STATUTORY RULES OF NORTHERN IRELAND

2002 No. 359

SOCIAL SECURITY STATUTORY MATERNITY PAY; STATUTORY SICK PAY

The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2002

Made - - - -	*25th November 2002*
Coming into operation	*8th December 2002*

The Department for Social Development, in exercise of the powers conferred by sections 35A(4)(a), 159(3), 160(9)(c), 167(5), 167ZP(2) and (3) and 171(1) to (4) of, and paragraph 2 of Schedule 13 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), and now vested in it(**2**), and of all other powers enabling it in that behalf, by this statutory rule, which contains only regulations made by virtue of, or consequential upon, Articles 3 to 6 of the Employment (Northern Ireland) Order 2002(**3**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2002 and shall come into operation on 8th December 2002.

(2) Regulation 2(2) shall take effect only in respect of those women whose expected week of confinement commences on or after 6th April 2003.

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

(**1**) 1992 c. 7; section 35A was inserted by Article 50(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), section 167ZP is inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), section 171(2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 2 of Schedule 13 was substituted by paragraph 44(3) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) S.I. 2002/2836 (N.I. 2)

(**4**) 1954 c. 33 (N.I.)

Amendment of the Statutory Maternity Pay (General) Regulations

2.—(1) The Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(**5**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 11(1) (continuous employment)–

(a) in sub-paragraph (d) after "pregnancy or confinement," there shall be added "or"; and

(b) after sub-paragraph (d) there shall be added the following sub-paragraph–

"(e) absent from work in consequence of taking paternity leave, adoption leave or parental leave under Part IX of the Employment Rights (Northern Ireland) Order 1996(**6**),".

(3) In regulation 20(4) (meaning of "earnings")–

(a) for "Article 51(3) of the 1986 Order" there shall be substituted "section 167(4) of the Contributions and Benefits Act"; and

(b) after sub-paragraph (d) there shall be added the following sub-paragraphs–

"(e) any sum payable by way of statutory maternity pay, including sums payable in accordance with regulations made under section 160(9)(b) of the Contributions and Benefits Act(**7**);

(f) any sum payable by way of statutory paternity pay, including sums payable in accordance with regulations made under section 167ZD(3) of the Contributions and Benefits Act(**8**);

(g) any sum payable by way of statutory adoption pay, including sums payable in accordance with regulations made under section 167ZM(3) of the Contributions and Benefits Act(**9**).".

Amendment of the Social Security (Incapacity Benefit) Regulations

3. In the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994(**10**), after regulation 6 (days of statutory sick pay to be included in days of entitlement to incapacity benefit) there shall be inserted the following regulations–

"**Effect of statutory maternity pay on incapacity benefit**

6A.—(1) For the purpose of determining a woman's entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act(**11**), a day which falls within the maternity pay period shall, notwithstanding paragraph 1 of Schedule 13 to that Act, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where–

(a) on that day she was incapable of work; and

(**5**) S.R. 1987 No. 30
(**6**) S.I. 1996/1919 (N.I. 16); Part IX was substituted by Article 9 of, and Part I of Schedule 4 to, the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and is amended by Articles 3 and 4 of the Employment (Northern Ireland) Order 2002
(**7**) Section 160(9)(b) was amended by paragraph 14(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
(**8**) Section 167ZD is inserted by Article 5 of the Employment (Northern Ireland) Order 2002
(**9**) Section 167ZM is inserted by Article 6 of the Employment (Northern Ireland) Order 2002
(**10**) S.R. 1994 No. 461
(**11**) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and amended by Article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(b) that day is not treated under section 30C(3) of the Contributions and Benefits Act(**12**) as a day which is not a day of incapacity for work; and

(c) the day immediately preceding the first day in the maternity pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part XI of the Contributions and Benefits Act; and

(d) the woman either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, as being a day on which the woman has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation "period of incapacity for work" has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a woman is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to her for that week shall be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part XII of the Contributions and Benefits Act for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to her.

Effect of statutory adoption pay on incapacity benefit

6B.—(1) For the purpose of determining a person's entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, a day which falls within the adoption pay period shall, notwithstanding section 167ZP(1) of the Contributions and Benefits Act(**13**), be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where–

(a) on that day he was incapable of work; and

(b) that day is not treated under section 30C(3) of the Contributions and Benefits Act as a day which is not a day of incapacity for work; and

(c) the day immediately preceding the first day in the adoption pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part XI of the Contributions and Benefits Act; and

(d) the person either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of

(**12**) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994
(**13**) Section 167ZP is inserted by Article 6 of the Employment (Northern Ireland) Order 2002