
STATUTORY INSTRUMENTS

1991 No. 765 (N.I. 9)

NORTHERN IRELAND

The Statutory Sick Pay (Northern Ireland) Order 1991

Made - - - - 20th March 1991

Laid before Parliament 25th March 1991

Coming into operation in accordance with Article 1

At the court at Buckingham Palace, the 20th day of March 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the Statutory Sick Pay Act 1991(1):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(2) (as modified by section 4(5) of the said Act of 1991) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title, citation and commencement

1.—(1) This Order may be cited as the Statutory Sick Pay (Northern Ireland) Order 1991.

(2) This Order and the Social Security (Northern Ireland) Acts 1975 to 1990 may be cited together as the Social Security (Northern Ireland) Acts 1975 to 1991.

(3) This Article, Article 2 and paragraphs (1) and (3) to (6) of Article 5 shall come into operation on the seventh day after the day on which this Order is made.

(4) The remaining provisions of this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(1) 1991 c. 3
(2) 1974 c. 28

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽³⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of Health and Social Services;

“the 1982 Order” means the Social Security (Northern Ireland) Order 1982⁽⁴⁾;

“the 1986 Order” means the Social Security (Northern Ireland) Order 1986⁽⁵⁾;

“the principal Act” means the Social Security (Northern Ireland) Act 1975⁽⁶⁾;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

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

3.—(1) In Article 11 of the 1982 Order (recovery by employers of amounts paid by way of statutory sick pay), in paragraph (1)—

(a) in sub-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 sub-paragraph (b) (which requires regulations to provide for payments to be made by or on behalf of the Department 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 sub-paragraph (a)”.

(2) Paragraph (1A) of that Article (which requires regulations to give an employer who has paid statutory sick pay a right to an amount determined in such manner as may be prescribed) shall cease to have effect.

(3) In paragraph (3) of that Article (provision that may be made by regulations), after sub-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 paragraph (1)(a).”.

(4) In consequence of paragraph (1), in section 1(4A) of the principal Act (which with section 128(2A) of that Act provides for payments to be made out of money appropriated for the purpose into the Northern Ireland 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

(3) 1954 c. 33 (N.I.)

(4) 1982 NI 16

(5) 1986 NI 18

(6) 1975 c. 15

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 Article 24 of the Social Security (Northern Ireland) Order 1989(7) (recovery of sums equivalent to benefit from compensation payments), in the definition of “benefit” in paragraph (3), after the word “and” there shall be inserted the words “, subject to regulations under paragraph (3A),”, and after paragraph (3) there shall be inserted the following paragraph—

“(3A) If statutory sick pay is prescribed as a relevant benefit, the amount of that benefit for the purposes of this Article shall be a reduced amount determined in accordance with regulations by reference to the percentage specified in Article 11(1)(a) of the 1982 Order (percentage of statutory sick pay recoverable by employers by deduction from contributions).”.

Small employers' relief

4.—(1) In Article 11 of the 1982 Order, before paragraph (2) (meaning of “contributions payments”) there shall be inserted the following paragraphs—

“(1B) For the purposes of this Article, 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 Article 9;

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 Department by order so provides for any tax year, the following paragraphs shall have effect for that tax year in substitution for paragraph (1B)—

“(1BB) For the purposes of this Article, 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 paragraph (1BB)(b), 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 paragraph (1BB) as if he had been liable to make payments of statutory sick pay as mentioned in sub-paragraph (c) instead of as mentioned in sub-paragraph (a).

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

- (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 paragraph (1BB)(b), 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 paragraph (1BB) as if he had been liable to make payments of statutory sick pay as mentioned in sub-paragraph (c) instead of the payment mentioned in sub-paragraph (a).”;

and, without prejudice to Article 36(1), the Department may by regulations make such transitional or consequential provision or savings as it considers necessary or expedient in connection with the coming into operation of an order under this paragraph or the expiry or revocation of any such order and the consequent revival of paragraph (1B).

(1D) For the purposes of this Article, “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 Article or under any other statutory provision; 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) Whenever the Secretary of State makes regulations prescribing an amount which an employer’s contributions payments must not exceed if he is to be a small employer for the purposes of section 9 of the Social Security and Housing Benefits Act 1982, the Department shall make corresponding regulations for Northern Ireland.

(1F) Section 156(1) of the principal Act (confirmatory procedure) shall apply to any regulations or order under paragraph (1B), (1C), (1D) or (1E) and to any regulations or order contained in a statutory rule which includes any such regulations or order.”

(2) In paragraph (2) of that Article (meaning of “contributions payments” in paragraphs (1)(a) and (1A)), for the words “and paragraph (1A)” there shall be substituted the words “and paragraph (1D)”.

(3) In Part II of Schedule 5 to the 1986 Order (questions for the Department), 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 Article 11(1D) of that Order;”.
- (4) The first regulations made under Article 11 of the 1982 Order by virtue of this Article shall—
 - (a) specify 6 as the prescribed number of weeks for the purposes of paragraph (1B)(b) of that Article; and
 - (b) without prejudice to paragraph (1D)(b) of that Article, 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 paragraph (1B) of that Article.

Consequential amendments, repeals and supplementary provisions

5.—(1) In consequence of this Order, in the following statutory provisions for the words “the Social Security (Northern Ireland) Acts 1975 to 1990” in each place where they occur there shall be substituted the words “the Social Security (Northern Ireland) Acts 1975 to 1991”—

- (a) section 5(1) of the National Insurance Measure (Northern Ireland) 1974⁽⁸⁾;
- (b) section 9(7) of the Social Security Act 1980⁽⁹⁾;
- (c) Article 6(5) of the Forfeiture (Northern Ireland) Order 1982⁽¹⁰⁾;
- (d) Article 7(1)(a) of the Social Security (Northern Ireland) Order 1985⁽¹¹⁾;
- (e) paragraph (b) of the definition of “the benefit Acts” in Article 2(2) of the 1986 Order.

(2) The statutory provisions mentioned in the Schedule are hereby repealed to the extent specified in the third column of the Schedule.

(3) The Department may by regulations make—

- (a) such transitional provision,
- (b) such consequential provision, or
- (c) such savings,

as it considers necessary or expedient for or in connection with the coming into operation of any provision of this Order or the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

(4) Subsections (1) to (3A) of section 155 of the principal Act (general provisions about regulations and orders) shall apply in relation to the powers to make regulations conferred by paragraph (3) 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 paragraph (3).

(5) Regulations under paragraph (3) shall be subject to negative resolution.

(6) The amendment or repeal by this Order of any provision of the 1982 Order or any other statutory provision 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 statutory provision amended or repealed; and the powers conferred by paragraph (3) are correspondingly exercisable in relation to the Crown or any such persons.

⁽⁸⁾ 1974 c. 4 (N.I.)

⁽⁹⁾ 1980 c. 30

⁽¹⁰⁾ 1982 NI 14

⁽¹¹⁾ 1985 NI 16

Status: *This is the original version (as it was originally made).*

G. I. de Deney
Clerk of the Privy Council

SCHEDULE

Article 5(2).

REPEALS

Number	Title	Extent of repeal
1982 NI 16.	The Social Security (Northern Ireland) Order 1982.	In Article 11— (a) paragraph (1A); (b) in paragraph (3), the word “and” immediately preceding sub-paragraph (b); (c) in paragraph (5), the words “or deductions or payments made by virtue of paragraph (1A)”; (d) in paragraph (7), the words “or paragraph (1A)(c)”.
1985 NI 16.	The Social Security (Northern Ireland) Order 1985.	Article 19.
1986 NI 18.	The Social Security (Northern Ireland) Order 1986.	In Article 68, paragraph (2). In Part II of Schedule 5, in paragraph (b), the word “or” at the end of sub-paragraph (iv).
1990 NI 15.	The Social Security (Northern Ireland) Order 1990.	In Schedule 6, paragraph 20.

EXPLANATORY NOTE*(This note is not part of the Order)*

This Order is made only for purposes corresponding to those of the Statutory Sick Pay Act 1991.

It amends the law relating to the arrangements under which employers are reimbursed for the statutory sick pay which they pay to their employees.

Article 3(1) reduces from 100% to 80% the amounts of statutory sick pay which employers can recover from their remittances of national insurance contributions and Article 4 provides for relief for small employers.