EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT) (NO. 2) REGULATIONS 2020

2020 No. 304

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 Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument ensures that regulation 2 of the Statutory Sick Pay (General) Regulations 1982 is amended to reflect the date of the latest guidance provided by Public Health England, NHS National Services Scotland and Public Health Wales relating to coronavirus. It ensures that a person who is following that guidance and isolating themselves is deemed to be incapable of work, and therefore entitled to Statutory Sick Pay.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These are emergency regulations in relation to the Government's response to coronavirus. The regulations have been prepared as soon as it became clear that there was a need for the measures they contain. The measures are required as a matter of urgency as part of the Government response to a developing outbreak, in order to reduce the risk that employees will continue to work despite advice that they should self-isolate. These regulations will therefore come into force the day after they are laid, meaning that the usual period of 21 days between laying and coming into force will not apply.

3.2 This change will give certainty to individuals that they will be entitled to receive Statutory Sick Pay if they are self-isolating and therefore unable to work as a result of following government advice. This is essential to ensure people follow government advice regarding self-isolation in order to minimise the risk to public health.

3.3 These regulations refer to guidance issued by Public Health England, NHS National Services Scotland and Public Health Wales in relation to coronavirus on a particular date. The original regulation reflected the guidance as at 12 March. This regulation reflects the fact that the guidance was updated on 16 March. As and when this guidance is updated again, these regulations will need to be amended accordingly as a matter of urgency.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland ONLY. The instrument relates to a reserved matter within the devolved legislative competence of the Northern Ireland Assembly. The Department for Communities in Northern Ireland intend to amend regulations to align with these changes.

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 Statutory Sick Pay is paid for by employers to employees who are incapable of work due to sickness. It is paid at a flat rate of £94.25 for up to 28 weeks. The rate will increase to £95.85 from 6 April 2020 in line with annual uprating. 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 £118 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.

Regulation 2 of the Statutory Sick Pay (General) Regulations 1982 provides for people to be treated as incapable of work if they are sick for the purposes of claiming Statutory Sick Pay. As a result of the Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020, provision is now included for those who are self-isolating as a result of government advice as at 12 March 2020. The regulations therefore need to be amended to refer to the amended guidance as issued on 16 March 2020.

The amended regulations refer to guidance issued by Public Health England, NHS National Services Scotland and Public Health Wales in relation to coronavirus on a given date. The regulations will need to be amended as and when the guidance is revised, in line with phased approach in the government's published Coronavirus action Plan. Such amendments may need to be made frequently, depending on the extent of changes to the guidance, and will need to be made quickly to ensure the regulations reflect the latest public health advice.

7. Policy background

What is being done and why?

7.1 This change will give certainty to individuals that they will be entitled to receive Statutory Sick Pay if they are unable to work because they are following government advice. This will include, for example, those who are advised by the government to self-isolate as a precaution, even if they may not be symptomatic, and are unable to work as a result.

7.2 This is an important measure to provide an incentive to individuals to follow government advice and therefore it will support efforts to limit or contain the spread of the virus. This provision will apply in relation to an outbreak of Covid-19 and is therefore a temporary amendment for the duration of an outbreak.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not being done as this does not apply.

10. Consultation outcome

10.1 Given the urgency of these regulations, no consultation has been done.

11. Guidance

11.1 The instrument will refer to guidance issued by Public Health England, NHS National Services Scotland and Public Health Wales in relation to coronavirus.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because of the need to make and lay the instrument urgently to encourage self-isolation and minimise the risks to public health arising from Covid-19.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to make revisions in line with guidance issued by Public Health England, NHS National Services Scotland and Public Health Wales. The regulations will need to be amended as and when the guidance is revised, in line with the development of a severe outbreak.

15. Contact

15.1 Rachel Nicholls at the Department for Work and Pensions Telephone: 07800 676 339 or email: rachel.nicholls@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Angus Gray, Deputy Director for Statutory Sick Pay, at the Department for Work and Health can confirm that this Explanatory Memorandum meets the required standard.

15.3 Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.