EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT 2025 (STATUTORY SICK PAY) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2026

2026 No. 210

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 His Majesty.

2. Declaration

2.1 Dame Diana Johnson, Minister for Employment at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Keith Roberts, Deputy Director for Disability & Work Opportunities Division, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Conor Jackson at the Department for Work and Pensions can be contacted by email at the following address with any queries regarding the instrument: ssp.team@dwp.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes consequential amendments necessary to implement the Employment Rights Act 2025[1] ("the 2025 Act"). The 2025 Act removes the requirement to earn above the Lower Earnings Limit ("the LEL", see para 5.4) to be eligible for Statutory Sick Pay ("SSP") and removes the requirement to serve waiting days (see para 5.5) at the start of a sickness absence. This instrument removes, from relevant secondary legislation (see paras 6.3-6.4), references to the LEL and the fourth day of an absence which are no longer relevant.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom, except regulation 2 which extends to Great Britain only and regulation 3 which extends to Northern Ireland only.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.

5. Policy Context

What is being done and why?

5.1 In its manifesto, the Government committed to strengthening SSP by removing the LEL as a qualifying criterion so that all eligible employees, regardless of earnings, are

[1] Employment Rights Act 2025: https://www.legislation.gov.uk/ukpga/2025/36/contents/enacted

able to receive SSP. From 6 April 2026, SSP will be calculated as either 80% of an employee's normal weekly earnings, or the flat rate of £123.25, whichever is lower.

5.2 The Government also committed to removing the waiting period so that all eligible employees are paid SSP from the first, rather than the fourth, day of their sickness absence.

What was the previous policy, how is this different?

5.3 Previously, entitlement to SSP was limited to employees who met specific eligibility conditions. To qualify, an individual had to be classed as an employee, have undertaken some work for their employer, have been ill for at least four consecutive working days, and have average weekly earnings at or above the LEL (currently £125 per week).

5.4 The LEL is the point at which employees start to build up entitlement to contributory benefits[2] and other statutory payments. There are between 1 and 1.3 million individuals who earn below the LEL[3], meaning they do not have access to SSP, and would, if they had no access to employer-provided sick pay, have to rely on welfare benefits.

5.5 Currently, SSP is not payable for the first 3 qualifying days[4] of a sickness absence ("waiting days"). SSP is then paid from the fourth qualifying day. This means employees can feel forced to come to work when they are unwell, increasing presenteeism and reducing overall productivity.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 10(6) of the 2025 Act amends section 155 of the Social Security Contributions and Benefits Act 1992[5] ("the 1992 GB Act"), while section 12(6) amends section 151 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992[6] ("the 1992 NI Act") (together "the Contributions and Benefits Acts"). These sections remove section 155(1) of the 1992 GB Act and section 151(1) of the 1992 NI Act which currently prevent SSP from being payable on waiting days.

6.2 Section 11(3) of the 2025 Act amends Schedule 11 to the 1992 GB Act, while section 13(3) makes the equivalent amendment to the 1992 NI Act. These sections remove paragraph 2(c) of Schedule 11[7] to the Contributions and Benefits Acts which prevented a period of entitlement from arising (in other words, prevented an employee from being eligible for SSP) if an employee earned below the LEL.

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[2] Contributory Benefits and Social Insurance in the UK: https://commonslibrary.parliament.uk/contributory-benefits-and-social-insurance-in-the-uk/

[3] DWP Internal Estimate using combination of Family Resource Survey 2022/23 and Labour Force Survey 2022

[4] A qualifying day is a day on which an employee is contracted or scheduled to work.

[5] Section 155 of the Social Security Contributions and Benefits Act 1992: https://www.legislation.gov.uk/ukpga/1992/4/section/155

[6] Section 151 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992: https://www.legislation.gov.uk/ukpga/1992/7/section/151

[7] Schedule 11 to the Social Security Contributions and Benefits Act 1992: https://www.legislation.gov.uk/ukpga/1992/4/schedule/11 and Schedule 11 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992: https://www.legislation.gov.uk/ukpga/1992/7/schedule/11

6.3 This instrument amends the Statutory Sick Pay (General) Regulations 1982[8] ("the GB Regulations") and the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982[9] ("the NI Regulations") (together "the General Regulations").

6.4 Regulations 2(2) & 3(2) remove a reference in regulation 15(2)(b) of the General Regulations to the 'fourth day' of an employee's sickness absence, which is no longer relevant. Regulations 2(3) & 3(3) remove reference to the LEL in regulation 19(2) of the General Regulations as this definition is no longer required.

6.5 It is important to note that the text of regulation 15(2) and regulation 19(2) of the General Regulations refers to Schedule 1 to the Social Security and Housing Benefits Act 1982[10] and Schedule 1 to the Social Security (Northern Ireland) Order 1982[11] ("the predecessor legislation"). Under section 2 of the Social Security (Consequential Provisions) Act 1992[12] and the Social Security (Consequential Provisions) (Northern Ireland) Act 1992[13] ("the Consequential Provisions Acts"), this should now be read as Schedule 11 to the Contributions and Benefits Acts.

6.6 Regulation 15(2) of the General Regulations also refers to section 18(3) and article 20(3) of the predecessor legislation. Under section 2 of the Consequential Provisions Acts, this should now be respectively read as section 130(3) of the Social Security Administration Act 1992[14] (the "1992 Admin Act") and section 122 of the Social Security Administration (Northern Ireland) Act 1992[15].

6.7 This principle applies to other references to the predecessor legislation in the General Regulations. References in regulation 19 of the GB Regulations to section 26 should be read as section 163 of the 1992 GB Act, and in the NI Regulations, article 28 should be read as section 159 of the 1992 NI Act. The reference in regulation 15 of the GB Regulations to section 3 should be read as section 153 of the 1992 GB Act, and in the NI Regulations, Article 5 should be read as section 149 of the 1992 NI Act.

6.8 Employment law, including SSP, is a reserved matter in Great Britain and so decisions taken on SSP are made by the UK Government. SSP is transferred (sometimes called 'devolved') to Northern Ireland and so decisions are the responsibility of the Department for Communities in Northern Ireland. However, section 154(1) of the 2025 Act allows the Secretary of State to make, by regulations, provision that is consequential on any provision made by that Act. Therefore, this instrument, and the Commencement Regulations (see paragraph 6.9), are made on behalf of the Northern Ireland Minister for Communities in respect of amendments to the NI Regulations. The Department for Work and Pensions has worked closely with the Department for Communities on this matter.

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[8] The Statutory Sick Pay (General) Regulations 1982: https://www.legislation.gov.uk/uksi/1982/894/contents

[9] Access the Regulations via the NI Social Security Blue Volumes. Go to https://www.communities-ni.gov.uk/services/law-relating-social-security-northern-ireland-blue-volumes, click 'The Blue Volumes' and in the 'Title' box select 'Statutory Sick Pay (General) Regulations (Northern Ireland) 1982'.

[10] Schedule 1 of Social Security and Housing Benefits Act 1982 (repealed): https://www.legislation.gov.uk/ukpga/1982/24/schedules/enacted

[11] The Social Security (Northern Ireland) Order 1982 (repealed): https://www.legislation.gov.uk/nisi/1982/1084/schedules/made

[12] Section 2 of the Social Security (Consequential Provisions) Act 1992: https://www.legislation.gov.uk/ukpga/1992/6/section/2

[13] Section 2 of the Social Security (Consequential Provisions) (Northern Ireland) Act 1992: https://www.legislation.gov.uk/ukpga/1992/9/section/2

[14] Section 130 of the Social Security Administration Act 1992: https://www.legislation.gov.uk/ukpga/1992/5/part/VII/crossheading/statutory-sick-pay-and-other-benefits

[15] Section 122 of the Social Security Administration (Northern Ireland) Act 1992: https://www.legislation.gov.uk/ukpga/1992/8/part/VII/crossheading/statutory-sick-pay-and-other-benefits

6.9 The Employment Rights Act 2025 (Commencement No. 3 and Transitional Provisions) Regulations 2026[16] ("the Commencement Regulations") will commence sections 10-13 of the 2025 Act at the same time as this instrument comes into force.

6.10 The Commencement Regulations also make transitional provision to: ensure employees earning below the LEL and already off sick receive the right amount of SSP from 6 April; protect those already receiving SSP who would otherwise see a reduction in their weekly rate (due to moving from the flat rate to the percentage rate); and ensure employees are paid appropriately from 6 April.

6.11 Following this instrument and the Commencement Regulations, the annual social security up-rating orders for GB and NI (the Social Security Benefits Up-rating Order 2026[17] and the Social Security Benefits Up-rating Order (Northern Ireland) 2026 [18]), will increase the rate of SSP in section 157 of the 1992 GB Act and section 153 of the 1992 NI Act from £118.75 to £123.25 per week. The SSP provisions in each of the up-rating orders will come into force at 00.01am on 6 April 2026, which is immediately after this instrument and the Commencement Regulations. This ensures the correct sequencing of the three sets of Regulations to allow for the rate of SSP to be up-rated after the 2025 Act takes effect.

Why was this approach taken to change the law?

6.12 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The changes introduced by the 2025 Act mean that for some lower earners, including those earning below the LEL, their rate of SSP will be either a percentage of their normal (sometimes called 'average') weekly earnings, or the flat rate (£118.75 in 2025-26, rising to £123.25 in 2026-27), whichever is lower. The Government ran a public consultation from 21 October 2024 to 4 December 2024[19] seeking views on what this percentage should be, to ensure it provides a fair earnings replacement when these employees need to take time off work. However, this consultation did not cover removing the LEL or the waiting period because these were manifesto commitments.

7.2 Officials engaged with a range of stakeholders throughout the broader policy development and the passage of the 2025 Act. This has been via correspondence, official, and Ministerial level meetings, and included payroll providers, business representatives, and trade unions. Following this engagement and the consultation, the Government set the percentage rate to 80% of normal weekly earnings.

7.3 Part XIII of the 1992 Admin Act requires the Secretary of State to consult the Social Security Advisory Committee ("SSAC") on Regulations made using the powers of a 'relevant enactment' (such as the Contributions and Benefits Act). However, as the 2025 Act is not a relevant enactment and this instrument only contains provision made by virtue of, and consequential upon, the 2025 Act, the Secretary of State has not referred these Regulations to SSAC.

[16] These regulations will be published on https://legislation.gov.uk prior to this Instrument coming into force.
[17] The Social Security Benefits Up-rating Order 2026: https://www.legislation.gov.uk/uksi/2026/148/contents/made
[18] This Order is expected to be made in March by the Department for Communities. You can find it on https://legislation.gov.uk by searching 'The Social Security Benefits Up-rating Order (Northern Ireland) 2026'.
[19] Making Work Pay: Strengthening Statutory Sick Pay: https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay

8. Applicable Guidance

8.1 The Government has published non-statutory guidance[20]. This guidance applies more generally to the 2025 Act but includes the changes to SSP, including removing the waiting period, the LEL and how an employer should calculate an employee's normal weekly earnings.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this instrument because this is a tidying up measure and no, or no significant, impact on the private, voluntary or public sectors is foreseen.

9.2 An impact assessment was produced for the 2025 Act.[21] It covers the package of reforms to SSP, including removal of the waiting period and removal of the LEL. The changes are expected to have a direct annual cost to business of £428m but an overall positive Net Present Social Value of £161m over the 10-year period. [22]

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this is a tidying up measure to remove reference to the fourth day of sickness absence, which is no longer relevant, and to remove a reference to a paragraph in Schedule 11 to the Contributions and Benefits Acts that the 2025 Act is repealing.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because this is a technical instrument, as we set out above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Government intends to conduct a post-implementation review of the 2025 Act within five years of implementation. The impact on employers and employees of the measures to strengthen SSP will be monitored.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015[23], Dame Diana Johnson has made the following statement: *"Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that to make provision for a statutory review in this instrument would be disproportionate taking into account the economic impact of the regulatory provision and would, therefore, be inappropriate."*

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[20] New employment rights: Guidance for businesses and workers: https://www.business.gov.uk/campaign/employment-changes

[21] Employment Rights Act 2025: impact assessments: https://www.gov.uk/guidance/employment-rights-bill-impact-assessments

[22] SSP Impact Assessment: Pages 9-10: https://assets.publishing.service.gov.uk/media/6715f848386bf0964853d848/Impact_assessment_improve_access_statutory_sick_pay_removing_lower_earnings_limit_removing_waiting_period.pdf

[23] Small Business, Enterprise and Employment Act 2015: https://www.legislation.gov.uk/ukpga/2015/26

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").