

1991 No. 589

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Sick Pay (National Health Service
Employees) Regulations 1991

<i>Made</i> - - - -	<i>11th March 1991</i>
<i>Laid before Parliament</i>	<i>11th March 1991</i>
<i>Coming into force</i>	<i>1st April 1991</i>

The Secretary of State for Social Security in exercise of the powers conferred by sections 26(1) and (5A), 45(1) and 47 of the Social Security and Housing Benefits Act 1982(a) and of all other powers enabling him in that behalf, by this instrument, which contains only regulations consequential upon paragraph 16 of Schedule 6 to the Social Security Act 1990(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Statutory Sick Pay (National Health Service Employees) Regulations 1991 and shall come into force on 1st April 1991.

(2) In these Regulations, a “health authority” ▶¹ shall in relation to Wales have the same meaning it has in section 8◀ of the National Health Service Act 1977(c), and in relation to Scotland means the health board within the meaning of section 2 of the National Health Service (Scotland) Act 1978(d).

(3) ▶²◀

▶³(5) In these Regulations, a reference to “NHS trust” shall be construed to include a reference to an NHS foundation trust within the meaning of section 1(1) of the Health and Social Care (Community Health and Standards) Act 2003 where the application for authorisation to become an NHS foundation trust was made by an NHS trust.◀

¹Words substituted in reg. 1(2) by para. 50(a) of Sch. 1 to S.I. 2002/2469 as from 1.10.02.

²Reg. 1(3) & (4) and words in reg. 2 omitted by para. 15(2) & (3) of Sch. 2 to S.I. 2013/235 as from 1.4.13.

³Reg. 1(5) inserted by Sch. 17 of S.I. 2004/696 as from 1.4.04.

Treatment of more than one contract of employment as one contract

2. Where, in consequence of the establishment of one or more National Health Service Trusts under Part I of the National Health Service and Community Care Act 1990(e) or the National Health Service (Scotland) Act 1978, a person’s contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, ▶²◀ he may elect for all those contracts to be treated as one contract for the purposes of Part I of the Social Security and Housing Benefits Act 1982.

(a) 1982 c. 24; section 26(5A) was inserted by paragraph 16, Schedule 6 to the Social Security Act 1990 (c. 27); section 26(1) is cited because of the meaning it ascribes to the word “prescribed” and section 47 is cited because of the meaning it ascribes to the word “regulations”.

(b) 1990 (c. 27).

(c) 1997 (c. 49).

(d) 1978 (c. 29).

(e) 1990 (c. 19).

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Notification of election

3. A person who makes an election under regulation 2 above shall give written notification of that election to each of his employers under the two or more contracts of service mentioned in that regulation, before the end of the fourth day of incapacity for work in the period of incapacity for work in relation to a contract of service with the employer with whom this day first occurs.

Provision of information by employees

4. A person who makes an election under regulation 2 above shall, as soon as is reasonably practicable after giving notice of that election, provide each of his employers under the two or more contracts of service mentioned in that regulation with the following information—

- (a) the name and address of each of his employers; and
- (b) the date his employment with each of those employers commenced; and
- (c) details of his earnings during the relevant period and for this purpose “earnings” and “relevant period” have the same meanings as they have for the purposes of section 26(2) of the Social Security and Housing Benefits Act 1982(a).

Treatment of two or more employers as one

5. The employer to be regarded for the purposes of statutory sick pay as the employee’s employer under the one contract where 2 or more contracts of service are treated as one in accordance with regulation 2 above, shall be—

¹Para. (a) & (b) substituted by art. 3 & Part II of the Sch. to S.I. 2000/694 as from 1.4.00.

- ▶¹(a) in the case of a person whose contract of employment is treated by a scheme under Part I of the National Health Service and Community Care Act 1990(b) or the National Health Service (Scotland) Act 1978(c) as divided—
 - (i) the Health Authority or Primary Care Trust from which the employee was transferred in a case where any one of the employee’s contracts of service is with that Health Authority or Primary Care Trust; or
 - (ii) the first NHS trust to which a contract of service was transferred in a case where none of the employee’s contracts of service are with the Health Authority or Primary Care Trust from which he was transferred; or
- (b) in the case of a person whose contract of employment is divided as provided by an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977—
 - (i) the Health Authority, NHS trust or Primary Care Trust from which the employee was transferred, in a case where any one of the employee’s contracts of service is with that body; or
 - (ii) the first Primary Care Trust to which a contract of service was transferred in a case where none of the employee’s contracts of service are with the body from which he was transferred.◀

Time for which an election is to have effect

6. An election made under regulation 2 shall lapse at the end of the period of incapacity for work in relation to the contract of service with the employer mentioned in regulation 5.

Signed by authority of the Secretary of State for Social Security.

11th March 1991

Henley
Parliamentary Under-Secretary of State,
Department of Social Security

(a) See section 26(3) of the Social Security and Housing Benefits Act 1982 (c. 24) and regulations 17 and 19 of the Statutory Sick Pay (General) Regulations 1982/894; the relevant amending instruments are 1983/376 and 1987/868.

(b) See sections 6 and 7 of the 1990 Act, as amended by paragraphs 77 and 78 of Schedule 4 to the 1999 Act.

(c) See sections 12B and 12C of the Act, as inserted by section 31 of the 1990 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations contained in this instrument are consequential upon the coming into force on 1st April 1991 of paragraph 16 of Schedule 6 to the Social Security Act 1990 (c. 27) (which relates to statutory sick pay for National Health Service staff with divided contracts). The instrument is made before the end of the period of 6 months beginning with the coming into force of that provision; the regulations in it are therefore exempted by section 61(5) of the Social Security Act 1986 (c. 50) (as amended by the Social Security Act 1989 (c. 24) Schedule 8, paragraph 12(3)) from the requirement under section 10 of the Social Security Act 1980 (c. 30) to refer the proposals to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 2 provides for employees whose contract of service has been divided into two or more such contracts with different bodies as a consequence of the National Health Service and Community Care Act 1990 or, the National Health Service (Scotland) Act 1978 to elect to have those contracts treated as one contract for the purposes of entitlement to statutory sick pay.

Regulation 3 provides for the manner and time in which an election is to be made.

Regulation 4 makes provision for the information that is to be provided by employees to employers.

Regulation 5 provides for one of a person's employers under the two or more contracts to be regarded for the purposes of statutory sick pay as his employer under the one contract.

Regulation 6 provides for the time for which an election is to have effect.

