

1987 No. 171

STATUTORY MATERNITY PAY

**The Statutory Maternity Pay (Persons Abroad and Mariners)
Regulations (Northern Ireland) 1987**

Made 3rd April 1987

Coming into operation 6th April 1987

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 80(1) of the Social Security (Northern Ireland) Order 1986(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Statutory Maternity Pay (Persons Abroad and Mariners) Regulations (Northern Ireland) 1987 and shall come into operation on 6th April 1987.

(2) In these regulations—

“the Order” means the Social Security (Northern Ireland) Order 1986;

“Part VI” means Part VI of the Order;

“the General Regulations” means the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(b),

and other expressions have the same meanings as in Part VI.

Persons in other member States — meaning of “employee”

2. Subject to regulation 3, a woman who is—

(a) gainfully employed in a member State other than the United Kingdom in such circumstances that if her employment were in Northern Ireland she would be an employee for the purposes of Part VI or a woman treated as such an employee under regulation 17 of the General Regulations; and

(b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No. 1408/71(c),

notwithstanding that she is not employed in Northern Ireland, shall be treated as an employee for the purposes of Part VI.

Meaning of “employee” — general

3. No woman who, by virtue of regulation 17 of the General Regulations, would be treated as not being an employee for the purposes of Part VI if her

(a) S.I. 1986/1888 (N.I. 18)

(b) S.R. 1987 No. 30

(c) O.J. No. L230, 22.8.83

employment were in Northern Ireland, shall be treated as an employee by virtue of these regulations.

Women outside the European Community

4.—(1) Notwithstanding the provisions of Article 47(1) of the Order, no liability to make payments of statutory maternity pay to a woman shall arise in respect of any week within the maternity pay period for any part of which she is not present in any member State, or any subsequent week within that period.

(2) A woman shall be treated for the purposes of paragraph (1) as present in a member State while she is in transit between two such States.

Women who worked in the European Community

5.—(1) A woman who is an employee or treated as an employee under regulation 2 and who—

- (a) in the week immediately preceding the 14th week before the expected week of confinement was in employed earner's employment with an employer in Northern Ireland, and
- (b) had in any week within the period of 2 years immediately preceding that week been employed by the same employer in a member State other than the United Kingdom,

shall be treated for the purposes of Articles 47(2) and 49 of the Order as having been employed in employed earner's employment in those weeks in which she was so employed in that member State.

(2) In relation to a woman to whom Article 49(5) of the Order refers (higher rate for woman normally employed 8 hours a week or more for the last 5 years), a reference to 5 years shall be substituted for the reference to 2 years in paragraph (1)(b).

Time for compliance with Part VI and regulations

6. Where—

- (a) a woman is outside the United Kingdom;
- (b) Part VI or regulations made under the Order or under Part III of the Social Security (Northern Ireland) Act 1975(a) require any act to be done forthwith or on the happening of a certain event or within a specified time; and
- (c) because the woman is outside the United Kingdom she or her employer cannot comply with the requirement,

the woman or the employer, as the case may be, shall be deemed to have complied with it if the act is performed as soon as reasonably practicable.

Mariners

7.—(1) In this regulation "foreign-going ship", "home-trade ship" and "mariner" have the same meanings as in Case B of Part VIII of the Social

(a) 1975 c. 15; sections 100 and 101, as amended by paragraphs 5 and 6 of Schedule 5 to the Social Security (Northern Ireland) Order 1986 and extended to statutory maternity pay by Article 53(3), (6) and (7) of that Order provide for the time for making appeals and applications to be prescribed by regulations

Security (Contributions) Regulations (Northern Ireland) 1979(a) and the expression "ship or vessel" within those expressions shall, except in paragraph (3), include hovercraft.

(2) Subject to regulation 3, a mariner engaged in employment on board a home-trade ship with an employer who has a place of business within the United Kingdom shall be treated as an employee for the purposes of Part VI, notwithstanding that she may not be employed in Northern Ireland.

(3) A mariner who is engaged in employment—

(a) on a foreign-going ship, or

(b) on a home-trade ship with an employer who does not have a place of business within the United Kingdom,

shall not be treated as an employee for the purposes of Part VI, notwithstanding that she may have been employed in Northern Ireland.

Persons abroad — maternity pay period not commencing or ending

8.—(1) Subject to paragraph (2), a maternity pay period shall not commence in any week during any part of which the woman is not present in a member State and, if already commenced, shall end in any such week.

(2) This regulation shall not apply in the case of a woman who by virtue of her employment as a mariner, within the meaning of regulation 7(1), is not present in any member State.

(3) A woman shall be treated for the purpose of this regulation as present in a member State while she is in transit between two such States.

Sealed with the Official Seal of the Department of Health and Social Services on 3rd April 1987.

(L.S.)

A. N. Burns

Assistant Secretary

(a) S.R. 1979 No. 186, to which there are amendments not relevant to these regulations

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations provide for statutory maternity pay (under Part VI of the Social Security (Northern Ireland) Order 1986 ("the Order")), in relation to persons abroad and women who work as mariners. They correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Under Article 51(1) of the Order, a woman is not, as a rule, an "employee" and therefore qualified to receive statutory maternity pay, unless she is employed in Northern Ireland. Regulation 2 makes exceptions to that rule for women employed in a member State other than the United Kingdom but subject to the legislation of the United Kingdom. This and the other exceptions made by the regulations are, however, overridden by regulation 3, which provides that the woman is not to be treated as an employee if she would not be so treated if her employment was in Northern Ireland.

Regulation 4 provides that liability to pay statutory maternity pay shall not arise in respect of any week within the maternity pay period in which a woman is outside the European Community, or for any subsequent week in that period.

Where a woman has worked for the same employer both in Northern Ireland and in a member State other than the United Kingdom, regulation 5 permits her, in specified circumstances, to have her employment in that member State treated as though it was employed earner's employment.

Some of the provisions relating to statutory maternity pay impose time limits, but these are relaxed by regulation 6 in their application to persons who are outside the United Kingdom and for that reason cannot comply with them.

Regulation 7 treats certain mariners as employees for the purposes of entitlement to statutory maternity pay.

Regulation 8 provides that the maternity pay period is not to commence, or if commenced, is to end, where a woman is outside the European Community. This regulation does not apply where the absence is due to the woman's employment as a mariner.