

## SCHEDULES

### SCHEDULE 2

#### RELATIONSHIP WITH BENEFITS AND OTHER PAYMENTS, ETC

##### *The general principle*

- 1 Any day which—
- (a) is a day of incapacity for work in relation to any contract of service; and
  - (b) falls within a period of entitlement (whether or not it is also a qualifying day); shall not be treated, for the purposes of the principal Act or the Social Security Pensions Act 1975, as a day of incapacity for work for the purposes of determining whether a period is a period of interruption of employment.

##### *Contractual remuneration*

- 2 (1) Subject to sub-paragraphs (2) and (3) below, any entitlement to statutory sick pay shall not affect any right of an employee in relation to remuneration under any contract of service ("contractual remuneration").
- (2) Subject to sub-paragraph (3) below—
- (a) any contractual remuneration paid to an employee by an employer of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay statutory sick pay to that employee in respect of that day; and
  - (b) any statutory sick pay paid by an employer to an employee of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay contractual remuneration to that employee in respect of that day.
- (3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of sub-paragraph (1) or (2) above.

##### *Sickness and unemployment benefit*

- 3 (1) This paragraph applies in any case where—
- (a) a period of entitlement as between an employee and an employer of his comes to an end; and
  - (b) the first day immediately following the day on which the period of entitlement came to an end—
    - (i) is a day of incapacity for work in relation to that employee; and
    - (ii) is not prevented by paragraph 1 above from being treated as a day of incapacity for work for the purposes of determining whether a period is a period of interruption of employment.

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- (2) In a case to which this paragraph applies, the day of incapacity for work mentioned in sub-paragraph (1)(b) above shall, except in prescribed cases, be or as the case may be form part of a period of interruption of employment notwithstanding section 17(1)(d)(ii) of the principal Act (which requires a period of interruption of employment to consist of four or more consecutive days of incapacity for work).
  - (3) Where each of the first two consecutive days, or the first three consecutive days, following the day on which the period of entitlement came to an end is a day falling within sub-paragraphs (i) and (ii) of sub-paragraph (1)(b) above, sub-paragraph (2) above shall have effect in relation to the second day or, as the case may be, the second and third days, as it has effect in relation to the first day.
  - (4) Any day which is, by virtue of section 17(1)(e) of the principal Act, to be disregarded in computing any period of consecutive days for the purposes of that Act shall be disregarded in determining, for the purposes of this paragraph, whether a day is the first day following the end of a period of entitlement or, as the case may be, the second or third consecutive such day.
- 4 (1) This paragraph applies in any case where—
- (a) a period of entitlement as between an employee and an employer of his comes to an end ; and
  - (b) that employee has a day of incapacity for work which—
    - (i) is, or forms part of, a period of interruption of employment; and
    - (ii) falls within the period of 57 days immediately following the day on which the period of entitlement came to an end.
- (2) In a case to which this paragraph applies, section 14(3) of the principal Act (which provides for no entitlement to unemployment or sickness benefit for the first three days of any period of interruption of employment) shall not apply in relation to a day of incapacity for work of a kind mentioned in sub-paragraph (1)(b) above or to any later day in the period of interruption of employment concerned.

#### *Invalidity pension*

- 5 (1) This paragraph applies in any case where—
- (a) a period of entitlement as between an employee and an employer of his (the " first period ") comes to an end ;
  - (b) the first period, or another period of entitlement as between the employee and an employer of his which came to an end while the first period was running, came to an end by virtue of section 3(2)(b) of this Act; and
  - (c) the employee has a day of incapacity for work which—
    - (i) is, or forms part of, a period of interruption of employment; and
    - (ii) falls within the period of 57 days immediately following the day on which the first period came to an end.
- (2) In a case to which this paragraph applies, sections 15(1) of the principal Act (entitlement to invalidity pension) and 15(2) and 16(2) of the Social Security Pensions Act 1975 (entitlement to invalidity pension for, respectively, widow and widower) shall have effect, in relation to the period of interruption of employment mentioned in sub-paragraph (1)(c)(i) above, as if for the references to 168 days there were substituted references to 120 days.

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*Unemployability supplement*

- 6 Paragraph 1 above does not apply in relation to section 59 of the principal Act (increases in unemployability supplement) and accordingly the references in that section to a period of interruption of employment shall be construed as if this Part had not been enacted.

*Supplementary benefit*

- 7 (1) This paragraph applies in any case where—
- (a) for any period an amount has been paid by way of supplementary benefit to or in respect of an employee ; and
  - (b) it appears to the Secretary of State that the whole, or some part, of that amount might not have been so paid if an employer who was liable to make to that employee one or more payments of statutory sick pay had made that payment or, as the case may be, those payments.
- (2) In this paragraph and in paragraphs 8 and 9 below " sickness payment" means—
- (a) any payment by way of statutory sick pay ; and
  - (b) any payment, of a prescribed kind, made to an employee in respect of his incapacity for work.
- (3) In any case to which this paragraph applies, the Secretary of State may serve on the employer concerned, in a prescribed form and manner, a notice—
- (a) informing him that an amount has been paid by way of supplementary benefit to or in respect of the employee and of the period for which the payment was made ;
  - (b) requiring him to inform the Secretary of State in writing, within such period as may be specified in the notice—
    - (i) whether or not he is, or has at any time been, liable to make any sickness payment to the employee in respect of any day specified in the notice ;
    - (ii) of the amount of any such liability in respect of statutory sick pay ;
    - (iii) of the amount of any such liability in respect of any other sickness payment; and
    - (iv) if any such liability has been discharged in whole or in part, of the extent to which it has been, and the date on which it was, discharged ; and
  - (c) requiring him to comply with sub-paragraph (4) below if he has been liable as mentioned in paragraph (b)(i) above, in respect of statutory sick pay, and at the time when he receives the notice—
    - (i) that liability ; or
    - (ii) if he has also been so liable in respect of any other sickness payment, his liability for that other sickness payment ;has not been wholly discharged.
- (4) Where an employer is required to comply with this sub-paragraph he shall—
- (a) calculate, in accordance with regulations, the net payment for the purposes of paragraph 8 below ;

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- (b) inform the Secretary of State, in writing and before the expiry of the period mentioned in sub-paragraph (3)(b) above, of the amount of the net payment, as calculated by him ; and
  - (c) withhold, until such time as it is determined whether or not the employer is to be required to make a payment to the Secretary of State under paragraph 8(2) below, so much of the sickness payment, or part, in question as is equal to the net payment.
- (5) In any case where an employer who is required by sub-paragraph (4) above to calculate the net payment to be made in his case—
- (a) fails to inform the Secretary of State as required by sub paragraph (4)(b) above ; or
  - (b) in the opinion of the Secretary of State, has in purporting to calculate that payment failed to do so in accordance with the relevant regulations ;
- the Secretary of State may make the calculation for him ; and this and the following paragraph shall have effect as if a calculation made by the Secretary of State under this sub-paragraph had been duly made by the employer concerned.
- 8 (1) This paragraph applies in any case where—
- (a) a notice has been served on an employer under paragraph 7(3) above and the employer has been required to comply with paragraph 7(4) above ; and
  - (b) a benefit officer appointed under section 27 of the Supplementary Benefits Act 1976 determines that the whole, or a specified part, of the amount paid by way of supplementary benefit would not have been paid if the employer had paid to the employee concerned, on or before a date determined in accordance with regulations, an amount equal to the net payment, or the aggregate of the net payments, attributable to the sickness payment or payments in question.
- (2) In a case to which this paragraph applies, the employer concerned shall, if the Secretary of State so requires, pay to the Secretary of State, within the prescribed period, whichever is the lesser of the following—
- (a) the amount determined in accordance with sub-paragraph (1)(a) above ;
  - (b) an amount equal to the net payment, or the aggregate of the net payments, required to be withheld by virtue of paragraph 7(4)(c) above.
- (3) Any sum paid to the Secretary of State under this paragraph shall be paid by him into the Consolidated Fund.
- (4) For the purposes of regulations made under section 14(2)(d) (provision for review of determinations) of the Act of 1976 a determination by a benefit officer made for the purposes of this paragraph shall be treated as if it had been made under that Act; and for the purposes of section 15 of that Act (right of appeal) the employee shall be treated as a person to whom section 15 gives a right of appeal against the determination (including a determination to refuse to review a determination).
- 9 (1) Regulations shall provide—
- (a) for the extent to which, and purposes for which, an employer who has made a payment to the Secretary of State under paragraph 8 above is to be treated as having discharged his liability to make the sickness payment or payments to which the payment under paragraph 8 is attributable ; and
  - (b) for an amount, calculated in accordance with the regulations, to be treated in a case to which sub-paragraph (2) below applies and for prescribed purposes

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as having been paid to the employee concerned as remuneration derived from an employed earner's employment.

- (2) This sub-paragraph applies to any case (other than one of a prescribed class) where an employer is required by virtue of paragraph 7(4)(c) above to withhold the whole or any part of a sickness payment.
  - (3) Regulations made by virtue of sub-paragraph (1)(b) above may make provision for determining the date on which any payment treated as mentioned in that sub-paragraph is to be taken as having been made.
- 10 Nothing in paragraphs 7 to 9 above shall be taken to prejudice the right of the Secretary of State, under any other enactment, to recover the amount of any supplementary benefit from any person.

*Benefit paid when statutory sick pay due*

- 11 (1) This paragraph applies in any case where—
- (a) in respect of any period, an amount has been paid to a person by way of benefit;
  - (b) as a result of any appeal heard, or review conducted, under any enactment it has been determined that the recipient of the benefit was not entitled to it; and
  - (c) the recipient was entitled, in respect of that period, to payment by an employer of his of an amount of statutory sick pay.
- (2) In any case to which this paragraph applies, the Secretary of State may serve on the employer concerned, in a prescribed form and manner, a notice—
- (a) informing him that an amount has been paid to the recipient by way of benefit and of the period in respect of which the payment was made;
  - (b) requiring him to inform the Secretary of State in writing within such period as may be specified in the notice—
    - (i) of the amount of any statutory sick pay which he was liable to pay to the employee in respect of the period mentioned in sub-paragraph (1)(c) above ;
    - (ii) of the amount of any other sickness payment for which he was so liable ; and
    - (iii) if any such liability has been discharged in whole or in part, of the extent to which it has been, and the date on which it was, discharged ;and
  - (c) requiring him to comply with sub-paragraph (3) below if, at the time when he receives the notice, any liability of his falling within paragraph (b)(i) or (ii) above has not been wholly discharged.
- (3) Where an employer is required to comply with this sub-paragraph he shall—
- (a) calculate, in accordance with regulations, the net payment for the purposes of sub-paragraph (5) below ;
  - (b) inform the Secretary of State, in writing and before the expiry of the period mentioned in sub-paragraph (2)(b) above, of the amount of the net payment, as calculated by him; and
  - (c) withhold, pending a decision by the Secretary of State as to whether to require payment under sub-paragraph (5) below, so much of the sickness payment, or part, in question as is equal to the net payment.

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- (4) In any case where an employer who is required by sub-paragraph (3) above to calculate the net payment to be made in his case—
- (a) fails to inform the Secretary of State as required by sub paragraph (3)(b) above ; or
  - (b) in the opinion of the Secretary of State, has in purporting to calculate that payment failed to do so in accordance with the relevant regulations ;
- the Secretary of State may make the calculation for him ; and this paragraph shall have effect as if a calculation made by the Secretary of State under this sub-paragraph had been duly made by the employer concerned.
- (5) Where the Secretary of State has served a notice under sub-paragraph (2) above, and the employer concerned has been required to comply with sub-paragraph (3) above, that employer shall, if the Secretary of State so requires, pay to the Secretary of State within the prescribed period whichever is the lesser of the following—
- (a) the amount mentioned in sub-paragraph (2)(a) above ;
  - (b) an amount equal to the net payment, or the aggregate of the net payments, required to be withheld by virtue of sub-paragraph (3)(c) above.
- (6) In this paragraph " sickness payment" has the same meaning as in paragraph 7 above.
- (7) Regulations shall provide—
- (a) for the extent to which, and purposes for which, an employer who has made a payment to the Secretary of State under this paragraph is to be treated as having discharged his liability to make the sickness payment or payments to which the payment under this paragraph is attributable ; and
  - (b) for an amount, calculated in accordance with the regulations, to be treated in a case to which sub-paragraph (8) below applies and for prescribed purposes as having been paid to the employee concerned as remuneration derived from an employed earner's employment.
- (8) This sub-paragraph applies to any case (other than one of a prescribed class) where an employer is required by virtue of sub-paragraph (3)(c) above to withhold the whole or any part of a sickness payment.
- (9) Regulations made by virtue of sub-paragraph (7)(b) above may make provision for determining the date on which any payment treated as mentioned in that sub-paragraph is to be taken as having been made.
- (10) Subject to regulations made under sub-paragraph (11) below, nothing in this paragraph shall be taken to prejudice the right of the Secretary of State, under any enactment, to recover any amount paid to a person by way of benefit.
- (11) Regulations may provide for the modification of section 119 of the principal Act (effect of adjudication on payment and recovery of benefit) in relation to any case to which this paragraph applies ; and any such regulations may, in particular—
- (a) make provision pending a determination whether or not a case is one to which this paragraph applies ; and
  - (b) provide for section 119 to have effect as if subsection (2) (no recovery of benefit where no lack of due care and diligence) were omitted.
- (12) Any sum paid to the Secretary of State under this paragraph shall be paid by him into the National Insurance Fund.

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*Employment Protection (Consolidation) Act 1978 (c. 44)*

- 12 In section 121 of the Employment Protection (Consolidation) Act 1978 (priority of certain debts on insolvency) the following paragraph is inserted at the end of subsection (2)—
- “(e) statutory sick pay, payable under Part I of the Social Security and Housing Benefits Act 1982.”.
- 13 In paragraphs 2(2) and 3(3) of Schedule 3 to the Act of 1978 (sick pay etc. treated as discharging employer's liability towards employee in period of notice terminating contract of employment), in each case, after the words "sick pay" there are inserted the words
- “statutory sick pay”.