

Citizens Information Board Response to a Public Consultation Questionnaire on the introduction of a Statutory Sick Pay Scheme in Ireland – December 2020

The purpose of this consultation is to seek views on what form a statutory sick pay scheme should take in Ireland.

The background to this initiative is set out in this consultation paper with an opportunity to provide your views on important issues related to the scheme, including the appropriate minimum rate of payment, the minimum duration the scheme should cover, eligibility requirements, waiting days, supports for employers and reintegration programmes for people recovering from illness.

Question 1: Minimum rate of payment

What is a suitable and appropriate minimum rate of payment?

The introduction of statutory sick pay will require regulation around the rate that an employer pays his or her employees under the scheme. Options to consider in this regard include:

- **A fixed minimum rate of payment that would apply to employees.**
- **A fixed percentage of an employee's weekly earnings. The same percentage rate would be fixed for all employees, but the actual rate of payment received would then vary based on an employee's earnings. (Amongst EU member states who use this system the percentage can range from 25-100%)**
- **A payment rate based on the current illness benefit rates, potentially with increases for adult or child dependents.**
- **A payment rate that is tapered in line with different income bands.**

At the outset, the Citizens Information Board (CIB) wishes to state that there needs to be absolute clarity about what is meant by Statutory Sick Pay. In responding to this consultation, we understand Statutory Sick Pay (SSP) to refer to the minimum amount of money mandated by Government that an employer should pay a person who is too ill to work. Such a payment would be separate from and additional to any social welfare Illness Benefit payment.

CIB identifies a number of inter-related factors which will need to be taken into account in determining the minimum rate of payment as follows:

- People who have to be off work due to illness should receive an income which is adequate to meet the costs of daily living and any additional costs associated with their illness, irrespective of the source of such income.
- There would need to be full integration between the Illness Benefit system and Statutory Sick Pay payable by employers.

- It is critical that lower-paid employees in precarious work do not feel pressurised to work while ill in order to avoid loss of income -- many users of CIB delivery services (Citizens Information Services (CISs) and MABS - Money Advice and Budgeting Service work in precarious and low-paid employment.
- The extent to which employers who have difficulty paying SSP should be subsidised by the State and the criteria for so doing will be important considerations in determining the minimum level of SSP to be paid by employers.
- The duration of SSP (see Answer to Question 2 below) will be an important factor in determining the amount to be paid by employers.
- While maintaining current levels of earnings in sick pay provision is relevant to some extent, a more important consideration is the need to ensure that people have an adequate replacement income, e.g., comparable to the €350 per week Covid-19 payment.
- A critical question for Government is the extent to which sick payments (employer and social welfare combined) should reflect existing pay differentials or whether the principle that all workers who are ill should have sufficient income to live on and can afford to take time off when ill should be prioritised.
- It would be important to ensure that existing relatively generous sick pay arrangements paid by employers on a voluntary basis or as part of a collective bargaining agreement remain in place and are not undermined by any legislative provisions for lower rates of payment. It should also be noted that many employers are likely to have employment contracts that include more generous provisions for sick pay and sick leave than would be mandated by new legislation.
- It is also reasonable to suggest that the more workers earn the more likely they are to have access to paid sick leave and, of course, the converse of that, the less they earn, the less likely they are to currently have paid sick leave from their employer.
- The extent to which relatively generous sick pay provisions in the public sector and those associated with collective bargaining agreements should be replicated throughout the private sector is a matter that requires further discussion and analysis.
- The proportion of National Minimum Wage levels that should be covered by the SSP would be a relevant factor (see below).
- Other relevant factors in determining the minimum rate of payment would be whether or not it would be appropriate to make a distinction between those who could continue to work from home but would be unable to travel to work.
- The Covid-19 Enhanced Illness Benefit at €350 a week, while considerably more than the standard Illness Benefit rate, represents less than half the average private sector weekly wage and does not cover workers with illnesses other than Covid-19,

Minimum rate of payment

Because of the above factors, determining the minimum rate of SSP will not be straightforward. OECD data¹ shows that there are a wide range of provisions in other comparable countries. The average worker across Europe receives 65% of their salary as pay during a week of sick leave. For example, in Belgium, workers are entitled to 30 days at 100% of their wages and, in Germany, workers are entitled to six weeks at 100% of their wages. In Finland, the benefits range from nine days at 100% while in the Netherlands they include provision for two years at 70%. The UK has one of the lowest mandatory sick pay provisions (at £95.85 per week) among OECD countries as a proportion of the average worker's earnings and workers earning less than £120 per week are not entitled to any payment from employers.

In Ireland, under the Private Members Sick Leave and Parental Leave (Covid-19) Bill 2020, the rate of sick pay is proposed to be the same as the employee's earnings for a period of six weeks.

In arriving at a specific minimum rate, CIB believes that, notwithstanding the fact that many workers earn significantly more than the minimum wage, there would be much merit in benchmarking the level of income for people who are off work due to illness against the national minimum wage which in Ireland is currently €10.10 per hour – increasing to €10.20 on 1 Jan 2021. Taking an average work week as 40 hours long, income from national minimum wage work would be €404 per week. The €350 per week pandemic unemployment payment represent about 87% of national minimum wage income. It is reasonable to suggest that the aggregated minimum income from weekly SSP and Illness Benefit should not be less than this. Obviously employers who wish to and are in a position to pay more can do so.

Another useful benchmark could be the Living Wage defined as the required amount to maintain a Minimum Essential Standard of Living (MESL) and which has been calculated at €12.30 per hour for 2020.² This would come to €484 for a 40-hour week and a €350 payment would represent 80% of a living wage.

Taking all of the above factors into account, CIB is of the view that €350 would be an appropriate level of income for people who are ill which would be comprised of Illness Benefit (current maximum rate €203 per week) and employer SSP (€147). It is the CIB view that the level of Illness Benefit (currently €203 per week at the top rate) should remain constant irrespective of whether or not employers pay more than the statutory minimum SSP.

This approach would obviously require some alternative social welfare provision for those who do not qualify for Illness Benefit under current eligibility criteria. Specifically, there will be a need for comparable measures for the self-employed with particular reference to farmers, fishing communities and micro-entrepreneurs.

An alternative to a universal statutory minimum level of SSP to be paid by employers would be to have a service/industry specific approach which would require people on customer-facing roles to have the protection of increased SSP, e.g., people working in the home care home sector, to ensure that are able to take time off if they are unwell.

¹ https://read.oecd-ilibrary.org/view/?ref=134_134797-9iq&w1fnju&title=Paid-sick-leave-to-protect-income-health-and-jobs-through-the-COVID-19-crisis

² https://www.livingwage.ie/download/pdf/living_wage_2020_4_page_annual_paper.pdf

Question 2: Duration of payment

What duration of absence should be covered by statutory sick pay?

Under any SSP scheme, employees will be covered for a certain period of absence paid by the employer (in full or in part) followed by illness benefits paid by the social protection system. In other EU member States, statutory sick pay coverage ranges from 15 days or less to up to 2 years.

The intrinsic link between duration of sick pay and statutory minimum rates to be paid by employers is an important factor when considering the question of duration of payment and its potential impact on employers' finances. Some illnesses, e.g. Covid-19, could result in people having to take an extended period off work and require the hiring of a temporary replacement. According to the WHO, six weeks is the recovery time for a moderate to severe case of Covid-19. It is noted that the PUP payment here is for two weeks for a person who is a probable risk of infection and up to ten weeks for those diagnosed with Covid-19.

Also, centrally relevant will be the extent to which employers can reclaim SSP from the State (see answer to Question 7 below).

Looking at international practice, the maximum duration of sick pay is 5-15 days in most countries, but can be up to several weeks or months. For example, in Germany, workers are entitled to six weeks at 100% of their wages while in the Netherlands payment can be for up to two years at 70%. In the UK, SSP can be paid for up to 28 weeks but employees will only receive SSP for days that they are contracted to work. In Norway, SSP is for a full year while in Belgium, workers are entitled to 30 days at 100% of their wages. In France, workers who are off sick are paid for 60 to 90 days, with 90% for the first 30 days. In Finland, legislation compels the employer to pay nine days of full salary.

Illness Benefit is paid for a maximum of 2 years (624 payment days) if a person has at least 260 weeks of social insurance contributions commencing work or 1 year (312 payment days) if a person has between 104 and 259 weeks of social insurance contributions paid since they first started work.

It is worth referencing the fact that public service workers in Ireland are entitled to the following payments during absence from work due to illness or injury:

- A maximum of 92 days (13 weeks) on full pay in a rolling one-year period
- Followed by a maximum of 91 days (13 weeks) on half pay in a rolling one-year period
- Subject to a maximum of 183 days paid sick leave in a rolling four-year period

While clearly, these are relatively generous provisions and are indicative of the level of duration of payment that we should aspire to for all sectors, it may be unrealistic to seek to apply them to the private sector.

Question 3: Waiting days

Should there be a minimum period that the employee must be out sick before statutory sick pay applies?

Under the current Illness benefit system, Illness benefit is paid after a period of 6 days which are known as waiting days (the number of waiting days will be reduced to a period of 3 days from end February 2021 as part of measures introduced under Budget 2021)

People left without income for any period at all can encounter hardship. For example, feedback from Citizens Information Services and MABS has indicated that some applicants for Illness Benefit went into debt, rent arrears, incurred medical expenses and were unable to pay for household expenses as a result of waiting for their Illness Benefit to be paid. The impact was particularly severe on low income earners who were just above the Medical Card threshold and who had no savings.

There continues to be a significant proportion of people who can be defined as 'working poor', i.e., people with jobs who are in poverty. Low pay has been found to be most common among people working alone (self-employed), young workers, those in retail, hotels and security sectors, lone parents and those on temporary contracts. Many CIB delivery services clients are living in households that struggle financially, borrow for day to day living costs and experience poverty. CIB believes that paying employees from the first day of illness would be particularly important for low-paid employees.

SSP criteria in the UK require people to have been ill for at least 4 days in a row (including weekends). This would suggest that employers are not required to pay sick leave for the first four days.

The approach introduced for the Enhanced Illness Benefit (EIB) which eliminated waiting days for those who meet the eligibility requirements for this payment should become the target for payment of SSP.

Question 4: Certification of Illness

Should statutory sick pay only apply to illnesses that have been certified by a medical professional or medical body?

There is a clear need to ensure that workers do not feel compelled to go to work if they are unwell. The issue has come into sharp focus since the onset of the Covid-19 pandemic amid concerns that some workers fearing financial loss may continue to work and spread the virus because they cannot afford to quarantine.

The work environment should ideally operate on the premise that people are encouraged to take the time to recover when they are unwell. Workers should not be forced to or feel obliged to keep on working when they should be resting and recovering. In this regard, the level of trust that exists between employer and employee is highly important. In the UK, for example, many companies require employees to self-certify (i.e. to say that they are sick, but not necessarily go to

a doctor) for up to a week of illness. Beyond 7 days, a medical certificate is required.

It is noted that the application for Illness Benefit must include a 'certificate of incapacity to work' completed by a family doctor. A typical GP visit fee is between €30-€70 if a person does not have a Medical Card.

Regulation 7 (2) of the Conditions for Payment of Sick Pay in the Public Service states that for sick pay to be paid, a medical practitioner must certify in writing that the individual cannot attend work because of illness or injury; and that any communication made by or on behalf of the individual concerned must be genuine, made in good faith. Public Service Management (Sick Leave) Regulations <https://hr.per.gov.ie/wp-content/uploads/2020/04/Guide-to-the-Regulations.pdf>

As stated above, any days without income can be problematic for low income households. On that basis, it is reasonable to suggest that the system which prevails in the UK (the first week off work self-certified) is both pragmatic and fair as many illnesses will be of short duration.

Question 5: Length of service

Should an employee be required to have worked for an employer for a certain period before they are entitled to avail of statutory sick pay? (e.g. an employee would complete six months service before such an entitlement applies, or fully complete the probation period as specified under their employment contract)

Section 2 of the Private Members Sick Leave and Parental Leave (Covid-19) Bill 2020 provides for paid sick leave at the normal rate of pay after the first four weeks of employment. In the UK, there is no qualifying length of service or minimum number of hours a week.

Regulation 7 (3) of Conditions for Payment of Sick Pay in the Public Service states that where the individual is employed on a probationary or temporary basis, they may not be paid sick pay where that is the 'rule, practice or custom'.

CIB suggests that a 3-4 weeks period in the employment would seem to be a reasonable requirement. However, the length of service requirement must also be applied to casual and atypical workers.

Question 6: Earnings threshold

Should an employee have to satisfy a minimum earnings threshold to avail of statutory sick pay? Should any other eligibility requirements apply?

It is noted that in the UK, workers earning less than £120 per week do not receive SSP from their employer. The advantages of not having an earnings threshold in order to qualify for Enhanced Illness Benefit scheme are clear and should be replicated as far as possible for statutory sick pay provisions in the longer-term.

Question 7: Employer supports

Should financial supports be put in place for employers who genuinely can't afford to pay the rates of SSP? What is the best way to establish if employers genuinely can't afford to pay?

Any statutory requirement for employers to pay SSP must be balanced with the need to support the viability of businesses and the enterprise sector in order to protect jobs and keep as many people as possible in work. Provision is, therefore, required for temporarily lifting or reducing employer costs (through direct payments or tax credits) when employers are under financial stress. However, a balance has to be struck between enabling businesses to continue to operate while at the same time protecting the public purse.

In the Netherlands, employers are required to cover sick leave for up to two years with supports for small businesses that cannot afford to do so. In response to Covid-19 in the UK, employers with fewer than 250 employees are refunded their eligible SSP costs (limited to 14 days per employee) provided they meet certain specified criteria. The maximum amount which an eligible employer may receive as a refund in relation to a single employee is £191.70. The thinking behind this initiative is informative in developing a SSP support system in Ireland for small employers.

In determining the amount of financial support to be provided to employers by the State, there will be a need for full evaluation of the costs to employers with particular reference to small and medium sized enterprises related to Covid-19 and in the event of further downturns and recession. The prospect of a slow recovery in domestic consumer demand and decreased international demand, together with the overhang of costs and losses that arose during the pandemic to date will be factors.

The introduction of a statutory sick pay scheme must be balanced with the need to ensure the viability of businesses and protecting jobs. Therefore, a targeted and easy to access supports for employers who can demonstrate inability to afford statutory sick leave payments will be essential.

The following are identified by CIB as indicative measures that might be introduced in order to support employers:

- The refund is limited to two weeks per employee in cases where illness is not pandemic-related;
- Employers can reclaim expenditure for longer periods for any employee who has claimed SSP as a result of a pandemic;

- All employers with fewer than 200 employees are eligible;

The Employment Wage Subsidy Scheme (EWSS) recognises that businesses can experience operational difficulties and cash-flow problems. A similar approach to EWSS could be used to reimburse businesses experiencing difficulties with paying SSP. The EWSS requires that an employer must be able to demonstrate to Revenue that their business is expected to experience a 30% reduction in turnover. Unsustainable costs from having to pay SSP could be documented in a similar manner.

Question 8: Rehabilitation programmes

Should rehabilitation and reintegration programmes, for employees who have been absent due to long term illnesses, be introduced along with SSP?

According to the OECD, connecting workers quickly to occupational rehabilitation or employment services, as appropriate and necessary, will be critical to prevent long-term labour market exit of those among them unable to find new jobs.

In addition to sick leave payment which replaces income of individual workers who temporarily cannot work because of health-related reasons, there is a need to make provision for people who have to take long periods off work due to illness to enable them to re-establish connection with the labour force. This is particularly important for people who have to rely on a combination of temporary part-time work and social welfare payments. For some people, the reality is (as reported by CIB delivery services)³ that the most favourable financial option continues to be full-time social welfare payments particularly where the work available is only part-time, casual or activation scheme based or, in the case of some people with disabilities, the only work they are able to take on because of their disability. Transitioning back to work after a period of illness will almost certainly be more difficult for people in such situations who have to take time off work because of illness.

It is also the case that access to employment is particularly difficult for those who live in areas where there has been less employment, less economic development and where there are many issues associated with social exclusion. Again, people living in such areas will need additional support to get back to work after a period off due to illness. It is also important to acknowledge that for some people, getting a job in the first instance was significant in building (or re-building) their self-confidence and widening their options. The proactive support of people in such situations to re-engage with employment opportunities after a period of illness is crucial if there is not to be regression and additional marginalisation.

It is noted that a Temporary Rehabilitation Remuneration (TRR) can be paid to public servants who have exhausted access to sick leave at full and half pay and who are likely to be able to resume work.

³ See CIB Submission on Pathways to Work Strategy 2020-2024
https://www.citizensinformationboard.ie/downloads/social_policy/pathways_to_work.pdf

Any other comments:

Including all workers in a Statutory Sick Pay Scheme

Statutory sick pay can only be effective if it is widely available in all cases where workers have to be absent from work due to illness. A centrally important question not included explicitly in the list of consultation questions is the extent of SSP coverage, e.g., whether and how agency workers, casual workers, people working from home and self-employed people would be included as well as those on atypical work contracts. Equitable sick pay provisions for such groups will be essential.

OECD research shows that typically in many countries with SSP schemes, full-time and part-time work as well as permanent and temporary employees are covered. However, other groups of individuals in non-standard work, such as casual workers and zero-hour contract workers, tend to be excluded from paid sick leave. For example, zero-hour contract workers in the Netherlands (about 7% of all employees) are only eligible to sick pay for those hours they were called upon by their employer, including in the case of sickness due to COVID-19 or mandatory quarantine. Casual workers in Australia (about a quarter of all employees) remain excluded from sick pay. Expanding sick pay coverage to self-employed workers is particularly important in the context of a growing emphasis on entrepreneurship. During Covid-19, those who are self-employed are eligible for the Enhanced Illness Benefit which was an important example of a positive measure introduced during the pandemic in response to need. This clearly demonstrated the importance of having a comprehensive system in place for paid sick leave that encompasses different types of workers, including those who are self-employed, casual workers, those on temporary contracts. While this was introduced as a temporary measure, the underlying rationale should be retained in developing a new Statutory Sick Pay scheme.

There is a clear need for a full evaluation of the costs that a Statutory Sick Pay Scheme would place on employers, particularly micro, small and medium sized enterprises and what State supports will be required to make the statutory scheme operable and to ensure ongoing business viability.

A key question to be addressed in determining the criteria for a Statutory Sick Pay scheme is what would be the impact of placing the cost of SSP on employers at a time when many businesses are struggling to keep their doors open and their employees in jobs.

There will be need for further analysis of the links between Statutory Sick Pay and Illness Benefit with particular reference to those who do not currently meet the eligibility criteria for Illness Benefit. In order to qualify for Illness Benefit, a person must have at least 104 weeks of PRSI contributions paid since first beginning work and 39 weeks of PRSI contributions paid or credited in the relevant tax year, of which 13 must be **paid** contributions. Only PRSI contributions paid at class A, E, H and P count towards Illness Benefit which means that people who pay Class S contributions (most self-employed people) are excluded.

Therefore, mechanisms will be required to ensure that the minimum level of income during a period of illness (suggested above as €350) is to be achieved for those who do not qualify for IB under current provisions.

Why a Statutory Sick Pay Scheme is necessary

The Citizens Information highlighted the need for a Statutory Sick Pay Scheme in its 2021 Pre Budget Submission⁴ based on the experience of its information delivery services in supporting people access income supports⁵ including claims for Illness Benefit and supporting those who lost work or were sick during Covid-19.

- 1) Illness Benefit is a social insurance based provision and there are many workers who are not eligible – this will still remain the case after the waiting time is reduced from 6 days to 3 days and the promise to reduce it to 1/2 days.
- 2) Most low-income households cannot afford to be without income even for a very short period.
- 3) Reliance on income from Supplementary Welfare Allowance can be problematic because it is not always immediately accessible and there are relatively low levels of awareness and corresponding take up.
- 4) In order to qualify for Disability Allowance (DA), a person must have an injury, disease or physical or mental disability that has continued, or may be expected to continue, for at least one year. Also, many people who are sick may not wish to be identified as a person with a disability.

Enforcement

While some form of statutory sick pay is clearly necessary and in the interest of workers, we must ensure that the way in which such a scheme is introduced is proportional and that any legislative requirements are enforceable and monitored accordingly. There is evidence, as outlined in a recent CIB report, of failure by employers to implement existing employment protection legislation.⁶ For example, the report cites examples of people being dismissed after returning from sick leave if they had been employed for less than 12 months. It is imperative that Statutory Sick Pay legislation includes provision for strong enforcement mechanisms. CIB is of the view that, in order to protect both employers and employees, that it is particularly important that time off due to illness is always recorded and documented.

⁴ https://www.citizensinformationboard.ie/downloads/social_policy/submissions2020/cib-prebudget-sub-092020.pdf

⁵ Citizens Information Services dealt with over half a million callers in 2019 and over a million queries on all aspects of rights and entitlements to benefits and services.

⁶ Citizens Information Board, *Employment Rights that Work for All*, https://www.citizensinformationboard.ie/downloads/social_policy/socialpolicy-employment-rights-for-all.pdf