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## STATUTORY INSTRUMENTS

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# 1982 No. 894

## TERMS AND CONDITIONS OF EMPLOYMENT

### The Statutory Sick Pay (General) Regulations 1982

<i>Made</i>	- - - -	<i>30th June 1982</i>
<i>Laid before Parliament</i>		<i>8th July 1982</i>
<i>Coming into Operation</i>		<i>6th April 1983</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 1(3) and (4), 3(5) and (7), 4(2), 5(5), 6(1), 8(1) to (3), 17(4), 18(1), 20 and 26(1) and (3) to (5) of, paragraph 1 of Schedule 1 to, and paragraphs 2(3) and 3(2) of Schedule 2 to, the Social Security and Housing Benefits Act 1982 and of all other powers enabling him in that behalf, hereby makes the following regulations.

This instrument satisfies the requirement of paragraph 38 of Schedule 4 to the Social Security and Housing Benefits Act 1982 and the Secretary of State has not referred proposals to make any regulations contained in it to the Industrial Injuries Advisory Council or the Social Security Advisory Committee.

#### **Modifications etc. (not altering text)**

**C1** Instrument applied (with modifications) (1.10.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) Regulations 2010 \(S.I. 2010/1907\)](#), [reg. 16\(2\)\(e\)\(iii\)\(3\)](#) (with [reg. 3](#))

#### **Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Statutory Sick Pay (General) Regulations 1982, and shall come into operation on 6th April 1983.

(2) In these regulations—

“the Act” means the Social Security and Housing Benefits Act 1982;

[<sup>F1</sup>“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;]

[<sup>F2</sup>“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;]

“Part I” means Part I of the Act;

and other expressions, unless the context otherwise requires, have the same meanings as in Part I.

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- (3) Unless the context otherwise requires, any reference—
- (a) in these regulations to a numbered section or Schedule is a reference to the section or Schedule, as the case may be, of or to the Act bearing that number;
  - (b) in these regulations to a numbered regulation is a reference to the regulation bearing that number in these regulations; and
  - (c) in any of these regulations to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

- F1** Words in reg. 1(2) inserted (16.11.1992) by [The Social Security \(Miscellaneous Provisions\) Amendment \(No. 2\) Regulations 1992 \(S.I. 1992/2595\)](#), regs. 1, **14**
- F2** Words in reg. 1(2) inserted (6.4.1996) by [The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/777\)](#), regs. 1, **2(2)**

### Persons deemed incapable of work

**2.—(1)** A person who is not incapable of work of which he can reasonably be expected to do under a particular contract of service may be deemed to be incapable of work of such a kind by reason of some specific disease or bodily or mental disablement for any day on which either—

- (a) (i) he is under medical care in respect of a disease or disablement as aforesaid,
  - (ii) it is stated by a registered medical practitioner that for precautionary or convalescent reasons consequential on such disease or disablement he should abstain from work, or from work of such a kind, and
  - (iii) he does not work under that contract of service, or
- [<sup>F3</sup>(b)** he is—
- (i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or
  - (ii) otherwise prevented from working pursuant to an enactment,
- [<sup>F4</sup>by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination].]**

**(2)** A person who at the commencement of any day is, or thereafter on that day becomes, incapable of work of such a kind by reason of some specific disease or bodily or mental disablement, and

- (a) on that day, under that contract of service, does no work, or no work except during a shift which ends on that day having begun on the previous day; and
- (b) does no work under that contract of service during a shift which begins on that day and ends on the next,

shall be deemed to be incapable of work of such a kind by reason of that disease or bodily or mental disablement throughout that day.

**[<sup>F5</sup>(3)** For the purposes of paragraph (1)(b)—

“enactment” includes an enactment comprised in, or in an instrument made under—

- (a) an Act; or
- (b) an Act of the Scottish Parliament; and]

**[<sup>F6</sup>“relevant infection or contamination” means—**

- (a) in England and Wales—
  - (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984 in respect of

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which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or

- (ii) any disease, food poisoning, infection, infectious disease or notifiable disease to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 applies; and
- (b) in Scotland, any–
  - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008, or exposure to an organism causing that disease, or
  - (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
 to which sections 56 to 58 of that Act (compensation) apply.]

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| <b>F3</b> | Reg. 2(1)(b) substituted (10.4.2006) by <a href="#">The Statutory Sick Pay (General) Amendment Regulations 2006 (S.I. 2006/799)</a> , regs. 1, <b>2(2)</b>   |
| <b>F4</b> | Words in <a href="#">reg. 2(1)(b)</a> substituted (6.4.2012) by <a href="#">The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425)</a> , regs. 1(3), <b>6(a)</b> |
| <b>F5</b> | Reg. 2(3) added (10.4.2006) by <a href="#">The Statutory Sick Pay (General) Amendment Regulations 2006 (S.I. 2006/799)</a> , regs. 1, <b>2(3)</b>  |
| <b>F6</b> | Words in <a href="#">reg. 2(3)</a> substituted (6.4.2012) by <a href="#">The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425)</a> , regs. 1(3), <b>6(b)</b>    |

#### [<sup>F7</sup>“Linking periods of incapacity for work

**2A.** In subsection (3) of section 2 of the 1982 Act (linking periods of incapacity for work), 8 weeks shall be substituted for 2 weeks.]

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| <b>F7</b> | Reg. 2A inserted (6.4.1996) by <a href="#">The Statutory Sick Pay (General) Amendment Regulations 1986 (S.I. 1986/477)</a> , regs. 1(1), <b>2</b> |
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#### Period of entitlement ending or not arising

**3.—(1)** In a case where an employee is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended) on a day which in relation to him falls within a period of entitlement, that period shall end with that day.

(2) A period of entitlement shall not arise in relation to a period of incapacity for work where at any time on the first day of that period of incapacity for work the employee in question is in legal custody or sentenced to or undergoing a term of imprisonment (except where the sentence is suspended).

[<sup>F8</sup>(2A) A period of entitlement in respect of an employee who was entitled to incapacity benefit, maternity allowance or severe disablement allowance shall not arise in relation to any day within a period of incapacity for work beginning with the first day on which paragraph 2(d) of Schedule 11 to the Contributions and Benefits Act ceases to have effect where the employee in question is a person to whom regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 (welfare to work beneficiary) applies.]

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[<sup>F9</sup>(2B) Paragraph (2A) shall not apply, in the case of an employee who was entitled to incapacity benefit, where paragraph 2(d)(i) of Schedule 11 to the Contributions and Benefits Act ceases to have effect by virtue of paragraph 5A of that Schedule.]

[<sup>F10</sup>(2C) A period of entitlement in respect of an employee who was entitled to employment and support allowance shall not arise in relation to any day within a period of limited capability for work beginning with the first day on which paragraph 2(dd) of Schedule 11 to the Contributions and Benefits Act ceases to have effect where the employee in question is a person to whom regulation 148 of the Employment and Support Allowance Regulations 2008 (work and training beneficiaries) applies.]

[<sup>F11</sup>(3) A period of entitlement as between an employee and his employer shall end after 3 years if it has not otherwise ended in accordance with [<sup>F12</sup>section 153(2) of the Contributions and Benefits Act] or with regulations (other than this paragraph) made under [<sup>F13</sup>section 153(6) of the Contributions and Benefits Act.]]

[<sup>F14</sup>(4) Where a period of entitlement is current as between an employee and her employer and the employee—

- (a) is pregnant or has been confined; and
- (b) is incapable of work wholly or partly because of pregnancy or confinement on any day which falls on or after the beginning of the [<sup>F15</sup>4th week] before the expected week of confinement; and
- (c) is not by virtue of that pregnancy or confinement entitled to statutory maternity pay under Part XII of the Contributions and Benefits Act or to maternity allowance under section 35 of that Act;

the period of entitlement shall end on that day or, if earlier, on the day she was confined.]

[<sup>F16</sup>(5) Where an employee—

- (a) is pregnant or has been confined; and
- (b) is incapable of work wholly or partly because of pregnancy or confinement on any day which falls on or after the beginning of the [<sup>F17</sup>4th week] before the expected week of confinement; and
- (c) is not by virtue of that pregnancy or confinement entitled to statutory maternity pay under Part XII of the Contributions and Benefits Act or to maternity allowance under section 35 of that Act;

a period of entitlement as between her and her employer shall not arise in relation to a period of incapacity for work where the first day in that period falls within 18 weeks of the beginning of the week containing the day referred to at (b) above or, if earlier, of the week in which she was confined.]

[<sup>F18</sup>(6) In paragraphs (4) and (5) “confinement” and “confined” have the same meanings as in [<sup>F19</sup>section 171 of the Contributions and Benefits Act].]

**F8** Reg. 3(2A) inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **6**

**F9** Reg. 3(2B) inserted (6.4.2007) by [The Employment Equality \(Age\) \(Consequential Amendments\) Regulations 2007 \(S.I. 2007/825\)](#), regs. 1, **5(2)**

**F10** Reg. 3(2C) inserted (27.10.2008) by [The Employment and Support Allowance \(Consequential Provisions\) \(No. 2\) Regulations 2008 \(S.I. 2008/1554\)](#), regs. 1(2)(b), **45(1)**

**F11** Reg. 3(3) inserted (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **3**

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- F12** Words in reg. 3(3) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Social Security Maternity Benefits and Statutory Sick Pay (Amendment) Regulations 1994 (S.I. 1994/1367), regs. 1(2), **9(2)(a)**
- F13** Words in reg. 3(3) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Social Security Maternity Benefits and Statutory Sick Pay (Amendment) Regulations 1994 (S.I. 1994/1367), regs. 1(2), **9(2)(b)**
- F14** Reg. 3(4) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Social Security Maternity Benefits and Statutory Sick Pay (Amendment) Regulations 1994 (S.I. 1994/1367), regs. 1(2), **9(3)**
- F15** Words in reg. 3(4)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), **13(2)**
- F16** Reg. 3(5) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Social Security Maternity Benefits and Statutory Sick Pay (Amendment) Regulations 1994 (S.I. 1994/1367), regs. 1(2), **9(4)**
- F17** Words in reg. 3(5)(b) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), **13(3)**
- F18** Reg. 3(4)-(6) added (7.6.1987) by The Statutory Sick Pay (General) Amendment (No.2) Regulations 1987 (S.I. 1987/868), regs. 1(1), **2**
- F19** Words in reg. 3(6) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by The Social Security Maternity Benefits and Statutory Sick Pay (Amendment) Regulations 1994 (S.I. 1994/1367), regs. 1(2), **9(5)**

#### “Maximum entitlement to Statutory Sick Pay in a period of entitlement

<sup>F20</sup>**3A.** . . . . .

**F20** Reg. 3A revoked (27.10.2008) by The Statutory Sick Pay (General) (Amendment) Regulations 2008 (S.I. 2008/1735), regs. 1, **3**

#### Contract of service ended for the purpose of avoiding liability for statutory sick pay

4.—(1) The provisions of this regulation apply in any case where an employer's contract of service with an employee is brought to an end by the employer solely or mainly for the purpose of avoiding liability for statutory sick pay.

(2) Where a period of entitlement is current on the day on which the contract is brought to an end, the employer shall be liable to pay statutory sick pay to the employee until the occurrence of an event which, if the contract had still been current, would have caused the period of entitlement to come to an end under section 3(2)(a), (b) or (d) or regulation 3(1) [<sup>F21</sup>of these regulations or regulation 10(2) of the Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982], or (if earlier) until the date on which the contract would have expired.

**F21** Words in reg. 4(2) added (6.4.1983) by The Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982 (S.I. 1982/1349), regs. 1(1), **10(3)** (with regs. 11, 12, 13)

#### Qualifying days

5.—(1) In this regulation “week” means a period of 7 consecutive days beginning with Sunday.

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(2) Where an employee and an employer of his have not agreed which day or days in any week are or were qualifying days [F22 or where in any week the only day or days are or were such as are referred to in paragraph (3)], the qualifying day or days in that week shall be—

- (a) the day or days on which it is agreed between the employer and the employee that the employee is or was required to work (if not incapable) for that employer or, if it is so agreed that there is or was no such day,
- (b) the Wednesday, or, if there is no such agreement between the employer and employee as mentioned in sub-paragraph (a),
- (c) every day, except that or those (if any) on which it is agreed between the employer and the employee that none of that employer's employees are or were required to work (any agreement that all days are or were such days being ignored).

[F23(3) No effect shall be given to any agreement between an employee and his employer to treat as qualifying days—

- (a) any day where the day is identified, whether expressly or otherwise, by reference to that or another day being a day of incapacity for work in relation to the employee's contract of service with an employer;
- (b) any day identified, whether expressly or otherwise, by reference to a period of entitlement or to a period of incapacity for work.]

**F22** Words in reg. 5(2) inserted (5.3.1985) by [The Statutory Sick Pay \(General\) Amendment Regulations 1985 \(S.I. 1985/126\)](#), regs. 1, **2(2)**

**F23** Reg. 5(3) inserted (5.3.1985) by [The Statutory Sick Pay \(General\) Amendment Regulations 1985 \(S.I. 1985/126\)](#), regs. 1, **2(3)**

**Calculation of entitlement limit**

6.—(1) Where an employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of entitlement<sup>F24</sup> ..., the entitlement limit shall be calculated in the manner described in paragraphs (2) and (3), or, as the case may be, (4) and (5); and where a number referred to in paragraph (2)(b) or (d) or (4)(a)(ii) or (d)(ii) is not a whole number, [F25 of thousandths, it shall be rounded up to the next thousandth].

(2) For the purpose of determining whether an employee has reached his maximum entitlement to statutory sick pay in respect of a period of entitlement, there shall be calculated—

- (a) the amount of statutory sick pay to which the employee became entitled during the part of the period of entitlement before the change in the weekly rate;
- (b) the number by which the weekly rate (before the change) must be multiplied in order to produce the amount mentioned in sub-paragraph (a);
- (c) the amount of statutory sick pay to which the employee has so far become entitled during the part of the period of entitlement after the change in the weekly rate; and
- (d) the number by which the weekly rate (after the change) must be multiplied in order to produce the amount mentioned in sub-paragraph (c);
- (e) the sum of the amounts mentioned in sub-paragraphs (a) and (c); and
- (f) the sum of the numbers mentioned in sub-paragraphs (b) and (d).

(3) When the sum mentioned in paragraph (2)(f) reaches [F26 28], the sum mentioned in paragraph (2)(e) reaches the entitlement limit.

<sup>F27</sup>(4) .....

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F28 (5) .....

- F24 Words in reg. 6(1) revoked (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **9(a)**
- F25 Words in reg. 6(1) substituted (16.4.1984) by [The Statutory Sick Pay \(General\) Amendment Regulations 1984 \(S.I. 1984/385\)](#), regs. 1, **2(a)**
- F26 Word in reg. 6(3) substituted (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **9(b)**
- F27 Reg. 6(4) revoked (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **9(c)**
- F28 Reg. 6(5) revoked (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **9(c)**

**Time and manner of notification of incapacity for work**

7.—(1) Subject to paragraph (2), notice of any day of incapacity for work shall be given by or on behalf of an employee to his employer—

- (a) in a case where the employer has decided on a time limit (not being one which requires the notice to be given earlier than <sup>F29</sup>... the first qualifying day in the period of incapacity for work which includes that day of incapacity for work) [<sup>F30</sup>or by a specified time during that qualifying day] and taken reasonable steps to make it known to the employee, within that time limit; and
- (b) in any other case, on or before the seventh day after that day of incapacity for work.

(2) Notice of any day of incapacity for work may be given [<sup>F31</sup>one month] later than as provided by paragraph (1) where there is good cause for giving it later [<sup>F32</sup>or if in the particular circumstances that is not practicable, as soon as it is reasonably practicable thereafter], so however that it shall in any event be given on or before the 91st day after that day.

(3) A notice contained in a letter which is properly addressed and sent by prepaid post shall be deemed to have been given on the day on which it was posted.

(4) Notice of any day of incapacity for work shall be given by or on behalf of an employee to his employer—

- (a) in a case where the employer has decided on a manner in which it is to be given (not being a manner which imposes a requirement such as is specified in paragraph (5)) and taken reasonable steps to make it known to the employee, in that manner; and
- (b) in any other case, in any manner, so however that unless otherwise agreed between the employer and employee it shall be given in writing.

(5) The requirements mentioned in paragraph (4)(a) are that notice shall be given—

- (a) personally;
- (b) in the form of medical evidence;
- (c) more than once in every 7 days during a period of entitlement;
- (d) on a document supplied by the employer; or
- (e) on a printed form.

- F29 Words in reg. 7(1)(a) omitted (16.4.1984) by virtue of [The Statutory Sick Pay \(General\) Amendment Regulations 1984 \(S.I. 1984/385\)](#), regs. 1, **2(b)**
- F30 Words in reg. 7(1)(a) inserted (16.4.1984) by [The Statutory Sick Pay \(General\) Amendment Regulations 1984 \(S.I. 1984/385\)](#), regs. 1, **2(b)**

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- F31** Words in reg. 7(2) inserted (6.4.1996) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, 2**(3)(a)**
- F32** Words in reg. 7(2) inserted (6.4.1996) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, 2**(3)(b)**

### **Manner in which statutory sick pay may not be paid**

**8.** Statutory sick pay may not be paid in kind or by way of the provision of board or lodging or of services or other facilities.

### **Time limits for paying statutory sick pay**

**9.—(1)** In this regulation, “pay day” means a day on which it has been agreed, or it is the normal practice, between an employer and an employee of his, that payments by way of remuneration are to be made, or, where there is no such agreement or normal practice, the last day of a calendar month.

(2) In any case where—

- (a) a decision has been made by an [<sup>F33</sup>adjudication officer], [<sup>F33</sup>social security appeal tribunal] or Commissioner in proceedings under Part I that an employee is entitled to an amount of statutory sick pay; and
- (b) the time for bringing an appeal against the decision has expired and either—
- (i) no such appeal has been brought; or
- (ii) such an appeal has been brought and has been finally disposed of,

that amount of statutory sick pay is to be paid within the time specified in paragraph (3).

(3) Subject to paragraphs (4) and (5), the employer is required to pay the amount not later than the first pay day after—

- (a) where an appeal has been brought, the day on which the employer receives notification that it has been finally disposed of;
- (b) where leave to appeal has been refused and there remains no further opportunity to apply for leave, the day on which the employer receives notification of the refusal; and
- (c) in any other case, the day on which the time for bringing an appeal expires.

(4) Subject to paragraph (5), where it is impracticable, in view of the employer's methods of accounting for an paying remuneration, for the requirement of payment referred to in paragraph (3) to be met by the pay day referred to in that paragraph, it shall be met not later than the next following pay day.

(5) Where the employer would not have remunerated the employee for his work on the day of incapacity for work in question (if it had not been a day of incapacity for work) as early as the pay day specified in paragraph (3) or (if it applies) paragraph (4), the requirement of payment shall be met on the first day on which the employee would have been remunerated for his work on that day.

- F33** Words in reg. 9(2) substituted (23.4.1984) by Health And Social Services And Social Security Adjudications Act 1983 (c. 41), ss. 25, 32(2), **Sch. 8 para. 1(3)(a)** (1984/216, art. 2 Sch. 2)

### **[<sup>F34</sup>Liability of the Secretary of State for payments of statutory sick pay**

**9A.—(1)** Notwithstanding the provisions of section 1 of the Act 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 that payment has not been made by the employer, be that of the Secretary of State 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) above “adjudicating authority” means, as the case may be, the Chief or other adjudication officer, <sup>F35</sup>the First-tier Tribunal or the Upper Tribunal.]

(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.]

**F34** Regs. 9A-9C inserted (6.4.1987) by [The Statutory Sick Pay \(General\) Amendment Regulations 1987 \(S.I. 1987/372\)](#), **reg. 2**

**F35** Words in [reg. 9A\(3\)](#) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 18**

### <sup>F34</sup>Insolvency of employer

**9B.**—(1) Notwithstanding the provisions of section 1 of the Act and subject to paragraph (3), any liability arising under Part I of the Act 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 Secretary of State 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) in England and Wales—
  - (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
  - (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986; or
  - (iii) where an employer is a company, a winding-up order <sup>F36</sup>... is made or a resolution for voluntary winding-up is passed with respect to it [<sup>F37</sup>or it enters administration], 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, or any property of the company comprised in or subject to the charge or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part;
- (b) in Scotland—
  - (i) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;

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- (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors; or
  - (iii) where the employer is a company, a winding-up order<sup>F38</sup> ... is made or a resolution for voluntary winding-up is passed with respect to it [<sup>F39</sup>or it enters administration] or a receiver of its undertaking is duly appointed or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.
- (3) This regulation shall not apply where the employer became insolvent before 6th April 1987.]

- F34** Regs. 9A-9C inserted (6.4.1987) by [The Statutory Sick Pay \(General\) Amendment Regulations 1987 \(S.I. 1987/372\)](#), [reg. 2](#)
- F36** Words in reg. 9B(2)(a)(iii) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 1\(1\)](#), [Sch. para. 42\(a\)\(i\)](#) (with [art. 6](#))
- F37** Words in reg. 9B(2)(a)(iii) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 1\(1\)](#), [Sch. para. 42\(a\)\(ii\)](#) (with [art. 6](#))
- F38** Words in reg. 9B(2)(b)(iii) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 1\(1\)](#), [Sch. para. 42\(b\)\(i\)](#) (with [art. 6](#))
- F39** Words in reg. 9B(2)(b)(iii) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 1\(1\)](#), [Sch. para. 42\(b\)\(ii\)](#) (with [art. 6](#))

### <sup>F34</sup>Payments by the Secretary of State

**9C.** Where the Secretary of State 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 he becomes so liable, and payments thereafter shall be made at weekly intervals, by means of an instrument of payment<sup>F40</sup>, instrument for benefit payment] or by such other means as appears to the Secretary of State to be appropriate in the circumstances of the particular case.]

- F34** Regs. 9A-9C inserted (6.4.1987) by [The Statutory Sick Pay \(General\) Amendment Regulations 1987 \(S.I. 1987/372\)](#), [reg. 2](#)
- F40** Words in reg. 9C inserted (4.4.1996) by [The Social Security \(Claims and Payments Etc.\) Amendment Regulations 1996 \(S.I. 1996/672\)](#), [regs. 1, 3](#)

### Persons unable to act

- 10.—(1)** Where in the case of any employee—
- (a) statutory sick pay is payable to him or he is alleged to be entitled to it;
  - (b) he is unable for the time being to act; and
  - (c) either—
    - (i) no receiver has been appointed by the Court of Protection with power to receive statutory sick pay on his behalf, or
    - (ii) in Scotland, his estate is not being administered by any tutor, curator or other guardian acting or appointed in terms of law,

the Secretary of State may, upon written application to him by a person who, if a natural person, is over the age of 18, appoint that person to exercise, on behalf of the employee, any right to which he may be entitled under Part I and to deal on his behalf with any sums payable to him.

- (2) Where the Secretary of State has made an appointment under paragraph (1)—

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- (a) he may at any time in his absolute discretion revoke it;
- (b) the person appointed may resign his office after having given one month's notice in writing to the Secretary of State of his intention to do so; and
- (c) the appointment shall terminate when the Secretary of State is notified that a receiver or other person to whom paragraph (1)(c) applies has been appointed.

(3) Anything required by Part I to be done by or to any employee who is unable to act may be done by or to the person appointed under this regulation to act on his behalf, and the receipt of the person so appointed shall be a good discharge to the employee's employer for any sum paid.

**Rounding to avoid fractional amounts**

11. Where any payment of statutory sick pay is made and the statutory sick pay due for the period for which the payment purports to be made includes a fraction of a penny, the payment shall be rounded up to the next whole number of pence.

**Days not to be treated as, or as parts of, periods of interruption of employment**

12. In a case to which paragraph 3 of Schedule 2 applies, the day of incapacity for work mentioned in sub-paragraph (1)(b) of that paragraph shall not be, or form part of, a period of interruption of employment where it is a day which, by virtue of section 17(1) or (2) of the Social Security Act 1975 or any regulations made thereunder, is not to be treated as a day of incapacity for work.

**Records to be maintained by employers**

13.—<sup>F41</sup>(1) Every employer shall maintain for 3 years after the end of each tax year a record, in relation to each employee of his, of—

- (a) any day in that tax year which was one of 4 or more consecutive days on which, according to information supplied by or on behalf of the employee, the employee was incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do under any contract of service between him and the employer, whether or not he would normally have been expected to work on that day;
  - <sup>F42</sup>and
- (b) any payment of statutory sick pay made in respect of any day recorded under sub-paragraph (a).
- (c) the reason why he did not; and
- (d) the days which were qualifying days as between that employer and that employee in each period of entitlement which fell wholly or partly in that tax year.]

<sup>F43</sup>(1A) For the purposes of paragraph (1)(b) only, the employer is not to be regarded as having made a payment of statutory sick pay where, in respect of any day recorded under paragraph (1) (a), the employee is entitled to receive, and does in fact receive, a payment or payments by way of contractual remuneration from his employer which, in aggregate, equal or exceed the amount of statutory sick pay payable in respect of that day.]

<sup>F44</sup>(2) .....

<sup>F44</sup> .....

<sup>F44</sup> .....

<sup>F44</sup> .....

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- F41** Reg. 13(1): reg. 13 renumbered as reg. 13(1) (6.4.1986) by [The Statutory Sick Pay \(General\) Amendment Regulations 1986 \(S.I. 1986/477\)](#), regs. 1(1), **5**
- F42** Reg. 13(1)(b)(d) substituted for (6.4.1996) by [The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/777\)](#), regs. 1, **2(4)(a)**
- F43** Reg. 13(1A) inserted (6.4.1997) by [The Statutory Sick Pay \(General\) Amendment Regulations 1996 \(S.I. 1996/3042\)](#), regs. 1, **2**
- F44** Reg. 13(2)-(5) omitted (6.4.1996) by virtue of [The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/777\)](#), regs. 1, **2(4)(b)**

### **[<sup>F45</sup>Production of employer's records**

**13A.—(1)** An authorised officer of the Commissioners of Inland Revenue may by notice require an employer to produce to him at the place of keeping such records as are in the employer's possession or power and as (in the officer's reasonable opinion) contain, or may contain, information relevant to satisfy him that statutory sick pay has been paid and is being paid in accordance with these regulations to employees or former employees who are entitled to it.

(2) A notice referred to in paragraph (1) shall be in writing and the employer shall produce the records referred to in that paragraph within 30 days after the date of such a notice.

(3) The production of records in pursuance of this regulation shall be without prejudice to any lien which a third party may have in respect of those records.

(4) References in this regulation to "records" means—

- (a) any wage sheet or deductions working sheet; or
- (b) any other document which relates to the calculation or payment of statutory sick pay to his employees or former employees,

whether kept in written form, electronically, or otherwise.

(5) In paragraph (1), "place of keeping" means such place in Great Britain that an employer and an authorised officer may agree upon, or, in the absence of such agreement—

- (a) any place in Great Britain where records referred to in paragraph (1) are normally kept; or
- (b) if there is no such place, the employer's principal place of business in Great Britain.]

- F45** [Reg. 13A](#) inserted (6.4.2005) by [The Statutory Maternity Pay \(General\) and Statutory Sick Pay \(General\) \(Amendment\) Regulations 2005 \(S.I. 2005/989\)](#), art. 1(2), **reg. 3(2)**

### **Provision of information in connection with determination of questions**

**14.** Any person claiming to be entitled to statutory sick pay, or any other person who is a party to proceedings arising under Part I, shall, if he receives notification from the Secretary of State that any information is required from him for the determination of any question arising in connection therewith, furnish that information to the Secretary of State within 10 days of receiving that notification.

### **Provision of information by employers to employees**

**15.—(1)** [<sup>F46</sup>Subject to paragraph (1A),] in a case which falls within paragraph (a), (b) or (c) of section 18(3) (provision of information by employers in connection with the making of claims for [<sup>F47</sup>short-term incapacity] and other benefits), the employer shall furnish to his employee, in writing

on a form approved by the Secretary of State for the purpose [<sup>F48</sup>or in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose], the information specified in paragraph (2), (3) or (4) below respectively within the time specified in the appropriate one of those paragraphs.

[<sup>F49</sup>(1A) For the purposes of paragraph (1), where, in the particular circumstances of a case, it is not practicable for the employer to furnish the information within the specified time mentioned in paragraph (2), (3), (4)(b)(ii) or (5), he shall, not later than the first pay day within the meaning of regulation 9(1) immediately following the relevant specified time, furnish the information to his employee.]

(2) In a case which falls within paragraph (a) (no period of entitlement arising in relation to a period of incapacity for work) of section 18(3)—

- (a) the information mentioned in paragraph (1) is a statement of all the reasons why, under the provisions of paragraph 1 of Schedule 1 and regulations made thereunder, a period of entitlement does not arise; and
- (b) it shall be furnished not more than 7 days after the day on which the employer is notified by or on behalf of the employee of the employee's incapacity for work on the fourth day of the period of incapacity for work

(3) In a case which falls within paragraph (b) (period of entitlement ending but period of incapacity for work continuing) of section 18(3)—

- [<sup>F50</sup>(a) [<sup>F51</sup>the information mentioned in paragraph (1) above is a statement informing the employee of—
  - (i) the reason why the period of entitlement ended;
  - (ii) the date of the last day in respect of which the employer is or was liable to make a payment of statutory sick pay to him.]
- (b) the statement shall be furnished not more than 7 days after the day on which the period of entitlement ended, or if earlier, on the day on which it is already required to be furnished under paragraph (4).

(4) In a case which falls within paragraph (c) (period of entitlement expected to end before period of incapacity for work ends, on certain assumptions) of section 18(3)—

- [<sup>F52</sup>(a) the information mentioned in paragraph (1) above is a statement informing the employee of—
  - (i) the reason why the period of entitlement is expected to end;
  - (ii) the date of the last day in respect of which the employer is or was expected to be liable to make a payment of statutory sick pay to him.]
- [<sup>F53</sup>(b) the statement shall be furnished—
  - (i) in a case where the period of entitlement is expected to end in accordance with section 3(2)(b) of the Act (maximum entitled to statutory sick pay), on or before the 42nd day before the period of entitlement is expected to end, or
  - (ii) in any other case, on or before the seventh day before the period of entitlement is expected to end,]

<sup>F54</sup>  
...

(5) For the purposes of section 18(3)(c)(i) (period for which the period of incapacity for work is to be assumed to continue to run) the prescribed period shall be 14 days.]

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- F46** Words in reg. 15(1) inserted (6.4.1996) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, **2(5)(a)(i)**
- F47** Words in reg. 15(1) substituted (13.4.1995) by The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995 (S.I. 1995/829), regs. 1(1), **15** (with Pt. III)
- F48** Words in reg. 15(1) inserted (6.4.1996) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, **2(5)(a)(ii)**
- F49** Reg. 15(1A) inserted (6.4.1996) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, **2(5)(b)**
- F50** Reg. 15(3)(a)(b) substituted (6.4.1986) by The Statutory Sick Pay (General) Amendment Regulations 1986 (S.I. 1986/477), regs. 1(1), **6(2)**
- F51** Reg. 15(3)(a) substituted (27.10.2008) by The Statutory Sick Pay (General) (Amendment) Regulations 2008 (S.I. 2008/1735), regs. 1, **2(2)(a)**
- F52** Reg. 15(4)(a) substituted (27.10.2008) by The Statutory Sick Pay (General) (Amendment) Regulations 2008 (S.I. 2008/1735), regs. 1, **2(2)(b)**
- F53** Reg. 15(4)(a)(b) substituted (6.4.1986) by The Statutory Sick Pay (General) Amendment Regulations 1986 (S.I. 1986/477), regs. 1(1), **6(3)**
- F54** Words in reg. 15(4)(b) omitted (6.4.1996) by virtue of The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/777), regs. 1, **2(5)(c)**

**“Statements relating to the payment of Statutory Sick Pay**

<sup>F55</sup>**15A.** . . . . .

- F55** Reg. 15A revoked (27.10.2008) by The Statutory Sick Pay (General) (Amendment) Regulations 2008 (S.I. 2008/1735), regs. 1, **3**

**Meaning of “employee”**

**16.**—(1) [<sup>F56</sup>Subject to paragraph (1ZA),] in a case where, and in so far as, a person <sup>F57</sup>... is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978**(1)**, he shall be treated as an employee for the purposes of Part I and in a case where, and in so far as, such a person is treated otherwise than as an employed earner by virtue of those regulations, he shall not be treated as an employee for the purposes of Part I.

[<sup>F58</sup>(1ZA) Paragraph (1) shall have effect in relation to a person who—

- (a) is under the age of 16; and
- (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been over that age,

as it has effect in relation to a person who is or, as the case may be, is not so treated.]

[<sup>F59</sup>(1A) Any person who is employed earner's employment within the meaning of the Social Security Act 1975 under a contract of apprenticeship shall be treated as an employee for the purposes of Part 1.]

(1) amended by S.I. 1980/1713.

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(2) A person who is in employed earner's employment within the meaning of the Social Security Act 1975 but whose employer—

- (a) does not fulfil the conditions prescribed in regulation 119(1)(b) of the Social Security (Contributions) Regulations 1979(2) as to residence or presence in Great Britain, or
- (b) is a person who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding the United Kingdom—
  - (i) is exempt from the provisions of the Social Security Act 1975, or
  - (ii) is a person against whom the provisions of that Act are not enforceable,

shall not be treated as an employee for the purposes of Part I.

<b>F56</b>	Words in reg. 16(1) inserted (1.10.2006) by <a href="#">The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031)</a> , reg. 1(1), <b>Sch. 8 para. 50(2)(a)</b>
<b>F57</b>	Words in reg. 16(1) omitted (1.10.2006) by virtue of <a href="#">The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031)</a> , reg. 1(1), <b>Sch. 8 para. 50(2)(b)</b>
<b>F58</b>	Reg. 16(1ZA) substituted (6.4.2007) by <a href="#">The Employment Equality (Age) (Consequential Amendments) Regulations 2007 (S.I. 2007/825)</a> , regs. 1, <b>5(3)</b>
<b>F59</b>	Reg. 16(1A) inserted (6.4.1983) by <a href="#">The Statutory Sick Pay (Compensation of Employers) and Miscellaneous Provisions Regulations 1983 (S.I. 1983/376)</a> , <b>reg. 5(2)</b>

**Meaning of “earnings”**

17.—<sup>F60</sup>(1) .....

[<sup>F61</sup>(2) For the purposes of section 163(2) of the Contributions and Benefits Act, the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a person’s employment except any payment or amount which is—

- (a) excluded [<sup>F62</sup>or disregarded in the calculation of a person’s earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001][<sup>F63</sup>(or would have been so excluded had he not been under the age of 16)];
- (b) a chargeable emolument under section 10A of the Social Security Contributions and Benefits Act 1992, except where, in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory sick pay [<sup>F63</sup>(or where such a payment or amount would have been so excluded and in consequence he would not have been entitled to statutory sick pay had he not been under the age of 16)].]

<sup>F64</sup>(2A) .....

(3) For the purposes of [<sup>F65</sup>section 163(2) of the Contributions and Benefits Act] the expression “earnings” includes also—

[<sup>F66</sup>(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;]

- (a) any sum payable by way of maternity pay or payable by the Secretary of State in pursuance of section 40 of the Employment Protection (Consolidation) Act 1978 in respect of maternity pay;
- (b) any sum which is payable by the Secretary of State by virtue of section 22(3)(a) of that Act in respect of arrears of pay and which by virtue of section 42(1) of that Act is to go towards discharging a liability to pay maternity pay;

(2) to which there are amendments not relevant to these regulations.

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- (c) any sum payable in respect of arrears of pay in pursuance of an order for re-instatement or re-engagement under that Act;
- (d) any sum payable by way of pay in pursuance of an order under that Act for the continuation of a contract of employment;
- (e) any sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975;
- (f) any sum payable to any employee under the Temporary Short-time Working Compensation Scheme administered under powers conferred by the Employment Subsidies Act 1978;
- (g) any sum paid in satisfaction of any entitlement to statutory sick pay.
- [<sup>F67</sup>(h) any sum payable by way of statutory maternity pay under Part V of the Social Security Act 1986, including sums payable in accordance with regulations made under section 46(8)(b) of that Act.]
- [<sup>F68</sup>(i) any sum payable by way of statutory paternity pay, including any sums payable in accordance with regulations made under section 171ZD(3) of the Contributions and Benefits Act;
- (j) any sum payable by way of statutory adoption pay, including any sums payable in accordance with regulations made under section 171ZM(3) of the Contributions and Benefits Act.]
- <sup>F69</sup>(4) .....
- <sup>F70</sup>(5) .....

<b>F60</b>	Reg. 17(1) omitted (16.11.1992) by virtue of The Social Security (Miscellaneous Provisions) Amendment (No. 2) Regulations 1992 (S.I. 1992/2595), regs. 1, <b>15(2)</b>
<b>F61</b>	Reg. 17(2) substituted (6.4.1999) by The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/567), regs. 1(1)(b), <b>13</b>
<b>F62</b>	Words in reg. 17(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2007 (S.I. 2007/1154), regs. 1(1), <b>5(2)</b>
<b>F63</b>	Words in reg. 17(2)(a)(b) inserted (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 1(1), <b>Sch. 8 para. 51(2)</b>
<b>F64</b>	Reg. 17(2A) omitted (16.11.1992) by virtue of The Social Security (Miscellaneous Provisions) Amendment (No. 2) Regulations 1992 (S.I. 1992/2595), regs. 1, <b>15(4)</b>
<b>F65</b>	Words in reg. 17(3) substituted (24.11.2002) by The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(a), <b>14(a)</b>
<b>F66</b>	Reg. 17(3)(za) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2007 (S.I. 2007/1154), regs. 1(1), <b>5(3)</b>
<b>F67</b>	Reg. 17(3)(h) added (7.6.1987) by The Statutory Sick Pay (General) Amendment (No.2) Regulations 1987 (S.I. 1987/868), regs. 1(1), <b>4(b)</b>
<b>F68</b>	Reg. 17(3)(i)(j) added (8.12.2002) by The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690), regs. 1(1)(c), <b>14(b)</b>
<b>F69</b>	Reg. 17(4) omitted (16.11.1992) by virtue of The Social Security (Miscellaneous Provisions) Amendment (No. 2) Regulations 1992 (S.I. 1992/2595), regs. 1, <b>15(4)</b>
<b>F70</b>	Reg. 17(5) omitted (16.11.1992) by virtue of The Social Security (Miscellaneous Provisions) Amendment (No. 2) Regulations 1992 (S.I. 1992/2595), regs. 1, <b>15(4)</b>

## Payments to be treated or not to be treated as contractual remuneration

18. For the purposes of paragraph 2(1) and (2) of Schedule 2 to the Act, those things which are included within the expression “earnings” by regulation 17 (except paragraph (3)(g) thereof) shall be, and those things which are excluded from that expression by that regulation shall not be, treated as contractual remuneration.

## Normal weekly earnings

19.—(1) For the purposes of section 26(2) and (4), and employee's normal weekly earnings shall be determined in accordance with the provisions of this regulation.

(2) In this regulation—

“the critical date” means the first day of the period of entitlement in relation to which a person's normal weekly earnings fall to be determined, or, in a case to which paragraph 2(c) of Schedule 1 applies, the relevant date within the meaning of Schedule 1;

“normal pay day” means a day on which the terms of an employee's contract of service require him to be paid, or the practice in his employment is for him to be paid, if any payment is due to him; and

“day of payment” means a day on which the employee was paid.

(3) Subject to paragraph (4), the relevant period (referred to in section 26(2)) is the period between—

(a) the last normal pay day to fall before the critical date; and

(b) the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a),

including the normal pay day mentioned in sub-paragraph (a) but excluding that first mentioned in sub-paragraph (b).

(4) In a case where an employee has no identifiable normal pay day, paragraph (3) shall have effect as if the words “day of payment” were substituted for the words “normal pay day” in each place where they occur.

(5) In a case where an employee has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) his normal weekly earnings shall be calculated by dividing his earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52.

(6) In a case to which paragraph (5) does not apply and the relevant period is not an exact number of weeks, the employee's normal weekly earnings shall be calculated by dividing his earnings in the relevant period by the number of days in the relevant period and multiplying the result by 7.

(7) In a case where the normal pay day mentioned in sub-paragraph (a) of paragraph (3) exists but that first mentioned in sub-paragraph (b) of that paragraph does not yet exist, the employee's normal weekly earnings shall be calculated as if the period for which all the earnings under his contract of service received by him before the critical date represented payment were the relevant period.

(8) In a case where neither of the normal pay days mentioned in paragraph (3) yet exists, the employee's normal weekly earnings shall be the remuneration to which he is entitled, in accordance with the terms of his contract of service, for, as the case may be—

(a) a week's work; or

(b) a number of calendar months' work, divided by that number of months, multiplied by 12 and divided by 52.

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## Treatment of one or more employers as one

**20.**—(1) In a case where the earnings paid to an employee in respect of 2 or more employments are aggregated and treated as a single payment of earnings under regulation 12(1) of the Social Security (Contributions) Regulations 1979(3), the employers of the employee in respect of those employments shall be treated as one for all purposes of Part I.

(2) Where 2 or more employers are treated as one under the provisions of paragraph (1), liability for the statutory sick pay payable by them to the employee shall be apportioned between them in such proportions as they may agree or, in default of agreement, in the proportions which the employee's earnings from each employment bear to the amount of the aggregated earnings.

(3) <sup>[F71]</sup>Subject to paragraphs (4) and (5)] where a contract of service (“the current contract”) was preceded by a contract of service entered into between the same employer and employee (“the previous contract”), and the interval between the date on which the previous contract ceased to have effect and that on which the current contract came into force was not more than 8 weeks, then for the purposes of establishing the employee's maximum entitlement within the meaning of section 5 (limitation on entitlement to statutory sick pay in any one period of entitlement or tax year), the provisions of Part I shall not have effect as if the employer were a different employer in relation to each of those contracts of service.

(4) <sup>[F72]</sup>Where a contract of service (“the current contract”), was preceded by two or more contracts of service entered into between the same employer and employee (“the previous contracts”) and the previous contracts-

- (a) existed concurrently for at least part of their length, and
- (b) the intervals between the dates on which each of the previous contracts ceased to have effect and that on which the current contract came into force was not more than 8 weeks,

then for the purposes of establishing the employee's maximum entitlement within the meaning of section 5 the provisions of Part 1 shall not have effect as if the employer were a different employer in relation to the current contract and whichever of the previous contracts was the contract by virtue of which the employer had become liable to pay the greatest proportion of statutory sick pay in respect of any tax year or period of entitlement.]

(5) <sup>[F73]</sup>If, in any case to which paragraph (4) applies, the same proportion of the employer's liability for statutory sick pay becomes due under each of the previous contracts, then for the purpose of establishing the employee's maximum entitlement within the meaning of section 5, the provisions of Part 1 shall have effect in relation to only one of the previous contracts.]

**F71** Words in reg. 20(3) inserted (6.4.1983) by [The Statutory Sick Pay \(Compensation of Employers\) and Miscellaneous Provisions Regulations 1983 \(S.I. 1983/376\)](#), regs. 1, **5(4)(a)**

**F72** Reg. 20(4) inserted (6.4.1983) by [The Statutory Sick Pay \(Compensation of Employers\) and Miscellaneous Provisions Regulations 1983 \(S.I. 1983/376\)](#), regs. 1, **5(4)(b)**

**F73** Reg. 20(5) inserted (6.4.1983) by [The Statutory Sick Pay \(Compensation of Employers\) and Miscellaneous Provisions Regulations 1983 \(S.I. 1983/376\)](#), regs. 1, **5(4)(b)**

## Treatment of more than one contract of service as one

**21.** Where 2 or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for all purposes of Part I except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations 1979, the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

(3) to which there are amendments not relevant to these regulations.

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[<sup>F74</sup>**Election to be treated as different employers not to apply to recovery of statutory sick pay**

**21A.**—(1) Paragraph (2) below applies for the purposes of section 159A of the Contributions and Benefits Act (power to provide for recovery by employers of sums paid by way of statutory sick pay) and of any order made under that section.

(2) Where an employer has made 2 or more elections under regulation 3 of the Income Tax (Employments) Regulations 1993 to be treated as a different employer in respect of each of the groups of employees specified in the election, the different employers covered by each of those elections shall be treated as one employer.]

**F74** Reg. 21A inserted (6.4.1995) by [The Statutory Sick Pay Percentage Threshold Order 1995 \(Consequential\) Regulations 1995 \(S.I. 1995/513\)](#), regs. 1, **3** (with reg. 2)

**Penalties**

<sup>F75</sup>**22.** .....

**F75** Reg. 22 revoked (coming into force in accordance with of the amending S.I.) by [The Statutory Maternity Pay \(General\) and Statutory Sick Pay \(General\) \(Amendment\) Regulations 2005 \(S.I. 2005/989\)](#), regs. 1(2), **3(3)**

*Norman Fowler*  
Secretary of State for Social Services

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## EXPLANATORY NOTE

These Regulations make miscellaneous provisions about statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982.

Regulation 2 sets out circumstances in which a person who is not incapable of work which he can reasonably be expected to do under a contract of service may be deemed to be so incapable.

Regulation 3 provides that an existing period of entitlement shall end with a day on which an employee is detained in legal custody or awarded a sentence (other than a suspended sentence) of imprisonment, and that no period of entitlement shall arise on a day on which an employee is in legal custody.

Regulation 4 provides that where an employee's contract of service is brought to an end solely or mainly to avoid liability for statutory sick pay, the employer is to be liable to pay statutory sick pay until the period of entitlement would have ended for some other reason, as provided by section 3 of the Act or by regulation 3.

Regulation 5 makes provision for the days of the week which are to be "qualifying days" for the purposes of section 4 in a case where the qualifying days have not been agreed between an employer and employee.

Regulation 6 sets out the method of calculating the "entitlement limit" for the purposes of section 5 in a case where an employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same tax year or period of entitlement.

Regulation 7 prescribes 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.

Regulation 8 provides that statutory sick pay may not be paid in kind or by way of the provision of board or lodging or of services or other facilities.

Regulation 9 provides that, in general, where the liability to pay an amount of statutory sick pay has been the subject of adjudication, it must be paid on the first pay day (or, where that is impracticable, the second) after the day when the time for bringing an appeal expires, or (as the case may be) the day on which the employer is notified of the result of an appeal, or is notified (where there is no further opportunity to apply for leave) that leave to appeal is refused.

Regulation 10 enables the Secretary of State in certain circumstances to appoint a person to act, in connection with statutory sick pay, on behalf of an employee who is unable to act for himself, and also provides for the termination of such an appointment.

Regulation 11 provides for the rounding up, to the next whole number of pence, of any payment of statutory sick pay, where the amount of statutory sick pay for the relevant period includes a fraction of a penny.

Regulation 12 provides for a case where a day is not to be, or to form part of, a period of interruption of employment under paragraph 3 of Schedule 2 to the Act.

Regulation 13 specifies the matters of which employers are required to keep records, and provides that they must be kept for 3 years after the tax year to which they relate.

Regulation 14 provides that the period within which information required for purposes of adjudication must be given to the Secretary of State is 10 days from receipt of notification that the information is required.

Regulation 15 makes provision about the information that is to be provided by employers to employees, and the time within which it is to be provided.

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Regulations 16, 17 and 18 make provision about persons who are, or are not, to be treated as “employees”, and remuneration that is, or is not, to be treated as “earnings” and “contractual remuneration”, for the purposes of Part I of the Act.

Regulation 19 provides how “normal weekly earnings” are to be calculated.

Regulations 20 and 21 specify the cases in which 2 or more employers or contracts of service are to be treated as one.

Regulation 22 sets out the penalties for contraventions of regulations 9, 13, 14 and 15.

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