

## 1994 No. 271

**SOCIAL SECURITY; STATUTORY MATERNITY PAY****The Statutory Maternity Pay (Compensation of Employers)  
and Miscellaneous Amendment Regulations  
(Northern Ireland) 1994**

Made . . . . . 18th July 1994

Coming into operation in accordance with regulation 1(2)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 35(3) and 163(1), (1B) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(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 (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994 and regulations 2 to 7 shall have effect in relation to payments of statutory maternity pay due on or after 4th September 1994.

(2) These regulations shall come into operation as follows—

(a) regulations 1, 8 and 9(b) on 31st July 1994; and

(b) all other regulations on 4th September 1994.

(3) In these regulations—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“contributions payment”, in relation to an employer, means any payment which an employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions;

“employer” shall include a person who was previously an employer of a woman to whom a payment of statutory maternity pay was made, whether or not that person remains her employer at the date any deduction from contributions payments is made by him in accordance with regulation 5 or, as the case may be, any payment is received by him in accordance with regulation 6;

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

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(a) 1992 c. 7; sections 35 and 163 were amended by regulations 2 and 5 respectively of the Maternity Allowance and Statutory Maternity Pay Regulations (Northern Ireland) 1994 (S.R. 1994 No. 176)

“payment of statutory maternity pay” means the total amount of statutory maternity pay paid by an employer to an employee during her maternity pay period;

“qualifying day” means the first day in the week immediately preceding the 14th week before the expected week of confinement in which a woman who is or has been an employee first satisfies the conditions of entitlement to statutory maternity pay for which a deduction from a contributions payment is made by her employer in respect of a payment of statutory maternity pay made by him;

“qualifying tax year” means the tax year preceding the tax year in which the qualifying day in question falls.

(4) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(5) For the purposes of regulations 5 and 6 “the Department” shall include a reference to the Commissioners of Inland Revenue acting on its behalf.

#### *Meaning of “small employer”*

2.—(1) Subject to paragraphs (2) to (4), a small employer is an employer whose contributions payments for the qualifying tax year do not exceed £20,000.

(2) For the purposes of this regulation, the amount of an employer’s contributions payments shall be determined without regard to any deductions that may be made from them under any enactment or instrument.

(3) Where in the qualifying tax year an employer has made contributions payments in one or more, but less than 12, of the income tax months, the amount of his contributions payments for that tax year shall be estimated by adding together all of those payments, dividing the total amount by the number of those months in which he has made those payments and multiplying the resulting figure by 12.

(4) Where in the qualifying tax year an employer has made no contributions payments, but does have such payments in one or more income tax months which fall both—

(a) in the tax year in which the qualifying day falls; and

(b) before the qualifying day or, where there is more than one such day in that tax year, before the first of those days,

then the amount of his contributions payments for the qualifying tax year shall be estimated in accordance with paragraph (3) but as if the amount of the contributions payments falling in those months had fallen instead in the corresponding tax months in the qualifying tax year.

*Amount of additional payment to which a small employer shall be entitled*

3. In respect of any payment of statutory maternity pay a small employer shall be entitled to an additional payment being an amount equal to 4 per cent. of such payment.

*Right of employers to prescribed amount*

4. An employer who has made any payment of statutory maternity pay shall be entitled—

(a) to an amount equal to 92 per cent. of such payment; or

(b) where he is a small employer—

(i) to an amount equal to such payment, and

(ii) to an additional payment under regulation 3,

which in either case he shall be entitled to deduct in accordance with the provisions of regulation 5 or, as the case may be, to receive in accordance with the provisions of regulation 6.

*Deductions from contributions payments*

5. An employer who is entitled to a payment determined in accordance with regulation 4 may recover such payment by making one or more deductions from his contributions payments except where and insofar as—

(a) the contributions payments relate to earnings paid before the beginning of the income tax month in which the payment of statutory maternity pay was made;

(b) the contributions payments are made by him later than 6 years after the end of the tax year in which the payment of statutory maternity pay was made;

(c) the amount determined in accordance with regulation 4 has been paid to him under regulation 6 by the Department; or

(d) the employer has made a request in writing under regulation 6 that the amount of the payment of statutory maternity pay or the amount determined in accordance with regulation 4 be paid to him and he has not received notification by the Department that the request is refused.

*Payments to employers by the Department*

6.—(1) If the total amount which an employer is or would otherwise be entitled to deduct under regulation 5 exceeds the total amount which the employer is liable to pay by way of primary and secondary Class 1 contributions in respect of the earnings paid in an income tax month, and the Department is satisfied that that is so, then provided that the employer has in writing requested it to do so, the Department shall pay the employer such amount as the employer was unable to deduct.

(2) If an employer is not liable to pay any primary or secondary Class 1 contributions but would otherwise be entitled to deduct an amount under regulation 5, and the Department is satisfied that that is so, then provided the employer has in writing requested it to do so, the Department shall pay the employer that amount.

*Date when certain contributions are to be treated as paid*

7. Where an employer has made a deduction from a contributions payment under regulation 5, the date on which it is to be treated as having been paid for the purposes of section 163(4) of the Contributions and Benefits Act (amount deducted to be treated as paid and received towards discharging liability in respect of Class 1 contributions) is—

- (a) in a case where the deduction did not extinguish the contributions payment, the date on which the remainder of the contributions payment or, as the case may be, the first date on which any part of the remainder of the contributions payment was paid; and
- (b) in a case where the deduction extinguished the contributions payment, the 14th day after the end of the income tax month during which there were paid the earnings in respect of which the contributions payment was payable.

*Amendment of the Social Security (Maternity Allowance) Regulations*

8. For regulation 3(4)(ii) of the Social Security (Maternity Allowance) Regulations (Northern Ireland) 1987(a) (modification of the maternity allowance period) there shall be substituted the following—

- “(ii) where a woman is absent from work after the beginning of the 6th week before the expected week of confinement wholly or partly due to pregnancy or confinement, at the end of the 18th week following the week in which she was so absent,”.

*Revocations*

9. The following regulations are hereby revoked—

- (a) the Statutory Maternity Pay (Compensation of Employers) Regulations (Northern Ireland) 1987(b), the Statutory Maternity Pay (Compensation of Employers) (Amendment) Regulations (Northern Ireland) 1988(c) and the Statutory Maternity Pay (Compensation of Employers) (Amendment) Regulations (Northern Ireland) 1994(d); and
- (b) regulation 3(3) of the Social Security Maternity Benefits, Statutory Maternity Pay and Statutory Sick Pay (Amendment) Regulations (Northern Ireland) 1994(e).

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 18th July 1994.

(L.S.)

W. G. Purdy

Assistant Secretary

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(a) S.R. 1987 No. 170; relevant amending regulations are S.R. 1994 No. 191  
(b) S.R. 1987 No. 80  
(c) S.R. 1988 No. 95  
(d) S.R. 1994 No. 84  
(e) S.R. 1994 No. 191

## EXPLANATORY NOTE

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

These regulations provide for compensation of employers who have made payments of statutory maternity pay under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7). They also contain an amendment to the Social Security (Maternity Allowance) Regulations (Northern Ireland) 1987 ("the Maternity Allowance Regulations").

Regulation 2 defines the meaning of small employer for the purposes of recovery of statutory maternity pay.

Regulation 3 defines the additional payment which a small employer shall be entitled to recover.

Regulation 4 sets out the payments which may be recovered by employers.

Regulation 5 provides that payments may be recovered by deductions from Class 1 national insurance contributions.

Regulation 6 provides for payments to employers by the Department of Health and Social Services where the total amount which the employer can deduct under the regulations exceeds the amount which he is liable to pay by way of Class 1 national insurance contributions.

Regulation 7 describes the date on which a deduction from contributions payments may be treated as paid.

Regulation 8 amends regulation 3 of the Maternity Allowance Regulations to amend the definition of the maternity allowance period in respect of women claiming maternity allowance after confinement.

Regulation 9 provides for revocations.

These regulations 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 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.