

2014 No. 102

SOCIAL SECURITY

**The Social Security (Maternity Allowance) (Participating Wife
or Civil Partner of Self-employed Earner) Regulations
(Northern Ireland) 2014**

Made - - - - *31st March 2014*

Coming into operation - *1st April 2014*

The Department for Social Development is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to allowances made to women on maternity leave.

Accordingly the Department for Social Development makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Maternity Allowance) (Participating Wife or Civil Partner of Self-employed Earner) Regulations (Northern Ireland) 2014 and shall come into operation on 1st April 2014.

(2) Regulation 2 applies in relation to the payment of maternity allowance in cases where a woman's expected week of confinement (within the meaning of section 35 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c)) begins on or after 27th July 2014.

Amendment of the Social Security Contributions and Benefits (Northern Ireland) Act

2.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992 is amended in accordance with paragraphs (2) to (5).

(2) In section 21(1)(d) (contribution conditions) after "section 35" insert "or 35B".

(3) In section 35 (state maternity allowance)—

(a) in the heading after "allowance" insert "for employed or self-employed earner";

(b) in subsections (1), (2), (3)(a), (3)(b)(i) and (ii), (4) and (5) after "a maternity allowance" insert "under this section"; and

(a) S.I. 1993/2661

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)

(c) 1992 c. 7; section 35 was amended by Article 4(a) of the Still-Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10)), regulation 2(3) of S.R. 1994 No. 176, Article 50(1) and (2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10)

(d) Section 21(1) was amended by paragraph 3(2) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraphs 20 and 29(2) of Schedule 8 and paragraph 6 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(c) in subsection (7) after “maternity allowance” insert “under this section”.

(4) In section 35A(a) (appropriate weekly rate of maternity allowance) in the heading, after “allowance” insert “under section 35”.

(5) After section 35A insert—

“State maternity allowance for participating wife or civil partner of self-employed earner

35B.—(1) A woman (W) shall be entitled to a maternity allowance under this section, at the weekly rate given by subsection (3), if—

- (a) W has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
- (b) for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement, W has worked with a person (S) who at the time of her doing so—
 - (i) was her spouse or civil partner, and
 - (ii) was engaged in employment as a self-employed earner; and
- (c) S is liable to pay a class 2 contribution in respect of the 26 weeks referred to in paragraph (1)(b); and
- (d) W is not entitled to a maternity allowance under section 35, or statutory maternity pay, for the same week in respect of the same pregnancy.

(2) In this section—

- (a) a reference to W working with S is a reference to W participating in the activities engaged in by S as a self-employed earner, performing the same tasks or ancillary tasks, without being employed by S or being in partnership with S; and
- (b) a reference to W ceasing to work with S is a reference to W ceasing to do so either permanently or until after her confinement.

(3) The rate of allowance under this section for any particular week is 90 per cent. of the amount of the maternity allowance threshold for the tax year in which the week ends.

(4) Subject to subsections (10) and (11), a maternity allowance under this section shall be payable for the period of 14 weeks (“the 14-week period”) beginning as set out in subsection (5), (6), (7) or (8) (whichever applies).

(5) If W ceases to work with S before the commencement of the 11th week before the expected week of confinement, the 14-week period begins with the commencement of the 11th week before the expected week of confinement.

(6) If W ceases to work with S on a day that falls within the period beginning with the commencement of the 11th week before the expected week of confinement and ending with the end of the 5th week before the expected week of confinement, the 14-week period begins immediately after that day.

(7) If on a day that falls within the period beginning with the commencement of the 4th week before the expected week of confinement and ending with the date of confinement—

- (a) W ceases to work with S, or
- (b) she refrains from working with S wholly or partly because of her pregnancy or confinement,

the 14-week period begins immediately after the day on which she ceases or refrains.

(8) If none of subsections (5) to (7) applies, the 14-week period begins immediately after the date of confinement.

(a) Section 35A was inserted by Article 50(3) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and amended by section 4(1) and paragraph 3 of Schedule 1 to the Social Security Act (Northern Ireland) 2002

(9) In relation to maternity allowance under this section, a reference in a provision contained in or made under any enactment to the maternity allowance period shall be read as a reference to the 14-week period.

(10) Subsections (4) to (7) of section 35 have effect for the purposes of this section as they have effect for the purposes of that section (reading references to the maternity allowance period as references to the 14-week period).

(11) Regulations under section 35 may make provision for the purposes of this section corresponding or similar to the provision that may be made by virtue of subsection (3)(a), (b) or (c) of that section.”.

Sealed with the Official Seal of the Department for Social Development on 31st March 2014

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the 1992 Act”) using section 2(2) of the European Communities Act 1972.

Regulation 2(5) inserts new section 35B into the 1992 Act. This provides an entitlement to maternity allowance for women who work with a spouse or civil partner who is engaged in self-employment. This implements Article 8 of Directive 2010/41/EU (“the Directive”) in respect of the women referred to in Article 2(b) of the Directive. Article 8 of the Directive has already been implemented in respect of self-employed women (Article 2(a) of the Directive) by virtue of section 35 of the 1992 Act. Section 35 already applies to a woman who is the employee of her spouse or civil partner.

In the new section 35B, subsection (1) sets out the conditions that must be satisfied for payment of maternity allowance under the new section. Subsection (2) defines when a woman is treated as working with, or ceasing to work with, her spouse or civil partner. Subsection (3) sets the rate of maternity allowance that is payable for any particular week. That will be 90 per cent. of the amount of the maternity allowance threshold for the tax year in which the week ends. The maternity allowance threshold in relation to a tax year is currently £30 as prescribed in section 35(6A) of the 1992 Act. Subsections (4) to (8) provide that maternity allowance under the new section is payable for a 14-week period, and define when the period begins. Subsection (9) provides that a reference to the maternity allowance period in relation to section 35B is a reference to the 14-week period referred to in subsection (4). Subsection (10) applies certain provisions in section 35 (maternity allowance for employed or self-employed earner) to the new section 35B. These include definitions of the terms “confined”, “confinement” and “maternity allowance threshold”. Subsection (11) ensures that regulations under section 35 of the 1992 Act may prescribe circumstances under which a woman is disqualified from receiving maternity allowance or may prescribe modifications which will enable a woman to satisfy the qualifying conditions after the commencement of the 11th week before her expected week of confinement.

The remainder of regulation 2 makes consequential amendments to other provisions in the 1992 Act.

A Transposition Note is attached to the Explanatory Memorandum which is available alongside these Regulations at www.legislation.gov.uk/nisr. Copies of the Note have been laid in the Business Office and the Library of the Northern Ireland Assembly and are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast, BT7 2JA.

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