

Title: The Statutory Sick Pay (Maintenance of Records) (Revocation) Regulations 2014 (Removal of record keeping obligations) IA No: DWP0034 Lead department or agency: Department for Work and Pension Other departments or agencies: Her Majesty's Customs and Revenue Department for Business, innovation and Skills	Impact Assessment (IA)		
	Date: 24/06/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Carol Krahe			
Summary: Intervention and Options			RPC Opinion: GREEN

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£0m	£0m	£0m	Yes Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?
Employers have a statutory responsibility to pay SSP. Those who do not operate an Occupational Sick Pay (OSP) scheme are required to keep records on sickness absence lasting 4 days or more for three years after the end of each tax year. These records also support their claims via the SSP Percentage Threshold Scheme (PTS) which enables them to recover any SSP paid which is more than 13% of their National Insurance Contributions (NIC) liability in any month. The Government's response to the Independent Review of Sickness Absence and Red Tape Challenge consultation agreed to abolition of the PTS and to remove this record keeping requirement to lift an administrative burden on business.

What are the policy objectives and the intended effects?
Abolishing the record keeping requirements would remove the cost to businesses associated with maintaining records for SSP and PTS purposes. However, 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 to it which best meets their needs.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
Default position - do nothing and employers continue to bear the costs of maintaining records for SSP purposes.
Option 1 (preferred) - remove SSP record keeping obligations. 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 a 2011 independent review of sickness absence and recognises the private sector's views. For example, the Federation of Small Businesses (FSB) believes the SSP record keeping requirements are unnecessarily burdensome.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Lord Freud _____ Date: 26/06/2013 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Remove the statutory obligation on employers to keep records solely for SSP purposes, from April 2014.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0m
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					£0m
Description and scale of key monetised costs by 'main affected groups'					
This policy is not expected to place any additional cost on business or individuals, and cannot be monetised.					
Other key non-monetised costs by 'main affected groups'					
Possible cost to Government where there is no dispute resolution, albeit this is unlikely as employers are assumed to keep records and as a new initiative mitigates against this risk; HMRC may become responsible for paying SSP to employees in a higher number of cases than it does today.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					£0m
Description and scale of key monetised benefits by 'main affected groups'					
Other key non-monetised benefits by 'main affected groups'					
We expect some savings to businesses from this removal of regulation. However, our best estimate is given as zero to reflect the lack of robust evidence to make an assessment; it is assumed that the majority would retain some records for business reasons as indicated in research undertaken by a trade association. The benefit is therefore likely to be small. Changes in employers' behaviour could result in lower sickness absence, benefiting employees, employers and the Exchequer.					
Key assumptions/sensitivities/risks					Discount rate (%) 3.5%
The scale of the benefits will depend on the degree to which employers are able to reduce their record-keeping while still meeting business needs.					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero net cost

Background information

What is the current policy?

1. 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 some of their costs through the Percentage Threshold Scheme (PTS); only if they have costs more than a set percentage (currently 13%) of their National Insurance Contributions (NIC) liability in any month then the excess above this can be reclaimed by them via the PTS.
2. In addition some businesses may also choose to supplement SSP through Occupational Sick Pay (OSP) schemes above and beyond the compulsory payment.
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 statute.¹

What is the record keeping requirement and how is it used?

4. Businesses 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 each tax year.¹ Those who operate their own OSP 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.² They submit this information to HMRC for PTS recovery of SSP payments.
5. 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, this Government department has powers to settle questions over entitlement; its officers decide cases on basis of the law and facts provided to it. Following this, a formal challenge can progress to the tax tribunal system on appeal, if either party disagrees with the initial decision, where there may be a requirement on employers to produce records of sickness absence and pay for the purposes of the hearing.
6. 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.

Problem and solution

What are the proposed interventions and intended effects?

7. The Government has accepted the following proposals through its response to the recommendations from the independent Sickness Absence Review (SAR) in January 2013.³

Abolition of the PTS

8. The recommendation is to abolish the PTS. This policy measure is outlined in the Response to the SAR and included in the Budget of 2013 and signed off by the Office for Budget Responsibility (OBR); analysis is available at the following links:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181072/health-at-work-gov-response.pdf; and

¹ Regulation 13 of the Social Security Statutory Sick Pay (General) Regulations 1982

² PWC Admin Burdens Measurement Exercise (ABME) 2006

³ Black, C. and Frost, D. (2011) *Health at work – an independent review of sickness absence* <www.dwp.gov.uk/docs/health-at-work.pdf>

Removal of record-keeping obligation

9. **The SAR recommendation is to remove unnecessary regulatory burden on employers, which includes mandating the collection of sickness absence records to eliminate the costs associated with maintaining records solely for SSP and PTS purposes.**
10. **Businesses are expected to continue to keep records for their own internal functions, including for operation of their own OSPs if they have these schemes, but this change will permit them to have the freedom to set up a risk based approach to record keeping, which best meets their needs.**
11. **This Impact Assessment outlines policy rationale, options and impact for the recommendation to remove SSP record keeping requirements.**

Policy rationale

12. Business believes the SSP record keeping obligation is burdensome. For example the Federation of Small Businesses (FSB) said: *"The proposal to end the requirement to keep SSP records would of course be generally welcomed notwithstanding the fact that effective absence control depends on businesses recording absence in a way that meets their domestic needs."*
13. In the event of the removal of this requirement, employers would have the freedom to set up a risk-based approach to record keeping that best meets their business needs and would have more time to concentrate on more effectively managing sickness absence rather than maintaining sickness absence records. The measure is in scope for 'One-in Two-out', and is in line with reducing Red Tape as employers are no longer compelled by legislation to retain records.
14. For the individual employee, it would not change rights to receive SSP. HMRC will continue to apply penalties associated with non-payment of this benefit, and this should act as a deterrent against failure to do so on the part of businesses (and so protect the exchequer from picking up the cost).

Policy options

What are the default and preferred options?

15. Options for the reform are:
 - Default option** – do nothing and continue to obligate employers to keep records for SSP purposes;
 - or
 - Option 1 (preferred)** – remove the statutory obligation on employers to keep records solely for SSP purposes. However, the expectation is that the majority of enterprises will continue to collect information on periods of sickness for their own salary and tax systems, or will keep records to operate their own scheme or pay wages at or above the statutory rate.

What is the estimated impact?

16. This policy change is costed from 2014/15 to 2023/24 and achieves the removal of the SSP record keeping obligation and is in scope for One-in-Two-out. 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.

Baseline (default option)

17. Business' administrative costs for the SSP record keeping obligation were estimated to be between £50m and £60m in real-terms to the nearest £10m over the 10 years. This is based on uprating and deflating the PriceWaterhouseCoopers estimate of annual cost on administrative burdens of

government regulation to employers of £45.7m in 2005 available at the following link:
<http://www.dwp.gov.uk/docs/adminburdens2.pdf>.

Option 1

18. It is expected that the majority of employers will continue to retain records for their own business needs. Therefore, in the absence of robust evidence on the degree to which businesses will change their record-keeping practices, the costing cannot monetise the impact; the employers' administrative costs for this requirement are the same as the baseline, and savings realised through its removal are zero.
19. However, we expect 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. 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.
20. 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.

Risks

Policy

21. The main risk to Government with 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.
22. 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.

Analysis

23. The main source of variation is the degree to which businesses reduce their spending on record keeping while still meeting business needs.

Conclusion

24. 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'*'.