

**EXPLANATORY MEMORANDUM TO
TERMS AND CONDITIONS OF EMPLOYMENT**

**THE STATUTORY SICK PAY (MEDICAL EVIDENCE) (MODIFICATION)
REGULATIONS (NORTHERN IRELAND) 2021**

2021 No. 347

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 This Statutory Rule is made under sections 12(2)(b) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 and is subject to the negative resolution procedure

2. Purpose

- 2.1 This Rule modifies the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 in order to increase the number of days that an employee is not required to provide medical evidence of a sickness absence to their employer from 7 days to 28 days. This is intended to increase General Practitioner (GP) capacity to support the coronavirus vaccine booster programme.

3. Legislative Context

- 3.1 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 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.
- 3.2 Powers under section 12(2)(b) of the 1992 Act provide that regulations may be made which determine the information and evidence required for payment of SSP. Under regulation 2 of the SSP Regulations as modified, employees are not required to provide medical evidence of absence within the first 28 days of a sickness absence.
- 3.3 These regulations will expire on 26 January 2022.

4. Policy background

- 4.1 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 purpose of SSP. This modification will mean employees are not required to provide medical evidence within the first 28 days of their sickness absences for the purpose of SSP.
- 4.2 The onset of the Omicron strain of Coronavirus has made it vital that every eligible adult over the age of 18 is offered a booster vaccination as soon as possible and this presents a huge challenge for the NHS. This proposed modification will reduce the number of visits and/or the amount of contact a person needs to have with their GP and will subsequently free up general practice capacity thereby enabling GPs to assist with the vaccination programme.
- 4.3 This modification is therefore a temporary measure intended to quickly maximise GP capacity to support the coronavirus vaccine booster programme. Given this is a strictly time limited measure with a clear end date, any impact on employers or businesses should be minimal.

5. Consultation

- 5.1 Given the urgency of these regulations, no consultation has been carried out.

6. Equality Impact

- 6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

7. Regulatory Impact

- 7.1 The proposed Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies or on the public sector

8. Financial Implications

- 8.1 None for the Department

9. Section 24 of the Northern Ireland Act 1998

- 9.1 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.

10. EU Implications

10.1 Not applicable

11. Parity or Replicatory measure

11.1 These Regulations are equivalent to The Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2021 in Great Britain which come into force on 17th December 2021.

12. Additional Information

12.1 Guidance will be made available on NIDirect (www.nidirect.gov.uk) for individuals and employers to understand how to comply with SSP regulations.