

1987 No. 372

TERMS AND CONDITIONS OF EMPLOYMENT

**The Statutory Sick Pay (General) Amendment
Regulations 1987**

<i>Made</i> - - - -	<i>9th March 1987</i>
<i>Laid before Parliament</i>	<i>16th March 1987</i>
<i>Coming into force</i> -	<i>6th April 1987</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 1(5), 26(1) and 47 of the Social Security and Housing Benefits Act 1982(a) and sections 51(1)(k) and (4), 84(1) and 89(1) of the Social Security Act 1986(b), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations:-

Citation and commencement

1. These Regulations may be cited as the Statutory Sick Pay (General) Amendment Regulations 1987 and shall come into force on 6th April 1987.

Amendment of the Statutory Sick Pay (General) Regulations 1982

2. There shall be inserted after regulation 9 of the Statutory Sick Pay (General) Regulations 1982(c) the following regulations:-

“Liability of the Secretary of State for payments of statutory sick pay

9A.—(1) Notwithstanding the provisions of section 1 of the Act and subject to paragraph (4), where-

- (a) an adjudicating authority has determined that an employer is liable to make payments of statutory sick pay to an employee, and
- (b) the time for appealing against that determination has expired, and
- (c) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any day of incapacity for work in respect of which it was determined the employer was liable to make those payments, and for any further days of incapacity for work which fall within the same spell of incapacity for work and in respect of which the employer was liable to make payments of statutory sick pay to that employee, the liability to make payments of statutory sick pay in respect of those

(a) 1982 c.24; section 1(5) was inserted by section 68 of the Social Security Act 1986 (c.50). Section 26(1) is quoted for the meaning ascribed to the word “prescribed” and section 47 for the meaning ascribed to the word “regulations”.

(b) 1986 c.50; section 84(1) is quoted for the meaning ascribed to the word “Regulations”.

(c) S.I. 1982/894.

days shall, to the extent that payment has not been made by the employer, be that of the Secretary of State and not the employer.

(2) For the purposes of this regulation a spell of incapacity for work consists of consecutive days of incapacity for work with no day of the week disregarded.

(3) In paragraph (1) above "adjudicating authority" means, as the case may be, the Chief or other adjudication officer, a Social Security Appeal Tribunal or the Chief or any other Social Security Commissioner.

(4) This regulation shall not apply to any liability of an employer to make a payment of statutory sick pay where the day of incapacity for work in respect of which the liability arose falls within a period of entitlement which commenced before 6th April 1987.

Insolvency of employer

9B.—(1) Notwithstanding the provisions of section 1 of the Act and subject to paragraph (3), any liability arising under Part I of the Act to make a payment of statutory sick pay in respect of a day of incapacity for work in relation to an employee's contract of service with his employer shall be that of the Secretary of State and not that of the employer where the employer is insolvent on that day.

(2) For the purposes of paragraph (1) an employer shall be taken to be insolvent if, and only if—

(a) in England and Wales—

- (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986(a); or
- (iii) where an employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge, or any property of the company comprised in or subject to the charge or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part;

(b) in Scotland—

- (i) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
- (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889(b) is required by that section to divide his insolvent estate among his creditors; or
- (iii) where the employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

(3) This regulation shall not apply where the employer became insolvent before 6th April 1987.

Payments by the Secretary of State

9C. Where the Secretary of State becomes liable in accordance with regulation 9A or 9B to make payments of statutory sick pay to a person, the first payment shall be made as soon as reasonably practicable after he becomes so liable, and payments thereafter shall be made at weekly intervals, by means of an instrument of payment

(a) 1986 c.45.

(b) 1889 c.39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c.66); section 75(1), Schedule 7, paragraph 4.

or by such other means as appears to the Secretary of State to be appropriate in the circumstances of the particular case.”.

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

9th March 1987

John Major
Minister of State, Department of Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations, which come into force on 6th April 1987, introduce new provisions into the Statutory Sick Pay (General) Regulations 1982. They prescribe the circumstances in which the liability to pay statutory sick pay is to be that of the Secretary of State and not the employer. Those circumstances are where an adjudicating authority has determined that statutory sick pay is payable but the employer neither pays the amount due nor appeals against the decision (regulation 9A) and where the employer was insolvent at the time (regulation 9B). Provision is also made (regulation 9C) requiring the Secretary of State to make the payments for which he is liable at weekly intervals.

The regulations are made under section 1(5) of the Social Security and Housing Benefits Act 1982, which is inserted by section 68 of the Social Security Act 1986 and under sections 51(1)(k) and (4) and 89(1) of the Act of 1986. Those provisions have not yet been in force for 12 months. Accordingly the regulations are exempt, by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.