

## 1982 No. 306

## STATUTORY SICK PAY

The Statutory Sick Pay (Mariners, Airmen and Persons Abroad)  
Regulations (Northern Ireland) 1982

Made . . . . . 22nd September 1982

Coming into operation . . . . . 6th April 1983

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 5(5) and (7), 24(1) and 28(1) of, and paragraph 1 of Schedule 1 to, the Social Security (Northern Ireland) Order 1982(a) and of all other powers enabling it in that behalf, hereby makes the following regulations which correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and which accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980(b) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations (Northern Ireland) 1982 and shall come into operation on 6th April 1983.

(2) In these regulations—

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

“Part II” means Part II of the Order;

“the General Regulations” means the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(c);

and other expressions have the same meanings as in Part II.

*Mariners – interpretation*

2. In regulations 5 and 9 the expressions “British ship”, “foreign-going ship”, “managing owner”, “mariner”, “owner” and “radio officer” have the same meanings as in Case B of Part VIII of the Social Security (Contributions) Regulations (Northern Ireland) 1979(d), and the expressions “ship” and “ship or vessel”, except in regulation 5(2), include hovercraft.

*Airmen – interpretation*

3. In regulations 6 and 10—

“airman” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

(a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried thereby, and

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

(a) S.I. 1982/1084 (N.I. 16)

(b) 1980 c. 30

(c) S.R. 1982 No. 263

(d) S.R. 1979 No. 186, to which there are amendments not relevant to the subject matter of these regulations

but does not include a person in so far as his employment is as a serving member of the forces;

“British aircraft” means any aircraft registered in the United Kingdom of which the owner (or managing owner if there is more than one owner) resides or has his principal place of business in Northern Ireland, and references to the owner of an aircraft shall, in relation to an aircraft which has been hired, be taken as referring to the person for the time being entitled as hirer to possession and control of the aircraft by virtue of the hiring or any subordinate hiring.

*Persons in other member States – meaning of “employee”*

4. Subject to regulations 5(2), 6(2) and 7, a person who is—

- (a) gainfully employed in a member State other than the United Kingdom in such circumstances that if his employment were in Northern Ireland he would be an employee for the purposes of Part II or a person treated as such an employee under regulation 16 of the General Regulations; and
- (b) subject to the legislation of the United Kingdom under Council Regulation (EEC) No. 1408/71(a);

notwithstanding that he is not employed in Northern Ireland, shall be treated as an employee for the purposes of Part II.

*Mariners – meaning of “employee”*

5.—(1) Subject to regulation 7, where a mariner—

(a) is employed as such and—

(i) the employment is on board a British ship; or

(ii) the employment is on board a ship and the contract in respect of the employment is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage; and

(iii) in a case to which head (ii) applies, the person by whom the mariner's earnings are paid, or, in the case of employment as a master or member of the crew of a ship or vessel, either that person or the owner of the ship or vessel (or the managing owner if there is more than one owner) has a place of business in Northern Ireland; or

(b) is employed as a master, member of the crew or radio officer on board any ship or vessel, not being a mariner to whom the last preceding sub-paragraph applies; and

(i) in the case of the employment being as a radio officer, if the contract under which the employment is performed is entered into in the United Kingdom, the employer or the person paying the radio officer his earnings for that employment has a place of business in Northern Ireland; or

(ii) in the case of the employment being as a master, member of the crew or radio officer, if the contract is not entered into in the United Kingdom, the employer or the person paying the earnings has his principal place of business in Northern Ireland,

then, unless he is a mariner to whom paragraph (2) applies, he shall, notwithstanding that he may not be employed in Northern Ireland, be treated as an employee for the purposes of Part II.

(2) A mariner who—

(a) is in employment (including any period of leave, other than leave for the

purpose of study, accruing from the employment) as a master or member of the crew of a ship, where—

- (i) the employment is on a foreign-going ship; or
  - (ii) the employment is partly on a foreign-going ship and partly otherwise than on such a ship, and it is a requirement of the contract of service which relates to that employment that any payment of earnings in respect of that employment is to be made during the employment on the foreign-going ship; or
- (b) has been in such employment as is mentioned in sub-paragraph (a), where—
- (i) not more than 13 weeks have elapsed since he was last in such employment;
  - (ii) he continues to be employed by the employer by whom he was employed when he was last in such employment; and
  - (iii) he is not employed (by that employer or any other) on terms which are inconsistent with his being able to resume such employment as is mentioned in sub-paragraph (a) after not more than 13 weeks have elapsed since he was last in such employment;

shall, notwithstanding that he may be employed in Northern Ireland, not be treated as an employee for the purposes of Part II.

#### *Airmen – meaning of ‘employee’*

6.—(1) Subject to regulation 7 and to the following provisions of this regulation, where an airman is employed as such on board any aircraft, and the employer of that airman or the person paying the airman his earnings in respect of the employment (whether or not the person making the payment is acting as agent for the employer) or the person under whose directions the terms of the airman's employment and the amount of the earnings to be paid in respect thereof are determined has—

- (a) in the case of the aircraft being a British aircraft, a place of business in Northern Ireland; or
- (b) in any other case, his principal place of business in Northern Ireland,

then, notwithstanding that he may not be employed in Northern Ireland, he shall be treated as an employee for the purposes of Part II.

(2) Subject to the provisions of paragraph (3), an airman shall not be treated as an employee for those purposes if he is not domiciled, and has no place of residence, in Northern Ireland.

(3) The provisions of paragraph (2) shall have effect subject to any Order in Council or order giving effect to any reciprocal agreement made under section 134 of the Social Security (Northern Ireland) Act 1975(a) (reciprocity with other countries).

#### *Meaning of ‘employee’ – general*

7. No person who, by virtue of regulation 16 of the General Regulations, would not be treated as an employee for the purposes of Part II if his employment were in Northern Ireland, shall be treated as an employee by virtue of any of regulations 4 to 6.

#### *Persons abroad – period of entitlement ending or not arising*

8.—(1) Subject to the provisions of regulations 9 and 10, a period of entitlement shall not arise where at any time during the day on which it would otherwise have arisen the employee in question is not present in any member State.

(2) Subject to the provisions of regulations 9 and 10, a period of entitlement shall end with a day which in relation to the employee in question is a day of incapacity for work and forms part of a period of incapacity for work, where at any time during that day the employee is not present in any member State.

(3) Regulation 4(2) of the General Regulations shall be amended by the addition, after "regulation 3(1)", of "of these regulations or regulation 8(2) of the Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations (Northern Ireland) 1982".

*Mariners – exception to regulation 8*

9. Regulation 8 shall not apply in the case of an employee who, by virtue of his employment as a mariner, is not present in any member State.

*Airmen – exception to regulation 8*

10. Regulation 8 shall not apply in the case of an employee who either—

- (a) by virtue of his employment as an airman is not present in any member State; or
- (b) being or having been employed as pilot, commander, navigator or other member of the crew of any aircraft, or being or having been under contract to travel at his employer's expense for the purpose of commencing such employment, has been left for a period in a place which is not in any member State—
  - (i) on account of any hurt or injury received, or any illness suffered, by him while so employed or under contract so to travel; or
  - (ii) in consequence of any action taken, while he is or was so employed or under contract so to travel, for the purpose of preventing infection.

*Time for compliance with requirements of Part II and regulations*

11. Where—

- (a) an employee is outside the United Kingdom;
- (b) Part II or regulations made thereunder require any act to be done forthwith or on the happening of a certain event or within a specified time; and
- (c) because the employee is outside the United Kingdom he or his employer cannot comply with the requirement;

the employee or the employer, as the case may be, shall be deemed to have complied with it if he performs the act as soon as reasonably practicable.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 22nd September 1982.

(L.S.)

*I. M. S. Jordan* (Miss)

Assistant Secretary

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations make provisions about statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982 ("the Order") as it affects mariners, airmen and persons abroad.

Under Article 28(1) of the Order, a person is not, as a rule, an "employee", and therefore not qualified to receive statutory sick pay, unless he is employed in Northern Ireland. Regulations 4 to 6 prescribe exceptions to this rule, so that certain persons who are employed in other member States of the European Communities but subject to the legislation of the United Kingdom and certain mariners and airmen are "employees" though employed outside Northern Ireland; and so that certain limited classes of mariners and airmen are not "employees" though employed in Northern Ireland.

Regulation 8 makes provision for a period of entitlement to statutory sick pay to end if the employee goes outside the member States of the European Communities, or not to arise if he is already outside them, and regulations 9 and 10 set out exceptions applying to mariners and airmen.

Some of the requirements of Part II of the Order and regulations made under it impose time limits. Regulation 11 relaxes those requirements in their application to persons who are outside the United Kingdom and for that reason cannot comply with them.