



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### PART XI

#### STATUTORY SICK PAY

#### 147 Employer's liability.

- (1) Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 148 to 150 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as “statutory sick pay”) in respect of that day.
- (2) 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 to contribute (whether directly or indirectly) towards any costs incurred by his employer under this Part of this Act.
- (3) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory sick pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (2) (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.
- (4) For the purposes of this Part of this Act [<sup>F1</sup>a day of incapacity for work in relation to a contract of service means a day on which] the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or

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bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.

- (5) In any case where an employee has more than one contract of service with the same employer the provisions of this Part of this Act shall, except in such cases as may be prescribed and subject to the following provisions of this Part of this Act, have effect as if the employer were a different employer in relation to each contract of service.
- (6) Circumstances may be prescribed in which, notwithstanding the provisions of subsections (1) to (5) above, the liability to make payments of statutory sick pay is to be a liability of the [<sup>F2</sup>Commissioners of Inland Revenue].
- [<sup>F3</sup>(7) Regulations under subsection (6) above must be made with the concurrence of the Commissioners of Inland Revenue]

#### Textual Amendments

- F1** Words in s. 147(4) substituted (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1), **Sch. 1 Pt. I para. 34**; S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F2** Words in s. 147(6) substituted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 10** (with savings and transitional provisions in **Sch. 7**); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)
- F3** S. 147(7) added (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 10** (with savings and transitional provisions in **Sch. 7**); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)

### *The qualifying conditions*

#### **148 Period of incapacity for work.**

- (1) The first condition is that the day in question forms part of a period of incapacity for work.
- (2) In this Part of this Act “period of incapacity for work” means any period of four or more consecutive days, each of which is a day of incapacity for work in relation to the contract of service in question.
- (3) Any two periods of incapacity for work which are separated by a period of not more than 8 weeks shall be treated as a single period of incapacity for work.
- (4) The Department may by regulations direct that a larger number of weeks specified in the regulations shall be substituted for the number of weeks for the time being specified in subsection (3) above.
- (5) No day of the week shall be disregarded in calculating any period of consecutive days for the purposes of this section.
- (6) A day may be a day of incapacity for work in relation to a contract of service, and so form part of a period of incapacity for work, notwithstanding that—
- (a) it falls before the making of the contract or after the contract expires or is brought to an end; or
  - (b) it is not a day on which the employee concerned would be required by that contract to be available for work.

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## **149 Period of entitlement.**

- (1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.
- (2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—
  - (a) the termination of that period of incapacity for work;
  - (b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 151 below);
  - (c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;
  - (d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.
- (3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work.
- (4) A period of entitlement as between an employee and an employer of his may also be, or form part of, a period of entitlement as between him and another employer of his.
- (5) The Department may by regulations—
  - (a) specify circumstances in which, for the purpose of determining whether an employee's maximum entitlement to statutory sick pay has been reached in a period of entitlement as between him and an employer of his, days falling within a previous period of entitlement as between the employee and any person who is or has in the past been an employer of his are to be counted; and
  - (b) direct that in prescribed circumstances an employer shall provide a person who is about to leave his employment, or who has been employed by him in the past, with a statement in the prescribed form containing such information as may be prescribed in relation to any entitlement of the employee to statutory sick pay.
- (6) Regulations may provide, in relation to prescribed cases, for a period of entitlement to end otherwise than in accordance with subsection (2) above.
- (7) In a case where the employee's contract of service first takes effect on a day which falls within a period of incapacity for work, the period of entitlement begins with that day.
- (8) In a case where the employee's contract of service first takes effect between two periods of incapacity for work which by virtue of section 148(3) above are treated as one, the period of entitlement begins with the first day of the second of those periods.
- (9) In any case where, otherwise than by virtue of section 6(1)(b) above, an employee's earnings under a contract of service in respect of the day on which the contract takes effect do not attract a liability to pay secondary Class 1 contributions, subsections (7) and (8) above shall have effect as if for any reference to the contract first taking effect there were substituted a reference to the first day in respect of which the employee's earnings attract such a liability.
- (10) Regulations shall make provision as to an employer's liability under this Part of this Act to pay statutory sick pay to an employee in any case where the employer's contract

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of service with that employee has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory sick pay.

- (11) Subsection (2)(d) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement.
- (12) In this section—
- “confinement” is to be construed in accordance with section 167(1) below;
  - “disqualifying period” means—
    - (a) in relation to a woman entitled to statutory maternity pay, the maternity pay period; and
    - (b) in relation to a woman entitled to maternity allowance, the maternity allowance period;
  - “maternity allowance period” has the meaning assigned to it by section 35(2) above, and
  - “maternity pay period” has the meaning assigned to it by section 161(1) below.

## **150 Qualifying days.**

- (1) The third condition is that the day in question is a qualifying day.
- (2) The days which are for the purposes of this Part of this Act to be qualifying days as between an employee and an employer of his (that is to say, those days of the week on which he is required by his contract of service with that employer to be available for work or which are chosen to reflect the terms of that contract) shall be such day or days as may, subject to regulations, be agreed between the employee and his employer or, failing such agreement, determined in accordance with regulations.
- (3) In any case where qualifying days are determined by agreement between an employee and his employer there shall, in each week (beginning with Sunday), be at least one qualifying day.
- (4) A day which is a qualifying day as between an employee and an employer of his may also be a qualifying day as between him and another employer of his.

*Limitations on entitlement, etc.*

## **151 Limitations on entitlement.**

- (1) Statutory sick pay shall not be payable for the first three qualifying days in any period of entitlement.
- (2) An employee shall not be entitled, as against any one employer, to an aggregate amount of statutory sick pay in respect of any one period of entitlement which exceeds his maximum entitlement.
- (3) The maximum entitlement as against any one employer is reached on the day on which the amount to which the employee has become entitled by way of statutory sick pay during the period of entitlement in question first reaches or passes the entitlement limit.
- (4) The entitlement limit is an amount equal to 28 times [F<sup>4</sup>the weekly rate applicable in accordance with] section 153 below.

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- (5) Regulations may make provision for calculating the entitlement limit in any case where an employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of entitlement.

#### Textual Amendments

- F4** Words in s. 151(4) substituted (6.4.1995) by S.I. 1994/1898 (N.I. 12), art. 10(4); S.R. 1994/450, art. 2, Sch. Pt. 3

### 152 Notification of incapacity for work.

- (1) Regulations shall prescribe the manner in which, and the time within which, notice of any day of incapacity for work is to be given by or on behalf of an employee to his employer.
- (2) An employer who would, apart from this section, be liable to pay an amount of statutory sick pay to an employee in respect of a qualifying day (the “day in question”) shall be entitled to withhold payment of that amount if—
- (a) the day in question is one in respect of which he has not been duly notified in accordance with regulations under subsection (1) above; or
  - (b) he has not been so notified in respect of any of the first three qualifying days in a period of entitlement (a “waiting day”) and the day in question is the first qualifying day in that period of entitlement in respect of which the employer is not entitled to withhold payment—
    - (i) by virtue of paragraph (a) above; or
    - (ii) in respect of an earlier waiting day by virtue of this paragraph.
- (3) Where an employer withholds any amount of statutory sick pay under this section—
- (a) the period of entitlement in question shall not be affected; and
  - (b) for the purposes of calculating his maximum entitlement in accordance with section 151 above the employee shall not be taken to have become entitled to the amount so withheld.

*Rate of payment, etc.*

### 153 Rate of payment.

- (1) Statutory sick pay shall be payable by an employer at the weekly rate of [<sup>F5</sup>£66·15].
- (2) The Department may by order—
- [<sup>F6</sup>(a) amend subsection (1) above so as to substitute different provision as to the weekly rate or rates of statutory sick pay; and]
  - (b) make such consequential amendments as appear to the Department to be required of any provision contained in this Part of this Act.
- (3) The amount of statutory sick pay payable by any one employer in respect of any day shall be the weekly rate applicable on that day divided by the number of days which are, in the week (beginning with Sunday) in which that day falls, qualifying days as between that employer and the employee concerned.

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**Textual Amendments**

- F5** Sum in s. 153(1) substituted (6.4.2004) by [The Social Security Benefits Up-rating Order \(Northern Ireland\) 2004 \(S.R. 2004/82\)](#), arts. 1(1)(d), **9**
- F6** S. 153(2)(a) substituted (6.4.1995) by [S.I. 1994/1898 \(N.I. 12\)](#), **art. 10(3)**; [S.R. 1994/450](#), art. 2, **Sch. Pt. III**

<sup>F7</sup>**154** .....

**Textual Amendments**

- F7** [S. 154](#) repealed (6.4.1995) (subject to savings made by regulations under s. 155A(4) of this Act) by [S.R. 1995/69](#), **art. 5**

<sup>F8</sup>**155** .....

**Textual Amendments**

- F8** [S. 155](#) repealed (6.4.1995 subject to savings made by regulation under s. 155A(4) of this Act) by [S.R. 1995/69](#), **art. 5(a)**

<sup>F9</sup>**155A Power to provide for recovery by employers of sums paid by way of statutory sick pay.**

- (1) [<sup>F10</sup>The Secretary of State]] may by order provide for the recovery by employers, in accordance with the order, of the amount (if any) by which their payments of, or liability incurred for, statutory sick pay in any period exceeds the specified percentage of the amount of their liability for contributions payments in respect of the corresponding period.
- (2) An order under subsection (1) above may include provision—
  - (a) as to the periods by reference to which the calculation referred to above is to be made,
  - (b) for amounts which would otherwise be recoverable but which do not exceed the specified minimum for recovery not to be recoverable,
  - (c) for the rounding up or down of any fraction of a pound which would otherwise result from a calculation made in accordance with the order, and
  - (d) for any deduction from contributions payments made in accordance with the order to be disregarded for such purposes as may be specified,
 and may repeal sections 154 and 155 above and make any amendments of other statutory provisions which are consequential on the repeal of those sections.
- (3) In this section—
 

“contributions payments” means payments which a person is required by or under any statutory provision to make in discharge of any liability of his as an employer in respect of primary or secondary Class 1 contributions; and

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“specified” means specified in or determined in accordance with an order under subsection (1).

- (4) [<sup>F10</sup>The Secretary of State] may by regulations make such transitional and consequential provision, and such savings, as it considers necessary or expedient for or in connection with the coming into operation of any order under subsection (1) above.

#### Textual Amendments

**F9** S. 155A inserted (22.3.1994) by S.I. 1994/766 (N.I. 5), arts. 1(2), 5(1)

**F10** Words in s. 155A(1)(4) substituted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), Sch. 1 para. 11 (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6)

#### Miscellaneous

### 156 Relationship with benefits and other payments, etc.

Schedule 12 to this Act has effect with respect to the relationship between statutory sick pay and certain benefits and payments.

### 157 Crown employment - Part XI.

- (1) Subject to subsection (2) below, the provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.
- (2) The provisions of this Part of this Act do not apply in relation to persons serving as members of Her Majesty’s forces, in their capacity as such.
- (3) For the purposes of this section Her Majesty’s forces shall be taken to consist of such establishments and organisations as may be prescribed by regulations made by the Secretary of State [<sup>F11</sup>with the concurrence of the Treasury], being establishments and organisations in which persons serve under the control of the Defence Council.

#### Textual Amendments

**F11** Words in s. 157(3) inserted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), Sch. 1 para. 12 (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), Sch. 2 (subject to arts. 3-6)

### 158 Special classes of persons.

- (1) The Department may [<sup>F12</sup>with the concurrence of the Treasury] make regulations modifying this Part of this Act in such manner as the Department thinks proper in their application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft; or
  - (b) outside Northern Ireland at any prescribed time or in any prescribed circumstances.
- (2) Regulations under subsection (1) above may in particular provide—

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- (a) for any provision of this Part to apply to any such person, notwithstanding that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in Northern Ireland;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory other than Northern Ireland, by a British consular official or such other person as may be determined in accordance with the regulations.

#### Textual Amendments

**F12** Words in s. 158(1) inserted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 13** (with savings and transitional provisions in **Sch. 7**); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)

### 159 Interpretation of Part XI and supplementary provisions.

(1) In this Part of this Act—

“contract of service” (except in paragraph (a) of the definition below of “employee”) includes any arrangement providing for the terms of appointment of an employee;

“employee” means a person who is—

- (a) gainfully employed in Northern Ireland either under a contract of service or in an office (including elective office) with [<sup>F13</sup>general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)] ; and
- (b) over the age of 16;

but subject to regulations, which may provide for cases where any such person is not to be treated as an employee for the purposes of this Part of this Act and for cases where any person who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to an employee and a contract of service of his, means a person who under section 6 above is, or but for [<sup>F14</sup>the condition in] subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract;

“period of entitlement” has the meaning given by section 149 above;

“period of incapacity for work” has the meaning given by section 148 above;

<sup>F15</sup> . . .

“prescribed” means prescribed by regulations;

“qualifying day” has the meaning given by section 150 above;

“week” means any period of 7 days.

(2) For the purposes of this Part of this Act an employee’s normal weekly earnings shall, subject to subsection (4) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under his contract of service with the employer in question.



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- (3) For the purposes of subsection (2) above, the expressions “earnings” and “relevant period” shall have the meaning given to them by regulations.
- (4) In such cases as may be prescribed an employee’s normal weekly earnings shall be calculated in accordance with regulations.
- (5) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or such of its provisions as may be prescribed—
  - (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.
- (6) Where, in consequence of the establishment of one or more Health and Social Services trusts under the <sup>M1</sup>Health and Personal Social Services (Northern Ireland) Order 1991, a person’s contract of employment is treated by a scheme under that Order as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—
  - (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person’s employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract;and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.
- (7) Regulations may provide for periods of work which begin on one day and finish on the following day to be treated, for the purposes of this Part of this Act, as falling solely within one or other of those days.

#### Textual Amendments

- F13** Words in s. 159(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 6 para. 202](#) (with [Sch. 7](#))
- F14** Words in definition in s. 159(1) inserted (6.4.1999) by [S.I. 1998/1506 \(N.I. 10\)](#), art. 78(1), [Sch. 6 para. 55](#); [S.R. 1999/72](#), art. 2(b), [Sch.](#)
- F15** Definition in s. 159(1) repealed (7.10.1996) by [S.I. 1995/2705 \(N.I. 15\)](#), art. 40(2), [Sch. 3](#); [S.R. 1996/401](#), [art. 2](#)

#### Marginal Citations

- M1** [S.I. 1991/194 \(N.I. 1\)](#).

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