



Statutory Sick Pay Act 1991

1991 CHAPTER 3

An Act to reduce the amount of statutory sick pay which employers are entitled to recover; to repeal section 9(1A) of the Social Security and Housing Benefits Act 1982; and for purposes connected therewith. [12th February 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Reduction in the amounts recoverable by employers who have paid statutory sick pay

(1) In section 9 of the Social Security and Housing Benefits Act 1982 (recovery by employers of amounts paid by way of statutory sick pay) in subsection (1)—

(a) in paragraph (a) (which requires regulations to make provision entitling an employer who has made a payment of statutory sick pay to recover the amount so paid by making deductions from his contributions payments) for the words from “a payment” to “by making” there shall be substituted the words

“one or more payments of statutory sick pay in a prescribed period to recover an amount equal to the sum of—

(i) the aggregate of such of those payments as qualify for small employers' relief, and

(ii) an amount equal to 80 per cent. of the aggregate of such of those payments as do not so qualify,

by making”; and

(b) in paragraph (b) (which requires regulations to provide for payments to be made by the Secretary of State to employers who are unable to recover by such deductions the whole or any part of any payments of statutory sick pay which they have made) for the words “any payments of statutory sick pay which they have made” there shall be substituted the words “the amounts which they are entitled to recover by virtue of paragraph (a) above.”

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- (2) Subsection (1A) of that section (which requires regulations to give an employer who has paid statutory sick pay a right to an amount determined by reference to certain secondary Class 1 contributions paid) shall cease to have effect.
- (3) In subsection (3) of that section (provision that may be made by regulations) after paragraph (b) there shall be added the words “and
- (c) provide for the rounding up or down of any fraction of a penny which would otherwise result from calculating the amount which an employer is entitled to recover for any period by virtue of subsection (1)(a) above.”
- (4) In consequence of subsection (1) above, in section 1(4A) of the Social Security Act 1975 (which provides for payments to be made out of money provided by Parliament into the National Insurance Fund in each financial year of an amount equal to the estimated aggregate of all statutory sick pay and statutory maternity pay paid by employers and others in that year) for the words “paid by employers and others in that year” there shall be substituted the words “recovered by employers and others in that year”.
- (5) In section 22 of the Social Security Act 1989 (recovery of sums equivalent to benefit from compensation payments) in the definition of “benefit” in subsection (3), the words “subject to regulations under subsection (3A) below” shall be inserted after the word “and”, and after that subsection there shall be inserted—
- “(3A) If statutory sick pay is prescribed as a relevant benefit, the amount of that benefit for the purposes of this section shall be a reduced amount determined in accordance with regulations by reference to the percentage from time to time specified in section 9(1)(a) of the 1982 Act (percentage of statutory sick pay recoverable by employers by deduction from contributions).”

2 Small employers' relief

- (1) In section 9 of the Social Security and Housing Benefits Act 1982, before subsection (2) (meaning of “contributions payments”) there shall be inserted—
- “(1B) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day which forms part of a period of incapacity for work qualifies for small employers' relief if—
- (a) on that day the employer is a small employer who has been liable to pay statutory sick pay in respect of that employee for earlier days forming part of that period of incapacity for work; and
- (b) the aggregate amount of those payments exceeds the entitlement threshold, that is to say, an amount equal to

$$W \times R$$

, where—

W is a prescribed number of weeks; and

R is the appropriate weekly rate set out in section 7 above;

and regulations may make provision for calculating the entitlement threshold in any case where the employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of incapacity for work.

(1C) If the Secretary of State by order so provides for any tax year, the following subsections shall have effect for that tax year in substitution for subsection (1B) above—

“(1BB) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day in a tax year qualifies for small employers' relief if—

- (a) on that day the employer is a small employer who has been liable to make payments of statutory sick pay for earlier days in that tax year in respect of any employees of his; and
- (b) the aggregate of any such payments for those earlier days exceeds a prescribed sum.

(1BC) In any case where—

- (a) an employer is liable to make two or more payments of statutory sick pay for the same day in a tax year, and
- (b) by virtue of the condition in subsection (1BB)(b) above, none of those payments would qualify for small employers' relief, but
- (c) that condition would have been fulfilled in relation to a proportion of the aggregate amount of those payments, had he been liable—

- (i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that aggregate that would enable that condition to be fulfilled, and

- (ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (1BB) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of as mentioned in paragraph (a) above.

(1BD) If, in a case not falling within subsection (1BC) above—

- (a) an employer is liable to make a single payment of statutory sick pay for a day in a tax year, and
- (b) by virtue of the condition in subsection (1BB)(b) above, that payment would not qualify for small employers' relief, but
- (c) that condition would have been fulfilled in relation to a proportion of that payment, had he been liable—

- (i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that payment that would enable that condition to be fulfilled, and

- (ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (1BB) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of the payment mentioned in paragraph (a) above.”; and, without prejudice to section 45(1) below, the Secretary of State may by regulations

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make such transitional or consequential provision or savings as he considers necessary or expedient in connection with the coming into force of an order under this subsection or the expiry or revocation of any such order and the consequent revival of subsection (1B) above.

- (1D) For the purposes of this section, “small employer” shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
- (a) may define that expression by reference to the amount of an employer’s contributions payments for any prescribed period; and
 - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
 - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
 - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (1E) If and so long as regulations under subsection (1D) above prescribe an amount which an employer’s contributions payments must not exceed if he is to be a small employer for the purposes of this section, the Secretary of State shall in each tax year consider whether that amount should be increased, having regard to any increase in the aggregate amount of all primary and secondary Class 1 contributions payable in Great Britain and such other matters as he considers appropriate.
- (1F) A statutory instrument containing (whether alone or with other provisions) any regulations or order under or by virtue of subsection (1B), (1C) or (1D) above shall not be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.”
- (2) In subsection (2) of that section (meaning of “contributions payments” in subsections (1)(a) and (1A)) for the words “and subsection (1A)” there shall be substituted the words “and subsection (1D)”.
- (3) In Part II of Schedule 5 to the Social Security Act 1986 (questions for the Secretary of State) in paragraph (b), after sub-paragraph (v) there shall be inserted the words “or
- (vi) the amount of an employer’s contributions payments for any period for the purposes of regulations under section 9(1D) of that Act;”.
- (4) The first regulations made under section 9 of the Social Security and Housing Benefits Act 1982 by virtue of this section shall—
- (a) specify 6 as the prescribed number of weeks for the purposes of subsection (1B)(b) of that section; and
 - (b) without prejudice to subsection (1D)(b) of that section, define a “small employer” as an employer whose contributions payments for the tax year preceding the one in which the day of incapacity for work in question falls did not exceed £15,000.
- (5) Any day of incapacity for work falling before 6th April 1991 shall be left out of account for the purposes of subsection (1B) of that section.

3 Consequential amendments, repeals and supplementary provisions

- (1) In consequence of this Act, the words “the Social Security Acts 1975 to 1991” shall be substituted for the words “the Social Security Acts 1975 to 1990” in each place where they occur in the following enactments, that is to say—
 - (a) section 6(1) of the National Insurance Act 1974;
 - (b) sections 9(7) and 18(1) of the Social Security Act 1980;
 - (c) section 4(5) of the Forfeiture Act 1982;
 - (d) section 5(1)(a) of the Social Security Act 1985;
 - (e) paragraph (b) of the definition of “the benefit Acts” in section 84(1) of the Social Security Act 1986.
- (2) The enactments specified in the Schedule to this Act are repealed to the extent specified in the third column of that Schedule.
- (3) The Secretary of State may by regulations make—
 - (a) such transitional provision,
 - (b) such consequential provision, or
 - (c) such savings,as he considers necessary or expedient for or in connection with the coming into force of any provision of this Act or the operation of any enactment repealed or amended by a provision of this Act during any period when the repeal or amendment is not wholly in force.
- (4) Subsections (1) to (3A) of section 166 of the Social Security Act 1975 (general provisions about regulations and orders) shall apply in relation to the powers to make regulations conferred by subsection (3) above as they apply in relation to any power conferred by that Act to make regulations, but as if for references to that Act there were substituted references to that subsection.
- (5) A statutory instrument—
 - (a) which contains (whether alone or with other provisions) any regulations made under subsection (3) above, and
 - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The amendment or repeal by this Act of any provision of the Social Security and Housing Benefits Act 1982 or any other enactment which applies to any extent in relation to the Crown, or to persons employed by or under the Crown, has effect in relation to the Crown or any such persons to the same extent as the provision amended or repealed; and the powers conferred by subsection (3) above are correspondingly exercisable in relation to the Crown or any such persons.

4 Citation, commencement, financial provision and extent

- (1) This Act may be cited as the Statutory Sick Pay Act 1991; and this Act and the Social Security Acts 1975 to 1990 may be cited together as the Social Security Acts 1975 to 1991.
- (2) Except for section 3(1) and (3) to (6) above and this section (which come into force on the passing of this Act), this Act shall not come into force until such day as the

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Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different provisions and for different purposes of the same provision.

- (3) There shall be paid out of money provided by Parliament any administrative expenses incurred by a Minister of the Crown in consequence of this Act.
- (4) Where any enactment repealed or amended by this Act extends to any part of the United Kingdom, the repeal or amendment extends to that part.
- (5) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—
 - (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsections (1), (2), (4) and (5) above and this subsection extend to Northern Ireland.
- (7) Except as provided by this section, this Act does not extend to Northern Ireland.

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SCHEDULE

Section 3(2).

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1982 c. 24.	Social Security and Housing Benefits Act 1982.	In section 9— (a) subsection (1A); (b) in subsection (3), the word “and” immediately preceding paragraph (b); (c) in subsection (5), the words “or deductions or payments made by virtue of subsection (1A) above”; (d) in subsection (7), the words “or subsection (1A)(c)”.
1985 c. 53.	Social Security Act 1985.	Section 19.
1986 c. 50.	Social Security Act 1986.	Section 67(2). In Schedule 5, Part II, paragraph (b), the word “or” at the end of subparagraph (iv).
