

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO. 5) REGULATIONS 2020

2020 No. 829

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 extend eligibility for Statutory Sick Pay (SSP) to cover people where they are self-isolating for a minimum of ten days in line with Public Health England guidance published on 30 July.

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), 163(4) and 175(3), (4) and (5A) of the Social Security Contributions and Benefits Act 1992. (“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 important to ensure that individuals are eligible for SSP as soon as possible in line with changes to public health guidance.

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. 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 (or their linked household or extended household is displaying symptoms, and they are unable to work as a result of that isolation. The SSP Regulations also ensure that a person can be 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 provide that a person continues to be eligible for SSP for up to 10 days if they have to self-isolate because they have tested positive for coronavirus or have symptoms of coronavirus.
- 6.4 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 Guidance issued by Public Health England on 30 July 2020 advises that anyone having to self-isolate after this date because they have tested positive for coronavirus or have symptoms of coronavirus, are advised to do so for 10 days instead of 7. Existing regulations ensure a person is eligible for SSP for 7 days if they are self-isolating because they have symptoms. We therefore need to amend the Regulations to ensure that these people are eligible for SSP for the full 10 days.

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 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