EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (CORONAVIRUS AMENDMENT)

(NO. 3) REGULATIONS (NORTHERN IRELAND) 2020

S.R. 2020 NO. 66

1. 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 sections 147(4) and (4A) and 171(1), (3), (4) and (5A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and is subject to the negative resolution procedure.

2. Purpose

2.1 These Regulations amend the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982. The effect of the amendment is that Statutory Sick Pay (SSP) is extended to a person who is deemed to be incapable of work because the person is advised to stay at home to shield themselves as they are extremely vulnerable and at very high risk of severe illness from coronavirus (COVID-19) because of an underlying health condition.

3. Background

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 response to the developing situation. 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 In accordance with public health guidance a person classed as extremely vulnerable and at a very high risk of severe illness from coronavirus (COVID-19) is advised to remain at home for at least 12 weeks, if they are incapable of work (for example because they cannot work from home) during this period , they would not currently receive SSP. These regulations will ensure entitlement to SSP in cases where people are unable to work because they are shielding themselves in accordance with the guidance and where they meet the SSP eligibility criteria.

3.3 The provisions will apply in relation to an outbreak of COVID-19 and is therefore a temporary amendment for the duration of the outbreak.

4. Consultation

4.1 There is no requirement to consult on these regulations.

5. Equality Impact

5.1 An equality impact assessment has not been carried out in relation to this Statutory Rule because of the need to make and lay urgently to encourage those who need to shield to stay at home and minimise the risk to public health arising from COVID-19.

6. Regulatory Impact

6.1 The legislation applies to activities which are undertaken by small businesses and owing to the urgent nature of the requirement for this legislation it is not appropriate to carry out a Regulatory Impact Assessment.

7. Section 24 of the Northern Ireland Act 1998

7.1 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.

8. E U Implications

8.1 Not applicable.

9. Parity or Replicatory Measure

9.1 These Regulations are equivalent to the Statutory Sick Pay (General) (Coronavirus Amendment) (No.3) Regulations 2020 (SI 2020/426) which were made in Great Britain on 14th April 2020 and came into force on 16th April 2020.

10. Additional Information

10.1 SSP is paid for by employers to employees who are incapable of work due to sickness. It is paid at a flat rate of £95.85 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. If you cannot work while you're self-isolating because of coronavirus (COVID-19), you could get SSP for every day you're in isolation. You must still self-isolate for at least 4 days to be eligible.

10.2 Powers under section 147(4) of the Social Security Contributions and Benefits Act (Northern Ireland)1992 ("the 1992 Act") provide that regulations may be made which deem an employee to be incapable of work, meaning that they can then potentially be eligible for SSP. Under those powers, regulations have previously been made to amend the Statutory Sick Pay (General) Regulations Northern Ireland)1982 to provide that a person is deemed to be incapable of work because the person is staying home

as a result of coronavirus. The individual may therefore be eligible for SSP, subject to meeting the usual qualifying conditions.

10.3 These regulations amend a schedule in the Statutory Sick Pay (General) Regulations Northern Ireland)1982 to extend SSP eligibility to cover a person who is extremely vulnerable and at very high risk of severe illness from coronavirus because of an underlying health condition who has been notified in accordance with public health guidance to follow rigorously shielding measures

11. Guidance

11.1 The public health guidance referred to in the Regulations is available at this link: www.publichealth.hscni.net/news/covid-19-coronavirus(Regional Agency for Public Health and Social well- being)