

1990 No. 622

TERMS AND CONDITIONS OF EMPLOYMENT

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

<i>Made - - - -</i>	<i>15th March 1990</i>
<i>Laid before Parliament</i>	<i>16th March 1990</i>
<i>Coming into force</i>	
<i>- for the purposes of regulation 6</i>	<i>6th May 1990</i>
<i>- for all other purposes</i>	<i>6th April 1990</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 46(8), 50(1) and (4), 83(1) and 84(1) of, and paragraphs 8A, 11 and 11A of Schedule 4 to, the Social Security Act 1986(a), and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that the proposals in respect of these Regulations should not be referred to it(b), hereby makes the following Regulations:-

Citation, commencement and interpretation

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

(2) In these regulations “the General Regulations” means the Statutory Maternity Pay (General) Regulations 1986(c).

Amendment of regulation 11 of the General Regulations

2. In regulation 11 of the General 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 2 or more occasions in a year for periods which do not overlap; and
 - (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 the pregnancy or her confinement, or
 - (ii) because of incapacity arising from some specific disease or bodily or mental disablement,

(a) 1986 c.50; paragraph 8A was added to Schedule 4 by the Social Security Act 1989 (c.24), Schedule 8, paragraph 18; paragraph 11A was added by the Social Security Act 1988 (c.7), Schedule 4, paragraph 19(2); section 84(1) is cited because of the meanings it ascribes to the words “prescribed” and “regulations”. (b) See section 61(1)(b) and (10) of the 1986 Act; section 61(10) is amended by the Social Security Act 1989 (c.24), Schedule 8, paragraph 12(4). (c) S.I. 1986/1960.

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

Amendment of regulation 14 of the General Regulations

3. In regulation 14(f) of the General Regulations (change of employer), for the words "the employers are the governors of a school maintained by a local education authority or that authority", there shall be substituted the words "those employers are the governors of a school maintained by a local education authority and that authority".

Meaning of the "week"

4. After regulation 16 of the General 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"

5. Regulation 20(2) of the General Regulations (meaning of "earnings") shall be amended by –

- (a) in sub-paragraph (b), inserting after the word "holiday" the word "entitlement";
- (b) in sub-paragraph (d), inserting after the word "kind" the words "other than a payment to which regulation 19C of the Social Security (Contributions) Regulations 1979(a), applies";
- (c) omitting sub-paragraph (e); and
- (d) inserting after sub-paragraph (i) the following sub-paragraph—

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

The Maternity Pay Period and Invalidity Pension

6. In regulation 21A of the General Regulations(c) (effect of statutory maternity pay on invalidity benefit) for paragraph (1) there shall be substituted the following paragraphs:–

"(1) For the purpose of determining a woman's entitlement to invalidity pension under section 15 of the 1975 Act or under section 15 of the Social Security Pensions Act 1975(d), a day which falls within the maternity pay period shall, notwithstanding paragraph 11 of Schedule 4 to the 1986 Act, 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; and
- (b) that day is not treated under section 17(2) of the 1975 Act as a day which is not a day of incapacity for work, and

(a) S.I. 1979/591; regulation 19C was added by regulation 3 of S.I. 1988/860. (b) 1988 c.1. (c) Regulation 21A was inserted by regulation 3 of S.I. 1988/532. (d) 1975 c.60.

- (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 I of the Social Security and Housing Benefits Act 1982(a); 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 1975 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 in the 1975 Act by virtue of section 17(1)(d) of that 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

7. After regulation 25 of the General Regulations (provision of information in connection with determination of questions) there shall be inserted the following regulation –

"Provision of information relating to claims for certain other benefits

25A.—(1) Where an employer who has been given notice in accordance with Section 46(4) of the 1986 Act or regulation 23 by a woman who is or has been an employee –

- (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 the following provisions of this regulation.

(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 the 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

(a) 1982 c.24.

- (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."

Signed by authority of the Secretary of State for Social Security.

15th March 1990

Henley
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 6th April 1990, amend the Statutory Maternity Pay (General) Regulations 1986.

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 makes a minor amendment to provisions providing for continuity of employment where the woman moves from one employer to another.

Regulation 4 defines the word "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 5 makes minor amendments to the meaning of the word "earnings" as it applies for the purposes of statutory maternity pay.

Regulation 6 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 force on 6th May 1990.

Regulation 7 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 Act 1975 (c.14).

90p net

ISBN 0 11 003622 0

Printed in the United Kingdom for HMSO

880 WO608 C36 3/90 452 7102 O/N88174