STATUTORY INSTRUMENTS

2006 No. 2379

SOCIAL SECURITY

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006

Made - - - - *4th September 2006*

Laid before Parliament *8th September 2006*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by sections 35(3)(a)(i) and (c), 165(1), (3), (4) and (7) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 5(1)(l)(**b**), 73(1)(a) and 189(1), (3) and (4) of the Social Security Administration Act 1992(**c**).

This instrument contains only regulations made by virtue of, or consequential upon, the coming into force of the Work and Families Act 2006(**d**) or, in the case of regulation 2, by virtue of, or consequential upon the coming into force of section 67 of the Social Security Act 1998(**e**) and is made before the end of the period of 6 months beginning with the coming into force of those enactments(**f**).

Citation, application, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006.

(**a**) 1992 (c.4); section 35(3)(a)(i) was substituted by the Work and Families Act 2006 (c.18), Schedule 1, paragraph 6; section 35(3)(c) was added by S.I.1994/1230, regulation 2(3) and amended by the Employment Act 2002 (c.22), Schedule 7, paragraph 4(3); section 165(1) was amended by the Work and Families Act 2006 section 1; section 165(3) was substituted by the Work and Families Act 2006, Schedule 1, paragraph 7(2); section 165(4) was amended by the Work and Families Act 2006, Schedule1,paragraph 7(3); section 165(7) was amended by S.I. 1994/1230, regulation 3(3); section 175(1) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 3, paragraph 29.

(**b**) Section 5(1)(l) applies as if statutory maternity pay was a benefit by virtue of section 5(5) of the Social Security Administration Act 1992.

(**c**) 1992 c.5; section 73(1) was amended by the Jobseekers Act 1995 (c.18), Schedule 2, paragraph 49(2); section 189(1) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 57(2); section 189(1) and (4) was amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109.

(**d**) 2006 c. 18.

(**e**) 1998 c.14; section 67 is brought into force by S.I. 2376 (C.82) with effect from 1st October 2006 for women whose expected week of confinement falls on or after 1st April 2007.

(**f**) See section 173(5) of the Social Security Administration Act 1992.

(2) These Regulations shall apply to women whose expected week of confinement falls on or after 1st April 2007 and shall come into force on 1st October 2006.

(3) In these Regulations—

"the Maternity Allowance Regulations" means the Social Security (Maternity Allowance) Regulations 1987(**a**);

"the Overlapping Benefits Regulations" means the Social Security (Overlapping Benefits) Regulations 1979(**b**);

"the Statutory Maternity Pay Regulations" means the Statutory Maternity Pay (General) Regulations 1986(**c**).

Amendment of the Overlapping Benefits Regulations

2.—(1) The Overlapping Benefits Regulations are amended as follows.

(2) For regulation 14(1) (provisions for adjusting benefit for part of a week) substitute—

"**14.**—(1) Where an adjustment falls to be made under these regulations for part of a week, benefit (whether under the Contributions and Benefits Act or otherwise) shall be deemed to be payable at a rate equal to one-seventh of the appropriate weekly rate for each day of the week in respect of any such benefit.".

Amendment of the Statutory Maternity Pay Regulations

3.—(1) The Statutory Maternity Pay Regulations are amended as follows.

(2) For regulation 2 (the maternity pay period) substitute—

"**2.**—(1) Subject to paragraphs (3) to (5), where—

(a) a woman gives notice to her employer of the date from which she expects his liability to pay her statutory maternity pay to begin; and

(b) in conformity with that notice ceases to work for him in a week which is later than the 12th week before the expected week of confinement,

the first day of the maternity pay period shall be the day on which she expects his liability to pay her statutory maternity pay to begin in conformity with that notice provided that day is not later than the day immediately following the day on which she is confined.

(2) The maternity pay period shall be a period of 39 consecutive weeks.

(3) In a case where a woman is confined—

(a) before the 11th week before the expected week of confinement; or

(b) after the 12th week before the expected week of confinement and the confinement occurs on a day which precedes that mentioned in a notice given to her employer as being the day on which she expects his liability to pay her statutory maternity pay to begin,

section 165 of the Contributions and Benefits Act shall have effect so that the first day of the maternity pay period shall be the day following the day on which she is so confined.

(4) In a case where a woman is absent from work wholly or partly because of pregnancy or confinement on any day—

(a) which falls on or after the beginning of the 4th week before the expected week of confinement; but

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(**a**) S.I.1987/416; relevant amending instruments are S.I.1994/1367 and S.I. 2002/2690.
(**b**) S.I.1979/597; relevant amending instruments are S.I.1995/829 and S.I.1996/1345.
(**c**) S.I.1986/1960; relevant amending instruments are S.I.1994/1367 and S.I. 2002/2690.

(b) not later than the day immediately following the day on which she is confined,

the first day of the maternity pay period shall be the day following the day on which she is so absent.

(5) In a case where a woman leaves her employment—

(a) at any time falling after the beginning of the 11th week before the expected week of confinement and before the start of the maternity pay period, but

(b) not later than the day on which she is confined,

the first day of the maternity pay period shall be the day following the day on which she leaves her employment.".

(3) After regulation 9 (no liability to pay statutory maternity pay) insert—

"Working for not more than 10 days in the Maternity Pay Period

9A. In a case where a woman does any work under a contract of service with her employer on any day, but for not more than 10 days (whether consecutive or not), during her maternity pay period, statutory maternity pay shall continue to be payable to the employee by the employer.".

(4) For regulation 28 (rounding to avoid fractional amounts) substitute—

"**28.** Where any payment of statutory maternity pay is paid for any week or part of a week and the amount due includes a fraction of a penny, the payment shall be rounded up to the next whole number of pence.".

Amendment of the Maternity Allowance Regulations

4.—(1) The Maternity Allowance Regulations are amended as follows.

(2) For regulation 2(1)(a) (disqualification for the receipt of a maternity allowance) substitute—

"(a) during the maternity allowance period she does any work in employment as an employed or self-employed earner, for more than 10 days, whether consecutive or not, falling within that period and the disqualification shall be for such part of the maternity allowance period as may be reasonable in the circumstances, provided that the disqualification shall, in any event, be for the number of days on which she so worked in excess of 10 days;".

(3) In regulation 3(2A) (modification of the maternity allowance period) for "26 weeks commencing with the week following that in which she stopped work" substitute "39 weeks commencing no earlier than the day she becomes entitled to maternity allowance and no later than the day following the day on which she is confined".

Signed by authority of the Secretary of State for Work and Pensions

Philip A Hunt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

4th September 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Overlapping Benefits) Regulations 1979 (S.I.1979/597) ("the Overlapping Benefits Regulations"), the Statutory Maternity Pay (General) Regulations 1986 (S.I.1986/1960) ("the Statutory Maternity Pay Regulations") and the Social Security (Maternity Allowance) Regulations 1987 (S.I.1987/416) ("the Maternity Allowance Regulations").

Regulation 2 amends the Overlapping Benefits Regulations by substituting a new regulation 14(1) to provide for adjustments of all benefits at a rate of one-seventh of the appropriate weekly rate for each day of the week.

Regulation 3(2) substitutes a new regulation 2 of the Statutory Maternity Pay Regulations, the effect of which is as follows—

New regulation 2(1) provides that a woman's maternity pay period will begin in accordance with a notice to her employer stating the day she expects his liability to pay her Statutory Maternity Pay ("SMP") to begin, if that day is 11 weeks or less before her expected week of confinement ("EWC") and not later than the day after she gives birth.

New regulation 2(2) establishes that the maternity pay period is 39 consecutive weeks.

New regulation 2(3) provides that a woman's maternity pay period will begin the day after she gives birth if that day is before the 11th week before her EWC or, if it is after the 12th week before her EWC, and she gives birth before the day specified in a notice to her employer stating the day she expects his liability to pay her SMP to begin.

New regulation 2(4) provides that a woman's maternity pay period will begin the day after her absence from work where she is absent because of pregnancy or confinement on a day four weeks or less before her EWC and before her actual confinement (if earlier).

New regulation 2(5) provides that a woman's maternity pay period will begin the day after she leaves her employment where she leaves 11 weeks or less before her EWC, before the start of the maternity pay period and before her actual confinement (if earlier).

Regulation 3(3) inserts a new regulation 9A in the Statutory Maternity Pay Regulations to provide that SMP shall be paid where a woman works for her employer for not more than 10 days within her maternity pay period.

Regulation 3(4) substitutes a new regulation 28 of the Statutory Maternity Pay Regulations to allow payments of SMP for a week or part of a week to be rounded up to the next penny.

Regulation 4(2) amends the Maternity Allowance Regulations by substituting a new regulation 2(1)(a) to provide that a woman will be subject to disqualification from maternity allowance if she works as an employed or self-employed earner for more than 10 days in the maternity allowance period.

Regulation 4(3) amends regulation 3(2A) of the Maternity Allowance Regulations to extend the maternity allowance period to 39 weeks and to allow the maternity allowance period to commence no earlier than the day a woman becomes entitled to maternity allowance and no later than the day after which she is confined in specified circumstances.

An assessment of the cost to business, charities and the voluntary sector of the provisions in these Regulations is included in the regulatory impact assessment that accompanied the Work and Families Act 2006. A copy of that assessment has been placed in the library of both Houses of Parliament. Copies may be obtain from the Department for Work and Pensions, Workplace Health Division,1-11 John Adam Street, London WC2 6HT or from the Department of Trade and Industry website: www.dti.gov.uk/employment/workandfamilies

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