

Department for Business, Energy & Industrial Strategy (BEIS)
Good Work Plan: Proposals to support families
Consultation on neonatal leave and pay
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 As tax specialists with a particular interest in matters affecting those on low incomes, we welcome the opportunity to respond to this consultation on neonatal leave and pay, which forms one of the three consultations issued under the Good Work Plan initiative, Proposals to support families.
- 1.2 As has been acknowledged in the consultation document, coping with new born babies who require neonatal care is extremely stressful for parents, therefore the idea of providing additional support to these parents by way of statutory neonatal leave and pay is a positive one.
- 1.3 This would also be a positive step towards providing employees with the good jobs that the government wants to encourage businesses to provide,¹ and to help the government meet its long term objective of boosting productivity as part of its current Industrial Strategy.
- 1.4 We note that the treatment of neonatal pay and leave for both income tax and benefits purposes does not appear to have been considered in the consultation document. We assume that, in line with other statutory payments, neonatal pay will be taxable. If so, this needs to be made clear to both employees and employers. Also, work must be done to

¹ See executive summary, page 3 of consultation

establish how the payments and statutory leave period will affect entitlement to tax credits, universal credit (UC) and other work-related benefits. It is important to ensure that recipients are not inadvertently made worse off. In this respect, we make a particular observation as to how various forms of childcare support require the claimant to meet work requirements, and therefore neonatal leave would need to be added to the list of situations in which such requirements are deemed to be met, otherwise parents will lose entitlement.

- 1.5 We agree that neonatal leave should be a 'day one right'. We have concerns that the condition of having to meet the lower earnings limit (LEL) in order to receive neonatal pay could cause problems for the very low-paid or those with irregular earnings, such as part-time or casual workers – many will just not work enough hours to meet the earnings criteria. The government is currently consulting on extending statutory sick pay to include employees earning below the LEL.¹ We recommend that this is considered for the suite of statutory parental payments too.
- 1.6 It should be noted that neonatal leave and pay will be unavailable to significant sections of the working population – i.e. those treated as self-employed for tax purposes (even if they are 'workers' for employment law purposes). Does the government intend to make some provision for them, for example, extending neonatal leave and pay to the dependent self-employed or perhaps enhancing maternity allowance or contributions-based employment and support allowance in appropriate circumstances?
- 1.7 This consultation has been written very much from the point of view of the recipient of the proposed new payments, but it is equally as important to consider the effect of introducing any new statutory payment on the small and micro employers who do not have an in-house HR department to deal with all the associated administration and compliance.
- 1.8 For small and micro employers, including accidental employers,² administering a payroll can be a difficult and time-consuming necessity. Outsourcing is often costly, especially where staff are weekly paid, and so the temptation for many is to try to deal with it themselves. Therefore, it is important that any new statutory requirement that is introduced is straightforward to understand and administer, and is as similar as possible to existing statutory payment regimes, so as not to cause too much confusion.
- 1.9 Consideration also needs to be given to who will bear the cost of a new entitlement such as this. Small and micro employers already bear costs such as additional employment costs when employees are off sick or on maternity leave, and opportunity costs to the extent that time spent administering payroll and its associated obligations such as pensions auto-

¹ See HM Government consultation, 'Health is everyone's business: proposals to reduce ill health-related job losses', CP 134, July 2019:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816910/health-is-everyones-business-proposals-to-reduce-ill-health-related-job-loss-print-ready.PDF

² Those who employ care and support workers are often referred to as accidental employers.

enrolment is lost business time. We strongly support the proposal for recovery of statutory neonatal pay to be at a rate of 103% for small employers.¹ The rebate must be easy to claim. The advanced funding system needs to deal with any claims promptly, efficiently and quickly to be effective and useful.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 General comments

- 3.1 Our approach to this consultation is twofold:
 - (a) to raise issues relating to specific questions where relevant to those we seek to represent; and
 - (b) to highlight some areas which we think need to be considered but which are not specifically covered in the consultation.
- 3.2 The time spent in hospital by babies who require neonatal care currently eats into the standard maternity/paternity period that would otherwise be available to spend time with the child at home for most parents. Adding neonatal leave to the existing standard statutory entitlements means they have a chance to still have the same amount of time at home with

¹ As per footnote 58, on page 37 of the consultation document.

their babies once they leave neonatal care as other parents do, which makes a more equitable situation for all.

- 3.3 Further, any additional financial support for parents of babies who require neonatal care which can top up standard maternity, paternity or shared parental pay is also to be welcomed, to help ease the additional financial pressures that arise when babies are in neonatal care. As has been noted in the consultation,¹ when babies are in neonatal care immediately after birth, there can be additional costs incurred by the new parents purely to spend time with their new born children, such as travelling on a daily basis to the hospital and/or paying for accommodation to be nearer to the hospital when it is not local to the parental home, which are over and above additional costs that all new parents incur.
- 3.4 However, the treatment of neonatal pay and leave for both income tax and benefits purposes does not appear to have been considered in this consultation. We assume statutory neonatal pay will be treated as taxable income in the hands of the recipients, as with other statutory payments. If so, this needs to be made clear to both employees and employers.
- 3.5 With regard to benefits, consideration needs to be given as to how such payments will be treated for tax credits, UC and other means-tested benefits. It will also be important to make clear how a period of statutory neonatal leave will be treated when establishing entitlement to these and other work-related benefit schemes. It would make sense for the period of statutory neonatal leave to be treated in the same way as existing statutory family leave. In this respect, we make a particular observation relating to childcare support at section 5 below.
- 3.6 Arguably, if being in receipt of statutory neonatal pay means a reduction in benefit payments, then the claimant is not benefitting from the entitlement to neonatal pay, and so the government's objectives will not be met in this situation.

4 Administrative considerations (questions 6, 8, 12-16)

- 4.1 It is important that any new statutory entitlement that is introduced is straightforward for employers to understand and administer, and is as similar as possible to existing statutory payment regimes so as not to cause too much confusion. Therefore, a requirement for average earnings to be above the LEL to qualify for neonatal pay would be consistent with this, as would the leave entitlement being a 'day one right' (although it is noted that statutory paternity leave is not a day one right as mentioned in the consultation²).

¹ See page 31

² See page 34, final bullet

- 4.2 We have concerns however, that the condition of having to meet the LEL in order to receive neonatal pay could cause problems for the very low-paid or those with irregular earnings, such as part-time or casual workers – many will just not work enough hours to meet the earnings criteria. The government are currently consulting on extending statutory sick pay to include employees earning below the LEL. We would recommend that this is considered for the suite of statutory parental payments, including neonatal pay, too.
- 4.3 It should be noted that neonatal leave and pay will be unavailable to significant sections of the working population – i.e. those treated as self-employed for tax purposes (even if they are ‘workers’ for employment law purposes¹) and possibly those with earnings below the LEL.
- 4.4 Of course, those who are genuinely self-employed can take as much time off as they want (within the limits of their own affordability and business sustainability). However, much ‘self-employment’ these days is *dependent* self-employment – where people have less autonomy than genuinely self-employed people and may derive all or most of their income from the business that they work for. Without a statutory entitlement to neonatal leave and pay (or an equivalent) these people may feel unable to ask for, or be unable to afford, time off to spend with their baby/babies. Does the government intend to make some provision for them, for example extending neonatal leave and pay to the dependent self-employed or perhaps enhancing maternity allowance or contributions-based employment and support allowance in appropriate circumstances?
- 4.5 We agree neonatal leave should be capped to give employers some certainty around the amount of leave that could be taken by an employee, but we do not have a view as to what the cap should be, or for how long neonatal pay should be paid for. Such considerations involve looking at factors such as average neonatal care needs and the impact on parents, so they are outside the scope of our expertise and should arguably be considered by those who are specialists in neonatal care. If neonatal pay is not to be made available for the whole period of neonatal leave, then this would be similar to the maternity leave and maternity pay provisions and so there is precedent, and also a degree of understanding among some employers, for this approach.
- 4.6 Employers will need to be kept ‘in the loop’ by their employees in these difficult circumstances so they can plan around the absence for the benefit of their business. Therefore, we believe provision should be made for notice to be given to the employer by the parents. As paternity leave can be either one or two weeks in duration, if this is taken as soon as the baby is born, it could be that the father will not know whether the baby will still be in neonatal care at the end of the paternity period if a notice period of one week or more

¹ If a person performs work personally, outside of their own business or profession, then they are ‘workers’ for most employment law purposes. Contrary to popular belief, statutory payments are not ‘worker’ rights as they rely on there being a secondary contributor – i.e. someone who is paying Employer National Insurance.

is required. Therefore, it may be that a shorter period of say, three working days, may be more practical.

- 4.7 Mothers who are at home taking care of babies who have been in neonatal care for at least two weeks may not know whether they wish to take neonatal leave after their maternity leave ends until they are nearing the end of their maternity leave period, therefore it would be sensible for mothers to notify employers towards the end of their period of maternity leave. A notification deadline of say, eight weeks before the due date for the end of the maternity leave should allow sufficient time for the mother to decide whether she wants to take neonatal leave and also give employers a reasonable amount of time to review their business need and plan matters accordingly.
- 4.8 As an aside, we would point out that if a mother takes the full 12 months of maternity leave, she will only receive maternity pay for nine months. If she then takes neonatal leave at the end of her maternity leave there will be a period of three months where she will not receive any pay. Therefore some parents may choose to take reduced maternity leave of nine months, and then the period of neonatal leave to avoid a period without pay. If one kind of statutory leave (unpaid maternity leave) is replaced with another kind (paid neonatal leave) this does not meet the objective of the neonatal leave in providing **additional** support for the parents over and above what is currently available. We support the need for the employee to provide some form of evidence to the employer when making a request for neonatal leave, but this could simply be a short form certified by a medical professional, similar to the MAT B1 form which is required for notifying an employer of maternity leave. It is important the requirement is not too intrusive or time consuming at what could be a very distressing time for the parents. It might be helpful if there could be an online notification process which could then be undertaken by the parents at a time convenient to them.

5 Consequential legislative amendments – childcare

- 5.1 At paragraph 3.3 above, we refer to the additional costs that parents might incur as a result of a baby/babies requiring neonatal care. One of the costs mentioned in the consultation document – childcare – needs to be carefully considered in the context of childcare support.
- 5.2 Currently, the Universal Credit Regulations¹ and the Tax-free Childcare Regulations² ensure that childcare costs continue to qualify for support during various periods of statutory leave. In the event that neonatal leave is introduced, this therefore needs to be added as an additional qualifying category to those regulations, otherwise parents will lose the childcare support during those periods.

¹ The Universal Credit Regulations 2013, SI 2013/376, Reg 32(2)(b)

² The Childcare Payments (Eligibility) Regulations 2015, Reg 12

6 Recovery of neonatal payments by employers

- 6.1 Small and micro employers already bear costs such as additional employment costs when employees are off sick or on maternity leave. This will not usually be the case for larger employers who will often have capacity to cover the work of an employee who may be on long term leave as they will have a larger pool of existing staff. Smaller employers also suffer opportunity costs to the extent that time spent administering payroll and its associated obligations such as pensions auto-enrolment is lost business time. We strongly support the proposal that neonatal pay is fully recoverable for small employers, and agree with a recovery rate of 103% as mentioned in footnote 58 on page 37 of the consultation document, to compensate these employers for the extra administrative tasks that will need to be undertaken to deal with this entitlement.
- 6.2 From a practical perspective, the rebate has to be easy to claim. An employer would normally recover statutory payments by withholding their tax or NIC deductions. But it is often not possible for small and micro employers to recover statutory payments in full by offsetting against other tax and National Insurance liabilities as their tax and NIC bills could be substantially smaller than the neonatal pay in many instances. Therefore, the government needs to provide a facility to enable employers to claim a direct repayment of statutory payments, including neonatal pay, in a prompt and timely manner so as to avoid them being at risk of suffering unfair cash flow problems.
- 6.3 Furthermore, the option of applying for **advance** funding for statutory payments, should also be made available for neonatal payments to help businesses avoid potential cash flow problems, but this needs to ensure any claims for advance funding are dealt with promptly, efficiently and quickly.

LITRG
7 October 2019