

---

## CHAPTER 3

# Maternity benefit

## Contents

<b>Part 1: Entitlement to maternity grant on husband's contributions</b>	
Meaning of 'husband'	3.1.1
Claim for maternity grant subsequent to confinement	3.1.2
Claim for maternity grant in expectation of confinement	3.1.3
<b>Part 2: Polygamous marriages</b>	
Moslem marriages	3.2.1
Hindu marriages	3.2.2
Sikh marriages	3.2.3
Marriage under tribal law	3.2.4
Divorce by Talaq and effect of domicile in relation to the Moslem Family Law Ordinance 1961	3.2.5
<b>Part 3: Certificate of confinement</b>	
Meaning of 'confinement'	3.3.1
Who may give certificate of confinement	3.3.2
Necessity for certificate of confinement	3.3.3
<b>Part 4: Miscellaneous</b>	
Error of date on certificate of confinement	3.4.1
Maternity allowance	3.4.2
Duration of pregnancy	3.4.3
Absence from Great Britain	3.4.4
Decisions not included	3 Annex



## Maternity benefit

### Part 1: Entitlement to maternity grant on husband's contributions

*Sections 21-23 of the Social Security Act 1975 and the Social Security (Maternity Benefit) Regulations 1975 (hereinafter in Chapter 3 referred to as 'the Act' and 'the Regulations').*

#### 1 Meaning of 'husband'

i 'Husband' means a man to whom a woman is married. Thus an uninsured divorced woman was held not to be entitled to a maternity grant on the contribution record of a man with whom she was living and who was the father of her child. CG 3/49

ii Maternity grant was claimed by a woman who did not herself satisfy the relevant contribution conditions and she based her claim on the contribution record of the man with whom she had lived in Scotland for a number of years. They had not contracted a regular marriage and did not intend to do so because they felt that marriage was a paper thing; was unnecessary in lasting relationships; and could harm their type of marriage. The Commissioner held that cohabitation with habit and repute did not of itself constitute marriage, but raised a presumption that there had been tacit consent to marriage, a presumption which could be rebutted or displaced (R(G) 2/82, see 4.1.6 iii *below* - followed). (Para. 5.) The Commissioner also held that an unwillingness to go through a ceremony of marriage did not necessarily negate the inference of tacit consent to marriage (R(G) 7/56); however, a deliberate rejection by the parties of the institution of regular marriage indicated a rejection of some of the legal ties, constraints and consequences of marriage according to the law of Scotland sufficient to rebut a presumption that there had been tacit consent to marriage (paras. 7 and 9). The Commissioner accordingly held that the claimant could not be regarded as having contracted an irregular marriage by habit and repute. See R(G) 2/82, 4.1.6 iii *below*. R(G)4/84

#### 2 Claim for maternity grant made subsequently to confinement

i 'Husband' does not include a man who was not the claimant's husband when she was confined even though she subsequently marries him. Thus a single woman who was confined on 27th April was held not to be entitled to a maternity grant on the basis of the contribution record of the man to whom she was married some weeks later. R(G)1/52

ii A divorced woman gave birth to twins on 9th January and on the following 7th February married the man with whom she had been living. The next day she made a claim for a maternity grant but, since she did not satisfy the relevant contribution conditions, she could only be entitled to the grant on the basis of either her first or her second husband's contributions. It was held that a maternity grant was not payable to her on the ground that she did not have a husband at the date of her confinement. R(G)2/68

**3 A claim for maternity grant in expectation of confinement**

*Regulation 3 of the Regulations.*

- R(G) 1/65 i The expected week of a woman's confinement was certified to be the week which included 13th December. Nine weeks before that date she obtained a decree nisi of divorce which was made absolute prior to the date of her confinement. Admittedly she did not satisfy the relevant contribution conditions but her ex-husband did so, and it was held that she was entitled to a maternity grant on his contribution record on the ground that within the period of 9 weeks before the week in which it was expected she would be confined she had a husband who satisfied the contribution conditions. (N.B.: The period of 9 weeks was that specified by regulation 3 of the National Insurance (Maternity Benefit and Miscellaneous Provisions) Regulations 1954. Under regulation 3 of the Regulations the specified period is 11 weeks.)
- R(G) 1/67 ii A married woman became pregnant and the expected week of her confinement was certified to be the week which included 28th February. On the previous 20th January a decree of divorce dissolving her marriage was made absolute and on the next day, 21st January, she made a claim for maternity grant. She was confined on 19th February and on the following 24th March she re-married. She herself did not satisfy the contribution conditions but both her husbands did so. It was held, for the reasons given in paragraphs 13-15 (q.v.), that she was entitled to a maternity grant on the basis of her first husband's contributions.

---

## Part 2: Polygamous marriages

*See also the Social Security and Family Allowances (Polygamous Marriages) Regulations 1975.*

### 1 Moslem marriages

i The claimant, who admittedly did not herself satisfy the contribution conditions for a maternity grant, contended that she was lawfully married by ceremony valid according to Moslem law. Admittedly before the date of the ceremony her 'husband' had entered into a valid marriage with another woman who was still living in Pakistan. It was held that a maternity grant was not payable to the claimant on the basis of her 'husband's contribution records since, the ceremony or marriage having been performed in England, it could not create a marriage according to English law unless the requirements of the law of England regarding the celebration of marriage were satisfied. See also R(G) 7/55. R(G) 6/51

ii The claimant and her husband, who were Moslems, were married in Pakistan according to Islamic rites. The latter had previously been married, but it was accepted that his former marriage had been terminated in accordance with Islamic law before he married the claimant; that accordingly she had a husband who satisfied the relevant contribution conditions and that on that basis she was entitled to a maternity grant. See also 3.2.5 i *below*. R(G)2/71

iii Both a claimant and her husband professed the Moslem faith and had gone through a Moslem ceremony of marriage in Malaysia, where the claimant's husband, who was in the British Army, had been posted. Some time later they came to England, where they settled permanently. It was held (a) that the capacity fell to be determined by the law of domicile of the parties and not by the law of the intended matrimonial home, it being impossible to establish what that was at the time of the marriage; (b) that at the time of their marriage both the claimant and her husband were domiciled in Kenya, where the law would recognise the ceremony as a valid marriage which they had the capacity to contract; (c) that the claimant and her husband validly contracted a potentially polygamous marriage; (d) that the marriage throughout remained *de facto* monogamous; (e) that the potentially polygamous marriage having in fact been monogamous under (what is now) the Social Security (Polygamous Marriages) Regulations 1975, had the same consequences as a monogamous marriage throughout; (f) that the claimant and her husband had become domiciled in England and as from then converted the marriage to a monogamous marriage *de jure*; (g) that the claimant was entitled to a maternity grant on her husband's insurance. R(G) 3/75

**2 Hindu marriages**

- R(G) 3/55 i A woman based her claim for a maternity grant on the contribution record of a man whom she married in India according to the rites of the orthodox Hindu faith. The evidence showed that Hindu marriages are monogamous in certain circumstances, none of which applied to the claimant, but that in other circumstances it was lawful for the husband to take a second wife during his wife's lifetime. It was held that the man with whom the claimant went through a ceremony of Hindu marriage was not her 'husband' for the purposes of her entitlement to a maternity grant. See also and compare R(G) 2/56 (a decision by a Tribunal of Commissioners).
- R(G) 1/72 ii The claimant and her husband were both Hindus and belonged to the Patidar caste. She made a claim for a maternity grant on the basis of her husband's contribution record, it being alleged that his previous marriage had been dissolved by custom of the Patidars, which provides for dissolution of marriage by mutual consent of the spouses. It was held that the claimant had established the custom of the Patidar community permitting divorce by mutual consent and that her claim for entitlement to a maternity grant on her husband's insurance succeeded. See in particular paragraphs 14-15.
- R(G) 3/74 iii A woman made a claim for a maternity grant on the insurance of a man on the basis that he and she had been validly married by Hindu law. It was held, for the reasons given in paragraphs 5-12, that the fact of the marriage was not established and that a maternity grant was not payable to the claimant; and further (see paragraph 13) that the validity of the ceremony of the marriage could not be presumed on the basis of subsequent cohabitation because the ceremony itself was invalid.
- R(G) 4/74 iv A claim for a maternity grant was made by a woman on the insurance of her husband. Both the claimant and her husband were Hindus by religion and it was alleged that the latter's two previous marriages had been dissolved by custom of the Khalpa caste, to which the claimant and her husband belonged. It was held, following R(G) 1/72, 3.2.2 ii *above*, that the lack of evidence that an Indian court has recognised a custom of divorce in relation to persons of the Khalpa caste does not preclude the Commissioner from investigating the validity of the alleged custom; that the available evidence, which was mainly circumstantial, in the case of a non-judicial divorce, must be assessed on a balance of probabilities; that the requirements of the custom were obeyed in both cases of divorce to which the claimant's husband was a party; that his previous marriages were validly dissolved and that he had validly married the claimant. A maternity grant was, therefore, payable to her. See paragraphs 10-15.

**3 Sikh marriages**

- R(G) 12/56 i A claimant for a maternity grant and her husband were both Sikhs and had been married in Pakistan in accordance with the rites of their religion, which permitted

polygamy. In fact neither had ever taken a second spouse and since their marriage they had changed their domicile of origin for a domicile of choice in England. It was held by virtue of the change of domicile that the man whom the claimant had married could be treated as her husband and that she was entitled to a maternity grant on his contribution record.

#### **4 Marriage under tribal laws**

i A man and woman were married under tribal law which permitted polygamy. R(G) 11/53  
Later they went through a ceremony in a Christian church in England, but it was a ceremony which did not comply with the provisions of the Marriage Act 1949 for the celebration of marriage. It was held that a maternity grant was not payable to the claimant on the basis of her husband's insurance record since he and she were not 'husband' and 'wife' by reason of either the tribunal or the church ceremony.

#### **5 Divorce by Talaq and the effect of domicile in relation to the Moslem Family Laws Ordinance 1961**

i A marriage between Moslems could by ancient Islamic law be terminated by a non-judicial process called 'Talaq', but by an Ordinance of 1961 the ancient law was modified and the Ordinance was declared to apply to all Moslem citizens of Pakistan wherever they might be. According to English law, however, a man's personal law in relation to his matrimonial affairs is the law of his domicile. In the circumstances of that case it was held, for the reasons given in paragraphs 9-12, that the claimant's husband was not domiciled in Pakistan when he performed a ceremony of Talaq in respect of his first marriage and he was, therefore, free to marry the claimant. His second marriage to her was, therefore, a valid marriage for the purposes of the National Insurance Act 1965 and the claimant was held to be entitled to a maternity grant on the basis of her husband's contribution record. See also 3.2.1 ii *above*. But see R(G) 5/74 in which (at paragraph 9) attention is called to the Domicile and Matrimonial Proceedings Act 1973 which came into force on 1st January 1974. See also R(G) 2/75. R(G) 2/71

---

## Part 3: Certificate of confinement

*See the Social Security (Medical Evidence) Regulations 1976.*

### **1 Meaning of confinement**

*See the definition in section 23(1)(a) of the Social Security Act 1975.*

- C.S.G. 3/49 i It was certified on a form, the heading of which was ‘Certificate of Confinement’, that the claimant had been delivered of ‘a hydatidiform mole’. It was subsequently claimed in a supplementary certificate that ‘a child did not result’ from the claimant’s pregnancy. It was held that the certificate was not a certificate of confinement as required by the relevant statutory provisions and at paragraph 3 the Commissioner referred to the ‘very clear provisions of the National Insurance Act 1946 which related to maternity benefit and in particular to ... the definition of “confinement” in (what is now) section 23(1)(a) of the Social Security Act 1975 as “labour ... resulting in the issue of a child whether alive or dead”.’
- C.W.G.1/49 ii A claimant for maternity benefit submitted a certificate respecting her confinement on which the child was described as having been still-born and on which it was stated that ‘the confinement was premature - 6 months’ miscarriage’. The claim was disallowed, it being held that it was impossible to regard the certificate as a certificate of confinement within the meaning of the relative statutory provisions.

### **2 Who may give a certificate of confinement**

- C.G. 41/50 i A claimant made a claim for maternity grant and submitted a certificate of confinement which was signed by her father-in-law, who attended her at her confinement but who had ceased to be a registered medical practitioner some 17 years previously. It was held that the certificate did not comply with (what are now) paragraphs 2 and 4 of Part 1 of Schedule 2 to the Social Security (Medical Evidence) Regulations 1976, which require certificates of confinement or expected confinement to be signed by a doctor (defined by the regulation as a registered medical practitioner not being the claimant) or by a certified midwife.

**3 Necessity for certificate of confinement**

i A woman who had had a miscarriage made a claim for a maternity grant, but could not obtain a certificate of confinement although she had a certificate of expected confinement given to her after the miscarriage had occurred. It was held, for the reasons given in paragraph 6 of the decision, that the claim must fail. R(G) 14/52

---

## Part 4: Miscellaneous

### 1 Error of date on certificate

- R(G) 8/55 i A claimant for a maternity allowance was told by her doctor that she could expect to be confined in the week which included 8th September, but by a clerical error on the part of the midwife who signed the certificate of expected confinement the date was given as the week which included 2nd August. It was held that the decision in which the maternity allowance period was determined on the basis of the erroneous date should be reviewed.

### 2 Maternity allowance

- C.G.266/49 i The claimant was confined on 29th June and submitted a claim for maternity allowance on the following 11th July. The claim was supported by a certificate of expected confinement, the reason being that her confinement occurred very much earlier than had been anticipated. It was held that, having regard to (what was then) regulation 3(5)(b) of the National Insurance (Maternity Benefit) Regulations 1948, the proper period of the claimant's entitlement to a maternity allowance was from 25th June to 14th August. See now regulation 6(2) and (3) of the Social Security (Maternity Benefit) Regulations 1975.
- R(G) 1/78 ii A married woman claimed and was awarded a maternity allowance in anticipation of her confinement and it was accepted that she was also entitled to an earnings related supplement to the allowance, but the question arose whether for the purpose of calculating the supplement the maternity allowance period fell to be linked with a previous period of incapacity for work which had ended less than 13 weeks before the beginning of the maternity allowance period. If it did, then the relevant income-tax year for ascertaining the amount of the earnings related supplement would be the year 1973/74, whereas if, as was contended on behalf of the claimant, the maternity allowance period were to be regarded as beginning a new period of incapacity for work, the relevant tax year would be the year 1974/75, which would be more favourable financially for the claimant. The basis of the argument for the claimant was the omission from the introductory sentence of section 17(1) of the Social Security Act 1975 of reference to maternity allowance, but that argument was rejected for the reasons which are fully set out in paragraph 12 of the decision and which may be briefly summarised as follows: (a) section 17(2)(a) indicates that maternity allowance is not to be distinguished from unemployment, etc., benefits so far as regulation-making powers are concerned; (b) section 22(4) contemplates that a maternity allowance period may be linked with a period of interruption of employment - section 22(4) must be referring back to the definitions in sections 17(1)(c) and (d); and (c) to interpret sections 17 and 22 of the Act of 1975 in the sense suggested would make the Act inconsistent with regulation 14(2) of the Social

Maternity benefit: miscellaneous

3.4.2

Security (Short-Term Benefits) (Transitional) Regulations 1974. It was accordingly held that the earnings related supplement to the claimant's maternity allowance had to be calculated by reference to the income-tax year 1973/74.

iii The insurance officer decided maternity allowance was not payable from 23 April 1978 to 26 August 1978 because the claimant had paid insufficient contributions in the tax year ending 5 April 1976. The contribution record was not disputed but the claimant contended that 3 earlier claims on medical statements (forms Med 3), which had the effect of 'linking' periods of interruption of employment under section 17 of the Social Security Act 1975, were not intended as claims for benefit. If there were no 'linking' of periods the 'relevant past year' would be the tax year 1976/77 in which the claimant paid full contributions. The appeal was heard by a Tribunal of Commissioners because of a separate contention on behalf of the Secretary of State that the issue whether by force of the 'linking' provisions the relevant past year is the tax year 1975/76 or 1976/77 fell to be determined by the Secretary of State. It was held that-

R(G) 1/82  
(T)

- (a) all matters specified in sub-paragraph (4) of paragraph 3 of Part I of Schedule 3 to the 1975 Act ['the relevant time', 'the relevant past year' and 'the relevant benefit year'] are to be determined by the statutory authorities and not by the Secretary of State (para. 14);
- (b) where a question arises for determination by the Secretary of State the reference should be in relation to a given tax year or years predetermined by the statutory authority making the reference (para. 19);
- (c) since the claimant knew that her employers submitted all forms Med 3 received by them to the Department she is unable to establish she had not intended to claim in respect of the earlier periods of incapacity (paras 25 and 29);
- (d) the 'relevant past year' is the tax year 1975/76 and consequently the claimant is not entitled to maternity allowance (paragraph 1).

See also R(U) 4/84, 17.1.1 xiv *above*, 17.3.3 iii *below*, 19.1.1 viii, 19.2.21v *below*.

**3 Duration of pregnancy**

- R(G) 4/56 i A young married woman made a claim for maternity allowance and in the appropriate space on the form she submitted, a certified midwife certified that she had examined the claimant on 17th January and that in her opinion the claimant might expect to be confined in the week which included the following 21st April. In fact, the claimant was admitted to hospital without warning on 27th January and immediately had a complete miscarriage. It was held that, calculating on the basis of the expected date of confinement, the claimant's pregnancy had not lasted for 28 weeks from the end of the last menstrual period and had therefore been terminated otherwise than by confinement. See also R(G) 12/59.

**4 Absence from Great Britain**

- CG 32/49 i A German woman who was married to a British subject, but who had never been resident in Great Britain although it was her intention to live in England when her husband's contract with the Control Commission came to an end, was held not to be entitled to a maternity grant or an attendance allowance in respect of her confinement which took place in Germany. She could not identify her residence with that of her husband in the same way as a married woman could identify her nationality with that of her husband.
- R(G) 5/53 ii The claimant, who before her marriage was a Belgian citizen, normally resided in England, but went to Belgium to visit her grandmother. While there she was confined, but although her pregnancy had commenced before she left Great Britain it had not produced any incapacity and it was held that maternity allowance was not payable to her during the period of her absence from Great Britain since her absence was not for the specific purpose of being treated for incapacity which commenced before she left Great Britain. See also and compare R(G) 3/54.

The decisions listed below are not included in chapter 3

**A** *Decisions relating to home confinement grant, and no longer relevant*

R(G) 4/54	R(G) 4/58	R(G) 16/59
R(G) 6/56	R(G) 1/59	R(G) 2/60
R(G) 9/56	R(G) 2/59	R(G) 2/62
R(G) 10/56	R(G) 8/59	R(G) 6/62
R(G) 11/56	R(G) 9/59	

**B** *Decisions on good cause for late claims for benefit*

C.G. 15/48	C.W.G. 2/49
C.S.G. 6/48	R(G) 3/53
C.G. 47/49	R(G) 15/56
C.G. 207/49	R(G) 4/68
C.S.G. 9/49	R(G) 1/75

**C** *Decisions relating to adjudication*

C.G. 21/48  
R(G) 1/61  
R(G) 2/61

**D** *Decisions on whether a person is 'ordinarily resident' in Great Britain*

C.G. 28/48	C.G. 165/50
C.G. 202/49	R(G) 2/51
C.G. 204/49	R(G) 5/52
C.G. 206/49	