

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## NEONATAL CARE (LEAVE AND PAY) BILL

*Wednesday 7 September 2022*

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CLAUSES 1 TO 3 agreed to, one with amendments.  
SCHEDULE agreed to, with an amendment.  
Bill, as amended, to be reported.

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**not later than**

**Sunday 11 September 2022**

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**The Committee consisted of the following Members:**

*Chair:* HANNAH BARDELL

- |   |  |
|---|--|
| † Blomfield, Paul ( <i>Sheffield Central</i> ) (Lab)  | † McDonald, Stuart C. ( <i>Cumbernauld, Kilsyth and Kirkintilloch East</i> ) (SNP) |
| Byrne, Ian ( <i>Liverpool, West Derby</i> ) (Lab)   | † McDonnell, John ( <i>Hayes and Harlington</i> ) (Lab)                            |
| † Davison, Dehenna ( <i>Bishop Auckland</i> ) (Con)   | † Robinson, Mary ( <i>Cheadle</i> ) (Con)  |
| Eastwood, Mark ( <i>Dewsbury</i> ) (Con)  | † Russell, Dean ( <i>Watford</i> ) (Con)   |
| † Hall, Luke ( <i>Thornbury and Yate</i> ) (Con)  | † Smith, Cat ( <i>Lancaster and Fleetwood</i> ) (Lab)                              |
| Harris, Carolyn ( <i>Swansea East</i> ) (Lab)   | Trott, Laura ( <i>Sevenoaks</i> ) (Con)  |
| † Hollinrake, Kevin ( <i>Thirsk and Malton</i> ) (Con)  | † Young, Jacob ( <i>Redcar</i> ) (Con)   |
| † Hunt, Jane ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) | Anne-Marie Griffiths, <i>Committee Clerk</i>                                       |
| † Linden, David ( <i>Glasgow East</i> ) (SNP)   |  |
| Mackrory, Cheryl ( <i>Truro and Falmouth</i> ) (Con)  | † <b>attended the Committee</b>  |

# Public Bill Committee

Wednesday 7 September 2022

[HANNAH BARDELL *in the Chair*]

## Neonatal Care (Leave and Pay) Bill

9.25 am

**The Chair:** Before we begin, I have a few preliminary reminders for the Committee. I am conscious of how warm and muggy it is, so if Members and staff would like to remove their jackets, they are very welcome to do so. Please switch all electronic devices off or to silent. That includes those who are watching in the Gallery. No food and drink, except for the water provided, is permitted during sittings of the Committee. *Hansard* colleagues would be grateful if Members emailed their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk). My selection and grouping of amendments for today's sitting is available online and in the room. I have selected four amendments in the name of the Member in charge of the Bill, the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. The amendments will be considered alongside the existing content of the Bill in a single debate.

### Clause 1

#### NEONATAL CARE LEAVE AND PAY

*Question proposed,* That the clause stand part of the Bill.

**The Chair:** With this it will be convenient to discuss the following:

Amendment 1, in clause 2, page 1, line 9, leave out subsection (2).

*This amendment would exclude provision amending or repealing an Act of Parliament from the scope of the power in clause 2 to make consequential provision.*

Amendment 2, in clause 2, page 1, line 13, leave out subsection (4).

*This amendment is in consequence of Amendment 1.*

Amendment 3, in clause 2, page 1, line 17, leave out "Any other" and insert "A".

*This amendment is in consequence of Amendment 1.*

Clauses 2 and 3 stand part.

Amendment 4, in the schedule, page 6, line 40, leave out subsection (6) and insert—

"(6) In this section the 'relevant week'—

- (a) in any case where the person is entitled to statutory maternity pay under section 164 in respect of the child, is the week immediately preceding the 14th week before the expected week of confinement (within the meaning of Part 12);
- (b) in any case where the person is entitled to statutory paternity pay under section 171ZA (birth) in respect of the child, is the same week as the relevant week for the purposes of section 171ZA(2) in that case;
- (c) in any case where the person is entitled to statutory paternity pay under section 171ZB (adoption) in respect of the child, is the same week as the relevant week for the purposes of section 171ZB(2) in that case;

(d) in any case where the person is entitled to statutory adoption pay under section 171ZL in respect of the child, is the same week as the relevant week for the purposes of section 171ZL(2) in that case;

(e) in any other case, is the week immediately before the one in which the neonatal care starts."

*This amendment provides for the "relevant week" in section 171ZZ16 (for the purpose of determining whether particular conditions relating to eligibility for statutory neonatal care pay are satisfied) to, in cases where an employee is entitled to another type of statutory family pay, align with the week that is relevant to that entitlement.*

That the schedule be the schedule to the Bill.

**Stuart C. McDonald** (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): Thank you very much, Ms Bardell. It is great to see you in the Chair, and this is the first time that I have had the pleasure of serving under your chairmanship. May I also say that it is a pleasure to see the Minister in her place? I cannot always say that about Ministers in this particular Government, but I genuinely mean that. I am very grateful to her and her predecessor and to their officials for all their co-operation and support as the Bill has progressed.

I also thank all hon. Members for giving their time this morning to take forward debate on the Neonatal Care (Leave and Pay) Bill. I appreciate that this is a busy morning, with lots happening. I think that we have already lost one Committee member to promotion, so I will not take it too personally if one or two members are keeping a close eye on their phones just in case a call comes. I again express particular thanks to my hon. Friend the Member for Glasgow East and the hon. Member for Thornbury and Yate, not just because they have been committed campaigners for neonatal care leave and pay for a considerable time, but also for their significant assistance in getting the Committee spaces filled up very quickly indeed in what was a stressful 12-hour period at the end of last term.

As hon. Members know, the Bill will put on the statute book an entitlement to paid leave for employed parents of babies who require neonatal care. As Members from both sides of the House agreed on Second Reading, that has the potential to make a big difference to the experience of parents at an incredibly stressful time and to deliver positive outcomes for their children. The leave and pay will apply to eligible parents of babies who are admitted to hospital within their first 28 days of life and who have a continuous stay in hospital or other agreed care setting of seven full days or more. The intention is that such parents will be able to take up to 12 weeks of paid leave on top of their other parental entitlements, such as maternity or paternity leave and pay. There will be one week of neonatal care leave for every week that the child spends in neonatal care. That leave will be protected, and a person should not suffer any form of detriment due to taking that leave.

Up to 12 weeks of statutory neonatal care pay will be available to employees who meet a continuity of service and a minimum earnings test. Neonatal care leave will be a day one right, available to an employee from their first day in a new job. Statutory neonatal care pay, like other family-related pay rights, would be available, as I said, to those employees who meet a continuity of service and a minimum earnings test.

The Bill sets out in considerable detail the legal framework for the entitlement. Large parts of that are very similar to other leave and pay entitlements that are

already in operation, to avoid adding complexity. The Bill requires regulations to provide that eligible parents can take neonatal care leave and pay within at least a 68-week window following a child's birth. That is designed to ensure that mothers and fathers have sufficient time to take their neonatal care leave on top of or after other leave rights to which they may be entitled.

I now turn to the amendments. As an Opposition MP, I have spent a lot of time bemoaning the use of Henry VIII clauses and arguing that they should be taken out of Bills, so it is quite nice today to be able to practise what I have preached, I hope. Amendments 1, 2 and 3 modify clause 2 of the Bill to remove the power to amend primary legislation via secondary legislation—a so-called Henry VIII power. The amendments remove subsections (2) and (4) from that clause and subsequently modify the text in subsection (5). Taken together, the amendments have the effect of changing the Henry VIII power to a power to amend secondary legislation only, which is of course common in primary legislation.

The Henry VIII power was originally included to ensure that the Bill, if it was successful in gaining Royal Assent, worked effectively alongside other legislation going through Parliament at the same time, in particular the Carer's Leave Bill, which is being taken through by the hon. Member for North East Fife (Wendy Chamberlain). On further assessment and examination, it is not thought that the power is required any more. On that basis, I invite the Committee to accept the amendments.

9.30 am

Amendment 4 is more significant, updating part 2 of the schedule by replacing the text in proposed new section 171ZZ16(6) of the Social Security Contributions and Benefits Act 1992—time for a consolidation Bill, I think—with new drafting that adjusts the eligibility for statutory neonatal care pay by revising the definition of “relevant week”. I am particularly grateful to the charity Bliss and the Working Families campaign for highlighting the issue, and to the Minister and officials for responding positively. The Bill as drafted on introduction defined the relevant week for determining entitlement to neonatal care pay as the week immediately before the week in which neonatal care starts. That was similar to the drafting of the equivalent provision for parental bereavement pay. However, if a parent is already receiving statutory pay in the relevant week before their child enters neonatal care, their income could be lower than usual, which would affect their ability to qualify for the neonatal care pay.

Commonly, a mother going through a difficult pregnancy might be on maternity pay earlier, or on sick pay. That could mean that her earnings fall below the threshold for neonatal care pay. The amendment changes the definition of “relevant week” so that it aligns with the same relevant week as for other parental leave payments to which parents are entitled—for example, statutory maternity pay, statutory paternity pay, or statutory adoption pay. If a person would not qualify for any other statutory family pay, the relevant week will still be defined as the week immediately before the week in which neonatal care starts. Amending the Bill to align the relevant week with the same relevant week as other parental leave payments will resolve the issue and ensure that more parents who are already low earners do not

miss out on the entitlement to statutory neonatal care. On that basis, I invite the Committee to accept the amendment.

I will now summarise the clauses and schedules, and why they should stand part of the Bill. Clause 1 is uncontroversial; it simply sets out the route to provide for the substance of the Bill, which is in the schedule. I therefore propose that clause 1 stand part of the Bill. On clause 2, in order for the legislation to achieve the policy aims, it will be necessary to make some regulations and to amend existing subordinate legislation. Clause 2 allows that to happen. I have already covered the amendment that will take out the Henry VIII power, so I propose that the clause, as amended, stand part of the Bill. Clause 3 covers commencement and extent. Again, I propose that it stand part of the Bill.

The substance of the Bill is in the schedule, so this is the most important part of the Bill. Part 1 of the schedule introduces neonatal care leave, part 2 introduces neonatal care pay, and part 3 sets out the consequential amendments. Part 1 of the schedule creates neonatal care leave by inserting new sections into the Employment Rights Act 1996. This part of the schedule covers who is entitled to neonatal care leave. Through regulations, the Secretary of State will set out who will qualify for the leave entitlement. The schedule goes on to address the length of entitlement, which shall be a minimum of one week. A maximum period is not set out in the Bill but will instead be included in regulations. The Government's response to the consultation suggests that the leave and pay would be for a maximum of 12 weeks. Eligible parents will have a minimum of 68 weeks from birth to take neonatal leave, meaning that a parent who is entitled to maternity leave, parental bereavement leave and neonatal care leave will have sufficient time to take all the leave to which they are entitled.

Part 1 goes on to set out protections offered to employees while they are on leave. In particular, it provides that regulations must create an entitlement for employees to return from neonatal care leave to a type of work prescribed by those regulations. This part of the schedule also sets out that an employee is entitled to neonatal care leave only if neonatal care continues without interruption for a period of at least seven days, beginning the day after the child is admitted to neonatal care. This part of the schedule defines neonatal care as “care...of a medical or palliative kind specified in the regulations, and...that starts before the end of a period of 28 days beginning with the day after the date of the child's birth.”

The schedule also allows regulations to be made to address notice, evidence and procedural requirements. A framework would be created through regulation that will be clear and simple for employers and employees to follow. I therefore propose that part 1 of the schedule, addressing neonatal care leave, stand part of the Bill.

Part 2 of the schedule covers neonatal care pay. Having already set out the amendment to the relevant week for the purposes of neonatal care pay, I will briefly talk through the second part of the schedule. Part 2 of the schedule creates neonatal care pay through new sections of the Social Security Contributions and Benefits Act 1992. It then sets out the conditions that need to be met to be eligible for neonatal care pay and allows regulations to provide for what notice an employee must provide to the employer to receive their pay. Also

set out here is the liability of the employer to pay neonatal care pay to an eligible employee and a requirement for regulations to address situations where an employer terminates an employee's contract in an attempt to avoid liability for neonatal care pay.

Part 2 of the schedule provides for regulations to set out the rate of pay and details that the pay will be paid in weekly blocks. Mirroring neonatal care leave, regulations must provide a minimum of 68 weeks as a window for an employee to take their pay. Provisions on contracts are also covered. An employer will not be able to contract out of their liability to pay neonatal care pay. An employer will not be able to require a person to contribute towards any costs incurred by their employer in order to cover their neonatal care pay. This part of the schedule addresses the types of employment that will be covered. Those in Crown employment will be covered, while regulations can make provision for those working offshore.

Part 3 of the schedule contains further amendments to legislation impacted by neonatal care leave and pay. It sets out the numerous consequential amendments that will be required to ensure that the measure is effective and does not adversely impact on existing legislation. Sixteen Acts will be amended as a consequence of the Bill. I will not go through each and every one of them in turn—

**David Linden** (Glasgow East) (SNP): What a shame.

**Stuart C. McDonald**: I will simply commend part 3 to the Committee. I thank Members for their indulgence.

**Luke Hall** (Thornbury and Yate) (Con): I am pleased that we are back here so soon after Second Reading. It is just a couple of days after recess, which shows how important it is to get a good position on the private Members' Bill ballot. Again, I thank the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East for supporting the Bill and bringing it forward in the way he has. Today he has given a very comprehensive overview of the clauses and the amendments proposed.

I want to make a couple of very quick points. First, amendment 4 is very positive and makes complete sense. I thank the Minister for bringing it forward and supporting it. It will change the details around the qualifying criteria for neonatal care pay. I know there was concern raised by a couple of groups over the summer that certain parents, including women who were on statutory sick pay in particular, would be disadvantaged by the implementation of the Bill as it was drafted. The amendment makes a sensible change and brings the qualifying rules in line with maternity, paternity and adoption pay. It will hopefully receive unqualified support.

I also want to thank the Minister for the work she did over the summer looking into the point I raised on Second Reading about the seven-day trigger. I know it is a small point, but I was grateful that she took it away, looked at it and made sure the drafting was right. I am pleased to hear that it is, and I understand the reasons why it would not have been productive to have changed that in Committee today.

Lastly, I am slightly concerned about some of the noises that are coming out of the Department for Business, Energy and Industrial Strategy about the

implementation of the Bill. I think that 18 months after Royal Assent is too long and would essentially mean we were looking at implementation in 2025. Really, when all we are talking about is the upgrading of HM Revenue and Customs systems, which we have been talking about for a year or so now, it does not seem like there is any real reason why this has to go on. I know the Minister was very sympathetic when a number of us raised this point on Second Reading, so I am sure she has been pressing the Department over the summer.

There are clear advantages to delivering the money that was set aside from 2023 as quickly as we can. It makes sense to deliver it before a general election for all sorts of reasons, but mainly we want to deliver it quickly to make sure parents are not left in an impossible situation like that which so many have found and continue to find themselves in. I know we all want to see that come to an end as quickly as possible. Will the Minister update us today or in writing on her views about when implementation is likely? I am delighted the Bill is progressing so quickly and has had such unqualified support so far. I thank all members of the Committee for their attendance and for supporting the Bill.

**David Linden**: As ever, it is a great pleasure to serve under your chairmanship, Ms Bardell. Your position as Chair makes you unable to comment on the Bill, although I am sure that you would be keen to put your support for it on the record if you could—so I will do that for you. I pay particular tribute to your work with your constituent Coady Dorman and her son Matthew, who was born prematurely. Coady will be incredibly appreciative of the fact that you are chairing the proceedings on the Bill as we expedite it through the House.

Like the hon. Member for Thornbury and Yate, I thank everybody for the cross-party way in which we are piloting the Bill through the House. As I walked into work this morning, I reflected that I had perhaps been a little unfair to the Minister yesterday during a debate on the devolution of employment rights. Actually, this place probably works at its best when folk work on a cross-party basis; a good example would be the work done by the hon. Member for Bishop Auckland on her One Punch assaults campaign. Part of the reason why I was so keen for the Committee to progress quickly was that I suspect some Government Members will not be in their positions by the end of the week as they move, perhaps, into junior ministerial office. It is important that we work on a cross-party basis when we agree on issues. All that is a veiled way of saying sorry to the Minister for giving her such a hard time yesterday.

Like the hon. Member for Thornbury and Yate, I want to put on the record my support for amendments 1 to 4, the last of which is quite substantial. I share some of his concerns about implementation. One thing that reassured me during my past conversations with the hon. Member for Sutton and Cheam (Paul Scully), the former Minister, was learning that BEIS officials had done quite a lot of work on this. Given that we had been led to believe—completely fairly, perhaps—that Government officials had done the groundwork, it strikes me that the 18-month delay for implementation is a little out of kilter. If something needs to be ironed out between BEIS and HMRC, I am sure the Minister will see to that.

Those are the main points that I wanted to put on the record. I do not see a need for the Committee to spend huge amounts of time on the Bill, which is not controversial and already has a budget line of £15 million from a previous Budget. On that basis, I look forward to its passing through this Committee, having its remaining stages on the Floor of the House and then going over to the other place.

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Jane Hunt):** It is a pleasure to serve under your chairmanship, Ms Bardell. Introducing neonatal care and leave through the Bill will mean that parents will not have to worry about work when they face the stress and anxiety of caring for a sick baby. It will at least relieve them of one concern at such a very difficult time.

On Second Reading, we heard from Members on both sides, some of whom are serving on the Committee today, about their personal experiences of having children in neonatal care. Again, I thank the hon. Member for Glasgow East and my hon. Friend the Member for Thornbury and Yate, among others, for sharing their personal experiences; that was very much appreciated and I am sure it made a difference on Second Reading. Both Members talked movingly about their personal experiences and explained how incredibly worried they felt when their children were in neonatal care. The Government are keen to offer families in such difficult circumstances our full support, and I am pleased to be here today to reiterate that the Government fully support the Bill.

I would like to touch on the two amendments proposed by the Bill's promoter. The first would amend clause 2 to remove a power to amend primary legislation by secondary legislation, a so-called Henry VIII power, and replace it with a power to amend secondary legislation only. As the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East—I have now managed to say his constituency name correctly—points out, the need for that Henry VIII power has passed. Issues with how the entitlement might interact with other legislation that might be forthcoming have been resolved. That being the case, I am in favour of the clause being amended to limit the effect of the power and agree that the amended clause should stand part of the Bill.

The second amendment proposed by the sponsor is to make changes to the relevant week used to calculate pay. Again, I support that change. I agree with the sponsor's detailed explanation on the need for the amendment, which will ensure that parents who are already low earners do not miss out on the entitlement to statutory neonatal care pay. I therefore support the amended schedule, which should stand part of the Bill. I also agree that clauses 1 to 3 and schedule parts 1 to 3 should stand part of the Bill.

9.45 am

I will cover off a couple of the comments made during earlier speeches. My hon. Friend the Member for Thornbury and Yate, the hon. Member for Glasgow East and those at Bliss, who have been extremely helpful and supportive in lobbying on this matter, raised concerns about the length of time that it will take to implement neonatal care leave and pay. I share their desire to implement the measures in the Bill as soon as possible. I

am pleased that the Bill is at the front of the pack, and I hope and expect that it will progress quickly towards Royal Assent.

To implement the entitlement, it is necessary to have extensive secondary legislation and guidance in place that will take a significant time to prepare. It will also be necessary to make changes to HMRC systems so that employers and payroll providers have sufficient notice to update their pay systems. It is estimated that that work will take about 18 months following Royal Assent, but I have asked my officials and they are keen to help and to work with HMRC to investigate whether it is possible to speed up the work in a timely way. Please understand that that is the current position, but we are very keen to help wherever we possibly can.

The Government continue to support the measures, which will provide invaluable support and protection for parents during some of the most stressful days of their lives, when their children are in neonatal care. Our support for the Bill is in line with our ongoing commitment to support workers and build a high-skill, high-productivity, high-wage economy, so I look forward to continued work with the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East to support the passage of the Bill. I conclude by thanking you, Ms Bardell, for your excellent chairing of the Committee. Thank you.

**Stuart C. McDonald:** I thank everyone who has contributed to the debate, and I thank the Minister again for her support for the Bill and for the amendments.

The three points highlighted by the hon. Member for Thornbury and Yate are exactly where our focus has been in discussions over the summer: amendment 4 in relation to the relevant week, the seven days—I am absolutely on the same page as him on that—and implementation. In fact, as I detect an absolute determination to get things done quickly, I think our focus should probably now be on HMRC rather than BEIS, so perhaps we can organise a cross-party delegation to HMRC at some point to make sure we are focusing on the right people.

In response to my hon. Friend the Member for Glasgow East, the first thing that I want to do is go and read the *Hansard* of yesterday's debate on the devolution of employment law. He is right: there are times when we have fundamental disagreements, and we should have passionate debates and arguments, but there are good times when we are all on the same page, and it is nice to be able to work in that way as well.

I thank all Committee members for attending and for their contributions; I thank you, Ms Bardell, for your expert chairing; and I thank all supporters of the Bill, including those at Bliss, some of whom are here today—[HON. MEMBERS: "Hear, hear!"]

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Amendments made:* 1, in clause 2, page 1, line 9, leave out subsection (2).

*This amendment would exclude provision amending or repealing an Act of Parliament from the scope of the power in clause 2 to make consequential provision.*

Amendment 2, in clause 2, page 1, line 13, leave out subsection (4).

*This amendment is in consequence of Amendment 1.*

Amendment 3, in clause 2, page 1, line 17, leave out “Any other” and insert “A”.—(*Stuart C. McDonald.*)

*This amendment is in consequence of Amendment 1.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clause 3 ordered to stand part of the Bill.*

*Amendment made:* 4, in the schedule, page 6, line 40, leave out subsection (6) and insert—

“(6) In this section the ‘relevant week’—

- (a) in any case where the person is entitled to statutory maternity pay under section 164 in respect of the child, is the week immediately preceding the 14th week before the expected week of confinement (within the meaning of Part 12);
- (b) in any case where the person is entitled to statutory paternity pay under section 171ZA (birth) in respect of the child, is the same week as the relevant week for the purposes of section 171ZA(2) in that case;
- (c) in any case where the person is entitled to statutory paternity pay under section 171ZB (adoption) in respect of the child, is the same week as the relevant week for the purposes of section 171ZB(2) in that case;

(d) in any case where the person is entitled to statutory adoption pay under section 171ZL in respect of the child, is the same week as the relevant week for the purposes of section 171ZL(2) in that case;

(e) in any other case, is the week immediately before the one in which the neonatal care starts.”—(*Stuart C. McDonald.*)

*This amendment provides for the “relevant week” in section 171ZZ16 (for the purpose of determining whether particular conditions relating to eligibility for statutory neonatal care pay are satisfied) to, in cases where an employee is entitled to another type of statutory family pay, align with the week that is relevant to that entitlement.*

*Schedule, as amended, agreed to.*

*Bill, as amended, to be reported.*

**The Chair:** Before I end the sitting, I thank all Committee members, the Government and all who have been involved in making sure that this historic Bill makes it through the House so quickly.

9.50 am

*Committee rose.*