

1987 No. 418

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Maternity Pay (Persons Abroad and Mariners) Regulations 1987

Made - - - - 12th March 1987
Laid before Parliament 16th March 1987
coming into force 6th April 1987

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 80 and 84(1) of the Social Security Act 1986(a) and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations;

Citation, commencement and interpretation

1.—(1) these regulations may be cited as the statutory Maternity Pay (Persons Abroad and Mariners) Regulations 1987 and shall come into force on 6th April 1987.

(2) In these Regulations, the “1986 Act” means the Social Security Act 1986, “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(b), “the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(c), and the “General Regulations” means the Statutory Maternity Pay (General) Regulations 1986(d).

Defns. of “the Contributions and Benefits Act” and “the Contributions Regulations” inserted by reg. 4(2) of S.I. 1996/777 as from 6.4.96.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

Persons in other member States—meaning of employee”

- 2. Subject to regulation 3, a woman who is—
 - (a) gainfully employed in a member State other than the United Kingdom in such circumstances that if her employment were in Great Britain she would be an employee for the purposes of Part V of the 1986 Act or a woman treated as Such an employee under regulation 17 of the General Regulations; and
 - (b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No. 1408/71(e),

notwithstanding that she is not employed in Great Britain, shall be treated as an employee for the purposes of Part V of the 1986 Act.

(a) 1986 c. 50; section 84(1) is an interpretation provision and is cited because of the meaning ascribed to the words “prescribed” and “regulations”.
(b) 1992 c. 4.
(c) S.I. 1979/591.
(d) S.. 1986/1960.
(e) O.J. No. L230. 22.8.83.

Regs. 2A-5

Reg. 2A inserted by Reg. 4(3) of S.I. 1996/777 as from 6.4.96, subj. to transl. prov. in reg. 6 *ibid* (expected week of confinement begins before 18.8.96).

Persons absent from Great Britain—meaning of “employee”

2A. Subject to regulations 2,3 and 7(3), where a woman, while absent from Great Britain for any purpose, is gainfully employed by an employer who is liable to pay in respect of her secondary Class 1 contributions under section 6 of the Contributions and benefits Act or regulation 120 of the Contributions Regulations(a), she shall be treated as an employee for the purposes of Part XII of the Contributions and Benefits Act.◀

Meaning of employee—general

3. No woman who, by virtue of regulation 17 of the General Regulations, would be treated as not being an employee for the purposes of Part V of the 1986 Act if her employment were in Great Britain, shall be treated as an employee by virtue of these Regulations.

Reg. 4 deleted by reg. 4(4) of S.I. 1996/777 as from 6.4.96. subj to transl. prov. in reg. 6 *ibid*.

4. ▶◀

*Reg. 4, reproduced below in small print, although deleted by reg. 4(4) of S.I. 1996/777 w.e.f. 6.4.96, is transitionally preserved by reg. 6 *ibid*, where the expected week of confinement begins before 18.8.96:-*

Women outside the European Community

4.—(1) Notwithstanding, the provisions of section 46(1) of the 1986 Act, no liability to make payments of statutory maternity pay t o a woman shall arise in respect of any week within the maternity pay period(b) for any part of which she is not present in any member State, or any subsequent week within that period.

(2) A woman shall be treated for the purposes of paragraph (1) as present in a member State while she is in transit between two such States.

Women who worked in the European Community

5.—(1) A woman who is an employee or treated as an employee under regulation 2 and who—

- (a) in the week immediately preceding the 14th week before the expected week of confinement(c) was in employed earner’s employment with an employer in Great Britain, and
- (b) had in any week within the period of 26 weeks◀ immediately preceding that week been employed by the same employer in another member State,

shall be treated for the purposes of section 46(2) and 48 of the 1986 Act as having been employed in employed earner’s employment in those weeks in which she was so employed in the other member State.

Words “26 weeks” substituted for “2 years” in reg. 5(1)(b) by reg. 4(5)(a) of S.I. 1996/777 as from 6.4.96 subj. to transl. prov. in reg. 6 *ibid*.

(2) ▶◀

Reg. 5(2) deleted by reg. 4(5)(b) of S.I. 1996/777 as from 6.4.96, subj. to transl. prov. in reg. 6 *ibid*.

*Where expected week of confinement begins before 18.8.96, reg. 5 is transitionally preserved, by reg. 6 of S.I. 1996/777, as it stood before being amended by reg. 4(5) *ibid*., i.e. as reproduced below in small print:-*

Women who worked in the European Community

5.—(1) A woman who is an employee or treated as an employee under regulation 2 and who—

- (a) in the week immediately preceding the 14th week before the expected week of confinement(c) was in employed earner’s employment with an employer in Great Britain, and

(a) Regulation 120 was amended by S.I. 1992/97.

(b) See section 47 of the Social Security Act 1986 for the meaning of “maternity pay period”.

(c) See section 50(1) of the Social Security Act 1986 for the meaning of “confinement”.

- (b) had in any week within the period of 2 years immediately preceding that week had been employed by the same employer in another member State,

Shall be treated for the purposes of sections 46(2) and 48 of the 1986 Act as having been employed in employed earner's employment in those weeks in which she was so employed in the other member State.

(2) In relation to a woman to whom section 48(5) of the 1986 Act refers (higher rate for woman normally employed 8 hours a week or more for the last 5 years), a reference to 5 years shall be substituted for the reference to 2 years in paragraph (1)(b).

Time for compliance with Part V of the 1986 Act and Regulations

6. Where—

- (a) a woman is outside the United Kingdom;
- (b) Part V of the 1986 Act or Regulations made under that Act or under Part III of the Social Security Act 1975(a) require any act to be done forthwith or on the happening of a certain event or within a specified time; and
- (c) because the woman is outside the United Kingdom she or her employer cannot comply with the requirement;

the woman or the employer, as the case may be, shall be deemed to have complied with it if the act is performed as soon as reasonably practicable.

Mariners

7.—(1) In this regulation, “foreign-going ship”, “home-trade ship” and “mariner” have the same meanings as in Case C of Part VIII of the Social Security (Contributions) Regulations 1979(b) and the expressions “ship” and “ship or vessel”, except in paragraph (3), include hovercraft.

(2) Subject to regulation 3, a mariner engaged in employment on board a home-trade ship with an employer who has a place of business within the United Kingdom shall be treated as an employee for the purposes of Part V of the 1986 Act, notwithstanding that she may not be employed in Great Britain.

(3) A mariner who is engaged in employment—

- (a) on a foreign-going ship, or
- (b) on a home-trade ship with an employer who does not have a place of business within the United Kingdom,

shall not be treated as an employee for the purposes of Part V of the 1986 Act, notwithstanding that she may have been employed in Great Britain.

Continental shelf

8.—(1) In this regulation—

“designed area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964(c) as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;

“prescribed area” means an area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the sea-bed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or that member State or any other area which is from time to time specified under section 22(5) of the Oil and Gas (Enterprise) Act 1982(d);

(a) 1975 c. 14, sections 100 and 101, as amended by paragraphs 6 and 7 of Schedule 5 to the Social Security Act 1986 and extended to statutory maternity pay by section 2(3), (6) and (7), provide for the time for making appeals and applications to be prescribed by Regulations.

(b) S.I.1979/591; there are no amendments relevant to these Regulations.

(c) 1964 c. 29.

(d) 1982 c. 23.

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“prescribed employment” means employment in a designated area or prescribed area in connection with any activity mentioned in section 23(2) of the Oil and Gas (Enterprise) Act 1982 in any designated area or in any prescribed area.

(2) Subject to regulation 3, a woman in prescribed employment shall be treated as an employee for the purposes of Part V of the 1986 Act notwithstanding that she may not be employed in Great Britain.

Reg. 9 deleted by reg. 4(6) of S.I. 1996/777 as from 6.4.96, subj to transl. prov. in reg. 6 *ibid.*

9. ▶◀

*Reg. 9, reproduced below in small print, although deleted by reg. 4(6) of S.I. 1996/777 w.e.f. 6.4.96. is transitionally preserved by reg. 6 *ibid.* where expected week of confinement begins before 18.8.96:-*

Persons Abroad-maternity pay period not commencing or ending

9.—(1) Subject to paragraph (2), a maternity pay period shall not commence in any week during any part of which the woman is not present in a member State and, if already commenced, shall end in any such week.

(2) this regulation shall not apply in the case of a woman who-

- (a) by virtue of her employment as a mariner, or
- (b) by virtue of being or having been in prescribed employment with the meaning of regulation 8,

is not present in any member State.

(3) A woman shall be treated for the purpose of this regulation as present in a member State while she is in transit between two such States.

Signed by authority of the Secretary of State for Social Services.

12th March 1987

John Major
Minister of State,
Department of Health and Social Security

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations provide for statutory maternity pay (under part v of the social security act 1986), in relation to persons abroad, women who work as mariners or women who work on the continental shelf.

Under section 50(1) of that act, a woman is not, as a rule, and “employee” and therefore qualified to receive statutory maternity pay, unless she is employed in Great Britain, Regulation 2 makes exceptions to that rule for women employed in other member States of the European Communities but subject to the legislation of the United Kingdom. This and the other exceptions made by the Regulations are, however, overridden by regulation 3, which provides that the woman is not to be treated as an employee if she would not be so treated if her employment was in Great Britain.

Regulation 4 provides that the maternity pay period is not to begin in a week in which a woman is outside the member States of the European communities or, if the maternity pay period has begun, for benefit not to be payable for any week in which she is outside those States.

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Where a woman has worked for the same employer both in Great Britain and in another member State, regulation 5 permits her, in specified circumstances, to have her employment in the member State treated as though it was employed earner's employment.

Some of the provisions relating to statutory maternity pay impose time limits, but these are relaxed by regulation 6 in their application to persons who are outside the United Kingdom and for that reason cannot comply with them.

Regulation 7 treats certain mariners as employees for the purposes of entitlement to statutory maternity pay and regulation 8 makes similar provisions for women who worked on the continental shelf.

Regulation 9 provides that the maternity pay period is not to commence, or if commenced, is to end, where a woman is outside the European Community. This regulation does not apply where the absence is due to the woman's employment as a mariner or on the continental shelf.

The provisions of the Social Security Act 1986 under which these Regulations are made have not yet been in force for 12 months. Accordingly the Regulations are exempt, by section 61(5) of that Act, from reference to the Social Security Advisory Committee and have not been so referred.

