
STATUTORY INSTRUMENTS

1994 No. 1882

**SOCIAL SECURITY
TERMS AND CONDITIONS OF EMPLOYMENT**

**The Statutory Maternity Pay (Compensation of Employers)
and Miscellaneous Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>14th July 1994</i>
<i>Laid before Parliament</i>		<i>15th July 1994</i>
<i>Coming into force in accordance with regulation 1(2) and (3)</i>		
<i>regulations 1 and 9</i>		<i>31st July 1994</i>
<i>regulations 2 to 8</i>		<i>4th September 1994</i>

The Secretary of State for Social Security, in exercise of powers conferred on him by sections 35(3), 167(1), (1A), (1B) and (4), 171(1) and 175(1) to (4) of the Social Security Contributions and Benefits Act 1992⁽¹⁾ and of all other powers enabling him in that behalf after agreement by the Social Security Advisory Committee that proposals in respect of regulation 9 should not be referred to it⁽²⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994 and regulations 2 to 7 shall have effect in relation to payments of statutory maternity pay due on or after 4th September 1994.

(2) This regulation and regulation 9 shall come into force on 31st July 1994.

(3) Regulations 2 to 8 shall come into force on 4th September 1994.

(4) In these Regulations—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992

(1) 1992 c. 4; sections 35 and 167 were amended by the Maternity Allowance and Statutory Maternity Pay Regulations 1994 (S.I.1994/1230). Section 171(1) is cited because of the meaning ascribed to the word “prescribe”.

(2) See the Social Security Administration Act 1992 (c. 5) section 173(1)(b).

“the Maternity Allowance Regulations” means the Social Security (Maternity Allowance) Regulations 1987(3);

“contributions payments”, in relation to an employer, means any payments which an employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions;

“employer” shall include a person who was previously an employer of a woman to whom a payment of statutory maternity pay was made, whether or not that person remains her employer at the date any deduction from contributions payments is made by him in accordance with regulation 5 or, as the case may be, any payment is received by him in accordance with regulation 6;

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“payment of statutory maternity pay” means the total amount of statutory maternity pay paid by an employer to an employee during her maternity pay period;

“qualifying day” means the first day in the week immediately preceding the 14th week before the expected week of confinement in which a woman who is or has been an employee first satisfies the conditions of entitlement to statutory maternity pay for which a deduction from a contributions payment is made by her employer in respect of a payment of statutory maternity pay made by him;

“qualifying tax year” means the tax year preceding the tax year in which the qualifying day in question falls.

(5) Unless the context otherwise requires any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(6) For the purposes of regulations 5 and 6 “the Secretary of State” shall include a reference to the Commissioners of Inland Revenue acting on his behalf.

Meaning of “small employer”

2.—(1) Subject to the following provisions of this regulation, a small employer is an employer whose contributions payments for the qualifying tax year do not exceed £20,000.

(2) For the purposes of this regulation, the amount of an employer’s contributions payments shall be determined without regard to any deductions that may be made from them under any enactment or instrument.

(3) Where in the qualifying tax year an employer has made contributions payments in one or more, but less than 12, of the income tax months, the amount of his contributions payments for that tax year shall be estimated by adding together all of those payments, dividing the total amount by the number of those months in which he has made those payments and multiplying the resulting figure by 12.

(4) Where in the qualifying tax year an employer has made no contributions payments, but does have such payments in one or more income tax months which fall both—

- (a) in the tax year in which the qualifying day falls, and
- (b) before the qualifying day or, where there is more than one such day in that tax year, before the first of those days,

(3) S.I. 1987/416; the relevant amending instrument is S.I. 1994/1367.

then the amount of his contributions payments for the qualifying tax year shall be estimated in accordance with paragraph (3) but as if the amount of the contributions payments falling in those months had fallen instead in the corresponding tax months in the qualifying tax year.

Determination of the amount of additional payment to which a small employer shall be entitled

3. In respect of any payment of statutory maternity pay a small employer shall be entitled to an additional payment being an amount equal to 4 per cent. of such payment, that percentage being the total amount of secondary Class 1 contributions estimated by the Secretary of State as to be paid in respect of statutory maternity pay by all employers in that year, expressed as a percentage of the total amount of statutory maternity pay estimated by him to be paid by all employers in that year.

Right of employers to prescribed amount

4. An employer who has made any payment of statutory maternity pay shall be entitled—

- (a) to an amount equal to 92 per cent. of such payment; or
- (b) if he is a small employer—
 - (i) to an amount equal to such payment; and
 - (ii) to an additional payment under regulation 3;

which in either case (a) or (b) he shall be entitled to deduct in accordance with the provisions of regulation 5 or, as the case may be, to receive in accordance with the provisions of regulation 6.

Deductions from contributions payments

5. An employer who is entitled to a payment determined in accordance with regulation 4 may recover such payment by making one or more deductions from his contributions payments except where and insofar as—

- (a) the contributions payments relate to earnings paid before the beginning of the income tax month in which the payment of statutory maternity pay was made;
- (b) the contributions payments are made by him later than 6 years after the end of the tax year in which the payment of statutory maternity pay was made;
- (c) the amount determined in accordance with regulation 4 has been paid to him under regulation 6 by the Secretary of State; or
- (d) the employer has made a request in writing under regulation 6 that the amount of the payment of statutory maternity pay or the amount determined in accordance with regulation 4 be paid to him and he has not received notification by the Secretary of State that the request is refused.

Payments to employers by the Secretary of State

6.—(1) If the total amount which an employer is or would otherwise be entitled to deduct under regulation 5 exceeds the total amount which the employer is liable to pay by way of primary and secondary Class 1 contributions in respect of the earnings paid in an income tax month, and the Secretary of State is satisfied that that is so, then provided that the employer has in writing requested him to do so, the Secretary of State shall pay the employer such amount as the employer was unable to deduct.

(2) If an employer is not liable to pay any primary or secondary Class 1 contributions but would otherwise be entitled to deduct an amount under regulation 5, and the Secretary of State is satisfied

that that is so, then provided the employer has in writing requested him to do so, the Secretary of State shall pay the employer that amount.

Date when certain contributions are to be treated as paid

7. Where an employer has made a deduction from a contributions payment under regulation 5, the date on which it is to be treated as having been paid for the purposes of section 167(4) of the Contributions and Benefits Act (amount deducted to be treated as paid and received towards discharging liability in respect of Class 1 contributions) is—

- (a) in a case where the deduction did not extinguish the contributions payment, the date on which the remainder of the contributions payment or, as the case may be, the first date on which any part of the remainder of the contributions payment was paid; and
- (b) in a case where the deduction extinguished the contributions payment, the 14th day after the end of the income tax month during which there were paid the earnings in respect of which the contributions payment was payable.

Revocation

8. The Statutory Maternity Pay (Compensation of Employers) Regulations 1987(4) are hereby revoked.

Amendment of regulation 3 of the Maternity Allowance Regulations

9. In regulation 3(4)(c) of the Maternity Allowance Regulations (modification of the maternity allowance period) for head (ii) there shall be substituted the following head—

- “(ii) where a woman is absent from work after the beginning of the 6th week before the expected week of confinement wholly or partly due to pregnancy or confinement, at the end of the 18th week following the week in which she was so absent,”.

Signed by authority of the Secretary of State for Social Security.

14th July 1994

Astor
Parliamentary Under-Secretary of State,
Department of Social Security

(4) S.I. 1987/91; the relevant amending instruments are S.I. 1988/430, 1991/641 and 1994/592.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for compensation of employers who have made payments of statutory maternity pay under the Social Security Contributions and Benefits Act 1992. They also contain a miscellaneous amendment to the Social Security (Maternity Allowance) Regulations 1987 (“the maternity allowance regulations”).

Regulation 2 defines the meaning of small employer for the purposes of the recovery of statutory maternity pay.

Regulation 3 defines the additional payment which a small employer shall be entitled to recover.

Regulation 4 sets out the payments which may be recovered by employers.

Regulation 5 provides that payments may be recovered by deductions from Class 1 national insurance contributions.

Regulation 6 provides for payments to employers by the Secretary of State where the total amount which the employer can deduct under the regulations exceeds the amount he is liable to pay by way of Class 1 national insurance contributions.

Regulation 7 sets out the circumstances in which a deduction from contributions payments may be treated as paid.

Regulation 8 revokes the Statutory Maternity Pay (Compensation of Employers) Regulations 1987.

Regulations 1 to 8 are made under section 167 of the Social Security Contributions and Benefits Act 1992. They do not, by virtue of paragraph 8 of Schedule 7 to the Social Security Administration Act 1992, require prior submission to the Social Security Advisory Committee and they have not been so referred.

Regulation 9 amends regulation 3 of the maternity allowance regulations to amend the definition of maternity allowance period in respect of women claiming maternity allowance after confinement.

An assessment of the compliance costs for employers has been made and a copy has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Room 06/11, Adelphi, 1—11 John Adam Street, London, WC2N 6HT.