

Minutes of Statutory Payments Consultation Group

Date: Wednesday 18 January 2017

Venue: 100PS, London

Time: 11:30pm

In Attendance

Chris Tait (CT) HMRC - Chair

Lisa Storey (LS) HMRC

Sandie Andrews (SA) HMRC

Jane Edwards (JE) DWP

Debbie Griffin (DG) DWP

Lucy Dugmore (LD) DWP

Rebecca Lawther (RL) DWP

Samantha Mann (SM) CIPP

Kate Upcraft (KU) ICAEW

Simon Parsons (SP) IREEN

Alex Metcalfe (AM) FSB

Apologies

Linda Pullan - Payroll Alliance

Jackie Petherbridge - The Payroll Practice

Tracy Taylor - BSC Payroll Group

Debbie Jackson - BEIS

CT opened by thanking everyone for attending.

CT then briefly introduced himself to assist new members and the rest of the group did the same.

Minutes of last meeting - these were issued July 2016, and after requested amendments had been made they were accepted as being a true record of events. Further notes were issued in November 2016 in line with the agenda items that were due to be discussed at that meeting which had to be postponed due to problems with attendance. CT advised that some of the items had been added to this agenda and if there were any further questions we would cover them in AOB.

1. Update on Shared Paternity Pay and the proposals to extend this to Grandparents.

CT advised that due to unforeseen circumstances BEIS were unable to field a representative for the meeting however they had provided some lines concerning the proposals to the ShPP extension, which he read verbatim.

Following the change of Government, BEIS are exploring a number of options for supporting working parents. We will work with HMRC to ensure that any changes to statutory pay, e.g. who qualifies and in what circumstances, take account of how statutory pay is administered. Any change to statutory pay will only be made after consulting with HMRC and other interested parties, either formally or through this group, and we will ensure that employers and payroll providers are given sufficient lead time to make changes their policies and payroll systems.

He went on to advise he was unable to field any questions at the meeting but would be happy to pass any thoughts or comments onto BEIS later.

The main comments/concerns were relating to the implementation date for any changes. April 2018 was initially mentioned and stakeholder group members wanted some assurance that the implementation date for any changes proposed would be later than that date. LS advised that BEIS were aware of HMRC lead in times required but she would ask if BEIS could provide any further assurance. BEIS advised that they would ensure employers were given sufficient time to make any changes and that they would provide more clarity at the next meeting.

2. Update on Salary Sacrifice

LS advised that there would be no further update in the February Employer Bulletin as the Subject Matter Expert (SME) felt there was little more that could be added to the article in the October edition. LS said that due to other competing priorities the guidance had not yet been amended but she was waiting for confirmation of an expected date when this would be carried out. LS advised that the SME was happy to provide a draft of the proposed amendments to the external SPCG members in advance of publication, to seek constructive comments

Concerns were raised about the proposed guidance falling within the law. Legislation requires provision of non-cash benefits throughout Maternity Leave but guidance following the Peninsula judgment is centred around the contract. Employers are concerned that will be acting out with the law if they reconstruct contracts or do not pay where the contract is silent. LS said she would pass

these comments onto the SME for consideration and response and asked KU to send an e-mail covering all points to ensure nothing was missed. LS also asked if the stakeholder group members were receiving enquiries about this and they confirmed they were and these were increasing. LS asked if these could be forwarded to help ensure the best response could be provided.

3. Pensions during maternity leave

KU had asked for this to be added to agenda although LS said that there was some confusion about what advice was actually required. LS asked KU to confirm that the issue was around calculating pension contributions for employees with irregular hours whilst on maternity leave. KU confirmed this, adding that there was no legislation/guidance to advise how normal earnings are calculated for pension purposes. Whilst group members are aware that it is the earnings before leave started that are used (which is fine for employees with regular hours), this is problematic for those with irregular hours such as zero hours contracts. LS advised that BEIS has already provided information which indicates there is no legislation which provides for this matter and they were considering how such calculations should be carried out. LS will forward a request for further advice onto BEIS/DWP and will advise position in due course.

4. SSP modification – Green Paper

RL and LD led a discussion on questions relating to a potential reform of statutory sick pay to support phased return to work, as outlined in the 'Improving Lives' Green Paper (please see paper circulated ahead of the meeting). The group noted the following points:

- Statutory Sick Pay is covered in entirety by the employer (akin to the national minimum wage), but this is not always reflected in the way it is perceived by employees.
- Many employers have little or no HR support, and are conscious of potential risks around managing sickness absence.
- Awareness of existing support is a challenge - e.g. Fit for Work is well-regarded regards health expertise, less so on issues for employers; and awareness of the service (as also the associated tax exemption on occupational health treatments) is low.

LD noted that how existing services could be improved was also part of the green paper consultation, and encouraged the group to respond to the consultation by the closing date of 17th February.

With regards the proposed reform:

- To minimise the admin burden for the employer, the entitlement to SSP would need to be continuous even if during that period of entitlement the employee and employer agreed the employee would make a phased return to work (e.g., the entitlement to a proportion of SSP would only end when the employee is fully back at work at their normal, pre-absence hours)
- The start and end points of the phased return would need to be agreed between employer and employee – it could not be an open-ended matter (the group noted that it would not be possible to prescribe how long a phased return should take, as it was specific to the individual and work context)
- As SSP is treated as earnings, off-setting of SSP against wages is standard functionality of payroll systems. Therefore making changes to payroll systems to enable someone to be paid part-wages, part-SSP, whilst making a phased return to work, should be simple to effect
- Occupational Sick Pay is based on the employee's normal working pattern, which is not necessarily aligned with the SSP 7 day week, and which is hugely variable
- Overall, the group considered that employers would welcome the flexibility. They agreed that option B (the pro-rata model in the paper presented) would be the better option, as there was little incentive for the employee to make a phased return to work under option A (the flat rate model). The group noted that for some on very low wages (minimum wage and few hours), the individual might be financially better-off on SSP. Guidance for employers on the advantages of enabling, and implementing, a phased return would be crucial to driving uptake. The group noted that piloting the reform might be advisable.

The group offered to share questions with their networks. RL and LD expressed their thanks for the opportunity to discuss, and RL offered to tailor some questions that would be sent through with the meeting minutes.

RL and LD would welcome views on the 'Improving Lives: the Work, Health and Disability Green Paper consultation question - Should SSP be reformed to enable phased returns to work at the link below?

Please could you share this [link](#) with your networks.

Contributions would also be welcome to the broader consultation on the green paper, which closes on 17 February. You can submit your views at <https://www.gov.uk/government/consultations/work-health-and-disability-improving-lives>

Further discussions led to questions about any impact National Minimum Wage (NMW). LS said that she thought that SSP did not affect NMW but she would seek confirmation. (confirmed that SSP does not count towards the payment of NMW for a worker's pay as it is a payment in respect of absence. NMW needs only be paid for actual time worked - so if a worker is not working but sick then the time off sick would not be time for which NMW needs to be paid.)

5. AOB

SP raised the GOV.UK calculators and asked for confirmation that the calculations that cross over tax years will be based on both rates. SA said that she had been assured by GDS that the calculators would reflect the correct rates. SP asked if we could arrange to add a note to alert employers that rates were increasing which may affect calculations which would mitigate any problems. SA said she would arrange this asap.

SM said she had read a blog about amendments on GOV.UK and there was an indication that guidance on GOV.UK may be removed as it is not being used much. LS/CT said they had received no information to advise this was a possibility and amendments to SP guidance was continuing

There being no further business the meeting concluded amicably, and the date/time of the next meeting would be confirmed when the notes were issued.