Neutral Citation Number: [2026] UKUT 251 (AAC)
Appeal No. UA-2025-000996-MA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Heidi Bartley

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Citron
Decided on consideration of the papers

Representation:

Appellant:	by herself
Respondent:	by Naomi Ling of counsel

On appeal from

Tribunal:	First-Tier Tribunal (Social Entitlement Chamber)
Judge:	Judge A Redston
Tribunal Case No:	1730376279050677
Tribunal Venue:	Fox Court, London
Decision Date:	21 March 2025

<u>SUMMARY OF DECISION</u>
MATERNITY BENEFITS (25), State maternity allowance (25.1)

The Appellant was entitled to maternity allowance. The relevant statute set out that the period for which maternity allowance was payable – known as the maternity allowance period – was the same period for which statutory maternity pay would be payable (known as the maternity pay period), if the Appellant had been entitled to that. The same statute set out that the maternity pay period started 11 weeks before the expected week of confinement, unless regulations provided for it to start later than that.

The First-tier Tribunal decision, upholding the Respondent's decision, found that the maternity pay period started at the 11-week date, because the relevant regulations did not apply. This was disadvantageous to the Appellant, because she had been outside Great Britain until shortly after the birth of her child, and she was disqualified from receiving maternity allowance, until her return to Great Britain. This meant that the later the maternity allowance period started, the longer the period for which she would

receive maternity allowance. The Appellant appealed to the Upper Tribunal, arguing that the relevant regulation did apply, such that her maternity allowance period should start on the day after the birth of her child.

The Upper Tribunal allows the appeal. In deciding whether the relevant regulation applies (regulation 2 of the Statutory Maternity Pay (General) Regulations 1986), the Upper Tribunal first analyses how far the "statutory fiction" of the Appellant being entitled to statutory maternity pay should be taken, applying the principles in the Supreme Court case of *Fowler v HMRC*. Based on this, the Upper Tribunal finds that paragraph (3) of regulation 2 applies, because the birth date fell before the date deemed to have been notified by the Appellant to her employer (as to when her employer's liability to statutory maternity pay would have begun). This was sufficient to dispose of the appeal in the Appellant's favour. However, the Upper Tribunal went on to consider whether paragraph (1) of regulation 2 would have applied if paragraph (3) had not; this involved consideration of an earlier Upper Tribunal case on paragraph (1) of regulation 2, *Wade v North Yorkshire Police*, and the question of whether the Appellant "ceased to work" for her employer in conformity with her notice to the employer, even though she had been on a career break with her employer at the time. Applying *Wade*, the Upper Tribunal decides that the Appellant did "cease to work" for her employer in this way, and so, that paragraph (1) of regulation 2 would have applied, if paragraph (3) had not, such that the maternity allowance period would have begun on the date notified (and not at the 11-week date, as found by the First-tier Tribunal).

The decision of the First-tier Tribunal was set aside and re-made in the manner argued for by the Appellant.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to **allow** the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals Courts and Enforcement Act 2007, I **set aside** the decision and **re-make it as follows:**

The appeal is allowed. The decision made by the Respondent on 26 July 2024 is set aside. The Appellant's maternity allowance period began on the day after the 'Birth Date' as defined in the Reasons section below.

REASONS FOR DECISION

1. The Appellant was entitled to maternity allowance, but was disqualified for receiving it, prior to her returning to Great Britain from Australia, shortly after giving birth; this case is about when, under the law, her 39-week 'maternity allowance period' began. In the Appellant's particular circumstances, that issue made a financial difference (as, the later the maternity allowance period began, the more it included weeks during which the Appellant was in Great Britain and so not disqualified).

2. References in what follows to

a. **sections** (or "**s**") are to sections of the Social Security and Benefits Act 1992

b. **regulations** are to regulations of the Statutory Maternity Pay (General) Regulations 1986.

The sections and regulations referred to in this decision are set out in full in the Appendix.

3. The decision of the First-tier Tribunal (**FTT**) in question dismissed the Appellant's appeal against a decision (the "**Respondent's Decision**") made by the Respondent on 26 July 2024. The Respondent's Decision was that the Appellant's 'maternity allowance period' started on a date (the "**11-week date**") in March 2024, which was 11 weeks before her baby was due, and could not be delayed until the date (the "**Birth Date**") her baby was born, which was in June 2024.

4. The statement of reason for the FTT's decision found that

   a. the Appellant began employment at her employer ("**Employer**") in 2016

   b. on 31 October 2023, the Appellant started a career break

   c. on 1 December 2023, the Appellant left Great Britain to travel to and within Australia

   d. on 10 April 2024, the Appellant claimed maternity allowance; as part of this she provided her expected date of confinement (i.e. the expected birth date of her baby)

   e. on 10 May 2024, the Respondent determined that the Appellant was not entitled to maternity allowance as she was not in Great Britain and did not meet any of the statutory exceptions

   f. on 19 July 2024 (i.e. after the Birth Date), the Appellant returned to the UK

   g. the Respondent's Decision was that the Appellant was entitled to maternity allowance from 19 July 2024 to 21 December 2024; that entitlement was calculated on the basis that the Appellant's 'maternity allowance period' began on the 11-week date

   h. the Appellant asked for the maternity allowance period to begin on the Birth Date; although no maternity allowance would be paid between the Birth Date and 18 July 2024, the effect of starting the maternity allowance period from a later date would mean that it continued to be paid for longer, because less time would time fall within the period the Appellant was outside Great Britain.

5. The FTT's statement of reasons then provided a clear exposition of the relevant law, as follows:

a. it started by saying that there was no dispute about the law preventing maternity allowance when outside Great Britain; it was also accepted that the Appellant did not meet the conditions for statutory maternity pay;

b. it then set out s35(1), containing the conditions for entitlement to maternity allowance, and said there was no dispute that the Appellant met all of those conditions;

c. it then cited s35(2), which provides that the period for which a maternity allowance is payable (the 'maternity allowance period') is the period which, if the Appellant were entitled to statutory maternity pay, would be the maternity pay period under s165;

d. section 165 was then set out, in part; sub-section (1) says that statutory maternity pay is payable in respect of each week during a period of a duration not exceeding 52 weeks; the period is known as the 'maternity pay period'; sub-section (3) sets out an exception to the general rule in sub-section (2), that the maternity pay period begins with the 11th week before the expected week of confinement: it says that *cases may be prescribed in which the first day of the [maternity pay] period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined*;

e. the FTT's statement then explained that one such "prescribed case" was set out in regulation 2, as follows (with the same highlighting as was contained in the FTT decision):

> 2.—(1) Subject to paragraphs (3) to (5), where—
>
> > (a) 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
> >
> > (b) 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**,
>
> 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.

f. the FTT's statement stated that paragraphs (3) to (5) of regulation 2 were not relevant, as they dealt with "early confinements, absences from work because of pregnancy or confinement, and termination of employment"; it also noted that paragraph (2) of regulation 2 provides that the maternity pay period shall be a period of 39 consecutive weeks;

g. applying this law to the Appellant, the FTT's statement of reasons, in the nub of its analysis at paragraph 22-23, found that

i. the words “cease to work for” in regulation 2(1)(b) (and highlighted above) do not mean “cease to have a contract of employment with”, because the woman in question remains an employee;

ii. what those words instead mean is that the maternity pay period (and so the maternity allowance period) “only has a later start date if the woman is actually carrying out work for the employer beyond the 12^{th} week”; and

iii. the Appellant could not meet that condition, because at that time she was not carrying out work for the Employer; she was on a career break (in Australia); this means that the “normal position” applied i.e. the maternity pay period (and so, the maternity allowance period) started on the 11-week date.

Grant of permission to appeal

6. In giving permission to appeal, I noted that I would not have given such permission purely on the papers presented; but, acting inquisitorially, I noted a case that did not appear to have been put before the FTT by the Respondent (I would not have expected the Appellant to have done so, as she was not legally represented): *Wade v North Yorkshire Police Authority and HMRC* [2011] IRLR 393 (Newey J and Judge Gammie QC). This concerned a claim for statutory maternity pay; the claimant, Mrs Wade, went on “police maternity leave” some time before the specified time in regulation 2(1), but gave notice (to her employer) that she wished to claim statutory maternity pay from dates that fell <u>after</u> the 11^{th} week before the expected week of confinement. Paragraph 42 of the *Wade* decision explains that the FTT there

> “took the view that, Mrs Wade having already taken police maternity leave by the [time specified in regulation 2(1)], there was no possibility of her ceasing to work in conformity with the notices she had given. Implicit in that is the proposition that a woman cannot so cease to work if she is already on (non-statutory) maternity leave before the date given in her notice.”

7. I observed that the Upper Tribunal in *Wade* overturned this aspect of the FTT’s decision; I set out a number of paragraphs from the Upper Tribunal’s reasoning, which I now repeat below, though with a few further paragraphs included, for completeness:

> 42. The appeals boil down, as it seems to us, to the meaning of the words “in conformity with that notice ceases to work for him” in regulation 2(1) ... The [FTT] took the view that, Mrs Wade having already taken police maternity leave by the 11th week before each EWC [expected week of confinement], there was no possibility of her ceasing to work in conformity with the notices she had given. Implicit in that is the proposition that a woman cannot so cease to work if she is already on (non-statutory) maternity leave before the date given in her notice.
> 43. A literal reading of regulation 2(1) might suggest that a woman who had stopped work for any reason could not cease to work “in conformity with [a] notice” at a later date.

However, none of the parties advanced a submission to that effect, and in our view they were right not to do so. The literal interpretation would mean that regulation 2(1) could not apply to (say) a woman who sought to take outstanding leave or [time off in lieu] immediately before statutory maternity leave or even, on the face of it, to a woman who had to take time off sick before her maternity leave began. That cannot have been Parliament's intention.

44. As already mentioned, [counsel for the respondent police authority] sought to distinguish annual leave and [time off in lieu] from maternity leave. However, we can find no support for this distinction in regulation 2(1). The regulation speaks of a woman who "ceases to work", not of a woman ceasing to work because she is taking maternity leave.

45. The preferable construction, as it seems to us, is that .. a woman may cease to work "in conformity with [a] notice" for the purposes of regulation 2(1) even if she has previously ceased to work on some other basis. In our judgment, that interpretation is consistent both with the terms of regulation 2(1) (which speaks simply of "in conformity with that notice ceases to work") and with the scheme of the legislation.

46. Under the rival interpretation …, a woman who took maternity leave of any kind before giving notice under section 164(4), or before the date specified in such a notice, would be unable to cease to work "in conformity with that notice", and regulation 2(1) could not apply. The beginning of the maternity pay period could then be only either (a) the day after the first day the woman was away sick for a pregnancy-related reason in the last four weeks before the EWC (regulation 2(4)) or (b) the 11th week before the EWC (section 165(2)). Both could be unsatisfactory. Neither need correspond with either the start of the woman's maternity leave or the date from which she wished to claim [statutory maternity pay].

47. We consider, moreover, that the analogy with the regime for statutory maternity leave lends support to [counsel for the appellant and for HMRC]'s submissions. A woman eligible for statutory maternity leave can claim it from a date of her choosing, regardless of whether she has by then already been away for annual leave, [time off in lieu] or sick leave, or under a contractual scheme for maternity leave, provided only that (a) the date is no earlier than the 11th week before the EWC and (b) during the last four week before the EWC she is not absent from work because of pregnancy in advance of the specified date. It makes sense that she should be able to claim [statutory maternity pay] from a similar date, especially given the symmetries between the regimes for [statutory maternity pay] and statutory maternity leave.

48. A further pointer is perhaps to be found in section 164(4) ... That requires a woman to give notice of the date from which she expects her employer's liability to pay [statutory maternity pay] to begin. There is no requirement that the date should be that of the first day that she envisages being off work.

49. The judge considered that he should look for an interpretation that could be operated by an employer when the employer has to make a decision. It appears to us that the interpretation … under which a woman can nominate a date from which she wishes to claim [statutory maternity pay], produces clarity for both employer and employee.

8. I acknowledged, at paragraph 4 of my permission decision, the difficulties of applying the reasoning in *Wade* to this case, and in particular the fact that the Upper Tribunal in *Wade* had considerable regard to the "notice" provisions in s164, and to the words "in conformity with that notice" in regulation 2(1)(b) – whereas, in this case, the FTT, presumably because it was applying regulation 2(1) to a maternity allowance case by statutory cross-reference, did not attempt to apply the "notice" elements of the statutory wording (and this approach was arguably favourable to the appellant, as the FTT did not question whether her "ceasing to work" was "in conformity with" any notice). However, the reasoning of the Upper Tribunal as just quoted did, to my mind, make it arguable that the FTT in this case erred in saying that the Appellant *could not* have ceased to work after the specified time, because she was already on a career break

The Respondent's response

9. In their response to the appeal, the Respondent

   a. summarised the issue arising in this appeal as whether the Appellant was entitled to nominate the date on which her maternity allowance became payable pursuant to regulation 2(1), given that at the relevant time she was on a career break from Employer;

   b. noted that it appeared from Employer's declaration dated 13 March 2024 (page 29 of the FTT bundle) and a letter from Employer dated 3 April 2025 (Addition F to that bundle) that there was an agreement with Employer that during the career break the Appellant would remain employed;

   c. presented the Appellant's maternity allowance claims in a bit more detail than the FTT decision had, as follows (with certain details spelled out further (based on information in the FTT bundle), by me):

      i. the Appellant made an initial claim (on form MA1) signed on 15 March 2024; in this form, in answer to question 42 *What date do you want your maternity allowance payments to start?* she wrote 29 March 2024; and in answer to question 38 *What date do you plan to stop work to have the baby?* she wrote 14 June 2024;

      ii. this claim was refused by the Respondent by letter dated 10 May 2024 on the basis that the Appellant was absent from Great Britain and therefore was not entitled to maternity allowance;

      iii. the Appellant made a further claim for maternity allowance (on form MA1), signed on 8 May 2024; in answer to question 50 *What date do you want your maternity allowance payments to start?* she wrote 14 June 2024 (this was also the date she gave as the baby's due date); in answer to question 46, she wrote that she was currently on annual leave and this was due to end on 14 June 2024; in answer to question 49, she wrote that she had not yet started her maternity leave;

iv. on 20 July 2024 the Appellant notified the Department for Work and Pensions that she had returned to the UK the previous day;

v. on 26 July 2024 the Respondent issued a further decision (this was the Respondent's Decision) superseding their original decision of 10 May 2024 and acceding to the Appellant's claim for maternity allowance, which was determined to be payable between 19 July 2024 and 21 December 2024;

d. cited sections 164 and 165, and then submitted that the key differences between entitlement to maternity allowance, and to statutory maternity pay, were:

i. period of employment/self-employment: in relation to statutory maternity pay, it is necessary to be continuously employed for the 26 weeks up to the week immediately preceding the 14th week before the expected week of confinement, whereas in relation to maternity allowance, it is necessary only to be employed or self employed in 26 of the 66 weeks preceding the expected week of confinement; and

ii. amount of earnings: in relation to statutory maternity pay, it is necessary that normal weekly earnings for the 8 weeks prior to the 14th week before the expected week of confinement, be not less than the relevant lower earnings limit, whereas in relation to maternity allowance it is necessary only that they are not less than the maternity allowance threshold in force at the time during the 'test period';

e. observed that regulation 2(1) had a "less natural" application to maternity allowance than to statutory maternity pay, "given that if a woman is entitled to maternity allowance the employer will not have any liability to pay statutory maternity pay";

f. described certain practices of the Respondent in administering maternity allowance, including:

i. the Respondent's administrative practice is that women who are no longer in employment, and/or no longer working in a self employed capacity, or who are on unpaid leave at the time of the 11th week before the expected week of confinement, do not have the option to commence their maternity allowance period at a later date (which, I observe, is consonant with the Respondent opposing this appeal); and

ii. the Respondent's administrative practices do not require maternity allowance claimants who are still working in the 11th week before the expected week of confinement, to show that they have given notice to their employer of the date on which they expect liability to pay statutory maternity pay to begin (pursuant to s164(4) and regulation 2(1)(a)) in order to commence the maternity allowance period at a later date. It was submitted that, to do so, would be unduly onerous, given that, where maternity allowance is payable, employers are not liable to pay statutory maternity pay. Additionally, self-employed claimants do not have employers. This was said to be relevant to the observation made at paragraph 4 of my decision giving permission to appeal; the Respondent's response stated that the Respondent "did not rely on this point in resisting this appeal";

g. submitted that the Respondent should have determined the Appellant's second claim (form MA1 signed on 8 May 2024) rather than superseding the decision made in her first claim (form MA1 signed on 15 March 2024); it was said that this was a material error of law and the Respondent's Decision should be set aside, and re-made as a decision on the Appellant' second claim (and as this submission is not opposed, I accept it);

h. addressing the case of *Wade*, made the following submissions:

    i. the examples given in *Wade* at [43] in the third sentence, after "(say)", can be properly characterised as "absence from work"; they "entail a temporary absence from work during which an active employment relationship characterised by mutual wage-work obligations is maintained"; the employee is only released from her obligations to work because of a specific legal entitlement to be absent from work; and an employee continues to receive some kind of payment whilst absent from work for these reasons; a subsequent cessation of work in accordance with a notice under regulation 2(1) is not inconsistent with these absences; absence does not of itself entail a 'cessation of work' prior to having a baby; insofar as it might be thought that absence on the grounds of pregnancy or maternity might in some circumstances entail a 'cessation of work', regulation 2(4) specifically provides otherwise, by overruling the possibility of ceasing work in accordance with a notice after 4 weeks before the expected week of confinement. The policy-based reasons for the undesirability of such an approach (for a woman who took maternity leave before giving notice under s164(4)) were explained in *Wade* at [46];

    ii. where a woman's employment with an employer has come to an end (whether by reason of the termination of a contract or because none of the circumstances set out in regulation 11 apply) more than 14 weeks before the expected week of confinement, she will not be entitled to statutory maternity pay (this is the effect of s164(2)(a));

    iii. for maternity allowance purposes, once employment has come to an end, it was submitted that a woman was no longer able to cease to work in accordance with a notice for the purposes of regulation 2(1). This is because she will have already ceased work, definitively, and there are no ongoing mutual obligations of any kind which could subsequently be treated as ceasing in accordance with a notice;

iv. the situation with a career break is similar to that of having ceased employment, notwithstanding the fact that there may be an overarching contract still in place. During a career break, typically, mutual obligations within the employment sphere are suspended. There is no ongoing management of the employee, only an agreement that those obligations will recommence at some point in the future. There is sometimes an agreement that the employee will not work for someone else, but no obligations on the employee to keep in touch and to report key dates, or on the employer to comply with statutory obligations such as those arising under the Maternity and Parental Leave Regulations 1999. Generally speaking there is no entitlement to pay. Granting a career break is entirely within an employer's discretion and there is no statutory entitlement to it;

v. the alternative interpretation, whereby a woman can have ceased work definitively prior to having her baby, with a termination of relevant mutual obligations, and yet still be treated under regulation 2(1) as 'ceasing work in accordance with that notice' thereafter, would be to empty that requirement to 'cease work' of all practical meaning. All that would then be required in practice to comply with regulation 2(1)(b) would be to give notice. It seems unlikely that this was the intention, given that the drafter has specifically chosen to include the wording 'ceasing work' which, given its ordinary meaning, must be understood to imply cessation of a practical action or actions;

vi. in relation to maternity-based absences, the Upper Tribunal in *Wade* identified policy-based reasons for permitting women absent for pregnancy related reasons to choose the start of their maternity pay period so as to be able to align it with the commencement of statutory maternity leave if so desired. Additionally, as noted above, regulation 2(4) provides textual support for this interpretation. Neither of these imperatives applies in the case of a career break.

i. submitted that the Appellant had 'ceased work' in November 2023 and was therefore unable to do so pursuant to regulation 2(1) in June 2024.

Request for further submissions

10. In directions for further submissions issued on 7 May 2026, I invited submissions on the following "line of thinking" (which I said I was considering, on a tentative basis, and wanted to give the parties an opportunity to comment on):

a. this case is about the Appellant's 'maternity allowance period' – and s35(2) instructs us that this period is the period which, *if the Appellant were entitled to statutory maternity pay, would be* the maternity pay period under s165.

b. the statutory wording just italicised indicates that, when applying s165, one must apply the statutory fiction that the Appellant is entitled to statutory maternity pay.

c. this means, in applying s165, that the Appellant is to be assumed to have satisfied

    i. the condition that she had been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected date of confinement *but has ceased to work for that employer* (s164(2)(a));

    ii. the condition that she had become pregnant and *had reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement* (s164(2)(c)); and

    iii. the requirement that she give her employer notice of the date from which she expects the employer's liability to pay her statutory maternity pay to begin, and that notice was given 28 days before that date, or as soon as reasonably practicable (s164(4)). Such notice was to have been in writing if the employer so requested: s164(5).

d. turning to regulation 2(1), its <u>effect</u>, if it applies, is that the maternity pay period (and so, the maternity allowance period) starts on the date given in the s164(4) notice which, per the above, the Appellant is to be taken as having given.

e. there are two requirements for regulation 2(1) to have effect. It seems that the first – paragraph (1)(a) – is satisfied: this is because the requirement in s164(4) must have been satisfied, in order for the Appellant to be entitled to statutory maternity pay.

f. the second condition, at paragraph (1)(b), asks whether in conformity with her s164(4) notice, the Appellant ceased work for her employer in a week later than the 12th week before the expected week of confinement.

g. it is to be noted that another implication of the Appellant being assumed to be entitled to statutory maternity pay, is that she is to be taken as having been continuously employed by her employer up to the 14th week before the expected week of confinement, <u>but having ceased to work for her employer</u>: see s164(2)(a).

h. the question is therefore whether in conformity with her s164(4) notice (which the Appellant is to be taken as having given), the Appellant ceased working for her employer (which, again, she is to be taken as having done) in a week later than the 12th week before the expected week of confinement.

i. the Upper Tribunal's decision in *Wade* was that a woman may cease to work 'in conformity with [a] notice' for the purposes of reg 2(1) even if she has previously ceased to work on some other basis (see [45]); under the interpretation preferred by the Upper Tribunal, a woman can "nominate a date from which she wishes to claim" statutory maternity pay (see [49]), by putting that date in her s164(4) notice.

j. assuming that *Wade* is to be followed (for reasons of comity if no other), the question is how it is to be applied where there is, in effect, a "deemed" s164(4) notice, rather than an actual one.

k. it is suggested that the guidance given by the Supreme Court in *Fowler v HMRC* [2020] UKSC 22, [2021] 1 All ER 97, about the way in which, in general, statutory deeming provisions ought to be interpreted and applied, might be relevant here. The guidance was as follows (at [27]):

> (1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.
>
> (2) For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.
>
> (3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.
>
> (4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.
>
> (5) But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real. As Lord Asquith memorably put it in East End Dwellings Co Ltd v Finsbury BC [1951] 2 All ER 587 at 599, [1952] AC 109 at 133:
>
>> 'The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'

l. The parties may wish to comment on whether they consider this guidance relevant and, if so, how it should be applied in deciding whether the Appellant ceased working for her employer in conformity with the s164(4) notice she is (in effect) deemed to have given her employer, in a week later than the 12th week before the expected date of confinement.

Supplementary submissions

11. In response to the Upper Tribunal's request for supplementary submissions, the Respondent

    a. submitted that it is necessary to be in employment for entitlement to statutory maternity pay to arise. However, entitlement to maternity allowance may arise in a number of different circumstances:

        i. a woman may be employed but not be earning sufficiently to be entitled to statutory maternity pay;

        ii. a woman may have been employed but is no longer employed;

        iii. a woman may not be employed but may be self-employed, whether in the past (for at least 26 of the 66 weeks of the test period) or continuing up to or beyond the 12th week before the expected week of confinement.

    However, in relation to both statutory maternity pay and maternity allowance, it is necessary to cease work in order for entitlement to begin. It is not possible to continue working and to receive payment of either.

    b. gave further details of the Respondent's administrative practices, as follows: women who are (i) no longer in employment and/or (ii) are no longer working in a self-employed capacity, or (iii) who are on unpaid leave, at the time of the 11th week before the expected week of confinement, are currently treated by the Respondent as not having the option to commence the maternity allowance period at a later date.

    c. submitted that the s35(2) deeming exercise must not give rise to an entitlement that was not intended by Parliament and/ or potentially treat maternity allowance claimants more favourably than those claiming statutory maternity pay. The Respondent was concerned that it must not have the effect of: (a) permitting a woman to commence receipt of maternity allowance when she is, in fact, still working; (b) permitting a woman to commence receipt of maternity allowance at a date later than the 11th week to the expected week of confinement in circumstances when she is not still employed or working.

    d. agreed that *Fowler* was relevant to interpreting the "statutory fiction" in s35(2).

    e. submitted that the purpose of s35(2) is only to determine the period for which maternity allowance is payable by reference to the period for which statutory maternity pay is payable. It is not to change the circumstances in which maternity allowance is paid, nor is it to give maternity allowance recipients options to which statutory maternity pay recipients are not entitled.

f. submitted that the "statutory fiction" in s35(2) did not mean that, *for all purposes*, the conditions in s164 were deemed to be satisfied (as, if this were the case, the woman in question would actually become entitled to statutory maternity pay).

g. submitted that, to deem a woman to have satisfied the conditions in s164 would mean that those who are entitled to maternity allowance but who have already left employment or stopped self employed work, would be entitled to choose the start date of their maternity allowance period (whereas in practice, the way maternity allowance is applied by the Respondent is that, consistently with the approach taken in relation to statutory maternity pay, if a woman has left work or stopped self-employment before the 12th week before her expected week of confinement then she is not entitled to this flexibility).

h. submitted that the Respondent's administrative practices in effect assume that the woman has given her employer notice of the date on which she expects his liability to pay her statutory maternity pay to begin, pursuant to regulation 2(1)(a); but it is not assumed she is "in employment" when she is not.

i. submitted that a woman should *not* be deemed to have ceased work in conformity with her s164(4) notice, pursuant to regulation 2(1)(b). She is required to have ceased work in reality in order to be entitled to receipt of maternity allowance. She may not continue to work on an employed or self-employed basis save in the prescribed circumstances set out in regulations made under section 35(3)(a) (I observe that s35(3)(a) permits the making of regulations which *disqualify* a woman from maternity allowance if she does any work in employment as an employed or self-employed earner during the maternity allowance period);

j. submitted that the extent of the exercise of the deeming provision should be to create a "statutory fiction" that the woman has complied with regulation 2(1)(a). It should not be applied any further.

The Appellant's submissions

12. In her submissions on the appeal, the Appellant

a. emphasised that she had been employed through out;

b. cited regulation 11(1) in support of her case (the regulation deals with meaning of "continuous" employment for the purposes of statutory maternity pay; in particular, it provides that certain absences from work shall be treated for those purposes as part of a continuous period of employment with that employer, notwithstanding that no contract of service exists with that employer in respect of that week);

c. relied on the reasoning in *Wade*.

Why I have determined this appeal on the papers

13. Neither party requested a hearing before the Upper Tribunal. Given that I had full written submissions from both parties, including as to the matters on which I sought further submissions, it seemed to me fair and just in the circumstances to determine this appeal without a hearing.

My analysis of when the Appellant's maternity allowance period started

14. In this case it was common ground that the Appellant was entitled to maternity allowance, and no longer disqualified for receiving it, following her return to Great Britain on 19 July 2024; the sole issue is the start date of the period – known as the 'maternity allowance period' – for which the Appellant's maternity allowance was payable. Section 35(2) instructs us that this period is the period which, *if the Appellant were entitled to statutory maternity pay*, would be the maternity pay period under s165.

15. Section 165(2) and (3) tell us that, if the Appellant had been entitled to statutory maternity pay, it would have been payable for a period known as the 'maternity pay period' – and that period would have begun with the 11th week before the expected week of confinement *unless,* under regulations, the first day was to be a day *after* the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she was confined.

16. The relevant regulation, which may have this effect, is regulation 2. The structure of regulation 2 is that paragraph (1) is subject to two requirements, (a) and (b), and paragraph (1) as a whole is subject to paragraphs (3) to (5).

17. The first requirement in paragraph (1), (a), is that the woman gives notice to her employer of the date from which she expects the employer's liability to pay her statutory maternity pay to begin.

18. The second requirement in paragraph (1), (b), asks whether in conformity with the notice referred to in (1)(a), the woman ceases to work for her employer in a week later than the 12th week before the expected week of confinement.

19. The effect of paragraph (1), if it applies, is that the first day of the maternity pay period is the day on which the woman expects her employer's liability to pay her statutory maternity pay to begin in conformity with the notice referred to in (1)(a) (provided that day is not later than the day immediately following the day on which the woman is confined).

20. As regards that proviso at the end of paragraph (1), I note that paragraph (3) deals with the situation where 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 the employer's liability to pay her statutory maternity pay to begin: in such

a case, the first day of the maternity pay period is the day following the day on which she is confined.

21. Paragraph (1), as just described, touches on a number of aspects of statutory maternity pay, which are not present in maternity allowance:

    a. first, a condition of entitlement to statutory maternity pay is that the woman has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected date of confinement *but has ceased to work for that employer* (s164(2)(a));

    b. second, a requirement for entitlement to statutory maternity pay is that the woman gives her employer notice of the date from which she expects the employer's liability to pay her statutory maternity pay to begin, and that notice was given 28 days before that date, or as soon as reasonably practicable (s164(4)).

22. Given these references in regulation 2 to aspects of statutory maternity pay not present in maternity allowance, there are obvious difficulties in applying the provision in a maternity allowance case, where the woman is *treated as* entitled to statutory maternity pay, being

    a. Does the fact that, in reality, the woman has not sent any kind of notice to her employer (as there was no requirement on her to do so – and, in any case, maternity allowance can apply to someone who is self-employed) mean that the woman cannot satisfy regulation (1)(a)? Or is the woman, who is deemed to be entitled to statutory maternity pay, also deemed to have done everything necessary to be so entitled – including the things set out in the immediately preceding paragraph (i.e. that she had ceased to work for her employer; and that she gave her employer due notice); and, even if the woman is deemed to have taken those actions,

    b. what is to be assumed about certain details involved in these actions – in particular, the date notified as that from which the woman expects her employer's liability to pay her statutory maternity pay to begin; and

    c. how to ascertain if, in conformity with the notice, the woman ceased to work for her employer in a week later than the 12th week before the expected week of confinement.

23. These questions raise the issue of how far the statutory fiction in s35(2) – that the Appellant was entitled to statutory maternity pay (whereas, in reality, she was not) – should be taken. The guidance in *Fowler v HMRC* is that the tribunal should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.

24. It seems to me the purpose for which this statutory fiction should be resorted to, is to put a woman entitled to maternity allowance, and a woman entitled to statutory maternity pay, on an equal footing as regards the period for which they are entitled to payments; doing so is consonant with the *complementary relationship* between maternity allowance and statutory maternity pay. By complementary relationship I mean that:

    a. they share a common requirement for entitlement, namely, that a woman has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement;

    b. statutory maternity pay has "primacy", or "comes first", in the sense that a requirement of entitlement to maternity allowance is that the woman is *not* entitled to statutory maternity pay for the same week in respect of the same pregnancy;

    c. consonant with its "primacy", statutory maternity pay has somewhat more exacting conditions for entitlement: it requires

        i. 26 weeks' continuous employment ending with the week immediately preceding the 14th week before the expected week of confinement (as opposed to employment or self-employment for 26 of the 66 weeks immediately preceding the expected week of confinement, for maternity pay) and

        ii. normal weekly earnings for the 8 weeks prior to the 14th week before the expected week of confinement, of not less than the relevant lower earnings limit (as opposed to average weekly earnings of not less than the maternity allowance threshold for the relevant tax year);

    d. maternity allowance is paid by the State, whereas statutory maternity pay is paid by the employer.

25. The persons between whom this statutory fiction should be resorted to are, in my view, the woman entitled to maternity allowance i.e. the Appellant, and the payer of maternity allowance i.e. the Respondent.

26. Given this, it seems to me that, in considering the application of regulation 2, a woman entitled to maternity allowance should be treated as if she had done the things necessary to be entitled to statutory maternity pay, such as having ceased to work for her employer, and having given her employer due notice, because, otherwise, women entitled to maternity allowance, and those entitled to statutory maternity pay, would not be on an equal footing in considering the payment period: the former would have no possibility of falling within the regulation 2 provisions, the latter would. That would run entirely counter to the statutory purpose of the statutory deeming in s35(2), as I have found it.

27. That resolves the difficulty identified at [22a] above. But what is to be assumed about the date from which the woman expects her employer's liability to pay her statutory maternity pay to begin (and which, as I have just concluded, was included in the notice deemed to have been given by the woman to her employer)? The same reasoning applies: if one were to conclude that there was no such date because, in reality, there was no such notice, that would put women entitled to maternity allowance on an unequal footing with women entitled to statutory maternity pay, for the same reason as just described; and this would, again, defeat the purpose of the statutory fiction. The pragmatic solution – and one to which both parties here appear to agree – is to extend the statutory deeming to treating the date put in the woman's maternity allowance claim form, as the date on which she wishes her maternity allowance period to begin, as the date from which she expects her employer's liability to pay her statutory maternity pay to begin (and the date duly notified to her employer). In this case, that date was 14 June 2024 (see [9c iii] above).

28. This leaves the final difficulty, that in [22c] above: how to ascertain if, in conformity with the notice (which, per the foregoing analysis, is deemed to have been given, and which specified 14 June 2024 as the date from which the Appellant expected her employer's liability to pay her statutory maternity pay to begin), the Appellant ceased to work for her employer in a week later than the 12th week before the expected week of confinement.

29. The FTT decision, and the parties in this appeal, identified this as the key issue in the Appellant's appeal, and both the FTT decision, and the Respondent in this appeal, considered that it turned on whether the Appellant could be said to have ceased to work for her employer in June 2024, when she had been on a career break since November 2023.

30. However, I observe that, following my analysis thus far, the date notified (14 June 2024) actually fell several days after the Birth Date, on the facts of this case: and this means that the proviso at the end of paragraph (1) of regulation 2 is engaged, such that that paragraph cannot apply. Instead, paragraph (3), to which paragraph (1) is subject, is engaged (in particular, (b) of paragraph (3)), with the outcome that the first day of the maternity pay period in this case is the day after the Birth Date. I observe that the issue of whether, in conformity with her notice, the Appellant ceased to work for her employer later than the 12^{th} week, does not arise for resolution when applying paragraph (3) of regulation 2.

31. This is sufficient to determine the issue in this appeal (in the Appellant's favour); but since the question of whether, in conformity with her notice, the Appellant ceased to work for her employer later than the 12^{th} week, was argued in some detail, I shall go on to give my views on it.

32. The Respondent submitted that this question was not one that could be resolved by the deeming effect of s35(2). Whilst I have found that that deeming effect did extend to deeming the Appellant to have ceased to work for her employer (see [26] above), I am persuaded that the question of *whether she did so at a particular time in conformity with the notice she is deemed to have given* is not part of the conditions for entitlement to statutory maternity pay; and so, the Respondent is

right to say that deeming a woman entitled to maternity allowance to have ceased to work for her employer at a particular time in conformity with her notice, could put her in a different position to a woman entitled to statutory maternity pay, who would have to demonstrate that matter on the facts of her case; and this would over-step the purpose of the statutory deeming, being to put women entitled to maternity allowance, and to statutory maternity pay, on an equal footing as to the period of their payments.

33. It follows that the matter is to be determined not by the deeming effect of s35(2), but by determining, factually, whether the Appellant, in conformity with her (deemed) notice, ceased to work for her employer on 14 June 2024.

34. The fact the Appellant, prior to that date, had been on a career break with her employer means that this question is akin to that determined by the Upper Tribunal in *Wade* (a case which was not put before the FTT). *Wade* decided that a woman who was (already) on maternity leave prior to the date notified to her employer as the date from which she expected the employer's liability to pay her statutory maternity pay to begin, nevertheless "ceased to work" for her employer on the notified date.

35. *Wade* found that the emphasis should be put on whether the woman entitled to statutory maternity pay ceased working for her employer *in conformity with the notice she had given to her employer*; it was held that the woman could satisfy this even if, at the date given in her notice to her employer, she had already ceased working for the employer *on some other basis*: in *Wade* itself, it was because the woman had already gone on maternity leave, by that date; other examples given in the decision were of women who had already ceased working by the notice date because they were on sick leave, or holiday leave, or had time off in lieu.

36. The Upper Tribunal came to that view both on the wording of the regulation and the scheme of the legislation. It was agreed by the parties there that the fact that a person was on sick leave, or holiday leave, or had time off in lieu, just before the date notified to the employer, could not mean that such a person did not "cease to work for the employer" on that date; the Upper Tribunal decided that there was no justification, based either on the statutory words or their purpose, for "drawing a line" at these particular circumstances; rather, the words of regulation 2(1), interpreted in line with the statutory scheme, created a test of whether the person entitled to statutory maternity pay had ceased work in conformity with the notice they had given their employer; and so, in effect, such a person could "nominate a date from which she wishes to claim statutory maternity pay" (see [49] of the decision), by inserting that date in her s164(4) notice.

37. For reasons of comity, I should follow *Wade*; I certainly do not think it was wrong.

38. The question in this case is whether the reasoning in *Wade* extends to a situation where, immediately before the date notified to the employer, the woman was not on maternity leave, or sick leave, or annual leave, but rather on a career break.

39. My starting point is that the preferred construction of regulation 2(1) in that case, as expressed at [45], was that a woman could cease to work in conformity with a notice duly given, *even if she has previously ceased to work on some other basis*. That is the position here: a career break is simply a "ceasing to work" on "another basis".

40. The Respondent argues that that ceasing to work for an employer by way of a career break, is more like ceasing employment altogether, and therefore should not be treated like other kinds of "ceasing to work for an employer". Arguments are advanced on the basis of assertions about whether there was 'mutuality of obligation' between the Appellant and Employer during the period of her career break; and arrangements as to pay. The Respondent appears to have particular concerns about the case of a woman who had left her employment prior to the 11^{th} week, and so was not caught by paragraph (5) of regulation 2. The Respondent appeared to submit that it would be wrong to interpret regulation 2 such that such a woman's maternity pay period fell within paragraph (1), and so started after the 11^{th} week.

41. It seems to me that these arguments enter the realm of complication and fine distinction which the *Wade* decision sought to avoid, based on its interpretation of the statutes. "Ceasing work" is a simple enough concept; I do not think that the statutory language, or *Wade*, invites us to distinguish between some kinds of ceasing to work (maternity leave, annual leave, sick leave, time off in lieu) as against other kinds of ceasing to work (going on career break or leaving the employment). The way the statute puts a "brake" on the breadth of paragraph (1) is through the exceptions set out in paragraphs (3) to (5). Paragraph (5), in particular, addresses the situation where the woman leaves her employment (but limits its scope to where she does so *after* the beginning of the 11^{th} week).

42. I would comment as follows on the Respondent's concerns about the case of a woman who leaves her employment before the 11^{th} week, and so is not "caught" by paragraph (5):

    a. This is not our case. Neither party in this appeal is saying that the Appellant left her employment when she went on career break: the Appellant asserts this emphatically, and the Respondent, in their submissions, draws attention to documents in the FTT bundle indicating that the Appellant did not leave her employment when she went on career break (in particular, the employer's declaration, signed by the Employer, which accompanied the Appellant's maternity allowance claim);

    b. The drafter of the regulation clearly turned their mind to the possibility of the woman leaving her employment – this is evident from paragraph (5). One may speculate as to why paragraph (5) is drafted only to cover her leaving her employment *after the 11^{th} week*: perhaps it is related to the fact that statutory maternity pay in any event requires continuous employment up to the 14^{th} week – so there is limited scope for the woman leaving the employment before the 11^{th} week. Given the different entitlement requirements for maternity allowance, there is, at least in theory, more scope for a woman who has left her employment before the 11th week, coming within paragraph (1) of regulation 2. It is unclear to me why this is antithetical to the statutory purpose, as the Respondent claims: there is no loosening here of the requirements for *entitlement* to maternity allowance; this is simply about when the maternity pay period starts. In this particular case, where the Appellant only became entitled to maternity allowance about a month after the birth (on her return to Great Britain), that question makes a financial difference – but it seems doubtful that it would make any financial difference in many other cases.

43. The Respondent's essential argument, I would suggest, is that *Wade* at [45] is too broadly expressed, and gives rise to a regime in which a woman can, in certain circumstances, effectively "choose" the start date of her maternity pay period (and so, due to s35(1), of her maternity allowance period), subject to the limitations set out in paragraphs (3) to (5) of regulation 2 (indeed, this is what *Wade* says at [49], in shorthand). The Respondent asserts that such a regime is not within the statutory purpose of the relevant provisions; but *Wade* found otherwise on the statutory wording, and noted that its interpretation was supported by the right, at the heart of the regime, for the woman to choose the date she notified to her employer (see [48] of the decision). The facts of *this* case, where paragraph (1) is disapplied because the confinement date happened to fall earlier than the date notified to the employer under s164(4), such that paragraph (3) is engaged and so there is *no requirement at all* about "ceasing to work" on the notified date, further illustrate that, as found in *Wade*, a literal approach to exactly when the woman ceases to work for the employer, is not a critical feature of the statutory regime.

44. Thus, even if it had not been the case that the Birth Date preceded the date (deemed) notified to Employer (such that paragraph (3) of regulation 2 applies and paragraph (1) does not), I would have decided that, based on the reasoning in *Wade*, the Appellant ceased to work for Employer on the notified date (despite being on a career break immediately before that date) and so fulfilled the conditions of paragraph (1), such that the first day of her maternity allowance period was the date notified.

Disposal

45. Given my conclusions above about when the Appellant's maternity allowance period began, it is evident that the FTT decision erred on a point of law and so falls to be set aside. I am in a position to re-make the decision, and do so in the manner set out at the start of this document.

Zachary Citron
Judge of the Upper Tribunal
Authorised by the Judge for issue on 29 June 2026

APPENDIX: TEXT OF SECTIONS 35, 164, AND 165 AND OF REGULATION 2

Section 35
State maternity allowance for employed or self-employed earner
35.—(1) A woman shall be entitled to a maternity allowance under this section, at the appropriate weekly rate determined under section (35A) below if—

(a) she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
(b) she has been engaged in employment as an employed or self-employed earner for any part of the week in the case of at least 26 of the 66 weeks immediately preceding the expected week of confinement; and
(c) her average weekly earnings (within the meaning of section 35A below) are not less than the maternity allowance threshold for the tax year in which the beginning of the period of 66 weeks mentioned in paragraph (b) above falls;
(d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.

(2) Subject to the following provisions of this section, a maternity allowance under this section shall be payable for the period ("the maternity allowance period") which, if she were entitled to statutory maternity pay, would be the maternity pay period under section 165 below.
(3) Regulations may provide—

(a) for disqualifying a woman for receiving a maternity allowance under this section if—
 (i) during the maternity allowance period, except in prescribed cases, she does any work in employment as an employed or self-employed earner;
 (ia) during the maternity allowance period she fails without good cause to observe any prescribed rules of behaviour; or
 (ii) at any time before she is confined she fails without good cause to attend for, or submit herself to, any medical examination required in accordance with the regulations;
(b) that this section and Section 35A below shall have effect subject to prescribed modifications in relation to cases in which a woman has been confined and—
 (i) has not made a claim for a maternity allowance under this section in expectation of that confinement (other than a claim which has been disallowed); or
 (ii) has made a claim for a maternity allowance under this section in expectation of that confinement (other than a claim which has been disallowed), but she was confined more than 11 weeks before the expected week of confinement.
(c) that subsection (2) above shall have effect subject to prescribed modifications in relation to cases in which a woman fails to satisfy the conditions referred to in subsection (1)(b) or (c) above at the commencement of the 11th week before the expected week of confinement, but subsequently satisfies those conditions at any time before she is confined.

(3A) Regulations may provide for the duration of the maternity allowance period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.

(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

(a) after a prescribed period beginning with the day on which the woman is confined, and

(b) when at least a prescribed part of the maternity allowance period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

(a) the end of the woman's entitlement to maternity leave;

(b) the doing of work by the woman;

(c) the taking of prescribed steps by the woman or another person as regards leave under section 75E of the Employment Rights Act 1996 in respect of the child;

(d) the taking of prescribed steps by a person other than the woman as regards statutory shared parental pay in respect of the child.

(3D) Regulations may provide for a reduction in the duration of the maternity allowance period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.

(3E) A woman who would, but for the reduction in duration of a maternity pay period by virtue of section 165(3A), be entitled to statutory maternity pay for a week is not entitled to a maternity allowance for that week.

(4) A woman who has become entitled to a maternity allowance under this section shall cease to be entitled to it if she dies before the beginning of the maternity allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.

(5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance under this section the amount payable by way of that allowance for any day shall be taken as one seventh of the weekly rate of that allowance.

(6) In this section "confinement" means—

(a) labour resulting in the issue of a living child, or

(b) labour after 24 weeks of pregnancy resulting in the issue of a child whether alive or dead,

and "confined" shall be construed accordingly; and where a woman's labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.

(6A) In this section 'the maternity allowance threshold', in relation to a tax year, means (subject to subsection (6B) below) £30.

(6B) The Secretary of State may, in relation to any tax year after 2001–2002, by order increase the amount for the time being specified in subsection (6A) above to such amount as is specified in the order.

(6C) When deciding whether, and (if so) by how much, to increase the amount so specified the Secretary of State shall have regard to the movement, over such period as he thinks fit, in the general level of prices obtaining in Great Britain (estimated in such manner as he thinks fit).

(6D) The Secretary of State shall in each tax year carry out such a review of the amount for the time being specified in subsection (6A) above as he thinks fit.

(7) The fact that the mother of a child is being paid maternity allowance under this section shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

Section 164
Statutory maternity pay—entitlement and liability to pay
164.—(1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as ‘‘statutory maternity pay’’.
(2) The conditions mentioned in subsection (1) above are—

(a) that she has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him;
(b) that her normal weekly earnings for the period of eight weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
(c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.

(3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.
(4) A woman shall be entitled to payments of statutory maternity pay only if—

(a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and
(b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.

(5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.
(6) Any agreement shall be void to the extent that it purports—

(a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
(b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.

(7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—

(a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period; or
(b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

(8) Regulations shall make provision as to a former employer’s liability to pay statutory maternity pay to a woman in any case where the former employer’s contract

of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.
(9) The Secretary of State may by regulations—

(a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;
(b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability of the Commissioners of Inland Revenue;
(c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
(d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—

(i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
(ii) those contracts were not continuous;

(e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications in such cases as may be prescribed
(ea) provide that sub-section (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
(f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
(g) provide that—

(i) the amount of a woman's earnings for any period; or
(ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,

shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

(10) The provisions mentioned in subsection (9)(e) above are—
(a) subsection (2)(a) and (b) above; and
(b) section 166(1) and (2) below.
(11) Any regulations under sub-section (9) above which are made by virtue of paragraph (b) of that sub-section must be made with the concurence of the Commissioners of Inland Revenue.

Section 165
The maternity pay period
165.—(1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (''the maternity pay period'') of a duration not exceeding 52 weeks.
(2) Subject to subsections (3) and (7), the maternity pay period shall begin with the 11th week before the expected week of confinement.
(3) Cases may be prescribed in which the first day of the period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined.

(3A) Regulations may provide for the duration of the maternity pay period as it applies to a woman to be reduced, subject to prescribed restrictions and conditions.
(3B) Regulations under subsection (3A) are to secure that the reduced period ends at a time—

(a) after a prescribed period beginning with the day on which the woman is confined, and

(b) when at least a prescribed part of the maternity pay period remains unexpired.

(3C) Regulations under subsection (3A) may, in particular, prescribe restrictions and conditions relating to—

(a) the end of the woman's entitlement to maternity leave;

(b) the doing of work by the woman;

(c) the taking of prescribed steps by the woman or another person as regards leave under section 75E of the Employment Rights Act 1996 in respect of the child;

(d) the taking of prescribed steps by the woman or another person as regards statutory shared parental pay in respect of the child.

(3D) Regulations may provide for a reduction in the duration of the maternity pay period as it applies to a woman to be revoked, or to be treated as revoked, subject to prescribed restrictions and conditions.
(4) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.
(5) It is immaterial for the purposes of sub-section (4) above whether the work referred to in that sub-section is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.
(6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.
(7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—

(a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and

(b) to cases in which—

(i) a woman is confined at any time after the end of the week immediately preceding the 11th week before the expected week of confinement; and

(ii) the maternity pay period has not then commenced for her.

(8) In subsections (1), (4) and (6) "week" means a period of seven days beginning with the day of the week on which the maternity pay period begins.

Regulation 2
The Maternity Pay Period
2.—(1) Subject to paragraphs (3) to (5), where—

(a) 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

(b) 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,

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,

section 165 of the Contributions and Benefits Act shall have effect so that 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—

(a) which falls on or after the beginning of the 4th week before the expected week of confinement; but

(b) 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—

(a) 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

(b) not later than 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 leaves her employment.