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## STATUTORY INSTRUMENTS

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# 1986 No. 1960

## The Statutory Maternity Pay (General) Regulations 1986

### PART V

#### ADMINISTRATION

##### **Evidence of expected week of confinement or of confinement**

**22.**—(1) A woman shall in accordance with the following provisions of this regulation, provide the person who is liable to pay her statutory maternity pay with evidence as to—

- (a) the week in which the expected date of confinement occurs, and
- (b) where her entitlement to statutory maternity pay depends upon the fact of her confinement, the week in which she was confined.

(2) For the purpose of paragraph (1)(b) a certificate of birth shall be sufficient evidence that the woman was confined in the week in which the birth occurred.

(3) The evidence shall be submitted to the person who will be liable to make payments of statutory maternity pay not later than the end of the third week of the maternity pay period so however that where the woman has good cause the evidence may be submitted later than that date but not later than the end of the 13th week of the maternity pay period.

(4) For the purposes of paragraph (3) evidence contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to have been submitted on the day on which it was posted.

##### **Notice of absence from work**

**23.**—(1) Where a woman is confined before the beginning of the 14th week before the expected week of confinement, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives notice to the person who will be liable to pay it [<sup>F1</sup>of the date on which she was confined], and
- (b) that notice is given within [<sup>F2</sup>28 days] of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and
- (c) where the person so requests, the notice is in writing.

(2) Where a woman is confined before the date stated in a notice provided in accordance with [<sup>F3</sup>section 164(4) of the Contributions and Benefits Act] as being the date her absence from work is due to begin, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives a further notice to the person who will be liable to pay it specifying the date she was confined and the date her absence from work <sup>F4</sup>... began, and
- (b) that further notice is given within [<sup>F5</sup>28 days] of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and

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(c) where the person so requests, the notice is in writing.

(3) For the purposes of this regulation, a notice contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to be given on the date on which it is posted.

[<sup>F6</sup>(4) Subject to paragraph (5), section 164(4) of the Contributions and Benefits Act (statutory maternity pay-entitlement and liability to pay) shall not have effect in the case of a woman who leaves her employment with the person who will be liable to pay her statutory maternity pay after the beginning of the week immediately preceding the 14th week before the expected week of confinement.]

[<sup>F7</sup>(5) A woman who is exempted from section 164(4) of the Contributions and Benefits Act by paragraph (4) but who is confined before the 11th week before the expected week of confinement shall only be entitled to statutory maternity pay if she gives the person who will be liable to pay it notice specifying the date she was confined.]

#### Textual Amendments

- F1** Words in reg. 23(1)(a) 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), **7(2)(a)** (with reg. 1(2))
- F2** Words in reg. 23(1)(b) 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), **7(2)(b)** (with reg. 1(2))
- F3** Words in reg. 23(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), **6(2)**
- F4** Words in reg. 23(2)(a) omitted (24.11.2002) by virtue of [The Social Security, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/2690\)](#), regs. 1(1)(a), **7(3)(a)** (with reg. 1(2))
- F5** Words in reg. 23(2)(b) 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), **7(3)(b)** (with reg. 1(2))
- F6** Reg. 23(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), **7(4)** (with reg. 1(2))
- F7** Reg. 23(4)(5) 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), **6(3)**

#### Notification of employment after confinement

**24.** A woman who after the date of confinement but within the maternity pay period commences work in employed earner's employment with a person who is not liable to make payments of statutory maternity pay to her and is not a non-liaible employer for the purposes of regulation 8(1), shall within 7 days of the day she commenced work inform any person who is so liable of the date she commenced work.

#### Provision of information in connection with determination of questions

**25.** Any woman claiming to be entitled to statutory maternity pay, or any other person who is a party to proceedings arising under the 1986 Act relating to statutory maternity pay, shall, if she receives notification from the Secretary of State that any information is required from her for

the determination of any question arising in connection therewith, furnish that information to the Secretary of State within 10 days of receiving that notification.

**[<sup>F8</sup>Provision of information relating to claims for certain other benefits**

**25A.**—(1) Where an employer who has been given notice in accordance with [<sup>F9</sup>section 164(4) (a) or (9)(ea) of the Contributions and Benefits Act] or regulation 23 by a woman who is or has been an employee —

- (a) decides that he has no liability to make payments of statutory maternity pay to her, or
- (b) has made one or more payments of statutory maternity pay to her but decides, before the end of the maternity pay period and for a reason specified in paragraph (3), that he has no liability to make further payments to her,

then, in connection with the making of a claim by the woman for a maternity allowance<sup>F10</sup>, incapacity benefit or an employment and support allowance], he shall furnish her with the information specified in the following provisions of this regulation.

(2) Where the employer decides he has no liability to make payments of statutory maternity pay to the woman, he shall furnish her with details of the decision and the reasons for it.

(3) Where the employer decides he has no liability to make further payments of statutory maternity pay to the woman because <sup>F11</sup>... she has within the maternity pay period been detained in legal custody or sentenced to a term of imprisonment which was not suspended, <sup>F12</sup>... he shall furnish her with —

- (a) details of his decision and the reasons for it; and
- (b) details of the last week in respect of which a liability to pay statutory maternity pay arose and the total number of weeks within the maternity pay period in which such a liability arose.

(4) The employer shall—

- (a) return to the woman any maternity certificate provided by her in support of the notice referred to in paragraph (1); and
- (b) comply with any requirements imposed by the preceding provisions of this regulation—
  - (i) in a case to which paragraph (2) applies, within 7 days of the decision being made, or, if earlier, within [<sup>F13</sup>28 days] of the day the woman gave notice of her intended absence or of her confinement if that had occurred; or
  - (ii) in a case to which paragraph (3) refers, within 7 days of being notified of the woman's detention or sentence <sup>F14</sup>....

(5) In this regulation, 'incapacity benefit' means [<sup>F15</sup>incapacity benefit] or a severe disablement allowance.]

**Textual Amendments**

- F8** Reg. 25A inserted (6.4.1990) by [The Statutory Maternity Pay \(General\) Amendment Regulations 1990 \(S.I. 1990/622\)](#), regs. 1, 7
- F9** Words in reg. 25A(1) 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), **8(2)** (with reg. 1(2))
- F10** Words in reg. 25A(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/1554\)](#), regs. 1(2)(b), **46**

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- F11** Word in reg. 25A(3) omitted (24.11.2002) by virtue of The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), **8(3)(a)** (with reg. 1(2))
- F12** Words in reg. 25A(3) omitted (24.11.2002) by virtue of The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), **8(3)(b)** (with reg. 1(2))
- F13** Words in reg. 25A(4)(b)(i) 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), **8(4)(a)** (with reg. 1(2))
- F14** Words in reg. 25A(4)(b)(ii) omitted (24.11.2002) by virtue of The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), **8(4)(b)** (with reg. 1(2))
- F15** Words in reg. 25A(5) 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(3)** (with Pt. III)

### Records to be maintained by employers

**26.**—(1) Every employer shall maintain for 3 years after the end of the tax year in which the maternity pay period ends a record in relation to any woman who is or was an employee of his—

- (a) the date of the first day of absence from work wholly or partly because of pregnancy or confinement as notified by her and, if different, the date of the first day when such absence commenced;
- (b) the weeks in that tax year in which statutory maternity pay was paid and the amount paid in each week; and
- (c) any week in that tax year which was within her maternity pay period but for which no payment of statutory maternity pay was made to her and the reasons no payment was made.

(2) Except where he was not liable to make a payment of statutory maternity pay and subject to paragraphs (3) and (4), every employer shall retain for 3 years after the end of the tax year in which the maternity pay period ends any medical certificate or other evidence relating to the expected week of confinement, or as the case may be, the confinement which was provided to him by a woman who is or was an employee of his.

(3) Where an employer returns a medical certificate to an employee of his for the purpose of enabling her to make a claim for benefit under the 1975 Act, it shall be sufficient for the purposes of paragraph (2) if he retains a copy of that certificate.

(4) An employer shall not retain any certificate of birth provided to him as evidence of confinement by a woman who is or was an employee of his, but shall retain a record of the date of birth.

### [<sup>F16</sup>Production of employer's records

**26A.**—(1) An authorised officer of the Commissioners of Inland Revenue may by notice require an employer to produce to him at the place of keeping such records as are in the employer's possession or power and as (in the officer's reasonable opinion) contain, or may contain, information relevant to satisfy him that statutory maternity pay has been paid and is being paid in accordance with these regulations to employees or former employees who are entitled to it.

(2) A notice referred to in paragraph (1) shall be in writing and the employer shall produce the records referred to in that paragraph within 30 days after the date of such a notice.

(3) The production of records in pursuance of this regulation shall be without prejudice to any lien which a third party may have in respect of those records.

(4) References in this regulation to “records” means—

- (a) any wage sheet or deductions working sheet; or
- (b) any other document which relates to the calculation or payment of statutory maternity pay to his employees or former employees,

whether kept in written form, electronically, or otherwise.

(5) In paragraph (1), “place of keeping” means such place in Great Britain that an employer and an authorised officer may agree upon, or, in the absence of such agreement—

- (a) any place in Great Britain where records referred to in paragraph (1) are normally kept; or
- (b) if there is no such place, the employer’s principal place of business in Great Britain.]

#### **Textual Amendments**

**F16** Reg. 26A inserted (6.4.2005) by [The Statutory Maternity Pay \(General\) and Statutory Sick Pay \(General\) \(Amendment\) Regulations 2005 \(S.I. 2005/989\)](#), art. 1(2), **reg. 2(2)**

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