

2002 No. 359

**SOCIAL SECURITY
STATUTORY MATERNITY PAY;
STATUTORY SICK PAY**

**The Social Security, Statutory Maternity Pay and Statutory
Sick Pay (Miscellaneous Amendments No. 2) Regulations
(Northern Ireland) 2002**

Made - - - - - *25th November 2002*

Coming into operation *8th December 2002*

The Department for Social Development, in exercise of the powers conferred by sections 35A(4)(a), 159(3), 160(9)(c), 167(5), 167ZP(2) and (3) and 171(1) to (4) of, and paragraph 2 of Schedule 13 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), and now vested in it(b), and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, Articles 3 to 6 of the Employment (Northern Ireland) Order 2002(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2002 and shall come into operation on 8th December 2002.

(2) Regulation 2(2) shall take effect only in respect of those women whose expected week of confinement commences on or after 6th April 2003.

(3) The Interpretation Act (Northern Ireland) 1954(d) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Statutory Maternity Pay (General) Regulations

2.—(1) The Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(e) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 11(1) (continuous employment) –

(a) 1992 c. 7; section 35A was inserted by Article 50(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), section 167ZP is inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), section 171(2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 2 of Schedule 13 was substituted by paragraph 44(3) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(b) See Article 8(b) of S.R. 1999 No. 481

(c) S.I. 2002/2836 (N.I. 2)

(d) 1954 c. 33 (N.I.)

(e) S.R. 1987 No. 30

- (a) in sub-paragraph (d) after “pregnancy or confinement,” there shall be added “or”; and
- (b) after sub-paragraph (d) there shall be added the following sub-paragraph –
 - “(e) absent from work in consequence of taking paternity leave, adoption leave or parental leave under Part IX of the Employment Rights (Northern Ireland) Order 1996(a),”.
- (3) In regulation 20(4) (meaning of “earnings”) –
 - (a) for “Article 51(3) of the 1986 Order” there shall be substituted “section 167(4) of the Contributions and Benefits Act”; and
 - (b) after sub-paragraph (d) there shall be added the following sub-paragraphs –
 - “(e) any sum payable by way of statutory maternity pay, including sums payable in accordance with regulations made under section 160(9)(b) of the Contributions and Benefits Act(b);
 - (f) any sum payable by way of statutory paternity pay, including sums payable in accordance with regulations made under section 167ZD(3) of the Contributions and Benefits Act(c);
 - (g) any sum payable by way of statutory adoption pay, including sums payable in accordance with regulations made under section 167ZM(3) of the Contributions and Benefits Act(d).”.

Amendment of the Social Security (Incapacity Benefit) Regulations

3. In the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994(e), after regulation 6 (days of statutory sick pay to be included in days of entitlement to incapacity benefit) there shall be inserted the following regulations –

“Effect of statutory maternity pay on incapacity benefit

6A.—(1) For the purpose of determining a woman’s entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act(f), a day which falls within the maternity pay period shall, notwithstanding paragraph 1 of Schedule 13 to that Act, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where –

- (a) on that day she was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act(g) as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the maternity pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part XI of the Contributions and Benefits Act; and
- (d) the woman either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of

(a) S.I. 1996/1919 (N.I. 16); Part IX was substituted by Article 9 of, and Part I of Schedule 4 to, the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and is amended by Articles 3 and 4 of the Employment (Northern Ireland) Order 2002

(b) Section 160(9)(b) was amended by paragraph 14(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(c) Section 167ZD is inserted by Article 5 of the Employment (Northern Ireland) Order 2002

(d) Section 167ZM is inserted by Article 6 of the Employment (Northern Ireland) Order 2002

(e) S.R. 1994 No. 461

(f) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and amended by Article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(g) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

the Contributions and Benefits Act, as being a day on which the woman has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a woman is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to her for that week shall be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part XII of the Contributions and Benefits Act for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to her.

Effect of statutory adoption pay on incapacity benefit

6B.—(1) For the purpose of determining a person’s entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, a day which falls within the adoption pay period shall, notwithstanding section 167ZP(1) of the Contributions and Benefits Act(a), be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where –

- (a) on that day he was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the adoption pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part XI of the Contributions and Benefits Act; and
- (d) the person either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, as being a day on which the person has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a person is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to him for that week shall be reduced by an amount equivalent to any statutory adoption pay to which he is entitled in accordance with Part XIIIB of the Contributions and Benefits Act(b) for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to him.”.

Amendment of the Statutory Sick Pay (General) Regulations

4. In regulation 17(3) of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(c) (meaning of “earnings”) –

- (a) for “Article 28(2)” there shall be substituted “section 159(2) of the Contributions and Benefits Act”; and

(a) Section 167ZP is inserted by Article 6 of the Employment (Northern Ireland) Order 2002

(b) Part XIIIB is inserted by Article 6 of the Employment (Northern Ireland) Order 2002

(c) S.R. 1982 No. 263

- (b) after sub-paragraph (h)(a) there shall be added the following sub-paragraphs –
- “(i) any sum payable by way of statutory paternity pay, including any sums payable in accordance with regulations made under section 167ZD(3) of the Contributions and Benefits Act(b);
 - (j) any sum payable by way of statutory adoption pay, including any sums payable in accordance with regulations made under section 167ZM(3) of the Contributions and Benefits Act(e).”.

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

5. In regulation 2(1) of the Social Security (Maternity Allowance) (Earnings) Regulations (Northern Ireland) 2000(d) (specified payments for employed earners), after sub-paragraph (e), there shall be added the following sub-paragraphs –

- “(f) any sum payable by way of statutory paternity pay, including any sums payable in accordance with regulations made under section 167ZD(3) of the Contributions and Benefits Act;
- (g) any sum payable by way of statutory adoption pay, including any sums payable in accordance with regulations made under section 167ZM(3) of the Contributions and Benefits Act.”.

Revocations

6. The following regulations are hereby revoked –
- (a) regulation 21A of the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(e);
 - (b) regulation 3 of the Statutory Maternity Pay (General) (Amendment) Regulations (Northern Ireland) 1988(f);
 - (c) regulation 5 of the Statutory Maternity Pay (General) (Amendment) Regulations (Northern Ireland) 1990(g); and
 - (d) regulation 18(2) of the Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations (Northern Ireland) 1995(h).

Sealed with the Official Seal of the Department for Social Development on 25th November 2002.

(L.S.)

John O'Neill
Senior Officer of the Department for Social Development

(a) Sub-paragraph (h) was added by regulation 4 of S.R. 1987 No. 248
(b) Section 167ZD is inserted by Article 5 of the Employment (Northern Ireland) Order 2002
(c) Section 167ZM is inserted by Article 6 of the Employment (Northern Ireland) Order 2002
(d) S.R. 2000 No. 104
(e) Regulation 21A was inserted by regulation 3 of S.R. 1988 No. 128 and amended by regulation 5 of S.R. 1990 No. 112 and regulation 18(2) of S.R. 1995 No. 150
(f) S.R. 1988 No. 128
(g) S.R. 1990 No. 112
(h) S.R. 1995 No. 150

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987 (“the Statutory Maternity Pay (General) Regulations”), the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994 (“the Incapacity Benefit Regulations”), the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982 (“the Statutory Sick Pay Regulations”) and the Social Security (Maternity Allowance) (Earnings) Regulations (Northern Ireland) 2000 (“the Maternity Allowance (Earnings) Regulations”), in consequence of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)).

Regulation 2 amends the Statutory Maternity Pay (General) Regulations as follows –

- (a) to add references to paternity leave, adoption leave and parental leave to the circumstances in which a woman may be treated as employed and makes other minor drafting changes; and
- (b) to include references to certain sums payable by way of statutory maternity pay, statutory paternity pay and statutory adoption pay in the expression “earnings” for the purposes of section 167(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Regulation 3 amends the Incapacity Benefit Regulations to make provision for the effect of statutory maternity pay and statutory adoption pay on incapacity benefit.

Regulation 4 amends the Statutory Sick Pay Regulations to include references to certain sums payable by way of statutory paternity pay and statutory adoption pay in the expression “earnings” for the purposes of section 159(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Regulation 5 amends the Maternity Allowance (Earnings) Regulations to add references to certain sums payable by way of statutory paternity pay and statutory adoption pay to the payments specified for an employed earner for the purposes of section 35A(4)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Regulation 6 makes consequential revocations.

Section 167ZP of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, one of the enabling provisions under which these Regulations are made, was brought into operation on 23rd November 2002 for the purpose only of authorising the making of regulations, and for all other purposes on 8th December 2002, by virtue of the Employment (2002 Order) (Commencement and Transitional and Saving Provisions) Order (Northern Ireland) 2002 (S.R. 2002 No. 356 (C. 29)). As these Regulations are made before the end of the period of 6 months from the coming into operation of Articles 3 to 6 of the Employment (Northern Ireland) Order 2002, they are accordingly exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), from reference to the Social Security Advisory Committee.

The impact on business of the commencement of these provisions is detailed in the Regulatory Impact Assessment relating to the Employment (Northern Ireland) Order 2002. Copies of that Assessment may be obtained, free of charge, from the Employment Rights Branch, Department for Employment and Learning, Room 203, Adelaide House, 39/49 Adelaide Street, Belfast BT2 8FD.

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