

EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY (GENERAL) (AMENDMENT) REGULATIONS 2008

2008 No. 1735

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument makes provision for the reduction in the amount of information employers must provide about Statutory Sick Pay (SSP) for Social Security benefit purposes.

2.2 This instrument also removes the requirement for employers to provide information about SSP paid to employees who are leaving their employment. This information will no longer be used by a new employer to calculate the maximum entitlement to SSP during a subsequent period of sickness.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Statutory Sick Pay is the minimum amount that employers are required to pay to employees who meet specified conditions and are unable to work because of illness. SSP is payable for up to 28 weeks to employees who satisfy the qualifying conditions. When a payment of SSP ends or is not payable, and the employee is still unable to work, their employer must provide them with a statement giving detailed information about SSP. This will support any subsequent claim to benefits made by the employee.

4.2 The introduction of the new Employment and Support Allowance (ESA) from 27th October 2008 will reduce the amount of detailed information required about SSP for benefit purposes. These amending regulations make corresponding provision for a reduction in the amount of information an employer has to supply when SSP ends or is not payable.

4.3 Currently, employers are also required to provide a statement containing details of SSP paid to employees who leave their employment, if the employee requests it. The employee may then give this statement to their new employer. The new employer will take account of any previous periods of SSP, when calculating the employee's maximum entitlement to SSP if they fall ill again within eight weeks of the last day on which they were entitled to SSP. This provision is little used but adds to the complexity of SSP. Therefore, these amending regulations remove the requirement to provide this statement and the provision to consider spells of sickness with a previous employer when determining an employee's maximum entitlement to SSP.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government set out its strategy for helping those with a health condition or disability in its Green Paper '*A new deal for welfare: Empowering people to work*' (Cm 6730) published in January 2006. One of its key aims was to increase the number of people remaining in work when they fall sick or become disabled. With this in mind, the Government put forward proposals to simplify the SSP scheme to address employers' concerns about complexity. By simplifying SSP employers would be better able to focus on managing sickness absence more effectively.

Consultation

7.2 The Green Paper formal consultation period lasted 12 weeks, up to 21 April 2006. A broad spectrum of responses were received on the simplification of the SSP scheme which included replies from individuals, small businesses, local government, MPs, TUC, councillors, church organisations, NHS groups, disability groups, Jobcentre Plus providers and the disability rights lobby as well as employer representatives like the CBI and small business representatives. The response to the replies received were published in '*A new deal for welfare: Empowering people to work. Consultation report*' (Cm 6859) in June 2006.

7.3 The consultation on the SSP proposals received a mixed response. As a result, the proposals were withdrawn. Subsequently, the Government announced, on 24 July 2006 during the second reading of the Welfare Reform Bill (column 626: <http://www.publications.parliament.uk/pa/cm/cmse0506.htm>) a major review of statutory provision for short-term sickness which was designed to achieve a consensus on the proposals to be adopted.

7.4 The SSP Review Working Group was set up in November 2006. It included representatives from employer and employee organisations, Department for Work and Pensions (DWP) and other government departments who undertook a review of statutory provision for short-term sickness. External members of the group also consulted widely with their membership to establish views on whether changes to the existing provision for short-term sick pay for employees are required. Options were then examined by the group in line with the terms of reference. The review was carried out until July 2007, and the final report and the Government response were published on the DWP website in October 2007. This can be viewed at www.dwp.gov.uk/resourcecentre/review-ssp.asp.

7.5 These amending regulations implement the proposals to change SSP made by the SSP Review Working Group. The proposals in this memorandum require legislative change and have been accepted by the Government.

7.6 The review group recommended that the information employers are required to provide about SSP for benefit purposes should be reduced following the introduction of the new Employment and Support Allowance. Employment and Support Allowance will replace Incapacity Benefit from 27th October 2008 for all new claims. As a result, the detailed and complex information currently required about SSP to process a claim for Incapacity Benefit will no longer be required. Currently, employers are required to provide information on:

- First date of sickness
- Last date for which SSP was paid
- Number of weeks and days SSP was paid for
- The qualifying days for SSP

- If there were several linking spells of SSP, details of the linking spells
- The reason why payment of SSP ended
- If SSP has not been paid, the reason why

7.7 For new claims to ESA the only information that employers will be required to provide is:

- Last date for which SSP was paid
- The reason why payment of SSP ended
- If SSP has not been paid, the reason why

The amending regulations reduce the information requirements listed at paragraph 7.6 to those at 7.7.

7.8 The review group also recommended that the requirement to ‘link’ spells of SSP with different employers for the purpose of calculating an employee’s maximum entitlement should be removed. Where an employee leaves employment within 8 weeks of receiving SSP, they can ask their former employer for a statement giving details of the SSP paid. The employee then gives this statement to their new employer who considers the information when calculating whether this previous period of SSP counts towards the employee’s maximum entitlement of 28 weeks. Employers and employees representatives advised that this provision is rarely used yet complicates SSP. The review group recommended therefore that this should be removed.

Commencement date

7.9 Exceptionally, ministers have decided to exercise their discretion in commencing these regulations on a date (27 October 2008) other than one of the two common commencement dates - 6 April and 1 October. This is to co-ordinate timing with the introduction of Employment and Support Allowance, without which these amending regulations couldn’t work. Deferral to the next common commencement date (6 April 2009) would mean a delay in business being able to realise the benefit of these amending regulations.

Guidance

7.10 It is therefore particularly important that business is properly informed of the changes. Employers and payroll representatives have been informed by HMRC of the amendments, and guidance has been published in HMRC’s Employer Helpbook. Further information will be provided via Employer Bulletins, Employer Talks and via HMRC web pages. In addition, HMRC’s Employer Helpline staff will be provided with a written brief to enable them answer employers’ questions on how the changes affect them. Internal guidance will also be updated. Payroll software developers have also been kept informed of the changes resulting from the introduction of Employment and Support Allowance. Jobcentre Plus staff and customers will be informed of the changes alongside the guidance issued for the introduction of Employment and Support Allowance.

Consolidation

7.11 Informal consolidation of this instrument will be included in due course in the Department’s “the law relating to Social Security” (the Blue Volumes) which are available at no cost to the public on the internet at: www.dwp.gov.uk/advisers/docs/lawvols/bluevol/

8. Impact

8.1 An Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is the same as for the private sector which is detailed in the Impact Assessment attached.

9. Contact

Prabhavati Mistry at the Department for Work and Pensions. Tel: 0207 962 8822 or e-mail: Prabhavati.Mistry@dwg.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Work and Pensions	Title: Impact Assessment of the Statutory Sick Pay (General) Amendment Regulations 2008	
Stage: implementation	Version: final	Date: 30 May 2008
Related Publications: Green paper and response: A new deal for welfare: Empowering people to work		

Available to view or download at:

http://www.dwp.gov.uk/welfarereform/empowering_people_to_work.asp

Contact for enquiries: **Prabhavati Mistry**

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What is the problem under consideration? Why is government intervention necessary?

Employers are required to provide information on Statutory Sick Pay (SSP) for benefit purposes and for determining whether an employee's maximum entitlement to SSP has been reached. Employers find these aspects of the SSP scheme complicated and burdensome.

The Government has reviewed the SSP scheme, identified simplification measures that reduce admin burdens on employers, which also ensures continuing fairness to employees.

This also falls within the Governments aim to reduce the administration burdens placed on businesses whilst maintaining or improving regulatory outcomes.

What are the policy objectives and the intended effects?

Simplification of SSP and a reduction in burdens on employers.

Intended effects: Reduction in the amount of information employers have to provide for SSP will reduce the time taken to complete forms, an important factor in reducing the administrative burdens placed on employers. It will simplify and reduce the complexities of providing this information on SSP.

What policy options have been considered? Please justify any preferred option.

1. Do nothing.
2. Replace the current SSP scheme with a new scheme for those employees who are incapable of work due to illness.
3. Simplify the current SSP scheme.

Option 3 has been taken forward as it meets the policy objectives set out by the SSP review with no extra costs to employers/DWP and is fair to employees. It also reduces admin burdens on business.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? There will be no formal review but regular contact with stakeholders through the quarterly HMRC Statutory Payments Group meetings will review and advise on the impact of these changes

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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) the benefits justify the costs.

Signed by the responsible Minister:

William D. McKenzie**Date: 1st July 2008**

Summary: Analysis & Evidence

Policy Option: 3	Description: Simplify the current SSP scheme
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£ NIL	
	Average Annual Cost (excluding one-off)	
£	Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£	
	Average Annual Benefit (excluding one-off)	
£	Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks

Admin Burdens Measurement Exercise measurements have been used as the basis of calculation of reduced admin burdens.

Price Base	Time Period	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £		
What is the geographic coverage of the policy/option?		UK			
On what date will the policy be implemented?		27 October 2008			
Which organisation(s) will enforce the policy?		HMRC			
What is the total annual cost of enforcement for these organisations?		£ nil			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		N/A			
What is the value of the proposed offsetting measure per year?		£ n/a			
What is the value of changes in greenhouse gas emissions?		£ n/a			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase £ nil Decrease £ 4m Net Impact £ -4m

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Statutory Sick Pay (General) Amendment Regulations 2008

Introduction

1. Statutory Sick Pay (SSP) provides a measure of earnings replacement for employees unable to work because of short-term sickness. SSP is administered and paid for by employers. Employers have a statutory liability to pay SSP for up to 28 weeks to any employee who is incapable of work under their contract of service for four or more days in a row and who satisfies the qualifying conditions.
2. Entitlement to SSP ends either when an employee returns to work, their employment contract ends, when the employee has received the maximum SSP entitlement of 28 weeks, or, if the employee is a pregnant woman, when her maternity pay period begins.

Background

3. A major review of SSP began in November 2006. This review arose as a result of a failure to achieve consensus amongst employer and employee groups on a package of radical changes to SSP originally proposed in the Welfare Reform Green Paper 2006.
4. A SSP Review Working Group was set up which included both employee and employer representatives, as well as officials from DWP and other government departments. The group held monthly meetings between November 2006 and June 2007, to look into the degree and nature of the problems SSP causes for employers and the protection it provides for employees.
5. The group considered whether SSP needed to be retained as it is now; whether it should be changed within its existing structure; or whether it should be replaced, and if so by what. In undertaking the review, the group had regard to the DWP agenda as a whole and the specific parameters for the review set by the Secretary of State. These parameters were:
 - change should result in no unreasonable costs to employers;
 - neither should there be any overall costs to DWP;
 - there should be no unfairness to employees; and
 - simplification should be the prime objective.
6. The group looked at both radical change (replacement with a new scheme) and minor change (adjustment of the existing scheme). Radical reform of SSP would only be acceptable to the full range of interests of the group if it could deliver meaningful simplifications for business whilst maintaining employee rights. The parameters set for the review limited the outcome. It was not possible to devise a significantly altered or replacement scheme that would meet these parameters. The group identified that while SSP is no doubt a burden, especially to small employers and more generally within payroll departments, it does not top the list of employers' complaints about burdens. The consensus of the group was that the current scheme achieves a careful balance between benefits for employers and employees. The arguments for disturbing that balance are not strong enough to warrant changes.
7. The group did however make recommendations designed to simplify the administration of SSP.
8. Employers find administering SSP complex, especially the record-keeping requirements which they find cumbersome. Adjustments to the existing scheme would address some of this and would meet the policy agenda on regulatory burdens. This was reflected in the findings of the DWP administrative burdens measurement exercise.
9. These amending regulations take forward the recommendations of the SSP Review group related to reducing the administrative burdens which require legislative amendment.

Reduction of information provided on Statutory Sick Pay by employers for benefit purposes.

Details of the proposed change

10. The introduction of Employment and Support Allowance (ESA) (replacing Incapacity Benefit (IB) for new customers and in some cases Income Support) from 27 October 2008, offered scope for a reduction in the information employers are obliged to provide about SSP to Jobcentre Plus for benefit purposes.
11. Employers are required to provide information about SSP to their employees when SSP entitlement comes to an end or is not payable. This information is given on a form approved by the Secretary of State (known as an SSP1). This enables Jobcentre Plus processing staff to establish whether an employee is entitled to Incapacity Benefit and the appropriate rate at which it is payable. The latter is dependent on the length of time the person has been sick, including any periods for which SSP was paid.
12. When ESA is introduced, the rate of payment will not depend on the length of sickness. All customers will receive the same amount of benefit during an initial assessment phase. As a result, some of the complex information that is currently supplied on the SSP1 will no longer be required.
13. This information requirement is set out in regulations 15 (1),15(3)(a) and 15(4)(a) of the Statutory Sick Pay (General) Regulations 1982.
14. The Admin Burdens Measurement Exercise (ABME) in 2005/6 used the Standard Cost Model (SCM) methodology to look at the administrative burdens (providing information) of government regulation.
15. The total administrative burden of complying with regulations 15 (1),15(3)(a) and 15(4)(a) of the Statutory Sick Pay (General) Regulations 1982 was estimated to be £2.945 million.
16. The amending regulations will continue to require an employer to provide his employee with form SSP1 and retain the requirement for employers to provide information to their employee for benefit purposes. Employers will no longer need to provide complex information on SSP, the only requirement will be to provide information on:
 - Whether or not SSP has been paid;
 - If not paid, the reason for non payment;
 - If paid, the reason for ending payment and the last date for which SSP is payable.
17. It is estimated that the amount of information these regulations require employers to provide will be reduced by 80%. Thus these amending regulations will reduce administrative burdens by £2.356 million.

Removal of information provided by a previous employer for a new employer in determining maximum entitlement to SSP

Details of the proposed change

18. The requirement for an employer to provide a former employee with a statement (known as SSP1L) giving information about a recent spell of sickness, to enable a new employer to calculate the employee's maximum entitlement to SSP, does not recognise the reality that employees generally do not wish to advertise a previous sickness record to a new employer. This statement is only issued if the former employee requests it.
19. The review concluded that this provision is little used, adds unnecessary complexity to the current scheme and should be removed. An employee's entitlement to SSP from their new employer will be unaffected, except in so far as under the proposed change their new employer would be required to pay up to a maximum of 28 weeks SSP, rather than any balance of 28 weeks after taking into account SSP paid by the former employer.
20. These information requirements are set out in regulations 3A and 15A of the Statutory Sick Pay (General) Regulations 1982. The administrative burden of complying with these regulations was estimated to be £1.632 million.
21. Revoking these regulations will remove the requirement for :

- employers to produce a statement if requested by the employee, detailing any SSP paid prior to employment ending.
 - new employers to link any previous spells of SSP paid by a previous employer, to determine the employee's maximum entitlement to SSP
22. Thus removing this requirement completely will reduce administrative burdens by £1.632 million.

Impact on employers

23. The total administrative burden reduction resulting from these changes is estimated to be £3.988 million.
24. Simplifying form SSP1 by reducing the information provided by employers on SSP for benefit purposes could reduce the number of errors in completion by employers. Jobcentre Plus processing staff will be less likely to need to query possible discrepancies with employers, thus saving employers and public sector time.
25. In addition removing the requirement for a previous employer to provide a statement of any SSP paid to a former employee, will remove the need for a new employer to consider whether such SSP paid would count towards the employee's maximum entitlement to SSP. Employer groups advise that employers are willing to bear the costs of any additional payments of SSP resulting from this change, as they believe it will be cost negative overall. Any additional SSP expenditure will be more than compensated for by administrative savings that result from not having to consider previous sickness details for new employees or having to complete a statement of SSP paid, if the employee requests it when leaving employment.

Impact on employees

26. There is no significant impact on employees from these proposals. However, reducing the information provided by employers on SSP for benefit purposes could reduce the time it takes to process an employee's claim for benefit.
27. In addition, employees will no longer need to be concerned that they have to inform their new employer about any previous spells of sickness with a former employer, if they do not wish to do so.

Impact on Operations

Jobcentre Plus

28. As described above, reducing the information about SSP provided by employers for benefit purposes should reduce the time it takes Jobcentre Plus benefit processors to assess a benefit claim.

HMRC

29. DWP has policy responsibility for SSP. Responsibility for SSP compliance and operation rests with HMRC. Removal of these regulatory burdens on employers, will reduce some of the record keeping currently required, and may reduce the number of enquiries about SSP from Jobcentre Plus processors to HMRC. HMRC's form SSP1L will be abolished; there will be one-off guidance costs to publicise this and the changes to form SSP1. Overall cost impacts for HMRC are expected to be minimal.

Economic Impact

Competition Assessment

30. The proposals do not affect competitiveness between companies.

Small Firms Impact Test

31. These proposals stem from the SSP Review Working Group which was set up to review the SSP scheme. Membership of the group included representatives from employer and employee organisations and relevant government departments. These amendments impact equally on both small and large business. It might be argued that savings for small and micro businesses are greater as they are less likely to have automated systems or dedicated staff to deal with PAYE or SSP matters.
32. Small businesses were represented on the working group by Confederation of British Industry, Forum for Private Business, Federation of Small Business and Department for Business Enterprise and Regulatory

Reforms - Small Business Team. The proposals were widely circulated by these representatives to their members for their views. The outcome of which was that they were very supportive of the proposals and no adverse issues arose.

Legal Aid Impact Test

33. Not applicable as there are no criminal or new civil penalties related to these proposals.

Sustainable Development

Environmental Impact

Carbon and Greenhouse Gas Assessment

34. These proposals will contribute to the Government's sustainable development policy. There will be a reduction in the number of pages of the statement the department produces for employers to complete for benefit purposes. As a result there will be a reduction in the raw materials used by the department and by employers. The number of statements ordered per annum by employers is unknown, however approximately 214,000 have been downloaded from the internet in 2007.
35. Also, previous employers will no longer be required to provide a statement detailing any SSP paid to a former employer. As a result there will be a reduction in the raw materials used by employers to produce this statement. The number of statements ordered per annum by employers from HMRC is minimal. It is unknown how many of these forms have been downloaded from the internet, but the admin burdens measurement exercise estimated that about 3,000 (in a range of between 1,000 and 5,000) were issued by employers.
36. By reducing the size of the statement (SSP1), it may reduce the amount of wastage produced in the future when the department has to destroy the papers when the customer no longer claims benefit.

Social Impact

Health Impact Assessment Test

37. In considering the health impact, the screening questions were applied and showed that a full assessment was unnecessary. These proposals do not have an impact on well-being or health inequalities.

Race, Disability, Gender and Age Equality

38. The SSP scheme has been in place since 1983 and it serves everyone equally, irrespective of race, colour, nationality or ethnic or national background, disability or gender. Neither of these proposals is affected by an individual's age.

Human Rights

39. These proposals do not contravene individuals' human rights. All individuals have the same right regardless of their nationality or citizenship.

Rural Proofing

40. Particular rural circumstances would not be adversely affected by these proposals which are beneficial regardless of locality.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

