
STATUTORY INSTRUMENTS

1986 No. 1960

The Statutory Maternity Pay (General) Regulations 1986

PART IV

GENERAL PROVISIONS

Meaning of “employee”

17.—(1) [^{F1}Subject to paragraph (1A),] in a case where, and in so far as, a woman ^{F2}... is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978(1) she shall be treated as an employee for the purposes of Part V of the 1986 Act and in a case where, and in so far as, such a woman is treated otherwise than as an employed earner by virtue of those regulations, she shall not be treated as an employee for the purposes of Part V.

[^{F3}(1A) Paragraph (1) shall have effect in relation to a woman who—

- (a) is under the age of 16; and
- (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had she been over that age,

as it has effect in relation to a woman who is, or, as the case may be, is not so treated.]

(2) Any woman who is in employed earner's employment within the meaning of the 1975 Act under a contract of apprenticeship shall be treated as an employee for the purposes of Part V.

(3) A woman who is in employed earner's employment within the meaning of the 1975 Act but whose employer—

- (a) does not fulfil the conditions prescribed in regulation 119(1)(b) of the Social Security (Contributions) Regulations 1979(2) as to residence or presence in Great Britain, or
- (b) is a woman who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—
 - (i) is exempt from the provisions of the 1975 Act, or
 - (ii) is a woman against whom the provisions of that Act are not enforceable,shall not be treated as an employee for the purposes of Part V of the 1986 Act.

Textual Amendments

- F1** Words in reg. 17(1) inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), [Sch. 8 para. 53\(2\)\(a\)](#)
- F2** Words in reg. 17(1) omitted (1.10.2006) by virtue of [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), [Sch. 8 para. 53\(2\)\(b\)](#)

(1) , amended by S.I. 1980/1713 and 1984/350.

(2) , to which there are amendments not relevant to these regulations.

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F3 Reg. 17(1A) substituted (6.4.2007) by The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (S.I. 2007/825), regs. 1, 6(2)

Treatment of two or more employers as one

18.—(1) In a case where the earnings paid to a woman in respect of 2 or more employments are aggregated and treated as a single payment of earnings under regulation 12(1) of the Social Security (Contributions) Regulations 1979, the employers of the woman in respect of those employments shall be treated as one for all purposes of Part V of the 1986 Act.

(2) Where 2 or more employers are treated as one under the provisions of paragraph (1), liability for statutory maternity pay payable by them to a woman shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the woman's earnings from each employment bear to the amount of the aggregated earnings.

Payments to be treated as contractual remuneration

19. For the purposes of paragraph 12(1) and (2) of Schedule 4 to the 1986 Act, the payments which are to be treated as contractual remuneration are sums payable under the contract of service—

- (a) by way of remuneration;
- (b) for incapacity for work due to sickness or injury, and
- (c) by reason of pregnancy or confinement.

Meaning of “earnings”

20.—^{F4}(1)

^{F5}(2) For the purposes of section 171(4) of the Contributions and Benefits Act, the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a woman’s employment except any payment or amount which is—

- (a) excluded ^{F6}or disregarded in the calculation of a person’s earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001] (payments to be disregarded and payments to directors to be disregarded respectively) ^{F7}(or would have been so excluded had she not been under the age of 16)];
- (b) a chargeable emolument under section 10A of the Social Security Contributions and Benefits Act 1992, except where, in consequence of such a chargeable emolument being excluded from earnings, a woman would not be entitled to statutory maternity pay ^{F8}(or where such a payment or amount would have been so excluded and in consequence she would not have been entitled to statutory maternity pay had she not been under the age of 16)].]

^{F9}(3)

(4) For the purposes of ^{F10}section 171(4) of the Contributions and Benefits Act] the expression “earnings” includes also—

- ^{F11}(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;]
- (a) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the 1978 Act;
- (b) any sum payable by way of pay in pursuance of an order under the 1978 Act for the continuation of a contract of employment;

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- (c) any sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975;
- (d) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 1(5) of the Social Security and Housing Benefits Act 1982(3).
- [^{F12}(e) any sum payable by way of statutory maternity pay, including sums payable in accordance with regulations made under section 164(9)(b) of the Contributions and Benefits Act;]
- [^{F12}(f) any sum payable by way of statutory paternity pay, including sums payable in accordance with regulations made under section 171ZD(3) of the Contributions and Benefits Act;]
- [^{F12}(g) any sum payable by way of statutory adoption pay, including sums payable in accordance with regulations made under section 171ZM(3) of the Contributions and Benefits Act[^{F13};]]
- [^{F14}(h) any sum payable by way of statutory shared parental pay, including any sums payable in accordance with regulations made under section 171ZX(3) of the Contributions and Benefits Act.]
- ^{F15}(5)
- ^{F15}(6)

Textual Amendments

- F4** Reg. 20(1) omitted (16.11.1992) by virtue of [The Social Security \(Miscellaneous Provisions\) Amendment \(No. 2\) Regulations 1992 \(S.I. 1992/2595\)](#), regs. 1, **13(2)**
- F5** Reg. 20(2) substituted (6.4.1999) by [The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/567\)](#), regs. 1(1)(b), **12**
- F6** Words in reg. 20(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security, Occupational Pension Schemes and Statutory Payments \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1154\)](#), regs. 1(1), **4(2)**
- F7** Words in reg. 20(2)(a) inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 54(2)** (with Sch. 8 para. 54(4))
- F8** Words in reg. 20(2)(b) inserted (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 54(3)** (with Sch. 8 para. 54(4))
- F9** Reg. 20(3) omitted (16.11.1992) by virtue of [The Social Security \(Miscellaneous Provisions\) Amendment \(No. 2\) Regulations 1992 \(S.I. 1992/2595\)](#), regs. 1, **13(4)**
- F10** Words in reg. 20(4) substituted (24.11.2002) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(a), **5(a)**
- F11** Reg. 20(4)(za) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security, Occupational Pension Schemes and Statutory Payments \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1154\)](#), regs. 1(1), **4(3)**
- F12** Reg. 20(4)(e)-(g) added (8.12.2002) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(c), **5(b)**
- F13** Word in Reg. 20(4)(g) substituted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **4(3)(a)**
- F14** Reg. 20(4)(h) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **4(3)(b)**

(3) , as amended by the Social Security Act 1986 (c.50), section 68.

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F15 Reg. 20(5)(6) omitted (16.11.1992) by virtue of [The Social Security \(Miscellaneous Provisions\) Amendment \(No. 2\) Regulations 1992 \(S.I. 1992/2595\)](#), regs. 1, **13(4)**

Normal weekly earnings

21.—(1) For the purposes of [^{F16}Part XII of the Contributions and Benefits Act], a woman's normal weekly earnings shall be calculated in accordance with the following provisions of this regulation.

(2) In this regulation—

“the appropriate date” means the first day of the 14th week before the expected week of confinement, or the first day in the week in which the woman is confined, whichever is the earlier,^{F17} ... ;

“normal pay day” means a day on which the terms of a woman's contract of service require her to be paid, or the practice in her employment is for her to be paid, if any payment is due to her; and

“day of payment” means a day on which the woman was paid.

(3) Subject to paragraph (4), the relevant period for the purposes of [^{F18}section 171(4) of the Contributions and Benefits Act] is the period between—

(a) the last normal pay day to fall before the appropriate date; and

(b) the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a),

including the normal pay day mentioned in sub-paragraph (a) but excluding that first mentioned in sub-paragraph (b).

(4) In a case where a woman has no identifiable normal pay day, paragraph (3) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.

(5) In a case where a woman has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) her normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(6) In a case to which paragraph (5) does not apply and the relevant period is not an exact number of weeks, the woman's normal weekly earnings shall be calculated by dividing her earnings in the relevant period by the number of days in the relevant period and multiplying the result by 7.

[^{F19}(7) In any case where—

(a) a woman is awarded a pay increase (or would have been awarded such an increase had she not then been absent on statutory maternity leave); and

(b) that pay increase applies to the whole or any part of the period between the beginning of the relevant period and the end of her period of statutory maternity leave,

her normal weekly earnings shall be calculated as if such an increase applied in each week of the relevant period.]

Textual Amendments

F16 Words in reg. 21(1) 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), **5(2)**

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- F17** Words in reg. 21(2) 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), **5(3)**
- F18** Words in reg. 21(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), **5(4)**
- F19** Reg. 21(7) substituted (6.4.2005) by [The Statutory Maternity Pay \(General\) \(Amendment\) Regulations 2005 \(S.I. 2005/729\)](#), regs. 1(1), **3**

[^{F20}Effect of statutory maternity pay on [^{F21}incapacity benefit]

^{F22}21A].

- Textual Amendments**
- F20** Reg. 21A inserted (6.4.1988) by [The Statutory Maternity Pay \(General\) Amendment Regulations 1988 \(S.I. 1988/532\)](#), regs. 1(1), **3**
 - F21** Words in reg. 21A heading substituted (13.4.1995) by [The Social Security \(Incapacity Benefit\) \(Consequential and Transitional Amendments and Savings\) Regulations 1995 \(S.I. 1995/829\)](#), regs. 1(1), **18(2)(a)** (with Pt. III)
 - F22** Reg. 21A revoked (24.11.2002) by [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(a), **6**

[^{F23}Effect of maternity allowance on statutory maternity pay

- 21B.** Where a woman, in any week which falls within the maternity pay period, is—
- (a) in receipt of maternity allowance pursuant to the provisions of sections 35 and 35A of the Contributions and Benefits Act; and
 - (b) entitled to receive statutory maternity pay in consequence of [^{F24}—
 - (i) receiving a pay increase referred to in regulation 21(7), or
 - (ii) being treated as having been paid retrospective earnings under regulation 20(4)(za),]

the employer shall not be liable to make payments of statutory maternity pay in respect of such a week unless, and to the extent by which, the rate of statutory maternity pay exceeds the rate of maternity allowance received by her in that week.]

- Textual Amendments**
- F23** Reg. 21B substituted (6.4.2005) by [The Statutory Maternity Pay \(General\) \(Amendment\) Regulations 2005 \(S.I. 2005/729\)](#), regs. 1(1), **4**
 - F24** Reg. 21B(b)(i)(ii) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security, Occupational Pension Schemes and Statutory Payments \(Consequential Provisions\) Regulations 2007 \(S.I. 2007/1154\)](#), regs. 1(1), **4(4)**

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