EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MATERNITY ALLOWANCE) (MISCELLANEOUS AMENDMENT) REGULATIONS 2014

2014 No. 884

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

This instrument amends the Social Security (Maternity Allowance) Regulations 1987 (S.I. 1987/416) and makes miscellaneous amendments to various social security regulations as a consequence of introducing a maternity allowance for a new group of women, ie those who habitually participate in their self employed spouse's or civil partner's business but who are neither employed nor self employed. This instrument is consequential on the coming into force of section 35B of the Social Security (Contributions and Benefits) Act 1992 which was introduced by the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014. The latter Regulations (http://www.legislation.gov.uk/2014/606) came into force on 1st April 2014

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

None

4. Legislative Context

The reasons for the amendments vary and include aligning regulations to include a reference to this maternity allowance. The changes only affect women with an expected date of confinement on or after 27th July 2014.

This instrument amends the Social Security (Maternity Allowance) Regulations 1987 (S.I. 1987/416) and makes minor changes to regulations relating to income-related benefits and other social security regulations.

The maternity allowance regulations

i) The Social Security (Maternity Allowance) (Miscellaneous Amendments) Regulations *1987 (SI 1987/416)*
http://www.dwp.gov.uk/docs/a3-5401.pdf

Income-related benefits and Social Security regulations

ii) The Child Support (Maintenance Assessments and Special Cases) Regulations 1992 *(SI 1992/1815)*, http://www.dwp.gov.uk/docs/a6-1901.pdf

iii) The Child Support (Maintenance Calculations and Special Cases) Regulations 2000 *(SI 2012/2785)* http://www.legislation.gov.uk/uksi/2001/155/contents/made

iv) The Child Support Maintenance Calculation Regulations 2012 (*SI 2012/2677)* http://www.legislation.gov.uk/ukdsi/2012/9780111526132/contents

v) The Jobseeker's Allowance Regulations 1996 (*SI 1996/207*) http://www.dwp.gov.uk/docs/a11-4001.pdf

vi) The Employment and Support Allowance Regulations 2008 (*SI 2008/794*) http://www.dwp.gov.uk/docs/a13-5101.pdf

vii) The Universal Credit Regulations 2013 *(SI 2013/376)* The Universal Credit Regulations 2013

viii) The Jobseekers Allowance Regulations 2013 *(SI 2013/378)* http://www.dwp.gov.uk/docs/a11-5151.pdf

ix) The Employment and Support Allowance Regulations 2013 *(2013/379)* http://www.dwp.gov.uk/docs/a13-4701.pdf

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provisions will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Social Security (Maternity Allowance)(Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 [SI 2014/606] introduce a Maternity

Allowance for women who habitually participate in their self employed spouse's or civil partner's business but who are neither employed nor self employed. Further information can be found in the attached Explanatory Memorandum supporting those regulations.
http://www.legislation.gov.uk/ukdsi/2014/9780111108475/memorandum/contents

7.2 This statutory instrument is consequential on the introduction of the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations 2014 and makes the following changes to secondary legislation:

Maternity Allowance

7.3 Women who receive Maternity Allowance as a result of being employed or self employed in their own right are entitled to return to work for 10 days, known as Keeping in Touch Days ('Kit Days') during their 39 week maternity allowance period without it affecting their allowance. This is to allow a woman to maintain a link with her employer, or her business if she is self-employed. The rationale for KIT days does not apply in relation to a woman who participates in the business of her self-employed spouse or civil partner. Therefore, she will be subject to disqualification from receiving a maternity allowance, for such part of the maternity allowance period as the Secretary of State considers reasonable, being not less than the number of days on which she works during her 14 week maternity allowance period.

7.4 In line with the treatment of women who receive Maternity Allowance (MA) as a result of being employed or self-employed in their own right, women will also be disqualified from receiving a maternity allowance under the new provisions if they fail to take due care of their health or attend medical examinations without good cause. The disqualification will be for a period considered by the Secretary of State to be reasonable in their particular circumstances.

7.5 These regulations also ensure that, in relation to a woman who is not entitled to MA under the new provisions at the 11th week before the expected week of confinement but subsequently becomes entitled, the 14 week maternity allowance period will begin the day after she stops working.

Other social security provisions

7.6 Minor amendments to insert "or 35B" after references to "section 35" in income-related benefits and social security regulations ensure that the maternity allowance paid to a woman who habitually participates in her spouse's or civil partner's self-employed business is treated in the same way as a maternity allowance that is paid to a woman who is employed or self-employed in her own right.

Consolidation

7.7 "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 formal consultation has not been carried out by the Department for Work and Pensions on these Regulations. Consultation was not considered necessary for these changes as they are designed to provide equality for women who regularly assist in the business of their self- employed spouse or civil partner and in the main they align existing legislation.

8.2 Legislative changes to implement this policy have been brought about as a result of the European Directive as described in the Explanatory Memorandum) http://www.legislation.gov.uk/uksi/2014/606/pdfs/uksi_20140606_en.pdf. Although no formal consultation was carried out, and informal consultation with small businesses informed the Department's handling of the transposition of the Directive a number of options were considered which resulted in the decisions to implement the minimum duration and lowest rate of Maternity Allowance.

9. Guidance

Internal guidance and learning products have been updated to inform DWP staff of the change. Forms and leaflets have been amended to include reference to the new Maternity Allowance and Holidays, time off, sick leave, maternity and paternity leave - GOV.UK has been updated.

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

The legislation does not apply to small business**.**

12. Monitoring & review

The operation of the Regulations will continue to be reviewed through the normal avenue of guidance, enquiries received from Department for Work and Pensions offices and correspondence from members of the public.

13. Contact

Prabha Mistry at the Department for Works and Pensions (Tel: 0208 449 5585 or email: Prabha.mistry@dwp.gsi.gov.uk) can answer any queries regarding this instrument.