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STATUTORY INSTRUMENTS

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**1987 No. 372**

**The Statutory Sick Pay (General) Amendment Regulations 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(1) 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 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<sup>(2)</sup>; 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<sup>(3)</sup> 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 or by such other means as appears to the Secretary of State to be appropriate in the circumstances of the particular case.”

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(2) 1986 c. 45.

(3) 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66); section 75(1), Schedule 7, paragraph 4.