

**EXPLANATORY MEMORANDUM TO THE
STATUTORY MATERNITY PAY (GENERAL) AND STATUTORY SICK
PAY (GENERAL) (AMENDMENT) REGULATIONS 2005**

2005 No.989

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 These regulations make a number of amendments to the Statutory Maternity Pay (General) Regulations 1986 (SI 1986/1960) and Statutory Sick Pay (General) Regulations 1982 (SI1982/894). The Regulations bring arrangements for inspections of employers' records for Statutory Maternity Pay and Statutory Sick Pay into line with rules for inspections of a similar nature, i.e. for inspection of tax affairs, National Insurance contributions and other statutory payments (Statutory Adoption Pay and Statutory Paternity Pay). In doing so, they reduce the powers of Inland Revenue inspectors for examining the Statutory Maternity Pay and Statutory Sick Pay records to an appropriate and analogous level.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These Regulations contain new provisions in relation to the production to officers of the Inland Revenue of records relating to payment of statutory sick pay and statutory maternity pay kept by employers. They are necessitated by the entry into force on 6th April 2005 of section 9(4) of the National Insurance Contributions and Statutory Payments Act 2004(c.3) (NIC&SPA 2004). As a result of this, certain provisions in the existing regulations relating to criminal offences must be repealed immediately before the entry into force of that section, on 6th April 2005.

3.2 Since the relevant part of the NIC&SPA 2004 providing power to make the majority of these regulations only entered into force on 1st January 2005, and given the need to co-ordinate on their content and effect with various other government Departments (including the Inland Revenue, with whose concurrence these regulations are made), it has been necessary to breach the 21 day rule in relation to these regulations. The Department is aware of the importance of observing the 21 day rule wherever possible and regrets that it has not been able to do so in this instance.

4. Legislative Background

4.1 Sections 113(1)(b), 130(5), 132(4) and 189(1) and (5) of the Social Security Administration Act 1992 (c.5) (SSAA 1992) give the Secretary of State the power to make regulations, with the concurrence of the Inland Revenue:

- to require employers to produce relevant records to allow the Inland Revenue to be satisfied that Statutory Maternity Pay or Statutory Sick Pay have been properly paid.

These Regulations are analogous to provisions for other Inland Revenue business and will ensure consistent operation by IR officers who will be carrying out SSP/SMP functions alongside their other employer compliance work. They replace powers which give Inland Revenue powers for SMP and SSP which are unnecessarily heavy handed and disproportionate when compared to the inspection powers for other statutory payments, tax affairs and National Insurance contributions.

4.2 This is the first use of the powers under Sections 130(5) and 132(4) which were inserted by the NIC&SPA 2004.

4.3 This instrument relates to the Statutory Maternity Pay and Statutory Sick Pay (General) (Amendment) Regulations 2005

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Not applicable

7. Policy background

7.1 At the time of the transfer of responsibility for National Insurance contributions to the Inland Revenue, it was recognised that the powers under which officers inspected employers' and businesses' National Insurance affairs were significantly different from those in relation to tax affairs. The Minister in charge of transfer legislation, Baroness Hollis, promised that there would be a review following transfer. These regulations represent the end result of that review.

7.2 These regulations put in place machinery provisions for dealing with non-compliance in connection with the administration of Statutory Maternity Pay (SMP) and Statutory Sick Pay (SSP).

7.3 The Inland Revenue are responsible for:

- a. providing employers with the support they need to pay SMP or SSP to their employees correctly and recover SMP or SSP correctly;
- b. monitoring and enforcing employers' compliance with the schemes' provisions;
- c. investigating queries and complaints – making formal appealable decisions for dispute resolution where necessary;
- d. arranging funding for employers of payments made (either in advance or in arrears) and
- e. accounting for that expenditure from the National Insurance Fund (NIF) – reimbursed from the consolidated fund.

7.4 Currently, Inland Revenue officers who need to inspect records in connection with SMP or SSP use Section 110ZA of the SSAA 1992

- 7.5 The existing section 110ZA does three things:
- a. it provides a power of entry to premises for an officer enquiring into NICs or SSP/SMP matters,
 - b. it permits that officer to make enquiries and, in particular, to examine any person found on the premises,
 - c. it places an obligation on those persons to supply information and access to documents and records.

7.6 Section 7 of the NIC&SPA 2004 revises Section 110ZA to remove the existing powers of entry and examination for NICs purposes and attach NICs to the information power in Section 20 of the Taxes Management Act 1970 (TMA). SMP and SSP have not been attached to section 20 TMA.

7.7 The NIC&SPA 2004 provides a new regulation making power to provide for the inspection of SMP/SSP records which is exercised in this instrument for the first time. The power of entry currently contained in S110ZA is heavy handed and disproportionate to purpose in relation to SMP/SSP: it is a provision which has more in common with the robust approach necessary for dealing with cases where benefit fraud is suspected, rather than the inspections on compliance with Inland Revenue provisions to which it is actually related.

7.8 The NIC&SPA 2004 mirrors legislation where the Inland Revenue carries out similar functions in relation to other parts of its business – primarily Statutory Paternity and Adoption Pay (SPP and SAP). These regulations are designed to be analogous to provisions for other Inland Revenue business to ensure proportionate and consistent operation by Inland Revenue officers who will be carrying out SMP/SSP functions alongside their other employer compliance work.

7.9 In the consultation document *Simplifying National Insurance Contributions for Employers* published in 2000, Inland Revenue asked for views on these powers of inspection. Similarly, the measures contained in these Regulations are based on the compliance regimes for Statutory Adoption Pay and Statutory Paternity Pay, which were widely consulted on during the

Employment Act 2002. These consultations and informal consultation with the employers groups represented on the Inland Revenue Employers Umbrella Group on the relevant draft clauses of the NIC&SPA2004 and these regulations, have been universally welcomed by all concerned.

8. Impact

8.1 A full regulatory impact assessment has not been produced for these regulations as they have no impact on the costs of business.

8.2 The impact on the public sector is minimal.

9. Contact

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