1987 No. 131

STATUTORY SICK PAY

The Statutory Sick Pay (General) (Amendment) Regulations (Northern Ireland) 1987

Made	*24th March 1987*
Coming into operation . .	*6th April 1987*

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 3(5) of the Social Security (Northern Ireland) Order 1982(**a**) and Articles 52(1)(*j*) and 84(1) of the Social Security (Northern Ireland) Order 1986(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Statutory Sick Pay (General) (Amendment) Regulations (Northern Ireland) 1987 and shall come into operation on 6th April 1987.

(2) In these regulations "the principal regulations" means the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(**c**).

Amendment of the principal regulations

2. After regulation 9 of the principal regulations (time limits for paying statutory sick pay) there shall be inserted the following regulations—

"*Liability of the Department for payments of statutory sick pay*

9A.—(1) Notwithstanding the provisions of Article 3 and subject to paragraph (4), where—

(*a*) an adjudicating authority has determined that an employer is liable to make payments of statutory sick pay to an employee, and

(*b*) the time for appealing against that determination has expired, and

(*c*) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any day of incapacity for work in respect of which it was determined the employer was liable to make those payments, and for any further days of incapacity for work which fall within the same spell of incapacity for work and in respect of which the employer was liable to make payments of statutory sick pay to that employee, the liability to make payments of statutory sick pay in respect of those days shall, to the extent

(a) S.I. 1982/1084 (N.I. 16): Article 3(5) was inserted by Article 69 of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(b) S.I. 1986/1888 (N.I. 18): Article 52(1)(*j*) applies to statutory sick pay by virtue of Article 52(4)

(c) S.R. 1982 No. 263, to which there are amendments not relevant to these regulations

that payment has not been made by the employer, be that of the Department and not the employer.

(2) For the purposes of this regulation a spell of incapacity for work consists of consecutive days of incapacity for work with no day of the week disregarded.

(3) In paragraph (1) ''adjudicating authority'' means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal or the Chief or any other Social Security Commissioner.

(4) This regulation shall not apply to any liability of an employer to make a payment of statutory sick pay where the day of incapacity for work in respect of which the liability arose falls within a period of entitlement which commenced before 6th April 1987.

Insolvency of employer

9B.—(1) Notwithstanding the provisions of Article 3 and subject to paragraph (3), any liability arising under Part II to make a payment of statutory sick pay in respect of a day of incapacity for work in relation to an employee's contract of service with his employer shall be that of the Department and not that of the employer where the employer is insolvent on that day.

(2) For the purposes of paragraph (1) an employer shall be taken to be insolvent if, and only if,—

(*a*) he becomes bankrupt or makes a composition or arrangement with his creditors;

(*b*) he has died and an order is made under section 21 of the Bankruptcy Amendment Act (Northern Ireland) 1929(**a**) for the administration of his estate according to the law of bankruptcy, or by virtue of an order of the court his estate is being administered in accordance with rules set out in Part I of Schedule 1 to the Administration of Estates Act (Northern Ireland) 1955(**b**); or

(*c*) where the employer is a company, a winding-up order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

(3) This regulation shall not apply where the employer became insolvent before 6th April 1987.

Payments by the Department

9C. Where the Department becomes liable in accordance with regulation 9A or 9B to make payments of statutory sick pay to a person, the first payment shall be made as soon as reasonably practicable after the Department becomes so liable, and payments thereafter shall be made at weekly intervals, by means of an instrument of payment or by such other means as appears to the Department to be appropriate in the circumstances of the particular case.''.

(**a**) 1929 c. 1 (N.I.) (20 Geo. 5) (**b**) 1955 c. 24 (N.I.)

Sealed with the Official Seal of the Department of Health and Social Services on 24th March 1987.

(L.S.) *A. N. Burns*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations, which come into operation on 6th April 1987, introduce new provisions into the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982. They correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Article 3(5) of the Social Security (Northern Ireland) Order 1982, as inserted by Article 69 of the Social Security (Northern Ireland) Order 1986 (''the Order''), and Article 52(1)(*j*) of the Order are two of the enabling provisions under which these regulations are made. They are brought into operation on 6th April 1987 by virtue of Schedule 2 to the Social Security (1986 Order) (Commencement No. 3) Order (Northern Ireland) 1987 (S.R. 1987 No. 21 (C. 3)).

The regulations prescribe the circumstances in which the liability to pay statutory sick pay is to be that of the Department and not the employer. Those circumstances are where an adjudicating authority has determined that statutory sick pay is payable but the employer neither pays the amount due nor appeals against the decision (new regulation 9A) and where the employer was insolvent at the time (new regulation 9B). Provision is also made (new regulation 9C) requiring the Department to make the payments for which it is liable at weekly intervals.