

EXPLANATORY MEMORANDUM TO
THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT)
REGULATIONS 2022

2022 No. 380

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 revokes deeming provisions related to coronavirus. It amends the Statutory Sick Pay (General) Regulations 1982 (S.I.1982/894) (“the SSP General Regulations”) to revoke provisions which deem individuals to be incapable of work, and thereby allow for individuals to be eligible for Statutory Sick Pay (SSP), where they are self-isolating or shielding due to coronavirus but may only have very mild or no symptoms and would therefore otherwise be considered capable of work. This change will come into effect on 25 March 2022, in line with the expiry of most of the remaining temporary provisions of the Coronavirus Act 2020 at midnight on 24 March 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Secretary of State makes these Regulations in exercise of the powers conferred by sections 151(4) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”).
- 3.2 The Regulations will come into force the day after they are laid. It has not been possible to comply with the 21-day rule in this case because the Secretary of State was required by statute to consult the Social Security Advisory Committee (SSAC). At the Department’s request, in an attempt to comply with the 21-day rule, the SSAC convened an urgent meeting to consider these Regulations on 1 March 2022 and sent a report to the Department on 2 March 2022. The Department worked at pace to produce a response to this report addressing the recommendations made by the SSAC, which must be laid with the Regulations. However, in order to properly comply with the Secretary of State’s statutory duties to lay such a response alongside the Regulations, it was not possible to lay these Regulations 21 days before they come into force.
- 3.3 SSAC recommended that further clarity should be obtained regarding the public health guidance which would be in force from 1 April 2022. Additionally, SSAC recommended that the Department should better understand the equalities implications of the Regulations prior to them being made. As such, in light of SSAC’s recommendations, the making and laying of these Regulations has been delayed to enable a better understanding of their impact, both in the light of further equalities information and in the light of further information regarding future public health

guidance, and to allow a more complete response to the report from SSAC. The Regulations were made as soon as possible following receipt of sufficiently clear advice as to the contents of the guidance and having obtained all available information about equalities implications.

- 3.4 The Secretary of State decided that it would be inappropriate to delay the coming into force of these Regulations because the policy announcement had been made well over 21 days prior to the changes coming into force and because it would be likely to create practical difficulties for employers and employees if there were to be a late departure from the previous public announcement on 21 February. Additionally, as the changes to the suspension of waiting days will result from the expiry of section 40 of the Coronavirus Act 2020 on 24 March 2022, the Secretary of State considers that it is preferable for employers and employees for all SSP-related changes to occur at once, rather than delaying these Regulations and creating confusion.
- 3.5 The Department regrets that it has been unable to comply with the 21-day rule and that very little time has been left between the laying of the Regulations and their coming into force. However, for the reasons given above, this approach has, in the current situation, been preferable to either delaying the coming into force or making the Regulations at an earlier point while there was greater uncertainty about the content of the public health guidance.

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.

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 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, 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.
- 6.2 Powers under section 151(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. As part of the government's response to the pandemic, regulations were made to reflect public health advice so that individuals may be eligible for SSP if they are unable to work because they are staying at home and self-isolating because:
- a) They have symptoms of coronavirus or have tested positive for coronavirus;
 - b) They live with, or are in a linked or extended household with, someone who has symptoms or has tested positive for coronavirus;

- 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 are due to undergo planned or elective surgical or other hospital procedure.
- 6.3 Powers under section 40(1)-(3) of the Coronavirus Act 2020 provide that regulations may be made which disapply waiting days where an employee's incapacity for work is related to coronavirus. As part of the government's response to the pandemic, waiting days have been suspended where an employee's absence is related to coronavirus in the circumstances set out above. As these Regulations were made under powers taken in the Coronavirus Act, these Regulations will no longer have legal effect once the relevant provisions within this Act expire.
- 6.4 This instrument revokes the deeming regulations made under powers contained in the 1992 Act. SSP rules around eligibility criteria will revert to those which were in place before the pandemic, meaning that, to be eligible for SSP, an individual must be sick or incapable of work.

7. Policy background

What is being done and why?

- 7.1 As part of the response to the pandemic, the government made temporary changes to SSP to support compliance with public health advice on self-isolation. This has included where the public health advice has been set out in both guidance and, later, in regulations. These changes extended SSP eligibility to individuals who were self-isolating but would not otherwise have been considered sick or incapable of work, including where they had no, or very mild, symptoms, or were following guidance on household isolation or shielding. The other qualifying criteria continued to apply.
- 7.2 The changes made to SSP have been linked to the Coronavirus Act: either directly, because they were made under powers taken in that Act or, where they were made under existing powers, indirectly, because Ministers stated that the Regulations would be reviewed in line with any revision of the Coronavirus Act.

Explanations

- 7.3 On 21 February, the Prime Minister announced that the government would expire all remaining non-devolved temporary provisions of the Coronavirus Act, with the majority of these expiring on 24 March 2022, including the SSP provisions. This is in line with previous commitments that the SSP deeming provisions would be reviewed in line with the Coronavirus Act. The consequence of these Regulations is that individuals with Covid-19 or symptoms of Covid-19 will have to be sick or incapable of work to be eligible for SSP.
- 7.4 Employment law, including SSP, is a reserved matter and so decisions taken on SSP are made by UK Government and have effect across Great Britain.

8. European Union Withdrawal and Future Relationship

- 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 In accordance with s172 of the Social Security Administration Act 1992, the Secretary of State consulted the SSAC on these Regulations (albeit under a slightly different title to the Regulations). The SSAC produced a report which is laid, along with the Secretary of State's response, with these Regulations.

10.2 Throughout the pandemic, the Government was clear that the SSP coronavirus-related regulations which were introduced were temporary and would be reviewed in line with any revision of the Coronavirus Act. The government has concluded that the SSP coronavirus provisions are no longer necessary and has confirmed they will expire at midnight on 24 March 2022. Given this instrument acts to deliver this decision, no further consultation was considered necessary.

11. Guidance

11.1 Guidance is available on GOV.UK for individuals and employers to understand how to comply with SSP regulations.

12. Impact

12.1 We have not assessed the impact on business, charities or voluntary bodies because of the need to make and lay the instrument urgently to align with the expiry of the temporary provisions within the Coronavirus Act but no significant impact is foreseen.

12.2 We have not assessed the impact on the public sector because of the need to make and lay the instrument urgently to align with the expiry of the temporary provisions within the Coronavirus Act but no significant impact is foreseen.

12.3 A full Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument in accordance with the Government's public announcement and no significant impact is foreseen.

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 regulatory burdens on small businesses.

13.3 Given the advance notice that has been given of plans to make regulations, no consultation has been conducted.

14. Monitoring & review

14.1 As these Regulations revoke earlier regulations, they will not be reviewed.

15. Contact

15.1 Rachel Nicholls at the Department for Work and Pensions Email: rachel.nicholls@dwp.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Keith Roberts, 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.