

## **Work and Families – Choice and Flexibility**

### **Draft Regulations – Maternity Allowance, Statutory Maternity, Adoption and Paternity Pay**

These draft regulations are being published as an addendum to the consultation document “*Work and Families – Choice and Flexibility; Draft Regulations on Maternity and Adoption Leave and Flexible Working*” (URN 06 / 707 – [www.dti.gov.uk/er/workandfamilies.htm](http://www.dti.gov.uk/er/workandfamilies.htm)).

The intended effect of the draft regulations is set out in the consultation document and the Regulatory Impact Assessment published with it. They should be read alongside the draft maternity and adoption leave regulations contained in that consultation.

The draft regulations are:

- (i) The Statutory Maternity Pay and Maternity Allowance (Amendment) Regulations 2006
- (ii) Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations 2006

**Department of Trade and Industry -**  
**[www.dti.gov.uk/er/workandfamilies.htm](http://www.dti.gov.uk/er/workandfamilies.htm)**

2006 No. [ ]

**SOCIAL SECURITY**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**The Statutory Maternity Pay and Maternity Allowance  
(Amendment) Regulations 2006**

<i>Made</i> - - - -	2006
<i>Laid before Parliament</i>	2006
<i>Coming into force</i> - -	2006

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by section 5(1)(l) of the Social Security Administration Act 1992(1) and sections 35(3)(a)(i) and 165(1), (2), (3), (4) and (7) of the Social Security Contributions and Benefits Act 1992(2).

This instrument contains only provisions made by virtue of, or consequential upon the coming into force of the Work and Families Act 2006 and is made before the expiry of the period of 6 months from the commencement of the enactments under which it is made(3).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Statutory Maternity Pay and Maternity Allowance (Amendment) Regulations 2006 and shall come into force on [ ] October 2006 in respect of women whose expected week of confinement falls on or after 1st April 2007.

(2) In these Regulations—

“the Maternity Allowance Regulations” means the Social Security (Maternity Allowance) Regulations 1987(4);

“the Statutory Maternity Pay Regulations” means the Statutory Maternity Pay (General) Regulations 1986(5).

**Amendment of the Statutory Maternity Pay Regulations**

2.—(1) The Statutory Maternity Pay (General) Regulations are amended as follows.

(2) For regulation 2 (the Maternity Pay Period) substitute—

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(1) 1992 (c.5);  
(2) 1992 (c.4).  
(3) see section 173(5) of the Social Security Administration Act 1992 (c.5).  
(4) S.I.1987/416.  
(5) S.I.1986/1960.

### **“The Maternity Pay Period**

2.—(1) Subject to paragraphs (3) to (5), where a woman gives notice to her employer of the date from which she expects his liability to pay her statutory maternity pay to begin and in conformity with that notice ceases to work for him in a week which is later than the 12th week before the expected week of confinement, then the first day of the maternity pay period shall be the day on which she expects his liability to pay her statutory maternity pay to begin in conformity with that notice provided that day is not later than the day immediately following the day on which she is confined.

(2) The maternity pay period shall be a period of 39 consecutive weeks.

(3) In a case where a woman is confined—

(a) before the 11th week before the expected week of confinement, or

(b) after the 12th week before the expected week of confinement and the confinement occurs on a day which precedes that mentioned in a notice given to her employer as being the day on which she expects his liability to pay her statutory maternity pay to begin,

the first day of the maternity pay period shall be the day following the day on which she is so confined.

(4) In a case where a woman is absent from work wholly or partly because of pregnancy or confinement on any day which falls on or after the beginning of the 4th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined, the first day of the maternity pay period shall be the day following the day on which she is so absent.

(5) In a case where a woman leaves her employment at any time falling after the beginning of the 11th week before the expected week of confinement and before the start of the maternity pay period but not later than the day on which she is so confined, the first day of the maternity pay period shall be the day following the day on which her employment ends.”.

(3) After regulation 9 (the liability to pay statutory maternity pay) insert—

### **“Working for not more than [x] days in the Maternity Pay period**

9A. In a case where a woman does any work under a contract of service with her employer on any day for no more than [x] such days during her maternity pay period, whether consecutive or not, statutory maternity pay shall continue to be payable to the employee by the employer”.

(4) For regulation 28 (rounding to avoid fractional amounts) substitute—

“28. Where any payment of statutory maternity pay is paid for any week [or part of a week] and the amount due includes a fraction of a penny, the payment should be rounded to the next whole number of pence.”.

### **Amendment of the Maternity Allowance Regulations**

3.—(1) The Maternity Allowance Regulations are amended as follows.

(2) For regulation 2(1) (a) insert—

“(a) during the maternity allowance period she does any work in employment as an employed or self employed earner, for more than [x] days, whether consecutive or not, falling within that period and the disqualification shall be for such part of the maternity allowance period as may be reasonable in the circumstances, provided that the disqualification must, in any event, be for the number of days on which she so worked in excess of [x] days;”.

Signed by authority of the Secretary of State for Work and Pensions

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Social Security (Maternity Allowance) Regulations 1987(S.I.1987/416) (“the Social Security (Maternity Allowance) Regulations”) and the Statutory Maternity Pay (General) Regulations 1987(S.I.1986/1960) (“the Statutory Maternity Pay Regulations”).

Regulation 2(2) substitutes a new regulation 2 of the Statutory Maternity Pay (General) Regulations, the effect of which is as follows—

New Regulation 2(1) provides that a woman’s maternity pay period will begin on the day on which she stops work in accordance with a notice to her employer stating the day she expects his liability to pay her SMP to begin, if that day is 11 weeks or less before her EWC and not later than the day after she gives birth.

New Regulation 2(2) establishes that the maternity pay period is 39 consecutive weeks.

New Regulation 2(3) provides that a woman’s maternity pay period will begin the day after she gives birth if that day is 11 weeks or less before her EWC or, if it is after the start of the 12th week before her EWC, and she gives birth before the day specified in a notice to her employer stating the day she expects his liability to pay her SMP to begin.

New Regulation 2(4) provides that a woman’s maternity pay period will begin the day after her absence from work where she is absent because of pregnancy or confinement on a day four weeks or less before her EWC and before her actual confinement (if earlier).

New Regulation 2(5) provides that a woman’s maternity pay period will begin the day after the end of her employment where she leaves it 11 weeks or less before her EWC, and before her actual confinement (if earlier).

Regulation 2(3) inserts a new regulation 9A in the Statutory Maternity Pay (General) Regulations which provides that SMP shall to be paid where a woman works for her employer for not more than [x] days within her maternity pay period.

Regulation 2(4) substitutes a new regulation 28 of the Statutory Maternity Pay (General) Regulations which allows payments of SMP for a week or part of a week to be rounded up to the next penny.

Regulation 3 amends the Social Security (Maternity Allowance) Regulations by amending regulation 2(1)(a) of those regulations to provide that a woman will only be subject to disqualification from maternity allowance if she works as an employed or self-employed earner for more than [x] days in the maternity allowance period.

[An assessment of the cost to business was made in accordance with the Work and Families Act 2006.]

**2006 No. 0000**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**Statutory Paternity Pay and Statutory Adoption Pay (General)  
and the Statutory Paternity Pay and Statutory Adoption Pay  
(Weekly Rates) (Amendment) Regulations 2006**

<i>Made</i> - - - -	<i>September 2006</i>
<i>Laid before Parliament</i>	<i>September 2006</i>
<i>Coming into force</i> - -	<i>1 October 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred upon him by sections 171ZE(10A) and 171ZN(2), (3) and (6A) of the Social Security Contributions and Benefits Act 1992 (1) and section 5(1)(l) of the Social Security Administration Act 1992(2).

[This instrument contains only provisions made by virtue of, or consequential upon the coming into force of the Work and Families Act 2006 and is made before the expiry of the period of 6 months from the commencement of the enactments under which it is made (3).]

**Citation Commencement and Extent**

2.—(1) These Regulations may be cited as the Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2006 and shall come into force on 1 October 2006.

**Application**

3. The amendments to the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(4) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002(5) provided for by regulations 3 to 6 apply in relation to an entitlement to—

- (a) statutory paternity pay (birth) in respect of children whose expected week of birth begins on or after 1 April 2007;
- (b) statutory paternity pay (adoption) and statutory adoption pay in respect of children placed for adoption on or after 1 April 2007.

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(1) 1992 (c. 4) Part XIIZA of the Social Security Contributions and Benefits Act 1992 was inserted by section 2 of the Employment Act 2002 (c. 22). Section 171ZE was amended by paragraph 16 of Schedule 1 to the Work and Families Act 2006 (c. XX). Section 171ZN was amended by paragraph 21 of Schedule 1 to the Work and Families Act 2006 (c. XX).  
(2) 1992 (c. 5) Section 5(1)(l) of the Social Security Administration Act 1992 was derived from section 51 of the Social Security Act 1986. Further amendments have been made to section 5 by the [ ] which are not relevant to these Regulations  
(3) see section 173(5) of the Social Security Administration Act 1992 (c..5).  
(4) SI 2002/2820  
(5) SI 2002/2818

**Amendments to the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002**

4. The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 shall be amended as follows.

5. In regulation 21 (adoption pay period), in paragraph (5), for “26” substitute “39”.

6. After regulation 27 (cases where there is no liability to pay statutory adoption pay) insert—

**“Working for not more than [x] days in the statutory adoption pay period**

27A. In the case where an employee does any work under a contract of service with his employer for no more than [x] such days during his adoption pay period, whether consecutive or not, statutory adoption pay shall continue to be payable to the employee by the employer”

**Amendment to the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002**

7. The Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rate) Regulations 2002 shall be amended as follows:

8. For regulation 4 (rounding of fractional amounts) substitute—

“4. Where any payment of—

(a) statutory paternity pay is at—

(i) the weekly rate specified in regulation 2(b); or

(ii) the daily rate of one-seventh of the weekly rate specified in regulation 2; or

(b) statutory adoption pay is at—

(i) the weekly rate specified in regulation 3(b); or

(ii) the daily rate of one-seventh of the weekly rate specified in regulation 3; and

(c) that amount includes a fraction of a penny,

the payment shall be rounded up to the next whole number of pence.”

[Date]

Alan Johnson  
Secretary of State  
Department of Trade and Industry

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Regulations amend the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (S.I. 2002/2822) (“the General Regulations”) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 (S.I. 2002/2818) (“the Weekly Rate Regulations”)

Regulation 5 amends Regulation 21 of the General Regulations and establishes that the adoption pay period is 39 consecutive weeks.

Regulation 6 inserts a new Regulation 27A into the General Regulations, providing that statutory adoption pay shall continue to be paid where an employee works for his employer for not more than [x] days within the adoption pay period.

Regulation 8 substitutes a new Regulation 2 into the Weekly Rate Regulations, and allows for payments of statutory adoption pay and statutory paternity pay for a week or part of a week to be rounded up to the next penny.

A Regulatory Impact Assessment of the costs and benefits of these Regulations to business has been placed in the libraries of both Houses of Parliament. Copies are available to the public from the Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET and are also available on the Directorate's website [www.dti.gov.uk/er](http://www.dti.gov.uk/er).

Department of Trade and Industry - [www.dti.gov.uk/er/workandfamilies.htm](http://www.dti.gov.uk/er/workandfamilies.htm)

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