
STATUTORY INSTRUMENTS

1986 No. 1960

The Statutory Maternity Pay (General) Regulations 1986

PART II

ENTITLEMENT

The Maternity Pay Period

[^{F12}2.—(1) Subject to paragraphs (3) to (5), where—

- (a) a woman gives notice to her employer of the date from which she expects his liability to pay her statutory maternity pay to begin; and
- (b) in conformity with that notice ceases to work for him in a week which is later than the 12th week before the expected week of confinement,

the first day of the maternity pay period shall be the day on which she expects his liability to pay her statutory maternity pay to begin in conformity with that notice provided that day is not later than the day immediately following the day on which she is confined.

(2) The maternity pay period shall be a period of 39 consecutive weeks.

(3) In a case where a woman is confined—

- (a) before the 11th week before the expected week of confinement; or
- (b) after the 12th week before the expected week of confinement and the confinement occurs on a day which precedes that mentioned in a notice given to her employer as being the day on which she expects his liability to pay her statutory maternity pay to begin,

section 165 of the Contributions and Benefits Act shall have effect so that the first day of the maternity pay period shall be the day following the day on which she is so confined.

(4) In a case where a woman is absent from work wholly or partly because of pregnancy or confinement on any day—

- (a) which falls on or after the beginning of the 4th week before the expected week of confinement; but
- (b) not later than the day immediately following the day on which she is confined,

the first day of the maternity pay period shall be the day following the day on which she is so absent.

(5) In a case where a woman leaves her employment—

- (a) at any time falling after the beginning of the 11th week before the expected week of confinement and before the start of the maternity pay period, but
- (b) not later than the day on which she is confined,

the first day of the maternity pay period shall be the day following the day on which she leaves her employment.]

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Textual Amendments

F1 Reg. 2 substituted (1.10.2006) by [The Statutory Maternity Pay, Social Security \(Maternity Allowance\) and Social Security \(Overlapping Benefits\) \(Amendment\) Regulations 2006 \(S.I. 2006/2379\)](#), regs. 1(2), **3(2)** (with reg. 1(2))

Contract of service ended for the purpose of avoiding liability for statutory maternity pay

3.—(1) A former employer shall be liable to make payments of statutory maternity pay to any woman who was employed by him for a continuous period of at least 8 weeks and whose contract of service with him was brought to an end by the former employer solely or mainly for the purpose of avoiding liability for statutory maternity pay.

(2) In order to determine the amount payable by the former employer—

- (a) the woman shall be deemed for the purposes of Part V of the 1986 Act to have been employed by him from the date her employment with him ended until the end of the week immediately preceding the 14th week before the expected week of confinement on the same terms and conditions of employment as those subsisting immediately before her employment ended, and
- (b) her normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement shall for those purposes be calculated by reference to her normal weekly earnings for the period of 8 weeks ending with the last day in respect of which she was paid under her former contract of service.

Modification of entitlement provisions

4.—^{F2}(1)

(2) In relation to a woman in employed earner's employment who was confined before the 14th week before the expected week of confinement [^{F3}section 164(2)(a) and (b) of the Contributions and Benefits Act] shall have effect as if for the conditions there set out, there was substituted the conditions that—

- (a) she would but for her confinement have 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, and
- (b) her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week of her confinement are not less than the lower earnings limit in force under [^{F4}under section 5(1)(a) of the Contributions and Benefits Act] immediately before the commencement of the week of her confinement.

[^{F5}[^{F6}(3) In relation to a woman to whom paragraph (2) applies, section 166 of the Contributions and Benefits Act shall be modified so that subsection (2) has effect as if the reference to the period of 8 weeks immediately preceding the 14th week before the expected week of confinement was a reference to the period of 8 weeks immediately preceding the week in which her confinement occurred.]]

Textual Amendments

F2 Reg. 4(1) omitted (with effect in accordance with reg. 1(3) of the amending S.I.) by virtue of [The Social Security Maternity Benefits and Statutory Sick Pay \(Amendment\) Regulations 1994 \(S.I. 1994/1367\)](#), regs. 1(2), **3(2)**

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- F3** Words in reg. 4(2) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Maternity Benefits and Statutory Sick Pay \(Amendment\) Regulations 1994 \(S.I. 1994/1367\)](#), regs. 1(2), **3(3)(a)**
- F4** Words in reg. 4(2) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Maternity Benefits and Statutory Sick Pay \(Amendment\) Regulations 1994 \(S.I. 1994/1367\)](#), regs. 1(2), **3(3)(b)**
- F5** Reg. 4(3) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security Maternity Benefits and Statutory Sick Pay \(Amendment\) Regulations 1994 \(S.I. 1994/1367\)](#), regs. 1(2), **3(4)**
- F6** Reg. 4(3) inserted (6.4.1988) by [The Statutory Maternity Pay \(General\) Amendment Regulations 1988 \(S.I. 1988/532\)](#), regs. 1(1), **2**

Treatment of more than one contract of service as one

5. Where 2 or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part V of the 1986 Act, except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations 1979 the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

[^{F7} Prescribed rate of statutory maternity pay

6. The rate of statutory maternity pay prescribed under section 166(1)(b) of the Contributions and Benefits Act is a weekly rate of [^{F8}£112.75].]

Textual Amendments

- F7** Reg. 6 substituted (6.4.2003) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(b), **3**
- F8** Sum in reg. 6 substituted (1.4.2007 for specified purposes, 9.4.2007 in so far as not already in force) by [The Social Security Benefits Up Rating Order 2007 \(S.I. 2007/688\)](#), arts. 1(2)(f), **10**

Liability of Secretary of State to pay Statutory Maternity Pay

7.—(1) Where—

- (a) an adjudicating authority has determined that an employer is liable to make payments of statutory maternity pay to a woman, and
- (b) the time for appealing against that determination has expired, and
- (c) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any week in respect of which the employer was liable to make payments of statutory maternity pay but did not do so, and for any subsequent weeks in the maternity pay period the liability to make those payments shall, notwithstanding section 46(3) of the 1986 Act, be that of the Secretary of State and not the employer.

(2) In paragraph (1) adjudicating authority means, as the case may be, the Chief or any other adjudication officer, a Social Security Appeal Tribunal or the Chief or any other Social Security Commissioner.

(3) Liability to make payments of statutory maternity pay shall, notwithstanding section 46(3) of the 1986 Act, be a liability of the Secretary of State and not the employer as from the week in which the employer first becomes insolvent until the end of the maternity pay period.

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- (4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if—
- (a) in England and Wales—
- (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
 - (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986; or
 - (iii) where an employer is a company, a winding-up order ^{F9}... is made or a resolution for voluntary winding-up is passed with respect to it [^{F10}or it enters administration], or a receiver or manager of its undertaking is duly appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part;
- (b) in Scotland—
- (i) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
 - (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889(1) is required by that section to divide his insolvent estate among his creditors; or
 - (iii) where the employer is a company, a winding-up order ^{F11}... is made or a resolution for voluntary winding-up is passed with respect to it [^{F12}or it enters administration] or a receiver of its undertaking is duly appointed or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

Textual Amendments

- F9** Words in reg. 7(4)(a)(iii) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), [Sch. para. 44\(a\)\(i\)](#) (with art. 6)
- F10** Words in reg. 7(4)(a)(iii) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), [Sch. para. 44\(a\)\(ii\)](#) (with art. 6)
- F11** Words in reg. 7(4)(b)(iii) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), [Sch. para. 44\(b\)\(i\)](#) (with art. 6)
- F12** Words in reg. 7(4)(b)(iii) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), [Sch. para. 44\(b\)\(ii\)](#) (with art. 6)

Work after confinement

8.—(1) Where in the week immediately preceding the 14th week before the expected week of confinement a woman had 2 or more employers but one or more of them were not liable to make payments to her of statutory maternity pay (“non-liable employer”), section 47(6) of the 1986 Act shall not apply in respect of any week after the week of confinement but within the maternity pay period in which she works only for a non-liable employer.

- (2) Where after her confinement a woman—
- (a) works for an employer who is not liable to pay her statutory maternity pay and is not a non-liable employer, but
 - (b) before the end of her maternity pay period ceases to work for that employer,

(1) section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1), Schedule 7, paragraph 4.

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the person who before she commenced work was liable to make payments of statutory maternity pay to her shall, notwithstanding section 46 of the 1986 Act, not be liable to make such payments to her for any weeks in the maternity pay period after she ceases work.

No liability to pay statutory maternity pay

9. Notwithstanding the provisions of section 46(1) of the 1986 Act, no liability to make payments of statutory maternity pay to a woman shall arise in respect of a week within the maternity pay period for any part of which she is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended), or of any subsequent week within that period.

[^{F13}Working for not more than 10 days in the Maternity Pay Period

9A. In a case where a woman does any work under a contract of service with her employer on any day, but for not more than 10 days (whether consecutive or not), during her maternity pay period, statutory maternity pay shall continue to be payable to the employee by the employer.]

Textual Amendments

F13 Reg. 9A inserted (1.10.2006) by The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006 (S.I. 2006/2379), regs. 1(2), **3(3)** (with reg. 1(2))

Death of woman

10. An employer shall not be liable to make payments of statutory maternity pay in respect of a woman for any week within the maternity pay period which falls after the week in which she dies.

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