

1987 No. 30

STATUTORY MATERNITY PAY**The Statutory Maternity Pay (General) Regulations
(Northern Ireland) 1987***Made* 30th January 1987*Coming into operation—**Regulations 1, 22 and 23* 15th March 1987*Remainder* 6th April 1987

ARRANGEMENT OF REGULATIONS

PART I

INTRODUCTION

1. Citation, commencement and interpretation

PART II

ENTITLEMENT

2. The maternity pay period
3. Contract of service ended for the purpose of avoiding liability for statutory maternity pay
4. Modification of entitlement provisions
5. Treatment of two or more contracts of service as one
6. Lower rate of statutory maternity pay
7. Liability of Department to pay statutory maternity pay
8. Work after confinement
9. No liability to pay statutory maternity pay
10. Death of woman

PART III

CONTINUOUS EMPLOYMENT AND NORMAL WORKING HOURS

11. Continuous employment
12. Continuous employment and unfair dismissal
13. Continuous employment and stoppages of work
14. Change of employer
15. Reinstatement after service with the armed forces, etc
16. Normal working weeks

PART IV

GENERAL PROVISIONS

17. Meaning of "employee"
18. Treatment of two or more employers as one
19. Payments to be treated as contractual remuneration
20. Meaning of "earnings"
21. Normal weekly earnings

PART V

ADMINISTRATION

22. Evidence of expected week of confinement or of confinement
23. Notice of absence from work
24. Notification of employment after confinement
25. Provision of information in connection with determination of questions
26. Records to be maintained by employers

PART VI

PAYMENT

27. Payment of statutory maternity pay
28. Rounding to avoid fractional amounts
29. Time when statutory maternity pay is to be paid
30. Payments by the Department
31. Persons unable to act

PART VII

OFFENCES

32. Penalties

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 47(4), (7) and (8), 48(1), (3), (6) and (7), 49(3) and (6), 51(1), (2), (4) and (5), 52(1)(g), (j), (m) and (q) and (4) and 55 of, and paragraphs 6, 8 and 12(3) of Schedule 4 to, the Social Security (Northern Ireland) Order 1986(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

(a) S.I. 1986/1888 (N.I. 18); Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) was inserted by Article 63(1) of the Social Security (Northern Ireland) Order 1986

PART I

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987 and shall come into operation in the case of regulations 1, 22 and 23 on 15th March 1987, and in the case of the remainder of the regulations on 6th April 1987.

(2) In these regulations—

“the Act” means the Social Security (Northern Ireland) Act 1975(a);

“the No. 1 Order” means the Industrial Relations (Northern Ireland) Order 1976(b);

“the No. 2 Order” means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(c);

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

PART II

ENTITLEMENT

The maternity pay period

2.—(1) Subject to paragraph (3), where a woman gives notice to her employer that she intends to stop work and does in fact stop work because of her pregnancy in a week which is later than the 12th week before the expected week of confinement, then the first week in the maternity pay period shall be the week following the week in which she stopped work, or the 6th week before the expected week of confinement, whichever is the earlier.

(2) The maternity pay period shall end not later than the end of the 11th week immediately following the expected week of confinement and subject thereto shall be for a period of 18 consecutive weeks.

(3) Where—

(a) a woman is confined before the 11th week before the expected week of confinement, or

(b) is confined after the 12th week but before the 6th week before the expected week of confinement and the confinement occurs in a week which precedes that mentioned in a notice given to her employer as being the week she intends to give up work,

the first week in the maternity pay period shall be the week after the week in which she is confined.

Contract of service ended for the purpose of avoiding liability for statutory maternity pay

3.—(1) A former employer shall be liable to make payments of statutory maternity pay to any woman who was employed by him for a continuous period of at least 8 weeks and whose contract of service with him was brought

(a) 1975 c. 15

(b) S.I. 1976/1043 (N.I. 16)

(c) S.I. 1976/2147 (N.I. 28)

to an end by the former employer solely or mainly for the purpose of avoiding liability for statutory maternity pay.

- (2) In order to determine the amount payable by the former employer—
- (a) the woman shall be deemed for the purposes of Part VI of the 1986 Order to have been employed by him from the date her employment with him ended until the end of the week immediately preceding the 14th week before the expected week of confinement on the same terms and conditions of employment as those subsisting immediately before her employment ended, and
 - (b) her normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement shall for those purposes be calculated by reference to her normal weekly earnings for the period of 8 weeks ending with the last day in respect of which she was paid under her former contract of service.

Modification of entitlement provisions

4.—(1) In relation to a woman who—

- (a) has been in employed earner's employment with an employer for a continuous period of at least 8 weeks, and
- (b) is dismissed by that employer for a reason mentioned in sub-paragraph (a) or (b) of Article 14(1) of the No. 2 Order, but
- (c) is not offered a new contract of service which complies with Article 14(3) of the No. 2 Order, or is offered such a contract but declines to accept it,

Article 47(2)(a) and (b) of the 1986 Order shall have effect as if for the conditions there set out there were substituted the conditions that—

- (i) she would but for her dismissal have been in employment with the employer who dismissed her for a period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement, and
- (ii) her normal weekly earnings from that employment for the period of 8 weeks ending with the last day in respect of which she was paid in accordance with the contract of service with the employer are not less than the lower earnings limit in force under section 4(1)(a) of the Act in the last of the 8 weeks.

(2) In relation to a woman in employed earner's employment who was confined before the 14th week before the expected week of confinement Article 47(2)(a) and (b) of the 1986 Order shall have effect as if for the conditions there set out, there were substituted the conditions that—

- (a) she would but for her confinement have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement, and
- (b) her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week of her confinement are not less than the lower earnings limit in force under section 4(1)(a) of the Act immediately before the commencement of the week of her confinement.

Treatment of two or more contracts of service as one

5. Where two or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part VI of the 1986 Order, except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations (Northern Ireland) 1979(a) the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

Lower rate of statutory maternity pay

6. The lower rate of statutory maternity pay is a weekly rate of £32·85.

Liability of Department to pay statutory maternity pay

7.—(1) Where—

- (a) an adjudicating authority has determined that an employer is liable to make payments of statutory maternity pay to a woman, and
- (b) the time for appealing against that determination has expired, and
- (c) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any week in respect of which the employer was liable to make payments of statutory maternity pay but did not do so, and for any subsequent weeks in the maternity pay period the liability to make those payments shall, notwithstanding Article 47(3) of the 1986 Order, be that of the Department and not the employer.

(2) In paragraph (1) adjudicating authority means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal or the Chief or any other Social Security Commissioner.

(3) Liability to make payments of statutory maternity pay shall, notwithstanding Article 47(3) of the 1986 Order, be a liability of the Department and not the employer as from the week in which the employer first becomes insolvent until the end of the maternity pay period.

(4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if,—

- (a) he becomes bankrupt or makes a composition or arrangement with his creditors;
- (b) he has died and an order is made under section 21 of the Bankruptcy Amendment Act (Northern Ireland) 1929(b) for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act (Northern Ireland) 1955(c); or
- (c) where the employer is a company, a winding-up order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

(a) S.R. 1979 No. 186
(b) 1929 c. 1 (N.I.) (20 Geo. 5)

(c) 1955 c. 24 (N.I.)

Work after confinement

8.—(1) Where in the week immediately preceding the 14th week before the expected week of confinement a woman had two or more employers but one or more of them were not liable to make payments to her of statutory maternity pay (“non-liable employer”), Article 48(6) of the 1986 Order shall not apply in respect of any week after the week of confinement but within the maternity pay period in which she works only for a non-liable employer.

(2) Where after her confinement a woman—

- (a) works for an employer who is not liable to pay her statutory maternity pay and is not a non-liable employer, but
- (b) before the end of her maternity pay period ceases to work for that employer,

the person who before she commenced work was liable to make payments of statutory maternity pay to her shall, notwithstanding Article 47 of the 1986 Order, not be liable to make such payments to her for any weeks in the maternity pay period after she ceases work.

No liability to pay statutory maternity pay

9. Notwithstanding the provisions of Article 47(1) of the 1986 Order, no liability to make payments of statutory maternity pay to a woman shall arise in respect of a week within the maternity pay period for any part of which she is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended), or of any subsequent week within that period.

Death of woman

10. An employer shall not be liable to make payments of statutory maternity pay in respect of a woman for any week within the maternity pay period which falls after the week in which she dies.

PART III

CONTINUOUS EMPLOYMENT AND NORMAL WORKING HOURS

Continuous employment

11.—(1) Subject to paragraphs (2) to (4), where in any week a woman is, for the whole or part of the week,—

- (a) incapable of work in consequence of sickness or injury;
- (b) absent from work on account of a temporary cessation of work;
- (c) absent from work in circumstances such that, by arrangement or custom, she is regarded as continuing in the employment of her employer for all or any purposes; or
- (d) absent from work wholly or partly because of pregnancy or confinement,

and returns to work for her employer after the incapacity for or absence from work, that week shall be treated for the purposes of Part VI of the 1986 Order as part of a continuous period of employment with that employer.

notwithstanding that no contract of service exists with that employer in respect of that week.

(2) Incapacity for work which lasts for more than 26 consecutive weeks shall not count for the purposes of paragraph (1)(a).

(3) Paragraph (1)(d) shall only apply to a woman who—

(a) has a contract of service with the same employer both before and after her confinement but not during any period of absence from work due to her confinement and the period between those contracts does not exceed 26 weeks, or

(b) returns to work in accordance with Article 28(1) of the No. 2 Order or in pursuance of an offer made in circumstances described in Article 30A(2) of that Order(a) after a period of absence from work wholly or partly occasioned by pregnancy or confinement.

(4) Where a woman is employed under a contract of service for part only of the week immediately preceding the 14th week before the expected week of confinement, the whole of that week shall count in computing any period of continuous employment for the purposes of Part VI of the 1986 Order.

Continuous employment and unfair dismissal

12.—(1) This regulation applies to a woman in relation to whose dismissal an action is commenced which consists—

(a) of the presentation by her of a complaint under Article 29(1) of the No. 1 Order;

(b) of her making a claim in accordance with a dismissal procedures agreement designated under Article 26 of the No. 1 Order; or

(c) of any action taken by the Labour Relations Agency under Article 62(5) of the No. 1 Order(b).

(2) If in consequence of an action of the kind specified in paragraph (1) a woman is reinstated or re-engaged by her employer or by a successor or associated employer of that employer the continuity of her employment shall be preserved for the purposes of Part VI of the 1986 Order and any week which falls within the interval beginning with the effective date of termination and ending with the date of reinstatement or re-engagement, as the case may be, shall count in the computation of her period of continuous employment.

(3) In this regulation—

“successor” and “dismissal procedures agreement” have the same meanings as in Article 2(2), (4) and (5) of the No. 1 Order, and

“associated employer” shall be construed in accordance with Article 2(6) of the No. 1 Order.

Continuous employment and stoppages of work

13.—(1) Where for any week or part of a week a woman does no work because there is, within the meaning of section 19 of the Act(c) a stoppage of

(a) Article 30A was inserted by Article 14 of the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8))

(b) See Article 3(b) of S.R. 1977 No. 177

(c) Section 19 was amended by Article 45(1) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888) (N.I. 18))

work due to a trade dispute at her place of employment the continuity of her employment shall, subject to paragraph (2), be treated as continuing throughout the stoppage but, subject to paragraph (3), no such week shall count in the computation of her period of employment.

(2) Subject to paragraph (3), where during the stoppage of work a woman is dismissed from her employment, the continuity of her employment shall not be treated in accordance with paragraph (1) as continuing beyond the commencement of the day she stopped work.

(3) The provisions of paragraph (1) to the extent that they provide that a week in which a stoppage of work occurred shall not count in the computation of a period of employment, and paragraph (2) shall not apply to a woman who proves that at no time did she have a direct interest in the trade dispute in question.

Change of employer

14. A woman's employment shall, notwithstanding the change of employer, be treated as continuous employment with the second employer where—

- (a) the employer's trade or business or an undertaking (whether or not it is an undertaking established by or under an Act of the United Kingdom Parliament or a transferred provision) is transferred from one person to another;
- (b) by or under any Act of the United Kingdom Parliament or transferred provision, a contract of employment between any body corporate and the woman is modified and some other body corporate is substituted as her employer;
- (c) on the death of her employer, the woman is taken into the employment of the personal representatives or trustees of the deceased;
- (d) the woman is employed by partners, personal representatives or trustees and there is a change in the partners, or, as the case may be, personal representatives or trustees;
- (e) the woman is taken into the employment of an employer who is, at the time she entered his employment, an associated employer of her previous employer, and for this purpose "associated employer" shall be construed in accordance with Article 2(6) of the No. 1 Order.

Reinstatement after service with the armed forces, etc

15. If a woman who is entitled to apply to her former employer under the Reserve Forces (Safeguard of Employment) Act 1985(a) enters the employment of that employer not later than the 6 month period mentioned in section 1(4)(b) of that Act, her previous period of employment with that employer (or if there was more than one such period, the last of those periods) and the period of employment beginning in the said period of 6 months shall be treated as continuous.

Normal working weeks

16.—(1) For the purposes of Article 49(5) of the 1986 Order, a woman's contract of service shall be treated as not normally involving or having involved employment for less than 16 hours weekly where she is normally employed for 16 hours or more weekly.

(2) Where a woman's relations with her employer were governed for a continuous period of at least 2 years by a contract of service which normally involved employment for not less than 16 hours weekly and this period was followed by a further period, ending with the week immediately preceding the 14th week before the expected week of confinement, in which her relations with that employer were governed by a contract of service which normally involved employment for less than 16 hours, but not less than 8 hours weekly, then her contract of service shall be treated for the purpose of Article 49(5) of the 1986 Order as not normally involving or having involved employment for less than 16 hours weekly.

(3) Where a woman's relations with her employer are or were governed for a continuous period of at least 2 years by a contract of service which involved—

- (a) for not more than 26 weeks in that period, employment for 8 hours or more but less than 16 hours weekly, and
- (b) for the whole of the remainder of that period, employment for not less than 16 hours weekly,

the contract of service shall be treated for the purposes of Article 49(5) of the 1986 Order as not normally involving or having involved employment for less than 16 hours weekly.

PART IV

GENERAL PROVISIONS

Meaning of "employee"

17.—(1) In a case where, and in so far as, a woman over the age of 16 is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978(a), she shall be treated as an employee for the purposes of Part VI of the 1986 Order and in a case where, and in so far as, such a woman is treated otherwise than as an employed earner by virtue of those regulations, she shall not be treated as an employee for the purposes of Part VI.

(2) Any woman who is in employed earner's employment within the meaning of the Act under a contract of apprenticeship shall be treated as an employee for the purposes of Part VI.

(3) A woman who is in employed earner's employment within the meaning of the Act but whose employer—

- (a) does not fulfil the conditions prescribed in regulation 111(1)(b) of the Social Security (Contributions) Regulations (Northern Ireland) 1979 as to residence or presence in Northern Ireland, or

(a) S.R. 1978 No. 401, as amended by S.R. 1980 No. 405 and S.R. 1984 No. 81

(b) is a woman who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—

(i) is exempt from the provisions of the Act, or

(ii) is a woman against whom the provisions of the Act are not enforceable,

shall not be treated as an employee for the purposes of Part VI of the 1986 Order.

Treatment of two or more employers as one

18.—(1) In a case where the earnings paid to a woman in respect of two or more employments are aggregated and treated as a single payment of earnings under regulation 12(1) of the Social Security (Contributions) Regulations (Northern Ireland) 1979(a), the employers of the woman in respect of those employments shall be treated as one for all purposes of Part VI of the 1986 Order.

(2) Where two or more employers are treated as one under the provisions of paragraph (1), liability for statutory maternity pay payable by them to a woman shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the woman's earnings from each employment bear to the amount of the aggregated earnings.

Payments to be treated as contractual remuneration

19. For the purposes of paragraph 12(1) and (2) of Schedule 4 to the 1986 Order, the payments which are to be treated as contractual remuneration are sums payable under the contract of service—

(a) by way of remuneration;

(b) for incapacity for work due to sickness or injury, and

(c) by reason of pregnancy or confinement.

Meaning of "earnings"

20.—(1) In this regulation "secondary contributor" means a person who is, or but for the provisions of the Act relating to the lower earnings limit would be, liable to pay a secondary contribution under section 4 of the Act.

(2) For the purposes of Article 51(3) of the 1986 Order, the expression "earnings" refers to gross earnings and includes any remuneration or profit derived from a woman's employment, except any payment in so far as it is—

(a) a payment on account of the woman's earnings in respect of that employment which comprises or represents, and does not exceed in amount, sums which have previously been included in her earnings for the purposes of Article 51(3) of the 1986 Order;

(b) a payment in respect of a period of holiday, where the sum paid is derived directly or indirectly from a fund to which more than one secondary contributor contributes and the management and control of which are not vested in those secondary contributors, or where the

(a) S.R. 1979 No. 186: the relevant amending regulations are S.R. 1984 No. 43 and S.R. 1985 No. 260

person making the payment is entitled to be reimbursed from such a fund;

- (c) a payment of or in respect of a gratuity or offering—
 - (i) where the payment is not made directly or indirectly by the secondary contributor and the sum paid does not comprise or represent sums previously paid to the secondary contributor; or
 - (ii) where the payment is not directly or indirectly allocated by the secondary contributor to the woman;
- (d) any payment in kind or by way of the provision of board or lodging or of services or other facilities;
- (e) a payment made to or by trustees not being a sickness payment which by virtue of section 3(1A) of the Act^(a) is treated as remuneration derived from employed earner's employment where—
 - (i) in the case of a payment to trustees, the share thereof which that woman is entitled to have paid to her, or
 - (ii) in the case of a payment by trustees, the amount to be so paid, is or may be dependent upon the exercise by the trustees of a discretion or the performance by them of a duty arising under the trust;
- (f) any payment by way of a pension;
- (g) a payment of a fee in respect of employment as a minister of religion which does not form part of the stipend or salary paid in respect of that employment;
- (h) a payment to defray or a contribution towards expenses incurred by women for whom facilities are provided under section 15 of the Disabled Persons (Employment) Act (Northern Ireland) 1945^(b) in travelling to and from the place where they are employed or where training is provided;
- (i) a payment by way of or derived from shares appropriated under a profit sharing scheme to which the provisions of Chapter III of Part III of the Finance Act 1978^(c) (profit sharing schemes) apply.

(3) Where the funds for making a sickness payment in accordance with arrangements of the kind mentioned in section 3(1A)^(b) of the Act are attributable in part to contributions to those funds by the employed earner, there shall be disregarded for the purposes of Article 51(3) of the 1986 Order so much of the sickness payment as is attributable to those contributions.

(4) For the purposes of Article 51(3) of the 1986 Order the expression "earnings" includes also—

- (a) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the No. 1 Order;
- (b) any sum payable by way of pay in pursuance of an order under the No. 1 Order for the continuation of a contract of employment;

(a) Section 3(1A) was inserted by Article 30(1) of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16))

(b) 1945 c. 6 (N.I.)

(c) 1978 c. 42

- (c) any sum payable by way of remuneration in pursuance of a protective award under the No. 1 Order;
- (d) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under Article 3(5) of the Social Security (Northern Ireland) Order 1982(a).

(5) Where goods or services are supplied by a woman and earnings paid to or for the benefit of that woman in respect of that employment include the remuneration for the supply of those goods or services, and on that supply value added tax is chargeable, there shall, for the purposes of Article 51(3) of the 1986 Order, be excluded from the calculation of those earnings an amount equal to the value added tax so chargeable.

(6) For the avoidance of doubt, in the calculation for the purposes of Article 51(3) of the 1986 Order of earnings paid to or for the benefit of a woman, there shall be disregarded—

- (a) any payment by way of a redundancy payment;
- (b) any specific and distinct payment of, or contribution towards, expenses actually incurred by a woman in carrying out her employment.

Normal weekly earnings

21.—(1) For the purposes of Part VI of the 1986 Order, a woman's normal weekly earnings shall be calculated in accordance with paragraphs (2) to (6).

(2) In this regulation—

“the appropriate date” means the first day of the 14th week before the expected week of confinement, or the first day in the week in which the woman is confined, whichever is the earlier, or in the case of a woman in respect of whom Article 47(2) of the 1986 Order is modified in accordance with regulation 4(1), the first day of the week immediately following the last week in which she was employed under a contract of service by the employer who dismissed her;

“normal pay day” means a day on which the terms of a woman's contract of service require her to be paid, or the practice in her employment is for her to be paid, if any payment is due to her; and

“day of payment” means a day on which the woman was paid.

(3) Subject to paragraph (4), the relevant period for the purposes of Article 51(3) of the 1986 Order is the period between—

- (a) the last normal pay day to fall before the appropriate date; and
- (b) the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a),

including the normal pay day mentioned in sub-paragraph (a) but excluding that first mentioned in sub-paragraph (b).

(4) In a case where a woman has no identifiable normal pay day, paragraph (3) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.

(a) S.I. 1982/1084 (N.I. 16); Article 3(5) was inserted by Article 69 of the Social Security (Northern Ireland) Order 1986

(5) In a case where a woman has normal pay days at intervals of or approximating to one or more months (including intervals of or approximating to a year) her normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(6) In a case to which paragraph (5) does not apply and the relevant period is not an exact number of weeks, the woman's normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of days in the relevant period and multiplying the result by 7.

PART V

ADMINISTRATION

Evidence of expected week of confinement or of confinement

22.—(1) A woman shall in accordance with paragraphs (2) to (4), provide the person who is liable to pay her statutory maternity pay with evidence as to—

- (a) the week in which the expected date of confinement occurs, and
- (b) where her entitlement to statutory maternity pay depends upon the fact of her confinement, the week in which she was confined.

(2) For the purpose of paragraph (1)(b) a certificate of birth shall be sufficient evidence that the woman was confined in the week in which the birth occurred.

(3) The evidence shall be submitted to the person who will be liable to make payments of statutory maternity pay not later than the end of the third week of the maternity pay period so however that where the woman has good cause the evidence may be submitted later than that date but not later than the end of the 13th week of the maternity pay period.

(4) For the purposes of paragraph (3) evidence contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to have been submitted on the day on which it was posted.

Notice of absence from work

23.—(1) Where a woman is confined before the beginning of the 14th week before the expected week of confinement, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives notice to the person who will be liable to pay it that her absence from work with him is wholly because of her confinement, and
- (b) that notice is given within 21 days of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and
- (c) where the person so requests, the notice is in writing.

(2) Where a woman is confined before the date stated in a notice provided in accordance with Article 47(4) of the 1986 Order as being the date her

absence from work is due to begin, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives a further notice to the person who will be liable to pay it specifying the date she was confined and the date her absence from work wholly or partly because of pregnancy or confinement began, and
- (b) that further notice is given within 21 days of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and
- (c) where the person so requests, the notice is in writing.

(3) For the purposes of this regulation, a notice contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to be given on the date on which it is posted.

(4) Subject to paragraph (5), Article 47(4) of the 1986 Order shall not apply to a woman who either—

- (a) leaves, for a reason wholly unconnected with her pregnancy, her employment with the person who will be liable to pay her statutory maternity pay, after the beginning of the 15th week before the expected week of confinement; or
- (b) is dismissed, but not unfairly dismissed under Article 14 of the No. 2 Order(a), from her employment by the person who will be liable to pay statutory maternity pay and has not at the time of her dismissal given him notice that she is going to be absent from work with him because of her pregnancy or confinement.

(5) A woman who is exempted from Article 47(4) of the 1986 Order by paragraph (4) but who is confined before the 11th week before the expected week of confinement shall be entitled to payments of statutory maternity pay only if she gives the person who will be liable to pay it notice specifying the date she was confined.

Notification of employment after confinement

24. A woman who after the date of confinement but within the maternity pay period commences work in employed earner's employment with a person who is not liable to make payments of statutory maternity pay to her and is not a non-labile employer for the purposes of regulation 8(1), shall within 7 days of the day she commenced work inform any person who is so liable of the date she commenced work.

Provision of information in connection with determination of questions

25. Any woman claiming to be entitled to statutory maternity pay, or any other person who is a party to proceedings arising under the 1986 Order relating to statutory maternity pay, shall, if she or that person receives notification from the Department that any information is required from her or that person for the determination of any question arising in connection therewith, furnish that information to the Department within 10 days of receiving that notification.

(a) Article 14(6) was repealed by Schedule 3 to the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8))

Records to be maintained by employers

26.—(1) Every employer shall maintain for 3 years after the end of the tax year in which the maternity pay period ends a record in relation to any woman who is or was an employee of his of—

- (a) the date of the first day of absence from work wholly or partly because of pregnancy or confinement as notified by her and, if different, the date of the first day when such absence commenced;
- (b) the weeks in that tax year in which statutory maternity pay was paid and the amount paid in each week; and
- (c) any week in that tax year which was within her maternity pay period but for which no payment of statutory maternity pay was made to her and the reasons no payment was made.

(2) Except where he was not liable to make a payment of statutory maternity pay and subject to paragraphs (3) and (4), every employer shall retain for 3 years after the end of the tax year in which the maternity pay period ends any medical certificate or other evidence relating to the expected week of confinement, or as the case may be, the confinement which was provided to him by a woman who is or was an employee of his.

(3) Where an employer returns a medical certificate to an employee of his for the purpose of enabling her to make a claim for benefit under the Act, it shall be sufficient for the purposes of paragraph (2) if he retains a copy of that certificate.

(4) An employer shall not retain any certificate of birth provided to him as evidence of confinement by a woman who is or was an employee of his, but shall retain a record of the date of birth.

PART VI

PAYMENT

Payment of statutory maternity pay

27. Payment of statutory maternity pay may be made in a like manner to payments of remuneration but shall not include payments in kind or by way of the provision of board or lodgings or of services or other facilities.

Rounding to avoid fractional amounts

28. Where any payment of statutory maternity pay is made for any week at the higher rate specified in Article 49(2) of the 1986 Order and the amount due for that week includes a fraction of a penny, the payment shall be rounded up to the next whole number of pence.

Time when statutory maternity pay is to be paid

29.—(1) In this regulation, “pay day” means a day on which it has been agreed, or it is the normal practice between an employer or former employer and a woman who is or was an employee of his, that payments by way of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a month.

(2) In any case where—

- (a) a decision has been made by an adjudication officer, a social security appeal tribunal or a Commissioner in proceedings under Part III of the Act as a result of which a woman is entitled to an amount of statutory maternity pay; and
- (b) the time for bringing an appeal against the decision has expired and either—
 - (i) no such appeal has been brought; or
 - (ii) such an appeal has been brought and has been finally disposed of,

that amount of statutory maternity pay shall be paid within the time specified in paragraph (3).

(3) Subject to paragraphs (4) and (5), the employer or former employer shall pay the amount not later than the first pay day after—

- (a) where an appeal has been brought, the day on which the employer or former employer receives notification that it has been finally disposed of;
- (b) where leave to appeal has been refused and there remains no further opportunity to apply for leave, the day on which the employer or former employer receives notification of the refusal; and
- (c) in any other case, the day on which the time for bringing an appeal expires.

(4) Subject to paragraph (5), where it is impracticable, in view of the employer's or former employer's methods of accounting for and paying remuneration, for the requirement of payment referred to in paragraph (3) to be met by the pay day referred to in that paragraph, it shall be met not later than the next following pay day.

(5) Where the employer or former employer would not have remunerated the woman for her work in the week in question as early as the pay day specified in paragraph (3) or (if it applies) paragraph (4), the requirement of payment shall be met on the first day on which the woman would have been remunerated for her work in that week.

Payments by the Department

30. Where the Department becomes liable in accordance with regulation 7 to make payments of statutory maternity pay to a woman, the first payment shall be made as soon as reasonably practicable after it becomes so liable, and payments thereafter shall be made at weekly intervals, by means of an instrument of payment or by such other means as appears to the Department to be appropriate in the circumstances of any particular case.

Persons unable to act

31.—(1) Where in the case of any woman—

- (a) statutory maternity pay is payable to her or she is alleged to be entitled to it;
- (b) she is unable for the time being to act; and
- (c) no controller has been appointed by the High Court with power to receive statutory maternity pay on her behalf,

the Department may, upon written application to it by a person who, if a natural person, is over the age of 18, appoint that person to exercise, on behalf of the woman any right to which she may be entitled under Part VI of the 1986 Order and to deal on her behalf with any sums payable to her.

(2) Where the Department has made an appointment under paragraph (1)—

- (a) it may at any time in its absolute discretion revoke it;
- (b) the person appointed may resign his office after having given one month's notice in writing to the Department of his intention to do so; and
- (c) the appointment shall terminate when the Department is notified that a controller has been appointed by the High Court.

(3) Anything required by Part VI of the 1986 Order to be done by or to any woman who is unable to act may be done by or to the person appointed under this regulation to act on her behalf, and the receipt of the person so appointed shall be a good discharge to the woman's employer or former employer for any sum paid.

PART VII

OFFENCES

Penalties

32. Any person who without reasonable excuse contravenes, or fails to comply with any provision of regulation 25, 26 or 29, shall be guilty of an offence under the 1986 Order and shall be liable on summary conviction to a penalty not exceeding—

- (a) for any one offence, £400; or
- (b) except in relation to regulation 29, for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.

Sealed with the Official Seal of the Department of Health and Social Services on 30th January 1987.

(L.S.)

A. N. Burns

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations make provision as to statutory maternity pay ("SMP") introduced by Part VI of, and Schedule 4 to, the Social Security (Northern Ireland) Order 1986 ("the 1986 Order"). 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.

Article 47(4) of, and paragraph 6(a) of Schedule 4 to, the 1986 Order are two of the enabling provisions under which these regulations are made. They are brought into operation on 15th March 1987 by virtue of Schedule 1 to the Social Security (1986 Order) (Commencement No. 3) Order (Northern Ireland) 1987 (S.R. 1987 No. 21 (C. 3)). The other enabling provisions under which these regulations are made are brought into operation on 6th April 1987 by virtue of Schedule 2 to that commencement order.

Part I relates to the citation, commencement and interpretation of the regulations.

Part II contains provisions relating to entitlement to SMP. Regulation 2 prescribes when the maternity pay period of 18 weeks begins in cases where the woman does not stop work until after the start of the 11th week before her expected week of confinement. It also sets out the provisions which apply when the woman is confined before the 11th week before her expected week of confinement. Regulations 3 and 4 contain provisions specifying entitlement to SMP where the woman's contract of service is ended before the 14th week before the expected week of confinement.

Regulation 5 provides for two or more contracts of service to be treated as a single contract where both employer and employee are the same. Regulation 6 specifies the lower rate of SMP. Regulation 7 specifies the circumstances in which the liability to make payments of SMP is to be that of the Department and not the employer. Regulations 8 to 10 specify circumstances in which there is to be no liability to make payments of SMP.

Part III provides for weeks which would otherwise break a period of continuous employment to count in determining whether employment was continuous. These include weeks where the woman was absent because of a temporary cessation of work, or because of pregnancy or confinement, even though no contract of service existed between the woman and her former employer (regulation 11); weeks falling between a dismissal and reinstatement (regulation 12) and weeks in which the woman did not work because of a trade dispute at her place of employment (regulation 13). Breaks due to a change in ownership or control of the undertaking or business in which she worked are disregarded in determining whether her employment is continuous (regulation 14). Time spent in the reserve forces is also disregarded (regulation 15).

Regulation 16 contains provisions as to when a contract of service is to be treated as not normally involving or having involved employment for less than 16 hours weekly.

Part IV contains general provisions relating to the meaning of “employee” (regulation 17); to the treatment of two or more employers as one (regulation 18); to the payments which are to be regarded as contractual remuneration (regulation 19); to the meaning of “earnings” (regulation 20) and to the calculation of normal weekly earnings (regulation 21).

Part V contains provisions relating to the administration of SMP including the provision of information by women (regulations 22-25) and the keeping of records by employers (regulation 26).

Part VI relates to the payments of SMP both by employers (regulations 27-29) and by the Department (regulation 30). Regulation 31 provides for the payment of SMP where the woman is unable to act.

Part VII relates to offences and sets out the penalties for contraventions of regulations 25, 26 and 29.