

**2022 No. 5**

**SOCIAL SECURITY**

**The Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2022**

*Made* - - - - at 11.45 a.m. on 5th January 2022

*Laid before Parliament* at 4.45 p.m. on 5th January 2022

*Coming into force* - - 14th January 2022

The Commissioners for Her Majesty's Revenue and Customs, with the concurrence of the Secretary of State, make the following Regulations in exercise of the powers conferred by sections 159B and 175(3), (4) and (5A) of the Social Security Contributions and Benefits Act 1992(a).

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2022 and come into force on 14th January 2022.

**Interpretation**

2. In these Regulations—

“eligible employer” has the meaning given in regulation 4;

“employer PAYE reference number” means the number identifying a PAYE scheme which was given to the employer by HMRC when the employer registered the PAYE scheme with HMRC;

“HMRC” means Her Majesty's Revenue and Customs;

“in difficulty” has the meaning given in regulation 4(2);

“maximum temporary aid amount” means the maximum amount of aid permitted to be received by an undertaking in accordance with section 3.1 of the Communication from the

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(a) 1992 c. 4. By virtue of section 39(1) of the Coronavirus Act 2020 (c. 7), the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) has effect as if a new section 159B were inserted after section 159A. Section 159B(7) allows these Regulations to have retrospective effect in relation to a day of incapacity for work that falls on or after 13th March 2020. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). By virtue of section 41(2) of the Coronavirus Act 2020, the 1992 Act has effect as if a new section 175(5A) were inserted after section 175(5).

Commission of 19 March 2020 on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak<sup>(a)</sup>;

“original claim” has the meaning given in regulation 9(1)(a);

“PAYE scheme” means a pay as you earn scheme registered on HMRC’s real time information system;

“reimbursement amount” has the meaning given in regulation 3(1).

## PART 2

### Eligibility for funding

#### Funding of eligible employers’ liabilities by HMRC

**3.**—(1) An eligible employer who has made a payment of statutory sick pay<sup>(b)</sup> to an employee where—

- (a) that employee’s period of incapacity for work<sup>(c)</sup> is related to coronavirus; and
- (b) any day of incapacity for work in that period falls on or after 21st December 2021,

is, subject to paragraphs (2) and (3), entitled to recover the amount paid to the employee in respect of those days of incapacity for work which fall on or after 21st December 2021 (the “reimbursement amount”) from HMRC.

(2) An eligible employer is not entitled to recover a reimbursement amount from HMRC—

- (a) if, were the eligible employer to receive the reimbursement amount claimed, the amount of State aid received by the eligible employer would exceed the maximum temporary aid amount for that eligible employer; or
- (b) in respect of an employee for a period for which the eligible employer is entitled to a government grant in respect of that employee due to the employee being furloughed from the employment for reasons related to COVID-19.

(3) The amount which an eligible employer may recover from HMRC under these Regulations is limited to—

- (a) in relation to a single employee, £192.70; and
- (b) in total, £192.70 multiplied by the number of employees enrolled in PAYE schemes of the eligible employer on 30th November 2021, determined in accordance with regulation 4.

(4) In this regulation—

- (a) an employee includes an employee who—
  - (i) was employed by the eligible employer during a period of incapacity for work related to coronavirus,
  - (ii) has received a payment of statutory sick pay from the eligible employer in respect of that period of incapacity for work, and
  - (iii) no longer works for the eligible employer; and

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(a) OJ C 91I, 20.3.2020, p. 1, amended by Communication from the Commission of 3 April 2020 OJ C 112I, 4.4.2020, p.1, Communication from the Commission of 8 May 2020 OJ C 164, 13.5.2020, p.3, Communication from the Commission of 29 June 2020 OJ C 218, 2.7.2020, p.3, Communication from the Commission of 13 October 2020 OJ C 340I, 13.10.2020, p.1, Communication from the Commission of 28 January 2021 OJ C 34, 1.2.2021, p.6 and Communication from the Commission of 21 November 2021 OJ C 473, 24.11.2021, p.1.

(b) “Statutory sick pay” is defined in section 151(1) of the 1992 Act.

(c) “Period of incapacity for work” is defined in section 152(2) of the 1992 Act.

- (b) the reference to the reimbursement amount in paragraph (2)(a) is to that amount converted into euros using the European Commission's—
  - (i) official monthly accounting rate for the euro; and
  - (ii) conversion rate for December 2021(a).

### Meaning of eligible employer

4.—(1) An eligible employer is an employer who—

- (a) on 30th November 2021, had fewer than 250 employees enrolled in all PAYE schemes operated by the employer; and
- (b) on 31st December 2019, was not already in difficulty.

(2) An employer is “in difficulty” if—

- (a) in the case of an employer who is not a micro or small enterprise, it is reasonable to assume that the employer would be regarded as an undertaking in difficulty under Article 2(18) of the General Block Exemption Regulation; or
- (b) in the case of an employer who is a micro or small enterprise, it is reasonable to assume that the employer would be regarded as an undertaking in difficulty either under Article 2(18)(c) of the General Block Exemption Regulation, as if the words after “collective insolvency proceedings”, in the first place it appears, to the end were omitted, or under Article 2(18)(d) of the General Block Exemption Regulation.

(3) Where, on 30th November 2021, the employer was one of—

- (a) two or more companies which were not charities and which were connected with one another; or
- (b) two or more charities which were connected with one another,

the limit in paragraph (1)(a) applies to the total number of employees enrolled in all PAYE schemes operated by the connected companies or charities, as applicable.

(4) For the purposes of paragraph (3)—

- (a) Part 1 of Schedule 1 to the National Insurance Contributions Act 2014(b) sets out the rules for determining if two or more companies are connected with one another;
- (b) Part 2 of Schedule 1 to that Act sets out the rules for determining if two or more charities are connected with each other.

(5) In this regulation—

“charity” has the same meaning as in section 18(1) of the Small Charitable Donations Act 2012(c), subject to paragraph 8(5) of Schedule 1 to the National Insurance Contributions Act 2014;

“company” has the meaning given by section 1121(1) of the Corporation Tax Act 2010(d) and includes a limited liability partnership;

“General Block Exemption Regulation” means Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty(e);

“micro or small enterprise” means an employer who is a micro-enterprise or a small enterprise within the meaning of Article 2 of Annex 1 of the General Block Exemption Regulation.

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(a) The European Commission's official rates are available at [https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro\\_en](https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en).

(b) 2014 c. 7.

(c) 2012 c. 23.

(d) 2010 c. 4. Section 1121(1) was amended by S.I. 2013/1388.

(e) OJ No. L 187, 26.6.2014, p. 1, to which there are amendments not relevant to these Regulations.

## **When an employee's incapacity for work is related to coronavirus**

- 5.**—(1) An employee's incapacity for work is related to coronavirus if the employee is—
- (a) incapable by reason of infection or contamination with coronavirus, or
  - (b) deemed, in accordance with regulation 2(1)(c) or (d) of the Statutory Sick Pay (General) Regulations 1982(a), to be incapable by reason of coronavirus,

of doing work which the employee can reasonably be expected to do under the employee's contract of service, and references in these Regulations to an employee's period of incapacity for work related to coronavirus shall be construed in accordance with this regulation.

(2) The reference to regulation 2(1)(c) or (d) of the Statutory Sick Pay (General) Regulations 1982 in paragraph (1)(b) is a reference to the regulation which was in force on the first day of incapacity for work in question.

## **PART 3**

### **Claims**

#### **Making a claim**

**6.**—(1) An employer who makes a claim for the recovery of a reimbursement amount must do so in accordance with this regulation.

- (2) A claim may include one or more reimbursement amounts paid by the employer—
- (a) to employees enrolled in the same PAYE scheme, and
  - (b) during the period of time specified by the employer in accordance with paragraph (3)(d).
- (3) The claim must contain the following—
- (a) the employer PAYE reference number for the PAYE scheme to which the claim relates;
  - (b) the number of employees the claim relates to;
  - (c) the amount claimed;
  - (d) the beginning and end dates of the period of time to which the amount specified in accordance with sub-paragraph (c) relates;
  - (e) details of the bank account into which the amount specified in accordance with sub-paragraph (c) is to be paid; and
  - (f) if required by regulation 9(2), the amount by which the original claim was overstated.
- (4) The claim must contain a declaration by the employer that—
- (a) the employer was not already in difficulty on 31st December 2019;
  - (b) receipt of the amount claimed will not result in the amount of State aid received by the employer exceeding the maximum temporary aid amount for that employer; and
  - (c) the matters stated in the claim are true and accurate.
- (5) The claim must be submitted to HMRC electronically using the Government Gateway unless paragraph (6) or regulation 9(2) applies.
- (6) If the employer considers that the employer is digitally excluded—
- (a) the employer may make a request to HMRC to submit a claim in an alternative manner, and
  - (b) if HMRC are satisfied that the employer is digitally excluded, the employer must submit the claim in a manner agreed with HMRC.

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(a) S.I. 1982/894. Paragraph (1)(c) was inserted by S.I. 2020/287 and amended by S.I. 2020/304, 2020/374, 2020/681. Paragraph (1)(d) was inserted by S.I. 2020/681.

- (7) An employer is digitally excluded where—
- (a) it is not reasonably practicable for the employer to use the Government Gateway to submit a claim for any reason including age, disability or remoteness of location, or
  - (b) the employer is a person who is a practising member of a religious society or order whose beliefs are incompatible with using the Government Gateway.
- (8) In this regulation “Government Gateway” means the secure online facility for accessing government services.

#### **Time limit for making a claim**

7. A claim may not be made after the end of 24th March 2022.

## **PART 4**

### **Payments, corrections and overpayments**

#### **Payments**

8. Where HMRC accept a claim, HMRC must pay the amount specified in the claim by the employer in accordance with regulation 6(3)(c), less any amount repayable under regulation 9(3), to the account specified by the employer in accordance with regulation 6(3)(e) as soon as reasonably practicable.

#### **Correcting a claim when the amount has been mistakenly overstated**

9.—(1) Where an employer—

- (a) becomes aware that the employer mistakenly overstated the amount in a claim (the “original claim”); and
- (b) has received payment from HMRC in respect of the original claim,

the employer must correct the error in accordance with this regulation.

(2) The next claim that the employer makes under regulation 6 (the “next claim”) must be made in the manner provided for in paragraph (8) and in it, the employer must specify the amount by which the original claim was overstated.

(3) The amount by which the original claim was overstated must be repaid to HMRC by the employer by way of set-off against the amount stated in the next claim, up to a maximum of the amount stated in the next claim.

(4) Where the amount by which the original claim was overstated exceeds the maximum amount required to be set off in accordance with paragraph (3), the employer must repay the excess to HMRC within the period of 30 days beginning on the day on which the next claim is made.

(5) Where an employer does not make a next claim within the period of 60 days beginning with the day on which the original claim was made, the employer must notify HMRC of the overstatement in accordance with paragraphs (6) to (8).

(6) The employer must provide the following information to HMRC—

- (a) the employer PAYE reference number for the PAYE scheme to which the original claim related;
- (b) the amount by which the original claim was overstated; and
- (c) the beginning and end dates of the period of time to which the original claim related.

(7) The employer must declare to HMRC that the information provided under paragraph (6) is true and accurate.

(8) An employer who makes a next claim, a declaration under paragraph (7) or who provides information under paragraph (6) must do so by telephone or in writing, as determined by HMRC in its discretion and notified to the employer.

(9) The employer must repay to HMRC the amount referred to in paragraph 6(b) within the period of 30 days beginning on the day on which the employer provides the information under paragraph (6) and the declaration under paragraph (7).

### **Correcting a claim when the amount has been mistakenly understated**

**10.** Where an employer becomes aware that the employer mistakenly understated the amount in a claim (the “understated claim”), the employer may submit a claim in accordance with regulation 6 for the amount understated in respect of the same period, PAYE scheme and employees specified in the understated claim.

### **Recovery of overpayments**

**11.—(1)** Where any sum has been overpaid to an employer under these Regulations (an “overpayment”), HMRC may recover it in accordance with this regulation.

(2) An officer of Revenue and Customs must decide the amount of the overpayment and must give notice in writing of the decision to the employer.

(3) The employer must repay the overpayment to HMRC within the period of 30 days beginning with the day on which the employer receives the notice of decision referred to in paragraph (2).

(4) Part 6 of the Taxes Management Act 1970(a) (collection and recovery) applies to the recovery of overpayments as if—

- (a) the amount of the overpayment were income tax charged on the employer named in the notice of decision referred to in paragraph (2);
- (b) that notice of decision were an assessment; and
- (c) that notice of decision were the matter complained of for the purposes of section 65(3) of that Act(b).

(5) In the application of section 101(4) of the Finance Act 2009(c) (late payment interest on sums due to HMRC) in relation to a repayment to HMRC of an overpayment under this regulation, the overpayment becomes due and payable on the date on which HMRC give the notice of decision referred to in paragraph (2).

## **PART 5**

### **Records and information requests**

#### **Preservation of records**

**12.—(1)** An employer who makes a claim for a reimbursement amount must keep a record of the following in respect of the employee, or former employee, in relation to whom the amount was claimed—

- (a) the start date and end date of the period of incapacity for work related to coronavirus to which the reimbursement amount relates;
- (b) national insurance number;
- (c) the reason for incapacity for work provided by the employee or former employee; and

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(a) 1970 c. 9.

(b) Section 65(3) was amended by paragraph 30 of Schedule 19 to the Finance Act 1998 (c.36).

(c) 2009 c. 10.

(d) the days which were qualifying days<sup>(a)</sup> in that period of incapacity for work.

(2) An employer who corrects the amount of a claim in accordance with regulation 9 or 10 must keep a record of the amount of the correction and the reason for the correction.

(3) The employer must keep the records specified in paragraphs (1) and (2) until the end of the period of 3 years beginning with the date on which payment under regulation 8 is received.

(4) An employer who makes a claim for a reimbursement amount must keep the confirmation of State aid letter until the end of the period of 4 years beginning on IP completion day.

(5) In paragraph (4), “the confirmation of State aid letter” means the letter containing confirmation of receipt of State aid under these Regulations sent by HMRC to the employer once a claim is made.

### **Provision of information and records**

**13.—**(1) HMRC may by notice require an employer who has made a claim for a reimbursement amount—

- (a) to provide to HMRC in the manner specified in the notice, or
- (b) to make available for inspection at a place within the United Kingdom by an officer of Revenue and Customs,

within the period specified in the notice, all documents, records and other information in the employer’s possession or under the employer’s control as HMRC may reasonably require, to ascertain whether the employer was entitled to receive a reimbursement amount under these Regulations, including whether it was unlawful State aid.

(2) Where records are maintained by computer, an employer required to make them available for inspection must provide the officer of Revenue and Customs making the inspection with all the facilities necessary for obtaining information from them.

*Myrtle Lloyd  
Justin Holliday*

4th January 2022                      Two of the Commissioners for Her Majesty’s Revenue and Customs

The Secretary of State concurs.  
Signed by authority of the Secretary of State for Work and Pensions.

*Chloe Smith*  
Minister for Disabled People, Health and Work  
Department for Work and Pensions

At 11.45 a.m. on 5th January 2022

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide for certain small and medium size employers to reclaim some or all of their Statutory Sick Pay (SSP) costs from Her Majesty’s Revenue and Customs (HMRC).

Regulation 1 provides for citation and commencement and regulation 2 provides for interpretation of terms used in the Regulations.

Regulation 3 provides that an employer may make a claim in respect of an employee’s period of incapacity for work related to coronavirus where any day of incapacity for work in that period falls on or after 21st December 2021. Section 159B(7) of the Social Security Contributions and Benefits Act 1992 (c. 4) allows these Regulations to have effect in relation to days of incapacity for work that fall on or after 13th March 2020. The regulation makes further provision about

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(a) “Qualifying day” is defined in section 154 of the 1992 Act.

which SSP costs an employer is entitled to reclaim and limits the amounts which can be claimed per employee and in total. It also provides for when an employer is not entitled to claim by reason of exceeding limits on receipt of State aid under the Temporary Framework for State aid measures to support the economy during the current COVID-19 outbreak set by the European Commission or having certain entitlement to a government grant where an employee is furloughed from the employment for reasons related to COVID-19.

Regulation 4 defines an eligible employer for the purposes of regulation 3 by reference to the number of employees enrolled on all pay as you earn schemes operated by the employer on 30th November 2021 and by reference to whether it is reasonable to assume that the employer would be regarded as “in difficulty” for State aid purposes. The number of employees of connected companies or connected charities must be aggregated for the purpose of determining eligibility.

Regulation 5 gives the meaning of period of incapacity for work related to coronavirus for the purposes of regulation 3.

Regulation 6 sets out how to make a claim for reimbursement of SSP and the information and declarations that must be included in a claim.

Regulation 7 provides for a time limit on making claims.

Regulation 8 provides for how HMRC will make payment pursuant to accepted claims.

Regulation 9 requires an employer who mistakenly overstated the amount of a claim for which the employer has received payment from HMRC to correct the error and repay the amount by which the claim was overstated.

Regulation 10 allows an employer who has mistakenly understated the amount of a claim to submit another claim in respect of the same period, PAYE scheme and employees.

Regulation 11 provides for recovery by HMRC of overpayments made under these Regulations.

Regulation 12 places record keeping obligations on eligible employers making claims under these Regulations.

Regulation 13 permits HMRC to request information from, and inspect the records of, employers making claims under these Regulations.

An Impact Assessment has not been produced for this instrument because it is covered by the Summary of Impacts published with the Coronavirus Bill on 19 March 2020 at <https://publications.parliament.uk/pa/bills/cbill/58-01/0122/Coronavirus%20Bill%20Impact%20Assessment%20final%20pdf.pdf> (see pages 72 to 73). Copies are also available from the Department of Health and Social Care, 39 Victoria Street, Westminster, London SW1H 0EU.

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