1987 No. 30

STATUTORY MATERNITY PAY

The Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987

Made	*30th January 1987*
Coming into operation—	
Regulations 1, 22 and 23 . .	*15th March 1987*
Remainder	*6th April 1987*

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 47(4), (7) and (8), 48(1), (3), (6) and (7), 49(3) and (6), 51(1), (2), (4) and (5), 52(1)(*g*), (*j*), (*m*) and (*q*) and (4) and 55 of, and paragraphs 6, 8 and 12(3) of Schedule 4 to, the Social Security (Northern Ireland) Order 1986(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

(**a**) S.I. 1986/1888 (N.I. 18); Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) was inserted by Article 63(1) of the Social Security (Northern Ireland) Order 1986

PART I

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987 and shall come into operation in the case of regulations 1, 22 and 23 on 15th March 1987, and in the case of the remainder of the regulations on 6th April 1987.

(2) In these regulations—

"the Act" means the Social Security (Northern Ireland) Act 1975(**a**);

"the No. 1 Order" means the Industrial Relations (Northern Ireland) Order 1976(**b**);

"the No. 2 Order" means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**c**);

"the 1986 Order" means the Social Security (Northern Ireland) Order 1986.

PART II

ENTITLEMENT

The maternity pay period

2.—(1) Subject to paragraph (3), where a woman gives notice to her employer that she intends to stop work and does in fact stop work because of her pregnancy in a week which is later than the 12th week before the expected week of confinement, then the first week in the maternity pay period shall be the week following the week in which she stopped work, or the 6th week before the expected week of confinement, whichever is the earlier.

(2) The maternity pay period shall end not later than the end of the 11th week immediately following the expected week of confinement and subject thereto shall be for a period of 18 consecutive weeks.

(3) Where—

(*a*) a woman is confined before the 11th week before the expected week of confinement, or

(*b*) is confined after the 12th week but before the 6th week before the expected week of confinement and the confinement occurs in a week which precedes that mentioned in a notice given to her employer as being the week she intends to give up work,

the first week in the maternity pay period shall be the week after the week in which she is confined.

Contract of service ended for the purpose of avoiding liability for statutory maternity pay

3.—(1) A former employer shall be liable to make payments of statutory maternity pay to any woman who was employed by him for a continuous period of at least 8 weeks and whose contract of service with him was brought

(**a**) 1975 c. 15
(**b**) S.I. 1976/1043 (N.I. 16)
(**c**) S.I. 1976/2147 (N.I. 28)

to an end by the former employer solely or mainly for the purpose of avoiding liability for statutory maternity pay.

(2) In order to determine the amount payable by the former employer—

(*a*) the woman shall be deemed for the purposes of Part VI of the 1986 Order to have been employed by him from the date her employment with him ended until the end of the week immediately preceding the 14th week before the expected week of confinement on the same terms and conditions of employment as those subsisting immediately before her employment ended, and

(*b*) her normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement shall for those purposes be calculated by reference to her normal weekly earnings for the period of 8 weeks ending with the last day in respect of which she was paid under her former contract of service.

Modification of entitlement provisions

4.—(1) In relation to a woman who—

(*a*) has been in employed earner's employment with an employer for a continuous period of at least 8 weeks, and

(*b*) is dismissed by that employer for a reason mentioned in sub-paragraph (*a*) or (*b*) of Article 14(1) of the No. 2 Order, but

(*c*) is not offered a new contract of service which complies with Article 14(3) of the No. 2 Order, or is offered such a contract but declines to accept it,

Article 47(2)(*a*) and (*b*) of the 1986 Order shall have effect as if for the conditions there set out there were substituted the conditions that—

(i) she would but for her dismissal have been in employment with the employer who dismissed her for a period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement, and

(ii) her normal weekly earnings from that employment for the period of 8 weeks ending with the last day in respect of which she was paid in accordance with the contract of service with the employer are not less than the lower earnings limit in force under section 4(1)(*a*) of the Act in the last of the 8 weeks.

(2) In relation to a woman in employed earner's employment who was confined before the 14th week before the expected week of confinement Article 47(2)(*a*) and (*b*) of the 1986 Order shall have effect as if for the conditions there set out, there were substituted the conditions that—

(*a*) she would but for her confinement have been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement, and

(*b*) her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the week of her confinement are not less than the lower earnings limit in force under section 4(1)(*a*) of the Act immediately before the commencement of the week of her confinement.

Treatment of two or more contracts of service as one

5. Where two or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part VI of the 1986 Order, except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations (Northern Ireland) 1979(**a**) the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

Lower rate of statutory maternity pay

6. The lower rate of statutory maternity pay is a weekly rate of £32·85.

Liability of Department to pay statutory maternity pay

7.—(1) Where—

(*a*) an adjudicating authority has determined that an employer is liable to make payments of statutory maternity pay to a woman, and

(*b*) the time for appealing against that determination has expired, and

(*c*) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any week in respect of which the employer was liable to make payments of statutory maternity pay but did not do so, and for any subsequent weeks in the maternity pay period the liability to make those payments shall, notwithstanding Article 47(3) of the 1986 Order, be that of the Department and not the employer.

(2) In paragraph (1) adjudicating authority means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal or the Chief or any other Social Security Commissioner.

(3) Liability to make payments of statutory maternity pay shall, notwithstanding Article 47(3) of the 1986 Order, be a liability of the Department and not the employer as from the week in which the employer first becomes insolvent until the end of the maternity pay period.

(4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if,—

(*a*) he becomes bankrupt or makes a composition or arrangement with his creditors;

(*b*) he has died and an order is made under section 21 of the Bankruptcy Amendment Act (Northern Ireland) 1929(**b**) for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act (Northern Ireland) 1955(**c**); or

(*c*) where the employer is a company, a winding-up order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

(a) S.R. 1979 No. 186
(b) 1929 c. 1 (N.I.) (20 Geo. 5)
(c) 1955 c. 24 (N.I.)