EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MATERNITY ALLOWANCE) (EARNINGS) (AMENDMENT) REGULATIONS 2015

2015 No. 342

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. Purpose of the instrument

2.1 These regulations amend the Social Security (Maternity Allowance) (Earnings) Regulations 2000 http://www.legislation.gov.uk/uksi/2000/688/contents/made. They make changes to the way that the earnings of a self-employed claimant are determined for the purposes of calculating Maternity Allowance (MA).

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

3.1 None

4. Legislative Context

4.1 HM Treasury introduced, in the National Insurance Contributions Act 2015, http://www.legislation.gov.uk/2015?title=National%20Insurance (the Act), changes to the method of collection of Class 2 National Insurance contributions (NICs) for the self-employed.

4.2 Currently, a self-employed person has an automatic liability for payment of Class 2 NICs for each week of self-employment, unless a Small Earnings Exception Certificate ("SEE Certificate") has been obtained from Her Majesty's Revenue and Customs (HMRC).

4.3 Under the reforms introduced by the Act, changes will be made to the assessment and collection of Class 2 NICs. From the start of the 2015/16 tax year, a self-employed person will no longer have an automatic liability for payment of Class 2 NICs in year. Instead, liability will be determined on an annual basis, retrospectively, alongside income tax and Class 4 NICs, through the individual's self-assessment (SA) return. The last due date for payment of Class 2 NICs becomes 31 January in the year which immediately follows the end of the relevant tax year. So where liability is established for 2015/16, for example, the Class 2 NICs will fall due no later than 31 January 2017. Those with profits below a new Small Profits Threshold will not be liable for Class 2 NICs, but will be given the option to pay them voluntarily to protect their entitlement to benefit. These reforms make SEE Certificates obsolete.

4.4 These regulations (alongside further provisions in the Act) are designed to safeguard the position of self-employed women who, in consequence of the reforms introduced by the Act, might otherwise be denied access to MA. These

regulations therefore make amendments to the way MA is calculated following the changes to Class 2 NICs assessment and collection contained in the Act.

5. Territorial Extent and Application

5.1 These regulations apply to Great Britain.

5.2 The Department for Social Development in Northern Ireland will make similar provisions.

6. European Convention on Human Rights

As the regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Maternity Allowance (MA) is paid by the Department for Work and Pensions (DWP) to women who are not entitled to Statutory Maternity Pay from their employer; the self-employed and those who have irregular employment. If a woman is entitled, MA is payable for 39 weeks.

7.2 For self-employed women, MA is paid at two rates:

- The standard rate (currently £138.18 per week); or
- The lower rate (currently £27 per week).

Currently, to be entitled to MA, a woman must be self-employed for at least 26 weeks in a 66 week period before the week her baby is due (known as the "Test Period") and either:

- has paid 13 weeks' Class 2 NICs during the Test Period and is therefore treated as having sufficient average earnings to entitle her to the standard weekly rate of MA, or
- has not paid the requisite Class 2 NICs but holds a SEE Certificate and is therefore treated as earning the minimum weekly amount required to be entitled to the lower weekly rate of MA.

7.3 Provisions in the Act affect the way MA is calculated in two respects. Firstly, as the liability for Class 2 NICs will arise on an annual basis, rather than in year, a self-employed woman may not have a contemporaneous record of her Class 2 NICs payments. Provisions in the Act provide an exception to the new rules enabling payment of the requisite number of Class 2 NICs to be made on a voluntary basis and before any liability is established, for the purposes of a claim for MA, thereby allowing such women to access MA at the standard rate. These Regulations therefore enable account to be taken of all Class 2 NICs paid, whether on a voluntary basis or as part of the self-assessment process, in calculating MA.

7.4 Secondly, since the provisions in the Act render the SEE obsolete, these regulations remove any reference in the Social Security (Maternity Allowance)

(Earnings) Regulations 2000 to SEE Certificates, and enable a woman, who has merely been self-employed for at least 26 weeks in her Test Period to be eligible for MA at the lower rate.

Consolidation

"Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here."

8. Consultation outcome

8.1 A consultation published in July 2013 entitled "*Simplifying the National Insurance Processes for the Self-Employed*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224605/hmrc_consultation_Simplification_of_Self-employed_July_2013-4.pdf sought views on proposals to simplify Class 2 NICs.

The consultation ran for 12 weeks until October 2013. It was an opportunity for the self-employed; agents and accountants; intermediary and representative groups as well as the general public, to comment on whether the proposed change would be simpler and reduce the administrative burden on the self-employed community. During the course of the consultation, officials from HMRC met with some of these organisations to discuss the detail of the consultation paper. Engagement with these stakeholders was very useful; allowed in depth discussion and generated ideas for simplification.

The results of the consultation were published in December 2013. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266218/Simplifying_NICs_consultation_response.pdf

8.2 HMRC commissioned external qualitative research with focus groups and in depth interviews to seek opinions directly from a range of self-employed people. The researchers also conducted interviews with agents and representative bodies.

8.3 At Budget 2014, the Government announced that the collection of Class 2 NICs would be moved into self-assessment (SA) so that the self-employed could deal with their Class 2 NICs together with their income tax and Class 4 NICs.

8.4 Following this, the National Insurance Contributions Bill was introduced into Parliament on 17 July 2014.

8.5 These Regulations are being made following the above consultations and announcement.

9 Guidance

9.1 HMRC and DWP have established a cross-departmental implementation project and developed a comprehensive communications strategy to ensure all self-employed people are aware of the intended changes to the collection of Class 2 NICs. DWP will amend guidance for staff and claimants. Information and guidance will be issued by letter by HMRC to registered self-employed individuals, be available online and on claim forms explaining how the reforms may impact on any benefit claim a self-employed person may make now or in the future. HMRC already provide a telephone service.

DWP guidance and information for self-employed women considering a claim to MA will be available on www.gov.uk. A telephone enquiry facility will be available to MA claimants. DWP will also engage with relevant stakeholders to raise awareness of the forthcoming changes.

10 Impact

10.1 Government expect that around 5 million self-employed people will benefit from the NICs reforms. It is expected that the resulting reduction in administrative burden placed on self-employed people will be around £19 million per year. HMRC published a detailed Tax Information and Impact Note (TIIN) which can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331758/tiin-class2-nic.pdf

10.2 The MA amendments will affect around 25,000 – 30,000 self-employed women annually. They mitigate any potential detriment the NICs reforms might have brought. DWP are committed to ensuring pregnant woman are not disadvantaged, in compliance with their obligations under the Self-employed Workers Directive (Directive 2010/41 EU).

11 Regulating small business

11.1 This measure is likely to have a positive impact on this group as they will now be able to assess their Class 2 NICs liability and pay it through the operation of self-assessment.

12 Monitoring & review

12.1 Monitoring volumes and claims to MA is already in place and will continue following the changes. Any significant impacts identified post-implementation will be considered.

Contact

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