EXPLANATORY MEMORANDUM TO

THE STATUTORY SICK PAY PERCENTAGE THRESHOLD (REVOCATIONS, TRANSITIONAL AND SAVING PROVISIONS) (GREAT BRITAIN AND NORTHERN IRELAND) ORDER 2014

2014 No. [DRAFT]

and

THE STATUTORY SICK PAY (MAINTENANCE OF RECORDS) (REVOCATION) REGULATIONS 2014

2014 No. 55

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. Purpose of the instruments

2.1 The Statutory Sick Pay Percentage Threshold (Revocation, Transitional and Savings Provisions) (Great Britain and Northern Ireland) Order 2014 ("the draft first instrument") abolishes the Statutory Sick Pay Percentage Threshold Order 1995 (SI 1995 No.512) and the Statutory Sick Pay Percentage Threshold Order (Northern Ireland) 1995 (SR 1995 No.69) from 6 April 2014. The Percentage Threshold Scheme (PTS) allows employers to claim reimbursement of their costs when the amount of Statutory Sick Pay (SSP) paid exceeds 13% of their National Insurance contribution liability to Her Majesty's Revenue and Customs (HMRC). In addition, this instrument makes transitional and savings provisions to enable employers to continue to recover SSP for a two year period beginning with the 6 April 2014 for days of incapacity falling before 6 April 2014.

2.2 The Statutory Sick Pay (Maintenance of Records (Revocation) Regulations 2014 ("the second instrument") abolishes a requirement placed on employers, set out in the Statutory Sick Pay (General) Regulations 1982 (S.I.1982/894), to maintain records of employees relating to sickness absence and payment of SSP. These records support claims for reimbursement under the PTS and will no longer be required when the PTS is abolished.

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

None

4. Legislative Context

These regulations are being made to implement two of the recommendations that the Government agreed in its published response to the Independent

Review of Sickness Absence. Namely; the Government agreed that the PTS should be abolished because it provides a disincentive to employers by providing compensation for sickness absence rather than supporting them to actively manage sickness absence in the workplace. In addition, as abolition of the Percentage Threshold Scheme (PTS) renders the associated SSP record keeping requirements an unnecessary burden, the Government agreed that they too should be abolished. Please see paragraph 7 below for more information.

5. Territorial Extent and Application

5.1 The draft first instrument applies to the United Kingdom.

5.2 The second instrument applies to Great Britain. Parallel provisions to revoke regulation 13 of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982 (SR1982 No.263) will be made separately in Northern Ireland. [SR1982 No.263 is not available to view directly by web link but can be accessed in portable document format (pdf) through search at: http://www.dsdni.gov.uk/index/law_and_legislation/law_relating_to_social_security.htm]

6. European Convention on Human Rights

Mike Penning, Minister of State for Disabled People has made the following statement regarding Human Rights:

> In my view the provisions of The Statutory Sick Pay Percentage Threshold (Revocations, Transitional and Saving Provisions) (Great Britain and Northern Ireland) Order 2014 is compatible with the Convention rights.

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

7. Policy background

7.1 Approximately 2% of total working time is lost due to sickness absence every year. This costs employers £9 billion per year in sick pay and associated costs; it costs employees £4 billion in lost earnings and it costs Government £2 billion in sick pay and foregone taxes. It further reduces the UK's economic output by £15 billion per year.

7.2 On 17 February 2011 the Government commissioned Dame Carol Black and David Frost CBE to conduct a review of sickness absence. 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 become increasingly distanced from the labour market as well as suffering from reduced economic, social and health status that come with being out of work. The review was also asked to find ways of improving the coherence, effectiveness and cost of the existing system for managing sickness absence by employers, employees and the State.

7.3 The review's findings Health at Work: An Independent Review of Sickness Absence[1] were published in November 2011 and made 13 separate recommendations to improve the sickness absence and benefits systems.

Abolition of PTS

7.4 In the Government's response to the Review [2], the Government agreed (alongside other recommendations - see 7.7 below) to the abolition of the PTS and the specific SSP record keeping obligations to support claims for reimbursement of SSP under the PTS, placed on employers by SSP regulations.

7.5 SSP is funded by employers. However, 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 HMRC. To address the shortfall in contributions, The Department for Work and Pensions transfers the annual cost of approximately £50m per annum to HMRC.

7.6 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.

7.7 The reviewers also identified a lack of access to occupational health advice as one of the obstacles to people returning to work. The Government agreed and in its response accepted their recommendation to introduce an independent assessment service to help employees on sick leave get back to work. Crucially, abolition of the PTS will enable funds to be recycled into establishing this service.

7.8 The Health and Work Service (HWS) will make independent expert health and work advice more widely available to employers, employees, and General Practitioners (GPs). The new service will be available to employers to support them to enable employees, wherever possible, to remain in work and reduce sickness absence in manner that offers better value for money for tax payers. We anticipate this change of focus will deliver substantial savings to employers[3] as output will increase as a result of the reduction in days lost to sickness absence.

Abolition of record keeping

7.9 The second instrument abolishes the requirement for employers to maintain records which can be used to support claims for reimbursement under the PTS.

---

[1] Health at Work - An Independent Review of Sickness Absence

[2] Health at Work - The Government response

[3] While hard to quantify given the innovative nature of the Service, we estimate benefits to business of between £65m to £80m per year through sick pay savings.

Currently, regulation 13 of the Statutory Sick Pay (General) Regulations 1982 requires employers to maintain records for each employee relating to sickness absence and payment of SSP. These records must be retained for three years after the end of the tax year where the employee has been incapable of work for four or more consecutive days and SSP has been paid. These records may be required to be produced to HMRC to satisfy them employers are claiming reimbursement correctly and/or meeting their obligation to pay SSP to qualifying employees.

7.10 DWP and HMRC are content that the vast majority of employers meet their obligations with regard to payment of SSP. Regulation 13A of the Statutory Sick Pay (General) Regulations 1982 enables the Commissioners of Inland Revenue (now HMRC) to require an employer to produce such records to satisfy HMRC that SSP has been paid in accordance with the 1982 Regulations and this remains unchanged.

7.11 Stakeholder engagement found that employers maintain records of sickness absence for payroll, tax and other staff management reasons. Therefore, the specific obligations of Regulation 13 are no longer necessary and a regulatory burden can be lifted from employers. Employers will be free to keep records in the manner which suits their particular business.

Consolidation

7.12 Informal consolidation of these instruments will be included in due course in the Department's "the law relating to Social Security" (the Blue volumes). The Blue volumes are available at no cost to the public on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 During the development of the review and the subsequent Government response both the reviewers and the DWP consulted with a wide range of stakeholders (Annex 1). These included individual employers and representative bodies, such as the Federation of Small Businesses, British Chambers of Commerce and Confederation of British Industry. These organisations alone represent more than half a million businesses employing more than 5 million employees.

8.2 DWP have held a number of stakeholder events, pre and post publication of the Government response. The general consensus at these events was acceptance that reform of the PTS was necessary as the scheme is cumbersome and complex to administer. In discussions about abolition of the scheme in order to recycle funding into a health and work assessment and advisory service, stakeholders were enthusiastic about the new service. They recognised that the Service will deliver significant benefits to employers, in excess of the current PTS provision, particularly for smaller employers who are less likely to have access to occupational health services. In addition,

employers welcomed the tax exemption on payments of up to £500 per year per employee for health-related interventions recommended by the service.

8.3 One employer representative group was concerned about the impact of removing last element of SSP reimbursement available to employers on small employers in particular. The Government has concluded, however, that the Health and Work service provides a preferable alternative to compensation by helping employers manage sickness absence better and help get employees back to work more quickly.

9. Guidance

DWP has a communications strategy as part of the implementation plan to take forward all the changes accepted in the Government's response to the Review. The strategy is to ensure that employers, payroll software developers and HMRC are aware in advance of the changes coming into force. Guidance will be published on www.gov.uk and HMRC Employer Helpline staff have been provided with a written brief to enable them to answer employers' questions on how the changes will affect them. Relevant internal guidance in both DWP and HMRC will also be updated.

10. Impact

10.1 The impact on business and civil society organisations, that will lose access to reimbursement of SSP paid, will vary according to their individual circumstances. However, the impact is mitigated by the introduction of a Health and Work Service for employers. This means they will have access to free occupational health advice and support to help them better manage sickness absence and, thereby, reduce costs, as well as tax exemption of up to £500 for health-interventions recommended by the service.

10.2 The impact on the public sector is the same as the private sector as the Health and Work Service will be available to all employers.

10.3 Impact Assessments will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of abolition of the PTS on firms employing up to 20 people, the introduction of a Health and Work Service will make available new support particularly to smaller businesses which are less likely to have access to occupational health services. The removal of specific regulations relating to record keeping for SSP purposes will lift a regulatory obligation from business.

11.3 In the longer term, it is anticipated that as a result of interventions via the new service, a reduction in lost working days and the associated costs will more than offset the limited reimbursement currently available.

12. Monitoring & review

It is intended to monitor and review the changes as the new service develops and during full operation.

13. Contact

Jane Edwards at the Department for Work and Pensions, Tel: 0113 232 4172 or email: jane.e.edwards@dwp.gsi.gov.uk can answer any queries regarding the instrument.