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## STATUTORY INSTRUMENTS

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# 1986 No. 1960

## The Statutory Maternity Pay (General) Regulations 1986

### PART IV

#### GENERAL PROVISIONS

##### Meaning of “employee”

17.—(1) In a case where, and in so far as, a woman over the age of 16 is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978(1) she shall be treated as an employee for the purposes of Part V of the 1986 Act and in a case where, and in so far as, such a woman is treated otherwise than as an employed earner by virtue of those regulations, she shall not be treated as an employee for the purposes of Part V.

(2) Any woman who is in employed earner's employment within the meaning of the 1975 Act under a contract of apprenticeship shall be treated as an employee for the purposes of Part V.

(3) A woman who is in employed earner's employment within the meaning of the 1975 Act but whose employer—

- (a) does not fulfil the conditions prescribed in regulation 119(1)(b) of the Social Security (Contributions) Regulations 1979(2) as to residence or presence in Great Britain, or
  - (b) is a woman who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—
    - (i) is exempt from the provisions of the 1975 Act, or
    - (ii) is a woman against whom the provisions of that Act are not enforceable,
- shall not be treated as an employee for the purposes of Part V of the 1986 Act.

##### Treatment of two or more employers as one

18.—(1) In a case where the earnings paid to a woman in respect of 2 or more employments are aggregated and treated as a single payment of earnings under regulation 12(1) of the Social Security (Contributions) Regulations 1979, the employers of the woman in respect of those employments shall be treated as one for all purposes of Part V of the 1986 Act.

(2) Where 2 or more employers are treated as one under the provisions of paragraph (1), liability for statutory maternity pay payable by them to a woman shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the woman's earnings from each employment bear to the amount of the aggregated earnings.

##### Payments to be treated as contractual remuneration

19. For the purposes of paragraph 12(1) and (2) of Schedule 4 to the 1986 Act, the payments which are to be treated as contractual remuneration are sums payable under the contract of service—

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(1) , amended by S.I. 1980/1713 and 1984/350.

(2) , to which there are amendments not relevant to these regulations.

- (a) by way of remuneration;
- (b) for incapacity for work due to sickness or injury, and
- (c) by reason of pregnancy or confinement.

### **Meaning of “earnings”**

**20.**—(1) In this regulation “secondary contributor” means a person who is, or but for the provisions of the 1975 Act relating to the lower earnings limit would be, liable to pay a secondary contribution under section 4 of that Act.

(2) For the purposes of section 50(3) of the 1986 Act, the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a woman's employment, except any payment in so far as it is—

- (a) a payment on account of the woman's earnings in respect of that employment which comprises or represents, and does not exceed in amount, sums which have previously been included in her earnings for the purposes of section 50(3) of the 1986 Act;
- (b) a payment in respect of a period of holiday, where the sum paid is derived directly or indirectly from a fund to which more than one secondary contributor contributes and the management and control of which are not vested in those secondary contributors, or where the person making the payment is entitled to be reimbursed from such a fund;
- (c) a payment of or in respect of a gratuity or offering—
  - (i) where the payment is not made directly or indirectly by the secondary contributor and the sum paid does not comprise or represent sums previously paid to the secondary contributor; or
  - (ii) where the payment is not directly or indirectly allocated by the secondary contributor to the woman;
- (d) any payment in kind or by way of the provision of board or lodging or of services or other facilities;
- (e) a payment made to or by trustees not being a sickness payment which by virtue of section 3(1A) of the 1975 Act is treated as remuneration derived from employed earner's employment where—
  - (i) in the case of a payment to trustees, the share thereof which that woman is entitled to have paid to her, or
  - (ii) in the case of a payment by trustees, the amount to be so paid,
 is or may be dependent upon the exercise by the trustees of a discretion or the performance by them of a duty arising under the trust;
- (f) any payment by way of a pension;
- (g) a payment of a fee in respect of employment as a minister of religion which does not form part of the stipend or salary paid in respect of that employment;
- (h) a payment to defray or a contribution towards expenses incurred by women for whom facilities are provided under section 15 of the Disabled Persons (Employment) Act 1944 in travelling to and from the place where they are employed or where training is provided;
- (i) a payment by way of or derived from shares appropriated under a profit sharing scheme to which the provisions of Chapter III of Part III of the Finance Act 1978 (profit sharing schemes) apply.

(3) Where the funds for making a sickness payment in accordance with arrangements of the kind mentioned in section 3(1A)(b) of the 1975 Act are attributable in part to contributions to those funds by the employed earner, there shall be disregarded for the purposes of section 50(3) of the 1986 Act so much of the sickness payment as is attributable to those contributions.

(4) For the purposes of section 50(3) of the 1986 Act the expression “earnings” includes also—

- (a) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the 1978 Act;
- (b) any sum payable by way of pay in pursuance of an order under the 1978 Act for the continuation of a contract of employment;
- (c) any sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975;
- (d) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 1(5) of the Social Security and Housing Benefits Act 1982(3).

(5) Where goods or services are supplied by a woman and earnings paid to or for the benefit of that woman in respect of that employment include the remuneration for the supply of those goods or services, and on that supply value added tax is chargeable, there shall, for the purposes of section 50(3) of the 1986 Act, be excluded from the calculation of those earnings an amount equal to the value added tax so chargeable.

(6) For the avoidance of doubt, in the calculation for the purposes of section 50(3) of the 1986 Act of earnings paid to or for the benefit of a woman, there shall be disregarded—

- (a) any payment by way of a redundancy payment;
- (b) any specific and distinct payment of, or contribution towards, expenses actually incurred by a woman in carrying out her employment.

### **Normal weekly earnings**

**21.**—(1) For the purposes of Part V of the 1986 Act, a woman's normal weekly earnings shall be calculated in accordance with the following provisions of this regulation.

(2) In this regulation—

“the appropriate date” means the first day of the 14th week before the expected week of confinement, or the first day in the week in which the woman is confined, whichever is the earlier, or in the case of a woman in respect of whom section 46(2) of the 1986 Act is modified in accordance with regulation 4(1), the first day of the week immediately following the last week in which she was employed under a contract of service by the employer who dismissed her;

“normal pay day” means a day on which the terms of a woman's contract of service require her to be paid, or the practice in her employment is for her to be paid, if any payment is due to her; and

“day of payment” means a day on which the woman was paid.

(3) Subject to paragraph (4), the relevant period for the purposes of section 50(3) of the 1986 Act is the period between—

- (a) the last normal pay day to fall before the appropriate date; and
- (b) the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a),

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(3) , as amended by the Social Security Act 1986 (c.50), section 68.

including the normal pay day mentioned in sub-paragraph (a) but excluding that first mentioned in sub-paragraph (b).

(4) In a case where a woman has no identifiable normal pay day, paragraph (3) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.

(5) In a case where a woman has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) her normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(6) In a case to which paragraph (5) does not apply and the relevant period is not an exact number of weeks, the woman's normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of days in the relevant period and multiplying the result by 7.