



Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART II

CONTRIBUTORY BENEFITS

Maternity

35 State maternity allowance [^{F1}for employed or self-employed earner].

[^{F2}(1) A woman shall be entitled to a maternity allowance [^{F3}under this section], at the appropriate weekly rate determined under section 35A below, if—

- (a) she 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) she has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement; and
- [^{F4}(c) her average weekly earnings (within the meaning of section 35A below) are not less than the maternity allowance threshold for the tax year in which the beginning of the period of 66 weeks mentioned in paragraph (b) above falls;]
- (d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.]

(2) Subject to the following provisions of this section, a maternity allowance [^{F5}under this section] shall be payable for the period (“the maternity allowance period”) which, if she were entitled to statutory maternity pay, would be the maternity pay period under section 165 below.

(3) Regulations may provide—

- (a) for disqualifying a woman for receiving a maternity allowance [^{F6}under this section] if—

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- [^{F7}(i) during the maternity allowance period, except in prescribed cases, she does any work in employment as an employed or self-employed earner;
 - (ia) during the maternity allowance period she fails without good cause to observe any prescribed rules of behaviour; or]
 - (ii) at any time before she is confined she fails without good cause to attend for, or submit herself to, any medical examination required in accordance with the regulations;
 - (b) that this section and [^{F8}section 35A below] shall have effect subject to prescribed modifications in relation to cases in which a woman has been confined and—
 - (i) has not made a claim for a maternity allowance [^{F9}under this section] in expectation of that confinement (other than a claim which has been disallowed); or
 - (ii) has made a claim for a maternity allowance [^{F10}under this section] in expectation of that confinement (other than a claim which has been disallowed), but she was confined more than 11 weeks before the expected week of confinement;
 - [^{F11}(c) that subsection (2) above shall have effect subject to prescribed modifications in relation to cases in which a woman fails to satisfy the conditions referred to in subsection (1)(b) [^{F12}or (c) above] at the commencement of the 11th week before the expected week of confinement, but subsequently satisfies those conditions at any time before she is confined.]
- [^{F13}(3A) Regulations may provide for the duration of the maternity allowance period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.
- (3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—
 - (a) after a prescribed period beginning with the day on which the woman is confined, and
 - (b) when at least a prescribed part of the maternity allowance period remains unexpired.
- (3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—
 - (a) the end of the woman's entitlement to maternity leave;
 - (b) the doing of work by the woman;
 - (c) the taking of prescribed steps by the woman or another person as regards leave under section 75E of the Employment Rights Act 1996 in respect of the child;
 - (d) the taking of prescribed steps by a person other than the woman as regards statutory shared parental pay in respect of the child.
- (3D) Regulations may provide for a reduction in the duration of the maternity allowance period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.]
- [^{F14}(3E) A woman who would, but for the reduction in duration of a maternity pay period by virtue of section 165(3A), be entitled to statutory maternity pay for a week is not entitled to a maternity allowance for that week.]
- (4) A woman who has become entitled to a maternity allowance [^{F15}under this section] shall cease to be entitled to it if she dies before the beginning of the maternity

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allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.

(5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance [^{F16}under this section][^{F17}the amount payable by way of that allowance for any day shall be taken as one seventh of the weekly rate of the allowance].

(6) In this section “confinement” means—

- (a) labour resulting in the issue of a living child, or
- (b) labour after [^{F18}24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,

and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.

[^{F19}(6A) In this section “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (6B) below) £30.

(6B) The Secretary of State may, in relation to any tax year after 2001-2002, by order increase the amount for the time being specified in subsection (6A) above to such amount as is specified in the order.

(6C) When deciding whether, and (if so) by how much, to increase the amount so specified the Secretary of State shall have regard to the movement, over such period as he thinks fit, in the general level of prices obtaining in Great Britain (estimated in such manner as he thinks fit).

(6D) The Secretary of State shall in each tax year carry out such a review of the amount for the time being specified in subsection (6A) above as he thinks fit.]

(7) The fact that the mother of a child is being paid maternity allowance [^{F20}under this section] shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

Textual Amendments

- F1** Words in s. 35 heading inserted (with application in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Maternity Allowance\) \(Participating Wife or Civil Partner of Self-employed Earner\) Regulations 2014 \(S.I. 2014/606\)](#), regs. 1(2), **2(3)(a)**
- F2** S. 35(1) substituted for s. 35(1)(1A) (12.1.2000 for specified purposes, 2.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 53(1)**, 89(1) (with s. 53(4)); [S.I. 1999/3309](#), art. 2(1)(a)
- F3** Words in s. 35(1) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Maternity Allowance\) \(Participating Wife or Civil Partner of Self-employed Earner\) Regulations 2014 \(S.I. 2014/606\)](#), regs. 1(2), **2(3)(b)**
- F4** S. 35(1)(c) substituted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), s. 55(2), **Sch. 7 para. 4(2)**; [S.I. 2002/2866](#), art. 2(3), Sch. 1 Pt. 3
- F5** Words in s. 35(2) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Maternity Allowance\) \(Participating Wife or Civil Partner of Self-employed Earner\) Regulations 2014 \(S.I. 2014/606\)](#), regs. 1(2), **2(3)(b)**

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- F6** Words in s. 35(3)(a) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(b)**
- F7** S. 35(3)(a)(i)(ia) substituted for s. 35(3)(a)(i) (27.6.2006 for specified purposes, 1.10.2006 in so far as not already in force) by Work and Families Act 2006 (c. 18), s. 19(2), **Sch. 1 para. 6**; S.I. 2006/1682, arts. 2(d), 3(d)
- F8** Words in s. 35(3) substituted (12.1.2000 for specified purposes, 2.4.2000 in so far as not already in force) by Welfare Reform and Pensions Act 1999 (c. 30), **ss. 53(2)(a)**, 89(1) (with s. 53(4)); S.I. 1999/3309, art. 2(1)(a)
- F9** Words in s. 35(3)(b)(i) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(b)**
- F10** Words in s. 35(3)(b)(ii) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(b)**
- F11** S. 35(3)(c) added (with effect in accordance with reg. 1(2) of the amending S.I.) by The Maternity Allowance and Statutory Maternity Pay Regulations 1994 (S.I. 1994/1230), **reg. 2(3)**
- F12** Words in s. 35(3)(c) substituted (6.4.2003) by Employment Act 2002 (c. 22), s. 55(2), **Sch. 7 para. 4(3)**; S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3
- F13** S. 35(3A)-(3D) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 120(2)**, 139(6); S.I. 2014/1640, art. 3(1)(d)
- F14** S. 35(3E) inserted (30.6.2014) by Children and Families Act 2014 (c. 6), **ss. 120(3)**, 139(6); S.I. 2014/1640, art. 3(1)(d)
- F15** Words in s. 35(4) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(b)**
- F16** Words in s. 35(5) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(b)**
- F17** Words in s. 35(5) substituted for s. 35(5)(a)(b) (1.10.2006 in respect of women whose expected week of confinement falls on or after 1.4.2007) by Social Security Act 1998 (c. 14), **ss. 67**, 87(2); S.I. 2006/2376, **art. 2**
- F18** Words in s. 35(6) substituted (1.10.1992) by Still-Birth (Definition) Act 1992 (c. 29), **s. 2(1)(a)(2)(a)**, 4(2)
- F19** S. 35(6A)-(6D) inserted (6.4.2003) by Employment Act 2002 (c. 22), s. 55(2), **Sch. 7 para. 4(4)**; S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3
- F20** Words in s. 35(7) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by The Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 (S.I. 2014/606), regs. 1(2), **2(3)(c)**

[^{F21}35A Appropriate weekly rate of maternity allowance [^{F22}under section 35].

- ^{F23}(1) For the purposes of section 35(1) above the appropriate weekly rate is (subject to subsection (5A) below) whichever is the lower rate of—
- (a) a weekly rate equivalent to 90 per cent of the woman’s average weekly earnings; and
 - (b) the weekly rate for the time being prescribed under section 166(1)(b) below.]
- (4) For the purposes of this section a woman’s “average weekly earnings” shall be taken to be the average weekly amount (as determined in accordance with regulations) of specified payments which—
- (a) were made to her or for her benefit as an employed earner, or

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- (b) are (in accordance with regulations) to be treated as made to her or for her benefit as a self-employed earner,
during the specified period.
- (5) Regulations may, for the purposes of subsection (4) above, provide—
- (a) for the amount of any payments falling within paragraph (a) or (b) of that subsection to be calculated or estimated in such manner and on such basis as may be prescribed;
- (b) for a payment made outside the specified period to be treated as made during that period where it was referable to that period or any part of it;
- (c) for a woman engaged in employment as a self-employed earner to be treated as having received a payment in respect of a week—
- (i) equal to [^{F24}an amount 90 per cent of which is equal to the weekly rate prescribed under section 166(1)(b) below that is] in force on the last day of the week, if she paid a Class 2 contribution in respect of the week, or
- (ii) equal to the maternity allowance threshold in force on that day, if she was excepted (under section 11(4) above) from liability for such a contribution in respect of the week;
- (d) for aggregating payments made or treated as made to or for the benefit of a woman where, either in the same week or in different weeks, she was engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner).

[Where subsection (5B) below applies the appropriate weekly rate is the weekly rate ^{F25}(5A) for the time being prescribed under section 166(1)(b) below.

(5B) This subsection applies where a woman is treated by virtue of regulations under sub-paragraph (i) of paragraph (c) of subsection (5) above as having received a payment in respect of each week in the specified period equal to the amount mentioned in that sub-paragraph.]

[^{F26}(6) In this section “the maternity allowance threshold” has the same meaning as in section 35 above and “specified” means prescribed by or determined in accordance with regulations.]]

Textual Amendments

- F21** S. 35A inserted (12.1.2000 for specified purposes, 2.4.2000 in so far as not already in force) by [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **ss. 53(3)**, 89(1) (with s. 53(4)); S.I. 1999/3309, art. 2(1)(a)
- F22** Words in [s. 35A heading](#) inserted (with application in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Maternity Allowance\) \(Participating Wife or Civil Partner of Self-employed Earner\) Regulations 2014 \(S.I. 2014/606\)](#), regs. 1(2), **2(4)**
- F23** S. 35A(1) substituted for s. 35A(1)-(3) (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), **ss. 48(1)(a)**, 55(2); S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3
- F24** Words in s. 35A(5)(c)(i) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), **ss. 48(1)(b)**, 55(2) (with s. 48(2)); S.I. 2002/2866, art. 2(1), Sch. 1 Pt. 1
- F25** S. 35A(5A)(5B) inserted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), **ss. 48(1)(c)**, 55(2); S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3
- F26** S. 35A(6) substituted for s. 35A(6)-(8) (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), s. 55(2), **Sch. 7 para. 5**; S.I. 2002/2866, art. 2(3), Sch. 1 Pt. 3

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[^{F27}35B. State maternity allowance for participating wife or civil partner of self-employed earner

- (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.
- (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.

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- (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.]

Textual Amendments

- F27** S. 35B inserted (with application in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Maternity Allowance\) \(Participating Wife or Civil Partner of Self-employed Earner\) Regulations 2014 \(S.I. 2014/606\)](#), regs. 1(2), **2(5)**

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