

EXPLANATORY MEMORANDUM TO
THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO.
7) REGULATIONS (NORTHERN IRELAND) 2020
S.R. 2020 No. 351

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), (4) and (5A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, 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 ensure that individuals will be eligible for Statutory Sick Pay (SSP) for the full period for which they are required to self-isolate, including where they have tested positive for coronavirus, or where they are in a household with someone who has tested positive. This Statutory Rule therefore reflects the changes to public health advice on self-isolation in Northern Ireland, which came into effect on 14 December 2020.

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, 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.
- 3.2. Powers under section 147(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 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 The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 32), individuals may be eligible for SSP if they are unable to work because they are staying at home and self-isolating in accordance with public health advice because:

- They have symptoms of coronavirus or have tested positive for coronavirus;
- They live with, or are in a linked or extended household with, someone who has symptoms or has tested positive for coronavirus;
- They have been informed that they have had contact with a person who was, at the time of the contact, infected with coronavirus;
- They are shielding in accordance with public health guidance;
- They are due to undergo planned or elective surgical or other hospital procedure.

3.3. From 14 December in England, Scotland and Northern Ireland, and from 10 December in Wales, the self-isolation period for contacts of someone who has tested positive for coronavirus was reduced from 14 days to 10 days. This means the self-isolation advice for close contacts aligns with the advice for those who have tested positive for coronavirus and those who are in the same household (including extended and linked households). The point at which the 10-day self-isolation period begins also changed, with day 1 being the day after either the first day of symptoms, the day of the test or, if a contact, the day of the most recent contact with the confirmed case.

3.4. These regulations therefore amend the SSP regulations to ensure that individuals are eligible for SSP for the full period of their isolation. This is achieved by providing that anyone who is symptomatic, along with their household contacts, is deemed to be incapable of work if they self-isolate for 11 days. This includes the day of symptom onset, or day of test, plus the subsequent 10 full days.

3.5. These regulations also provide that where a person has received a notification in writing or orally informing them that they have tested positive for coronavirus, they and their household contacts will be eligible for SSP for the period set out in that

notification. Where no such period is specified in the notification, they will be deemed incapable of work for 11 days, beginning with the day on which they first develop symptoms or are tested. The usual SSP eligibility conditions will apply.

3.6. These Regulations will be kept under review in line with any renewal or revision of the Coronavirus Act 2020.

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 provide support and give certainty to those affected by the Covid-19 pandemic.

6. Regulatory Impact

6.1. There is no impact on business, charities or voluntary bodies or on the public sector.

7. Financial Implications

7.1. None anticipated.

8. Section 24 of the Northern Ireland Act 1998

8.1. 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 ground of religious belief or political opinion; and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. These Regulations are equivalent to the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 7) Regulations 2020 in Great Britain which come into force on 24 December 2020.

11. 21 Day Rule

11.1. 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. This Statutory Rule gives effect to the changes to public health advice on self-isolation in Northern Ireland, which came into effect on 14 December 2020, and ensures that individuals will be eligible for Statutory Sick Pay for the full period for which they are required to self-isolate, including where they have tested positive for coronavirus, or where they are in a household with someone who has tested positive.