FABIAN SOCIETY

STATUTORY SICK PAY: OPTIONS FOR REFORM

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June 2021

CONTENTS

SUMMARY

Statutory sick pay is a government scheme that requires employers to provide most workers in the UK a minimum level of pay during sickness absence (in 2021/22 £96.35 per week). It is badly in need of reform.

Problems: The SSP system has major problems that need to be addressed. Many of them have been highlighted by the Covid-19 pandemic:

- Workers can face a significant loss of income when sick because SSP replaces less than 20 per cent of average earnings. UK employees lose an estimated £4bn a year in lost earnings due to sickness absence
- Some workers are left without any pay, especially part-time workers earning less than £120 per week
- The low value of SSP is one cause of harmful 'presenteeism' when people work when they're sick and therefore of the avoidable transmission of infectious disease. Workers feel they need to work both because SSP is not paid for the first three days of absence and because it is paid at such a low rate.
- The design of SSP does not sufficiently support rehabilitation and return to work. The low payments don't provide a sufficient incentive for employers to support people back to work, employees are unable to return part-time, and SSP does not support people who are ill for more than 28 weeks.
- The very low minimum payment is unfair to employers who offer decent occupational sick pay. All employers are vulnerable to unpredictable long-term sickness costs because they have to self-fund SSP.

History: SSP was created in 1983, taking the place of a social security benefit, and since then it has gradually lost value relative to earnings. Its costs were refunded by the government until the early 1990s. In 2019 ministers consulted on minor reforms to SSP and in 2020 they introduced temporary emergency measures to enable people to self-isolate during the Covid-19 crisis.

International comparisons: Almost all rich nations have systems of compulsory sickness payments (the USA is an important exception, but the

Biden-Harris administration is pushing for legislation to introduce compulsory paid sick leave). The UK's system is unusual however: it is the least generous; and it pools very little risk between employers.

Options for reform

1a: pay a higher flat-rate payment (SMP)	Raise SSP to the value of the flat-rate element of Statutory Maternity Pay (SMP) – ie £151.97 in 2021/22. This would raise the SSP replacement rate from 18 per cent to 28 per cent. For employers without occupational sick pay it would cost around £40 per employee per year.
1b: pay a higher flat-rate payment (real living wage)	Raise SSP to the value of the real living wage outside London (£356 per week for a full-time worker in 2021). SSP would replace 100 per cent of the earnings of a low paid worker and 70 per cent of median earnings. For employers without occupational sick pay it would cost around £110 per employee per year.
2: create earnings-related sick pay	Turn SSP into an earnings-related scheme, like the first six weeks of SMP or the Covid-19 furlough scheme. The degree of protection and cost of the scheme would depend on its design. Options include: • Match Statutory Maternity Pay – 6 weeks at 90 per cent of earnings, followed by a flat-rate of £152 per week • Match Covid-19 furlough scheme – 80 per cent of earnings up to £37,500 (for the duration of the sick leave) • Covid-19 furlough plus the living wage – 100 per cent of earnings up to the real living wage, then 80 per cent of earnings up to £37,500 (for the duration of the sick leave) For employers without occupational sick pay, the cost of the most generous possible scheme (ie full sick pay at all times) would be around £500 per employee per year. A scheme resembling SMP might cost around £300 per employee per year.
3: end waiting days for SSP	End the three waiting days before SSP begins, to reduce both financial hardship and the transmission of infectious disease. This would increase the cost of SSP by a quarter. For employers without occupational sick pay it would on average cost less than £20 per employee per year.
4: pay SSP for longer	Pay SSP for up to 12 months. This would increase the income of people with long-term sickness absence and improve the chances of them returning to their job. This cost would average at £20-30 per sickness absence but would be highly variable and unpredictable for small employers (see option 8 on government subsidies).
5: pay SSP to people on low earnings	Pay SSP to people with earnings below the Lower Earnings Limit (£120 per week in 2021/22). The government consulted on this reform in 2019 but has taken no action since. The total extra cost for employers would be around £150 million per year (but some of this is already paid through occupational sick pay). The scheme should be designed to pay the lower of SSP or actual earnings.

6: improve sickness payments for the self-employed	Make employment and support allowance (ESA) a better benefit for self-employed sickness absence. ESA waiting days should be reduced; National Insurance eligibility conditions should be simplified; and ESA should be widely promoted to the self-employed and possibly rebranded. The generosity of ESA should also be improved so that it at least matches SSP for the first 3 months of a claim (at a cost of £60 million per year).
7: reform the operation of SSP for part-time workers	Calculate SSP waiting days on a pro-rata basis for part-time workers (for as long as waiting days continue). If Option 1b is adopted SSP payments themselves should be awarded pro-rata for part-time workers.
8a: introduce government subsidy for SSP (small employers)	Introduce an SSP rebate for small employers (eg a 50 per cent rebate for absences over 4 weeks).
8b: introduce government subsidy for SSP (sharing the cost of the reforms)	If Options 1b, 2 or 4 are adopted consider employer subsidies to support the extra costs. In the case of eligibility after 28 weeks (option 4) employers could be paid the equivalent of ESA for the extra sick leave period. Where payments are increased (options 1b and 2) a subsidy scheme could cover ½ the costs of the reformed SSP for large employers, and ¾ of the costs for small employers. It could start from day 1 or after 4 weeks (which would half the costs).

Additionally, ministers should consider how to clarify and enforce the SSP rights of non-employee workers.

1. STATUTORY SICK PAY TODAY

What is statutory sick pay?

Statutory sick pay (SSP) is a government scheme that provides most workers in the UK with a minimum level of pay during sickness absence. The law sets out the baseline requirements for paid sick leave and is compulsory for all employers. In addition many employers offer more generous occupational sick pay schemes, stated in employment contracts or agreed through collective bargaining.[*]

SSP is a flat-rate payment that is not linked to a worker's earnings (it is worth £96.35 per week in 2021/22). Although it is specified as a weekly amount it can be paid with respect to individual days of sickness and to part-time workers.[†] It is earned income paid by the employer and is subject to income tax and National Insurance. Employers cannot reclaim the costs of SSP from the government (unlike with other compulsory schemes such as statutory maternity pay).[‡]

SSP is payable once a worker is incapable of working for 4 days (including days off). Payment is not usually available for the first three days of absence.[§] It is paid for up to 28 weeks of sickness. Seven days after the start of absence employers may ask for evidence of illness (eg a GP 'fit note').

Most employees are entitled to SSP but there are some exceptions. The most important is that employees are excluded if they have earnings below the

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[*] Occupational sick pay is paid by around half of employers and covers around two thirds of employees. A 2014 DWP survey found that 32 per cent of employees eligible for sick pay were only covered by SSP – see appendix 1 for details

[†] The daily rate is 1/5th of the weekly amount for an employee working 5 days a week, 1/3rd of the weekly amount for an employee working 3 days a week etc

[‡] The government will pay SSP to individuals in cases of business insolvency or if they employer refuses to comply with an HMRC decision or tribunal ruling

[§] The exceptions are if the worker received SSP within the last 8 weeks (and had 3 wating days then); or if the worker is covered by the current Covid-19 emergency rules

Lower Earnings Limit (£120 per week in 2021/22, averaged over 8 weeks).[*] Provided they earn enough, non-employee workers (eg casual, zero-hours or agency workers) are also usually entitled to SSP, but people who are genuinely self-employed are not.[†]

The Covid-19 pandemic

In 2020 emergency rules were introduced in response to the Covid-19 pandemic. Employers are currently required to pay SSP to employees who are absent in order to self-isolate at home even if they are not incapable of work. In an important change, the temporary rules require that employees are paid from the first day they are absent (the 3 waiting days rule does not apply, but they still need to be unable to work for at least 4 days). An SSP rebate scheme has also been reintroduced in some cases: employers with fewer than 250 employees can reclaim up to two weeks' SSP from HMRC (additional periods of pandemic-related absence above a total of 2 weeks are not covered).

What are the main problems with SSP?

The UK's system of statutory sick pay has significant problems, which need to be addressed. Many of them have become more visible as a result of the Covid-19 pandemic.

Workers face a significant loss of income when sick: SSP replaces less than 20 per cent of average earnings which leads to a significant fall in income and living standards during sickness absence (see figure 2). The loss of income is even greater during the first week of illness due to the three waiting days. In total UK employees lose an estimated £4 bn per year in earnings due to sickness absence (see figure 3).

Some workers are left without any sick pay: SSP does not cover part time workers with weekly earnings below £120 per week or people who are self-employed. It is also likely that many non-employee workers who are

[*] Other exclusions: the worker has received the maximum amount of SSP (28 weeks, as a single block or with a gap of under 8 weeks); has linked periods of sick leave over more than 3 years; is pregnant or on maternity leave (and eligible for statutory maternity pay or maternity allowance instead); is in custody or on strike; was in receipt of Employment and Support Allowance in the last 12 weeks (and can restart a claim for ESA instead); has been hired but not yet started working for an employer.

[†] Eligibility for SSP covers casual, short/zero hours and agency workers who pay income tax and national insurance as employees. The rules on eligibility for casual workers vary depending on whether the worker has 3 months continuous employment.

entitled to SSP do not receive it.* Self-employed workers are not covered by SSP and lose an estimated £1.4 bn per year in earnings from sickness absence (see figure 3).

'Presenteeism' and the transmission of infectious disease is promoted: the initial waiting days and the low value of SSP are one reason why workers who are sick attend work (known as 'presenteeism'). This can sit alongside other factors such as the use of sickness absence in disciplinary cases, or harmful over-intensive workplace cultures. Presenteeism reduces productivity and harms public health by transmitting infectious disease.[1]

Rehabilitation and return to work is not sufficiently encouraged: the government says its main concern with the current sick pay system is that it does not sufficiently support returns to work (this viewpoint needs to be set in the context that UK sickness absence is low and has been declining).[2] Features of the system that may stymie effective returns to work include the low value of sick pay (reducing incentives for employers to support return), the ending of the scheme after 6 months and the lack of support for phased return to work.

The system is unfair to employers: the lack of generosity of SSP means that good employers who provide decent occupational sick pay are left at a considerable financial disadvantage, compared to those who only offer the legal minimum. Additionally, employers receive no public support towards the costs of sick pay meaning that most do not pool the risks they face relating to sickness absence.

FIGURE 1: DIRECT COSTS OF SICKNESS ABSENCE – ESTIMATES FOR 2019

	Annual costs	Percentage of total
Statutory sick pay	£1.8 bn	11%
Occupational sick pay	£8.7 bn	54%
Lost earnings - employees	£4.0 bn	25%
Lost earnings - self employed	£1.4 bn	9%
Total	£16 bn	100%

Source: Health at work: an independent review of sickness absence, DWP, 2011 Note: DWP figures for 2010 updated to 2019 using National Accounts, ONS sickness absence data and changes in value of SSP

* Both these problems are exacerbated by the UK's complex and ungenerous social security system. Workers who lose income due to sickness may be eligible for universal credit or employment and support allowance. However both these benefits are paid at a very low rate and are poorly designed and promoted for short to medium periods of sickness absence (ESA and UC are only payable after 7 days of eligibility, and UC is only paid 5 weeks after a claim begins)

The history of SSP

Statutory sick pay was created in 1983 to replace the early weeks of entitlement to sickness benefit (a national insurance benefit that was a predecessor to Employment and Support Allowance). It was introduced with two aims: first to help people stay attached to work (a payment from the employer would keep people connected to their jobs, and keep employers connected to their workers); and second to join-up sickness payments from government and employers' occupational sick pay schemes. SSP was initially available for 8 weeks, rising to 28 weeks in 1986.

The value of SSP has gradually declined over time. When the scheme started in 1983 it was paid at three rates, depending on earnings. The highest rate was worth 35 per cent of average weekly earnings. Today SSP is worth 18 per cent of average weekly earnings. If SSP had retained its value compared to earnings it would be worth around £190 per week now.

At first SSP was fully refunded by the government, on the grounds that it replaced a social security payment. From 1991 these refunds became partial and then in 1994 they were abolished in most circumstances. Employers could reclaim very high spending on SSP (relative to their overall payroll costs) until 2014, however awareness and take-up of this rebate was low. From 2014 until the Covid-19 emergency there were no employer refunds for SSP. But SSP continues to have links to social security, with individuals' eligibility for the scheme determined by the rules governing national insurance.

Annual public spending on SSP averaged £1.5bn from 1983/84 to 1985/86; £2.0bn from 1985/86 to 1990/91; £1.3bn from 1991/92 to 1993/94; and £80m from 1994/95 to 2013/14 (2020/21 prices).[3] In the 1990s when employer rebates were first reduced and then largely abolished, the government simultaneously cut employer national insurance contributions, with ministers saying the average employer should be no worse off as a combined result of the two changes.[4] The effect of this was to privatise the costs of SSP, shifting them from all employers collectively (through social insurance) to each individual employer. Ministers argued this was to give employers stronger financial incentives to reduce sickness absence.

SSP has changed little since the mid-1990s. The government has conducted reviews and implemented modest reforms to reduce absences and support returns to work (eg reform of sickness certification in the late 2000s). In 2019 ministers proposed a modest package of reforms to SSP, which have not been taken forward due to the Covid-19 pandemic. The 2021 Queen's Speech did not include an Employment Bill needed to introduce reforms that was first promised in December 2019.[5] However different temporary reforms have been introduced for the duration of the pandemic (see box 'the Covid-19 Pandemic).

See appendix 2 for a timeline of the history of SSP.

'Health is everyone's business' 2019 consultation[6]

The government's 2019 proposals for SSP were designed first to reduce sickness absence and improve rehabilitation (following a series of reviews and green papers on health, disability and work); and second to provide better protection to vulnerable workers (following the Taylor review of modern working practices). The reforms consulted on were to:

- Amend SSP rules to allow for phased returns to work (with SSP paid pro rata depending on the percentage of usual hours worked by a returning employee)
- Simplify the operation of SSP for part time workers
- Extend eligibility to workers earning below the national insurance lower earnings limit (with people in this position to be paid 80 per cent of their earnings). This would implement a recommendation from the Taylor review.

The paper also discussed options for strengthening compliance and enforcement of SSP rules, and the introduction of a 'day one' statement of rights for employees and non-employee workers that would include details of eligibility for SSP (this is the only part of the package that has been implemented). The government also asked for views on introducing a rebate for small employers (possibly on condition that they met requirements related to managing sickness absences).

Lastly the paper discussed possibilities for the long-term reform of SSP, including changing the generosity and duration of the entitlement, but declared that the government did not intend to consider such major changes 'at this time'.

International comparisons

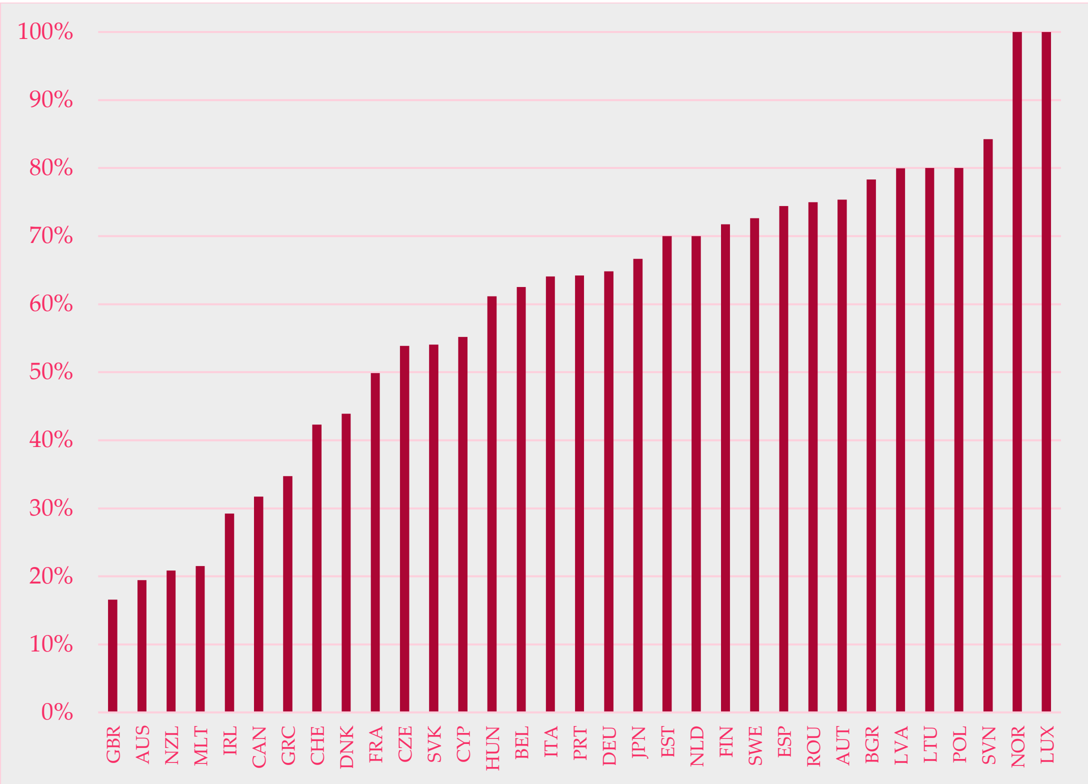
The UK's arrangements for supporting workers during sickness are unusual when compared to other countries: our levels of payment are low; and there is very little pooling of risk between employers.

Generosity: Figure 2 shows that the UK's system of sick pay and sickness benefits is the least generous amongst advanced countries (with the exception of the United States and Korea, which have no mandatory arrangements).[7] The UK system replaces less than 20 per cent of average earnings, while many countries replace between 70 per cent and 100 per cent, through either sick pay or sickness benefits.

The main reason why the UK system is so ungenerous is that SSP is paid at a flat rate rather than being linked to earnings. By comparison, no EU country has a flat-rate system of sick pay and only Ireland and Malta have flat-rate sickness benefits.

Additionally, the UK has poor collective bargaining coverage compared to many countries.[8] This means that occupational sick pay cannot be expected to supplement SSP on a near universal basis. The generosity of the compulsory minimum scheme is therefore more important for workers' living standards in the UK than in countries with stronger social partnership institutions.

FIGURE 2: REPLACEMENT RATE OF SICK PAY SCHEMES IN A SELECTION OF ADVANCED ECONOMIES, 2015



Source: social insurance entitlements dataset, Stockholm University, standard gross 26-week replacement rate, single worker

Risk-pooling: The UK is also unusual in expecting employers to fully fund the cost of sickness for a long duration. Most European countries provide significant funding to cover sickness costs – either by quickly replacing sick pay with sickness benefits (the most common model); or by subsidising employers' sick pay costs (Malta, Italy, Finland, Spain). See appendix 3 for details.

Despite this absence of public support, the UK has little private risk-pooling of sickness absence costs. Two European countries that do not provide public support for sickness have well developed private insurance systems (Switzerland and the Netherlands). By contrast, the UK only has a limited market for employer-purchased group income protection insurance (currently insuring 2.5 million employees).[9]

Proposed sick pay reforms in the United States

In the United States there is currently no federal right to paid sick pay (although a number of states and cities have local paid sick pay requirements). 30m Americans have no access to paid sick leave. For many years US legislators have sought to pass a **Healthy Families Act** which would include provision for paid sick leave and President Biden has called on congress to pass this bill. The law would require employers to allow employees to accrue seven days paid sick leave per year for their own sickness or to care for a family member.

In April 2021, the Biden-Harris administration announced the **American Families Plan**, a huge proposal for the expansion of welfare rights in the US. The plan includes provision to create a 'national comprehensive paid family and medical leave programme'. Workers would receive up to $4,000 a month, with a minimum of two-thirds of average weekly wages replaced, rising to 80 per cent for the lowest wage workers. This right to paid leave would cover serious illness, maternity, paternity, caring, bereavement and seeking safety from domestic violence. The White House estimates this policy will cost $225 billion over 10 years.[10]

2. OPTIONS FOR REFORM

More generous payments

Workers who are absent because of sickness receive a lower percentage of their normal earnings in the UK than in most other rich countries (see figure 2) and than in the past in this country. The low level of SSP has been in the public eye because of Covid-19. Millions of people have been forced to self-isolate and have discovered they are only entitled to a payment far below their normal earnings. As a result of the low value of SSP, in September 2020 the government was forced to introduce an additional £500 one-off payment for people with low incomes who need to self-isolate.

Option 1a: a higher flat-rate payment (match the flat-rate element of statutory maternity pay)

SSP and statutory maternity pay (SMP) are both compulsory payments by employers to support workers during temporary absences. But the main flat-rate element of SMP (£151.97 in 2021/22) is worth 58 per cent more than SSP, following large increases to SMP introduced by the last Labour government in 2002 and 2003.[11] There is no obvious reason why SSP should be paid at a rate that is so much lower than SMP.

Raising SSP to £151.20 would significantly increase its value as a proportion of average earnings, from 18 per cent to 28 per cent. This would be an important step forward although it would still leave the UK near the bottom of European countries with respect to the generosity of sickness payments (in line with Ireland – see figure 2).

Figure 4 shows that this reform would lead to employers' spending on SSP rising by an estimated £1.1 bn. Of this, around £300 million represents new expenditure for employers and new earnings for workers (the remainder is already being paid under occupational sick pay schemes). Appendix 4 presents the costings methodology.

For employers who do not offer occupational sick pay already, on average the cost of the measure would be around £40 per employee per year. This is a modest extra requirement to place on employers that would significantly improve the incomes of sick workers.

Statutory maternity pay

Statutory maternity pay is a two-part compulsory payment for women on maternity leave:

- For the first 6 weeks SMP is paid at a rate of 90 per cent of the woman's average weekly earnings
- For the remainder of the maternity leave, SMP is paid at a flat-rate level (£151.97 in 2021/22) or 90 per cent of earnings if this is lower

As with SSP, entitlement to SMP is linked to the national insurance system, with the payment available to women who are earning over the Lower Earnings Limit (£120 in 2021/22) and are treated as an employee under National Insurance rules. SMP is not a 'day one' right and is only paid after 26 weeks of employment. Women who are not eligible because they have been employed for less than 26 weeks or because their earnings are too low can claim maternity allowance.

Unlike with SSP, employers are entitled to reclaim most of the costs of SMP. All employers can reclaim 92 per cent of the costs of SMP while small employers can reclaim 103 per cent of the costs (helping them cover the costs of employer national insurance and pension contributions).

At any one time around 260,000 women receive SMP. Average government spending is £182 per recipient per week, which translates into an average payment of around £195 per week.[12]

Option 1b: a higher flat-rate payment (match the real Living Wage)

A more generous alternative to Option 1a would be to pay flat-rate SSP at a level that matched the real living wage for workers outside London (£9.50 per hour in 2021 or £356 per week for a full-time worker). This would create a system that replaced 100 per cent of the earnings of a low-paid worker and around 60 per cent of average earnings.

The measure would take the UK into the European mainstream with respect to the generosity of sick pay. It would create a much stronger legal minimum and act as a strong platform on which to build occupational sick pay schemes.

Under this option it might be necessary to pay the lower of an employee's actual earnings or the real living wage for a full-time worker, otherwise some people would end up with higher earnings during sickness absence. This could involve changes being made to the way SSP treats part-time work (see option 7, on improving SSP for part-time workers).

Figure 4 shows that the reform would lead to employers' spending on SSP rising by an estimated £2.7 bn. Of this, around £800 million would be new expenditure by employers and new earnings for workers (the remainder is already being paid under occupational sick pay schemes). For employers who do not offer occupational sick pay at the moment, on average the cost of the measure would be around £110 per employee per year.

This proposal also has the advantage that the future value of SSP would rise automatically in line with future increases to the living wage, which is calculated each year to reflect the cost of living.

A similar, less generous, version of this policy could be introduced based on the government's National Living Wage (currently £8.91 in 2021/22).

Option 2: earnings-related sick pay

Another option would be to introduce earnings-related sick pay, which is the system used by most employers' occupational sick pay schemes and is the usual approach to compulsory sickness payments in other European countries.

The UK does not have a strong tradition of earnings-related social protection payments, but there is one important exception: the first six weeks of statutory maternity pay. During this period new mothers are paid 90 per cent of their average earnings.

Following the success of the Covid-19 furlough (the coronavirus job retention scheme) there is renewed interest in earnings-related social protection. The furlough provides employees who cannot work because of pandemic restrictions with 80 per cent of their usual earnings up to a maximum of £2,500 per month.

An earnings-related SSP could be designed in a variety of ways, with considerations including: the overall cost of the scheme; the balance between providing protection to low, medium and high earners; and the question of whether to frontload or backload protection during a sickness absence.

FIGURE 3: DESIGN CONSIDERATIONS FOR AN EARNINGS-RELATED STATUTORY SICK PAY SCHEME

What level of earnings to replace?	SMP replaces 90% of earnings for 6 weeks CJRS (furlough) replaces 80% of earnings European countries with earnings-related sickness absence schemes replace between 50% and 100% of earnings[13]
Protection for low earners	SMP does not protect low earners. Mothers receive the lower of 90% of their usual earnings or the flat-rate payment. A new earnings-related scheme could be combined with Option 1a or 1b so that workers on sick leave are paid the higher of a specified percentage of their usual earnings or a flat-rate payment (eg the maternity pay rate or the real living wage)
Maximum statutory payments	To reduce overall costs, an earnings-replacement scheme could have a wage cap like the furlough (which only replaces 80% of earnings up to a gross income of £37,500). As most high earners are covered by occupational sick pay schemes this issue would only relevant if a new statutory scheme is to be accompanied by a government subsidy (see Option 8).
Timing of payments	A new scheme could mirror SMP and make earnings-related payments for the initial 6 weeks of absence only, and then revert to a flat rate. This would mark the point where the sickness payments system started to resemble the UK's flat-rate social security system. On the other hand, some European countries increase their sickness payments after a number of weeks to reflect the longer period people are without their usual income. Compulsory earnings-related sick leave could therefore begin after a fixed number of weeks. This would reduce the costs as most absences would already have ended – see figure 7.

Work is needed to consider these options and new survey evidence and modelling would be needed to accurately calculate the costs of possible earnings-related schemes with different variables.

The theoretical maximum cost for employers of a new earnings-related compulsory scheme would be £4 billion per year. This is the extra it would cost employers to provide full pay throughout sickness absences, with employees forgoing no income (see figure 4). This version of the policy would cost employers who do not currently have an occupational sick pay scheme around £500 per employee per year.

However, in practice it would be possible to design an earnings-related scheme that would cost employers considerably less than this sum. For example, the government could consider a scheme with features of SMP and/or furlough. This would combine features of a flat-rate scheme (like options 1a and 1b) with earnings related support:

- **Based on Statutory Maternity Pay** – 6 weeks pay at 90 per cent of earnings, followed by 22 weeks at the flat-rate of SMP.
- **Based on furlough** - lasting the whole sickness absence, 80 per cent of wages for people earning up to £37,500 (a maximum compulsory payment of £575 per week).
- **Based on furlough (but with 100 per cent of wages covered for low paid workers)** – for the whole sickness absence, 100 per cent of wages up to the (real) living wage (£356 per week), then 80 per cent of wages for people earning up to £37,500 (a maximum compulsory payment of £575 per week).

Using the limited data available, we have estimated the costs of a scheme that directly replicates SMP (ie 6 weeks pay at 90 per cent of earnings, followed by 22 weeks at the flat-rate of SMP). Under this variant, we estimate that SSP costs would rise to £10bn per year, and employees' lost earnings would fall from £4bn to £1.4bn. For employers who do not currently have an occupational sick pay scheme the extra obligation would cost an average of £340 per employee per year.

FIGURE 4: ESTIMATED COSTS FOR FOUR OPTIONS FOR INCREASING THE GENEROSITY OF SSP

		Flat rate SSP		Earnings-related SSP	
	Current system	Maternity pay	Real living wage	Replicate SMP scheme	Full pay
Statutory sick pay	£1.8bn	£2.9bn	£4.5bn	£10.0bn	£14.5bn
Occupational sick pay	£8.7bn	£7.9bn	£6.9bn	£3.1bn	£0bn
Total employer payment	£10.5bn	£10.8bn	£11.3bn	£13.1bn	£14.5bn
Employee lost earnings	£4.0bn	£3.7bn	£3.2bn	£1.4bn	£0bn

Note: see appendix 4 for costings methodology

Extending the period for which SSP is available

Option 3: end waiting days for SSP

The three waiting days before SSP payments begin cause considerable hardship. Waiting days mean that a worker who is absent for between one and three days receives nothing. But it also means that people with more serious conditions receive very little protection in the early weeks of a longer absence. For example, in the first week of a spell of sickness SSP replaces just 7 per cent of average earnings (see figure 5).

In light of the Covid-19 pandemic an urgent re-think on waiting days is needed. The government has temporarily suspended them for pandemic-related absences. But after the peak of the crisis has past, the UK will still need to be wary of the transmission of coronavirus variants for many years to come. Replacing the current emergency package with permanent paid sick leave for all, from day one, could help facilitate a new culture where people are expected to stay away from workplaces when they are unwell with the symptoms of infectious illnesses.

Waiting days are used in sick pay and sickness benefit systems in several other countries. However figure 6 shows that 20 European countries require sickness payments to be made from day one of absence, including most of northern, central and eastern Europe.

Looking across the labour market, ending waiting days would significantly reduce lost income for employees and increase expenditure for employers. This is because a very large number of people take short absences. Figure 7 is based on a 2014 DWP survey and shows that over half of workers who commence a spell of sick leave are back in work after three days, before eligibility for SSP begins. The average duration of a sickness absence is 2¼ days.

On the basis of the distribution presented in Figure 7, the average cost of SSP per absence is currently £177. With the 3 waiting days in force, a small number of people who need to take long periods off work account for the majority of the costs. Figure 8 shows how the costs of each absence would rise if the number of waiting days were cut. If there were no waiting days, the cost of SSP per absence would increase by a quarter.

These figures are based on survey data on the duration of the longest sickness absence each employee experiences annually. Similar data on additional periods of sickness is not available, but if the profile of other spells of absence is similar, then these figures would apply to differences in costs per employee as well per absence.

Looking across the whole labour market, if ending waiting days increased the cost of SSP by 25 per cent, this would equate to a rise in SSP expenditure of an estimated £½ billion per year. Around £150 million would represent new spending for employers and new earnings for workers (the remainder is already being paid under occupational sick pay schemes). For employers who do not offer occupational sick pay during the first three days of absence already, on average the cost of the measure would be around £15-20 per employee per year.

FIGURE 5: SSP PAID DURING THE FIRST WEEK OF A LONG-TERM ABSENCE

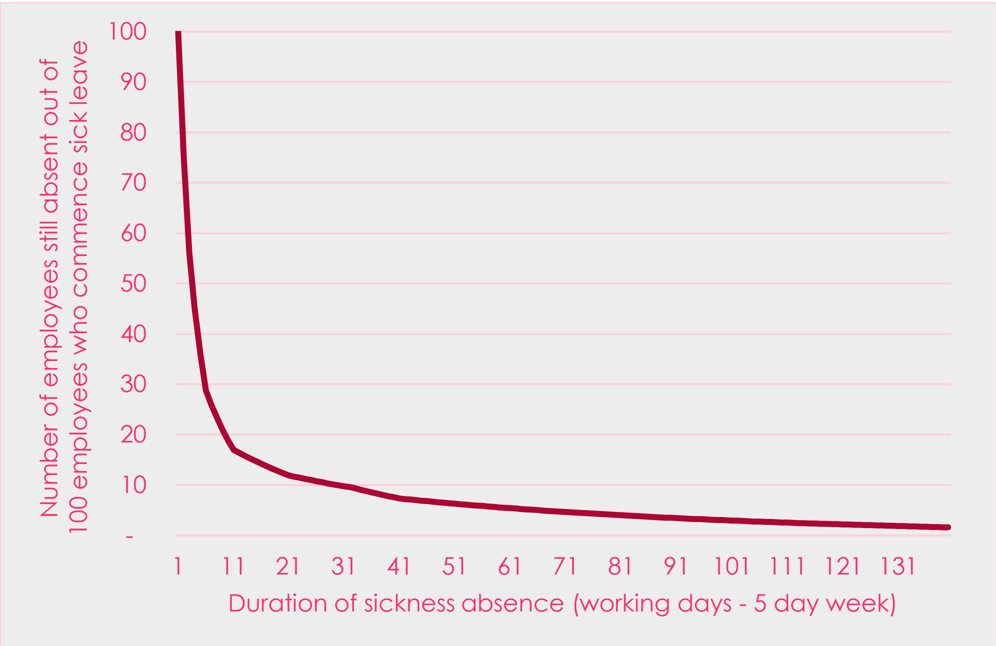
	With waiting days	Without waiting days
SSP payment	£38.34	£95.85
Replacement rate of average earnings	7%	18%

FIGURE 6: 'WAITING DAYS' FOR COMPULSORY SICK PAY OR SICKNESS BENEFITS IN OTHER COUNTRIES

0 days	Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Norway, Switzerland, Hungary, Lithuania, Luxembourg, Norway, Poland, Romania, Slovakia, Slovenia, Sweden
1 day	Latvia
2 days	The Netherlands
3 days	Cyprus, Estonia, France, Italy, Japan, Malta, Portugal, Spain, United Kingdom
7 days	Australia, Ireland
14 days	Canada, New Zealand

Source: MISSOC, missoc.org (2020); social insurance entitlements dataset, Stockholm University (2015)

FIGURE 7: MOST EMPLOYEES WHO START SICK LEAVE ARE ONLY ABSENT FOR A HANDFUL OF DAYS BUT A 'LONG TAIL' GO ON TO MISS MANY WEEKS OF WORK



Source: https://www.gov.uk/government/publications/health-and-wellbeing-at-work-survey-of-employees Data is for longest duration of illness during the year. 2014 data

FIGURE 8: REDUCING THE NUMBER OF WAITING DAYS INCREASES EXPENDITURE ON SSP FOR EACH SICKNESS ABSENCE

SSP paid from	Chance of still being absent when SSP starts	Average cost of SSP per absence	Increase in cost per absence
Day 4 (present)	45%	£177	-
Day 3	56%	£187	6%
Day 2	75%	£202	14%
Day 1	100%	£221	25%

Source: https://www.gov.uk/government/publications/health-and-wellbeing-at-work-survey-of-employees Data is for longest duration of illness during the year. 2014 data

Option 4: paying SSP for longer

At present SSP ends after 28 weeks. From this point people who are still sick and are not covered by occupational sick pay need to claim employment and support allowance (ESA). There is a good case for extending this period and SSP could be extended to 12 months (or even 2 years as is the case in the Netherlands).

Paying SSP for longer would bring financial benefits to many people who are on long-term sick leave. This is first because SSP is paid at a higher level than the main rate of ESA (which is worth £74.70 per week for over-24s in 2021/22); and second because sick pay is treated more favourably than ESA in calculations for universal credit.*

The other important reason to consider extending SSP is that it would strengthen connections between employers and workers, increasing prospects for rehabilitation and return to work. There is no legal link between the end of SSP and employers' decisions about whether to dismiss absent workers (health-related dismissal decisions must be reasonable, based on the facts of each case). However, in practice the expiry of SSP sends a signal to employers and may result in a worker being dismissed. Extending SSP to 12 months would give a clear indication to employers that they should retain sick workers after 28 weeks, whenever there is a real possibility of them being able to return to work.

Extending SSP to 12 months would cost an extra £2,300 for each worker who was absent for a whole year, but such an event would be extremely rare. On

* Any ESA payment is deducted pound-for-pound in lower universal credit. With earnings, including SSP, universal credit is reduced by 63 pence for every pound of extra net earnings. In the case of SSP, the difference is up to £35 per week extra in UC.

average introducing 12 months of entitlement to SSP would probably add between £20 and £30 to the cost of SSP for each sickness absence.*

These figures may not provide reassurance to small employers however, because the costs of the policy would be very variable and unpredictable. With one per cent or less of sickness absences likely to last 12 months many employers would be completely unaffected by the change; but an unlucky few would face quite high extra costs and associated operational challenges. Only large employers would be comfortable facing such risks themselves, without a public subsidy or commercial insurance (see option 8).

Extending SSP to more workers

Option 5: pay SSP to people earning less than the Lower Earnings Limit

At present people can work for 13 hours a week on the National Living Wage and have no entitlement to sick pay.

The Taylor review of modern working practices proposed that SSP should be available to workers regardless of their income – ie removing the current income bar on SSP for workers earning less than the national insurance lower earnings limit (£120 per week in 2021/22). This would bring SSP into line with maternity allowance which can be claimed by women earning more than an average of £30 per week.

The government accepted the Taylor review's recommendation and proposed to remove this limit in its 2019 consultation Health is everyone's business. The paper said:

> "The government is concerned that employees on lower incomes are missing out on the protection that SSP provides. People may be working when unwell, or relying on the benefit system, when remaining attached to their employer is likely to be more beneficial. The Taylor Review of Modern Working Practices recommended extending SSP to include those earning below the LEL. This would extend SSP protection to around 2 million employees, including over 1 million who work less than 16 hours per week. The government believes there is a case to accept this recommendation.

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* Data on the rate at which people return to work after 6 months is not included in the DWP 2014 survey used in this analysis. Our estimate for the cost range is based on an assumption that between ¼ and ½ of those absent after 6 months are still absent after one year.

> "Many of those earning below the LEL earn less than the current rate of SSP. It would therefore be inappropriate to pay these employees the full rate of SSP, as otherwise they would then be better off when sick than at work. If eligibility were to be widened in this way, the government proposes that those earning below the LEL would be paid a proportion of their wage as SSP, set at 80%. Those earning above the LEL would continue to receive a flat rate. A calculator on GOV.UK would aid employers and employees in calculating payments."

The government did not publish estimates for the cost of the policy alongside the consultation paper. If an extra 2 million workers were covered by SSP (with similar sickness profile to workers who are presently eligible) the cost would be in the region of £150m per year. However a significant share of this group already receive occupational sick pay, which will reduce the extra spending.

In 2019 the TUC supported the government's proposal for reform but argued that people should be paid the higher of their normal earnings or SSP, on the grounds that anyone with low earnings would face financial harm if they lost 20 per cent of their wage during sickness absence. It also pointed out that this reform would benefit more than 1 in 10 of women in work, who earn below the LEL (women make up 69 per cent of those earning below this threshold).[14]

The government's proposals were also supported by employer representatives. They should be implemented without delay (ideally with low paid employees receiving full pay if their earnings are below the SSP limit).[*]

Option 6: improve sickness payments for the self-employed

People who are genuinely self-employed obviously cannot be paid sick leave by an employer. Nevertheless, there is a good case for increasing the social protection available to the self-employed, including the support they can draw on when they are sick.

At present self-employed people who are unable to work for more than a week are eligible for employment and support allowance (ESA). In the past this benefit has not been associated with short-term sickness absence as it is

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[*] Implementation of this option could also sit alongside changes to how SSP treats all part-time workers. See Option 7

also the main benefit paid to people with long-term health conditions and disabilities.

However ESA's role as a short-term benefit has been highlighted by Covid-19, with the government promoting it to people who cannot work due to the pandemic and are not entitled to SSP.* On top of that, the recent separation of contribution-based ESA from its means-tested equivalent (which has been replaced by universal credit for new claimants) will change the character of the benefit over time. As ESA gradually becomes an exclusively contribution-based benefit, recipients will tend to have shorter claims and closer connections to employment.

Right now ESA is not working well as a short-term sickness absence benefit, no doubt because it has been designed to serve other functions too. Figure 9 compares ESA and maternity allowance (the contribution-based maternity payment) and shows how the latter performs better as an income replacement benefit for the self-employed.

FIGURE 9: COMPARISON BETWEEN CONTRIBUTION-BASED BENEFITS FOR SICKNESS AND MATERNITY FOR THE SELF-EMPLOYED

	Employment and support allowance	Maternity allowance
Weekly payment (2021/22)	£59.20 (24 and under) £74.70 (25 and over) (after 13 weeks an extra £39.20 in some cases)	£151.97
Waiting days	7 days	0 days
Maximum duration	Moderate incapacity: 1 year Severe incapacity: indefinite	39 weeks
Proof of eligibility	1 week: self-certification 2-13 weeks: GP 'fit note' After 13 weeks: work capability assessment	Maternity certificate
National insurance requirements for the self-employed	Class 2 NICs paid for at least 26 weeks in 1 of last 2 full tax-years AND sufficient earnings or NI credits in both last 2 tax-years	Class 2 NICs paid in 26 of the 66 weeks before the due date

This comparison between ESA and maternity allowance indicates that several low-cost reforms could be introduced that would make ESA a better benefit for self-employed people. The options to consider are:

* Government guidance states that during the pandemic people can claim ESA if they or their children have Covid-19 or are recovering from it, or are self-isolating because of contact with someone who might have coronavirus; or if they have been advised to self-isolate before surgery or to 'shield' because they are extremely clinically vulnerable.

- End waiting days (as with maternity allowance); or reduce the number of waiting days from 7 to 3 (the waiting period for SSP now, and for ESA until 2014). The second option would cost less than £10m.*
- Simplify and relax the National Insurance eligibility conditions for ESA (eg adopt the same requirements as maternity allowance – see figure 9).
- Widely advertise ESA in tools and resources used by self-employed people (including the HMRC self-assessment portal) and clearly communicate that it is available for temporary sickness.
- Consider rebranding the assessment phase of ESA with a name that indicates that it is designed for temporary sickness absence.

More significantly, ESA should ideally be increased in value so that it matches SSP (just as the flat-rate levels of maternity allowance and SMP are the same). At the start of the pandemic the government temporarily followed this approach with respect to universal credit, by introducing a time-limited £20 weekly uplift. However contribution-based ESA was excluded from this measure even though it is the direct equivalent to SSP for self-employed workers. The government could consider both a low cost and high cost option for applying the £20 uplift to ESA:

- High-cost – pay the £20 uplift to all contribution-based ESA recipients (around 800,000 claimants, mainly with long-term disabilities, at a cost of £850m per year)
- Low-cost – pay the £20 uplift to ESA recipients during the first three months of their claim at the stage when the benefit most resembles SSP (around 50,000 claimants at any time, at a cost of £60m per year)

Going further, if the options for reforming SSP presented in this report are adopted, parallel changes to ESA for self-employed people could also be considered. In particular, if SSP payments were to rise to the value of SMP or the real living wage, the initial period of ESA could be increased in a similar way. Alternatively, if SSP were to become an earnings-related payment, the initial period of ESA could also become earnings-related (alongside a similar reform to maternity allowance so that it matched the earnings-related phase of SMP).

The government has just set a precedent for earnings-related support for the self-employed with the Coronavirus self-employment income support scheme (SEISS). This uses records from the last 3 tax years to make an

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* The government's decision in 2014 to extend ESA waiting days from 3 days to 7 days saved the government £10 million. However this included income-based ESA which is now part of UC for new claimants.

earnings-related grant to self-employed people who have lost earnings during the pandemic. Some of the details of the scheme have been criticised but it has proved that HMRC data on past profits can be used effectively to establish entitlement and calculate payments for earnings-related income protection for the self-employed.

Changing the operation of SSP

Option 7: Reform the operation of SSP for part time workers

SSP is a weekly entitlement that people are either entitled to or not. As things stand part time workers receive it in full if they earn more than the Lower Earnings Limit; or they receive nothing if they earn less than the Lower Earnings Limit.

The most urgent change needed for part-time workers is to remove the earnings floor for SSP – see option 5.

After that, attention should turn to the treatment of part-time workers during the first week of sickness. Under the current rules on waiting days, no account is taken of whether a worker is part time or full time. With three waiting days in force, someone who works three days a week will receive no pay if they are sick for a whole week.*

This is an unreasonable policy, especially as part time workers have lower earnings in the first place. The best option would be to abolish waiting days. But for as long as they remain a part of SSP, part-time workers should have pro-rata waiting periods based on how much they work. The government should consult with employers, trade unions and payroll suppliers to determine whether to create this pro-rata entitlement on the basis of days, half-days or each hour of work.

While the value of SSP remains so much lower than earnings, there is no need for a similar pro-rata calculation with respect to the payments people receive (after their waiting days). Currently SSP is equivalent to a weekly

* In rare cases an employee working flexible hours averaging 3 days a week might not be eligible for sick pay until the 10th day they are ill (this arises from a technicality in the design of SSP which is discussed in the government consultation paper Health is everyone's business).

social security payment and so should be available to full time and part time workers on the same basis.*

However, were SSP to become significantly more generous in the future, a pro-rata approach to SSP for part-time workers would be needed. With Option 2, an earnings-related payment would deliver this automatically, but with Option 1b, new rules would be needed to ensure that everyone received equivalent to the living wage for the hours they worked.

Without new arrangements someone working 3-days a week on the real Living Wage would earn £214 per week but be eligible for SSP of £356 per week. To match the non-London living wage, a daily payment could be set at £71.25 per day for up to 5 days a week. Or an hourly payment could be set at £9.50 per hour for up to 37.5 hours per week.

As with changes to waiting days, the government would need to consult stakeholders on whether payments should be by the day, half-day or hour in order to strike the right balance between fairness and operational simplicity.

Option 8a: introduce government subsidy for SSP (small employers)

In requiring employers to self-finance sickness payments for so long, the UK is an international outlier (see appendix 3). When SSP rebates were largely ended in the early 1990s the government said that employers should pay for SSP, to incentivise them to support prompt returns to work. Successive ministers have used similar arguments ever since. But this does not mean that employers should necessarily pay all the costs of statutory sick pay, in all situations. There is a case for considering greater public support for employers' sickness absence costs.

In 2019 the government consulted on introducing a rebate for small employers who demonstrate good practice on sickness management:[15]

> "It is important that sick pay is paid for by the employer to ensure they have incentives to support employees to return to work. However, SMEs are much less likely to have the people, financial resources or expertise to invest in best practice measures. A financial incentive, such as a rebate of sick pay, is one way to provide support for SMEs to meet, or go beyond, their legal obligations and demonstrate best practice. Rebates could also act as a mechanism to

* An exception would arise only if the Lower Earnings Limit floor was removed. In this case part-time workers should receive the lower of SSP or their actual earnings (to avoid receiving more when sick than when healthy). See Option 5.

> share the burden of greater action between SMEs and government to support employees."

While more support for small employers is welcome in principle, a system that only provides rebates in certain situations would be challenging to make work in practice. The government consultation paper floated a wide range of possibilities and flagged implementation challenges without signalling any clear destination for policy.

During the Covid-19 pandemic the government has taken much more resolute action by introducing SSP rebates for all employers with under 250 employees. These rebates are for 100 per cent of the cost of SSP, but only for a maximum of 2 weeks and only when the absence is linked to Covid-19.

For as long as the health emergency continues, the government should continue with this policy and also consider whether support is needed for large employers in sectors where workers cannot avoid social contact. This will be particularly relevant now that people-facing parts of the economy are opening back up, since public health regulations require that workers self-isolate whenever there is a risk they may have been exposed to the coronavirus.

Learning from the pandemic, the government should also return to the question of SSP for small employers. Ministers should consider both how to incentivise good practice (the focus of the 2019 consultation) but also the wider question of how to protect small employers from high costs over which they have only limited control. For example, even without requirements relating to good practice, the state could cover a minority of a small employer's SSP costs, for absences over a certain duration. This would still leave the employer with a clear financial incentive to minimise absences.

As an illustration, the following requirements would be simple and could be expected to have high take-up, unlike the complex rebate arrangements in place between 1995 and 2014:

- Available to all employers with under 250 staff (including non-employee workers).
- Employers reclaim 50 per cent of the costs of an individual's SSP
- Eligibility commences after 4 weeks of sickness absence

Option 8b: introduce government subsidy for SSP (sharing the costs of the proposed reforms)

If any of the options in this report are adopted, debate will be needed about whether employers should meet the entire costs or if the government should provide some financial support.

There is precedent for government providing subsidies when new employer obligations are introduced (the original launch of SSP being a case in point). Today SMP and other similar statutory parental leave payments are subsidised by the government, with HMRC refunding 92 per cent of the costs to employers (or 103 per cent for small employers). But there are also examples of new obligations that employers are expected to fund themselves (eg compulsory pension contributions).

The main factors to consider in determining whether to introduce a state subsidy are:

- The scale of extra costs facing employers
- How variable, controllable and/or insurable the costs are
- Whether the policy is linked to specific social policy goals (eg help for vulnerable groups)

Developing policy in this area is complicated by the risk of very significant 'deadweight' costs, since the majority of employees are already covered by occupational sick pay schemes that go well beyond the statutory minimum. This means that if a new public subsidy for all employers was introduced alongside an enhancement to SSP, many firms would receive public money while facing no additional costs. While this could be considered a reward for employers' past good practice, the deadweight spending would tend to benefit large employers and those employing relatively advantaged workers (see appendix 1). The same argument would apply to a tax cut for employers to offset the costs of any reforms.

Figure 10 presents an assessment of the case for public subsidy for the reform options discussed in this report. The main options where there is a case to explore public subsidy are Option 1b and Option 2 (where the costs are high); and Option 4 (where the costs are unpredictable, there is less deadweight and there is a social policy goal).

In the case of option 4 the government could just pay employers the equivalent of ESA each week (as workers absent from 28 weeks to 1 year are currently expected to claim this benefit).

FIGURE 10: APPRAISAL OF THE CASE FOR PUBLIC SUBSIDY FOR THE OPTIONS EXAMINED IN THIS REPORT

Option 1a: a higher flat rate (SMP)	**Weak case:** Low cost, high predictability, high deadweight
Option 1b: a higher flat rate (living wage)	**Good case:** High cost, high predictability, high deadweight
Option 2: earnings-related SSP	**Good case:** High cost, high predictability, high deadweight
Option 3: ending waiting days	**Weak case:** Low cost, high predictability, high deadweight
Option 4: pay SSP for longer	**Good case:** Low cost, low predictability, low deadweight, strong social policy rationale, saves benefit spending (ESA)
Option 5: pay SSP to low earners	**Weak case:** Low cost, high predictability, unknown deadweight
Option 6: improve payments for self-employed	**n/a**
Option 7: reform SSP for part-timers	**Weak case:** Low cost, high predictability, high deadweight

In the case of options 1b or 2, a public subsidy could work by the government meeting a percentage of the costs through a rebate scheme. This would resemble Statutory Maternity Pay however, in the case of sickness absence, ministers are likely to want employers to bear a higher share of the costs to incentivise good employment practices. A scheme could be designed so that:

- **Large employers pay half the costs of reformed SSP**. The employer reclaims 58 per cent of salary (half of compulsory payroll costs)
- **Small employers pay a quarter of the costs of reformed SSP.** The employer reclaims 87 per cent of salary (three quarters of compulsory payroll costs)

This cost sharing could begin from day 1 of sickness absence or it could be for longer-term sickness only. If the scheme started after 4 weeks of sickness, the government support would apply to half of the total days lost to sickness up to 28 weeks of absence (based on the distribution of sickness reported in figure 7).

In the case of earnings-related SSP (option 2), the government should also consider a salary cap on rebates, to limit spending on employees with high salaries. The cap could be the same as for the furlough scheme – ie support for salaries up to £37,500.

The final possibility to consider is a financial reward for employers who go beyond statutory sick pay (as an alternative to simply subsidising compulsory action). For example, the government could pay a fraction of an employers' SSP costs on condition that they have an occupational sick pay scheme in place that meets specified standards. Again, this measure would face the risk high deadweight costs unless carefully designed. But it might have powerful behavioural effects if it was introduced in parts of the labour market where SSP-only is the norm, for example among small employers or employers in low-paying sectors.

If the government may wish to recoup this subsidy from employers collectively. To do this it could consider increasing employers' national insurance contributions. Raising employers' national insurance contributions by one penny in the pound would raise £6bn per year. This would be sufficient to provide a large subsidy for a generous new SSP scheme (the total cost of all sick pay and sickness-related lost earnings for employees is £14.5bn annually – see figure 1).

Additional issues: non-employee workers' rights to SSP

Another complex area for further thinking is how to improve access to SSP for non-employee workers.

To qualify for SSP a worker must have an employment contract. However according to HMRC this requirement includes many non-employee workers. HMRC guidance states that casual, zero-hours and agency workers are all covered by SSP (and indeed there are specific SSP rules for these workers, during the first three months of their employment). This is because HMRC equates entitlement to SSP with the payment of class 1 national insurance contributions (paid by employees and employers) and these NICs are paid with respect to non-employee workers as well as employees.[16]

Many workers and employers are unaware of this and do not understand the law. For example, a DWP 2015 survey of people who had moved from work to employment and support allowance (ESA) found that the most frequent reason for sick pay being refused was 'probation period/temporary contract/agency worker/zero hours'. SSP is a legal entitlement in all these circumstances.[17]

In order to improve understanding and compliance with the law the Taylor review on modern working practices recommended that employers should be required to issue a 'day one' statement of employment rights to all employees and non-employee workers. In 2019 the government accepted this recommendation and said that a mandatory statement would need to include details of sick leave and sick pay.[18] This became law in April 2020 and its impact now needs to be monitored.

In 2019 the government also consulted on improving enforcement of SSP. The options proposed included increasingly existing fines for non-payment and introducing proactive enforcement of SSP (as opposed to reactive dispute resolution) on the same basis as enforcement of the national minimum wage. If the latter option were adopted, the government also said it would consider whether to situate this enforcement function within a single labour market enforcement body.

In its response to these proposals the TUC said that it supported both higher penalties and proactive enforcement of SSP (eg based on tip-offs and risk-based profiling, not just the determination of formal complaints). It said that the priority for enforcement should be to provide adequate powers and resources for employment rights agencies, rather than to make changes to institutional machinery.[19] Since the 2019 consultation the government has taken no action on enforcement and decisions are now needed. Creating the powers and resources for proactive enforcement of SSP should be a priority.

In addition to these proposals, the government could consider how to further strengthen the link between National Insurance contributions and their associated rights and responsibilities, including entitlement to SSP.

As things stand HMRC guidance and resources make no connection between determination of tax status and related rights. For example the agency's extensive guidance on whether or not to class contractors as employees makes no reference to the new 'day one' statement of employment rights, which people deemed to be employees under tax law will almost always be eligible to receive.

From April 2021, HMRC will require all large employers to issue 'status determination statements' to contractors, setting out whether they are employees or self-employed for the purposes of National Insurance. It would make sense for these statements to specify the rights related to being treated as an employee in tax law (or, alternatively, for them to be presented alongside a 'day one' statement of employment rights).

In the medium term further reform should be considered. The TUC has proposed that the intermediate status of workers should be abolished so that everyone paying employee National Insurance has full employee rights. The Taylor review said its preference was to retain the three-tier system but create a simpler, clearer boundaries between workers and the self-employed. For a start, the law should be changed so that anyone who is taxed as an employee is automatically treated as a worker in employment law as well as tax and social security legislation (this reform was proposed by the Taylor review and also recommended by the 2020 commission on workers and technology).[20] This measure would not directly affect the position of SSP as HMRC already enforces this using the tax-based definition of a worker. But more simplicity and clarity would help improve compliance across the whole suite of worker's rights (including SSP compliance).

APPENDICES

1. Employees only eligible for SSP

PERCENTAGE OF EMPLOYEES ELIGIBLE FOR SICK PAY WHO ARE ONLY ENTITLED TO SSP, 2014

All employees	32%
Size - small employer	50%
Size - medium employer	37%
Size - large employer	24%
Sector - private sector	33%
Sector - public sector	29%
Sector - non-profit sector	35%
Occupational class - white collar worker	27%
Occupational class - blue collar worker	44%
Occupation - managers, directors and senior officials	20%
Occupation - professional occupations	22%
Occupation - associate professional and technical occupations	24%
Occupation - skilled trades occupations	43%
Occupation - administration and secretarial occupations	31%
Occupation - caring, leisure and other service occupations	48%
Occupation - sales and customer service occupations	39%
Occupation - process, plant and machine operatives	37%
Occupation - elementary occupations	49%
Management – supervisor	26%
Management - non-supervisor	37%
Contract – permanent	30%
Contract – temporary	54%
Contract - no contract/informal/casual	59%
Hours - part-time	46%
Hours - full-time	28%
Age - 16-24	46%
Age - 25-34	35%
Age - 35-49	28%
Age - 50-59	28%
Age - 60-65	28%
Age - Over 65	46%
Ethnicity – white	32%
Ethnicity - mixed race	40%
Ethnicity – black	35%
Ethnicity – Asian	29%
Ethnicity – other	22%
Sex – women	35%
Sex – men	28%
Disability – disabled	37%
Disability - not disabled	30%

Source: Health and wellbeing at work: a survey of employees, DWP, 2014. Excludes employees not eligible for SSP and respondents who answered 'don't know'

2. History of SSP – timeline

1980	Statutory sick pay proposed as a replacement for the initial period of sickness benefit (a social security benefit paid by the government)
1982	Social Security and Housing Benefits Act 1982 brings SSP into law
1983	SSP is launched. Initially the entitlement is for 8 weeks, with 3 different payment rates depending on earnings. The government reimburses 100 per cent of the costs to employers
1985	The government rebate is made more generous so that employers can also reclaim the employer national insurance contributions associated with their SSP payments
1986	SSP entitlement is extended to 28 weeks
1987	The middle rate of SSP is abolished
1991	The government's employer rebate is reduced to 80 per cent of the cost of SSP. A small employer relief is introduced, offering 100 per cent rebate after 6 weeks of absence. The reform is accompanied by an offsetting reduction in employer NICs
1994	The employer rebate is abolished. The small employer relief becomes more generous and offers a 100 per cent rebate after 4 weeks of absence. Once again, an offsetting reduction in employers' NICs sits alongside the reform.
1995	A single rate of SSP is introduced (the previous higher rate). The small employer rebate is replaced by the Percentage Threshold Scheme which allows employers to claim back any amount of SSP paid that exceeds 13 per cent of their National Insurance contributions paid that month
2014	The Percentage Threshold Scheme is scrapped (meaning there is no public subsidy for sick pay except in cases of business insolvency)
2019	The government proposes modest reforms to SSP in a green paper, but no legislation follows. The most important proposal is for SSP to be available to part-time workers with low weekly earnings
2020	The Covid-19 pandemic leads to temporary emergency reforms to SSP (ie pandemic-related entitlement rules and rebates for small employers for Covid-19 absences)

3. Government support for sickness costs: international comparisons

LENGTH OF TIME EMPLOYERS ARE REQUIRED TO MEET SICKNESS ABSENCE COSTS BEFORE GOVERNMENT SUPPORT IS AVAILABLE

No time without support	Cyprus – sickness benefits Ireland – sickness benefits Malta – employer subsidy Portugal – sickness benefits
Up to 1 week	Bulgaria – 3 days then sickness benefits France – 3 days both sickness benefits and sick pay Greece – 3 days then sickness benefits Italy – 3 days then government subsidy for sick pay Lithuania – 2 days then sickness benefits Romania – 5 days then sickness benefits
Up to 1 month	Belgium – 1 week to 1 month then sickness benefits Czech Republic – 2 weeks then sickness benefits Denmark – 30 days then sickness benefits Estonia – 8 days then sickness benefits Finland – 9 days then government subsidy for sick pay Hungary – 15 days per year then sickness benefits Latvia – 10 days then sickness benefits Norway – 16 days then sickness benefits or subsidy for sick pay Slovakia – 10 days then sickness benefits Slovenia – 10 days then sickness benefits Spain – 15 days then government subsidy for sick pay Sweden – 14 days then sickness benefits
Up to 4 months	Austria – 6-12 weeks then sickness benefits Croatia – 42 days then sickness benefits Germany – 6 weeks then sickness benefits Luxembourg – 13 weeks per 18 months (most of costs covered by mutual employer insurance) then sickness benefits. Poland – 33 days (14 days for over-50s) then sickness benefits
Over 4 months	United Kingdom – 28 weeks then sickness benefits
No government support	The Netherlands – 104 weeks sick pay. Option of employer insurance Switzerland – 3 weeks minimum sick pay. Widespread employer insurance (voluntary, contractual or collective bargaining)

4. Estimated costs – methodology

The costings in this paper are estimates only, based on previous official costings and survey data. The starting point for the analysis is data prepared for the DWP's 2011 independent review of sickness absence by Dame Carol Blake and David Freud. This presents data on employers' expenditure on SSP and occupational sick pay, and the lost earnings due to sickness of employees and the self-employed. These figures for 2010 have been updated to 2019 (ie before the Covid-19 pandemic) using National Accounts data on changes in economy-wide earnings and self-employment profits; changes in average levels of sickness absence; and increases in SSP (figure 1).

For each reform option where cost estimates are provided, a calculation has been made for the likely increase in spending on SSP as a result of the policy:

Option 1a: a higher flat rate (SMP)	£1.1bn increase in SSP costs as SSP rises by 58% to £151.20
Option 1b: a higher flat rate (real living wage)	£2.7bn (223%) increase in SSP costs, as the average SSP payment rises to £310 per week (based on the 2020 non-London living wage of £9.50 per hour and average working week of 32.6 hours)
Option 2: earnings-related SSP	1: Full pay variant: £12.7bn increase in SSP costs (a 697% increase) as SSP rises to cover all costs of occupational sick pay and lost employee earnings 2: SMP variant: £8.2bn increase in SSP costs (a 450% increase). £7.8bn is the cost of paying SSP at 90% of earnings for 6 weeks; £0.4bn is the cost of paying SSP at the SMP flat-rate from 7 to 28 weeks (based on the profile of sickness durations presented in figure 7)
Option 3: ending waiting days	SSP costs rise by between £0.1bn and £0.5bn (6% and 25%). See figure 8.
Option 4: pay SSP for longer	12-18% increase in SSP costs (based on different assumptions regarding the incidence of sickness between 28 weeks and 12 months)
Option 5: pay SSP to low earners	£150m increase, based on 2 million more eligible employees with the same annual SSP spend of around £65 per employee as the 24m existing employees covered
Option 7: improve payments for self-employed	Reforms to contribution rules not costed. An increase in contribution-based ESA of £20 per week would cost £850m for all recipients
Option 8: reform SSP for part-timers	Not costed

With each option, the cost of a large proportion of the extra SSP spending is offset by a corresponding fall in employers' existing expenditure on occupational sick pay. It therefore has no financial impact on employers or employees. The remainder of the additional SSP spending is an extra cost for employers and extra earnings from employees.

Based on the survey data reported in appendix 2 our estimated costings assume that across the labour market 68 per cent of extra SSP spending is offset against existing employer occupational sick pay; and 32 per cent reduces employees' lost earnings. The latter figure is used to report our estimate for total increased spending by employers. Estimates for extra spending per employee are based on the increase in SSP spending for each reform option, divided by the number of eligible employees.

ENDNOTES

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