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STATUTORY INSTRUMENTS

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**2020 No. 512**

**The Statutory Sick Pay (Coronavirus) (Funding  
of Employers' Liabilities) Regulations 2020**

**PART 2**

Eligibility for funding

**Funding of eligible employers' liabilities by HMRC**

**3.**—(1) An eligible employer who has made a payment of statutory sick pay<sup>(1)</sup> to an employee where—

- (a) that employee's period of incapacity for work<sup>(2)</sup> is related to coronavirus; and
- (b) the first day of incapacity for work in that period falls on or after 13th March 2020,

is, subject to paragraphs (2) and (3), entitled to recover the amount paid to the employee (the "reimbursement amount") from HMRC.

(2) An eligible employer is not entitled to recover a reimbursement amount from HMRC—

- (a) if, were the eligible employer to receive the reimbursement amount claimed, the amount of State aid received by the eligible employer would exceed the maximum temporary aid amount for that eligible employer; or
- (b) in respect of an employee for a period for which the eligible employer is entitled to a grant in respect of that employee under the Coronavirus Job Retention Scheme.

(3) The amount which an eligible employer may recover from HMRC under these Regulations is limited to—

- (a) in relation to a single employee, £191.70; and
- (b) in total, £191.70 multiplied by the number of employees enrolled in PAYE schemes of the eligible employer on 28th February 2020, determined in accordance with regulation 4.

(4) In this regulation—

- (a) an employee includes an employee who—
  - (i) was employed by the eligible employer during a period of incapacity for work related to coronavirus,
  - (ii) has received a payment of statutory sick pay from the eligible employer in respect of that period of incapacity for work, and
  - (iii) no longer works for the eligible employer;
- (b) the reference to the reimbursement amount in paragraph (2)(a) is to that amount converted into euros using the European Commission's—
  - (i) official monthly accounting rate for the euro; and

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(1) "Statutory sick pay" is defined in section 151(1) of the 1992 Act.

(2) "Period of incapacity for work" is defined in s152(2) of the 1992 Act.

- (ii) conversion rate for April 2020(3); and
- (c) the “Coronavirus Job Retention Scheme” is the scheme set out in the Schedule to the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction(4).

### Meaning of eligible employer

4.—(1) An eligible employer is an employer who—

- (a) on 28th February 2020, had fewer than 250 employees enrolled in all PAYE schemes operated by the employer; and
- (b) on 31st December 2019, was not already in difficulty.

(2) An employer is “in difficulty” if it is reasonable to assume that the employer would be regarded as an undertaking in difficulty under Article 2(18) of [Commission Regulation \(EU\) No. 651/2014](#) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty(5).

(3) Where, on 28th February 2020, the employer was one of—

- (a) two or more companies which were not charities and which were connected with one another, or
- (b) two or more charities which were connected with one another,

the number of employees referred to in paragraph (1) is the total number of employees enrolled in all PAYE schemes operated by the connected companies or charities, as applicable.

(4) For the purposes of paragraph (3)—

- (a) Part 1 of Schedule 1 to the National Insurance Contributions Act 2014(6) sets out the rules for determining if two or more companies are connected with one another;
- (b) Part 2 of Schedule 1 to that Act sets out the rules for determining if two or more charities are connected with each other.

(5) In this regulation—

“charity” has the same meaning as in section 18(1) of the Small Charitable Donations Act 2012(7), subject to paragraph 8(5) of Schedule 1 to the National Insurance Contributions Act 2014; and

“company” has the meaning given by section 1121(1) of the Corporation Tax Act 2010(8) and includes a limited liability partnership.

### When an employee’s incapacity for work is related to coronavirus

5.—(1) An employee’s incapacity for work is related to coronavirus if the employee is—

- (a) incapable by reason of infection or contamination with coronavirus, or

(3) The European Commission’s official rates are available at [https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoforeuro\\_en](https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoforeuro_en).

(4) The Direction dated 15 April 2020 is available at <https://www.thegazette.co.uk/notice/3551698>. A person unable to access the Direction electronically may access it while government advice on social distancing and unnecessary travel applies, in hard copy by post free of charge on application to 07785 665073 and otherwise by inspection free of charge at HMRC, 100 Parliament Street, London SW1A 2BQ.

(5) OJ No. L 187, 26.6.2014, p. 1, to which there are amendments not relevant to these Regulations.

(6) 2014 c. 7.

(7) 2012 c. 23.

(8) 2010 c. 4. Section 1121(1) was amended by [S.I. 2013/1388](#).

(b) deemed, in accordance with regulation 2(1)(c) of the Statutory Sick Pay (General) Regulations 1982<sup>(9)</sup>, to be incapable by reason of coronavirus, of doing work which the employee can reasonably be expected to do under the employee's contract of service, and references in these Regulations to an employee's period of incapacity for work related to coronavirus shall be construed in accordance with this regulation.

(2) The reference to regulation 2(1)(c) of the Statutory Sick Pay (General) Regulations 1982 in paragraph (1)(b) is a reference to the regulation which was in force on the first day of incapacity for work in question.

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(9) S.I. 1982/894. Paragraph (1)(c) was inserted by S.I. 2020/287 and amended by S.I. 2020/304, 2020/374.