

EXPLANATORY MEMORANDUM TO
THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO.
6) REGULATIONS 2020

2020 No. 892

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 people where they are self-isolating prior to admittance to hospital for planned or elective surgery.

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(3) and (4) of the Social Security Contributions and Benefits Act 1992(a) (“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 who are advised to self-isolate prior to surgery are eligible for SSP as soon as possible.

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, or deemed to be incapable of work, 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 by SI 2020/287, individuals may be eligible for SSP if they are unable to work because they are staying at home and self-isolating in accordance with guidance because:
- a. They have symptoms of coronavirus;
 - b. They live with, or are in a linked or extended household with, someone who has symptoms;
 - c. They have been informed that they have had contact with a person who was, at the time of the contact, infected with coronavirus;
 - d. They are shielding in accordance with public health guidance;
 - e. They have tested positive for coronavirus;
 - f. They live with someone who has tested positive for coronavirus.
- 6.3 These regulations provide that anyone who is advised that they should self-isolate prior to a planned or elective surgical or other hospital procedure can be deemed to be incapable of work, and therefore potentially be eligible for SSP, for up to 14 days.
- 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 Revised NICE guidelines published on 27 July 2020 sets out guidance for healthcare professionals on Covid-19 and arranging planned care in hospitals. As part of measures to deliver efficient planned care while minimising the risk of coronavirus in clinical settings, a clinician may recommend that a patient self-isolate for a period prior to their surgery, based on a number of individual and clinical risk factors. Patients may be advised to self-isolate for 3 days prior to being admitted into hospital, while those patients who are deemed at higher risk may be advised to self-isolate for 14 days prior. Regulations need to be amended to allow patients in this situation to potentially be eligible for SSP.

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