



Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART XII

STATUTORY MATERNITY PAY

164 Statutory maternity pay - entitlement and liability to pay.

- (1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as “statutory maternity pay”.
- (2) The conditions mentioned in subsection (1) above are—
 - (a) that she has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him ^{F1}... ;
 - (b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
 - (c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.
- (3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.
- ^{F2}(4) A woman shall be entitled to payments of statutory maternity pay only if—
 - (a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and

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- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.]
- (5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.
- (6) Any agreement shall be void to the extent that it purports—
 - (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
 - (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.
- (7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—
 - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
 - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.
- (8) Regulations shall make provision as to a former employer’s liability to pay statutory maternity pay to a woman in any case where the former employer’s contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.
- (9) The Secretary of State may by regulations—
 - (a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;
 - (b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability [^{F3}of the Commissioners of Inland Revenue];
 - (c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
 - (d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—
 - (i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
 - (e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications [^{F4}in such cases as may be prescribed];
 - [^{F5}(ea) provide that subsection (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;]
 - (f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
 - (g) provide that—
 - (i) the amount of a woman’s earnings for any period, or
 - (ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,

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shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

(10) The provisions mentioned in subsection (9)(e) above are—

- (a) subsection (2)(a) and (b) above; and
- (b) [^{F6}section 166(1) and (2)], ^{F7}... below.

[^{F8}(11) Any regulations under subsection (9) above which are made by virtue of paragraph (b) of that subsection must be made with the concurrence of the Commissioners of Inland Revenue.]

Textual Amendments

- F1** Words in s. 164(2)(a) repealed (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), ss. 20(a), 55(2), [Sch. 8\(1\)](#); S.I. 2002/2866, art. 2(1)(4)(5), [Sch. 1 Pt. 1](#), [Sch. 2 Pt. 1](#)
- F2** S. 164(4) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), [ss. 20\(b\)](#), 55(2); S.I. 2002/2866, art. 2(1), [Sch. 1 Pt. 1](#)
- F3** Words in s. 164(9)(b) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 12\(2\)](#); S.I. 1999/527, art. 2(b), [Sch. 2 \(with arts. 3-6\)](#)
- F4** Words in s. 164(9)(e) substituted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), [ss. 20\(c\)](#), 55(2); S.I. 2002/2866, art. 2(1), [Sch. 1 Pt. 1](#)
- F5** S. 164(9)(ea) inserted (24.11.2002) by [Employment Act 2002 \(c. 22\)](#), [ss. 20\(d\)](#), 55(2); S.I. 2002/2866, art. 2(1), [Sch. 1 Pt. 1](#)
- F6** Words in s. 164(10)(b) substituted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), s. 55(2), [Sch. 7 para. 6](#); S.I. 2002/2866, art. 2(3), [Sch. 1 Pt. 3](#)
- F7** Words in s. 164(10)(b) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Maternity Allowance and Statutory Maternity Pay Regulations 1994 \(S.I. 1994/1230\)](#), [reg. 6\(1\)](#)
- F8** S. 164(11) inserted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), [Sch. 1 para. 12\(3\)](#); S.I. 1999/527, art. 2(b), [Sch. 2 \(with arts. 3-6\)](#)

Modifications etc. (not altering text)

- C1** S. 164(2)(a) modified (17.11.2000) by [The Statutory Maternity Pay \(General\) \(Modification and Amendment\) Regulations 2000 \(S.I. 2000/2883\)](#), regs. 1(1), 2 (with reg. 4)

165 The maternity pay period.

(1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the maternity pay period”) of a duration not exceeding [^{F9}52 weeks].

[^{F10}(2) Subject to subsections (3) and (7), the maternity pay period shall begin with the 11th week before the expected week of confinement.

(3) Cases may be prescribed in which the first day of the period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined.]

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- (4) ^{F11}Except in such cases as may be prescribed,] statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.
- (5) It is immaterial for the purposes of subsection (4) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.
- (6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.
- (7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—
- (a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and
 - (b) to cases in which—
 - (i) a woman is confined ^{F12}at any time after the end of the week immediately preceding the 11th week] before the expected week of confinement; and
 - (ii) the maternity pay period has not then commenced for her.
- ^{F13}(8) In subsections (1), (4) and (6) “week” means a period of seven days beginning with the day of the week on which the maternity pay period begins.]

Textual Amendments

- F9** Words in s. 165(1) substituted (27.6.2006 for specified purposes, 1.10.2006 in so far as not already in force) by [Work and Families Act 2006 \(c. 18\), ss. 1, 19\(2\)](#); S.I. 2006/1682, arts. 2(a), 3(a)
- F10** S. 165(2)(3) substituted (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. 7\(2\)](#); S.I. 2006/1682, arts. 2(d), 3(d)
- F11** Words in s. 165(4) inserted (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. 7\(3\)](#); S.I. 2006/1682, arts. 2(d), 3(d)
- F12** Words in s. 165(7)(b)(i) substituted (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. 3\(3\)](#)
- F13** S. 165(8) inserted (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. 7\(4\)](#); S.I. 2006/1682, arts. 2(d), 3(d)

^{F14}166 Rate of statutory maternity pay

- (1) Statutory maternity pay shall be payable to a woman—
- (a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and
 - (b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the maternity pay period.

^{F15}(1A) In subsection (1) “week” means any period of seven days.]

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- (2) The earnings-related rate is a weekly rate equivalent to 90 per cent of a woman's normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement.
- (3) The weekly rate prescribed under subsection (1)(b) above must not be less than the weekly rate of statutory sick pay for the time being specified in section 157(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates.
- [^{F16}(4) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory maternity pay, the amount payable by way of statutory maternity pay for any day shall be taken as one seventh of the weekly rate.]]

Textual Amendments

- F14** S. 166 substituted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), **ss. 19, 55(2)**; S.I. 2002/2866, art. 2(3), [Sch. 1 Pt. 3](#)
- F15** S. 166(1A) inserted (1.10.2006) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), **Sch. 1 para. 8(2)**; S.I. 2006/1682, art. 3(e)
- F16** S. 166(4) inserted (1.10.2006) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), **Sch. 1 para. 8(3)**; S.I. 2006/1682, art. 3(e)

[^{F17}167 Funding of employers' liabilities in respect of statutory maternity pay

- (1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.
- (2) Regulations under subsection (1) shall—
 - (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
 - (i) the aggregate of such of those payments as qualify for small employers' relief; and
 - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
 - (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers' relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
 - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
 - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or
 - (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.
- (3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to

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that woman’s maternity pay period, the person liable to make the payment is a small employer.

- (4) For the purposes of this section “small employer”, in relation to a woman’s maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
- (a) may define that expression by reference to the amount of a person’s contributions payments for any prescribed period; and
 - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
 - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
 - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (5) Regulations under subsection (1) may, in particular, make provision—
- (a) for funding in advance as well as in arrear;
 - (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;
 - (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.
- (6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer’s contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
 - (b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer’s liability in respect of such contributions.
- (7) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.
- (8) In this section “contributions payments”, in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.]

Textual Amendments

F17 S. 167 substituted (6.4.2003) by [Employment Act 2002 \(c. 22\)](#), **ss. 21(1), 55(2)**; [S.I. 2002/2866](#), art. 2(3), Sch. 1 Pt. 3

168 Relationship with benefits and other payments etc.

Schedule 13 to this Act has effect with respect to the relationship between statutory maternity pay and certain benefits and payments.

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169 Crown employment - Part XII.

The provisions of this Part of this Act apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the Crown.

170 Special classes of persons.

- (1) The Secretary of State may [^{F18}with the concurrence of the Treasury] make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—
 - (a) employed on board any ship, vessel, hovercraft or aircraft;
 - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
 - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.
- (2) Regulations under subsection (1) above may in particular provide—
 - (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
 - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
 - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
 - (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

Textual Amendments

F18 Words in s. 170(1) inserted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\), Sch. 1 para. 14](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

171 Interpretation of Part XII and supplementary provisions.

- (1) In this Part of this Act—

“confinement” means—

 - (a) labour resulting in the issue of a living child, or
 - (b) labour after [^{F19}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;

“dismissed” is to be construed in accordance with [^{F20}Part X of the Employment Rights Act 1996];

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“employee” means a woman who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with [^{F21}general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)]; ^{F22} ...
- (b) ^{F22}

but subject to regulations [^{F23}made with the concurrence of [^{F24}Her Majesty’s Revenue and Customs]] which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

[^{F25}“employer”, in relation to a woman who is an employee, means a person who—

- ((a)) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or
- ((b)) would be liable to pay such contributions but for—
 - ((i)) the condition in section 6(1)(b), or
 - ((ii)) the employee being under the age of 16;]

“maternity pay period” has the meaning assigned to it by section 165(1) above;

“modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

“prescribed” means specified in or determined in accordance with regulations;

^{F26}

[^{F27}(1A) In this Part, except section 165(1), (4) and (6), section 166(1) and paragraph 3(2) of Schedule 13, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of case.]

(2) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same woman is an employee are to be treated as one.

(3) Where, in consequence of the establishment of one or more National Health Service trusts under [^{F28}the National Health Service Act 2006, the National Health Service (Wales) Act 2006] or the ^{M1}National Health Service (Scotland) Act 1978, a woman’s contract of employment is treated by a scheme under [^{F29}any of those Acts] as divided so as to constitute two or more contracts, [^{F30}or where an order under [^{F31}paragraph 26(1) of Schedule 3 to the National Health Service Act 2006] provides that a woman’s contract of employment is so divided,] regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election;

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- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the woman's employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract;

and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.

- (4) For the purposes of this Part of this Act a woman's normal weekly earnings shall, subject to subsection (6) below, be taken to be the average weekly earnings which in the relevant period have been paid to her or paid for her benefit under the contract of service with the employer in question.
- (5) For the purposes of subsection (4) above "earnings" and "relevant period" shall have the meanings given to them by regulations.
- (6) In such cases as may be prescribed a woman's normal weekly earnings shall be calculated in accordance with regulations.

[^{F32}(7) Regulations under any of subsections (2) to (6) above must be made with the concurrence of the Commissioners of Inland Revenue.]

Textual Amendments

- F19** Words in s. 171(1) substituted (1.10.1992) by [Still-Birth \(Definition\) Act 1992 \(c. 29\)](#), **ss. 2(1)(b)(2)(a), 4(2)**
- F20** Words in s. 171(1) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, **Sch. 1 para. 51(5)** (with s. 241, Sch. 2)
- F21** Words in s. 171(1) substituted (6.4.2003 with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 182** (with Sch. 7)
- F22** Words in s. 171(1) omitted (1.10.2006 with effect in relation to any case where the expected week of confinement begins on or after 14.1.2007) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 10(2)** (with Sch. 8 para. 10(4))
- F23** Words in s. 171(1) inserted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), s. 28(2)(a), **Sch. 1 para. 15(2)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F24** Words in s. 171 substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 43**; S.I. 2005/1126, art. 2(2)(h)
- F25** Words in s. 171(1) substituted (1.10.2006 with effect in relation to any case where the expected week of confinement begins on or after 14.1.2007) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 10(3)** (with Sch. 8 para. 10(4))
- F26** Words in s. 171(1) repealed (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. 9(2), **Sch. 2**; S.I. 2006/1682, arts. 2(d), 3(d)(i)(i)
- F27** S. 171(1A) inserted (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. 9(3)**; S.I. 2006/1682, arts. 2(d), 3(d)
- F28** Words in s. 171(3) substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), s. 8(2), **Sch. 1 para. 148(a)** (with Sch. 3 Pt. 1)

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- F29** Words in s. 171(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 148(b)** (with Sch. 3 Pt. 1)
- F30** Words in s. 171 inserted (8.2.2000) by The Health Act 1999 (Supplementary, Consequential etc. Provisions) Order 2000 (S.I. 2000/90), art. 3(1), **Sch. 1 para. 27(3)**
- F31** Words in s. 171(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 148(c)** (with Sch. 3 Pt. 1)
- F32** S. 171(7) inserted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 15(3)**; S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

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