

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (CORONAVIRUS) (SUSPENSION OF WAITING DAYS AND GENERAL AMENDMENT) REGULATIONS 2020

2020 No. 374

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument suspends the rule in Statutory Sick Pay (SSP) where SSP is not paid for the first three qualifying days of incapacity for work. This will mean that SSP will be payable from day one of an employee's absence from work, rather than day four, where that absence is related to coronavirus. This will apply retrospectively from 13 March 2020.

This instrument also inserts a Schedule into the Statutory Sick Pay (General) Regulations 1982 which specifies when a person is deemed to be incapable of work because the person is staying home. This includes people with symptoms of coronavirus staying at home for 7 days and people in the household of someone with symptoms of coronavirus staying at home for 14 days.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations are made under the powers provided for in the Coronavirus Act 2020, by which the Secretary of State may by regulations make provision disapplying waiting days, and make provision about whether an employee is deemed to be incapable of work in relation to coronavirus by reference to guidance published by specified authorities.
- 3.2 These are emergency Regulations in relation to the Government's response to coronavirus. During the passage of the Bill, illustrative regulations were placed in the Votes Office in the House of Commons, the Printed Paper Office in the House of Commons, and in the House libraries.
- 3.3 The measures are required as a matter of urgency as part of the Government's response to a developing outbreak. The Regulations will come into force on the day after they are laid, meaning that the usual period of 21 days between laying and coming into force will not apply.
- 3.4 These Regulations make provision that has retrospective effect, in that they apply in relation to periods of incapacity for work that arose on or after 13th March 2020. The enabling power for this provision is in section 40(4) of the Coronavirus Act 2020. The Regulations are drafted with this effect so that the disapplication of the waiting days restriction applies in relation to the same period as the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020 (S.I. 2020/287). Those Regulations

came into force on 13 March 2020 and provide for employees isolating themselves in accordance with guidance on coronavirus to be treated as incapable of work, and therefore potentially entitled to SSP.

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)

- 3.5 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 England, Wales and Scotland ONLY. The instrument relates to a reserved matter within the devolved legislative competence of the Northern Ireland Assembly. The Department for Communities in Northern Ireland will make regulations to align with these changes.

5. European Convention on Human Rights

- 5.1 As the instrument is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

- 6.1 SSP is paid for by employers to employees who are incapable of work due to sickness. It is paid at a flat rate of £94.25 for up to 28 weeks. The rate will increase to £95.85 from 6 April 2020 in line with annual uprating. 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 £118 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.
- 6.2 Section 155(1) of the Social Security Contributions and Benefits Act 1992 (SSCBA) provides that SSP is not payable for the first three qualifying days in any period of entitlement. These Regulations provide that section 155(1) of the SSCBA does not apply in relation to an employee where that employee's period of incapacity for work is related to coronavirus, and where the first day of incapacity for work arose on or after 13 March 2020. These Regulations are made under powers in the Coronavirus Act 2020.
- 6.3 Existing powers under section 151(4) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act") provide that regulations may be made which deem an employee to be incapable of work, meaning that they can then potentially be eligible for SSP. Under those powers, regulations have previously been made to amend the Statutory Sick Pay (General) Regulations 1982 to deem those who are self-isolating, in line with government advice, to be incapable of work, even if they are not exhibiting symptoms. The individual may therefore be eligible for SSP, subject to meeting the usual qualifying conditions. Under those Regulations, whether someone is deemed to be incapable of work is assessed by reference to government advice on a particular date. However, that advice is subject to change regularly as the outbreak progresses. In order to ensure that there is clarity on the point, these regulations insert a schedule into the Statutory Sick Pay (General) Regulations 1982 which specifies when a person is deemed to be incapable of work because the person is staying home as a result of coronavirus.

6.4 These Regulations also remove expiry provisions from the previous sets of amendment regulations, as they will be kept under review in line with corresponding provision in the Coronavirus Act 2020.

7. Policy background

7.1 Under current legislation, SSP is not paid for the first three days that an employee is unable to work because of sickness, or because they are deemed incapable of work. These days are known as waiting days. This regulation will suspend this rule for employees who are unable to work because they are unwell or self-isolating as a result of coronavirus. This will mean that SSP is payable from day one, rather than day four, and will thus provide additional support to employees affected by coronavirus. This measure will apply retrospectively to absences beginning on or after Friday 13 March 2020.

7.2 The waiting days rule may encourage some people to go into work even if they are sick, or if they are not sick but have been advised to self-isolate as a result of Government advice. It is important that people follow government advice in order to prevent the spread of coronavirus. Temporarily suspending waiting days will support the Government's efforts to do so.

7.3 These Regulations will provide certainty to individuals that they will be entitled to SSP if they are unwell or isolating in line with the latest government advice.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not being done as this does not apply.

10. Consultation outcome

10.1 Given the urgency of these Regulations, no consultation has been done.

11. Guidance

11.1 Guidance will be available on GOV.UK for employers and individuals to understand what these changes relating to waiting days mean in practice, including how to calculate SSP payments due.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument urgently to encourage self-isolation and minimise the risks to public health arising from Covid-19.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The measures are time limited to the lifetime of the Act or when the measures are no longer required. These Regulations will be reviewed in line with any revision or renewal of the Coronavirus Act.

15. Contact

- 15.1 Rachel Nicholls at the Department for Work and Pensions Telephone: 07800 676 339 or email: rachel.nicholls@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Angus Gray, Deputy Director at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Secretary of State for the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.