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STATUTORY INSTRUMENTS

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**2003 No. 672**

**SOCIAL SECURITY**  
**TERMS AND CONDITIONS OF EMPLOYMENT**

The Statutory Maternity Pay (Compensation  
of Employers) Amendment Regulations 2003

<i>Made</i>	- - - -	<i>11th March 2003</i>
<i>Laid before Parliament</i>		<i>14th March 2003</i>
<i>Coming into force</i>	- -	<i>6th April 2003</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 167(1), (2)(a) and (b)(i), (5) and (7), 171(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1), sections 163(1), (2)(a) and (b)(i), (5), (7) and (8) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) and of all other powers enabling him in that behalf, with the concurrence of the Commissioners of Inland Revenue(3), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2003 and shall come into force on 6th April 2003.

(2) In these Regulations—

“the principal GB Regulations” means the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(4);

“the principal NI Regulations” means the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994(5).

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- (1) 1992 c. 4; section 167 was substituted by section 21(1) of the Employment Act 2002 (c. 22); section 171(1) is cited for the meaning given to the word “prescribed”; section 175(1) and (4) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 29.
- (2) 1992 c. 7; section 163 was substituted by section 21(2) of the Employment Act 2002; section 171(10) was substituted by the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Schedule 3, paragraph 28(3).
- (3) See the Social Security Contributions and Benefits Act 1992, section 167(7) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, section 163(8).
- (4) S.I.1994/1882; the relevant amending instruments are S.I. 1995/566 and 2002/225.
- (5) S.R.1994 No. 271; the relevant amending instruments are S.R. 1995 No. 74 and S.I. 2002/225.

### **Amendment of regulation 1 of the principal GB Regulations**

2.—(1) Regulation 1 of the principal GB Regulations (citation, commencement and interpretation) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (4)—

(a) the definitions of “contributions payments” and “payment of statutory maternity pay” shall be omitted;

(b) there shall be inserted in the appropriate places the following definitions—

“the Board” means the Commissioners of Inland Revenue;

“contributions payments” has the same meaning as in section 167(8) of the Contributions and Benefits Act;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001(6);

“the Employment Act” means the Employment Act 2002;

“income tax quarter” means, in any tax year, the period beginning on 6th April and ending on 5th July, the period beginning on 6th July and ending on 5th October, the period beginning on 6th October and ending on 5th January, or the period beginning on 6th January and ending on 5th April;

“statutory adoption pay” means any payment under section 171ZL of the Contributions and Benefits Act(7);

“statutory paternity pay” means any payment under section 171ZA or 171ZB of the Contributions and Benefits Act(8);

“tax year” means the period of 12 months beginning on 6th April in any year;

“writing” includes writing delivered by means of electronic communications approved by directions issued by the Board pursuant to regulations made under section 132 of the Finance Act 1999(9);”.

(3) For paragraph (5) there shall be substituted the following paragraph—

“(5) Any reference in these Regulations to the employees of any employer includes, where the context permits, a reference to his former employees.”.

(4) Paragraph (6) shall be omitted.

### **Amendment of regulation 3 of the principal GB Regulations**

3. In regulation 3 of the principal GB Regulations (determination of the amount of additional payment to which a small employer shall be entitled) for the words “entitled to an additional payment” there shall be substituted the words “entitled to recover an additional amount”.

### **Substitution of regulations 4, 5 and 6 of the principal GB Regulations**

4. For regulations 4, 5 and 6 of the principal GB Regulations there shall be substituted the following regulations—

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(6) S.I. 2001/1004.

(7) Section 171ZL was inserted by section 4 of the Employment Act 2002.

(8) Sections 171ZA and 171ZB were inserted by section 2 of the Employment Act 2002.

(9) 1999 c. 16.

**“Right of employers to prescribed amount**

**4.** An employer who has made, or is liable to make, any payment of statutory maternity pay shall be entitled to recover—

- (a) an amount equal to 92 per cent. of such payment; or
- (b) if he is a small employer—
  - (i) an amount equal to such payment, and
  - (ii) an additional amount under regulation 3,in accordance with the provisions of these Regulations.

**Application for advance funding from the Board**

**5.—(1)** If an employer is entitled to recover an amount determined in accordance with regulation 4 in respect of statutory maternity pay which he is required to pay to an employee or employees in any income tax month or income tax quarter and the amount exceeds the aggregate of—

- (a) the total amount of tax which the employer is required to pay to the collector of taxes in respect of deductions from the emoluments of his employees in accordance with the Income Tax (Employments) Regulations 1993<sup>(10)</sup> for that income tax month or income tax quarter;
- (b) the total amount of deductions made by the employer from the emoluments of his employees for that income tax month or income tax quarter in accordance with regulations made under section 22(5) of the Teaching and Higher Education Act 1998<sup>(11)</sup> or section 73B of the Education (Scotland) Act 1980<sup>(12)</sup> or in accordance with Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1988<sup>(13)</sup>;
- (c) the total amount of contributions payments which the employer is required to pay to the collector of taxes in respect of the emoluments of his employees (whether by means of deduction or otherwise) in accordance with the Contributions Regulations for that income tax month or income tax quarter;
- (d) the total amount of payments which the employer is required to pay to the collector of taxes in respect of deductions made on account of tax from payments to sub-contractors in accordance with section 559 of the Income and Corporation Taxes Act 1988<sup>(14)</sup> for that income tax month or income tax quarter; and
- (e) the statutory paternity pay, statutory adoption pay and statutory maternity pay which the employer is required to pay to his employees in that income tax month or income tax quarter,

the employer may apply to the Board in accordance with paragraph (2) for funds (“advance funding”) to pay that excess (or so much of it as remains outstanding) to the employee or employees.

(2) Where—

- (a) the conditions in paragraph (1) are satisfied; or

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<sup>(10)</sup> S.I. 1993/744; the relevant amending instruments are S.I. 1993/2276, 2000/1152 and 2742.

<sup>(11)</sup> 1998 c. 30.

<sup>(12)</sup> 1980 c. 44.

<sup>(13)</sup> S.I. 1998/1760 (N.I. 14).

<sup>(14)</sup> 1988 c. 1.

- (b) the employer considers that the conditions in paragraph (1) will be satisfied on the date of any subsequent payment of emoluments to one or more employees who are entitled to a payment of statutory maternity pay,

the employer may apply to the Board for advance funding on a form approved for that purpose by the Board.

(3) An application by an employer under paragraph (2) shall be for an amount not exceeding the amount of statutory maternity pay which the employer is entitled to recover in accordance with regulation 4 and which he is required to pay to an employee or employees for the income tax month or income tax quarter to which the payment of emoluments relates.

#### **Deductions from payments to the Board**

6. An employer who is entitled to recover an amount under regulation 4 may do so by making one or more deductions from the aggregate of the amounts specified in subparagraphs (a) to (e) of regulation 5(1), except where and insofar as—

- (a) those amounts relate to earnings paid before the beginning of the income tax month or income tax quarter in which the payment of statutory maternity pay was made;
- (b) those amounts are paid by him later than six years after the tax year in which the payment of statutory maternity pay was made;
- (c) the employer has received advance funding from the Board in accordance with an application under regulation 5; or
- (d) the employer has made a request in writing under regulation 5 that the amount which he is entitled to recover under regulation 4 be paid to him and he has not received notification by the Board that such request is refused.

#### **Payments to employers by the Board**

6A. If, in an income tax month or an income tax quarter—

- (a) the total amount that the employer is entitled to deduct under regulation 6 is less than the amount which the employer is entitled to recover under regulation 4;
- (b) the Board is satisfied that this is so; and
- (c) the employer has so requested in writing,

the Board shall pay to the employer the sum that the employer is unable to deduct under regulation 6.”

#### **Amendment of regulation 7 of the principal GB Regulations**

5. In regulation 7 of the principal GB Regulations (date when certain contributions are to be treated as paid)—

- (a) for the words “regulation 5” there shall be substituted the words “regulation 6”; and
- (b) for the words “section 167(4)” there shall be substituted the words “section 167(6)”.

#### **Insertion of regulation 7A of the principal GB Regulations**

6. After regulation 7 of the principal GB Regulations there shall be inserted the following regulation—

### “Overpayments

7A.—(1) Where advance funding has been provided to an employer in accordance with an application under regulation 5, the Board may recover any part of it not used to pay statutory maternity pay (“the overpayment”).

(2) An officer of the Board shall decide to the best of his judgement the amount of the overpayment and shall give notice in writing of his decision to the employer.

(3) A decision under paragraph (2) may be in respect of funding provided in accordance with regulation 5 for one or more income tax months or income tax quarters in a tax year—

- (a) in respect of one or more classes of employees specified in a decision notice (where a notice does not name any individual employee); or
- (b) in respect of one or more individual employees named in a decision notice.

(4) Subject to paragraphs (5), (6) or (7), Part 6 of the Taxes Management Act 1970(15) (collection and recovery) shall apply with any necessary modifications to a decision under this regulation as if the amount specified were an assessment and as if the amount set out in the notice were income tax charged on the employer.

(5) Where a decision under paragraph (2) relates to more than one employee, proceedings may be brought to recover the amount overpaid without distinguishing the sum to be repaid in respect of each employee and without specifying the employee in question.

(6) A decision to recover an amount made in accordance with this regulation shall give rise to one cause of action or matter of complaint for the purpose of proceedings under section 65, 66 or 67 of the Taxes Management Act 1970(16).

(7) Nothing in paragraph (5) shall prevent separate proceedings being brought for the recovery of any amount which the employer is liable to repay in respect of each employee to whom the decision relates.”.

### Amendment of regulation 1 of the principal NI Regulations

7.—(1) Regulation 1 of the principal NI Regulations (citation, commencement and interpretation) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (3)—

(a) the definitions of “contributions payments” and “payment of statutory maternity pay” shall be omitted;

(b) there shall be inserted in the appropriate places the following definitions—

““the Board” means the Commissioners of Inland Revenue;

“contributions payments” has the same meaning as in section 163(9) of the Contributions and Benefits Act;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001;

“the Employment Act” means the Employment Act 2002;

“income tax quarter” means, in any tax year, the period beginning on 6th April and ending on 5th July, the period beginning on 6th July and ending on 5th October, the

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(15) 1970 c. 9.

(16) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 67(2) of the Finance Act 1984 and the Schedule to S.I. 1991/724, and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001 (c. 9); section 67 was amended by section 58 of the Finance Act 1976 (c. 14) and partly repealed by Schedule 15 to that Act, further amended by section 156 of the Finance Act 1994 and partly repealed by Part 2(14) of Schedule 33 to the Finance Act 2001.

period beginning on 6th October and ending on 5th January, or the period beginning on 6th January and ending on 5th April;

“statutory adoption pay” means any payment under section 167ZL of the Contributions and Benefits Act(17);

“statutory paternity pay” means any payment under section 167ZA or 167ZB of the Contributions and Benefits Act(18);

“tax year” means the period of 12 months beginning on 6th April in any year;

“writing” includes writing delivered by means of electronic communications approved by directions issued by the Board pursuant to regulations made under section 132 of the Finance Act 1999;”.

(3) For paragraph (4) there shall be substituted the following paragraph—

“(4) Any reference in these Regulations to the employees of any employer includes, where the context permits, a reference to his former employees.”.

(4) Paragraph (5) shall be omitted.

### **Amendment of regulation 3 of the principal NI Regulations**

8. In regulation 3 of the principal NI Regulations (amount of additional payment to which a small employer shall be entitled) for the words “entitled to an additional payment” there shall be substituted the words “entitled to recover an additional amount”.

### **Substitution of regulations 4, 5 and 6 of the principal NI Regulations**

9. For regulations 4, 5 and 6 of the principal NI Regulations there shall be substituted the following regulations—

#### **“Right of employers to prescribed amount**

4. An employer who has made, or is liable to make, any payment of statutory maternity pay shall be entitled to recover—

- (a) an amount equal to 92 per cent. of such payment; or
- (b) if he is a small employer—
  - (i) an amount equal to such payment, and
  - (ii) an additional amount under regulation 3,in accordance with the provisions of these Regulations.

#### **Application for advance funding from the Board**

5.—(1) If an employer is entitled to recover an amount determined in accordance with regulation 4 in respect of statutory maternity pay which he is required to pay to an employee or employees in any income tax month or income tax quarter and the amount exceeds the aggregate of—

- (a) the total amount of tax which the employer is required to pay to the collector of taxes in respect of deductions from the emoluments of his employees in accordance with the Income Tax (Employments) Regulations 1993 for that income tax month or income tax quarter;

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(17) Section 167ZL was inserted by article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I.2)).

(18) Sections 167ZA and 167ZB were inserted by article 5 of the Employment (Northern Ireland) Order 2002.

- (b) the total amount of deductions made by the employer from the emoluments of his employees for that income tax month or income tax quarter in accordance with regulations made under section 22(5) of the Teaching and Higher Education Act 1998 or section 73B of the Education (Scotland) Act 1980 or in accordance with Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1988;
- (c) the total amount of contributions payments which the employer is required to pay to the collector of taxes in respect of the emoluments of his employees (whether by means of deduction or otherwise) in accordance with the Contributions Regulations for that income tax month or income tax quarter;
- (d) the total amount of payments which the employer is required to pay to the collector of taxes in respect of deductions made on account of tax from payments to sub-contractors in accordance with section 559 of the Income and Corporation Taxes Act 1988 for that income tax month or income tax quarter; and
- (e) the statutory paternity pay, statutory adoption pay and statutory maternity pay which the employer is required to pay to his employees in that income tax month or income tax quarter,

the employer may apply to the Board in accordance with paragraph (2) for funds (“advance funding”) to pay that excess (or so much of it as remains outstanding) to the employee or employees.

(2) Where—

- (a) the conditions in paragraph (1) are satisfied; or
- (b) the employer considers that the conditions in paragraph (1) will be satisfied on the date of any subsequent payment of emoluments to one or more employees who are entitled to a payment of statutory maternity pay,

the employer may apply to the Board for advance funding on a form approved for that purpose by the Board.

(3) An application by an employer under paragraph (2) shall be for an amount not exceeding the amount of statutory maternity pay which the employer is entitled to recover in accordance with regulation 4 and which he is required to pay to an employee or employees for the income tax month or income tax quarter to which the payment of emoluments relates.

### **Deductions from payments to the Board**

6. An employer who is entitled to recover an amount under regulation 4 may do so by making one or more deductions from the aggregate of the amounts specified in subparagraphs (a) to (e) of regulation 5(1), except where and insofar as—

- (a) those amounts relate to earnings paid before the beginning of the income tax month or income tax quarter in which the payment of statutory maternity pay was made;
- (b) those amounts are paid by him later than six years after the tax year in which the payment of statutory maternity pay was made;
- (c) the employer has received advance funding from the Board in accordance with an application under regulation 5; or
- (d) the employer has made a request in writing under regulation 5 that the amount which he is entitled to recover under regulation 4 be paid to him and he has not received notification by the Board that such request is refused.

### **Payments to employers by the Board**

**6A.** If, in an income tax month or an income tax quarter—

- (a) the total amount that the employer is entitled to deduct under regulation 6 is less than the amount which the employer is entitled to recover under regulation 4;
- (b) the Board is satisfied that this is so; and
- (c) the employer has so requested in writing,

the Board shall pay to the employer the sum that the employer is unable to deduct under regulation 6.”.

### **Amendment of regulation 7 of the principal NI Regulations**

**10.** In regulation 7 of the principal NI Regulations (date when certain contributions are to be treated as paid)—

- (a) for the words “regulation 5” there shall be substituted the words “regulation 6”; and
- (b) for the words “section 163(4)” there shall be substituted the words “section 163(6)” .

### **Insertion of regulation 7A of the principal NI Regulations**

**11.** After regulation 7 of the principal NI Regulations there shall be inserted the following regulation—

#### **“Overpayments**

**7A.—(1)** Where advance funding has been provided to an employer in accordance with an application under regulation 5, the Board may recover any part of it not used to pay statutory maternity pay (“the overpayment”).

(2) An officer of the Board shall decide to the best of his judgement the amount of the overpayment and shall give notice in writing of his decision to the employer.

(3) A decision under paragraph (2) may be in respect of funding provided in accordance with regulation 5 for one or more income tax months or income tax quarters in a tax year—

- (a) in respect of one or more classes of employees specified in a decision notice (where a notice does not name any individual employee); or
- (b) in respect of one or more individual employees named in a decision notice.

(4) Subject to paragraphs (5), (6) or (7), Part 6 of the Taxes Management Act 1970 (collection and recovery) shall apply with any necessary modifications to a decision under this regulation as if the amount specified were an assessment and as if the amount set out in the notice were income tax charged on the employer.

(5) Where a decision under paragraph (2) relates to more than one employee, proceedings may be brought to recover the amount overpaid without distinguishing the sum to be repaid in respect of each employee and without specifying the employee in question.

(6) A decision to recover an amount made in accordance with this regulation shall give rise to one cause of action or matter of complaint for the purpose of proceedings under section 65, 66 or 67 of the Taxes Management Act 1970.

(7) Nothing in paragraph (5) shall prevent separate proceedings being brought for the recovery of any amount which the employer is liable to repay in respect of each employee to whom the decision relates.”.



Signed by authority of the Secretary of State for Work and Pensions.

10th March 2003

*P.Hollis*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions,

The Commissioners of Inland Revenue hereby concur.

11th March 2003

*Tim Flesher*  
*Ann Chant*  
Two of the Commissioners of Inland Revenue

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994 (S.I.1994/1882) (“the principal GB Regulations”) and the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994 (S.R. 1994 No. 271) (“the principal NI Regulations”).

These Regulations provide for the funding of employers liabilities to make payments of statutory maternity pay and allow for deductions from payments due from employers to the Commissioners of Inland Revenue (“the Board”) and for payments to employers by the Board. They also allow for the recovery of funds provided by the Board to employers in certain circumstances.

Regulations 2 and 7 of these Regulations amend regulation 1 of the principal GB Regulations and of the principal NI Regulations, principally to insert new definitions.

Regulations 3 and 8 of these Regulations make minor drafting changes to regulation 3 of the principal GB Regulations and of the principal NI Regulations which deal with the determination of the additional amount to which a small employer who makes payments of statutory maternity pay is entitled.

Regulations 4 and 9 of these Regulations substitute new regulations 4, 5, 6 and insert new regulation 6A in the principal GB Regulations and in the principal NI Regulations.

New regulation 4 makes minor drafting changes to regulation 4 of the principal GB Regulations and of the principal NI Regulations which specify the amount of statutory maternity pay an employer may recover.

New regulation 5 allows applications to be made by an employer to the Board for funds (“advance funding”) to pay statutory maternity pay which an employer is required to pay to his employees in specified circumstances.

New regulation 6 allows an employer to recover statutory maternity pay by making deductions from certain payments to the Board.

New Regulation 6A allows for payments to employers by the Board in specified circumstances.

Regulations 5 and 10 of these Regulations make minor drafting changes to regulation 7 of the principal GB Regulations and of the principal NI Regulations which deal with the date on which certain National Insurance contributions are to be treated as paid.

Regulations 6 and 11 of these Regulations insert new regulation 7A in the principal GB Regulations and in the principal NI Regulations to allow for the recovery of overpayments by the Board where advance funding has been provided to the employer where it appears to an officer of the Board that the employer has not used those funds to pay statutory maternity pay.

These Regulations are made with the concurrence of the Board. An assessment of the cost to business of the proposals for these Regulations was made in connection with the Employment Act 2002. Copies of that assessment have been placed in the libraries of both Houses of Parliament and can be obtained by post from the Department for Trade and Industry, Employment Relations Directorate, 1 Victoria Street, London SW1 OET.