EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (CORONAVIRUS) (FUNDING OF EMPLOYERS' LIABILITIES) (NORTHERN IRELAND) REGULATIONS 2022

2022 No. 9

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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 These regulations provide for certain small and medium-size employers to apply to HMRC for a refund of the cost of paying Statutory Sick Pay (SSP) to their employees. The scheme refunds eligible employers the costs of SSP up to a certain threshold where an employee's incapacity for work is related to coronavirus. Refunds are payable in respect of days of incapacity for work occurring on or after 21 December 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 On 21 December 2021, the government announced further support to help businesses with the impact of the coronavirus Omicron variant. These urgent regulations give effect to the Statutory Sick Pay Rebate scheme announced as part of that package of support. The regulations provide financial assistance for small and medium-size employers in relation to payments made for SSP related to coronavirus.

3.2 This instrument is being laid less than 21 days before it comes into force to ensure that employers can access this important support as soon as possible. HMRC has breached the 21-day rule to the minimum extent that has been possible in light of the government's developing response to the Omicron variant.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

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 Section 42 of the Coronavirus Act 2020 ('the 2020 Act') modified the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ('the 1992 Act') by inserting section 155B. Section 155B contains powers for the Commissioners for HMRC to make provision for the payment by employers of SSP in respect of incapacity for

work related to coronavirus to be funded by HMRC. Consequential changes to sections 107A and 107B of the Social Security Administration (Northern Ireland) Act 1992 ('the Administration Act') and to section 171 of the 1992 Act were also made by the 2020 Act.

6.2 The 2020 Act expires two years after Royal Assent, on 24 March 2022. HMRC will consider whether further legislation is needed to bring this scheme to a conclusion in advance of that date.

6.3 The government first established a Statutory Sick Pay Rebate scheme at Budget 2020. This was given effect in Northern Ireland by the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) Regulations 2020 (S.I. 2020/513). The scheme closed to new claims on 30 September 2021 by virtue of the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Closure) Regulations and the Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) (Northern Ireland) (Closure) Regulations 2021 (S.I. 2021/1013).

6.4 The Secretary of State for Work and Pensions concurred to the making of the final text of this instrument.

6.5 Equivalent provision is made for Great Britain in a separate instrument.

7. Policy background

What is being done and why?

7.1 Employers are obliged to pay SSP to eligible employees who are unable to work because of sickness. It is paid at a flat rate of £96.35 per week for up to 28 weeks. The full cost of SSP is currently met by the employer.

7.2 On 21 December 2021, the government announced further support to help businesses with the impact of the Omicron variant. This package of measures included the reintroduction of the Statutory Sick Pay Rebate scheme. This is a temporary scheme to support employers facing heightened levels of sickness absence due to coronavirus. The Statutory Sick Pay Rebate scheme will refund certain employers' coronavirus-related SSP costs for up to two weeks per eligible employee.

7.3 These refunds will be available to employers who have fewer than 250 employees enrolled on the employer's Pay As you Earn (PAYE) scheme on 30 November 2021.

7.4 When considering how many employees were enrolled on the employer's PAYE scheme, an employer will have to consider all the schemes it operates, where this is more than one, and the total number of employees on schemes operated by connected companies or charities. The definition of connected companies or charities is one that most employers of this size will be familiar with as it also applies to the Employment Allowance.

7.5 The employer is entitled to a refund from HMRC of the amount of SSP paid to an employee whose period of incapacity for work is related to coronavirus. An employee's incapacity for work is related to coronavirus when they are either unwell, having been infected or contaminated with coronavirus, or are self-isolating or shielding in line with government guidance. The maximum amount which an eligible employer may receive as a refund in relation to a single employee is £192.70 and the total amount is £192.70 multiplied by the number of employees enrolled in their PAYE schemes on 30 November 2021. £192.70 is the equivalent of 2 weeks' SSP at the current rate.

7.6 Employers will use their existing Government Gateway credentials to access the digital service provided specifically for claiming an SSP refund. An employer will be required to provide the PAYE scheme reference number, the amount being claimed, the number of employees being claimed for, the period covered by this claim and details of the bank account into which the amount is to be paid. Employers also need to make a declaration that the matters stated in the claim are true and accurate. Any claim for an SSP refund must be made no later than 24 March 2022. Employers who are digitally excluded, as defined in the regulations, are not required to use the Government Gateway and should contact HMRC to submit a claim in an alternative manner.

7.7 The United Kingdom is implementing the policy under the COVID-19 Temporary Framework for UK authorities as well as under its other international subsidy control commitments.

7.8 Employers will be required to keep the minimum necessary records to support their claims, and any adjustments to them, for a period of 3 years following receipt of the payment of their claim. HMRC can inspect records or request them to be provided. Failure to make them available is subject to the penalties in section 107A(2) of the Administration Act and fraudulent or negligent provision of information is subject to the penalty in section 107B(1) of the Administration Act.

7.9 Where employers identify an error in the amount claimed, they will be required to make an adjustment in their next claim (or within 60 days, if earlier) to correct any overpayments applied for from this scheme. Underpayments are adjusted by making a new claim. Fraudulent or negligent receipt of a payment under these regulations is subject to the penalty in section 107B(2A) of the Administration Act. Overpayments will be collected using the existing framework in the Taxes Management Act 1970.

7.10 HMRC will use the established decision-making process under article 7 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) in the event of a dispute about claims or overpayments under these regulations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These regulations do not amend existing regulations.

10. Consultation outcome

10.1 These regulations have been prepared in response to the recent coronavirus outbreak. The urgency for this measure means that it has not been possible to consult on policy or the detail contained in this instrument.

11. Guidance

11.1 Guidance on this measure is published at https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19.

12. Impact

12.1 The impact on business, charities and voluntary bodies is that they will be required to apply to HMRC if they wish to claim a refund of qualifying SSP payments. This measure is voluntary and is expected to be welcomed.

12.2 There is no, or no significant, impact on the public sector.

12.3 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).

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 burden on small businesses.

13.3 The basis for the final decision on what action to take to assist small business is that this measure is voluntary and will be welcomed by small businesses.

14. Monitoring & review

14.1 The government keeps all areas of the tax and benefit system under review, and that includes this instrument.

14.2 These regulations do not include a statutory review clause because they are dependent on the 2020 Act which has a 2-year expiry period, after which time the enabling powers will expire along with this instrument.

15. Contact

15.1 Ram Joshi at HMRC Telephone: 03000 532122 or email: Ram.Joshi@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Nixon, Deputy Director, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.