

STATES OF JERSEY



DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 8) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 3rd June 2014
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 8) (JERSEY) REGULATIONS 201-

REPORT

Improvements to Social Security Maternity Benefit

The Social Security (Amendment of Law No. 8) (Jersey) Regulations 201- amend the Social Security (Jersey) Law 1974 in respect of maternity allowance.

These Regulations introduce amendments to: Article 22(2) regarding the period in which maternity allowance claims can be initiated; Article 22(6)(a) to amend the period for which benefit may be paid in respect of late babies; and Article 22(6)(c)(i) to amend Order-making powers in relation to disqualification from benefit.

Introduction

The Minister for Social Security is seeking to amend the Employment Law to introduce family-friendly policies in respect of statutory entitlement to maternity leave. Changes to the Social Security Law regarding maternity benefit are necessary to align the provisions of this benefit with the rights that will be introduced by Employment Law in September 2015. Family-friendly policies and provisions for maternity leave have been subject to consultation by the Employment Forum.

It is proposed to amend the Social Security Law to –

- redefine the period prior to the expected date of birth when maternity allowance is payable
- entitle women to attend work for ‘keeping in touch’ days without disqualification from maternity allowance
- amend the period over which maternity allowance may be paid in respect of late babies.

Flexibility in commencing benefit payment period

Maternity allowance is payable for a total of up to 18 weeks, and payments must be initiated in a timeframe currently set at 11 to 6 weeks before the baby is expected. The allowance cannot be paid while a woman is still working. Currently, many women decide to remain in work closer to their due date and as a result lose some of their benefit entitlement. For example, if a woman works up to 2 weeks before the baby is expected, she will lose 4 weeks of benefit, because the Law states that payments should commence at least 6 weeks before the due date. This requirement was a feature of maternity benefit drawing on medical advice of the 1990s. Medical advice has changed over the years, and policy-makers now advise that women should have flexibility in how they take their maternity leave, including provision to allow women to work up to their due date (if their work is not hazardous and if they so wish). This

flexibility is tempered by one proviso, which will be stated in the proposals under the Employment Law, that a woman should have 2 weeks' compulsory leave immediately after childbirth.

The amendments presented here will state that maternity allowance claims can be initiated within a timeframe beginning not earlier than 11 weeks and no later than the actual date on which the baby is born.

'Keeping in touch' days

'Keeping in touch' days include both formal and voluntary arrangements which allow an employee who is absent from work on maternity leave to stay in touch with the work-place. They allow the woman to undertake some form of work during her leave without ending her leave period or disqualifying her from benefit. The type of work undertaken is agreed between employer and employee and, as given in Employment Law, there will be no obligation to work. Legislation will not prescribe the type of work that is undertaken, but 'keeping in touch' days could be particularly useful in enabling an employee to attend a conference, undertake a training activity or attend a team meeting. Proposed changes to the Employment Law will put a restriction in place to prevent a woman from attending work for a 'keeping in touch' day in the first 2 weeks after giving birth.

The Social Security Law currently states that Orders may be made to disqualify a woman from maternity benefit if she undertakes any work – the amendment will replace this with an Order-making power to disqualify a woman if she works in excess of a prescribed number of days. In the UK, statutory provision allows for up to 10 'keeping in touch' days.

Payment in respect of late babies

The current legislation includes numerous complex rules which cap the number of weeks of maternity allowance payable before and after the birth. These requirements are stipulated mainly in the Social Security (Maternity Benefit) (Jersey) Order 1975; however Article 22(6) of the Law also addresses this issue and states that, in the case of late babies, additional weeks of maternity allowance will not be payable if there were still 6 weeks or more benefit to run before the end of the maternity period.

The principle to limit the amount of additional benefit women may claim in respect of late babies will be maintained; however, the emphasis will switch from restricting the amount of benefit before and after birth to the plans and expectations of the mother. Therefore, in cases where a woman has started her maternity leave before the actual date of birth, and the baby is late by one week or more, additional benefit will be paid, the detail of which will be provided by Order.

A threshold of at least one week late has been set in recognition of the large number of babies who are late by a few days. Operationally amending a large volume of claims in respect of a few days will be disproportionately burdensome.

Improving the administration of maternity benefit

The changes above will align Social Security maternity allowance with family-friendly policy proposed in Employment Law. Over the summer, the Department will undertake further work to improve the operation of maternity benefit and plan to make amendments to –

- synchronise the rules regarding the dates on which applications for maternity allowance and maternity grant will be accepted
- streamline the application process
- improve communications

- change the calculation of the benefit from weekly to daily (maximising flexibility for the mother)
- reduce the complexity regarding the amount of benefit payable in respect of premature and late babies, maximising the benefit period available to women.

These improvements will require further law drafting to amend administrative details set out in the Social Security (Maternity Benefit) (Jersey) Order 1975, the Social Security (Claims and Payments) (Jersey) Order 1974 and the Social Security (Medical Certification) (Jersey) Order 1974.

The Department will also investigate the possibilities for an e-form application process.

Improvements to operational processes will require a complete re-working of the current computerised protocols; however, the Department will apply the new benefit on 1st January 2015 well before family-friendly policies become effective under Employment Law in September 2015.

Financial and manpower implications

The re-design of the maternity benefit process will be undertaken as a business improvement project utilising existing resources.

It is anticipated that expenditure on maternity benefit will increase, given that the legislation is being amended to allow women to start their leave later and still claim the full 18 weeks' benefit. In 2013, women claimed on average for 109 days, compared to the 18 week maximum of 126 days. In allowing greater flexibility as to when women can start their maternity allowance period, it is anticipated that the average duration of claims will increase.

In 2013, some 783 claims were initiated and eligible for payment. They had an average duration of 109 days and a total cost of £2,190,600. If the number of claims remained the same, but all women took the full 126 days' benefit, the cost to the Social Security Fund would increase to £2,532,300; a total maximum increase of £341,700.

The Social Security Fund is currently providing an annual surplus; however, the recent Government Actuary review has identified that this is a short-term position, and recommended that action on the condition of the Fund is considered in 2016.

Explanatory Note

These Regulations amend the Social Security (Jersey) Law 1974 in relation to a woman's entitlement to maternity allowance. They provide that a woman may claim maternity allowance for 18 weeks beginning not earlier than 11 weeks before her expected date of confinement, but not later than the date of confinement.

They enable the Minister to make an Order allowing claims for maternity allowance where a woman has had her baby earlier than the expected date of confinement. They also make provision for the Minister for Social Security to extend, by not more than 8 weeks, the period during which maternity allowance is payable for women whose maternity allowance period has commenced before the expected date of confinement but whose baby has not arrived by the end of the week following the expected week of confinement.

Finally, they enable the Minister to make an Order disqualifying a woman from receiving a maternity allowance during the maternity allowance period if she works in excess of such amount of time, or during such period, as may be prescribed.

These Regulations will come into force on 1st January 2015.



Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 50(1)(d) and (4) of the Social Security (Jersey) Law 1974¹, have made the following Regulations –

1 Article 22 amended

In Article 22 of the Social Security (Jersey) Law 1974² –

- (a) in paragraph (1) the words “(In this Article referred to as the “expected week of confinement)” shall be deleted;
- (b) in paragraph (2) for the words “and not later than 6 weeks before the expected week of confinement.” there shall be substituted the words “before the expected date of confinement and not later than the date of confinement.”;
- (c) in paragraph (6) –
 - (i) for sub-paragraph (a) there shall be substituted the following paragraph –

“(a) extending the maternity allowance period, by not more than 8 weeks, in cases where the maternity allowance period has commenced before the expected date of confinement but confinement has not occurred by the end of the week following the expected date of confinement;”;
 - (ii) in sub-paragraph (b)(ii) for the word “week” there shall be substituted the word “date”;
 - (iii) in sub-paragraph (c) –
 - (A) for the words “disqualifying a woman for receiving” there shall be substituted the words “disqualifying a woman from receiving”;
 - (B) in clause (i) there shall be deleted the word “any” and after the words “self-employed person” there shall be inserted the words “in excess of such amount of time, or during such period, as may be prescribed”.

2 Citation and commencement

These Regulations may be cited as the Social Security (Amendment of Law No. 8) (Jersey) Regulations 201- and shall come into force on 1st January 2015.

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- ¹ *chapter 26.900*
² *chapter 26.900*