

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (CORONAVIRUS) (FUNDING OF EMPLOYERS' LIABILITIES) (AMENDMENT) REGULATIONS AND THE STATUTORY SICK PAY (CORONAVIRUS) (FUNDING OF EMPLOYERS' LIABILITIES) (NORTHERN IRELAND) (AMENDMENT) REGULATIONS 2020

2020 No. 1030

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations amend the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020. These amendments ensure employers can continue to access support with the costs of paying eligible Statutory Sick Pay (SSP) to their employees. Specifically, they reflect further changes made by the European Commission to the provision of State aid to small and medium-sized enterprises (SMEs) in difficulty (a SME is a business with fewer than 250 employees and either turnover below €50m or balance sheet total below €43m), ensure that SSP can be reclaimed by employers in line with the changes made by the Department for Work and Pensions to extend eligibility to receive coronavirus related SSP and change the notification mechanism for employers who realise they have mistakenly overstated the amount of a previous claim.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application.

- 4.1 The territorial extent of this instrument is Great Britain and Northern Ireland.
4.2 The territorial application of this instrument is Great Britain and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 The Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 came into force on 26 May 2020, with mirroring changes for Northern Ireland, under powers inserted into the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by the Coronavirus Act 2020. This instrument makes a limited number of administrative changes to those regulations.
- 6.2 The Secretary of State for Work and Pensions concurred to the making of the final text of this instrument.

7. Policy background

What is being done and why?

- 7.1 At the Budget on 11 March 2020, the Chancellor announced that legislation would be introduced to refund some of the costs of SSP related to coronavirus to some employers. The SSP rebate scheme launched on 26 May 2020, enabling employers to access this support.
- 7.2 Following its introduction, the European Commission has amended its definition of when a SME employer is in difficulty and eligible to claim State aid under the UK's Temporary State Aid Framework. The changes ensure that the SSP rebate scheme remains aligned with the details agreed by the UK with the Commission for the UK government's support and intervention relating to Covid-19. These changes may enable some SME employers who were previously ineligible to claim because they were already in difficulty on 31 December 2019 to make a claim for eligible costs from 29 June 2020 unless: they are subject to collective insolvency proceedings; they have received rescue aids (aid issued, through a loan or guarantee, to an ailing business for a short time to keep it afloat while a restructuring or liquidation plan is developed) and not yet reimbursed the loan or terminated the guarantee; they have received restructuring aid (aid issued, through a loan or guarantee, of a more permanent nature than rescue aid, to restore the long term viability of the enterprise) and are still subject to a restructuring plan.
- 7.3 These regulations also change how employers must correct a claim which has been previously overstated. Employers will now be required to contact the HMRC employer helpline to provide the details of the overpaid amount rather than report through the SSP employer rebate online application. No changes have been made to the nature or type of information an employer must provide. This will be a more straightforward process for employers, with a single point of contact for all amendments.
- 7.4 These regulations also ensure that employers can claim for coronavirus related SSP for those employees who were required to shield and formed part of an extended or linked household and are therefore eligible for SSP in accordance with the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) (No.2) Regulations 2020 (S.I. 2020/681) brought in by Secretary of State for Department for Work and Pensions with effect from 6 July 2020.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 Given the technical nature of these changes, no consultation was considered necessary.

11. Guidance

11.1 The guidance continues to be available on GOV.UK for individuals and employers to understand how to access SSP and support with the costs of coronavirus related SSP. It will be updated to reflect these changes and can be found at <https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the instruments being amended are covered by the Summary of Impacts published with the Coronavirus Bill on 19 March 2020 at <https://www.gov.uk/government/publications/coronavirus-bill-summary-of-impacts/coronavirus-bill-summary-of-impacts> (see Section 5).

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burden on small businesses.

13.3 The basis for the final decision on what action to take to assist small business is that this measure remains voluntary and will be welcomed by small businesses.

14. Monitoring & review

14.1 The government keeps all areas of the tax and benefit system under review, and that includes this instrument.

14.2 These regulations do not include a statutory review clause because they are dependent on the Coronavirus Act 2020, which has a 2-year expiry period.

15. Contact

15.1 Gareth Cooper at HMRC Telephone: 03000 591498 or email: gareth.cooper@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Nixon, Deputy Director for National Insurance Contributions Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.