
STATUTORY INSTRUMENTS

2022 No. 5

**The Statutory Sick Pay (Coronavirus) (Funding
of Employers' Liabilities) Regulations 2022**

PART 2

Eligibility for funding

Funding of eligible employers' liabilities by HMRC

3.—(1) An eligible employer who has made a payment of statutory sick pay⁽¹⁾ to an employee where—

- (a) that employee's period of incapacity for work⁽²⁾ is related to coronavirus; and
- (b) any day of incapacity for work in that period falls on or after 21st December 2021,

is, subject to paragraphs (2) and (3), entitled to recover the amount paid to the employee in respect of those days of incapacity for work which fall on or after 21st December 2021 (the "reimbursement amount") from HMRC.

(2) An eligible employer is not entitled to recover a reimbursement amount from HMRC—

- (a) if, were the eligible employer to receive the reimbursement amount claimed, the amount of State aid received by the eligible employer would exceed the maximum temporary aid amount for that eligible employer; or
- (b) in respect of an employee for a period for which the eligible employer is entitled to a government grant in respect of that employee due to the employee being furloughed from the employment for reasons related to COVID-19.

(3) The amount which an eligible employer may recover from HMRC under these Regulations is limited to—

- (a) in relation to a single employee, £192.70; and
- (b) in total, £192.70 multiplied by the number of employees enrolled in PAYE schemes of the eligible employer on 30th November 2021, determined in accordance with regulation 4.

(4) In this regulation—

- (a) an employee includes an employee who—
 - (i) was employed by the eligible employer during a period of incapacity for work related to coronavirus,
 - (ii) has received a payment of statutory sick pay from the eligible employer in respect of that period of incapacity for work, and
 - (iii) no longer works for the eligible employer; and

(1) "Statutory sick pay" is defined in section 151(1) of the 1992 Act.

(2) "Period of incapacity for work" is defined in section 152(2) of the 1992 Act.

- (b) the reference to the reimbursement amount in paragraph (2)(a) is to that amount converted into euros using the European Commission's—
 - (i) official monthly accounting rate for the euro; and
 - (ii) conversion rate for December 2021(3).

Meaning of eligible employer

- 4.—(1) An eligible employer is an employer who—
- (a) on 30th November 2021, had fewer than 250 employees enrolled in all PAYE schemes operated by the employer; and
 - (b) on 31st December 2019, was not already in difficulty.
- (2) An employer is “in difficulty” if—
- (a) in the case of an employer who is not a micro or small enterprise, it is reasonable to assume that the employer would be regarded as an undertaking in difficulty under Article 2(18) of the General Block Exemption Regulation; or
 - (b) in the case of an employer who is a micro or small enterprise, it is reasonable to assume that the employer would be regarded as an undertaking in difficulty either under Article 2(18)(c) of the General Block Exemption Regulation, as if the words after “collective insolvency proceedings”, in the first place it appears, to the end were omitted, or under Article 2(18)(d) of the General Block Exemption Regulation.
- (3) Where, on 30th November 2021, the employer was one of—
- (a) two or more companies which were not charities and which were connected with one another; or
 - (b) two or more charities which were connected with one another,
- the limit in paragraph (1)(a) applies to the total number of employees enrolled in all PAYE schemes operated by the connected companies or charities, as applicable.
- (4) For the purposes of paragraph (3)—
- (a) Part 1 of Schedule 1 to the National Insurance Contributions Act 2014(4) sets out the rules for determining if two or more companies are connected with one another;
 - (b) Part 2 of Schedule 1 to that Act sets out the rules for determining if two or more charities are connected with each other.
- (5) In this regulation—
- “charity” has the same meaning as in section 18(1) of the Small Charitable Donations Act 2012(5), subject to paragraph 8(5) of Schedule 1 to the National Insurance Contributions Act 2014;
- “company” has the meaning given by section 1121(1) of the Corporation Tax Act 2010(6) and includes a limited liability partnership;
- “General Block Exemption Regulation” means [Commission Regulation \(EU\) No. 651/2014](#) of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty(7);

(3) The European Commission's official rates are available at https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en.

(4) 2014 c. 7.

(5) 2012 c. 23.

(6) 2010 c. 4. Section 1121(1) was amended by S.I. 2013/1388.

(7) OJ No. L 187, 26.6.2014, p. 1, to which there are amendments not relevant to these Regulations.

“micro or small enterprise” means an employer who is a micro-enterprise or a small enterprise within the meaning of Article 2 of Annex 1 of the General Block Exemption Regulation.

When an employee’s incapacity for work is related to coronavirus

5.—(1) An employee’s incapacity for work is related to coronavirus if the employee is—

- (a) incapable by reason of infection or contamination with coronavirus, or
- (b) deemed, in accordance with regulation 2(1)(c) or (d) of the Statutory Sick Pay (General) Regulations 1982⁽⁸⁾, to be incapable by reason of coronavirus,

of doing work which the employee can reasonably be expected to do under the employee’s contract of service, and references in these Regulations to an employee’s period of incapacity for work related to coronavirus shall be construed in accordance with this regulation.

(2) The reference to regulation 2(1)(c) or (d) of the Statutory Sick Pay (General) Regulations 1982 in paragraph (1)(b) is a reference to the regulation which was in force on the first day of incapacity for work in question.

⁽⁸⁾ [S.I. 1982/894](#). Paragraph (1)(c) was inserted by [S.I. 2020/287](#) and amended by [S.I. 2020/304](#), [2020/374](#), [2020/681](#). Paragraph (1)(d) was inserted by [S.I. 2020/681](#).