

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (CORONAVIRUS) (SUSPENSION OF WAITING DAYS) (SAVING PROVISION) (NORTHERN IRELAND) REGULATIONS 2022

2022 No. 987

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Work and Pensions on behalf on the request of the Department for Communities in Northern Ireland and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

- 2.1 This instrument makes a saving provision following the expiry of section 43 of the Coronavirus Act 2020¹ at midnight on 24 September 2022. It makes provision for the disapplying of waiting days to continue in relation to periods of incapacity for work due to sickness from coronavirus that commence on or before 24 September 2022.

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 89(3) of the Coronavirus Act 2020².
- 3.2 These Regulations will come into force on 25 September 2022. It has not been possible to comply with the 21-day rule as engagement with the Department for Communities in Northern Ireland and the Northern Ireland Office was required before laying these Regulations. It is also not possible to delay the laying of these Regulations beyond 23 September as they must be laid as soon as section 43 expires.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to no procedure, no statement is required.

6. Legislative Context

- 6.1 Statutory Sick Pay is paid for by employers to eligible employees who are incapable of work due to sickness at a rate of £99.35 a week for up to 28 weeks. To be eligible, 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 £123 per week; and tell their employer that they are sick before the employer's deadline or within 7 days where no deadline is set.

¹ <https://www.legislation.gov.uk/ukpga/2020/7/section/43>

² <https://www.legislation.gov.uk/ukpga/2020/7/section/89>

- 6.2 Section 151(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A)³ provides that Statutory Sick Pay is not payable for the first three qualifying days in any period of entitlement. Regulations made by virtue of section 43 provide that section 151(1) of the SSCB(NI)A does not apply in relation to an employee where that employee's period of incapacity is related to coronavirus. Regulation 2 of the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (Northern Ireland) 2020/54⁴, and Regulation 3 of the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) (No.2) Regulations (Northern Ireland) 2020/134⁵ were made under this power. As those Regulations were made under powers contained in a temporary provision of the Coronavirus Act, which will expire at midnight on 24 September 2022, they will no longer have legal effect once the power provided by section 43 of the Coronavirus Act expires.
- 6.3 This instrument makes saving provision relating to the expiry of the powers in section 43 of the Coronavirus Act 2020. It provides that where a period of incapacity for work is related to coronavirus and has commenced on or before 24 September 2022 (that is to say, whilst section 43 was in force) waiting days will continue to be suspended in relation to that period of incapacity. This means that an employee who is sick due to coronavirus at the expiry of the power will receive SSP for every qualifying day.
- 6.4 It is intended that this provision should ensure that employers and employees are clear about how waiting days operate where a period of incapacity has commenced prior to the expiry of section 43 and to avoid a situation whereby the requirement to serve waiting days applies to some, but not all, of the first 3 qualifying days of a period of incapacity.

7. Policy background

What is being done and why?

- 7.1 As part of the response to the coronavirus pandemic, temporary changes were made to Statutory Sick Pay in Great Britain and Northern Ireland to support compliance with public health advice on self-isolation. These changes made Statutory Sick Pay payable from day one of a coronavirus-related absence and extended eligibility to individuals who were self-isolating but would otherwise not have been considered sick or incapable of work, including where they had no or very mild symptoms, or were following guidance on household isolation. Other qualifying criteria continued to apply.
- 7.2 On the formal request of the Minister for Communities in Northern Ireland, Regulations were laid to extend section 43 of the Act for an additional six months up to 24 September 2022. This instrument aims to bring clarity for employers and employees on how waiting days operate at the end of this period.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

³ <https://www.legislation.gov.uk/ukpga/1992/7/section/151>

⁴ <https://www.legislation.gov.uk/nisr/2020/54/contents>

⁵ <https://www.legislation.gov.uk/nisr/2020/134/contents/made>

9. Consolidation

9.1 Consolidation does not apply.

10. Consultation outcome

10.1 This is a minor saving provision which is expected to have minimal impact and so no consultation has been conducted.

11. Guidance

11.1 Guidance is available on nidirect.gov.uk for individuals and employers to understand how to comply with Statutory Sick Pay rules in Northern Ireland⁶.

12. Impact

12.1 We have not assessed the impact on business, charities, or voluntary bodies because of the urgent need to make the instrument in advance of the expiry of section 43 of the Coronavirus Act 2020 but no significant impact is foreseen. We have not assessed the impact on the public sector because of the urgent need to make the instrument in advance of the expiry of section 43 of the Coronavirus Act 2020 but no significant impact is foreseen. A full Impact Assessment has not been prepared for this instrument because of the urgent need to make and lay the instrument in advance of the expiry of section 43 of the Coronavirus Act 2020 but no significant impact is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses in Northern Ireland. No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring and review

14.1 As these Regulations provide saving provision, which will only have practical effect for a short time, they will not be reviewed.

15. Contact

15.1 Sunil Aswani at the Department for Work and Pensions: email: sunil.aswani@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Natalie Keogh Deputy Director for the Employers, Health and Inclusive Employment Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Secretary of State for the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

⁶ <https://www.nidirect.gov.uk/articles/statutory-sick-pay>