EXPLANATORY MEMORANDUM TO

THE STATUTORY MATERNITY PAY (COMPENSATION OF EMPLOYERS) (AMENDMENT) REGULATIONS 2025

2025 No. 330

1. Introduction

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

2. Declaration

2.1 Baroness Sherlock, Minister for Lords at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Helen Walker, Deputy Director for Life Events, Poverty and Disadvantage, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nicola Heuston at the Department for Work and Pensions, email: smpand.mapolicy@dwp.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

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

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is United Kingdom for Regulations 1 and 2. Regulation 3 extends and applies to England, Wales and Scotland. Regulation 4 extends and applies to Northern Ireland only.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is United Kingdom for Regulations 1 and 2. Regulation 3 applies to England, Wales and Scotland. Regulation 4 extends and applies to Northern Ireland only.

5. Policy Context

What is being done and why?

5.1 Statutory Maternity Pay is payable by employers to qualifying women who are pregnant or who have recently given birth. The qualifying conditions[1] are based on a woman's recent employment and earnings. For the first six weeks, it is paid at a weekly rate equal to 90 percent of the woman's average weekly earnings, with no upper limit. For the remaining 33 weeks, it is paid at the lower of either the standard rate (for 2024/25 the rate is £184.03 per week and will be £187.18 per week from 6 April 2025, subject to parliamentary approval) or 90 percent of the woman's average weekly earnings.

5.2 Larger employers (those who have gross Class 1 National Insurance contributions[2] liability of more than £45,000.00 in the previous tax year) recover 92 percent of the cost by making deductions from the payments they are due to make to His Majesty's Revenue and Customs of tax, National Insurance contributions and other payments[3].

5.3 Smaller employers (those who have gross Class 1 National Insurance contributions liability of £45,000.00 or less in the previous tax year) can claim what is known as Small Employers Relief and can recover 100 percent of the Statutory Maternity Pay they have paid out plus an additional compensation payment. This additional compensation payment is known as the Small Employers' Compensation and seeks to support smaller employers with the associated costs of having an employee on maternity leave (such as the employer's share of National Insurance contributions that might be payable, as well as administration and recruitment costs). The process to recover these costs is the same as for large employers.

5.4 Statutory Maternity Pay payments are earnings and are liable to the deduction of Class 1 National Insurance contributions and income tax. The Small Employers' Compensation amount payable is a percentage of any Statutory Maternity Payments they have made. This percentage is set each year by calculating the total amount of Employers' Secondary National Insurance contributions[4] estimated to have been paid in respect of Statutory Maternity Pay in that year, expressed as a percentage of the estimated total amount of Statutory Maternity Pay paid by all employers that year. This methodology is set out in Regulation 3 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994[5].

5.5 The Small Employers' Compensation amount can vary as a natural consequence of the shift in the ratio between the Statutory Maternity Pay paid out and the employer's share of National Insurance contributions paid on Statutory Maternity Pay. The Employers' (Class 1) Secondary National Insurance rate will increase from the current percentage of 13.8 to 15 percent for the 2025/26 tax year. In tandem, the earnings threshold above which employers pay National Insurance will decrease from £175 to £96 per week. Essentially, these changes mean employers are paying increased National Insurance contributions compared to previous years

[1] https://www.gov.uk/maternity-pay-leave/eligibility#:~:text=Statutory%20Maternity%20Pay%20(%20SMP%20),the%20expected%20week%20of%20childbirth
[2] https://www.gov.uk/national-insurance/how-much-you-pay
[3] https://www.gov.uk/recover-statutory-payments
[4] https://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions
[5] https://www.legislation.gov.uk/uksi/1994/1882/regulation/3

What was the previous policy, how is this different?

5.6 The Small Employers' Compensation amount was introduced in September 1994 to support smaller employers with the associated costs of having an employee on maternity leave, such as the employer's share of National Insurance contributions that might be payable, as well as administration and recruitment costs. The effect on smaller businesses of having an employee on maternity leave is considered proportionately greater than for larger businesses.

5.7 There has been no change to the previous policy; this instrument amends existing legislation using a pre-determined formula. There is a requirement to assess and estimate the Small Employers' Compensation payment payable annually.

5.8 Since 2011, the estimate has remained at 3 percent. However, due to the increase in National Insurance contribution payments by employers from 6 April 2025 the estimate has been calculated at 8.5 percent in order to preserve the existing policy intent of enabling small employers to recover the associated costs of administering Statutory Maternity Pay. This instrument is therefore amending the Small Employers' Compensation amount payable in such cases from 3 to 8.5 percent of any Statutory Maternity Payments the small employer has made in the relevant tax year.

6. Legislative and Legal Context

How has the law changed?

6.1 Statutory Maternity Pay is payable by employers to qualifying women who are pregnant or who have recently given birth. Regulations made under section 167 of the Social Security Contributions and Benefits Act 1992[6] (and under section 163 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992[7]) entitle employers to recover either some or all of the cost of making Statutory Maternity Pay payments.

6.2 The Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994[8] sets out the employers' Statutory Maternity Pay reimbursement arrangements.

6.3 Regulation 3 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994 provides that the compensation amount is a percentage of any Statutory Maternity Payments the Employer has made that year. It is calculated based on the estimated total amount of employers Secondary National Insurance contributions paid in respect of Statutory Maternity Pay that year, expressed as a percentage of the estimated total amount of Statutory Maternity Pay paid by employers that year.

6.4 The same reimbursement arrangements apply to Statutory Paternity Pay[9], Statutory Shared Parental Pay[10], Statutory Adoption Pay[11], Statutory Parental Bereavement Pay[12] and Statutory Neonatal Care Pay[13] (comes into force on 6 April 2025).

[6] https://www.legislation.gov.uk/ukpga/1992/4/section/167
[7] https://www.legislation.gov.uk/ukpga/1992/7/section/163
[8] https://www.legislation.gov.uk/uksi/1994/1882/contents
[9] https://www.gov.uk/employers-paternity-pay-leave
[10] https://www.gov.uk/shared-parental-leave-and-pay
[11] https://www.gov.uk/adoption-pay-leave/pay
[12] https://www.gov.uk/parental-bereavement-pay-leave
[13] https://www.gov.uk/government/news/parents-to-receive-day-one-right-to-neonatal-care-leave-and-pay

6.5 Although maternity pay is transferred in Northern Ireland, the enabling power under which equivalent Northern Ireland provision for the Small Employers Compensation amount payable can be made or amended (section 163 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992) requires that any regulations making provision about the Small Employers Compensation amount payable for Northern Ireland must be made by the Secretary of State for Work and Pensions. This requirement is specified in section 163(7) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Why was this approach taken to change the law?

6.6 These changes could, in theory, have been made via appropriate primary legislation as consequential amendments. However, it is considered more appropriate to rely on the existing enabling powers in the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to make these changes, as these existing powers already allow for the Small Employers Compensation amount to be specified and amended via regulations.

7. Consultation

Summary of consultation outcome and methodology

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

7.2 Agreement was sought and obtained from the Northern Ireland Department of Communities that this instrument should follow previous approaches to amendments to the Small Employers' Compensation amount payable and should make equivalent amendments to the Small Employers' Compensation amount payable in both Great Britain and Northern Ireland.

7.3 These regulations are also made with the concurrence of two Commissioners of His Majesty's Revenue and Customs, as required by section 167(7) of the Social Security Contributions and Benefits 1992 (in relation to Great Britain) and by section 163(8) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (in relation to Northern Ireland).

8. Applicable Guidance

8.1 Payroll software developers have been informed by His Majesty's Revenue and Customs of the change. Guidance for employers will be published and aligned to the effective date of the measure. Guidance products will be supplemented with a communication bulletin to employers. His Majesty's Revenue and Customs employer helpline[14] staff will be able to answer employer questions about how this change might affect them.

[14] https://www.gov.uk/government/organisations/hm-revenue-customs/contact/employer-enquiries

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it is not a regulatory provision[15]. The instrument does not impose new costs or burdens on business.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is minimal. All employers who employ women must continue to pay Statutory Maternity Pay to all qualifying employees. Should any such business, charity or voluntary body fall within the definition of a small employer as set out in the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994, they will benefit from this change as it helps, in part, to offset the impact of the Employers (Class 1) Secondary National Insurance rate and the decrease in the earnings threshold above which employers pay National Insurance from 6 April 2025.

9.3 The legislation does impact small or micro businesses.

9.4 The legislation impacts small or micro businesses in a positive way as it helps to offset, at least in part, the impact of the increase of the Employers (Class 1) Secondary National Insurance rate and the decrease in the earnings threshold above which employers pay National Insurance from 6 April 2025.

9.5 The impact on the public sector will result from an increase in the Department of Work and Pensions Annually Managed Expenditure which has been approved by His Majesty's Treasury. This additional expenditure figure requires approval by the Office for Budget Responsibility before it can be shared.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to annually assess and estimate the Small Employers Compensation payment payable.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[15] https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf