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STATUTORY INSTRUMENTS

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**2005 No. 729**

**SOCIAL SECURITY**  
**TERMS AND CONDITIONS OF EMPLOYMENT**

The Statutory Maternity Pay (General)  
(Amendment) Regulations 2005

<i>Made</i>	- - - -	<i>15th March 2005</i>
<i>Laid before Parliament</i>		<i>16th March 2005</i>
<i>Coming into force</i>	- -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 164(9) (a), 171(1), (6) and (7) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it <sup>(2)</sup> and with the concurrence of the Inland Revenue, insofar as such concurrence is required<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Statutory Maternity Pay (General) (Amendment) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations, “the principal Regulations” means the Statutory Maternity Pay (General) Regulations 1986<sup>(4)</sup>.

**Amendment of regulation 1 of the principal Regulations**

2. In regulation 1(2) of the principal Regulations (citation, commencement and interpretation), after the definition of “the Contributions and Benefits Act” there shall be inserted the following definition—

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(1) 1992 c. 4. Section 171(1) is cited because of the meaning ascribed to the word “prescribed”; section 171(7) was inserted, and section 175(1) was amended, by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, para 15(3) and Schedule 3, para 29(2) respectively.  
(2) See the Social Security Administration Act 1992 (c. 5), section 173(1)(b).  
(3) See the Social Security Contributions and Benefits Act 1992, section 171(7).  
(4) S.I.1986/1960; relevant amending instruments are S.I. 1992/2595 and 1996/1335.

““statutory maternity leave” means ordinary maternity leave and any additional maternity leave under, respectively, sections 71 and 73 of the Employment Rights Act 1996(5).”.

### **Amendment of regulation 21 of the principal Regulations**

3. In regulation 21 of the principal Regulations (normal weekly earnings), for paragraph (7)(6) there shall be substituted the following paragraph—

“(7) In any case where—

- (a) a woman is awarded a pay increase (or would have been awarded such an increase had she not then been absent on statutory maternity leave); and
- (b) that pay increase applies to the whole or any part of the period between the beginning of the relevant period and the end of her period of statutory maternity leave,

her normal weekly earnings shall be calculated as if such an increase applied in each week of the relevant period.”.

### **Amendment of regulation 21B of the principal Regulations**

4. For regulation 21B of the principal Regulations (effect of maternity allowance on statutory maternity pay)(7), there shall be substituted the following regulation—

#### **“Effect of maternity allowance on statutory maternity pay**

**21B.** Where a woman, in any week which falls within the maternity pay period, is—

- (a) in receipt of maternity allowance pursuant to the provisions of sections 35 and 35A of the Contributions and Benefits Act(8); and
- (b) entitled to receive statutory maternity pay in consequence of receiving a pay increase referred to in regulation 21(7),

the employer shall not be liable to make payments of statutory maternity pay in respect of such a week unless, and to the extent by which, the rate of statutory maternity pay(9) exceeds the rate of maternity allowance(10) received by her in that week.”.

Signed by authority of the Secretary of State for Work and Pensions.

10 March 2005

*P. Hollis*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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(5) 1996 c. 18. Sections 71 and 73 were substituted by the Employment Relations Act 1999 (c. 26), Schedule 4, Part I and were amended by the Employment Act 2002 (c. 22), section 17(2) to (4).

(6) Paragraph (7) was inserted by regulation 2 of S.I. 1996/1335.

(7) Regulation 21B was inserted by S.I. 1996/1335.

(8) Section 35(1) was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), section 53(1). Section 35(3)(c) was added by regulation 2(3) of S.I. 1994/1230. Section 35(3)(c) was further amended, and section 35(6A) to (6D) inserted, by the Employment Act 2002, Schedule 7, paragraph (4)(3) and (4) respectively. Section 35(6)(b) was amended by the Still-Birth (Definition) Act 1992 (c. 29), section 2(1)(a). Section 35A was inserted by the Welfare Reform and Pensions Act 1999, section 53(3) and further amended by the Employment Act 2002, section 48(1) and Schedule 7, paragraph 5.

(9) See the Social Security Contributions and Benefits Act 1992, section 166(1) and (2) which was substituted by the Employment Act 2002, section 19.

(10) See the Social Security Contributions and Benefits Act 1992, section 35A(1).

The Inland Revenue hereby concur.

15 March 2005

*Helen Ghosh*  
*Ann Chant*  
Two of the Commissioners of Inland Revenue

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the Statutory Maternity Pay (General) Regulations 1986 (“the principal Regulations”).

Regulation 2 amends regulation 1 of the principal Regulations by inserting a definition of statutory maternity leave.

Regulation 3 amends regulation 21 of the principal Regulations to include in normal weekly earnings for the purpose of calculating entitlement to statutory maternity pay any pay increase which applies to the whole or any part of the period between the beginning of the period when pay is calculated to determine entitlement to statutory maternity pay and the end of the period of statutory maternity leave.

Regulation 4 substitutes regulation 21B of the principal Regulations. The substituted regulation provides that where a woman is entitled to statutory maternity pay in consequence of a pay increase referred to in regulation 21(7) of the principal Regulations, the employer shall only make payments of statutory maternity pay in any week if, and to the extent by which, her statutory maternity pay exceeds any maternity allowance received by her.

The effect of regulation 3 will be to increase costs to business. An assessment of the costs to business of complying with these Regulations has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department for Work and Pensions, 1-11 John Adam Street, London WC2N 6HT or electronically from [www.dwp.gov.uk](http://www.dwp.gov.uk).