted for 2 months.**

Yes, stay in neonatal care must be for a minimum of 7 full continuous days.

Eligibility for SNP is based on the same criteria as SMP, SAP, and SPP. If an employee qualifies for any of these, they are entitled to SNP. The relevant week for Statutory Neonatal Care Pay matches that of SMP, SAP, or SPP if the parent qualifies for these benefits.

If SMP/SAP/SPP was not received, tests are completed based on the relevant period, which is the week before the baby is admitted into neonatal care. If the parent is not eligible for SMP/SAP/SPP, the relevant week will be the week immediately preceding the child's entry into neonatal care.

When there is a second admission to neonatal care, the criteria are based on the first admission's results. The 'relevant week' is calculated from the first time the child enters neonatal care and remains so for any subsequent admissions. Therefore, if parents are not entitled to other statutory parental pay, the relevant week will still be the one before the child's initial admission into neonatal care.

- 2. We have been asked about 6th April – is this due date on the MAT B1 or the actual date of birth for eligibility (similar to how they did it for SPP block changes where it was based on due date and could be taken earlier).**

The entitlement will apply to children born on or after 6 April - so it is the actual date of birth for eligibility and not due date.

3. Can you explain how adoption can be paused due to baby being into neonatal. It says neonatal leave could be taken, but how does this affect the placement date – will this date be changed by the adoption agency as previously it is fixed in time – and also gives the pay calcs and dates for SAP, it could change eligibility to SAL, especially if they have variable low pay. If the baby passed away between neonatal leave and SAL what eligibility would they still have to SNCL if the adoption didn't happen? Can we have more examples of how SAL and neonatal interact for different scenarios.

We are not saying that adoption should be paused while the child is in neonatal care – there is no legislative requirement for this, and the adoption process will continue as it would usually in these cases. An adoptive parent would only be eligible for neonatal care leave and pay entitlement if the child has been placed with the adoptive parent at the time of the child being in neonatal care. If the child sadly passes away once the adoptive parent has accrued an entitlement to neonatal care leave and pay, they can take that entitlement within 68 weeks of the child's date of birth. If the child has not been placed with the adoptive parent at the time of death, then there will be no entitlement to neonatal care leave and pay.

4. Standard adoption, earliest start is the birth date, but the qualifying week comes of the placement date, how do they view these 2 leaves interacting if baby is early before placement date?

Eligibility for neonatal care leave and pay entitlement applies from the date of the child's placement with the adoptive parent. If the child goes into neonatal care before placement, the adoptive parent will not be eligible at that point. The adoptive parent only becomes eligible after the child has spent at least 7 full days in neonatal care after being placed with the adoptive parent. If the child leaves neonatal care before the placement takes place, the adoptive parent will not be eligible for neonatal care leave and pay entitlement.

5. Part 12ZE 6(E) Other cases, what are the other cases this is on about regarding 'relevant week', what are the interactions, caveats etc that they are thinking of?

We believe this query relates to section 171ZZ16 subsection 6E which states that in "any other case, is the week immediately before the one in which the neonatal care starts". This subsection means that when the parent is not entitled to SMP/SPP/SAP, the relevant week for neonatal care pay will be the week immediately before the week the child enters into neonatal care.

6. Relevant week determination – can we clarify whether we can just use the week before the Neonatal care starts, or do we have to use the relevant week specified for SMP, SPP (adoption), SPP (birth), SAP that they are receiving which is described in the legislation?

Relevant week should be determined as specified in the legislation. The relevant week will align with that of SMP/SPP/SAP if the parent is entitled to any of these. Otherwise, it will be the week before the week neonatal care starts.

7. Are there any more details on the Tier 1 and Tier 2 rates? Whether they are fixed or AWE based like SMP etc.

Weekly rate of neonatal care pay for both Tier 1 and Tier 2 will be the smaller of the following two amounts: (i) £187.18 – Statutory pay rate from 6 April 2025 or (ii) 90% of the normal weekly earnings.

8. Do we need to allow a week of neonatal pay to be split around another Parental pay record, e.g. 3 days of Neonatal pay, 1 week of ShPP, 4 days of Neonatal pay. Or was that information in relation to Leave only?

Pay cannot be split part-week except for payroll accounting purpose only i.e. if a week's pay straddles 2 pay periods. Leave in Tier 1 can be stopped mid-week to accommodate another pre-booked parental leave but pay cannot be stopped mid-week, payment for the full week will be made before stopping, if required, to accommodate another pre-booked leave.

9. A child must be in Neonatal care for 7 days for an employee to be entitled to a week's leave, but Tier 1 can be taken whilst they are in Neonatal care. Can this be taken from the admission date?

No, the parent does not become eligible for neonatal care leave until the child has spent 7 full continuous days in neonatal care beginning with the first full day after the care started. This means the parent can take a week's leave after their child has spent 7 full continuous days in neonatal care.

10.If a child is discharged and then re-admitted to neonatal care, is this classed as continuous neonatal care? And if so, how should this be dealt with, for example do they just need to remove or update the Discharged date, and the employee is entitled to the number of weeks from the initial admission date to the discharged date?

The continuous care is broken when the child leaves neonatal care, and the counting of days therefore stops. When the child is re-admitted, another round of counting of days starts. The days spent in neonatal care during both periods of admission are separate and cannot be added together to create a 7-day period. Each period of admission and discharge must be recorded separately. If the child spends 7 full days during the first period of admission and spends 4 days during the second period of admission, the parent would only be eligible for one week leave (accrued during the first period of admission) as the child did not spend 7 full days or more in neonatal care during the second period of admission.

11.What happens if the worker becomes pregnant and is due to go on Maternity Leave, or adopts another child, are we right to think they forfeit the SNCP and go onto Maternity or Adoption leave?

Any accrued neonatal care leave and pay that is not taken within 68 weeks of the child's date of birth will be forfeited.

12.If a child goes into neonatal care for one week, then returns a couple of weeks later for a further 2 weeks. Would they be entitled to 3 weeks SNCP?

In this scenario, the child needs to enter into neonatal care before the child is 28 days during both periods of admission. If this is the case, yes, the parent would accrue 3 weeks of leave and pay in total.

13.When do we expect the Regulations to commence the provisions in the Act?

The regulations will come into force on 6 April 2025. Two commencement orders are also required, the first one came into effect in August 2023 (this gave HMRC the necessary powers to make changes to their IT system to incorporate neonatal care pay). The second commencement order came into force on 17 January 2025.

14. Are the declarations of Leave eligibility (relationship and caring) going to be self-certifications - like Shared Parental Leave?

Yes. When giving notice for leave, the parent would need to confirm that they have parental relationship with the child and will use the leave to care for the child. Also, for pay, as part of the notice, the parent will give declaration that they have parental relationship with the child and that they have cared for the child or intend to care for the child during the period that pay is claimed for. No documentary evidence would be required.

15. Is parental responsibility the commonly understood definition (Mum and Dad etc) or the legal definition (which may mean that stepparents are taken out of the equation)?

The term parental responsibility is not used in the regulations. The individuals who meet parental relationship criteria are defined in the legislation. Apart from having parental or other personal relationship, they will also need to meet other criteria to be eligible for the entitlement. A stepparent may be able to meet the eligibility criteria for entitlement depending on the specific circumstances.

16. What about children that are born to surrogate parents (where you may need a parental order which is a different process in Scotland than it is in England and Wales)?

Neonatal care leave and pay regulations will require intended parents to apply or intend to apply for parental order within 6 months of the child's birth. The intended parent can make a joint application or apply as a sole applicant in respect of the child.

17. What is the situation if there are early births / adoptions or is it all going to be down to the expected dates? If it is expected dates, payroll software will not have functionality in 2024/24 products, so what is the advice for employers and recording?

Entitlement will apply to children born on or after 6 April 2025 only, not for children expected to be born on that date but who are then born earlier. Children born earlier than that date will not be in scope of the entitlement.

18. Tier 1 Leave (and Pay) is akin to discontinuous blocks in the Shared Parental landscape and Tier 2 akin to continuous blocks? What are the rules for employers on having to accept the dates or is there flexibility - as with discontinuous Shared blocks?

Tier 1 leave can be taken in multiple blocks provided notice is given before the employee is next due at work or as soon as reasonably practicable thereafter. For Tier 2 leave, notice will be given 15 days in advance for one week's leave and 28 days in advance for 2 or more weeks'

leave. However, the employee and employer can mutually agree to waive the requirement to give notice for leave.

The employer cannot turn down the notice for leave provided it is given within the required timeframe.

19. Will ACAS be providing template forms and letters as they have done for Shared?

We are informed DBT (Department for Business and Trade) have engaged with ACAS and are working on guidance and how best ACAS can support employees and employers ahead of the implementation of the entitlement.

20. As this is GB legislation only, what are the exact eligibility rules? Does this mean that the employee (or employees) must be resident in GB, working for an employer in GB, working primarily in GB / primarily for an employer in GB? This is going to be confusing, and it will increasingly be a problem as the UK's statutory leave and payments diverge.

Working out where someone is employed would largely be a case of looking at the facts in each specific situation and considering case law on the topic. Whether an employee would be entitled to Neonatal Care Pay would depend on whether they were classed as working in Great Britain at the relevant time. Whether they would be classed as working in GB would depend on the facts in each case and there is a broad body of case law which would help decide whether someone was working in Great Britain. The employee would also need to have been working in Great Britain for the 26 weeks prior to the relevant week.

21. Do the parents fail the eligibility tests if, say, there is one in GB and one in NI? A parent can be based in another UK country and still have caring responsibilities whilst living in another UK country.

Neonatal Care Leave and Pay legislation does not apply to NI. Whether an employee would be entitled to Neonatal Care Pay would depend on whether they were classed as working in Great Britain at the relevant time. Working out where someone is employed would largely be a case of looking at the facts in each specific situation and considering case law on the topic. Having responsibility for the upbringing of the child is one of the criteria that must be met in order to be eligible for the entitlement. Each parent will be assessed on their eligibility individually, so one parent may be eligible while the other may not be.

22.If similar legislation is introduced in NI, this will extend to workers rather than just employees. This brings more people into scope, i.e. one parent who is a worker and the other an employee, vice versa or just both workers. Does this mean that, effectively, there are two different statutory entitlements - a GB one and an NI one?

The entitlement will apply to employees in GB. As employment law is devolved to NI, it would be for the Northern Ireland Assembly to decide whether similar or different provisions should apply in that country.

23.The differences planned between GB and NI legislation is meaning that there are more and more differences. Will HMRC/DBT recognise that this is the case and start to recognise that NI is part of the UK.

As above, employment law is devolved to NI, it would be for the Northern Ireland Assembly to decide whether similar or different provisions should apply in that country. DBT does not have legal rights/power to influence what legislative provisions NI decides to introduce.

24.Policy Clarifications: What mechanisms will be in place to resolve ambiguities or grey areas in the policy as they arise, particularly for businesses with complex employee structures?

We are informed that there is a plan to produce a technical guidance which will deal with complex scenarios, similar to the shared parental leave and pay technical guidance for employers. The technical guidance will be developed and iterated as the policy/entitlement embeds. There will also be an HMRC team that can be contacted with questions on ambiguous areas in the first instance.

25.Penalties and Compliance: What penalties might apply for non-compliance with Statutory Neonatal Pay obligations, and will there be a grace period for businesses to adapt?

The penalty process for non-compliance is administered by HMRC for all the existing statutory parental pay, and this will include and apply to Statutory Neonatal Care Pay when the entitlement is implemented. The entitlement will come into force on 6 April 2025 and all businesses will need to be ready to implement it from that day.

26. Employee Entitlement Notifications: What are the recommended steps or tools to notify employees of their entitlement to Statutory Neonatal Pay and Leave?

Various groups we are members of are working with communications team at DBT and working with HMRC on their communication plans to ensure that the messaging is publicised as widely as possible to stakeholders and interested parties.

The Leave and Pay Statutory Instruments were laid in Parliament on 20 January, and this was publicised in a press release issued on many media outlets, on gov.uk site and on all DBT social media handles. More roundtables and sessions with stakeholders are planned as the entitlement's implementation date nears.

27. As part of the documentation, please can you provide examples for Relevant Pay Period or anything else pertaining to SNCP. It would be useful, like we used to have in the E15.

We understand that this is Employer Help book E15 (2013) for Statutory Maternity Pay. One of the areas guidance is provided on is 'how to calculate relevant period'. DBT said they will include the calculation of relevant period in the gov.uk guidance and employers' technical guidance.

28. How will compliance be monitored?

As the provisions in this entitlement mirrors those in the other existing parental leave and pay entitlements, we expect that similar approach will be taken to ensure compliance. This will be for HMRC as they administer all statutory parental pay entitlements.

29. Relevant period

- 1. At the point neonatal care starts, there may not be a period of SPP leave in place or booked. In this case do we assess the relevant week as per section 6e of the legislation as opposed to 6b or 6c?**

The test is not whether a period of Paternity Leave and Statutory Paternity pay is in place or booked, the test is whether the employee meets the eligibility criteria for SPP. If the employee is entitled to SPP, then the relevant week for neonatal care pay will align with that of the SPP. If the employee is not entitled to SPP, then the relevant week will be the week before the week the child enters into neonatal care.

- a) Is it correct to assume, that if at a later date SPP is requested, then this is calculated based on the relevant period associated to regulations stipulated for that leave and we do not re-assess the period of SNCP?**

This is the same answer as the above question.

2. If there is a break, for example SNCP for 2 weeks, then SPP for a further 2 weeks, when the SNCP reconvenes, does it use the AWE from the first period of SNCP and not look at the SPP?

Please If the employee is entitled to SPP, the relevant week for SNCP will align with that of the SPP. The same relevant week will then be used to calculate any subsequent period of SNCP taken after SPP. There can only be one relevant week.

3. If a child is in Neonatal, from the Wednesday, we look at the week prior to this, I take it, that being from Sunday to Saturday?

Yes. For example, if a child enters into neonatal care on Wednesday, 9 April 2025, the relevant week will be the week ending Saturday, 5 April 2025 in the case where the parent is not entitled to any other statutory parental pay (SMP/SAP/SPP)

- a. To work out the relevant periods to use, do we use the Saturday of this week and look for the pay period before this?

1. If Yes, do we then count back 8 weeks from

- a. Pay Date?
- b. Or Saturday of the week the Pay Date falls into?

The end of the relevant period is the last normal payday on, or before:

- the appropriate date for SMP where entitled;
- the appropriate date for SPP/SAP where entitled; or
- in any other case, the first day of the week in which neonatal care starts.

The start of the relevant period is the day after the last normal payday falling at least 8 weeks before the end of the relevant period.

So, the employer either uses the same calculation as they have done for the employee's SMP, SPP or SAP to work out the relevant period, or they calculate it from the pay date which falls closest to the start of the week in which neonatal care starts.

The relevant period is worked out in the same way for neonatal care pay as for all other statutory pays.

30.If baby is in neonatal care for 6 days, out then back in neonatal care for 14 days starting after 28 days has passed since the baby was born, are they eligible for two weeks of neonatal leave and pay?

Unfortunately, not under this example as they must have started the entitled care within 28 days of birth.

31. So, if we have a mother and secondary parent in the same company, they are both entitled to take the Tier 1 or Tier 2 leave?

They will both be entitled to up to 12 weeks of leave, and if the mother curtailed her entitlement of Maternity Leave and baby was still in neonatal care within the 1st 12 weeks of birth, they may be entitled to Tier 1. It is generally expected that the mother / primary adopter will only ever be able to use Tier 2 leave.

32. What if baby was in neonatal care on day 10 for one week, then went back into neonatal care on day 38 for one week, do they still get 2 weeks NCP?

Unfortunately, under this example they would only have entitlement to 1 week of neonatal leave.

33. If this comes into play April what would happen if they went into neonatal the week before

This is only for babies born on or after 6th April.

34. I thought they curtail any maternity / parental leave when taking neonatal leave so how could they switch between neo-natal leave and shared parental? Or does it not apply to shared parental?

Shared parental leave has already been notified of each period ending so there is no curtailment requirement.

35. Can you explain the bit about if the baby is re-admitted? So, it re-counts from the second admission, and this can't be added to the first admission? What if they are only re-admitted for 2 days, does this supersede the first admission or do we take the longer period?

Each period of admittance within the 1st 28 days will count as its own period, they cannot be combined.

36. Should an employee provide evidence that their baby is in neonatal, or do you just take them at their word?

Yes, evidence must be given, considering GDPR considerations. Awaiting further information from the government what this should be.

37.If I had premature birth of 14 weeks, spent 7 weeks in Neonatal unit, then moved to SCBU (special care baby unit) for the further 7 weeks... am i entitled to full Neonatal care up to 12 weeks' pay?

If they fit the definition of care, then yes (I think this would be a valid example).

38.Can I ask how this will affect freelancers i.e. those on different contracts such as PAYE and Self-Employed? Is everyone entitled to this or only those with statutory benefits attached to their contracts?

They must meet the definition of being employed to be entitled.

39.If first admittance is less than 7 days, does that mean an individual is no longer eligible or does the clock start again if readmitted?

The clock starts again if they are readmitted in the first 28 days. The 1st period in this case would not give any entitlement.

40.Is the amount of leave you are entitled to linked to the amount of time the baby has spent in care? I.e. two weeks in care equals two weeks neonatal care leave.

Yes, it is strict on 7 days care = 1 week of leave, 14 = 2 weeks leave etc.

41.Do they have to be off for the 52 weeks and only then be able to claim the pay for neonatal pay?

Pay cannot be paid to maternity and primary adopters until they curtail their leave, but 2nd parents can have pay from the week after baby has been admitted.

42.Does the fixed employer pension contributions rule that applies to SMP also apply to SNCP?

As far as we are aware it will. The government department said that they expect it to match the rules for other parental pay.

43.If you have twins, one is admitted on day one, and then the other is admitted with its sibling on day 10, 1st baby is then discharged on day 14 and 2nd twin is discharged on day 28 how many weeks would they have entitlement to?

This would give the parents 4 weeks of entitlement. Had both babies been discharged over the same dates this would have ended the entitlement and then restated the clock if one was readmitted.

For further information
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