Appendix 3: CRITICAL ILLNESS PROTOCOL

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\(^1\)
(c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment
(d) In-patient hospital care of two consecutive weeks or greater\(^2\).

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.

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.\(^3\)

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 either a single appeal Specialist Occupational Physician or a panel of Specialist Occupational Physicians. This can be decided on a sector by sector basis as to which is the most appropriate approach. 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 on the basis of an appropriate cost sharing arrangement to be determined within each sector.

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

5 **APPEAL OF THE MANAGEMENT DECISION**

5.1 The mechanism for appeal of the management decision will be decided on a sector by sector basis with access given to those appeal mechanisms which are already in place in each sector. For example, the management decision may be appealed using the Grievance Procedure in the Civil Service.

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\(^1\) In circumstances where there is no medical intervention.
\(^2\) 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.
\(^3\) 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.
5.2 Should there be a delay\(^3\) in the employer referring an employee to the Occupational Health Service of the organisation, or a delay\(^4\) in being seen by this Occupational Health Service, 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 Service of the organisation, or a delay in being seen by this Occupational Health Service. 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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\(^3\) Where the delay is of a duration in excess of the period of time currently allowed for a referral to an Occupational Physician.

\(^4\) Where the delay is of a duration in excess of the normal waiting time to be seen by an Occupational Physician.
Definitions

Current or recent Clinical Care
This means that the employee has received medical investigations and treatment ordinarily under the direct care / supervision of a hospital consultant. They may be either a hospital inpatient or outpatient. It excludes referrals that in the opinion of the Occupational Physician are primarily for report preparation purposes/medico-legal purposes.

Hospital Consultant
This is a medical doctor who is on the relevant specialist register, and holds a HSE / Voluntary Hospital / NHS hospital consultant appointment or has admission rights to a recognised private hospital.

Occupational Physician
This is a medical doctor registered with the Irish Medical Council who has a postgraduate qualification in Occupational Medicine / Occupational Health, or who is on a specialist training scheme in Occupational Medicine.

Specialist Occupational Physician
This is a medical doctor registered with the Irish Medical Council in the specialist division of Occupational Medicine.

Limitation of Life Expectancy
This refers to the condition and not the individual person. It must be well established in the peer reviewed medical literature that the medical condition results in a reduction of life expectancy.