



Employment Act 2002

2002 CHAPTER 22

PART 1

STATUTORY LEAVE AND PAY

CHAPTER 2

MATERNITY

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—

Changes to legislation: *Employment Act 2002, Section 21 is up to date with all changes known to be in force on or before 18 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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 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

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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—

“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.

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- (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 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

II S. 21 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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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\(b\)](#)