

## 1990 No. 112

## STATUTORY MATERNITY PAY

**The Statutory Maternity Pay (General) (Amendment) Regulations (Northern Ireland) 1990**

*Made* . . . . . 16th March 1990

*Coming into operation—*

*for the purposes of regulation 6* . . . . . 6th May 1990

*for all other purposes* . . . . . 6th April 1990

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 47(8), 51(1) and (4) of, and paragraphs 8A, 11 and 11A 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:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Statutory Maternity Pay (General) (Amendment) Regulations (Northern Ireland) 1990 and shall come into operation for the purposes of regulation 6 on 6th May 1990 and for all other purposes on 6th April 1990.

(2) In these regulations “the principal regulations” means the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(b).

*Amendment of regulation 11 of the principal regulations*

2. In regulation 11 of the principal regulations (continuous employment) after paragraph (3) there shall be inserted the following paragraph—

“(3A) Where a woman who is pregnant—

(a) is an employee in an employed earner’s employment in which the custom is for the employer—

(i) to offer work for a fixed period of not more than 26 consecutive weeks,

(ii) to offer work for such period on two or more occasions in a year for periods which do not overlap, and

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(a) S.I. 1986/1888; Article 47(8) and paragraph 11 of Schedule 4 were amended by, and paragraph 11A of Schedule 4 was inserted by, paragraphs 12 and 15 of Schedule 4 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)). Article 51(1) was amended by Schedule 5 to the Social Security (Northern Ireland) Order 1988. Paragraph 8A of Schedule 4 was inserted by paragraph 17 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)). 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

(b) S.R. 1987 No. 30; as amended by S.R. 1988 No. 128 and S.R. 1990 No. 70

- (iii) to offer the work available to those persons who had worked for him during the last or a recent such period; but
- (b) is absent from work—
- (i) wholly or partly because of her pregnancy or confinement, or
- (ii) because of incapacity arising from some specific disease or bodily or mental disablement,

then in her case paragraph (1) shall apply as if “and returns to work for her employer after the incapacity for or absence from work,” were omitted and paragraph (4) shall not apply.”.

*Meaning of “week”*

3. After regulation 16 of the principal regulations (normal working weeks) there shall be inserted the following regulation—

*“Meaning of “week”*

**16A.** Where a woman has been in employed earner’s employment with the same employer in each of 26 consecutive weeks (but no more than 26 weeks) ending with the week immediately preceding the 14th week before the expected week of confinement then for the purpose of determining whether that employment amounts to a continuous period of at least 26 weeks, the first of those 26 weeks shall be a period commencing on the first day of her employment with the employer and ending at midnight on the first Saturday thereafter or on that day where her first day is a Saturday.”.

*Meaning of “earnings”*

4.—(1) Regulation 20(2) of the principal regulations (meaning of “earnings”) shall be amended in accordance with paragraphs (2) to (5).

(2) In sub-paragraph (b) after “holiday” there shall be inserted “entitlement”.

(3) In sub-paragraph (d) after “kind” there shall be inserted “other than a payment to which regulation 19C of the Social Security (Contributions) Regulations (Northern Ireland) 1979(a) applies”.

(4) Sub-paragraph (e) shall be omitted.

(5) After sub-paragraph (i) there shall be inserted the following sub-paragraph—

“(j) a payment which by virtue of section 643(1) of the Income and Corporation Taxes Act 1988(b) (employer’s contributions) is not regarded as an emolument of the employment chargeable to tax under Schedule E.”.

*The maternity pay period and invalidity pension*

5. In regulation 21A of the principal regulations (effect of statutory maternity pay on invalidity benefit) for paragraph (1) there shall be substituted the following paragraphs—

(a) S.R. 1979 No. 186; regulation 19C was inserted by S.R. 1988 No. 189

(b) 1988 c. 1

“(1) For the purpose of determining a woman’s entitlement to invalidity pension under section 15 of the Act(a) or under Article 17 of the Social Security Pensions (Northern Ireland) Order 1975(b), a day which falls within the maternity pay period shall, notwithstanding paragraph 11 of Schedule 4 to the 1986 Order, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of interruption of employment where—

- (a) on that day she was incapable of work by reason of some specific disease or bodily or mental disablement, work for this purpose being work which the woman can reasonably be expected to do;
- (b) that day is not treated under section 17(2) of the Act as a day which is not a day of incapacity for work;
- (c) the day immediately preceding the first day in the maternity pay period falls within either a period of interruption of employment or a period of entitlement to statutory sick pay for the purposes of Part II of the Social Security (Northern Ireland) Order 1982(c); and
- (d) the woman either satisfied the contribution conditions specified for sickness benefit on the first day of incapacity for work to fall within that period of interruption of employment or would have satisfied those conditions had a claim for sickness benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(1A) Any day which, by virtue of paragraph (1), forms part of a period of interruption of employment shall be further treated, for the purposes of determining entitlement to invalidity pension under section 15 of the Act, as being a day on which the woman has been entitled to sickness benefit.

(1B) For the purposes of this regulation, “period of interruption of employment” has the same meaning as it has by virtue of section 17(1)(d) of the Act.

(1C) The reference to a maternity pay period in paragraph (1) is to a maternity pay period which commenced on or after 6th May 1990.”.

*Provision of information relating to claims for certain other benefits*

6. After regulation 25 of the principal regulations (provision of information in connection with determination of questions) there shall be inserted the following regulation—

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- (a) 1975 c. 15; section 15 was amended by paragraph 22 of Schedule 5 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), paragraph 1 of Schedule 1 and paragraph 6 of Schedule 3 to, the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), paragraph 6 of Schedule 4 to the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)) and paragraph 53 of Schedule 9 to the Social Security (Northern Ireland) Order 1986
  - (b) S.I. 1975/1503 (N.I. 15); Article 17 was amended by Article 5(4) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S.I. 1977/610 (N.I. 11)) and paragraph 45 of Schedule 9 to the Social Security (Northern Ireland) Order 1986
  - (c) S.I. 1982/1084 (N.I. 16)

*“Provision of information relating to claims for certain other benefits*

**25A.**—(1) Where an employer who has been given notice in accordance with Article 47(4) of the 1986 Order or regulation 23 by a woman who is or has been an employee of his—

- (a) decides that he has no liability to make payments of statutory maternity pay to her; or
- (b) has made one or more payments of statutory maternity pay to her but decides, before the end of the maternity pay period and for a reason specified in paragraph (3), that he has no liability to make further payments to her,

then, in connection with the making of a claim by the woman for a maternity allowance or incapacity benefit, he shall furnish her with the information specified in paragraphs (2) to (4).

(2) Where the employer decides he has no liability to make payments of statutory maternity pay to the woman, he shall furnish her with details of his decision and the reasons for it.

(3) Where the employer decides he has no liability to make further payments of statutory maternity pay to the woman because either she has within the maternity pay period been detained in legal custody or sentenced to a term of imprisonment which was not suspended or for part of a week within the maternity pay period she was not present in a member State, he shall furnish her with—

- (a) details of his decision and the reasons for it; and
  - (b) details of the last week in respect of which a liability to pay statutory maternity pay arose and the total number of weeks within the maternity pay period in which such a liability arose.
- (4) The employer shall—
- (a) return to the woman any maternity certificate provided by her in support of the notice referred to in paragraph (1); and
  - (b) comply with any requirements imposed by the preceding provisions of this regulation—
    - (i) in a case to which paragraph (2) applies, within 7 days of the decision being made, or, if earlier, within 21 days of the day the woman gave notice of her intended absence or of her confinement if that had occurred, or
    - (ii) in a case to which paragraph (3) refers, within 7 days of being notified of the woman's detention or sentence or, as the case may be, absence from a member State.

(5) In this regulation, “incapacity benefit” means sickness benefit, invalidity pension or a severe disablement allowance.”

Sealed with the Official Seal of the Department of Health and Social Services on 16th March 1990.

(L.S.)

A. N. Burns

Assistant Secretary

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

These regulations, which come into operation on 6th April 1990 and 6th May 1990, amend the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987. They correspond to provision contained in regulations made by the Secretary of State for Social Security 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.

Regulation 2 provides that a woman whose work is seasonal may be regarded as being in continuous employment during any period of absence from work due to pregnancy or confinement, whether or not she returns to work for the same employer following her confinement.

Regulation 3 defines "week" in relation to the first of the 26 weeks immediately preceding the 14th week before the expected week of confinement where a woman has worked for only 26 weeks in total.

Regulation 4 makes minor amendments to the meaning of "earnings" as it applies for the purposes of statutory maternity pay.

Regulation 5 provides that days on which a woman is entitled to statutory maternity pay are in specified circumstances to count for the purpose of satisfying conditions of entitlement to an invalidity pension. The provision comes into operation on 6th May 1990.

Regulation 6 provides details of the information employers are required to provide women employees who are not entitled to statutory maternity pay so as to enable them to claim maternity allowance or other benefits under the Social Security (Northern Ireland) Act 1975 (c. 15).