1994 No. 176

EUROPEAN COMMUNITIES

SOCIAL SECURITY

The Maternity Allowance and Statutory Maternity Pay Regulations (Northern Ireland) 1994

Made . . . . . 4th May 1994

Coming into operation in accordance with regulation 1(2) and (3)

The Department of Health and Social Services, being a department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to measures relating to allowances made to women on maternity leave, in exercise of the powers conferred by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Maternity Allowance and Statutory Maternity Pay Regulations (Northern Ireland) 1994.

(2) These Regulations, except regulation 5, shall have effect in any case where the expected week of confinement begins on or after 16th October 1994.

(3) Regulation 5 shall have effect in relation to payments of statutory maternity pay due on or after 4th September 1994.

(4) In this regulation "week" has the same meaning as in Part XII of the Contributions and Benefits Act.

(5) In these Regulations "the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**c**).

Rate of, and conditions of entitlement to, maternity allowance

2.—(1) In section 35 of the Contributions and Benefits Act (state maternity allowance), in subsection (1)—

(*a*) for "the weekly rate specified in Schedule 4, Part I, paragraph 4" there is substituted "the appropriate weekly rate determined under subsection (1A) below"; and

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(**a**) S.I. 1993/2661
(**b**) 1972 c. 68
(**c**) 1992 c. 7

(*b*) in paragraph (*b*) (employment condition) for "52 weeks immediately preceding the 14th week before" there is substituted "66 weeks immediately preceding".

(2) After that subsection there is inserted—

"(1A) For the purposes of subsection (1) above the appropriate weekly rate is—

(*a*) in the case of a woman who is engaged in employment as an employed earner in the week immediately preceding the 14th week before the expected week of confinement, a weekly rate equal to the lower rate of statutory maternity pay for the time being prescribed under section 162(3) below or the weekly rate specified in Schedule 4, Part I, paragraph 4, whichever is the higher; and

(*b*) in any other case, the weekly rate specified in Schedule 4, Part I, paragraph 4.".

(3) At the end of subsection (3) of that section there is added—

"(*c*) that subsection (2) above shall have effect subject to prescribed modifications in relation to cases in which a woman fails to satisfy the conditions referred to in subsection (1)(*b*) and (*c*) above at the commencement of the 11th week before the expected week of confinement, but subsequently satisfies those conditions at any time before she is confined.".

(4) In Schedule 3 to the Contributions and Benefits Act, in paragraph 3 of Part I (contributions condition for maternity allowance) in sub-paragraph (1)(*a*) for "52 weeks immediately preceding the 14th week before" there is substituted "66 weeks immediately preceding".

Beginning of maternity pay period

3.—(1) Section 161 of the Contributions and Benefits Act (the maternity pay period) is amended as follows.

(2) In subsection (3) (power to prescribe cases in which the first week of the maternity pay period is to be later than the 11th week before the expected week of confinement), for "the 6th week before the expected week of confinement" there is substituted "the week immediately following the week in which she is confined".

(3) In subsection (7) (section to have effect subject to prescribed modifications in certain cases), in paragraph (*b*)(i), for "during the period beginning with the 11th week, and ending with the 7th week" there is substituted "at any time after the end of the week immediately preceding the 11th week".

Rates of payment of statutory maternity pay

4.—(1) Section 162 of the Contributions and Benefits Act (rates of payment of statutory maternity pay) is amended as follows.

(2) At the end of subsection (3) there is added "which must not be less than the weekly rate of statutory sick pay for the time being specified in section 153(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates."

(3) For subsection (4) there is substituted—

"(4) Statutory maternity pay shall be payable to a woman—

(*a*) at the higher rate in respect of the first 6 weeks in respect of which it is payable; and

(*b*) at the lower rate in respect of the portion of the maternity pay period after the end of that 6 week period.".

(4) Subsections (5) to (8) are omitted.

Recovery of amounts paid by way of statutory maternity pay

5.—(1) Section 163 of the Contributions and Benefits Act (recovery of amounts paid by way of statutory maternity pay) is amended as follows.

(2) In subsection (1)—

(*a*) in paragraph (*a*), for the words from "the amount" onwards there is substituted—

"an amount equal to the sum of—

(i) the aggregate of such of those payments as qualify for small employers' relief, and

(ii) an amount equal to 92 per cent., of the aggregate of such of those payments as do not so qualify,

by making one or more deductions from his contrtibutions payments:";

(*b*) in paragraph (*b*), for "any payments of statutory maternity pay which they have made" there is substituted "amounts which they are entitled to recover by virtue of paragraph (*a*) above"; and

(*c*) in paragraph (*c*), after "statutory maternity pay" there is inserted "qualifying for small employers' relief".

(3) After subsection (1) there is inserted—

"(1A) For the purposes of this section, a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to that woman's maternity pay period, the person liable to make the payment is a small employer.

(1B) For the purposes of this section "small employer", in relation to a woman's maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—

(*a*) may define that expression by reference to the amount of a person's contributions payments for any prescribed period; and

(*b*) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—

(i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and

(ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.''.

Consequential amendments

6.—(1) In section 160(10)(*b*) of the Contributions and Benefits Act, the words ''(4) and (5)'' are omitted.

(2) In Schedule 4 to the Contributions and Benefits Act (rates of benefit etc.), in paragraph 4 of Part I after ''Maternity allowance'' there is inserted ''(in cases not falling within section 35(1A)(*a*)).''.

Sealed with the Official Seal of the Department of Health and Social Services on 4th May 1994.

(L.S.) *W. G. Purdy*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Social Security Contributions and Benefits (Northern Ireland) Act 1992 so as either to implement requirements of Council Directive 92/85/EEC in relation to allowances to be made to women on maternity leave, or to enable such requirements to be implemented in subordinate legislation made under that Act.

Regulation 2 amends section 35 so as to affect both the conditions of entitlement to maternity allowance and the rate of maternity allowance.

Regulation 3 provides for the maternity pay period, which at present must begin with a week not later than the 6th week before the expected week of confinement, to begin with a week not later than the week following the week in which the woman is actually confined.

Regulation 4 amends section 162 so as to provide that the higher rate of statutory maternity pay must be at least equal to the rate of statutory sick pay and that all women who are entitled to statutory maternity pay receive it at the higher rate for the first six weeks.

Regulation 5 amends section 163 so that employers other than small employers (to be defined by regulations made under that section) will be able to recover only 92 per cent. of payments of statutory maternity pay made by them.