

## EXPLANATORY MEMORANDUM TO

### THE STATUTORY SICK PAY (CORONAVIRUS) (SUSPENSION OF WAITING DAYS AND GENERAL AMENDMENT) (NO.2) REGULATIONS 2020

2020 No. 681

#### 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 clarify eligibility of the shielding group for Statutory Sick Pay (SSP). It also sets out how this group will be advised when shielding will come to an end. This instrument also provides that where a person self-isolates for less than 7 or 14 days because they or a member of their household, or extended household in Scotland, or linked household in England and Wales receives a negative test result for coronavirus, they do not have to serve waiting days for the days in self-isolation. Other eligibility criteria will still apply. It also provides that a person who has formed an extended household or a linked household and is self-isolating because a member of that other household has symptoms of coronavirus may be eligible for SSP.

#### 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(1), (3), (4) and (5A) of the Social Security Contributions and Benefits Act 1992(c. 4) (“the 1992 Act”).

The Regulations provide clarity on eligibility for SSP for those who are in extended or linked households; those who are advised to shield because they are at high risk of severe illness of coronavirus; and those who self-isolate ahead of a completed test result for coronavirus and where that test is returned negative. This is important to ensure that employers have certainty around their legal responsibilities to their employees in these circumstances and that employees receive SSP where they are entitled to. Such measures are in line with public health guidance on self-isolation and form a key part of the Government’s response to coronavirus, both in terms of managing and limiting the spread of the virus.

In making those changes, these Regulations address the point raised by the Committee on the Statutory Sick Pay (General) (Coronavirus Amendment) (No 3) Regulations 2020 (S.I. 2020/427).<sup>1</sup> In relation to those Regulations, the Committee queried whether a person may be defined as “extremely vulnerable and at very high risk of

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<sup>1</sup> [https://publications.parliament.uk/pa/jt5801/jtselect/jtstatin/61/6103.htm#\\_idTextAnchor023](https://publications.parliament.uk/pa/jt5801/jtselect/jtstatin/61/6103.htm#_idTextAnchor023)

severe illness from coronavirus” for the purposes of those Regulations even if the relevant public health guidance (for example, that issued by the Scottish Ministers) did not expressly use the phrase “extremely vulnerable”. In response to those concerns, these Regulations clarify that different definitions of shielding apply in the public health guidance, applying this respectively in England and Wales, and in Scotland.

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 important to prevent eligible individuals potentially being denied SSP because of the uncertainty over the application of the current regulations to those who are shielding.

*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)*

- 3.2 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. 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 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, individuals may be eligible for SSP if they stay at home and self-isolate in accordance with guidance because they have symptoms of coronavirus, or someone in their household is displaying symptoms, and they are unable to work as a result of that isolation. The SSP Regulations also clarify that a person is eligible for SSP where he or she is extremely vulnerable and at very high risk of severe illness from coronavirus because of an underlying health condition and has been notified in accordance with public health guidance to follow shielding measures.
- 6.3 These Regulations clarify that SSP continues to be available to the shielding group if they meet up with other people outside their household, in accordance with public health guidance, and as such are not strictly staying at home at all times. They provide that the shielding group will continue to be eligible for SSP until the end of the

shielding period, and that a person who is notified to shield at any future time will still be eligible for SSP. These Regulations also provide that a person who is self-isolating because they or someone they live with, or a member of their extended or linked household, has symptoms of coronavirus, and they or that person receives a negative test and therefore stops self-isolating after less than 7 or 14 days, they do not have to serve waiting days for the days in self-isolation.

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

## **7. Policy background**

- 7.1 In accordance with public health guidance, a person classed as extremely vulnerable and at very high risk of severe illness from coronavirus 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, if they follow this guidance, they are currently eligible for SSP. The government recently announced that restrictions for people who are shielding will be relaxed. As a result of new public health guidance, this group are now permitted to meet up to six other people outside of their home and to form an extended household (in Scotland and Wales) or a linked household (in England) with another household. This has changed how shielding operates in the regulations and so this instrument brings clarity to ensure that this group are still eligible for SSP. Regulations also set out that SSP will be paid until the end of the isolation period for this group and allows SSP to be paid should any future periods of shielding be required.
- 7.2 Currently, if a person has formed an extended or linked household with another household, and has to self-isolate and is unable to work because a member of the other household has symptoms of coronavirus, they may not be eligible for SSP. Also, if a person who is self-isolating because they have symptoms of coronavirus and receives a negative test result, and their period of self-isolation comes to an end, they may only be entitled to SSP, and not have to serve waiting days, if they have isolated for at least 7 days or 14 days. This instrument ensures that those in an extended or linked household and those who self-isolate for less than 7 or 14 days do not have to serve waiting days for the days in self-isolation. In doing so, these Regulations do not extend eligibility to this group; rather they clarify existing eligibility.

## **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 who need to self-isolate at home and those who need to follow shielding advice to do so and thereby 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 self-isolate 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 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 Angus Gray, 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.