



Employment Act 2002

2002 CHAPTER 22

PART 1

STATUTORY LEAVE AND PAY

CHAPTER 2

MATERNITY

17 Rights during and after maternity leave

- (1) Chapter 1 of Part 8 of the Employment Rights Act 1996 (c. 18) (maternity leave) is amended as follows.
- (2) In section 71 (ordinary maternity leave), in subsection (4) (rights during and after leave)—
 - (a) in paragraph (a), after “entitled” there is inserted “, for such purposes and to such extent as may be prescribed,”,
 - (b) in paragraph (b), after “bound” there is inserted “, for such purposes and to such extent as may be prescribed”, and
 - (c) for paragraph (c) there is substituted—

“(c) is entitled to return from leave to a job of a prescribed kind.”
- (3) In that section, for subsection (7) there is substituted—

“(7) The Secretary of State may make regulations making provision, in relation to the right to return under subsection (4)(c) above, about—

 - (a) seniority, pension rights and similar rights;
 - (b) terms and conditions of employment on return.”
- (4) In section 73 (additional maternity leave), after subsection (5) there is inserted—

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“(5A) In subsection (4)(c), the reference to return from leave includes, where appropriate, a reference to a continuous period of absence attributable partly to additional maternity leave and partly to ordinary maternity leave.”

(5) In section 74 (redundancy and dismissal), in subsection (4) (power to make provision about the right to return from, and for dismissal at the end of, an additional maternity leave period)—

- (a) after “section” (where it first appears) there is inserted “ 71 or ”,
- (b) in paragraph (a), after “section” there is inserted “ 71(4)(c) or ”, and
- (c) in paragraph (b), after “an” there is inserted “ ordinary or ”.

F1 18 Maternity pay period

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Textual Amendments

F1 S. 18 repealed (1.10.2006) by [Work and Families Act 2006 \(c. 18\)](#), s. 19(2), [Sch. 2](#); S.I. 2006/1682, art. 3(i)(ii)

19 Rate of statutory maternity pay

For section 166 of the Social Security Contributions and Benefits Act 1992 there is substituted—

“166 Rate of statutory maternity pay

- (1) Statutory maternity pay shall be payable to a woman—
 - (a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and
 - (b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the maternity pay period.
- (2) The earnings-related rate is a weekly rate equivalent to 90 per cent of a woman’s normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement.
- (3) The weekly rate prescribed under subsection (1)(b) above must not be less than the weekly rate of statutory sick pay for the time being specified in section 157(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates.”

Commencement Information

II S. 19 in force at 6.4.2003 by [S.I. 2002/2866](#), art. 2(3), [Sch. 1 Pt. 3](#) (with [Sch. 3](#))

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20 Entitlement to statutory maternity pay

In section 164 of the Social Security Contributions and Benefits Act 1992 (statutory maternity pay — entitlement and liability to pay)—

- (a) in subsection (2)(a), the words “, wholly or partly because of pregnancy or confinement” are omitted;
- (b) for subsection (4) there is substituted—

“(4) A woman shall be entitled to payments of statutory maternity pay only if—

- (a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and
- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.”;
- (c) in paragraph (e) of subsection (9), for sub-paragraphs (i) to (iii) there is substituted “in such cases as may be prescribed”; and
- (d) after that paragraph there is inserted—
 - “(ea) provide that subsection (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed.”.

21 Funding of employers’ liabilities: statutory maternity pay

- (1) For section 167 of the Social Security Contributions and Benefits Act 1992 (c. 4) there is substituted—

“167 Funding of employers’ liabilities in respect of statutory maternity pay

- (1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.
- (2) Regulations under subsection (1) shall—
 - (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
 - (i) the aggregate of such of those payments as qualify for small employers’ relief; and
 - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
 - (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers’ relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
 - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
 - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or

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- (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.
- (3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to that woman's maternity pay period, the person liable to make the payment is a small employer.
- (4) For the purposes of this section "small employer", in relation to a woman's maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
 - (a) may define that expression by reference to the amount of a person's contributions payments for any prescribed period; and
 - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
 - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
 - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (5) Regulations under subsection (1) may, in particular, make provision—
 - (a) for funding in advance as well as in arrear;
 - (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;
 - (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.
- (6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
 - (a) as having been paid (on such date as may be determined in accordance with the regulations), and
 - (b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer's liability in respect of such contributions.
- (7) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.
- (8) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions."
- (2) For section 163 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) there is substituted—

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“163 Funding of employers’ liabilities in respect of statutory maternity pay

- (1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.
- (2) Regulations under subsection (1) shall—
 - (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
 - (i) the aggregate of such of those payments as qualify for small employers’ relief; and
 - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
 - (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers’ relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
 - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
 - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or
 - (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.
- (3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers’ relief if, in relation to that woman’s maternity pay period, the person liable to make the payment is a small employer.
- (4) For the purposes of this section “small employer”, in relation to a woman’s maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
 - (a) may define that expression by reference to the amount of a person’s contributions payments for any prescribed period; and
 - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
 - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
 - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (5) Regulations under subsection (1) may, in particular, make provision—
 - (a) for funding in advance as well as in arrear;
 - (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such

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- amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;
- (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.
- (6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer’s contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—
- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
- (b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer’s liability in respect of such contributions.
- (7) Regulations under any provision of this section shall be made by the Secretary of State.
- (8) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.
- (9) In this section “contributions payments”, in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.”

Commencement Information

I2 S. 21 in force at 6.4.2003 by S.I. 2002/2866, art. 2(3), **Sch. 1 Pt. 3** (with Sch. 3)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 7(3)(e) and word inserted by [2023 c. 20 Sch. para. 36\(4\)\(c\)](#)
- s. 15(2)(bb) word omitted by [2023 c. 20 Sch. para. 43\(a\)](#)
- s. 15(2)(bc) inserted by [2023 c. 20 Sch. para. 43\(b\)](#)