

# **WELFARE REFORM AND PENSIONS ACT 1999**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Supplementary*

#### **Part V: Welfare**

#### *Chapter I: Social Security Benefits*

#### *Section 53: Extension of entitlement to state Maternity Allowance*

In the 1999 Budget, the Chancellor announced a reform of Maternity Allowance so that women earning below the lower earnings limit for NI contributions, and at least £30 a week, would be entitled to the benefit for the first time. Section 53, which was added to the Bill at Commons Report (Hansard vol. 331, col. 643), makes the necessary changes to the legislation.

#### **Background**

There are two maternity benefits for pregnant working women. Statutory Maternity Pay (SMP) is administered and paid by employers; Maternity Allowance (MA) is paid by the DSS.

Statutory Maternity Pay is paid to employees who satisfy two basic tests. A woman must have been employed continuously by her employer for at least 26 weeks by the 15th week before her baby is expected; and she must earn on average at or above the Lower Earnings Limit (LEL: the starting point for paying National Insurance contributions, currently £66 a week).

Maternity Allowance is paid to women who do not qualify for Statutory Maternity Pay, to the self-employed, and to recently employed women. To qualify, they must have worked and paid National Insurance contributions for at least 26 of the 66 weeks ending with the week before the expected week of childbirth.

Both SMP and MA provide a basic weekly benefit for employees of £59.55 (the same as Statutory Sick Pay) for up to 18 weeks. SMP beneficiaries, however, receive 90% of their average earnings for the first 6 weeks, if this is higher. The self-employed and recently employed receive a lower rate of Maternity Allowance of £51.70.

#### **Summary of changes**

Section 53 extends Maternity Allowance to women who earn below the LEL. The changes:

allow women who earn at least £30 a week, but below the LEL, to get Maternity Allowance worth 90% of their average weekly earnings;

allow women with several low paid jobs to add together their earnings, and get MA for the first time;

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(c.30) which received Royal Assent on 11 November 1999*

allow self-employed women who hold a Small Earnings Exception from paying National Insurance contributions to get Maternity Allowance of £27 a week (90% of £30);

remove the lower rate of MA, so that the self-employed and recently employed receive the same basic rate of benefit as employed women.

The section gives the power to set out the details (e.g. how average weekly earnings should be calculated) in regulations.

## **Commentary**

The section amends section 35 of the Contributions and Benefits Act which contains the rules for Maternity Allowance, and adds a new section 35A.

*Subsection (1)* replaces section 35(1) of the Act, which sets out the qualifying conditions for Maternity Allowance.

The only substantial change here is in the *inserted subsection (1)(c)*. Currently subsection (1)(c) says that a woman must meet National Insurance contribution conditions to qualify for MA. The new subsection says instead that she must earn above the “Maternity Allowance threshold” (defined in new section 35A(6) – described below – as £30).

There is a minor change in the *inserted subsection (1)(b)*. This makes clear that if a woman works for part of a week, this counts as a whole week for the test of recent employment.

*Subsection (2)* makes some consequential amendments.

*Subsection (3)* adds a new section 35A to the Contributions and Benefits Act. This sets out the rates at which Maternity Allowance will be paid, and gives the power to make the detailed arrangements of the earning test through regulations.

Any woman who earns on average at or above the Lower Earnings Limit will get the standard rate of MA (i.e. £59.55 a week) – *inserted subsection (2)*. There is no distinction between employed and self-employed women: self-employed and recently employed women will no longer get a lower rate of benefit.

Any woman whose average earnings are at least equal to the qualifying Maternity Allowance threshold (to be set at £30), but less than the LEL, will get a rate of MA equal to 90% of her average earnings – *inserted subsection (3)*.

The *inserted subsections (4)* and *(5)* of new section 35A contain powers to make regulations. It is intended to use the regulations to:

define “earnings”.

For employed earners, the same definition will be used as for Statutory Maternity Pay (i.e. gross earnings of a type that would qualify for National Insurance contributions).

For the self-employed, it is intended to base the calculation on notional earnings. For every week that a woman pays a Class 2 contribution, she will be treated as having earnings equal to the LEL in force for that week. To help the low paid self-employed, a self-employed woman who holds a certificate of Small Earnings Exception will be treated as having earnings equal to the Maternity Allowance Threshold applicable in that week (*subsections 4(b)* and *5(c)*).

define the period and the method to be used for calculating earnings.

The exact period has yet to be decided, but it is intended to take an average of at least 13 and at most 26 weeks’ earnings from the 66 week period used in the employment test. Women will be able to take account of their best weeks’ earnings when choosing which weeks to use (*subsection (5)(a)* and *(b)*).

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provide that the total earnings in any one week may come from a number of different jobs and/or self-employed earnings.

The aim is to ensure, for example, that a woman with three jobs earning £20 a week can add those earnings together to make total weekly earnings of £60. Or, a self-employed woman with a small earnings exception, who is also employed at £20 a week, could add together her notional earnings from self-employment (£30) to the £20 she earns as an employee. This would give her total earnings for that week of £50 (*subsection (5)(d)*).

*Subsection (6)* of new section 35A provides that the “Maternity Allowance threshold” is to be £30. *Subsections (7)* and *(8)* provide that the Secretary of State may increase this amount for any tax year after 1999/2000 by order.

The amendment made by paragraph 32 of Schedule 8 to the Act makes such orders would be subject to affirmative resolution: i.e. approval in draft by both Houses of Parliament. This is in line with the current procedure for uprating benefits.

*Subsection (4)* of section 53 provides that the new arrangements for Maternity Allowance will apply to woman whose expected date of confinement begins on or after 20 August 2000, with the first payments possible under the new rules being payable from April 2000.

Maternity Allowance, like Statutory Maternity Pay, may be paid from the 11<sup>th</sup> week before the week in which the baby is due. It is also payable where the baby is born prematurely. This can be as early as 19 weeks before the expected week of birth. So, women expecting a baby during the week commencing 20 August 2000 could receive Maternity Allowance as early as April 2000 if their baby arrives prematurely.

Schedule 8 Part VI contains some minor consequential amendments, and Schedule 13 some consequential repeals.