

EXPLANATORY MEMORANDUM TO
THE STATUTORY SICK PAY (CORONAVIRUS) (FUNDING OF EMPLOYERS’
LIABILITIES) REGULATIONS 2020

2020 No. 512

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty’s Revenue and Customs (HMRC) 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 These regulations provide for certain small and medium-size employers to apply to HMRC for a refund of the cost of paying Statutory Sick Pay (SSP) to their employees. The scheme refunds eligible employers the costs of SSP up to a certain threshold where an employee’s incapacity for work is related to coronavirus. Refunds are payable in respect of periods of incapacity for work where the first day of incapacity for work related to coronavirus arose on or after 13 March 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These are urgent regulations in relation to the government’s response to coronavirus; they provide for financial assistance for small and medium-size employers in relation to payments made for SSP related to coronavirus; they provide for financial assistance for small and medium-size employers in relation to payments made for SSP related to coronavirus. This instrument is being laid less than 21 days before it comes into force to ensure that employers can access this important support as soon as possible. HMRC has breached the 21-day rule to the minimum extent that has been possible in light of the government’s developing response to the outbreak. In doing so, HMRC has also sought to avoid amendments being made to the regulations shortly after they have been made.
- 3.2 To mitigate the impact of this, guidance outlining the scheme was published on 3 April 2020 and continues to be updated, allowing employers to prepare for making claims under the scheme (available at <https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>).
- 3.3 These regulations apply in relation to days of incapacity for work that fall on or after 13 March 2020, where the first day of the period of incapacity for work falls on or after that date. This is in line with other provisions that have been made in relation to SSP related to coronavirus. This is permitted by section 159B(7) of the Social Security Contributions and Benefits Act 1992.

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)

- 3.4 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 Great Britain.
4.2 The territorial application of this instrument is Great Britain.

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 Section 39 of the Coronavirus Act 2020 ('the 2020 Act') modified the Social Security Contributions and Benefits Act 1992 ('the 1992 Act') by inserting section 159B. Section 159B contains powers for the Commissioners for HMRC to make provision for the payment by employers of SSP in respect of incapacity for work related to coronavirus to be funded by HMRC. Consequential changes to sections 113A and 113B of the Social Security Administration Act 1992 ('the Administration Act') and to section 175 of the 1992 Act were also made by the 2020 Act. This is the first use of the powers under section 159B of the 2020 Act.
- 6.2 The 2020 Act expires two years after Royal Assent, on 24 March 2022. HMRC will consider whether further legislation is needed to bring this scheme to a conclusion.
- 6.3 The 2020 Act also introduced other powers relating to SSP. The Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (S.I. 2020/374) disapply the SSP waiting period in section 155(1) of the 1992 Act in respect of periods of incapacity related to coronavirus arising on or after 13 March 2020.
- 6.4 Also, provision has been made by the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 (S.I. 2020/287), the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 2) Regulations 2020 (S.I. 2020/304) and the regulations described in the paragraph above, to deem an employee incapable of work when the employee is self-isolating on or after 13 March 2020. This provision has been extended by the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 (S.I. 2020/427), from 16 April 2020, to include people who are shielding.
- 6.5 The Secretary of State for Work and Pensions concurred to the making of the final text of this instrument.

7. Policy background

What is being done and why?

- 7.1 Employers are obliged to pay SSP to eligible employees who are unable to work because of sickness. It is paid at a flat rate of £95.85 (£94.25 in the tax year to 5 April

2020) per week for up to 28 weeks. The full cost of SSP is currently met by the employer.

- 7.2 As a result of coronavirus, the number of people off work has increased significantly. This includes those who are displaying virus-like symptoms, as well as those who are self-isolating or shielding as a precautionary measure in accordance with government public health advice. In a stretching scenario, it is possible that up to one fifth of employees may be absent from work at some point during this outbreak. This would present a significant additional financial burden on employers through increased SSP costs.
- 7.3 At the Budget on 11 March 2020, the Chancellor announced that legislation would be introduced to refund some of the costs of SSP related to coronavirus to some employers.
- 7.4 These refunds will be available to employers who have fewer than 250 employees enrolled on the employer's Pay As you Earn scheme on 28 February 2020.
- 7.5 When considering how many employees were enrolled on the employer's Pay As You Earn scheme, an employer will have to consider all the schemes it operates, where this is more than one, and the total number of employees on schemes operated by connected companies or charities. The definition of connected companies or charities is one that most employers of this size will be familiar with as it also applies to the Employment Allowance.
- 7.6 The employer is entitled to a refund from HMRC of the amount of SSP paid to an employee whose period of incapacity for work is related to coronavirus. An employee's incapacity for work is related to coronavirus when they are either unwell, having been infected or contaminated with coronavirus, or are self-isolating or shielding in line with government guidance. The maximum amount which an eligible employer may receive as a refund in relation to a single employee is £191.70 and the total amount is £191.70 multiplied by the number of employees enrolled in their PAYE schemes on 28 February 2020. £191.70 is the equivalent of 2 weeks' SSP at the current rate.
- 7.7 Employers will use their existing government gateway credential to access the new digital service provided specifically for claiming an SSP refund. An employer will be required to provide the PAYE scheme reference number, the amount being claimed, the number of employees being claimed for, the period covered by this claim and details of the bank account into which the amount is to be paid. Employers also need to make a declaration that the matters stated in the claim are true and accurate. Employers who are digitally excluded, as defined in the regulations, are not required to use the government gateway and should contact HMRC to submit a claim in an alternative manner.
- 7.8 The United Kingdom (UK) is implementing the policy under the UK's Temporary State Aid Framework that was agreed with the European Commission. This means employers will not be eligible to claim where they are not able to receive this type of State aid. As part of their application, employers will have to confirm that the employer was not already in difficulty on 31 December 2019 and that receipt of the amount claimed will not result in the amount of State aid received by the employer exceeding the maximum State aid amount that an employer is permitted to receive. Employers will receive confirmation of the value of the state aid awarded and must keep this record until 4 years after the end of the implementation period following the

UK's withdrawal from the European Union. The government anticipate very few employers will fail to be eligible due to the State aid requirements.

- 7.9 Employers will be required to keep the minimum necessary records to support their claims, and any adjustments to them, for a period of 3 years following receipt of the payment of their claim. HMRC can inspect records or request them to be provided. Failure to make them available is subject to the penalties in section 113A(2) of the Administration Act and fraudulent or negligent provision of information is subject to the penalty in section 113B(1) of the Administration Act.
- 7.10 Where employers identify an error in the amount claimed, they will be required to make an adjustment in their next claim (or within 60 days, if earlier) to correct any overpayments applied for from this scheme. Underpayments are adjusted by making a new claim. Fraudulent or negligent receipt of a payment under these regulations is subject to the penalty in section 113B(2A) of the Administration Act. Overpayments will be collected using the existing framework in the Taxes Management Act 1970.
- 7.11 HMRC will use the established decision making process under section 8 of the Social Security Contributions (Transfer of Functions, Etc.) Act 1999 in the event of a dispute about claims or overpayments under these regulations.
- 7.12 The regulations contain a time limit to make a claim of one year from the end of the employee's period of incapacity for work, or from 26th May 2020, whichever is later. However this will need to be considered as part of legislation to bring the scheme to a conclusion (as described in paragraph 6.2 above).
- 7.13 An employer is not entitled to a refund of SSP if they could claim a grant for that employee for the same period under the Coronavirus Job Retention Scheme.

8. Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 These regulations do not amend existing regulations.

10. Consultation outcome

- 10.1 These regulations have been prepared in response to the recent coronavirus outbreak. The urgency for this measure means that it has not been possible to consult on policy or the detail contained in this instrument.

11. Guidance

- 11.1 Guidance on this measure is published at <https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>.

12. Impact

- 12.1 The impact on business, charities and voluntary bodies is that they will be required to apply to HMRC if they wish to claim a refund of qualifying SSP payments. This measure is voluntary and is expected to be welcomed.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been produced for this instrument because it is covered by the Summary of Impacts published with the Coronavirus Bill on 19 March 2020 at <https://publications.parliament.uk/pa/bills/cbill/58-01/0122/Coronavirus%20Bill%20Impact%20Assessment%20final%20pdf.pdf> (see pages 72 to 73).

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 burden on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small business is that this measure is voluntary and will be welcomed by small businesses.

14. Monitoring & review

- 14.1 The government keeps all areas of the tax and benefit system under review, and that includes this instrument.
- 14.2 These regulations do not include a statutory review clause because they are dependent on the 2020 Act which has a 2-year expiry period, after which time the enabling powers will expire along with this instrument.

15. Contact

- 15.1 Gareth Cooper at HMRC Telephone: 07785 665073 or email: gareth.cooper@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Nixon, Deputy Director for National Insurance Contributions Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.