
D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No.

SOCIAL SECURITY

**The Social Security (Maternity Allowance) (Participating Wife
or Civil Partner of Self-employed Earner) Regulations 2014**

Made - - - - - ****2014*
Coming into force - - - *1st April 2014*

The Secretary of State is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to allowances made to women on maternity leave.

In accordance with paragraph 2(2) of Schedule 2(c) to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the power conferred by section 2(2) of that Act, makes the following Regulations.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014.

(2) They come into force on 1st April 2014.

(3) Regulation 2 applies in relation to the payment of maternity allowance in cases where a woman’s expected week of confinement (within the meaning of section 35 of the Social Security Contributions and Benefits Act 1992(d)) begins on or after 27th July 2014.

(a) S.I.1993/2661.
(b) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”), section 27(1)(a) and section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).
(c) Paragraph 2(2) of Schedule 2 was amended by the 2006 Act, section 27(2)(a).
(d) Section 35 was amended by the Welfare Reform and Pensions Act 1999 (c.30) (“the 1999 Act”), sections 53(1) and 53(2)(a); the Employment Act 2002 (c.22) (“the 2002 Act”), Schedule 7, paragraphs 2 and 4(1), (2), (3) and (4); the Welfare Reform Act 2012 (c.5), section 63(1) and (2)(a) and (2)(b); the Work and Families Act 2006 (c.18), Schedule 1, paragraph 6; the Maternity Allowance and Statutory Maternity Pay Regulations 1994 (SI 1994/1230), regulation 2(3); the Social Security Act 1998 (c.14), section 67; and the Still-Birth (Definition) Act 1992 (c.29), sections 2(1) and 4(2).

Amendment of the Social Security Contributions and Benefits Act 1992

2.—(1) The Social Security Contributions and Benefits Act 1992(a) is amended as follows.

(2) In section 21(b) (contribution conditions), in subsection (1), after “section 35” insert “or 35B”.

(3) In section 35 (state maternity allowance)—

- (a) in the heading, after “allowance” insert “for employed or self-employed earner”;
- (b) in subsections (1), (2), (3)(a), (3)(b)(i), (3)(b)(ii), (4) and (5), after “a maternity allowance” insert “under this section”;
- (c) in subsection (7), after “maternity allowance” insert “under this section”.

(4) In section 35A(c) (appropriate weekly rate of maternity allowance), in the heading, after “allowance” insert “under section 35”.

(5) After section 35A (appropriate weekly rate of maternity allowance) insert—

“State maternity allowance for participating wife or civil partner of self-employed earner

35B.—(1) A woman (W) shall be entitled to a maternity allowance under this section, at the weekly rate given by subsection (3) below, if—

- (a) W has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
- (b) for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement, W has worked with a person (S) who at the time of her doing so—
 - (i) was her spouse or civil partner, and
 - (ii) was engaged in employment as a self-employed earner; and
- (c) S is liable to pay a Class 2 contribution in respect of the 26 weeks referred to in paragraph (1)(b); and
- (d) W is not entitled to a maternity allowance under section 35 above, or statutory maternity pay, for the same week in respect of the same pregnancy.

(2) In this section—

- (a) a reference to W working with S is a reference to W participating in the activities engaged in by S as a self-employed earner, performing the same tasks or ancillary tasks, without being employed by S or being in partnership with S;
- (b) a reference to W ceasing to work with S is a reference to W ceasing to do so either permanently or until after her confinement.

(3) The rate of allowance under this section for any particular week is 90 per cent of the amount of the maternity allowance threshold for the tax year in which the week ends.

(4) Subject to subsections (10) and (11) below, a maternity allowance under this section shall be payable for the period of 14 weeks (“the 14-week period”) beginning as set out in subsection (5), (6), (7) or (8) below (whichever applies).

(5) If W ceases to work with S before the commencement of the 11th week before the expected week of confinement, the 14-week period begins with the commencement of the 11th week before the expected week of confinement.

(a) 1992 c.4.

(b) Section 21(1) was amended by the 1999 Act, Schedule 8, paragraphs 30 and 31(1) and (2). No other relevant amendments have been made to section 21(1).

(c) Section 35A was inserted by the 1999 Act, section 53(3). Section 35A was amended by the 2002 Act, section 48(1)(a), (1)(b) and (1)(c) and Schedule 7, paragraphs 2 and 5.

(6) If W ceases to work with S on a day that falls within the period beginning with the commencement of the 11th week before the expected week of confinement and ending with the end of the fifth week before the expected week of confinement, the 14-week period begins immediately after that day.

(7) If on a day that falls within the period beginning with the commencement of the fourth week before the expected week of confinement and ending with the date of confinement—

- (a) W ceases to work with S, or
- (b) she refrains from working with S wholly or partly because of her pregnancy or confinement,

the 14-week period begins immediately after the day on which she ceases or refrains.

(8) If none of subsections (5) to (7) above applies, the 14-week period begins immediately after the date of confinement.

(9) In relation to maternity allowance under this section, a reference in a provision contained in or made under any enactment to the maternity allowance period shall be read as a reference to the 14-week period.

(10) Subsections (4) to (7) of section 35 above have effect for the purposes of this section as they have effect for the purposes of that section (reading references to the maternity allowance period as references to the 14-week period).

(11) Regulations under section 35 above may make provision for the purposes of this section corresponding or similar to the provision that may be made by virtue of subsection (3)(a), (b) or (c) of that section.”

Amendment of the Income Tax (Earnings and Pensions) Act 2003

3. In section 677 of the Income Tax (Earnings and Pensions) Act 2003(**a**) (UK social security benefits wholly exempt from tax), in Part 1 of Table B in subsection (1), for the entry for state maternity allowance substitute—

| | | |
|----------------------------|--|-------------------|
| “State maternity allowance | SSCBA 1992 | Section 35 or 35B |
| | Any provision made for Northern Ireland which corresponds to section 35 or 35B of SSCBA 1992”. | |

Amendment of the Welfare Reform Act 2012

4. In section 127(8)(d) of the Welfare Reform Act 2012(**b**) (information-sharing between Secretary of State and HMRC), after “section 35” insert “or 35B”.

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

Name
Minister of State
Department for Work and Pensions

Date

(a) 2003 c.1. No relevant amendments have been made to section 677.
(b) 2012 c.5.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) using section 2(2) of the European Communities Act 1972. These Regulations also make amendments to other Acts, which are consequential upon that amendment but which do not implement an obligation under European Union law.

Regulation 2(5) inserts new section 35B into the 1992 Act. This provides an entitlement to maternity allowance for women who work with a spouse or civil partner who is engaged in self-employment. This implements Article 8 of Directive 2010/41/EU (“the Directive”) in respect of the women referred to in Article 2(b) of the Directive. Article 8 of the Directive has already been implemented in respect of self-employed women (Article 2(a) of the Directive) by virtue of section 35 of the 1992 Act. Section 35 already applies to a woman who is the employee of her spouse or civil partner.

In the new section 35B, subsection (1) sets out the conditions that must be satisfied for payment of maternity allowance under the new section. Subsection (2) defines when a woman is treated as working with, or ceasing to work with, her spouse or civil partner. Subsection (3) sets the rate of maternity allowance that is payable for any particular week. That will be 90 per cent of the amount of the maternity allowance threshold for the tax year in which the week ends. The maternity allowance threshold in relation to a tax year is currently £30 as prescribed in section 35(6A) of the 1992 Act. Subsections (4) to (8) provide that maternity allowance under the new section is payable for a 14 week period, and define when the period begins. Subsection (9) provides that a reference to the maternity allowance period in relation to section 35B is a reference to the 14 week period referred to in subsection (4). Subsection (10) applies certain provisions in section 35 (maternity allowance for employed or self-employed earner) to the new section 35B. These include definitions of the terms “confined”, “confinement” and “maternity allowance threshold”. Subsection (11) ensures that regulations under section 35 of the 1992 Act may prescribe circumstances under which a woman is disqualified from receiving maternity allowance or may prescribe modifications which will enable a woman to satisfy the qualifying conditions after the commencement of the 11th week before her expected week of confinement.

The remainder of regulation 2 makes consequential amendments to other provisions in the 1992 Act.

Regulations 3 and 4 make consequential amendments to other primary legislation.

A transposition note is attached to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies have also been placed in the Libraries of both Houses of Parliament.

An impact assessment has not been produced for this instrument as there is no impact on business or civil society.

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