STATUTORY INSTRUMENTS

2020 No. 1030

SOCIAL SECURITY

The Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Amendment) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Amendment) Regulations 2020

Made - - - -at 9.00 a.m. on 24th September 2020

Laid before Parliament at 11.30 a.m. on 24th September 2020

Coming into force in accordance with regulation 1

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) and (5A) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 155B and 171(3), (5A) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Amendment) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Amendment) Regulations 2020 and, subject to paragraphs (2) and (3), come into force on 15th October 2020.

(2) The amendments made by regulation 3 have effect in relation to a day of incapacity for work which falls on or after 29th June 2020.

(3) The amendments made by regulation 4 have effect in relation to a day of incapacity for work which falls on or after 6th July 2020.

(**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. 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).

(**b**) 1992 c. 7. By virtue of section 42(1) of the Coronavirus Act 2020 (c. 7), the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the NI 1992 Act") has effect as if a new section 155B were inserted after section 155A. Section 155B(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. By virtue of section 44(b) of the Coronavirus Act 2020, the NI 1992 Act has effect as if a new section 171(5A) were inserted after section 171(5). Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999/671.

Amendment of the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020

2. The Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020(**a**) and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020(**b**) are amended as follows.

Amendment to the meaning of "in difficulty"

3.—(1) Regulation 4 is amended as follows.

(2) For paragraph (2), substitute—

"An employer is "in difficulty" if—

(a) in the case of an employer who is not an SME, 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 an SME, it is reasonable to assume that the employer would be regarded as an undertaking in difficulty 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) In paragraph (5), at the end insert—

""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(**c**);

"SME" means an employer who is within the category of micro, small and medium-sized enterprises in paragraph 1 of Annex 1 of the General Block Exemption Regulation."

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

4. In regulation 5(1)(b), after "regulation 2(1)(c)" insert "or (d)"(**d**).

Correcting a claim when the amount has been mistakenly overstated

5.—(1) In regulation 6(5) after "paragraph (6)" insert "or regulation 9(2)".

(2) Regulation 9 is amended as follows.

(3) For paragraph (2) substitute—

"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.".

(4) In paragraph (5) omit "(an "adjustment notice")".

(5) In paragraph (6) for "An adjustment notice must contain the following" substitute "The employer must provide the following information to HMRC".

(6) For paragraph (7) substitute—

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

(**a**) S.I. 2020/512
(**b**) S.I. 2020/513
(**c**) OJ No. L 187, 26.6.2014, p. 1, to which there are amendments not relevant to these Regulations.
(**d**) Regulation 2(1)(c) of the Statutory Sick Pay (General) Regulations 1982 (S.I. 1982/894) was inserted by S.I. 2020/287 and amended by S.I. 2020/304, 2020/374 and S.I. 2020/681. Sub-paragraph (d) was inserted by S.I. 2020/681.

(7) For paragraph (8) substitute—

"An employer who makes a next claim referred to in paragraph (2), 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.".

(8) In paragraph (9)—

(a) for "stated in the adjustment notice" substitute "referred to in paragraph (6)(b)"; and

(b) for "the adjustment notice is submitted" substitute "the employer provides the information under paragraph (6) and the declaration under paragraph (7)".

Ruth Stanier
Angela MacDonald

At 9.00 a.m. on 24th September 2020 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.

Justin Tomlinson
Minister for Disabled People
Department for Work and Pensions

23rd September 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020 which provide for certain small and medium size employers to reclaim some, or all, of their Statutory Sick Pay costs from Her Majesty's Revenue and Customs.

Regulation 1 provides for citation, commencement and effect.

Regulation 3 amends the meaning of "in difficulty" in regulation 4 of each instrument for the purposes of employer eligibility. Regulation 1(2) gives effect to these amendments in relation to a day of incapacity for work which falls on or after 29th June 2020.

Regulation 4 amends the meaning of period of incapacity for work related to coronavirus for the purposes of regulation 3 of each instrument. Regulation 1(3) gives effect to these amendments in relation to a day of incapacity for work which falls on or after 6th July 2020.

Regulation 5 makes changes to the way in which an eligible employer who mistakenly overstated the amount of a claim should correct the error, with effect from the date these Regulations come into force.

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/5801/0122/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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