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STATUTORY SICK PAY BILL 1993/94 (Bill 3)

Research Paper 93/116

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The Statutory Sick Pay Bill 1993/4 was laid on 1 December 1993. Proceedings on it are due to be held on 15 December. It is a short Bill, the main provisions of which are contained in Clause 1. The most important of these is the abolition of the right of larger employers to recover 80% of Statutory Sick Pay paid to employees. This follows the reduction of the amount which could be recovered by employers from 100% to 80% from April 1991. So now these employers will have to meet the full costs of Statutory Sick Pay. Smaller employees (those paying less than £16 000 per year National Insurance Contributions) can currently recover the full amount of Statutory Sick Pay after 6 weeks of sickness. The Government has announced that this exemption is to be extended so that those paying less than £20 000 per year (some 2/3rds of employers) will be able to get full reimbursement after 4 weeks. This "small employers' relief" is going to be amended through secondary legislation.

Clause 1 also contains a provision to equalise the upper age limit for Statutory Sick Pay at 65 for men and women. Currently people can claim the benefit up to state pension age - 60 for a woman and 65 for a man. This was necessary because the abolition of reimbursement brings SSP within the scope of an EC Equal Treatment Directive.

The abolition of recovery of statutory sick pay will reduce annual public expenditure by about £695 million in 1994/5 rising to £750 million in 1996/7, and increase costs to employers by a corresponding amount. The extension of entitlement to women aged 60 to 65 is expected to cost employers about £10 million a year. However, employers' national insurance contributions are to be cut, and this will offset the costs to them. The Government has said that "employers as a whole will be no worse off" (HC Deb 1.12.93 c1038).

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PART ONE -BACKGROUND

What is Statutory Sick Pay?

Statutory Sick Pay (SSP) is a benefit which is administered by employers according to provisions set down in legislation. To be eligible people must:

- be incapable of work because of sickness or disablement;
- be 16 or over and under pensionable age (60 for a woman, 65 for a man);
- have average weekly earnings over the lower earnings limit (currently £56 per week) in the eight weeks before incapacity began.

There are currently two rates of SSP depending on the claimant's earnings. People earning £195 per week or more get the higher rate - £52.50. People earning between £56 and £194.99 per week get the lower rate - £46.95. People earning less than £56 per week cannot claim. £56 per week is the threshold because it is the lower earnings limit for national insurance contributions (NICs).

History 1983-1991

SSP was introduced in April 1983 under the Social Security and Housing Benefits Act of 1982. For most people, it replaced contributory sickness benefit paid by the then DHSS through the national insurance system. As part of a deal to persuade employers to take on the extra administrative burden of paying SSP, the Government agreed to recompense them in full for their expenditure on SSP. Further background is given in Library Research Note No. 48. For those large employers who already operated Occupational Sick Pay Schemes, this was a good deal as they effectively got back from the Government money they would have paid out in any case. For smaller employers with no Occupational Scheme, it at least went some way to compensate them for the extra administration and costs involved.

SSP was originally paid for the first eight weeks of sickness only. In his Autumn Statement on 12 November 1984, Nigel Lawson, then Chancellor of the Exchequer, announced that SSP would "in due course" be extended to 28 weeks. At the same time, he announced that employers would be "relieved of the burden of contributions on payments under the SSP scheme", the implication being that this would compensate them for the extra burden and cost of 20 more weeks payment¹. Employers had argued for relief from NIC payment on SSP during the passage of the Social Security and Housing Benefits Act 1982. Their case was that no NICs had been payable on sickness benefit, so they should not be burdened with NICs on

¹ HC Deb 12.11.84 cc 416-7.

its replacement. However, the Government overturned a defeat in Committee over this issue at Report Stage². The Social Security Act 1985 provided both for reimbursement of NICs on SSP (from April 1985) and the extension of the duration of SSP from 8 to 28 weeks (from April 1986). Further detail is in Library Reference Sheet No 84/11.

The Statutory Sick Pay Act 1991

In his Uprating Statement on 24 October 1990³, the then Secretary of State for Social Security, Tony Newton, announced a package of changes to SSP. These included:

- the reduction of the amount of SSP which employers were able to recover from the DSS from 100% to 80%;
- an end to the arrangement which allowed employers to recover the NICs which they have to pay on SSP;
- freezing the higher rate of SSP at its April 1990 level of £52.50. It has remained frozen ever since;
- raising the earnings threshold below which employees receive the lower rate of SSP so that it equals the threshold below which employers pay lower rate NICs. This involved a rise from £125 per week to £185 per week in 1991. The threshold is currently £195 per week;
- Broadly compensating employers for the reduction in the amount of SSP they can recover by reducing employers' NICs. The standard rate was reduced by 0.05% from 10.45% to 10.4% in April 1991. The reduced rates for the lower paid went down by 0.4% from 5%, 7% and 9% to 4.6%, 6.6% and 8.6% respectively. They have not yet changed since then but are due to do so in April 1994.

Only the first two of these measures required primary legislation, and the necessary provisions were contained in the Statutory Sick Pay Act of 1991. Further details are in Library Research Note 90/7.

The Government emphasised that the increased costs for employers were offset by the reductions to NICs. Tony Newton, then Secretary of State for Social Security, acknowledged that there was a net overall cost for employers, but said that this represented a tiny proportion of their overall labour costs:

² SC Deb (B) 2.2.82 and HC Deb 18.3.82 cc 583-9.

³ HC Deb 24.10.90 cc 349-350

Another point-perhaps the most important from the point of view of the balance of our debate, and one that has not been given its due weight in much that has been said and written on these matters in recent weeks - is that we have proposed a significant reduction in the national insurance contributions payable by employers, weighted towards giving greater help in particular to the employers of those who are less well paid, who tend disproportionately to be small employers. We shall undoubtedly return to that point.

Taking all three elements together, we have what may broadly be described as about £350 million on one side of the account - mostly through reduced expenditure - and £250 million on the other side, in the form of reduced employers' contribution rates, leading to a net overall effect for employers of around £100 million.

To put that figure in context, I should make two main points. First, total labour costs in our economy are about £300 billion. Thus, the £100 million represents about 0.03 per cent. - less than one twentieth of 1 per cent. of the labour costs of industry as a whole.

The second is a rather wider point - that this very limited change should be seen in the light of trends well established over many years. Support for those in employment who are sick for short periods has, as a matter of experience and observation, moved increasingly from being something for which the state alone has been responsible to being a partnership between the state and employers, with the latter taking an increasingly important share.

(HC Deb 5.2.91 cc176-7)

Nevertheless, there was opposition to the Bill from a wide range of organisations representing both employers and claimants. The CBI called the measure a "*fundamental breach of the partnership agreement between the State and employers delivering a vital social security benefit*"⁴ and called on the Government to withdraw the Bill⁵. The National Federation of Self-Employed and Small Businesses (now known as the Federation of Small Businesses) was strongly opposed to what it saw as a break in the agreement with Government that employers would not be asked to foot the bill for SSP. It argued that the reduction in NICs for a small business could be rendered meaningless for a small employer faced with an employee suffering a prolonged bout of sickness⁶. The National Farmers Union argued that "*the imposition of significant new costs on businesses struggling at this time of high inflation and interest rates, and a deepening recession, is most inappropriate (not to say politically surprising)*"⁷. The National Association of Citizens' Advice Bureaux was concerned that the change would provide employers with a positive incentive to dismiss workers who became sick, and would discourage them from taking on employees with poor health records or

⁴ CBI Constituency Brief, December 1990.

⁵ CBI Press Release 27.12.90.

⁶ NFSE Brief to Members of Parliament, 19.11.90.

⁷ NFU Briefing on the Statutory Sick Pay Bill, 31 January 1991.

disabilities⁸. The Low Pay Unit pointed to difficulties which they said low-paid workers have in getting their SSP paid, and pointed to cases where people had been refused SSP by their employers or been dismissed⁹. The Disability Alliance drew attention to similar cases and questioned the Government's confidence that greater discrimination by employers would not result from the changes.¹⁰

The Bill made rapid progress through the Commons with the Second Reading, Committee and Third Reading taking place on the floor of the House¹¹. However, following a considerable amount of pressure from interested organisations, together with two Government defeats in the Lords¹², two important changes were introduced to the Bill. These were:

- the removal of the so-called "Henry VIII" clause, which would have allowed the new 80% rate of compensation for employers to be altered by order¹³;
- the introduction of "small employers relief"¹⁴.

Small Employers' Relief

Originally, the reduction of compensation from 100% to 80% was to affect all employers. Much of the debate in the Lords centred on the particular problems which could be faced by small businesses. The Government repeatedly stressed that the decrease in NICs meant that where small employers suffered average levels of sickness in their workforce, they would be more than compensated¹⁵. However, opponents to this view argued that for a small employer, the effect of the absence of a small number of employees would be proportionately much greater than if the same number were absent from a larger company. One employee with a broken leg might not cause undue problems for a large employer who was benefiting from reduced contributions for all the other employees, but the same incident could cause major difficulties in a firm of just three employees. Therefore it was argued that small employers

⁸ NACAB briefing for House of Lords 2nd Reading, January 1991.

⁹ See Library Research Note 90/7, p10.

¹⁰ Disability Alliance Briefing, January 1991

¹¹ HC Deb 26.11.90, cc 628-708, and HC Deb 28.11.90 cc 886-935.

¹² HL Deb 14.1.91 c 1024 and c 1038.

¹³ See HL Deb 14.1.91 c 1038, where the Government was defeated on this point, and consideration of Lords amendments, HC Deb 5.2.91 cc 176-220, where the Government did not attempt to reintroduce the clause.

¹⁴ HC Deb 5.2.91 cc 220-3.

¹⁵ See for example Tony Newton, HC Deb 5.2.93 c 185.

ran the risk of a disproportionately heavy burden. The Government made it clear in response to an amendment from the Liberal Democrat spokesman, Lord Russell, that they were "urgently considering" ways of helping small employers¹⁶. Eventually the Government tabled an amendment to address this. It enabled regulations to allow relief to be granted where a small employer (defined by the number of employers' and employees' NICs paid each year) had an employee who was sick for more than a certain period. The provisions were contained in the SSP (Small Employers' Relief) Regulations 1991 SI No 428. These set out that where an employer paid £15 000 in the qualifying tax year in employers' and employees' NICs, they would be fully reimbursed for SSP paid after the employee had been sick for 6 weeks. The £15 000 limit was increased to £16 000 in April 1992.

Coverage of Occupational Sick Pay Schemes

As noted above, the higher rate of SSP has been frozen for four years now (i.e. from April 1990 to April 1994). When it was last updated in April 1990, it increased by less than the relevant rate of inflation, although the lower rate was increased by more than inflation. The justification for depressing the higher rate of SSP has been the growing coverage of Occupational Sick Pay schemes, which has meant that many higher paid employees receive full earnings replacement when sick anyway. The evidence for this is derived from a report for the DSS by IFF Research Ltd¹⁷. Its findings were summarised in the following PQ:

Occupational Sick Pay Schemes

Mr. Evennett: To ask the Secretary of State for Social Security what is the latest information he has of the coverage and characteristics of occupational sick pay schemes.

Mr. Scott: The Department has today published a report commissioned from IFF Research Ltd. on occupational sick pay provision by employers.

The report, based on a survey of both private and public sector establishments carried out in February 1988, contains detailed and valuable information about the scope and nature of sick pay cover. It shows significant growth in coverage since the last official survey in 1974. It also reports on employers attitudes to sick pay schemes and to statutory sick pay (SSP).

The survey found that 91 per cent. of the work force are now covered by an occupational sick pay (OSP) scheme. This compares with 80 per cent. in 1974. The increase has come particularly amongst manual grades, where 88 per cent. have OSP cover compared to less than two thirds in 1974. Coverage between men and women is 90 and 92 per cent. respectively.

Employees with OSP cover work for 56 per cent. of all employers. The remaining 44 per cent. of employers who do not provide OSP are predominantly small or very small employers.

The majority of schemes (83 per cent, private and 74 per cent. public sector) top up SSP to full basic pay.

Payments for short-term cover are usually made either for a fixed period of up to six months or vary depending on the length of service.

The report shows that many employers now also extend sick pay cover well after SSP ends. A total 58 per cent. of all employees work for employers who provide some form of long-term sick pay. Typically such schemes have either a time limit or continue until retirement age. A number of schemes operate early retirement arrangements. The level of payment is either a percentage of salary or a flat rate payment.

I have arranged for copies of the report, which is entitled "Occupational Sick Pay Schemes", to be placed in the Library. It is also available for purchase from the Department's offices at Canons Park, Stanmore. An article about the report appears in the current issue of the *Employment Gazette*.

(HC Deb 2.11.88 c 649-650W)

¹⁶ Social Security spokesman Lord Henley, HL Deb 14.1.91, c 1006.

¹⁷ Report on Occupational Sick Pay Schemes, IFF Research Ltd, 1988, Dep 4362.

However, while the research shows the number of employees who work for companies with an occupational scheme, not all employees in such companies may be covered by the scheme. A more recent report for the CBI¹⁸ based on a survey of 1200 CBI members and local authorities indicates that *"the majority of organisations have taken no action on their occupational sick pay schemes ... in the last five years despite changes to the SSP scheme ... including the reduction from 100% to 80% in the amount an employer may deduct from National Insurance Contributions to meet SSP paid to employees"*.

The National Audit Office Report

In January 1993, the Comptroller and Auditor General published a Report on Statutory Sick Pay and Statutory Maternity Pay.¹⁹ This was mainly concerned with inaccuracies in payment and insufficient monitoring of the scheme by the Department of Social Security²⁰. However, the following observations were made on the 1991 changes upon employers:

Effects of the schemes on employers

3.6 As part of their partnership arrangements, and in line with the objective of keeping employers' administration as simple as possible, the Department have regularly consulted their Employers' Panel about proposed changes to the schemes. They have also usually made broad assessments of the likely costs to employers of such changes. Such assessments help to inform Ministers about whether proposed changes are desirable.

3.7 In 1991 the Department made changes to the Statutory Sick Pay scheme which reduced the amounts employers were able to recover. But at the same time they largely offset the costs to employers of the changes by reducing employers' national insurance contributions by some £250 million. This reduction was weighted

particularly in favour of smaller employers. For some employers, the reduction in national insurance contributions outweighed the extra costs likely to be incurred on Statutory Sick Pay.

3.8 Before implementing the changes the Department made no financial assessment of the likely effects on employers' administrative costs as they believed that these would not be affected by the changes. At the time of the National Audit Office examination, the Department were commissioning consultants to research the full effects on employers of the 1991 changes. The study was at a relatively early stage, but the Department's provisional timetable envisaged that the consultants would complete their work in the summer of 1993.

¹⁸ Too Much Time Out? CBI/Pension survey on absence from work, CBI, May 1993, p 16.

¹⁹ SSP and Statutory Maternity Pay, Report by the Comptroller and Auditor General, National Audit Office, 20.1.93, HC 384, Session 1992-93.

²⁰ *Ibid.*, paras 8 and 27.

- 3.9 Few of the employers consulted by the National Audit Office reported difficulties in operating the schemes but some said that they were complicated, especially the Statutory Maternity Pay scheme. And some employers, and organisations representing them, told the National Audit Office that they believed that the 1991 changes to the Statutory Sick Pay scheme had increased employers' costs. A few also commented that the changes had made the administration of sickness payments for employees more complicated, and that insufficient notice of the intention to make the changes had been given.
- 3.10 The Department commented that they had issued a press release containing details of the changes on 25 October 1990, the day after the Secretary of State announced them to Parliament, and that copies had been sent to a number of employers' organisations and professional bodies. Copies of the Bill to implement the changes were sent to members of the Department's Employers' Panel in November 1990, at the time of its introduction to Parliament. Further information about the changes had been sent to computer bureaux and other interested groups in December 1990. And explanatory leaflets and forms had been distributed to all employers in February 1991.

The report cited in paragraph 3.8 has yet to be published.

The NAO also pointed out that the 1988 IFF Report cited above was the "*latest picture*" of occupational sick pay coverage and that it "*did not measure the proportion of employees who would have received occupational sick pay had they been sick*" unlike previous research undertaken in 1974²¹. They therefore recommended that the DSS should seek to carry out research on the proportion of the employed workforce covered by occupational sick pay schemes on a more regular and consistent basis²².

²¹ Ibid, para 3.12.

²² Ibid, para 3.16.

Another issue raised in the NAO report was the question of employers refusing to pay employees the SSP to which they were entitled²³. NACAB and the Low Pay Unit had both submitted evidence telling the NAO that employers were behaving in this way. The NAO noted that the Benefits Agency did not monitor cases to detect instances where employers were dismissing employees in an attempt to avoid such payment²⁴. The Department said that they had no evidence to suggest that such practices were widespread²⁵. However, since the NAO report they have improved their monitoring procedures. Employers who refuse to pay SSP should provide their employees with a form to take to the Benefits Agency. The individual then has a right of appeal to an Adjudication Officer. Where the reason for refusal is termination of contract, employers now have to give more details. This could be a perfectly valid reason for refusal - for example where a person was on a short-term contract anyway. However, where the DSS consider that such reasons are given unduly often, it will investigate further²⁶.

PART TWO - THE BILL

The Announcement of the Changes

There have been rumours for some time that employers' reimbursement from SSP would be cut back as part of the Government's wider review of social security spending²⁷. The announcement was finally made by the Chancellor of the Exchequer, Kenneth Clarke in his budget statement. He made it clear that while reimbursement would stop altogether for the larger employers, the protection for small employers would be improved in some respects:

STATUTORY SICK PAY

I turn next to statutory sick pay. At the moment, employees who go sick and meet the qualifying conditions are entitled to receive sick pay at specified rates. After the first three days of sickness, their employers are entitled to reimbursement from the Government for 80 per cent. of the cost. We have no plans to reduce the sick pay entitlements of employees, but, with effect from next April, we propose to stop reimbursing the cost of statutory sick pay for the largest employers.

For smaller companies, the current special exemptions will be extended. At present, those with national insurance bills of less than £16,000 a year are fully reimbursed after the first six weeks of each statutory sick pay claim. I propose to increase that threshold to £20,000, to bring more

companies into the scheme, and to provide full reimbursement after only four weeks. Two thirds of all employers will therefore continue to get help.

[HC Deb 30.11.93 c 926]

²³ Ibid. paras 10 and 2.36 to 2.40.

²⁴ Ibid., para. 10.

²⁵ Ibid., para. 2.39.

²⁶ Source: DSS.

²⁷ See for example "Sick pay system may go private", Guardian, 2.3.93.

Some further details were given the following day by the Secretary of State for Social Security, Peter Lilley, in his Social Security Uprating Statement:

Britain has the second highest level of sick leave of any EC country. The level varies between companies even in the same business. Those differences reflect management's success or failure in motivating employees, caring for their health and monitoring absences. At present, the Government reimburse each firm 80 per cent. of the cost of its statutory sick pay. That largely removes the incentive to reduce sick leave.

From April next year, I propose to abolish reimbursement, except to small employers. Small employers usually have less sick leave but are harder hit by prolonged illness. Therefore, I intend to increase the help to small employers and extend it to more of them.

So far, we have been helping employers whose national insurance bill was £16,000 or less a year. I am raising that limit to £20,000. So far, we have been reimbursing 100 per cent. of statutory sick pay for absences of longer than six weeks. I shall start giving 100 per cent. help after four weeks. That will help an extra 50,000 employers, at a cost of £25 million. The new arrangements will help two thirds of all employers.

At the same time, I am cutting employers' national insurance rates by substantially more than they were spending on statutory sick pay. Indeed, the cut in national insurance will also offset the future extra cost of statutory maternity pay, which employers were expecting to bear without compensation. So employers as a whole will be no worse off. Indeed, their net costs will be reduced by over £100 million a year, and those who respond to the incentive to improve staff health will benefit even more.

There has been a particularly marked increase in the number of people claiming invalidity benefit in recent years. The number on this benefit has more than doubled.

(HC Deb 1.12.93 c1038)

A Department of Social Security Press Release²⁸ issued on 2 December when the Bill was published made the following observations:

The Bill proposes to abolish 80% reimbursement of employers' SSP costs with effect from 6 April 1994. This would give employers a greater incentive to tackle the high level of absenteeism in British

²⁸ DSS Press Release 93/212, 2.12.93.

industry which adds to cost, cuts productivity and endangers quality. Abolition would also simplify the administration of the scheme.

Industry as a whole would not be out of pocket. The reduction in employers' National Insurance contributions (NICs) announced in the Budget will more than compensate employers for the loss of reimbursement.

The proposals include special measures to help small employers. At present they can recover 100% of SSP paid after six weeks of sick absence if their annual NICs payments are £16,000 or less. Regulations would be laid after the passage of the Bill to raise this threshold to £20,000 and allow 100% recovery after four weeks of illness. 750,000 employers - almost two thirds of all employers - would be eligible.

The Bill would extend the scope of the SSP scheme to include women over the age of 60 because the abolition of reimbursement brings SSP within the scope of the EC Equal Treatment Directive. From April they would be able to receive SSP until age 65, putting them on a par with men. The Bill proposes to abolish the recovery from compensation awards of 80% of any SSP paid to the recipient on or after 6 April 1994.

The Cuts in National Insurance Contributions

The Government have emphasised that the Bill should be seen in the context of cuts to Employers' NICs.

The rates of employers' NICs depend on the level of the employee's earnings. The main rate is 10.4% for higher earners. The relevant main rates for employees in the three lower bands are 4.6%, 6.6% and 8.6%.

Following his explanation of the changes to SSP, the Chancellor announced that employers' NICs would be cut by **0.2%** for the main rate and by **1%** for the rates for lower paid employees:

EMPLOYERS' NATIONAL INSURANCE CONTRIBUTIONS

The transfer of these costs from the taxpayer to business will reduce public spending by around £700 million a year over the next three years, but to ensure that business as a whole does not lose, my right hon. Friend and I have decided to reduce the main rate of employers' national insurance contributions by 0.2 per cent. from next April. This means that, for well managed companies with low sickness rates, there will be a net reduction in the cost of employing people. Other companies will have a much sharper incentive to improve their management of sick leave and to take a greater interest in the health of their own employees.

However, with unemployment in Britain still far too high, it is vital that we do everything we can to reduce the cost of providing employment. Having reviewed the position, I have therefore decided that, even in a year of acute fiscal stringency, we can and should go further.

Long-term unemployed people are most likely to find unskilled and semi-skilled work at the lower end of the pay scale. To improve companies' incentives and ability to provide that kind of job, I propose, again from next April, to reduce each of the lower rates of employers' national insurance contributions by one full percentage point.

Overall, the reductions in national insurance contributions I have announced will reduce the cost to employers of providing jobs by £830 million next year, rising to £1 billion by 1996-97. That £1 billion is well above the overall cost to employers of the reforms that I have announced to statutory sick pay.

In our discussions within the European Union, my right hon. Friend the Prime Minister and I have repeatedly made clear our view that the surest route to higher employment is not the dirigisme of the social chapter, but measures to reduce the cost of creating jobs. That is the message that we will be taking with us to the European Council in Brussels next week.

[HC Deb 30.11.93 c 926]

The new rates will be as follows:

1994-95 Rates

Employee's total
weekly earnings

Employer's
contribution
(on all earnings)

Under £57.00	none
£57.00-£99.99	3.6%
£100.00-£144.99	5.6%
£145.00-£199.99	7.6%
£200.00-£430.00	10.2%
over £430.00	10.2%

In his Uprating Statement, Peter Lilley stated that "*...employers as a whole will be no worse off. Indeed, their net costs will be reduced by over £100 million per year and those who respond to the incentive to improve staff health will benefit even more.*"²⁹.

The cost to employers of the abolition of SSP reimbursement and the extension of the upper age limit from 60 to 65 for women is estimated to be around £700 million in 1994-95³⁰. The cost to the Government of the reduction in employers' NICs is £810 million in 1994-95 (or £830 million from an indexed base)³¹.

The Changes to the Benefit

For some years now, the Government has been eroding the differential between the higher rate of SSP (paid to higher earners) and the lower rate. In April 1990 the higher rate was uprated by less than inflation and the lower rate by more than inflation. Since then the higher rate has been frozen. In his 1993 Uprating Statement, Peter Lilley announced that the lower rate of SSP will be abolished from April 1995 in order to simplify the structure. Both lower paid and higher paid workers will now get the same rate. This would be worth an extra £3.70 a week to the lower paid³².

The New Small Employers' Relief

The new Small Employers' Relief will apply to employers who pay £20 000 a year or less in employers' and employees' NICs - an improvement on the previous limit of £16 000. In addition it will come into effect after just four weeks instead of six. However, it is important to note that under the old rules, small employers had to meet just 20% of the costs of SSP for six weeks. Now they will have meet 100% of the costs for the first four weeks.

The Bill's Provisions

Clause 1(1) and (2)(a) amend Section 158 (1) (a) of the Social Security Contributions and Benefits Act 1992 so as to abolish the right of an employer to recover 80% of the SSP paid to his employees. The provisions in section 158 (1) (a) which enable small employers to recover 100% of SSP in prescribed circumstances remain.

²⁹ Op.Cit. c1038.

³⁰ Explanatory and Financial Memorandum of the Bill.

³¹ Financial Statement and Budget Report 1994-95, HM Treasury, November 1993, HC 31, 1993-94, Table 4.1, p77.

³² HC Deb 1.12.93 c 1039.

Subclause (2)(b) relates to the way in which the DSS can recover sums equivalent to benefits paid from compensation payments received by an individual. Further details on this recovery from compensation are given in Library Reference Sheet 88/9, pp 16-18 and in DSS leaflet Z1. At the moment the Department recovers the equivalent of 80% of any SSP paid to an employee from any Compensation Payment in excess of the Small Payment Limit (currently £2 500). Clearly, as the Department is no longer funding this 80%, it does not make sense for them to recover it. Therefore the subclause would repeal the relevant parts of Section 81(2) of the Social Security Administration Act 1992.

Subclause (2)(b) also contains a provision to equalise the upper age limit for the receipt of SSP. This is currently the state pension age - 65 for a man and 60 for a woman. However, as the Department of Social Security is no longer funding SSP, it was felt that it would now come within the scope of an EC Equal Treatment Directive which covers social security schemes.³³ This Directive requires equal treatment for a number of benefits, including statutory schemes providing for sickness. However, there are certain exceptions. These include pension age and the consequences this has for other benefits. Because of the abolition of reimbursement, it was felt that Statutory Sick Pay would no longer fall within this exclusion. Thus men and women are being given equal treatment. **Clause 2** enables the Secretary of State to make transitional and supplementary provisions in connection with the coming into force of the Bill's provisions. **Subclause 2(4)** provides that the provisions relate to the Crown and people employed by the Crown.

Clause 3 provides that corresponding provisions made under an Order in Council for Northern Ireland will be subject to negative resolution.

³³ Council Directive (EEC) 79/7 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

PART THREE - REACTIONS TO THE BILL

Comment was not available at the time of writing from a number of interested organisations because they were still consulting members.

The Federation of Small Businesses has said that it totally rejects the Bill:

The FSB is concerned that this far reaching measure is being taken under a time order leaving Members of Parliament with inadequate time to consider its full implications on employers and their employees. We urge Members of Parliament to oppose this restrictive procedure.

The FSB totally rejects the SSP Bill proposals which seek to transfer the total responsibility and funding of sick pay from the state onto the employers. If this measure is enacted the Government will have reneged on their earlier commitments regarding SSP.

The proposals to compensate employers by reducing their NIC contributions will be inadequate to cover the small business employers who often experience a disproportionate sickness burden amongst staff - Likewise, the introduction of full reimbursement for small employers from the fifth week of the sickness period will prove of little assistance in the majority of cases as most employees are fit to return to work within a month.

The FSB therefore urges Members of Parliament to reject this Bill which will prove damaging to many small businesses and their employees.

It goes on to list six areas of concern. The first is that this or any future Government may remove the NIC offset or increase employers' NICs, leaving employers with the new liability but without compensation. It is also concerned about cash flow implications and the problem of a small number of employees' sickness leading to disproportionate costs for employers. It notes that business will be left with administrative record keeping despite the loss of reimbursement, and that small employers' relief will only start after four weeks. Ministerial arguments about the effects on the small business sector on average will be *"...of little comfort to the individual small business proprietor facing cashflow problems as a result of a disproportionate degree of sickness within the workforce"*.

Detailed comment from the CBI will be available shortly. However, in an article in the Independent on Sunday³⁴ the Confederation is cited as saying that it *"made it plain that there were significant problems in cutting (SSP) from 100% to 80%. It is also part of a disturbing trend towards switching the burden of social costs from the Government to the employer. It*

³⁴ "Ministers set to slash sick pay. Slash could cost industry millions", Independent on Sunday, 7.11.93.

would impose costs on the employers which would be partly hidden and would damage competitiveness."

The TUC initial response to the Bill is as follows:

The Government's policies on Statutory Sick Pay are the first step towards the right-wing Tories' objective of a two-tier welfare state. Workers and employers are being forced into paying for sickness while those jobs will be left in means-tested poverty.

This proposal is an enormous burden on business. It will cost British industry £500 million a year, and it will cost jobs. Established occupational sick pay schemes are threatened, and workers in the lowest paid jobs could lose out on support during sickness altogether.

The TUC would urge the Government to take their fair share of the costs of sickness. Individual businesses and individual workers should not have to pay for unforeseen illness.³⁵

NACAB in a briefing for the 2nd Reading³⁶ says that the CAB Service views with considerable concern the proposals in the Bill. They are concerned that by abolishing the right of employers to recover 80% of SSP paid to employers, the proposals will provide employers with a positive incentive to dismiss workers who become sick. CAB experience already shows that some employees are dismissed when they are off sick. The Briefing details the experience from Bureaux collected since the 1991 changes.

³⁵ TUC Briefing, 9.12.93.

³⁶ NACAB Briefing December 1993.

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