

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO. 7) REGULATIONS 2020

2020 No. 1638

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Statutory Sick Pay (General) Regulations 1982 (S.I.1982/894) (“the SSP Regulations”) in order to ensure that individuals will be eligible for Statutory Sick Pay (SSP) for the full period for which they are required to self-isolate, including where they have tested positive for coronavirus, or where they are in a household with someone who has tested positive. This instrument therefore reflects the changes to public health advice on self-isolation across Great Britain, which came into effect on 14 December 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Secretary of State makes these Regulations in exercise of the powers conferred by sections 151(4) and (4A) and 175(3), (4) and (5A) of the Social Security Contributions and Benefits Act 1992(a) (“the 1992 Act”).
- 3.2 The Regulations will come into force on the day after they are laid, meaning that the usual period of 21 days between laying and coming into force will not apply. This is to ensure that individuals are eligible for SSP for the full period for which they are required to self-isolate in line with the latest public health guidance across Great Britain.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland ONLY. The instrument relates to a reserved matter within the devolved legislative competence of the Northern Ireland Assembly. Regulations will also be made for Northern Ireland to align with these changes.
- 4.2 The territorial application of this instrument is England, Wales and Scotland (Great Britain). The instrument relates to a reserved matter within the devolved legislative

competence of the Northern Ireland Assembly. Regulations will also be made for Northern Ireland to align with these changes.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 SSP is paid by employers to employees who are incapable of work due to sickness. It is paid at a flat rate of £95.85 for up to 28 weeks. To be eligible for SSP, an individual must: be classed as an employee and have done some work for their employer; have been ill, or deemed to be incapable of work, for at least 4 days in a row (including non-working days); earn an average of at least £120 per week; and tell their employer that they are sick before the employer's deadline, or within 7 days if the employer has not set a deadline.

6.2 Powers under section 151(4) of the 1992 Act provide that regulations may be made which deem an employee to be incapable of work, meaning that they can potentially then be eligible for SSP. Under regulation 2 of the SSP Regulations as amended by SI 2020/287, individuals may be eligible for SSP if they are unable to work because they are staying at home and self-isolating in accordance with public health advice because:

- a) They have symptoms of coronavirus or have tested positive for coronavirus;
- b) They live with, or are in a linked or extended household with, someone who has symptoms or has tested positive for coronavirus;
- c) They have been informed that they have had contact with a person who was, at the time of the contact, infected with coronavirus;
- d) They are shielding in accordance with public health guidance;
- e) They are due to undergo planned or elective surgical or other hospital procedure.

6.3 Under current public health advice which came into effect on 14 December 2020, the period of isolation is 10 full days beginning with the day after either symptom onset or, if asymptomatic, the day of the test. These regulations therefore amend the SSP regulations to ensure that individuals are eligible for SSP for the full period of their isolation. This is achieved by providing that anyone who is symptomatic, along with their household contacts, is deemed to be incapable of work if they self-isolate for 11 days. This includes the day of symptom onset, or day of test, plus the subsequent 10 full days.

6.4 These regulations also provide that where a person has received a notification in writing or orally informing them that they have tested positive for coronavirus, they and their household contacts will be eligible for SSP for the period set out in that notification. Where no such period is specified in the notification, they will be deemed incapable of work for 11 days, beginning with the day on which they first develop symptoms or are tested. The usual SSP eligibility conditions will apply. A list of bodies who can issue such notifications is provided in the regulations. These regulations expand this list to include Scottish Ministers and Welsh Ministers to reflect the different approaches in testing and contact tracing across the devolved nations.

6.5 These Regulations will be kept under review in line with any renewal or revision of the Coronavirus Act 2020.

7. Policy background

What is being done and why?

7.1 From 14 December in England, Scotland and Northern Ireland, and from 10 December in Wales, the self-isolation period for contacts of someone who has tested positive for coronavirus was reduced from 14 days to 10 days. This means the self-isolation advice for close contacts aligns with the advice for those who have tested positive for coronavirus and those who are in the same household (including extended and linked households). The point at which the 10-day self-isolation period begins also changed, with day 1 being the day after either the first day of symptoms, the day of the test or, if a contact, the day of the most recent contact with the confirmed case.

7.2 These regulations reflect these changes in public health advice regarding the beginning of the self-isolation period and ensure that individuals remain eligible for SSP for the full 10 days of isolation, plus the day on which they first develop symptoms, or the day they are tested. The usual SSP qualifying conditions will apply.

7.3 Individuals may be notified in writing or orally (in person or by telephone) that they need to self-isolate because they have tested positive for coronavirus or they have had recent contact with someone who has tested positive for coronavirus. These regulations provide that where an individual receives such a notification, they will be eligible for SSP for the period set out in that notification. The list of bodies who can issue such notifications now includes Scottish Ministers and Welsh Ministers to reflect approaches in testing and contact tracing across the devolved nations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not being done as this does not apply.

10. Consultation outcome

10.1 Given the urgency of these regulations, no consultation has been done.

11. Guidance

11.1 Guidance is available on GOV.UK for individuals and employers to understand how to comply with SSP regulations.

12. Impact

12.1 We have not assessed the impact on business, charities or voluntary bodies because of the need to make and lay the instrument urgently to encourage those to who need to self-isolate to stay at home and minimise the risks to public health arising from Covid-19.

12.2 We have not assessed the impact on the public sector because of the need to make and lay the instrument urgently to encourage those to who need to self-isolate to stay at home and minimise the risks to public health arising from Covid-19.

12.3 A full Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument urgently to ensure that SSP is available for those who are encouraged to stay at home minimise the risks to public health arising from Covid-19.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 Given the urgency of these regulations, no consultation has been conducted.

14. Monitoring & review

14.1 These regulations will be reviewed in line with any revision or renewal of the Coronavirus Act or when the measures are no longer required.

15. Contact

15.1 Rachel Nicholls at the Department for Work and Pensions Telephone: 07800 676 339 or email: rachel.nicholls@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Fiona Walker, Deputy Director at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Secretary of State for the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.