

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

S.R. 2020 NO. 186

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 147(4) and (4A), and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the 1992 Act”), and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982 in order to extend eligibility for Statutory Sick Pay (SSP) to cover people where they are self-isolating prior to admittance to hospital for planned or elective surgery.

3. Background

- 3.1 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.
- 3.2 Powers under section 147(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 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.

3.3 These regulations provide that anyone who is notified 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.

4. Consultation

4.1 There is no requirement to consult on these regulations.

5. Equality Impact

5.1 An equality impact assessment has not been carried out in relation to this Statutory Rule because of the need to make and lay urgently to encourage those who need to shield to stay at home and minimise the risk to public health arising from COVID-19.

6. Regulatory Impact

6.1 The legislation applies to activities which are undertaken by small businesses and owing to the urgent nature of the requirement for this legislation it is not appropriate to carry out a Regulatory Impact Assessment.

7. Section 24 of the Northern Ireland Act 1998

7.1 The Department has considered section 24 of the Northern Ireland act 1998 and is satisfied that the Rule –

- (a) is not incompatible with any of the Convention rights;
- (b) is not incompatible with Community law;
- (c) does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

8. E U Implications

8.1 Not applicable.

9. Parity or Replicatory Measure

9.1 These Regulations are equivalent to the Statutory Sick Pay (General) (Coronavirus Amendment) (No.6) Regulations 2020 (SI 2020/892) which were made in Great Britain on 24th August 2020 and came into force on 26th August 2020.

10. Additional Information

10.1 Not applicable.

11. Guidance

11.1 Public health guidance is available at this link:

www.publichealth.hscni.net/news/covid-19-coronavirus (Regional Agency for Public Health and Social well- being)

12. 21 Day Rule

- 12.1 The Department for Communities was unable to adhere to the 21 Day Rule in making this Statutory Rule due to a rapidly changing policy environment which necessitates immediate legislative change as a result of the coronavirus pandemic. The National Institute for Health Care Excellence issued COVID-19 rapid guidelines on arranging planned care in hospitals and diagnostic services on 27 July 2020, advising patients who are at greater risk of getting COVID-19, or having a poorer outcome if they get it, that they may want to self-isolate before a planned procedure and the length of self-isolation should be 14 days.