EXPLANATORY MEMORANDUM TO

THE STATUTORY MATERNITY PAY (COMPENSATION OF EMPLOYERS) AMENDMENT REGULATIONS 2011

2011 No. 725

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 This instrument amends the additional amount that a small employer may recover from Her Majesty's Revenue and Customs in respect of the Statutory Maternity Pay paid out to qualifying employees.

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

3.1 None

4. Legislative Context

4.1 The Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994 enable employers to recover most or all of the Statutory Maternity Pay they pay. Employers reimburse themselves through deductions from tax, National Insurance contributions and other payments made to Her Majesty's Revenue and Customs. They may also apply to Her Majesty's Revenue and Customs for reimbursement in advance in certain circumstances.

4.2 Employers generally recover 92% of the Statutory Maternity Pay they pay. Small employers, those who have paid £45,000 or less in gross National Insurance contributions in the previous tax year, may recover 100% of the Statutory Maternity Pay paid out plus an additional amount. This additional amount is intended to compensate small employers for the employers' share of the National Insurance contributions they pay on Statutory Maternity Pay.

4.3 The calculation of the additional amount is set out in existing legislation. The rate must be looked at each year and amended to reflect the shift in the ratio between the Statutory Maternity Pay paid out and the employers' share of the National Insurance contributions paid on Statutory Maternity Pay. This additional amount has been set at 4.5% since 6 April 2002. This year the calculation has shown that the additional amount must change from 4.5% to 3% from 6 April 2011.

4.4 The same reimbursement arrangements also apply to four other Statutory Payments - Statutory Adoption Pay, Statutory Paternity Pay, Ordinary Statutory Paternity Pay and Additional Statutory Paternity Pay. The Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 and the Additional Statutory Paternity Pay (Administration) Regulations 2010 provide for employers who make these payments to recover them at the same rate as Statutory Maternity Pay.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Statutory Maternity Pay is the minimum amount that employers are required to pay to pregnant employees who meet specified conditions and who are taking time off work in the weeks surrounding the expected birth of their child. It is paid for a maximum of 39 weeks at 90% of a woman's average weekly earnings. There is no upper limit on the first 6 weeks of payment and a maximum of a standard rate (£128.73 a week from 3 April 2011) for the remaining 33 weeks.

7.2 In general employers are entitled to recover 92 % of the Statutory Maternity Pay paid out. There are different arrangements for small employers whose cash flows are more sensitive. To recognise this small employers get back all of the Statutory Maternity Pay paid out plus an additional amount in compensation for the employers' share of the National Insurance contributions due on these payments.

7.3 All employers and employees share payment of National Insurance contributions on the employees' earnings and Statutory Maternity Pay payments are earnings. The additional amount paid to small employers is calculated each year by comparing the estimated total amount of Statutory Maternity Pay that will be paid by all employers in the year with the estimated total of the employers' share of the National Insurance contributions due on those Statutory Maternity Pay payments. The additional amount has varied over the years as a natural consequence of the shift in relationship between Statutory Maternity Pay and the structure of National Insurance contributions.

7.4 The employers' National Insurance contributions threshold for the 2011/12 tax year is rising from £110 to £136 per week. This means that from 6 April 2011, employers will only pay National Insurance contributions during the first 6 weeks of Statutory Maternity Pay period. For the remaining 33 weeks no payment of National Insurance contributions is due on the £128.73 weekly standard rate of Statutory Maternity Pay. An adjustment to the additional amount paid to small employers from 4.5% to 3% is therefore required to reflect the increase in the employers' threshold and the subsequent decrease in any National Insurance contributions employers will pay on Statutory Maternity Pay.

Consolidation

7.5 No consolidation is required as the calculation and review of the additional amount is laid down in legislation. The calculation shows that the additional amount must be amended from 6 April 2011.

8. Consultation outcome

8.1 Consultation is not required as this instrument amends existing legislation using a pre-determined formula.

9. Guidance

9.1 Employers and payroll representatives have been informed by Her Majesty's Revenue and Customs of the change and the reasons behind it via their website, Employer Bulletins and Businesslink. In addition, Her Majesty's Revenue and Customs employer helpline staff will be able to answer employer questions about how this change may affect them.

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10. Impact

10.1 This legislation has a low impact on small business. The impact generally on larger business, charities or voluntary bodies is nil as all employers who employ women must continue to pay Statutory Maternity Pay to all qualifying employees.

10.2 The impact on the public sector is negligible as all employers who employ women must continue to pay Statutory Maternity Pay to all qualifying employees.

10.3 A full impact assessment has not been prepared as this instrument amends existing legislation using a pre determined formula.

11. Regulating small business

11.1 For the purposes of this instrument, small business is defined by the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994 as those paying £45,000 or less in National Insurance contributions in the previous tax year. Small businesses in the same way as all other employers must pay Statutory Maternity Pay to qualifying employees who take time off work due to pregnancy. These Regulations allow small businesses to recover in full all of the Statutory Maternity Pay they payout plus, an additional amount in compensation for the National Insurance contributions they pay on these payments.

Monitoring & review

12.1 The legislation is reviewed annually. In addition through its regular programme of surveys and educational visits, provision of guidance and technical support, Her Majesty's Revenue and Customs are able to monitor employer compliance with the legislation.

13. Contact

13.1 Angela Morris at the Department for Work and Pensions Tel: 0207 449 5588 or email: angela.morris4@dwp.gsi.gov.uk to answer any queries regarding the instrument.