
STATUTORY INSTRUMENTS

1995 No. 512

TERMS AND CONDITIONS OF EMPLOYMENT

The Statutory Sick Pay Percentage Threshold Order 1995

Made - - - - *1st March 1995*
Coming into force - - *6th April 1995*

Whereas a draft of the following Order was laid before Parliament in accordance with the provisions of section 3(3) of the Statutory Sick Pay Act 1994⁽¹⁾ and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 159A and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992⁽²⁾ and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Statutory Sick Pay Percentage Threshold Order 1995 and shall come into force on 6th April 1995.

(2) In this Order, unless the context otherwise requires, “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.

(3) A reference in this Order to a payment of statutory sick pay shall not include any such payment made in respect of a day of incapacity for work before the coming into force of this Order.

(4) Unless the context otherwise requires, any reference in this Order to a numbered article is a reference to the article bearing that number in this Order and any reference in an article to a numbered paragraph is a reference to the paragraph of that article bearing that number.

Right of employer to recover statutory sick pay

2.—(1) Subject to paragraph (2) an employer is entitled to recover in accordance with articles 3 and 4 the amount, if any, by which the payments of statutory sick pay made by him in any income tax month exceed 13 per cent. of the amount of his liability for contributions payments in respect of that income tax month.

(2) For the purposes of calculating the amount an employer is entitled to recover under paragraph (1), there shall be excluded any payment of statutory sick pay which was not made—

(1) 1994 c. 2.

(2) 1992 c. 4; section 159A was inserted by section 3(1) of the Statutory Sick Pay Act 1994.

- (a) in the income tax month in which he received notice, in accordance with regulation 7 of the Statutory Sick Pay (General) Regulations 1982(3), of the day or days of incapacity for work to which the payment related;
- (b) in a case where it would have been impracticable to make the payment in that income tax month in view of the employer's methods of accounting for and paying remuneration, in the following income tax month; or
- (c) in a case where a decision had been made by an adjudication officer, social security appeal tribunal or Commissioner that the employee was entitled to that payment, within the time limits set out in regulation 9 of those Regulations.

Recovery by deduction from contributions payments

3.—(1) An employer may recover an amount determined in accordance with article 2 in respect of any income tax month by making one or more deductions from his contributions payments for that or any following income tax month within 6 years from the end of the tax year in which he became entitled to recover that amount, except where and insofar as—

- (a) that amount has been repaid to him by or on behalf of the Secretary of State under article 4; or
- (b) he has made a request in writing under article 4 that that amount be repaid to him, and he has not received notification by or on behalf of the Secretary of State that the request is refused.

(2) A deduction from contributions payments made in accordance with paragraph (1) shall be disregarded for the purposes of determining whether an employer has discharged any liability of his in respect of Class 1 contributions.

Recovery from the Secretary of State

4.—(1) If the amount which an employer is or would otherwise be entitled to deduct under article 3 exceeds the amount of his contributions payments in respect of earnings paid in an income tax month, and the Secretary of State is satisfied that that is so, then provided that the employer has requested him in writing to do so, there shall be repaid to the employer by or on behalf of the Secretary of State such amount as the employer was unable to deduct.

(2) If an employer is not liable for any contributions payments in an income tax month but would otherwise be entitled to deduct an amount under article 3, and the Secretary of State is satisfied that that is so, then provided the employer has in writing requested him to do so, that amount shall be repaid to the employer by or on behalf of the Secretary of State.

Repeals and revocations

5. Subject to the savings made by regulations under section 159A(4) of the Social Security Contributions and Benefits Act 1992(4)—

- (a) sections 158 and 159 of the Social Security Contributions and Benefits Act 1992 shall be repealed; and
- (b) the Statutory Sick Pay (Compensation of Employers) and Miscellaneous Provisions Regulations 1983(5) and the Statutory Sick Pay (Small Employers' Relief) Regulations 1991(6) shall be revoked.

(3) S.I.1982/894; relevant amending instrument is S.I. 1984/385.

(4) See S.I. 1995/513.

(5) S.I. 1983/376, amended by S.I. 1985/1411, 1991/694 and 1994/730.

(6) S.I. 1991/428, amended by S.I. 1992/797 and 1994/561.

Consequential amendments

- 6.—(1) In the Social Security Contributions and Benefits Act 1992—
- (a) in section 176 (parliamentary control)—
 - (i) in subsection (1)(a) “section 158(2) or (3);” shall be omitted;
 - (ii) in subsection (1)(c) “section 159(1)” shall be omitted;
 - (iii) in subsection (2)(b) “(other than section 158(2) or (3))” shall be omitted;
 - (iv) in subsection (2)(c) “or 158(2) or (3)” shall be omitted;
 - (b) in Schedule 1, paragraph 6(5) (power to combine collection of contributions with tax) for “section 158” there shall be substituted “section 159A”.
- (2) In the Social Security Administration Act 1992(7)—
- (a) in section 17(1)(g) (adjudication by the Secretary of State)—
 - (i) after “regulations” where it first appears in that paragraph there shall be inserted “or an order”;
 - (ii) in sub-paragraphs (ii) and (v) for “regulations under section 158” and “regulations under section 158(3)” respectively there shall be substituted “an order under section 159A”;
 - (iii) in sub-paragraph (iii) at the end there shall be added “or order”;
 - (b) section 149 (power to alter limit for small employers' relief) shall cease to have effect;
 - (c) in Schedule 7 (regulations not requiring prior submission), Part 1, paragraph 8, “158 or” shall be omitted.
- (3) In Schedule 1 to the Social Security (Contributions) Regulations 1979(8) (which contains the provisions of the Income Tax (Employments) Regulations 1973 as they apply to Class 1 contributions), in Regulation 2(1), for the definition of “Compensation of Employers Regulations” there shall be substituted—
- ““Compensation of Employers Regulations” means the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(9) and the Statutory Sick Pay Percentage Threshold Order 1995(10).”

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

1st March 1995

William Hague
Minister of State,
Department of Social Security

(7) 1992 c. 5.

(8) S.I. 1979/591; relevant amending instruments are S.I. 1987/413 and 1991/1632.

(9) S.I. 1994/1882.

(10) S.I. 1995/512.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for employers to recover payments of statutory sick pay in excess of 13 per cent. of their liability for Class 1 contributions payments in any income tax month.

Article 2 sets out how the amount an employer may recover is to be determined.

Article 3 provides for the amount determined under article 2 to be recovered by deduction from Class 1 contributions payments.

Article 4 provides for repayment by or on behalf of the Secretary of State to the employer where the amount he is entitled to deduct exceeds his contributions payments.

Article 5 repeals and revokes the enactments which provide for recovery of statutory sick pay by small employers.

Article 6 makes amendments to various enactments which are consequential on the repeals and revocations in article 5.

An assessment of the compliance costs for employers has been made and a copy has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Room 06/09A, Adelphi, 1 – 11 John Adam Street, London WC2N 6HT.