1982 No. 324

STATUTORY SICK PAY

The Statutory Sick Pay (Adjudication) Regulations (Northern Ireland) 1982

Made . . . . . *8th October 1982*

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

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 13(1) and (2), 14(2), (5) and (6), 15(5), 16, 17(5) and 18(3) and (4) of, and Schedule 3 to, the Social Security (Northern Ireland) Order 1982(**a**) and Article 19(2)(i) of the Supplementary Benefits (Northern Ireland) Order 1977(**b**) 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(**c**) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee:

PART I

GENERAL

Citation and commencement

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

Interpretation

2.—(1) In these regulations—

"the Order" means the Social Security (Northern Ireland) Order 1982;

"hearing" means oral hearing;

"inspector" means an officer appointed as such under section 135 of the principal Act and referred to in Article 21 of the Order.

(2) In Part II of these regulations "a person interested" means an employer or employee—

(*a*) in relation to whose rights, duties or obligations under Part II of the Order, or under regulations made under that Part, a question has arisen that is for determination by the Department under Article 13(1), or

(*b*) whose rights, duties or obligations are called in question by way of review of a determination under the said Article 13(1).

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations may be sent to him by post to his ordinary or last known address.

(4) Any power given by these regulations to extend the period during which anything is required to be done under these regulations, or to dispense with any of the requirements thereof, may be exercised in any case, notwithstanding that the period within which it was required to be done has expired.

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

(**b**) S.I. 1977/2156 (N.I. 27); Article 19(2)(*i*) was inserted by Article 7(1) of, and paragraph 13 of Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(**c**) 1980 c. 30

(5) Any reference in these regulations to a numbered Article or Schedule is a reference to the Article of, or as the case may be, the Schedule to, the Order bearing that number.

PART II

ADJUDICATION BY THE DEPARTMENT

Persons who may apply for reference of questions to the Department for determination

3.—(1) Where a question such as is specified in Article 13 (determination of questions by Department) arises under Part II of the Order or under regulations made under that Part, an application may be made by the employer or the employee in relation to whom the question arose, or by an inspector, for that question to be referred to the Department for determination.

(2) For the purposes of this regulation—

"the employer" includes a person (or persons) claiming or alleged to have been the employer of another person in the period in question;

"the employee" includes a person claiming or alleged to have been an employee in the period in question.

Reference of questions for determination by the Department

4.—(1) An application by a person mentioned in regulation 3 for a question to be referred for determination by the Department shall be made in writing, in a form approved by the Department for the purpose or in such other manner as it may accept as sufficient.

(2) An application for reference of such a question shall be made by delivering it to or sending it by post to the Department.

(3) Before determining any question specified in Article 13(1) that is referred to the Department, whether by way of an application under the preceding paragraphs or by an insurance officer under Article 17(1) (reference of questions determinable by the Department arising in connection with adjudication of questions not so determinable), the Department shall—

(*a*) take steps to bring the fact that the question has been so referred to the notice of any person appearing to the Department to be a person interested;

(*b*) take steps to obtain from every such person information which the Department considers reasonably necessary for determining the question;

(*c*) receive any representations in writing relating to the question that may be submitted by or on behalf of any such person to the Department for its consideration.

Procedure for inquiries

5.—(1) Where, under Article 13(3), the Department appoints a person to hold an inquiry into, and to report on, a question referred to the Department for determination by it or any matter arising in connection with that question, the person so appointed may—

(*a*) by summons require persons to attend such inquiry to give evidence or produce documents which are reasonably required for the purpose of the inquiry;

(*b*) take evidence on oath and for that purpose administer oaths to persons giving evidence.

(2) Any person notified of the reference of the question in accordance with regulation 4(3)(*a*) and any other person appearing to the person holding the inquiry to be a person interested—

(*a*) shall be given reasonable notice of the time and place at which the inquiry is to be held;

(*b*) has the right to be present and to be heard at the inquiry;

(*c*) may be represented at the inquiry by another person, whether having professional qualifications or not; and for the purposes of the inquiry any such representative shall have the rights and powers, under Part II of the Order and under these regulations, of the person whom he represents.

(3) Subject to the provisions of Part II of the Order and these regulations, the procedure at such an inquiry shall be such as the person holding it shall determine.

Decisions of the Department and statements of grounds

6.—(1) The Department shall give a decision in writing on a question referred for its determination under Article 13 and shall give notice of that decision—

(*a*) if the question was referred to it by an insurance officer under Article 17(1), to the insurance officer; or

(*b*) if the question was referred to it by way of an application under these regulations, to the applicant,

and in either case,

(*c*) to any other person appearing to the Department to be a person interested.

(2) A person who applied for the reference of a question to the Department and any other person given notice of the Department's decision on a question referred to it, may apply in writing to the Department for a statement of the grounds of the decision.

(3) Where an application for a statement of grounds is made under paragraph (2), the person making the application shall be provided with such a statement in writing as will enable him to determine whether the Department has given a decision on a question of law such as would enable the applicant to appeal against it under Article 13(5) (right of appeal to the Court of Appeal).

Review of decisions of the Department

7.—(1) Subject to paragraph (2), the Department may, whether or not on an application made under this regulation, review a decision given by it under Article 13, or under this regulation, if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, a material fact.

(2) No such decision shall be reviewed—

(*a*) while an appeal under Article 13(5) against a decision on a question of law arising in connection with the decision to be reviewed remains undetermined, or

(*b*) before expiry of the time limits for so appealing, disregarding for this purpose any power to extend time conferred by rules of court unless exercised in the particular case.

(3) A question may be raised with a view to review by the Department under this regulation by means of an application in writing only by a person interested—

(*a*) within 3 months of the date on which the applicant was given notice in writing of the decision, or

(*b*) in a case where the applicant has requested a statement of the grounds of the decision within 28 days of the date specified in sub-paragraph (*a*), within 3 months of the date on which he receives such a statement,

or in either case within such further time as the Department may for special reasons allow.

(4) Provisions of the preceding regulations applicable to applications for reference of questions and the determination of questions so referred shall apply with any necessary modifications to applications for review under this regulation and the determination of questions by way of review of decisions of the Department under Article 13.

Further provision as to determination on review by the Department

8. Paragraphs (3) to (7) of Article 13 (determination of questions by Department and by the courts) shall apply with the necessary modifications to the determination of questions by way of review under regulation 7 as they apply to the determination of questions under Article 13(1) (questions determinable by Department).

PART III

ADJUDICATION BY INSURANCE OFFICERS, LOCAL TRIBUNALS AND COMMISSIONERS

Reference of Questions

Reference of questions for determination by an insurance officer

9.—(1) A question to which Article 14(1) or (4) (questions determinable by an insurance officer or a local tribunal) applies may be referred, when it arises, by—

(*a*) the Department, or

(*b*) an employee

to an insurance officer for determination.

(2) A reference by the Department of any such question shall be made in writing within 3 months of the day on which it appeared to the Department that the question arose.

(3) A reference of any such question by an employee shall be made by way of an application in writing in a form approved for the purpose by the Department or in such other manner, being in writing, as the Department may accept as sufficient in the circumstances.

(4) Such an application made by an employee shall—

(*a*) be delivered or sent to the Department within 6 months of the earliest day in respect of which liability for statutory sick pay is in dispute; and

(*b*) state the grounds (if any) on which the applicant's employer has denied liability for statutory sick pay in respect of the period specified in the application.

Reference of questions to a medical practitioner for report

10. An insurance officer, a local tribunal or a Commissioner may refer to a medical practitioner for examination and report any question arising for determination by him or it, as the case may be, under Part II of the Order or regulations made thereunder.