**EXPLANATORY MEMORANDUM TO**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**THE CORONAVIRUS ACT (EXTENSION OF PROVISIONS RELATING TO STATUTORY SICK PAY) ORDER (NORTHERN IRELAND) 2022**

**S.R. 2022 NO. 151**

## 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 The Statutory Rule is made under Section 90(2) of the Coronavirus Act 2020 and is subject to the confirmatory resolution procedure.

## Purpose

2.1 This Statutory Rule extends the expiry date of section 44 (*Statutory sick pay: modification of regulation making powers: Northern Ireland )* of the Coronavirus Act 2020 to 24th September 2022.

## Statutory Sick Pay

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.

## Policy Background and Legislative Context

4.1 The Coronavirus Act 2020 (CVA) enabled a response to an emergency situation and management of the effects of the Covid-19 pandemic. The Act contains temporary measures designed to either amend existing legislative provisions or introduce new statutory powers, designed to mitigate these impacts

4.2 The powers were used to amend the Statutory Sick Pay Regulations to introduce easements for employees who were required to isolate. The power under section 43 (*Statutory sick pay: power to disapply waiting period limitation: Northern Ireland)* lay with the Secretary of State for Work and Pensions who brought forward legislation dis-applying the waiting days normally required to be served in order to qualify for receipt of SSP, thereby enabling it to be paid immediately from Day 1 in Northern Ireland. Section

44 of the Coronavirus Act 2020 amended section 147 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to permit the payment of SSP for a person whose incapacity for work was related to COVID-19 and allow the payment of SSP to respond to public health guidance. These amendments provided financial support to encourage people to follow self-isolation public health advice.

4.3 From the outset the intention was that these powers would expire after a two year period. Section 89(1) provides for the Act to expire at the end of the period of 2 years beginning with the day on which it was passed (25th March 2020). However, subject to limited exceptions. Section 90(2) and (11) allows expiring provisions to be extended for not more than 6 months.
The Department for Work and Pensions (DWP) has confirmed that it does not intend to extend the SSP provisions contained within the Coronavirus Act 2020 beyond 24 March.

**Northern Ireland position**

5.1 An announcement by the Northern Ireland Minister for Health on 15 February 2022 resulted in all remaining Covid restrictions contained in law being down -graded to guidance only and issued to the public. The requirement to self-isolate for 5 days after a positive Covid test remains in guidance and this along with other measures currently remain under review.

5.2 Due to the continuation of public health guidance in relation to COVID-19, the Department has asked the Secretary of State for Work and Pensions to extend section 43 of the Coronavirus Act which allows SSP to be paid from day 1 in cases of COVID -19. The power to extend this provision is conferred upon the Secretary of State.

5.4 This Order extends the expiry date of section 44 of the Act to 24th September 2022 to allow the payment of SSP when someone is sick or self-isolating from COVID-19 and support current Public Health Guidance in relation to COVID-19.

5.5 It is important to note that an extension to section 42 (Statutory sick pay: funding of employers' liabilities: Northern Ireland) is not being sought.

**Consultation**

6.1 There is no requirement to consult on these regulations. The Order will not introduce any new policy but will simply extend the provisions of section 44 of the Act by 6 months.

**Equality Impact**

7.1 As this is a continuation of an existing measure the Department considers that an equality impact assessment is not necessary.

**Regulatory Impact**

8.1 The proposed rule is extending an existing provision in the Coronavirus Act 2020. While there may be a small cost on employers, this is balanced with supporting Public Health

Guidance. This extension will be reviewed and will not be maintained longer than considered necessary

**Financial Implications**

9.1 While there will be no financial implications for the Department there may be a small cost on employers but this is balanced with supporting Public Health Guidance.

**Section 24 of the Northern Ireland Act 1998**

10.1 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 grounds of religious belief or political opinion; and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

**E U Implications**

11.1 Not applicable.

**Additional Information**

12.1 Not applicable.