

2000 No. 688
SOCIAL SECURITY

**The Social Security (Maternity Allowance) (Earnings)
Regulations 2000**

<i>Made</i>	-	-	-	<i>9th March 2000</i>
<i>Laid before Parliament</i>				<i>10th March 2000</i>
<i>Coming into force</i>				<i>2nd April 2000</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 35A(4), (5) and (6)(c), 122(1) and 175(1) to (4) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of the enactments under which it is made(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Maternity Allowance) (Earnings) Regulations 2000 and shall come into force on 2nd April 2000.

(2) In these Regulations—

“certificate of small earnings exception” means a certificate issued pursuant to regulation 24(1) of the Contributions Regulations;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(c);

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

“test period” means the period of 66 weeks specified in section 35(1)(b) of the Contributions and Benefits Act.

Specified payments for employed earners

2.—(1) Subject to paragraph (2), for the purposes of section 35A(4)(a) of the Contributions and Benefits Act, the payments specified for a woman who is an employed earner in any week falling within the test period shall be all payments made to her or for her benefit as an employed earner including—

- (a) any sum payable in respect of arrears of pay in pursuance of an order for reinstatement under section 114 or re-engagement under section 115 of the Employment Rights Act 1996 (orders for reinstatement and re-engagement)(d);
- (b) any sum payable by way of pay in pursuance of an order made under section 129 of the Employment Rights Act 1996 (procedure on hearing of application and making of order) for the continuation of a contract of employment;
- (c) any sum payable by way of remuneration in pursuance of a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (complaint . . . and protective award)(e);
- (d) any sum payable by way of statutory sick pay, including sums payable in accordance with regulations made under section 151(6) of the Contributions and Benefits Act (employers’ liability)(f);

(a) 1992 c. 4. Section 35A was inserted by section 53(3) of the Welfare Reform and Pensions Act 1999 (c. 30); section 122(1) is cited because of the meaning ascribed to the word “prescribe”; section 175 was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

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

(c) S.I. 1979/591.

(d) 1996 c. 18.

(e) 1992 c. 52.

(f) Section 151(6) was amended by paragraph 9 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(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(a).

(2) The payments specified shall not include any sum excluded from the computation of a person's earnings under regulation 19, 19A or 19B of the Contributions Regulations (payments to be disregarded)(b).

Specified payments for self-employed earners

3. For the purposes of section 35A(4)(b) of the Contributions and Benefits Act, where a woman is a self-employed earner in any week falling within the test period, the payments treated as made to her or for her benefit shall be—

- (a) a payment equal to the lower earnings limit in force on the last day of that week where she has paid a Class 2 contribution and she does not hold a certificate of small earnings exception in respect of that week; or
- (b) a payment equal to the maternity allowance threshold in force on the last day of that week, where she holds a certificate of small earnings exception in respect of that week.

Aggregation of specified payments

4.—(1) In a case other than one to which regulation 5(2) applies where a woman, either in the same week or in different weeks falling within the test period, is engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner), any payments which are made, or treated in accordance with these Regulations as made to her or for her benefit shall be aggregated for the purpose of determining the average weekly amount of specified payments applicable in her case.

(2) In a case to which regulation 5(2) applies, any payments which are made or treated in accordance with these Regulations as made, to her or for her benefit shall not be aggregated for the purpose of determining the average weekly amount of specified payments applicable in her case.

The specified period

5.—(1) The specified period for the purposes of section 35A(4) and (5) of the Contributions and Benefits Act shall, subject to paragraph (2) below, be the period of 13 consecutive weeks falling within the test period in respect of which a woman's average weekly earnings determined in accordance with these Regulations are greatest.

(2) Where a woman's entitlement to maternity allowance would not otherwise equal the appropriate weekly rate specified in section 35A(2) of the Contributions and Benefits Act, and the payments made or treated in accordance with these Regulations as made to her or for her benefit are equal to or greater than the lower earnings limit in force on the last day of the week in 13 or more weeks (whether consecutive or not) falling within the test period, the specified period shall be the test period.

(3) Where a woman is normally paid other than weekly, the payments made to her or for her benefit for the purposes of paragraph (2) shall be calculated by dividing the payments made to her in any week by the nearest whole number of weeks in the period in respect of which she is paid.

Determination of average weekly amount of specified payments

6.—(1) For the purposes of section 35A(4) of the Contributions and Benefits Act, a woman's average weekly amount of specified payments shall, subject to paragraph (2) of this regulation, be determined—

- (a) in a case to which regulation 5(1) applies, by dividing by 13 the payments made or treated as made in accordance with these Regulations which fall within the specified period; or
- (b) in a case to which regulation 5(2) applies, by dividing by 13 the payments made or treated as made in accordance with these Regulations in the first 13 such weeks which fall within the specified period.

(2) In any case where a woman receives a back-dated pay increase after the end of the period specified in regulation 5 above which includes a sum in respect of any week falling within that

(a) Section 164(9)(b) was amended by paragraph 12(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(b) Regulation 19A was inserted by S.I. 1987/1590 and regulation 19B by S.I. 1987/2111. The relevant amending instruments are S.I. 1991/640 and S.I. 1996/700.

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period, her average weekly amount of specified payments shall be determined as if such sum had been paid in that week.

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

9th March 2000

Angela Eagle
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the payments which are, or are to be treated as, earnings for the purpose of determining entitlement to State Maternity Allowance.

Regulation 2 specifies payments for women who are employed earners.

Regulation 3 specifies the payments to be treated as made to or for the benefit of a woman who is a self-employed earner.

Regulation 4 provides for the aggregation of payments for the purpose of determining the average weekly amount of specified payments applicable in her case.

Regulation 5 specifies periods for the purposes of sections 35A(4) and (5) of the Social Security Contributions and Benefits Act 1992 (“the Contributions and Benefits Act”).

Regulation 6 provides for the determination of the average weekly amount of specified payments for the purposes of section 35A(4) of the Contributions and Benefits Act.

These Regulations do not impose any costs on business.

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