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AN ROINN | DEPARTMENT  
OIDEACHAIS | OF EDUCATION  
AGUS SCILEANNA | AND SKILLS

Circular Letter 0063/2014

**To: The Chief Executives of Education and Training Boards**

**Certified Sick Leave Scheme for all staff in Education and Training Boards, other than Teachers and Special Needs Assistants (SNAs).**

I am directed by the Minister for Education and Skills to refer to revised arrangements for certified sick leave in the Education Sector, for all staff in Education and Training Boards, other than Teachers and SNAs which apply from **1 September 2014**. This Circular should be read in conjunction with SI No. 124 of 2014.

Revised arrangements for teachers and SNAs have issued in Circulars 59/2014 and 60/2014 respectively.

On 19 July 2012 the Labour Court made a recommendation (Recommendation No. LCR20335) in relation to sick leave arrangements in the public service. A further Labour Court recommendation (Recommendation No. LCR 20667) in relation to critical illness was made on 20 December 2013. The *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*, passed at the end of December 2013, included a part in relation to the new sick leave arrangements. The legislation provided the Minister for Public Expenditure and Reform with the power to make regulations that set out the specific details of the new Scheme. These Regulations SI No. 124 of 2014 were signed by the Minister for Public Expenditure and Reform on 6 March 2014 and have been laid before the Houses of the Oireachtas.

The regulations and procedures are to be implemented by each employer with effect from 1 September 2014 and all staff must adhere to the terms of this circular.

You are requested to bring the contents of this letter to the attention of all relevant staff in your organisation, including those on leave of absence.

**Any queries in relation to this Circular should be communicated to the relevant employer in the first instance. Any employer that has a query in relation to this Circular should direct that query by e-mail only to the following dedicated e-mail address: [ESR@education.gov.ie](mailto:ESR@education.gov.ie)**

Philip Crosby  
External Staff Relations  
25 July 2014

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**Sick Leave Scheme for all staff in Education and Training Boards,  
other than Teachers and SNAs.**

**Definitions:**

For the purposes of this scheme the following terms shall have the meanings assigned to them here unless the context indicates otherwise:

**Critical Illness Provisions** – means that an employee who becomes incapacitated as a result of a critical illness or serious physical injury may be granted extended paid sick leave in exceptional circumstances.

**Dual Look Back** – means where, for the calculation of pay, an employee's sick leave record is initially reviewed over a four year rolling period and then reviewed over a one year rolling period.

**Employee** – means an employee of an Education and Training Board, other than a teacher or a Special Needs Assistant.

**Employer** – means an Education and Training Board (ETB). The ETB or Board of Management/Manager may delegate as appropriate responsibility for matters set out in this circular.

**ETB** – means an Education and Training Board.

**Leave Year** - means the leave year applicable to the relevant grade.

**Occupational Health Physician (OHP)** – means a provider of independent medical advice.

**Ordinary Illness** – means an illness which is not regarded as critical illness.

**Period of Illness** – means any period of illness in which an employee of an ETB is medically unfit to carry out his/her full duties.

**Temporary Rehabilitation Remuneration (TRR)** – means the remuneration of an employee which may be awarded if he or she has exhausted his/her access to paid sick leave.

## **1. Introduction**

- 1.1 These regulations and procedures are to be implemented by each employer with effect from 1 September 2014 and all staff must adhere to the terms of this circular.
- 1.2 Sick leave may be granted to an employee who is unable to perform his/her duties
  - because of illness, injury or
  - when absent for the purpose of obtaining health-related services (e.g. Doctor/Dentist) provided such appointments could not have been arranged outside of regular working hours or working days.
- 1.3 The granting of sick leave to an employee who is ill is intended to provide an adequate opportunity for that employee to recover from the illness and its effects so that s/he may make an early return to duty without a likelihood of a relapse into illness. Therefore it would be contrary to the express purpose of this scheme, to engage in any activity (e.g. travel abroad, gainful employment or self-employment) which in the opinion of an Occupational Health Physician (OHP) could be regarded as impeding that employee's progress to recovery.
- 1.4 The approval of the employer must be sought prior to an employee travelling abroad while on sick leave. The employer must in turn seek the advice of an OHP before deciding on the matter.
- 1.5 Referral of an employee to an OHP is dealt with in paragraph 12 of this Circular.
- 1.6 Sick leave periods are calculated retrospectively and include weekends, closure periods and days on which an employee is not timetabled for attendance (e.g. jobsharers), occurring within the period of absence.
- 1.7 The sick leave provisions for an employee participating in a work-sharing scheme, or working on a part-time basis will be adjusted pro-rata to his/her agreed attendance pattern and are subject to the normal provisions governing the granting of sick leave.
- 1.8 An employee's entitlement to sick leave shall cease on the expiry of the contract and that contract not having been renewed.

## **2. Entitlement to Ordinary Illness Leave Provisions**

- 2.1 An employee who is absent from duty because of personal illness or injury, may be granted paid sick leave of:
  - A maximum of 3 months (92 days) on full pay in a year
  - Followed by a maximum of 3 months (91 days) on half pay

- Subject to a maximum of 6 months (183 days) paid sick leave in a rolling four year period.

### **3. Entitlement to Critical Illness Leave Provisions**

- 3.1 An employee who becomes incapacitated as a result of a critical illness or serious physical injury may be granted extended paid sick leave, in exceptional circumstances of:
- A maximum of 6 months (183 days) on full pay in a year
  - Followed by a maximum of 6 months (182 days) on half pay
  - Subject to a maximum of 12 months (365 days) paid sick leave in a rolling four year period.
- 3.2 The award of extended sick leave for critical illness or serious physical injury is a decision for the employer following receipt of medical advice from an OHP.
- 3.3 If an employee has an ordinary illness within a 12 month period of the start date of the granting of a critical illness, the critical illness provisions will apply.
- 3.4 A copy of the Critical Illness Protocol is included at Appendix B

### **4. Temporary Rehabilitation Remuneration (TRR)**

- 4.1 Where the relevant period of paid sick leave has been exhausted, an employee with a minimum of 5 years' service (in a pensionable position either in a whole-time or part-time capacity) at the end of the period of paid sick leave may be granted TRR subject to certain conditions. TRR will be calculated on:
- pensionable pay, and
  - paid pensionable service accrued in the employment at the time paid sick leave was exhausted, together with the added years which would be awarded if ill health retirement were granted.

The amount of TRR paid should not be taken as an accurate reflection of what the employee may receive at retirement as the circumstances may be different.

- 4.2 The period during which TRR is paid is not a period of pensionable service.
- 4.3 The granting of TRR will be conditional at all times on an OHP confirming that there is a reasonable prospect of recovery and return to work.
- 4.4 TRR will not exceed 18 months (548 days) in the case of ordinary illness.

- 4.5 In the case of an employee who has been granted extended sick pay under the critical illness provisions, he/she may have access to 12 months (365 days) TRR followed by a further period of TRR not exceeding 24 months (730 days). This further period of TRR is subject to regular reviews by an OHP.

## **5. Entitlement to Unpaid Sick Leave**

- 5.1 An employee who, on having exhausted the maximum period of paid sick leave (and does not qualify for TRR) is still medically unfit to resume duty and wishes to retain his/her position with the employer must notify the employer of his/her intention to avail of a period of unpaid sick leave within which he/she may resume working if certified as fit to do so. This period of unpaid sick leave shall not normally exceed the TRR limits set out in paragraph 4.
- 5.2 An employee must exhaust his/her period of paid sick leave before he/she can apply for unpaid sick leave. The granting of a period of unpaid sick leave is subject to continued submission on a regular basis (max 3 months) of acceptable medical certification to the employer.
- 5.3 Prior to the expiration of unpaid sick leave, employers must seek the advice of an OHP on the employee's prospect of recovery and return to work. Where a return to duty is not deemed viable, the employer shall take such timely action as it deems appropriate including but not limited to termination of the contract of employment.

## **6. Dual Look Back**

- 6.1 To calculate an employee's appropriate rate of pay when absent as a result of illness or injury there will be a dual look back system as follows:

### **Ordinary Illness**

- Step 1: Determine whether the employee has access to paid sick leave

The employee's sick leave is reviewed over the 4 year period from the current date of absence. If 6 months (183 days) paid sick leave has not been exhausted over that 4 year period, access may be granted to paid sick leave.

- Step 2: Determine whether full pay, half pay or TRR applies

If Step 1 indicates that the employee has access to paid sick leave, his/her sick leave record is then reviewed over the 1 year period from the current date of absence to determine the rate at which sick leave may be paid. If the initial 3 months (92 day) limit at full pay has not been exhausted, full pay may be awarded until the limit of 3 months (92 days). Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

## **Critical Illness**

- Step 1: Determine whether the employee has access to paid sick leave

The employee's sick leave is reviewed over the 4 year period from the current date of absence. If 12 months (365 days) paid sick leave has not been exhausted over that 4 year period, access may be granted to paid sick leave.

- Step 2: Determine whether full pay, half pay or TRR applies

If Step 1 indicates that the employee has access to paid sick leave, his/her sick leave record is then reviewed over the 1 year period from the current date of absence to determine the rate at which sick leave may be paid. If the initial 6 months (183 day) limit at full pay has not been exhausted, full pay may be awarded until the limit of 6 months (183 days). Thereafter, the amount paid will be calculated based on half pay or TRR, as appropriate.

- 6.2 The scenarios set out at Appendix A illustrate how the dual look back arrangement will operate.

## **7. Transitional Arrangements**

- 7.1 Where an employee has commenced a period of sick leave prior to 1 September 2014 and sick leave continues on and after that date, he/she will continue to avail of the pre SI 124 of 2014 sick leave arrangements for that absence. Following a resumption of duties, any subsequent sick leave absence will be dealt with under the terms of the sick leave scheme as outlined in this circular.

## **8. Treatment of previous periods of sick leave under the new Scheme**

- 8.1 Sick leave records will be reviewed over a rolling 4 year period. That means that where an employee has a sick absence on or after 1 September 2014 and has been paid more than 183 days sick leave in a rolling 4 year period, that employee may find, him/herself moving immediately to half pay or TRR, as appropriate.

## **9. Certified Sick Leave**

- 9.1 Where an employee is absent on continuous sick leave of more than 2 days, a medical certificate is required to be provided to the employer. If a sick absence extends from Friday to Monday inclusive, then a medical certificate must be provided.
- 9.2 Should an employee fail to provide a medical certificate to their employer in respect of an absence on sick leave in accordance with the scheme, the employer should contact the employee to advise that if s/he fails to submit the required medical certification, the employer, following due process, shall record the leave as

a period of unapproved sick leave and payment to the employee will be withdrawn pending a return to duty or compliance with the scheme and may be dealt with under the agreed disciplinary procedures.

9.3 To be acceptable, a medical certificate must

- be signed by a duly qualified medical practitioner registered with the Irish/UK Medical Council/Dental Council of Ireland. In exceptional circumstances medical certificates may be accepted from overseas medical practitioners, such as where an employee becomes ill abroad or is receiving a recognised medical treatment unavailable in Ireland. The advice of an OHP must be sought in such circumstances.
- normally cover a period of or no more than one week. However, certification for periods of up to one month may be permitted at the discretion of the employer.
- state fitness to work or otherwise

9.4 While it is not obligatory to state the nature of the illness on a medical certificate, a failure to include this information may lead to difficulties if seeking to have the absence discounted e.g. discounting of a closure period.

9.5 Employers must safeguard the confidentiality of all information relating to the sick leave records of individual employees and this applies in particular to medical certificates.

## **10. Notification and Recording of Sick Leave**

10.1 Any employee who is absent due to illness must notify, or make suitable arrangements to notify the employer as early as possible on the first day of the absence. The employee should, where possible, indicate the likely duration of the absence.

10.2 Employers are required to have procedures in place to monitor and analyse patterns of sick leave.

10.3 A detailed statement of all sick leave absences should be supplied to each employee on request or at least one report should be produced annually.

## **11. Sick Leave Related Overpayments**

11.1 Where an overpayment of salary arises, for example, as a result of the late recording of sick leave absences, such overpayment will be recouped from the employee's future salary payment.



## **12. Referral of an employee to an Occupational Health Physician (OHP)**

- 12.1 The employer has a duty under Section 8 of the Safety, Health and Welfare at Work Act 2005 to “ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees”. The employer must therefore refer an employee to an OHP, for the purpose of an independent assessment, where reasonable concerns exist as to the capacity of the employee to undertake his/her duties in a manner that is safe for both the employee and the employer. It is a requirement of the sick leave scheme that all employees abide by the medical assessment of an OHP.
- 12.2 The employee is required to co-operate and engage with an OHP. While many assessments will not require attendance, it is a matter for an OHP to decide in what circumstances an employee may be required to attend for medical assessment and/or arrange for the transmission to the OHP (by the employee’s attending doctor) of a comprehensive doctor-to-doctor report.

## **13. Resumption of Duty**

- 13.1 It is expected that an employee would be medically fit to resume full duties after a period of sick leave so that a resumption of duty would not induce a relapse into illness.
- 13.2 An employee intending to resume duty prior to the date specified on her/his medical certificate, must provide a medical certificate of fitness from his/her attending doctor before the date of resumption. In the absence of such a certificate, the full period as recorded on the medical certificate(s) will be counted as sick leave. Certificates of fitness furnished at a later date will not be accepted as evidence of fitness for duty.
- 13.3 Prior to resumption of duties, an employee who is absent on paid sick leave for 4 or more continuous weeks, or absent for any period of TRR/unpaid sick leave or a shorter period where the employer has reasonable grounds for concern must submit medical certification of fitness for duties. Confirmation of fitness to return to duties must also be obtained by the employer from an OHP.
- 13.4 Where an employee is absent on sick leave and has not returned to duty for a reasonable period before and after a period of closure, the employee will be deemed to be on sick leave for the whole duration unless:
- the employee provides a medical certificate of fitness to resume full duties prior to or during a period of closure and
  - the advice of an OHP as to the employee’s fitness for full duties has been obtained as to whether the closure period or any part thereof might be discounted and
  - an OHP has deemed the period of return to duty to be reasonable taking into account the medical circumstances in individual cases.

#### **14. Maternity Related Illness Provisions**

- 14.1 The Public Service Management (Sick Leave) Regulations 2014, SI 124 of 2014, set out the provisions which relate to the interaction of pregnancy related illness with sick leave limits. The Regulations set out how the time on half pay due to pregnancy related illness is protected.
- 14.2 If a pregnant employee is medically unfit for work due to a pregnancy related illness and has exhausted sick leave at half pay she will continue to receive sick leave at half pay for the duration of her pregnancy-related illness, prior to going on maternity leave. This is regardless of whether she has reached the maximum limit for half pay due to prior sick leave.
- 14.3 If an employee is unfit for work following maternity leave, her access to sick leave at half-pay will be extended by the period of absence on sick leave at half pay due to pregnancy-related illness, which occurred before she went on maternity leave.

#### **15. Salary Adjustment**

- 15.1 In cases where, prior to resumption of duty, entitlement to salary has been exhausted, salary will be restored only from the date that an OHP deems the employee fit to resume full duties. This is also conditional on an employee actually resuming duty on the first possible day following an OHP's certification.
- 15.2 Any action which necessitates an adjustment to an employee's salary should be notified to the Employer's payroll section immediately.

#### **16. Annual Leave/Public Holiday Entitlement**

- 16.1 Any entitlements in respect of public holidays occurring while on sick leave will be addressed by additional annual leave.
- 16.2 These annual leave entitlements are to be taken within the current leave year in question i.e. after the sick leave period. Annual leave entitlements are to be taken at a time outside of the period of sick leave.
- 16.3 When absent on sick leave and it is not possible in the leave year to absorb all annual leave entitlements, it is permitted to carry the balance forward to the following leave year.
- 16.4 Employees who resign/retire or whose employment ceases may be entitled to additional payment in lieu of their accrued leave.

## **17. Status during Leave**

- 17.1 Absences on paid sick leave (full or half pay) are fully reckonable for all purposes. Absences on temporary rehabilitation remuneration (TRR) are not reckonable for superannuation and increment purposes.

## **18. PRSI Arrangements**

- 18.1 In the case of Class A PRSI contributors, the MC1 Social Welfare Certificate must be submitted by the employee to the payroll section of the employer after a period of 6 consecutive days of sick leave for referral to the Department of Social Protection. This is required for compliance with PRSI regulations.

## **19. Retirement on ill health grounds**

- 19.1 An employee deemed medically unfit to work, and who is a member of a Public Service Pension scheme, in the longer term may be entitled to certain pension benefits under the relevant pension scheme rules.

## **20. Employees on leave of absence in excess of two full years**

- 20.1 An employee who has been on long term leave of absence of any kind in excess of two full years will be required, prior to return, to undergo a medical assessment and be deemed medically fit by an OHP.

## **21. Correspondence Address**

- 21.1 The employer will address all necessary correspondence to the employee at the e-mail/home address last notified and no fault shall lie with the employer in the event that the employee does not receive such correspondence. Any information which the employee provides will not be made available to any third parties and will be used only in line with the purpose for which it was provided.

## **22. Compliance**

- 22.1 All employees/employers must adhere to the regulations and procedures set out in this circular. Failure to abide with the regulations and procedures will be dealt with under the agreed disciplinary procedures and may lead to the cessation of salary.
- 22.2 The employer should carry out regular examinations of sick leave records. All documentation relating to sick leave (e.g. medical certification, occupational health referrals, other supporting documentation) must be retained by the employer with the relevant personnel records.

## **23. Further Information**

- 23.1 Statutory Instrument 124 of 2014 Regulations is available at the following web address: <http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0124.pdf>

## Appendix A – Worked Examples

### Scenario 1 – Ordinary Illness

Sean's sick leave record is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 May 11	23 May 11	12 days	Certified Illness
01 Sep 12	16 Nov 12	77 days	Certified Illness
	<b>TOTAL</b>	<b>89 days</b>	

Sean goes on certified sick leave from the 01 Oct 2014 to 08 Oct 2014 (8 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Sean will be paid full pay for the 8 days. Using the dual look back, in the one year review of the sick leave record back to 02 Oct 2013 there has been no sick leave. Therefore he is entitled to 8 days on full pay.

### Scenario 2 – Ordinary Illness

Ann's sick leave record is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
10 Nov 10	22 Dec 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	02 Jul 12	124 days	Certified Illness
	<b>TOTAL</b>	<b>182 days</b>	

Ann goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was not reached
- Looking back over 1 year – 92 days sick leave was not reached

Ann will be paid full pay for 1 day. Using the dual look back, Ann has already had 182 days in the rolling 4 year period. Therefore she has 1 day of paid sick leave remaining. As she has not had any sick leave in the 12 months to 1 September 2014, she has access to full pay for that day. If Ann fulfils the criteria for TRR, the remaining 30 days would be paid at that rate.

### **Scenario 3 - Ordinary Illness**

Joe's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
10 Nov 10	22 Dec 10	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	04 Jul 12	126 days	Certified Illness
	<b>TOTAL</b>	<b>184 days</b>	

Joe goes on certified sick leave from the 01 Oct 2014 to 31 Oct 2014 (31 days).

- Looking back over 4 years – 183 days sick leave was reached
- As the limit of 183 days is exceeded in the rolling 4 year period, Joe may be paid TRR if he fulfils the criteria.

### **Scenario 4 – Critical Illness**

Marie's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 Nov 11	23 Nov 11	12 days	Certified Illness
01 Dec 12	15 Dec 12	15 days	Certified Illness
	<b>TOTAL</b>	<b>27 days</b>	

Marie goes on certified sick leave from the 01 October 2014 to 30 March 2015 (181 days).

Marie submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

Marie will be paid full pay for the 181 days as the dual look back limits in the case of critical illness are 365 days to determine whether she has access to paid sick leave and 183 days to determine the rate of pay.

**Scenario 5 – Critical Illness**

John's sick leave is as follows:

<b>From</b>	<b>To</b>	<b>No of days</b>	<b>Details</b>
12 May 11	23 June 11	43 days	Certified Illness
01 Dec 11	15 Dec 11	15 days	Certified Illness
01 Mar 12	20 Jun 12	112 days	Certified Illness
	<b>TOTAL</b>	<b>170 days</b>	

John goes on certified sick leave from the 01 Oct 2014 to 30 April 2015 (212 days). John submits an application for critical illness which is approved.

- Looking back over 4 years – 365 days sick leave was not reached
- Looking back over 1 year – 183 days sick leave was not reached

John has already had 170 days prior to commencement of this leave in the rolling 4 year period but has had no sick leave in the rolling 1 year back to 2 Oct 2013. Therefore he will be paid 183 days on full pay. This brings the total sick leave to 353 days in 4 years. He will then have the remaining 12 days at half pay and, if eligible the final 17 days at TRR.

## **CRITICAL ILLNESS PROTOCOL**

### **Appendix B**

#### ***1. INTRODUCTION***

1.1 It is recognised that public service bodies, as employers, need to continue to provide support for their employees who may be incapacitated as a result of critical illness or serious physical injury. Therefore when an individual becomes incapacitated as a result of critical illness or serious physical injury, and has supporting medical evidence for an extended period of sick leave, the individual may, on an exceptional basis, be granted paid sick leave extended as follows:

- A maximum of 183 days on full pay in the previous rolling one-year period
- Followed by a maximum of 182 days on half pay in the previous rolling one-year period
- Subject to a maximum of 365 days paid sick leave in the previous rolling four-year period.

1.2 The granting of exceptional extended paid sick leave is a decision of management having considered the occupational medical advice.

1.3 These arrangements will exclude individuals whose illness relates to an occupational injury/illness and who have access to an occupational injury/illness scheme.

#### ***2. CRITERIA FOR AWARD OF EXTENDED PAID SICK LEAVE***

2.1 In determining whether an individual may be granted access to exceptional extended paid sick leave the following criteria apply:

- 2.1.1 The employee should ordinarily be under the current or recent clinical care of a consultant either as an inpatient or outpatient. This excludes employees attending primarily for report preparation or medico legal purposes.
- 2.1.2 The case must be referred by the employer to its Occupational Health Service for medical advice.
- 2.1.3 The responsibility lies with the employee to furnish any treating doctor's medical reports requested within an appropriate time-frame to avail of the exceptional extended paid sick leave. A treating consultant's specialism must be appropriate to the critical illness for which the employee is making a claim.
- 2.1.4 The Occupational Physician, from the employer's Occupational Health Service, will advise whether, in their opinion, the following criteria are met:
- i. The employee is medically unfit to return to his or her current duties or (where practicable) modified duties in the same pay grade
  - ii. The nature of this medical condition has **at least one** of the following characteristics:
    - (a) Acute life threatening physical illness
    - (b) Chronic progressive illness, with well-established potential to reduce life expectancy<sup>1</sup>
    - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
    - (d) In-patient hospital care of two consecutive weeks or greater<sup>2</sup>.
- 2.1.5 The Occupational Physician will consider the information provided by the treating doctor, and may confer with them with consent if they feel this would be helpful. It is not an absolute requirement that a definitive final diagnosis has been made. The Occupational Physician may accept a presumptive diagnosis on a case by case basis.

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<sup>1</sup> In circumstances where there is no medical intervention.

<sup>2</sup> In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of two consecutive weeks will be reduced to two or more consecutive days of in-patient hospital / clinic care.



### **3      *DECISION TO AWARD***

3.1 The decision on whether to award extended paid sick leave is a management decision having consulted with the relevant line manager. Whilst management must primarily consider the Occupational Medical advice, management should consider all the circumstances of the case.

3.2 Thus, although an employee may not meet the medical criteria outlined above, management may still make a decision to award in exceptional circumstances.

3.3 In exercising this discretion management must demonstrate the reasons why they are awarding an extended period of paid sick leave although the individual does not meet the requirements set out at 2.1.4(ii) above. In this regard management should in particular consider the following:-

- the individual's sick leave record;
- the potential impact of an early return on the workplace efficiency and effectiveness;
- it has not been possible to make an accommodation to facilitate the return to work of a person with a disability-related illness or condition.<sup>3</sup>

Management should also confer with the Occupational Physician in such cases.

### **4      *APPEAL OF THE MEDICAL DECISION***

4.1 The advice of the Occupational Physician may be appealed to a single appeal Specialist Occupational Physician. This appeal will ordinarily be a file only review.

4.2 In the case of an appeal to a single Specialist Occupational Physician, an individual may arrange to meet with the Specialist Occupational Physician.

4.3 The final decision on any appeal lies with the employer, having considered the medical advice.

### **5      *APPEAL OF THE MANAGEMENT DECISION***

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<sup>3</sup> Management are required in the case of an employee with a disability-related illness take all reasonable steps in terms of making an accommodation to facilitate the employee's return to work consistent with, for example, specialist occupational health advice and service requirements.

5.1 The mechanism for appeal of the management decision will be in line with the relevant Grievance Procedure applicable to the employee's grade.

5.2 Should there be a delay<sup>4</sup> in the employer referring an employee to the Occupational Health Physician, or a delay<sup>5</sup> in being seen by this Occupational Health Physician, there will be no financial loss to the employee if they are later awarded the exceptional extended paid sick leave. Where, in these circumstances, an employee moves on to half pay and it is later found that access to exceptional extended paid sick leave should have been granted, pay will be restored appropriately.

## **6 RETURN TO WORK**

6.1 There will be no financial loss to an employee in circumstances where the employee has fully engaged with the process around the management of sick leave and their own consultant has certified fitness to return to work, but the employee has not been able to return to work because there is a delay in the employer referring the employee to the Occupational Health Physician, or a delay in being seen by this Occupational Health Physician. Pay will be restored appropriately.

## **7 TEMPORARY REHABILITATION REMUNERATION**

7.1 In advance of the termination of the payment of Temporary Rehabilitation Remuneration (TRR), following payment of paid sick leave and TRR for a period not exceeding two years, local management shall secure expert specialist occupational health advice on whether there is any reasonable prospect of the employee returning to work within a foreseeable timeframe. Where a reasonable prospect of return to work is confirmed by the Occupational Health Specialist the payment of TRR may be continued subject to review at six-monthly intervals for a further period not exceeding two years.

## **8 REVIEW OF THE OPERATION OF THE PROTOCOL**

8.1 There will be a review of the operation of this protocol following 1 full year after its introduction.

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<sup>4</sup> Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

<sup>5</sup> Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.

