

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO. 3) REGULATIONS 2020

2020 No. 427

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. In accordance with public health guidance as linked below in paragraph 11, a person classed as extremely vulnerable and at very high risk of severe illness from coronavirus (COVID-19) is advised to remain at home for at least 12 weeks (known as shielding). The effect of the amendment is that Statutory Sick Pay (SSP) is extended to these people who are deemed to be incapable of work because of this advice.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Secretary of State, in exercise of the powers conferred by sections 151(4) and (4A) and 175(1), (3), (4) and (5A) of the Social Security Contributions and Benefits Act 1992(c. 4), makes these Regulations. Sections 151(4A) and 175(5A) are given effect by section 41 of the Coronavirus Act 2020 (c. 7). This is an emergency instrument in relation to the Government's response to coronavirus.
- 3.2 The instrument will come into force on the day after it is laid, meaning that the usual period of 21 days between laying and coming into force will not apply.

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, Wales and Scotland ONLY. The instrument relates to a reserved matter within the devolved legislative competence of the Northern Ireland Assembly. The Department for Communities in Northern Ireland will make regulations to align with these changes.

5. European Convention on Human Rights

- 5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 SSP is paid for 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 for at least 4 consecutive days (including non-working days); earn an average of at least £120 per week; and notify their employer that they are sick before the employer's deadline, or within 7 days if the employer has not set a deadline. If an individual cannot work while shielding because of coronavirus (COVID-19), they can get SSP for every day they are unable to work. Section 155(1) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") provides that SSP is not payable for the first three qualifying days (known as waiting days). Pursuant to powers in section 40 of the Coronavirus Act 2020, the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020, [SI 2020/374](#), disapplied the requirement for waiting days where incapacity for work is due to coronavirus. An individual must still shield for at least 4 days to be eligible.
- 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 then potentially be eligible for SSP. Under those powers, regulations have previously been made to amend the Statutory Sick Pay (General) Regulations 1982 that when a person is deemed to be incapable of work because the person is staying home as a result of coronavirus that person may be eligible for SSP, subject to meeting the usual qualifying conditions as set out above in 6.1. Section 41 of the Coronavirus Act 2020 (c. 7) inserts a new subsection 151(4A) in the 1992 Act providing a power to make reference to guidance issued by Public Health England, Scottish Ministers and Public Health Wales or any other person, as amended from time to time.
- 6.3 This instrument amends the Schedule in the Statutory Sick Pay (General) Regulations 1982 to extend SSP eligibility to cover a person who is extremely vulnerable and at very high risk of severe illness from coronavirus (COVID-19) because of an underlying health condition and who has been notified in accordance with public health guidance to follow rigorously shielding measures.

7. Policy background

What is being done and why?

- 7.1 In accordance with public health guidance, a person classed as extremely vulnerable and at very high risk of severe illness from coronavirus (COVID-19) is advised to remain at home for at least 12 weeks. If they are incapable of work (for example because they cannot work from home) during this period, they would not currently receive SSP.
- 7.2 This instrument ensures entitlement to SSP in cases where people are unable to work because they are shielding themselves in accordance with the guidance and where they meet the SSP eligibility criteria as set out above in 6.1. This is intended as a safety net for individuals, in cases where their employer chooses not to furlough them under the Coronavirus Job Retention Scheme and does not have other suitable policies in place (e.g. the ability to work from home, or the provision of special leave).

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 In view of the urgency, no consolidation has been done.

10. Consultation outcome

10.1 Given the urgency of these Regulations, no consultation has been conducted.

11. Guidance

11.1 Guidance will be available on GOV.UK for employers and individuals to understand what these changes mean in practice. The public health guidance referred to in the Regulations is available at these links:

<https://www.gov.uk/government/publications/> (Public Health England).

<https://www.gov.scot/publications/> (the Scottish Ministers).

<https://phw.nhs.wales/topics/> (Public Health Wales).

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 shield 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 shield 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 encourage those to who need to shield to stay at home and 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 2020.

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 Angus Gray, 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.