

STATUTORY INSTRUMENTS

**1991 No. 590**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Statutory Maternity Pay (National Health Service Employees) Regulations 1991**

<i>Made</i>	- - - -	<i>11 March 1991</i>
<i>Laid before Parliament</i>		<i>11th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 49, 50(2A),84(1) of, and paragraph 6 of Schedule 4 to the Social Security Act 1986<sup>M1</sup> and of all other powers enabling him in that behalf, by this instrument, which contains only Regulations consequential upon paragraph 22 of Schedule 6 to the Social Security Act 1990<sup>M2</sup>, makes the following Regulations:

**Marginal Citations**

- M1** 1986 c.50; section 50(2A) is added by paragraph 22, Schedule 6 to the [Social Security Act 1990 \(c.27\)](#); section 84(1) is an interpretation provision and is cited because of the meaning ascribed to the words “prescribed” and “regulations”.
- M2** 1990 c.27.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Statutory Maternity Pay (National Health Service Employees) Regulations 1991 and shall come into force on 1st April 1991.

(2) In these Regulations, a “health authority” [<sup>F1</sup>shall in relation to Wales have the same meaning it has in section 8] of the National Health Service Act 1977 <sup>M3</sup>, and in relation to Scotland mean the health board within the meaning of section 2 of the National Health Service (Scotland) Act 1978 <sup>M4</sup>.

<sup>F2</sup>(3) .....

<sup>F3</sup>(4) .....

(5) [<sup>F4</sup>In these Regulations, a reference to “NHS trust” shall be construed to include a reference to an NHS foundation trust within the meaning of section 1(1) of the Health and Social Care (Community Health and Standards) Act 2003 where the application for authorisation to become an NHS foundation trust was made by an NHS trust.]

**Changes to legislation:** *The Statutory Maternity Pay (National Health Service Employees) Regulations 1991 is up to date with all changes known to be in force on or before 10 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- F1** Words in reg. 1(2) substituted (1.10.02) by S.I. 2002/2469, sch. 1, para. 51(a)  
**F2** Reg. 1(3) omitted (1.4.13) by S.I. 2013/235, Sch. 2, para. 16  
**F3** Reg. 1(4) omitted (1.4.13) by S.I. 2013/235, Sch. 2, para. 16  
**F4** Reg. 1(5) inserted (1.4.04) by S.I. 2004/696, Sch. 17

#### Marginal Citations

- M3** 1977 c.49.  
**M4** 1978 c.29.

### Treatment of more than one contract of employment as one contract

2. Where, in consequence of the establishment of one or more National Health Service Trusts under Part I of the National Health Service and Community Care Act 1990<sup>M5</sup>, or the National Health Service (Scotland) Act 1978, a woman's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts,<sup>F5</sup>... she may elect for all those contracts to be treated as one contract for the purposes of Part V of the Social Security Act 1986.

- F5** Words in reg. 2 omitted (1.4.13) by S.I. 2013/235, Sch. 2, para. 16(3)

#### Marginal Citations

- M5** 1990 c. 19.

### Notification of election

3. A woman who makes an election under regulation 2 above shall give written notification of that election to each of her employers under the two or more contracts of service mentioned in that regulation at least [<sup>F6</sup>28 days] before the first day she is going to be absent from work with any of her employers, wholly or partly because of pregnancy, or if in the particular circumstances that is not practicable, as soon as is reasonably practicable.

- F6** Words in reg. 3 substituted (24.11.02) by S.I. 2002/2690, reg. 11

### Provision of information

4. A woman who makes an election under regulation 2 above shall, within [<sup>F7</sup>28 days] of giving notice of that election or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter, provide each of her employers under the two or more contracts of service mentioned under that regulation with the following information—

- (a) the name and address of each of those employers; and
- (b) the date her employment with each of those employers commenced; and
- (c) details of her earnings during the relevant period from each employer and for this purpose the expressions “earnings” and “relevant period” have the same meanings as they have for the purposes of section 50(3) of the Social Security Act 1986<sup>M6</sup>.

- F7** Words in reg. 4 substituted (24.11.02) by S.I. 2002/2690, reg. 12

### Marginal Citations

- M6** See section 50(4) of the [Social Security Act 1986 \(c.50\)](#), and regulations 20 and 21 of the Statutory Maternity Pay (General) Regulations 1986/1960 as amended by [S.I. 1990/622](#).

### Treatment of two or more employers as one

5. The employer to be regarded for the purposes of statutory maternity pay as the employer under the one contract where 2 or more contracts of service are treated as one in accordance with regulation 2 above shall be—

[<sup>F8</sup>(a) in the case of a woman whose contract of employment is treated by a scheme under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978 as divided—

(i) the Health Authority or Primary Care Trust from which the woman was transferred, in a case where any one of the contracts of service is with that Health Authority <sup>F9</sup> ...; or

(ii) the first NHS trust to which a contract of service was transferred in a case where none of the contracts of service are with the Health Authority <sup>F10</sup> ... from which she was transferred;

<sup>F11</sup> ...

(c) in the case of a woman whose contract of employment is divided as provided by an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977—

(i) the Health Authority, NHS trust or Primary Care Trust from which the woman was transferred, in a case where any one of the contracts of service is with that body; or

(ii) the first Primary Care Trust to which a contract of service was transferred in a case where none of the contracts of service are with the body from which she was transferred.]

**F8** Reg. 5(a)(b) substituted for reg. 5(a)(c) (1.4.2000) by [The Health Act 1999 \(Supplementary, Consequential etc. Provisions\) \(No. 2\) Order 2000 \(S.I. 2000/694\)](#), art. 1, [Sch. para. 3\(4\)](#)

**F9** Words in reg. 5(a)(i) omitted (1.4.13) by S.I. 2013/235, Sch. 2, para. 16(4)(a)

**F10** Words in reg. 5(b)(ii) omitted (1.4.13) by S.I. 2013/235, Sch. 2, para 16(4)(b)

**F11** Preceding word and reg. 5(b) omitted (1.4.13) by S.I. 2013/235, Sch. 2

### Time for which an election is to have effect

6. An election made under regulation 2 shall lapse at the end of the maternity pay period.

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

11th March 1991

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

**Changes to legislation:** *The Statutory Maternity Pay (National Health Service Employees) Regulations 1991 is up to date with all changes known to be in force on or before 10 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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## EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this instrument are consequential upon the coming into force on 1st April 1991 of paragraph 22 of Schedule 6 to the Social Security Act 1990 (c.27) (which relates to statutory maternity pay for National Health Service Staff with divided contracts). The instrument is made before the end of the period of 6 months beginning with the coming into force of that provision; the regulations in it are therefore exempted by section 61(5) of the Social Security Act 1986 (c.50) (as amended by the Social Security Act 1989 (c.24) Schedule 8, paragraph 12(3)) from the requirement under section 10 of the Social Security Act 1980 (c.30) to refer the proposals to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 2 provides for employees whose contract of service has been divided into two or more such contracts with different bodies as a consequence of the National Health Service and Community Care Act 1990 or, the National Health Service (Scotland) Act 1978 to elect to have those contracts treated as one contract for the purposes of entitlement to statutory maternity pay. Regulation 3 provides for the manner in which, and the time within which, such an election is to be made.

Regulation 4 makes provision for the information that is to be provided by a woman to her employers.

Regulation 5 provides for one of a woman's employers under the two or more contracts to be regarded for the purposes of statutory maternity pay as her employer under the one contract.

Regulation 6 provides for the time for which an election is to have effect.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- reg.1 amended by [S.I. 2000/694 art.3Sch. Pt.II para.3\(2\)](#)
- reg.2 amended by [S.I. 2000/694 art.3Sch. Pt.II para. 3\(3\)](#)
- reg.5 amended by [S.I. 2000/694 art.3Sch. Pt.II para.3\(4\)](#)