

## EXPLANATORY MEMORANDUM TO

### THE STATUTORY SICK PAY (MEDICAL EVIDENCE) REGULATIONS 2021

2021 No. 1453

#### 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 (Medical Evidence) Regulations 1985 (S.I.1985/1604) (“the SSP Regulations”)<sup>1</sup> in order to increase the number of days for which an employee is not required to provide medical evidence of sickness absence to their employer from 7 days to 28 days. This is intended to increase General Practice (GP) capacity to support the coronavirus vaccine booster programme by reducing the need for employees to visit their GP for medical evidence for the purposes of Statutory Sick Pay (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 section 14(2)(b) of the Social Security Administration Act 1992 (“the 1992 Act”)<sup>2</sup>.
- 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 necessary to allow GP capacity to be increased immediately and thereby ensure that support to the coronavirus vaccine booster programme can be maximised quickly.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent and application of this instrument is Great Britain only.
- 4.2 The instrument relates to a reserved matter within the devolved legislative competence of the Northern Ireland Assembly.

#### 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 Statutory Sick Pay (SSP) is paid by employers to employees who are incapable of work due to sickness. It is paid at a flat rate of £96.35 for up to 28 weeks. To be eligible for SSP, an individual must: be classed as an employee and have done some

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/1985/1604/contents/made>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1992/4/contents/enacted>

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. Employers cannot require an employee to provide medical evidence within the first 7 days of their employee's sickness absence but may do so after the first 7 days. Medical evidence can be in the form of a fit note from a GP.

- 6.2 Powers under section 14(2)(b) of the 1992 Act provide that regulations may be made which provide that employees shall not be required to provide medical information in respect of such days as may be prescribed. Regulation 2 of the SSP Regulations is modified by these regulations such that employees are not required to provide medical evidence of absence within the first 28 days of a sickness absence.
- 6.3 These Regulations will apply to all spells of incapacity which begin after the regulations come into force until 26 January 2022 or, for spells of incapacity which commence before the regulations come into force, which have lasted for no more than 7 days when the regulations come into force.
- 6.4 The regulations will not apply to spells of incapacity which begin after 26 January 2022 but will continue to apply to any spell of incapacity (other than those commencing more than 7 days prior to the regulations coming into force) which is ongoing, having commenced prior to 26 January 2022.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Existing regulations mean an employee is not required to provide medical evidence, such as a fit note from their GP, within the first 7 days of their sickness absences for the purposes of SSP. This change will mean employees are not required to provide medical evidence within the first 28 days of their sickness absences for the purpose of SSP.
- 7.2 On 12th December 2021, the Prime Minister launched the Omicron Emergency Boost with the NHS expected to offer every eligible adult over the age of 18 a booster vaccination by 31 December. Delivering this accelerated booster programme presents a huge challenge for the NHS and it has been asked to prioritise vaccinations and emergency care for the rest of the year. All General Practice teams are being asked to clinically prioritise services to free up maximum capacity to support the COVID-19 vaccination programme alongside delivering urgent or emergency care and other critical services such as cancer. That could include pausing routine and non-urgent care and redeploying staff to support delivery of COVID-19 vaccinations.
- 7.3 This change is therefore a temporary measure intended to quickly maximise GP capacity to support the coronavirus vaccine booster programme. Given this context, the regulations only apply for a short time to provide the necessary support to medical professionals. Given this is a strictly time limited measure with a clear end date, any impact on employers or businesses should be minimal.

## **8. European Union Withdrawal and Future Relationship**

- 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 increase GP capacity to support the coronavirus vaccine booster programme.

12.2 We have not assessed the impact on the public sector because of the need to make and lay the instrument urgently to increase GP capacity to support the coronavirus vaccine booster programme.

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 increase GP capacity to support the coronavirus vaccine booster programme.

## **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 not apply to any spells of incapacity which commence after 26 January 2022. As such, no monitoring or review will take place.

## **15. Contact**

15.1 David Long at the Department for Work and Pensions email: david.long@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Keith Roberts, Deputy Director for Employers and 50+ choices, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey, Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.