



DSD

Department for
Social Development

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Regulatory Impact Assessment:

Statutory Sick Pay (SSP): The removal of record keeping obligations

1. Title of Proposal

Statutory Sick Pay – The removal of record keeping obligations.

2. Purpose and intended effect of measure

The objective

- 2.1 The primary objective behind the proposal is to abolish the SSP record-keeping requirements of employers thereby removing the cost to businesses associated with maintaining records for SSP and Percentage Threshold Scheme (PTS) purposes following the abolition of the PTS in both Great Britain and Northern Ireland.
- 2.2 It is expected that many will continue to keep records for their own purposes, but will have the freedom to set up a risk based approach which best meets their needs. This Impact Assessment briefly outlines the policy rationale and options for and the impact of the recommendation to remove SSP record keeping requirements.

The background

- 2.3 SSP provides a measure of earnings replacement for those unable to work because of short-term sickness. Government policy is that all employers should fulfil their statutory obligation to pay and administer this benefit correctly, so that employees receive the right amount of payment when due and for the right period of time. Legislation requires them to maintain and produce records relating to the payment to support compliance and dispute resolution as set out in statute¹. Currently, employers have a responsibility to pay Statutory Sick Pay (SSP) to qualifying employees for up to 28 weeks. They meet the full cost of SSP payments but can reclaim reimbursement of the costs they incur through what is known as the Percentage Threshold Scheme (PTS).
- 2.4 The PTS allows employers to claim reimbursement of some, or all, of the costs they incur when the amount of SSP paid exceeds 13% of their National Insurance contributions (NICs) liability in any tax month. Employers recover the payments of SSP by reducing the amount of their NICs payments to Her Majesty's Revenue and Customs (HMRC). In addition some businesses may also choose to supplement SSP through Occupational Sick Pay (OSP) schemes and beyond the compulsory payment.

¹ Regulation 13 of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982 (SR 1982 No. 263)

- 2.5 On 17 February 2011 the UK Government called for a major review of the sickness absence system. The Sickness Absence Review (the Review) was commissioned and chaired by Dame Carol Black and David Frost CBE. The aims were to minimise the loss of work resulting from ill health and to identify strategies to prevent as many people as possible from needlessly moving away from work because of ill health and onto health-related benefits. In moving away from work, individuals can become increasingly distanced from the labour market resulting in a reduced economic, social and health status. The Review was also commissioned to find ways of improving the coherence, effectiveness and cost of the existing system for managing sickness absence by employers, employees and the State.
- 2.6 The Review's findings Health at Work: An Independent Review of Sickness Absence² were published in November 2011 and made 13 separate recommendations to improve the UK's sickness absence and benefits systems. The Review found that the PTS provides a perverse incentive to employers by providing compensation for sickness absence rather than supporting them to actively manage sickness absence in the workplace.
- 2.7 In the Government's response to the Review, it agreed, alongside other recommendations, to the abolition of the Percentage Threshold Scheme (PTS) and the specific Statutory Sick Pay (SSP) record keeping obligations to support claims for reimbursement of SSP under the PTS. The abolition of the PTS in both Great Britain and Northern Ireland is being taken forward by the Department for Work and Pensions (DWP) in the form of a draft Order which is expected to come into operation in April 2014.
- 2.8 As is stands businesses currently have an obligation to maintain records of sickness absence lasting 4 days or more, and details of payments for each employee for 3 years after the end of the tax year³. Those who operate their own OSP schemes or pay wages at or above the statutory rate are not required to maintain details of payments, but still need to keep records on periods of sickness. About 80% of businesses operate their own scheme. They submit this information to HMRC for PTS recovery of SSP payments.
- 2.9 In the event that there is disagreement between employer and employee around SSP payable, the latter can contact HMRC for advice and guidance. In the first instance, the department has powers to

² Black, C. And Frost, D. (2011) Health at work – an independent review of sickness absence https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181060/health-at-work.pdf

³ PWC Admin Burdens Measurement Exercise (ABME) 2006

settle questions over entitlement; its officers decide cases on the basis of the law and facts provided. Following this, a formal challenge can progress to the tax tribunal system on appeal, if either party disagrees with initial decision, where there may be a requirement on employers to produce records of sickness absence and pay for the purposes of the hearing. Periodically, HMRC's officers visit businesses to see if their payroll is running smoothly. They review SSP, OSP and/or wage records, sickness absences and other related documents.

Risk assessment

- 2.10 The main risk to Government with the removal of the SSP record keeping obligation is that where there is no resolution to a dispute HMRC may become responsible for paying SSP to employees in a higher number of cases than at present. A further risk for employers is that a greater number of dispute cases may be settled in favour of the employee, if they have chosen not to maintain sufficient records to prove their case. The number of such dispute cases dealt with by HMRC from 2010 to 2011/12 was in the order of 1,600 to 1,700.
- 2.11 This policy is not expected to place any additional cost on businesses or individuals. There are some expected savings to businesses from this removal of regulation but as a consequence of the lack of robust evidence to make an assessment a best estimate is given as zero; it is assumed that the majority of businesses will retain some records for business reasons as indicated in research undertaken by a trade association. The benefit is therefore likely to be small. The main source of variation is the degree to which businesses reduce their spending on record keeping while still meeting business needs. Changes in the behaviour of employers could result in lower sickness absence, benefiting employees, employers and the Exchequer.

3. Options

- 3.1 **Option 1(Default position)**: do nothing and continue to obligate employers to keep records for SSP purposes and to bear the costs of maintaining such records for this purpose; or
- 3.2 **Option 2(Preferred)**: remove the statutory obligation on employers to keep records solely for SSP purposes. This gives them freedom to choose to keep records in line with a risk based approach and may free resources to improve sickness absence management. This policy proposition follows a recommendation from the 2011 independent review of sickness absence and recognises the private sector's views.

4. Business sectors affected

- 4.1 This policy change will affect all public and private sector businesses by removing a regulatory burden on them to maintain records of SSP that are currently necessary to support claims for reimbursement under the PTS.
- 4.2 Employers will still need to keep records to meet Pay-As-You-Earn (PAYE) requirements and to show that they are meeting their SSP obligations should HMRC seek evidence. However, removal of the SSP record keeping legislation will allow employers the freedom to maintain records in the manner which best suits their business.

5. Other Impact Assessments

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise of the proposals to remove the associated Statutory Sick Pay record keeping obligations of employers and has concluded that they do not have significant implication for equality of opportunity. In light of this, the Department has therefore screened the policy out and considers that a full Equality Impact Assessment is not necessary.
- 5.2 It was not considered necessary for a rural proofing of this policy proposal as the policy will affect all public and private sector businesses, charities and voluntary sector organisations irrespective of whether they are based in rural or urban areas.

6. Costs

- 6.1 This policy change will achieve the removal of the SSP record keeping obligation on all employers and is in scope for One-in-Two-out which prevents any government department introducing new regulation that will impose a direct net cost on business and voluntary organisations - unless the department can find savings by removing or modifying another regulation to ensure twice the equivalent cost. However the savings cannot be monetised due to lack of robust evidence on how businesses will respond as they may continue to keep records for their own purposes.
- 6.2 It is expected that businesses will accrue some benefit from the relaxation of regulatory restrictions on collection. Research undertaken by the Chartered Institute of Payroll Professionals (CIPP) suggests that a third of their respondents think the removal of the record keeping will reduce burdens, but the vast majority believe this to be a small

time/money saving exercise. The snapshot research was conducted online and on a voluntary basis and so the survey size is small and precision unclear, thus this excludes its incorporation in the impact costings. Additionally, it is expected that employers would use some or all of the time/money saved to more effectively manage absence. Lack of robust detailed evidence means this cannot be monetised.

7. Monitoring and Review

The policy to remove the statutory obligation on employers to keep records solely for SSP is as a result of wider package of the UK Governments policy decision to abolish the PTS. As a consequence, this policy will be monitored and reviewed in conjunction with the policy decision to abolish the PTS by HMRC and DWP.

8. Consultation with small business: the Small Business Impact Test

- 8.1 A consultation on the decision to withdrawal the PTS was undertaken by DWP and involved a wide range of stakeholders including the Federation of Small Businesses (FSB). During discussions there was a general consensus that there was a need to reform the PTS as the scheme is cumbersome and complex to administer. The FSB believes the SSP record keeping requirements are unnecessarily burdensome.
- 8.2 Stakeholders involved in the DWP consultation welcomed the removal of the regulatory burden of keeping SSP records. Also in relation to the overall policy package it was agreed that savings arising from the abolition of the PTS would be recycled into establishing a Health and Work Assessment and Advisory Service. Stakeholders involved in the DWP consultation were enthusiastic and considered that this new service will be a useful resource particularly for smaller employers who are less likely to have access to occupational health services.

9. Conclusion

- 9.1 The removal of the SSP record keeping obligations will be helpful as part of a wider package designed to support business in managing down the level of sickness absence, by giving them the freedom to choose to keep records in line with a risk-based approach and may free up their resources to target on better absence management. Other elements of this package are described in 'Fitness for work: the

Government response to 'Health at work – an independent review of sickness absence'⁴.

- 9.2 In line with the policy of parity in social security, any subsequent Northern Ireland Regulations should be made as soon as possible after the Great Britain Regulations and brought into operation from the same date. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.

10. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed **Nelson McCausland**
(This remains blank until the legislation is to be sent to Parliament or the Assembly. It then becomes a final RIA)

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11. Contact

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⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181072/health-at-work-gov-response.pdf