

Research Briefing

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Neonatal Care (Leave and Pay) Bill 2022-23



Summary

- 1 Introduction
- 2 Background
- 3 The Bill
- 4 Commentary

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Contents

Background	4
1 Introduction	6
2 Background	7
2.1 Bliss campaign	7
2.2 The Smallest Things campaign	8
2.3 Parental Leave (Premature and Sick Babies) Bill 2017-19	8
2.4 2019 Government consultation	8
2.5 Employment Bill	9
2.6 Adjournment debate, 9 February 2022	10
2.7 Private Members' Bill ballot 2022	11
3 The Bill	12
3.1 Clause 1: Neonatal care leave and pay	12
3.2 Clause 2: Power to make consequential provision	12
3.3 Clause 3: Extent, commencement and short title	13
3.4 Schedule Part 1: Neonatal Care Leave	13
3.5 Schedule Part 2: Neonatal Care Pay	14
3.6 Schedule Part 3: Further Amendments to do with Neonatal Care Leave and Pay	15
4 Commentary	16
4.1 Political commentary	16
4.2 Other commentary	17

Summary

The [Neonatal Care \(Leave and Pay\) Bill 2022-23](#) is a Private Member's Bill sponsored by SNP MP Stuart C McDonald who came first in the [Private Members' Bill ballot](#) for the 2022-23 session. The Bill had its first reading on 15 June 2022 and is listed for second reading on 15 July 2022.

The [explanatory notes](#) for the Bill were drafted by the Department for Business, Energy and Industrial Strategy.

Background

There have been calls since at least 2014 to extend parental leave and pay for parents of premature babies in receipt of neonatal care. Two charities dedicated to supporting parents with premature babies, Bliss and The Smallest Things, submitted a [joint petition calling for the Government to extend parental leave](#) for parents of premature babies in 2015. Both Bliss and The Smallest Things have continued campaigning on this issue in the years since.

In 2019 the Government launched [a consultation, Good Work Plan: Proposals to support families](#) which included proposals to introduce neonatal care leave and pay, the former as a day one right and the latter subject to the same service requirements as maternity pay. The [Government responded to this part of the consultation](#) in March 2020, committing to introduce neonatal care leave and pay.

Measures to introduce neonatal care leave and pay were included in the Employment Bill proposed in the [December 2019 Queen's Speech](#). The Employment Bill was not ultimately introduced in the 2019-21 session and did not reappear in the 2021 or 2022 Queen's Speeches. However, then Labour Markets Minister Paul Scully stated in response to a [Parliamentary Question on 25 May 2022](#) that the Government remained committed to introducing neonatal leave and pay.

What does the Bill do?

The Neonatal Care (Leave and Pay) Bill would introduce two new rights: neonatal care leave and statutory neonatal care pay. Both rights would require the Secretary of State to pass regulations in order to bring them into force and specify the details of how they operate.

The right to neonatal leave would be a day one right, available to all employees. It would apply to parents of children who spend at least one week in neonatal care. The maximum duration of the leave and how and when it must be taken would be set by regulations but would be at least one week and the period in which it has to be taken would last a minimum of 68 weeks starting from the date of the child's birth.

The right to neonatal care pay during periods of neonatal care leave would be available to all employees with at least 26 weeks' continuous service and whose weekly earnings are at or above the lower earnings limit (currently £123 per week for 2022-23). The level and duration of pay would be set by regulations but the limit that could be claimed would be at least 12 weeks.

The new rights would apply to England, Scotland and Wales but not Northern Ireland where employment law is a devolved matter.

1 Introduction

The [Neonatal Care \(Leave and Pay\) Bill 2022-23](#), Bill 14 of the 2022-23 session, was introduced on 15 June 2022 by SNP MP Stuart C McDonald as a Private Member's Bill, presented to Parliament through the ballot procedure. It is listed for second reading on 15 July 2022.

The Bill would create new statutory entitlements to leave and pay for employees with responsibility for babies receiving neonatal care.

The Bill itself has extent across the UK, however the new rights to neonatal leave and pay would extend only to England, Scotland and Wales but not Northern Ireland where employment law is a devolved matter.

The [explanatory notes](#) for the Bill were drafted by the Department for Business, Energy and Industrial Strategy.

The explanatory notes to the Bill state, if passed in 2023, "it is likely that implementation will take place 18 months after that date."¹

The explanatory notes also set out the financial implications of the Bill. It is estimated the annual cost to the Exchequer of Neonatal Care Leave, if paid at the statutory flat rate, would be £14.2m per year on average, alongside a one-off cost of £5m required to update HMRC's systems.²

A money resolution will be required for the Bill, as although the liability to pay statutory neonatal care pay will fall on employers, this will be significantly indirectly funded by HMRC under section 7 of the Employment Act 2002.³

¹ [Neonatal Care \(Leave and Pay\) Bill, Explanatory Notes](#), Para 75

² [Neonatal Care \(Leave and Pay\) Bill, Explanatory Notes](#), Para 76

³ [Neonatal Care \(Leave and Pay\) Bill, Explanatory Notes](#), Para 78

2 Background

2.1 Bliss campaign

Bliss, a charity supporting parents with sick and premature babies, has been campaigning since 2014 around extending leave and pay for parents of babies in neonatal care. As the charity's website states, their work in this area dates back several years:

- In February 2014 we launched our campaign and policy report, [Its Not A Game](#), to tackle the financial burden families face when their premature or sick baby is in hospital. This called on the Government to extend maternity leave and pay for these families. In response to our campaign, we secured a commitment in 2014 from the Department for Business, Innovations and Skills to [review how their policy on parental leave is working for parents whose babies are admitted to neonatal care](#) (28 Apr 2014 : Column 578W).
- On World Prematurity Day 2016, Bliss joined [The Smallest Things](#) to [hand in their petition](#) to the Minister responsible for parental leave. So far 180,000 people had signed, joining their call to extend leave for mums of premature babies.⁴

In 2019 the charity conducted a survey which found two thirds of fathers of premature babies had to return to work while their baby was still receiving neonatal care.⁵

In 2018 the charity also ran a campaign encouraging people to call their MPs “to put pressure on the Government to extend leave for parents of babies in specialist care”. The charity noted that over 90% of MPs were reached through this campaign.⁶

⁴ Bliss, [Parental leave](#), bliss.org.uk [accessed 5 July 2022]

⁵ Bliss, [Two thirds of dads forced to return to work while their baby was still in neonatal care](#), [bliss.org.uk](#), 18 February 2019

⁶ As above

2.2 The Smallest Things campaign

Premature baby charity The Smallest Things launched a change.org petition in 2015 calling for the Government to “Extend parental leave for parents of premature babies”, which has received 357,338 signatures to date.⁷

Since then the charity has continued to press for change in this area under their [Neonatal Leave Campaign](#), including a Twitter campaign using the hashtag #NeonatalLeaveNow. More recently the charity has been asking people to meet their MP and ask them to write to then Labour Markets Minister Paul Scully to ask when the neonatal leave measures announced by the Government in 2020 would be introduced.⁸

2.3 Parental Leave (Premature and Sick Babies) Bill 2017-19

On 12 June 2019 SNP MP David Linden introduced the Parental Leave (Premature and Sick Babies) Bill 2017-19 under the Ten Minute Rule. The Bill aimed to “to extend entitlements to parental leave for parents of babies born prematurely or requiring neonatal care”. It did not receive a second reading and fell at the end of the 2017-19 parliamentary session.⁹

2.4 2019 Government consultation

In July 2019 the Government launched a series of consultations under the Good Work Plan, one of which was entitled [Good Work Plan: Proposals to support families](#), seeking feedback on three issues:

- Parental leave and pay
- Neonatal leave and pay
- Transparency of flexible working and family related leave and pay policies¹⁰

The second of the three areas the Government sought responses on was a proposal to create “a new leave and pay entitlement for parents of babies that require neonatal care after birth”, with neonatal leave being a day one right and pay being a right subject to same service requirements as maternity

⁷ [Extend parental leave for parents of premature babies](#), change.org [accessed 5 July 2022]

⁸ The Smallest Things, [Neonatal Leave Campaign](#), thesmallestthings.org [accessed 7 July 2022]

⁹ [Parental Leave \(Premature and Sick Babies\) Bill 2017-19](#)

¹⁰ HM Government, [Good Work Plan: Proposals to support families](#), 23 September 2021

pay. These rights would be available to parents whose baby spent two weeks or more in neonatal care, giving each parent an entitlement of a week of leave per week their baby was in care, subject to a potential cap.

The Government responded to this part of the consultation in March 2020, committing to introduce neonatal leave and pay, saying:

In the light of responses to this section of the consultation, we will:

- introduce leave for parents of babies in neonatal care
- introduce statutory pay for parents of babies in neonatal care
- legislate to implement the entitlement and the relevant commitments we are making in the forthcoming Employment Bill¹¹

This commitment was also included in the text of the 2020 Budget published that month, which stated that:

The government will create an entitlement to Neonatal Leave and Pay for employees whose babies spend an extended period of time in neonatal care, providing up to 12 weeks paid leave so that parents do not have to choose between returning to work and taking care of their vulnerable newborn.¹²

2.5

Employment Bill

The [December 2019 Queen's Speech](#) included mention of an Employment Bill that would introduce both the neonatal leave and pay rights, alongside a range of other commitments.¹³ The Employment Bill was not ultimately introduced in the 2019-21 session and did not reappear in the 2021 or 2022 Queen's Speeches.¹⁴¹⁵

Since the end of the 2019-21 session, however, the Government has repeated its commitment to introduce neonatal leave and pay, including in the current session on 25 May in an answer to written Parliamentary Question from Justin Madders MP, when then Labour Markets Minister Paul Scully said "The Government is committed to introducing Neonatal Leave and Pay to meet this need and will bring forward legislation when Parliamentary time allows".¹⁶

¹¹ As above

¹² HM Government, [Budget 2020](#), 12 March 2020

¹³ Prime Minister's Office, [The Queen's Speech 2019: Background briefing notes](#), 19 December 2019

¹⁴ HM Government, [Queen's Speech 2021](#), 11 May 2021

¹⁵ HM Government, [Queen's Speech 2022](#), 10 May 2022

¹⁶ PQ 3643 [on [Parental Leave](#)], 17 May 2022

2.6

Adjournment debate, 9 February 2022

On 9 February 2022 Luke Hall MP (Con) secured an adjournment debate on Neonatal Leave and Pay. In the debate he stressed the value of parents of neonatal babies having the leave and pay needed for them to support their children while in neonatal care and pressing the Government to deliver on their pledge to introduce these measures, saying:

A wealth of evidence already exists that shows that, for children in neonatal care to have the best possible outcomes, they need their parents to be as involved in their care as much as possible and as early as possible. The Government already agree with this, and that the current leave and pay entitlements do not adequately support parents when their child is born sick or premature and requires neonatal care.¹⁷

Luke Hall MP went on to discuss his own experience of having his son in neonatal care for 72 days, before stressing the limitations of the current system of relying on existing maternity or shared parental leave for parents of premature babies:

Babies who have spent a long time in hospital after birth are usually at an earlier stage in their development when their mother or parents go back to work, in comparison with their peers. That can be particularly challenging for mothers, many of whom would have liked to have additional time with their child but cannot afford to take any more time off. That leads only in one direction—less parental involvement in care, causing immense stress and leaving parents unsupported. It reduces the opportunity for bonding time with their child.¹⁸

Responding for the Government, then Minister for Labour Markets Paul Scully stated that the Government remained committed to introducing neonatal care and leave, saying:

Considering those different scenarios, it is clear that the current leave and pay entitlements do not adequately support parents of babies in neonatal care. In March 2020, following a Government consultation on the issue, we committed to introducing the new entitlement to neonatal leave and pay, and I can assure my hon. Friend that we remain very much committed to that.¹⁹

To date the Government has not introduced any legislation to implement this commitment.

¹⁷ HC Deb [9 February 2022 c1053](#)

¹⁸ HC Deb [9 February 2022 c1054](#)

¹⁹ HC Deb [9 February 2022 c1058](#)

2.7

Private Members' Bill ballot 2022

The Private Members' Bill ballot for the 2022-23 session was held on 19 May 2022. The MPs drawn in the top seven positions on the ballot receive a guaranteed full day of debate on their Bill. Stuart C McDonald, SNP MP for Cumbernauld, Kilsyth and Kirkintilloch East, was drawn in the top position on the ballot, granting him first choice over a Private Members' Bill Friday for to give priority to a second reading of a Bill he wished to introduce.²⁰

On 15th June 2022, he introduced the Neonatal Care (Leave and Pay) Bill for first reading in the Commons. It is scheduled for second reading on Friday 15 July 2022, where it will be the first Private Member's Bill to be debated that day.

²⁰ [Private Members' Bill ballot: 19 May 2022](https://parliament.uk), parliament.uk, 19 May 2022

3 The Bill

3.1 Clause 1: Neonatal care leave and pay

Clause 1 of the Bill explains the three parts of the Schedule to the Bill, stating that:

In the Schedule—

- (a) Part 1 creates a statutory entitlement to neonatal care leave,
- (b) Part 2 creates a statutory entitlement to neonatal care pay, and
- (c) Part 3 contains related amendments.

3.2 Clause 2: Power to make consequential provision

Clause 2 grants powers to the Secretary of State to make regulations by statutory instrument to implement parts of this Bill, including to amend prior Acts of Parliament or future Acts in the same session. This is a Henry VIII power and deemed as necessary by the accompanying Delegated Powers Memorandum:

16. The purpose of this power is to ensure that this Bill, if successful in gaining Royal Assent, successfully works alongside other existing legislation which may be going through Parliament at a similar time.

17. It will also enable us to amend any existing legislation which we have yet to identify as necessary following the introduction of the Bill.²¹

Where they would amend other Acts of Parliament, any such statutory instruments would be subject to the affirmative procedure, otherwise to the negative procedure.

²¹ [Neonatal Care \(Leave and Pay\) Bill, Delegated Powers Memorandum](#), Para 16-17

3.3 Clause 3: Extent, commencement and short title

Clause 3 sets out that the new leave and pay provisions would come into force on a date to be appointed by the Secretary of State via statutory instrument.

The Bill's powers extend across the UK insofar as they amend existing provisions that already do so. However, the new entitlements to neonatal care leave and pay outlined in the Schedule would only apply to Scotland, England and Wales and not apply to Northern Ireland.

If passed the Bill would be known as the Neonatal Care (Leave and Pay) Act 2022.

3.4 Schedule Part 1: Neonatal Care Leave

Part 1 of the Schedule would amend the Employment Rights Act 1996 to add a new Chapter 5 to Part VIII of the Act, requiring the Secretary of State to make regulations providing a right to neonatal care leave. It specifies that this right would apply, from day one of employment:

- to employees;
- with a parental or other personal relationship with a child;
- who is receiving, or has received, neonatal care that lasts at least one week.

The exact details of when or how much leave can be taken would be left for the Secretary of State to determine through future regulations. However, the Bill would require that:

- The leave entitlement must be at least one week
- The period in which the leave must be taken must last a minimum of 68 weeks starting from the date of the child's birth

The rights of employees during and after the new leave are laid out to be broadly equivalent to those already granted by the Employment Rights Act 1996 to employees taking other forms of parental leave such as paternity or shared parental leave. The detail of these protections, including potential protections from dismissal or in cases of redundancy, would be left to the Secretary of State to lay out through future regulations.

New subsection 80E(1)(h) that would be added to the Employment Rights Act 1996 by this part would allow regulations to make provision applying,

modifying or excluding existing legislation under certain conditions in relation to a person entitled to take leave.

This is a Henry VIII power, deemed necessary by the Delegated Powers Memorandum which explains how it “replicates the power which exists in the statutory provisions relating to Maternity Leave, Adoption Leave, Paternity Leave and Shared Parental Leave.”²² The Memorandum goes on to explain why this is needed, saying:

In relation to Maternity, Adoption, Paternity, Shared Parental Leave, and Parental Bereavement Leave the power at 80EI(1)(h) has been exercised in relation to situations where an employee is simultaneously entitled to both the statutory right and a corresponding contractual right. In those circumstances, an employee cannot exercise the rights separately but is entitled to take advantage of whichever right is, in any particular respect, the more favourable right. While this approach has so far been consistently applied to existing entitlements, the regulations might need to change in future if evidence emerged that it was either unclear or somehow ineffective in the case of employees with particular contractual entitlements. If so, then it would be important to be able to reflect the same changes in Neonatal Care Leave as for other types of family-related leave and pay.²³

Regulations made under this new Chapter would be subject to the affirmative procedure for statutory instruments.

3.5

Schedule Part 2: Neonatal Care Pay

Part 2 of the Schedule would amend the Social Security and Benefits Act 1992 to add a new Part 12ZE on Statutory Neonatal Care Pay.

This would create an entitlement to statutory neonatal care pay for people meeting the criteria for neonatal care leave, above, providing they have “been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week”. The entitlement would also be subject to the lower earnings limit specified in section 5(1)(a) of the 1992 Act.

Employers would be liable to pay neonatal care pay to their employees, provided employees notify their employer of their intention to take leave. Further regulations could specify circumstances where this liability to pay neonatal care pay would shift from the employer to HM Revenue and Customs.

The Secretary of State would be authorised to make regulations further specifying the details of or otherwise applying limits to this entitlement.

²² [Neonatal Care \(Leave and Pay\) Bill, Delegated Powers Memorandum](#), Para 61

²³ [Neonatal Care \(Leave and Pay\) Bill, Delegated Powers Memorandum](#), Para 62

The rate of Neonatal Care Pay would be determined by regulations, as would the maximum number of weeks payable, though this must not be less than 12 weeks.

Regulations made under this new Part of the 1992 Act would be subject to the affirmative procedure for statutory instruments.

3.6

Schedule Part 3: Further Amendments to do with Neonatal Care Leave and Pay

Part 3 of the Schedule would make a number of amendments to other pieces of existing legislation to take account of the creation of the new statutory rights to neonatal care leave and neonatal care pay.

4 Commentary

4.1 Political commentary

The Bill's sponsor Stuart C McDonald was quoted in the press on the day the Bill was introduced, saying why he believed his Bill was particularly important given the current cost of living crisis:

No parent should have to choose between being with their premature or sick baby in neonatal care and having to go back to work to earn a living.

With the cost of living soaring, it is more important than ever that we secure an urgent change in the law so that parents of babies in neonatal care get the paid leave and support they need at an incredibly challenging time.²⁴

Fellow SNP MP David Linden, who had introduced a previous unsuccessful Private Member's Bill on neonatal leave in 2019,²⁵ issued a statement on his website on 16 June 2022 saying he was "delighted" by the introduction of the new Bill and expressing his support:

It is vital that this Bill now becomes a law so that tens of thousands of families each year will get a little bit of extra support when they need it most.²⁶

While the Government has not commented publicly on the Bill since its introduction, they have previously made commitments to introduce neonatal leave and pay (see section 2.6 above). This pledge was reiterated by then Labour Markets Minister Paul Scully on 7 June 2022 in response to a Parliamentary Question by David Linden MP, saying the Government "are committed to introducing neonatal leave and pay to meet this need as soon as parliamentary time allows."²⁷

On 15 June, the day the Bill was introduced, Minister Scully also suggested in a Westminster Hall debate that the Government would be open to seeing the Government's commitments on neonatal leave, alongside other matters, delivered via individual measures rather than through a single Employment Bill, saying:

I doubt any worker with a rogue employer is thinking, "I wish there was an employment Bill." They are probably thinking, "I need carer's leave," "I need neonatal leave," or, "I need flexible working." Those are the things that affect

²⁴ Andrew Learmonth, "[Ministers asked to back MP's bid to bring in neonatal pay and leave](#)", The Herald, 15 June 2022

²⁵ Parental Leave (Premature and Sick Babies) Bill 2017-19

²⁶ David Linden, "[Neonatal leave campaign leaps forward with Bill](#)", davidlinden.scot, 16 June 2022

²⁷ HC Deb [7 June 2022 c663](#)

people up and down the country; it is not that they need a single piece of legislation, tied up with a bow. That would be neat, clearly, but it is the measures to which we are committed, and that we will deliver.²⁸

4.2 Other commentary

Premature baby charity The Smallest Things welcomed the introduction of the Bill which they say they have been campaigning for since 2015. Catriona Ogilvy, Founder of The Smallest Things, gave a statement explaining why they were welcoming the introduction of the Bill:

This legislation will give families the emotional and financial support they need at a time of great stress and trauma. No parent should be sitting next to an incubator or neonatal cot worrying about work and pay.²⁹

The charity Bliss, which works to support parents of babies born premature or sick, published an update on their “[Neonatal Leave and Pay Campaign](#)” which discussed the Bill and included a downloadable “briefing for Members of Parliament” on the Bill.³⁰ This briefing included a statement from Bliss on why in their view the Bill was needed:

One in seven babies born in the UK receive some level of neonatal care shortly after birth. While some of these babies will receive just days of care, many will remain in hospital for weeks or months. Around 50,000 babies in the UK spend more than one week in neonatal care after birth every year.

For many families the inflexibility of current parental leave laws exacerbates the traumatic time experienced by parents and add to the stress of the whole family.³¹

The briefing also included a statement that “By supporting this Bill, Members will be providing essential support to tens of thousands of parents every year across Scotland, England, and Wales.”

Other charities including Rainbow Trust Children’s Charity and pregnancy charity Tommy’s have also issued statements expressing support for the Bill.^{32,33}

²⁸ HC Deb [15 June 2022 c171WH](#)

²⁹ The Smallest Things, [Neonatal Leave & Pay](#), thesmallestthings.org [accessed 5 July 2022]

³⁰ Bliss, [Neonatal Leave and Pay Campaign](#), bliss.org.uk [accessed 5 July 2022]

³¹ Bliss, [Neonatal Care \(Leave and Pay\) Bill Members briefing](#) (pdf), [accessed 5 July 2022]

³² Rainbow Trust, [Rainbow Trust welcomes the introduction of the Neonatal Care \(Leave & Pay\) Bill to Parliament](#), www.rainbowtrust.org.uk, 22 June 2022

³³ Tommy’s, [Supporting a new neonatal leave and pay law for parents](#), tommys.org, 15 June 2022

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