

EXPLANATORY MEMORANDUM TO
THE STATUTORY MATERNITY PAY, SOCIAL SECURITY (MATERNITY ALLOWANCE) AND SOCIAL SECURITY (OVERLAPPING BENEFITS) (AMENDMENT) REGULATIONS 2006

2006 No. 2379

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

2. Description

2.1 The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006 (the Amendment Regulations) make changes to Statutory Maternity Pay (SMP) and Maternity Allowance (MA) as a result of improvements introduced by the Work and Families Act 2006 (the 2006 Act). Amongst other beneficial changes, the payment period of both SMP and MA is extended from 26 weeks to 39 weeks.

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

3.1 None

4. Legislative Background

4.1 The Amendment Regulations are made under powers contained in the Social Security Contributions and Benefits Act 1992 (SSCBA) and the Social Security Administration Act 1992 (the 1992 Act). Several provisions in SSCBA have been amended by the Work and Families Act 2006 (the 2006 Act) which was introduced into Parliament on 18 October 2005. The 2006 Act as well as amending provisions in SSCBA covering SMP and MA also contains provision for maternity leave, paternity leave and pay and adoption leave and pay. Amendments to the maternity leave, adoption pay and leave and paternity pay and leave regulations are being introduced by the Department of Trade and Industry and those amendments correspond where appropriate to the changes being made to SMP and MA.

4.2 Most pregnant working women receive either SMP from their employer or MA from DWP. Sections 164 to 171 and Schedule 13 of SSCBA contain the primary legislation governing the SMP scheme, sections 35 and 35A of SSCBA cover MA. Section 1 of the 2006 Act amends section 165(1) of SSCBA increasing the maximum period that the Secretary of State may prescribe for the payment of SMP from 26 to 52 weeks. The maximum period of payment for MA follows this automatically through section 35(2) of SSCBA. The Amendment Regulations initially set the period of payment at 39 weeks.

4.3 Paragraphs 6 to 9 of Schedule 1 to the 2006 Act amend SSCBA:

- to enable working women to choose the exact day that their SMP should begin in

accordance with the date she gives in her notice to her employer (rather than restricting the start of the SMP payment period for most women to the Sunday following the day they stopped work). This will mean that SMP will align with the start date of maternity leave;

- to enable women to retain their SMP payments if they work for up to 10 days under their contract of service for the employer paying SMP or, for MA, to do some work as an employed or self-employed earner for up to 10 days with no loss of MA;
- to make it possible for the weekly rate of SMP to be divided by 7 where this will make it easier for employers to align weekly SMP payments with their normal pay practice

The Amendment Regulations are made under the powers amended by the 2006 Act and also consequentially under other powers.

4.4 Currently, where MA is calculated at a daily rate it is done on the basis of one sixth of the weekly rate. Section 67 of the Social Security Act 1998 is now commenced so that for women expecting babies on or after 1 April 2007 where it is necessary to calculate a daily rate of MA it will be done on the basis of one seventh of the weekly rate. This aligns MA with all other social security benefits.

4.5 As a consequence the Social Security (Overlapping Benefits) Regulations 1979 are amended to remove the references to MA as needing adjustments of one sixth against other benefits. This amendment is done under the power to adjust benefits in section 73(1)(a) of the 1992 Act.

5. Extent

5.1 This instrument applies to Great Britain.

5.2 Northern Ireland will take forward parallel legislation to mirror these changes.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 To ensure parents have a greater choice in balancing work and family life, the Government, in the Pre-Budget Report of 2 December 2004, committed to extend Statutory Maternity Pay and Maternity Allowance from the current 26 weeks to 39 weeks from April 2007. This was a step toward the goal of one year's payment by the end of this Parliament. A wider consultation, led by the Department of Trade and Industry was initiated with the publication, on 28 February 2005, of a consultation document "Work and Families: Choice and Flexibility" (available at www.dti.gov.uk/workandfamilies).

7.2 The consultation sought views on the extension to the pay periods; what might be done to help ease the administration of Statutory Maternity Pay for employers; improving communications between employers and employees on leave; and helping employers plan for an employees' eventual return to work by changing the notification requirements. It also put forward options for allowing leave to be transferred between

parents.

7.3 In October 2005 the Department of Trade and Industry published the Government's response to the consultation including a summary of over 200 responses received from representatives of large and small employers, parent and carer groups as well as individuals and individual employers. On 31 January 2006 the Government published draft regulations on maternity and adoption leave for consultation which included a description of the changes proposed for Statutory Maternity Pay and Maternity Allowance; the draft pay regulations were published in March. All the changes received a positive response. The Government's response to the consultation on the draft regulations was published in June 2006. It can be viewed at www.dti.gov.uk/employment/workandfamilies/index.html

7.4 The amendment regulations implement the changes the Government has undertaken to make to Statutory Maternity Pay and Maternity Allowance and make consequential changes.

Extending the payment period to 39 weeks and ensuring that the payment periods for both SMP and MA can begin on any day of the week.

Currently SMP and MA are paid for up to 26 weeks. The regulations extend this period to 39 weeks for women expecting babies on or after 1 April 2007. The rules which apply to the SMP payment period automatically apply to the MA payment period through section 35(2) of SSCBA. Currently where a woman has given her employer notice of the date she expects her SMP liability to begin, the maternity pay period starts from the week following the week she ceased work in accordance with that notice – in practice the Sunday following the day she stopped work in accordance with that notice. The new rule, which applies only to women whose babies are due on or after 1 April 2007, enables the period to start on any day of the week as specified by the woman in the notice she gives to her employer. The woman is required to tell her employer when she wants her SMP to start and she must have stopped work in accordance with that notice. This will allow the start of her payment period to match the start of her maternity leave. In line with this “any day” start, where a woman actually resigns from her employment after the 11th week before her expected date of childbirth but before her payment period is due to start, the payment period will start the day after the day her employment ends (instead of the Sunday after as now).

Working in the statutory maternity pay and maternity allowance payment periods for up to 10 days without loss of SMP or MA

Currently a woman will lose a week's SMP for any week in which she has done any work under her contract for the employer paying SMP to her. The changes allow a woman to work for up to 10 days under her contract during the statutory maternity pay period for the employer paying her SMP and retain her SMP for that week. Similarly a woman receiving MA will be able to work as an employed or self employed earner for up to 10 days in her maternity allowance payment period without losing any MA. Currently she is disqualified from receiving MA for at least the number of days she works. The days during which she may work with no loss of benefit will be known as “Keeping in Touch” days. They have been developed following discussions during consultation on the merits of these days and how many there should be whilst maintaining the special nature of maternity leave. The consultation revealed a general welcome for a measure which will help women maintain contact with their employer

during longer periods of paid maternity leave and ease their transition back to work at the end of that leave. Stakeholders on the whole suggested the number of days should be capped at between 5 and 15 days. The Government therefore decided that a cap of 10 days was a reasonable response to the views expressed during consultation.

Rounding of SMP payments

The Statutory Maternity Pay (General) Regulations 1986 (the SMP Regulations) are amended to ensure that where any payment of SMP is made whether in respect of a whole week or part of a week, then that payment, if it includes a fraction of a penny, is rounded up to the next whole number of pence. Currently rounding only needs to apply to the calculation of the earnings related rate of SMP. But to make the payment of SMP more flexible, employers may pay SMP in split weeks if this suits their payroll system. The regulations have therefore been amended to apply one rounding rule to all payments of SMP (including those where the earnings related rate is calculated).

Adjusting the Social Security (Overlapping Benefits) Regulations 1979

Currently MA has a 6 day benefit week- Monday to Saturday. Where it is necessary to pay MA at a daily rate, that rate is calculated as one sixth of the weekly rate. This will continue to be the case for those women with an Expected Week of Childbirth (EWC) on or before 31 March 2007. To align MA with other benefits and with the 7 day nature of SMP payments, MA will become a 7 day benefit week for those women with an EWC on or after 1 April 2007. Where it is necessary to pay MA at a daily rate, that rate will be calculated as one seventh of the weekly rate. The Social Security (Overlapping Benefits) Regulations 1979, which set out how social security benefits are adjusted against each other if a person is entitled to more than one benefit at the same time, are amended to take account of the change to MA.

8. Impact

8.1 A Regulatory Impact Assessment covering these measures and the corresponding leave measures was submitted with the memorandum covering the Maternity and Parental Leave Etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006. The Regulatory Impact Assessment is again attached here for convenience. It can also be viewed at www.dti.gov.uk/employment/workandfamilies/index.html

8.2 The impact on the public sector is expected to be similar to the impact on other employers.

9. Contact

Name of contact at the Department for Work and Pensions Kate Wheeler Tel: 0207 962 8925 or e-mail: kate.wheeler@dwp.gsi.gov.uk can answer any queries regarding the instrument.