

Department of Public Expenditure and Reform

Frequently Asked Questions about the Critical Illness Protocol Managerial Discretion Guidelines and revised Protocol

CS HR Policy Division
February 27, 2018

Table of Contents

1. What are the Critical Illness Provisions?.....	3
2. What are the changes to the Critical illness Provisions?	3
3. What is new to the CIP process?	3
4. Where will the changes be set out?	4
5. When do the Changes to the CIP come into effect?	4
6. What is the Occupational Physician?	4
Critical Illness Protocol Managerial Discretion Guidelines FAQs	5
7. What are the Critical Illness Protocol Managerial Discretion Guidelines?	5
8. Where will the Guidelines be set out?	5
9. How does a person qualify for Critical Illness Provisions?.....	5
10. What is the role of the decision maker in the award of CIP?	5
11. When is Managerial Discretion to be used?	6
12. What are the three pillars of information to enable a reasonable Managerial..... Discretion Decision to be made?	6
13. What can I expect from the OHP report?	6
14. Informed Consent for Disclosure of Medical Information	6
Example of OHP Report	7
Example 1:	7
Example 2	7
15. I have received the Occupational Physician Report but more information is	8
needed on the recovery time, medical conditions and /or complications, or	8
The additional information supplied, should I contact the Occupational Physician?	8
16. What Factors are Relevant and Irrelevant when making a Decision?.....	9
17. What information should I seek from the individual?.....	9
18. What are the Appeals Mechanisms?	9
19. How should the person be informed of the Decision on the Award of CIP?	10
Critical Illness Protocol FAQs	11
<u>20. What are the Changes to the Critical Illness Protocol?</u>	11
21. What are the Changes to Medical Criteria?	11
22. What are the Other Changes to the Protocol – Revised Wording - Changes to..... the Advice on the Decision to Award?.....	12
23. How has the Protective Year Provision Changed?.....	12
24. How should Chronic Critical Illness’s be treated?	13

1. What are the Critical Illness Provisions?

If a public servant becomes seriously injured or critically ill, and has supporting medical evidence, they may be granted extended paid sick leave by their employer under the terms of the Critical Illness Protocol as follows:

- up to a maximum of 6 months (183 days) on full pay in a rolling 1 year period, followed by
- up to a maximum of 6 months (182 days) on half pay
- subject to a maximum of 1 year (365 days) in a rolling 4 year period.

2. What are the changes to the Critical illness Provisions?

1. The revised Critical Illness Protocol (CIP) itself has changed.
2. The Critical Illness Protocol Managerial Discretion Guidelines hereafter referred to as 'the Guidelines' have been made.
3. The CIP Protective Year has changed to begin on the **date of return to work** from the CIP absence instead of the previous way of being from the first date of absence.

3. What is new to the CIP process?

There are a number of new elements in the new CIP and process. These are as follows.

1. The Medical Criteria have been changed – For more information on new criteria see question:

Q21 - What are the Changes to Medical Criteria?

2. The wording of the Protocol on the 'Decision to Award' and what must be established by the decision maker have changed. For more information on this refer to the following questions:

Q22 - What are the Other Changes to the Protocol – Revised Wording - Changes to the advice on the decision to award?

3. The Protective Year will now commence from **the date of return to work** after an absence that was covered by the CIP. For more information on this see question:

Q23 - How has the Protective Year Provision changed?

4. The Occupational Physician's Report will contain extra information than previously as a matter of course. More information on this is contained in the question:

Q13 - What can I expect from the OHP Report?

4. Where will the changes be set out?

1. The revised Critical Illness Protocol (CIP) will be contained in a revised Sick Leave Circular that will be published on circulars.ie and on the DPER website. It will also be an Appendix to the Guidelines.
2. The Guidelines will be available to download from the DPER website and will be issued to all HR Managers to inform their own Departments about these changes.
3. The Change to the CIP Protective Year will also be contained in the revised Sick Leave Circular.

5. When do the Changes to the CIP come into effect?

All the new CIP Provisions come into effect on **31st March 2018**.

6. What is the Occupational Physician?

This refers to the Occupational Health Provider (OHP) appointed by the employer and in the case of the Civil Service this is the Office of the Chief Medical Officer (CMO).

Critical Illness Protocol Managerial Discretion Guidelines FAQs

7. What are the Critical Illness Protocol Managerial Discretion Guidelines?

These guidelines are designed to enable a decision maker to reach a reasonable and fair decision that takes into account all the relevant and appropriate factors. It guides managers and decision makers through the decision making process on the basis of fair procedures and reflecting legal advice on factors that need to be taken into account. It will enable a consistent approach in the decision making process.

8. Where will the Guidelines be set out?

The Guidelines will be available to download from the DPER website and will be issued to all HR Managers to inform their own Departments of these changes.

9. How does a person qualify for Critical Illness Provisions?

The CIP defines eligibility criteria for the granting of extended sick leave for critical illnesses. The decision to award CIP is made by the HR Manager following consultation with the Occupational Physician.

1. CIP on the basis of Medical Certification

The Medical criteria which must be met for extended leave to be granted are set out in the CIP.

2. CIP on the basis of Managerial Discretion

CIP extended leave may also be granted based on management's discretion where the medical criteria are not met.

The application form for CIP is available from the DPER website and this should be filled out by the applicant and given to the relevant HR contact. The applicant will then be referred to the Occupational Physician which is the Office of the Chief Medical Officer (CMO) for the Civil Service.

10. What is the role of the decision maker in the award of CIP?

The role of the HR manager/decision maker is to decide whether any exceptional circumstances warrant extended paid sick leave. This is determined by the decision maker after consideration of all the circumstances as set out in the Guidelines, including any information and advice provided by the Occupational Physician. The Occupational Physician will inform the decision maker if the any of the medical criteria have been met.

11. When is Managerial Discretion to be used?

The CIP sets out the medical criteria that are to be met for the award of CIP on the grounds of medical certification. If the medical criteria are not met this will be stated in the Occupational Physician's Report together with other relevant information about recovery times for the illness, injury or condition. The decision maker must then establish if there are any exceptional circumstances in relation to the illness or injury as set out in the guidelines and use discretion to decide on the award of CIP. The use of Managerial Discretion in the award of CIP was designed to allow flexibility and not strictly exclude cases that have not quite met the threshold on the basis of medical certification.

12. What are the three pillars of information to enable a reasonable Managerial Discretion Decision to be made?

When determining if there are "exceptional circumstances" which would warrant the award of CIP granted on the basis of Managerial Discretion, the Manager should consider the following three sources of information to inform the decision making process to award CIP.

- Occupational Physician's Report
- Relevant Information from the Individual and
- Relevant HR Information

13. What can I expect from the OHP report?

The Occupational Physician should provide additional medical information they are aware of and consider relevant, within the boundaries of medical confidentiality. Examples include:

- a) Standard recovery times for the condition based on Department of Employment and Social Protection Guidelines where these exist having regard to the nature of the work
- b) The presence of medical conditions that prolong standard recovery time
- c) The presence of medical complications that prolong standard recovery time
- d) Other information relevant to assisting your employer in making a decision if appropriate e.g. length of hospital stay, or delay in establishing diagnosis.

14. Informed Consent for Disclosure of Medical Information

The Occupational Physician which is the Office of the Chief Medical Officer (CMO) for the Civil Service has advised that in the case of a CIP application, information may be given to the decision maker on the general type of injury, illness or condition where, or if appropriate as part of the report, within the boundaries of patient confidentiality. The specific details of the illness, injury or condition will not be required and may not be appropriate in certain circumstances.

The CMO has advised that in the case of a CIP application, the Occupational Physician can only discuss the confidential medical aspects of the case where the applicant has given **informed consent** for this where necessary and where the Occupational Physician considers that this is

required. The applicant should be made aware that the decision maker can only act on the information available to them.

Example of OHP Report

Example 1:

A person requires a total Hip Replacement operation and works at an office based occupation. They also have well controlled Type 2 Diabetes.

The Occupational Physician's Report would be as follows:

General type of injury, illness or condition

Elective orthopaedic joint replacement surgery.

Q: Does this person meet any of the Medical Criteria for the award of CIP?

A: No

Further Information:

a) Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures)?

A. 10 weeks approximately

b) Presence of additional medical conditions where relevant that prolong recovery time?

A. No

c) Presence of medical complications where relevant that prolong recovery time?

A. No

d) Any other information they consider relevant to assisting management in making a decision to award extended sick pay under "Management Discretion" e.g. a hospital inpatient stay is close to the 10 day threshold?

A. This person will not be fit to return to duty and perform the kind of work they are engaged in for 10 weeks and would need this extended recovery time to return to full mobility.

Example 2

This person works in an office based employment and requires an elective abdominal hysterectomy. The person also has well controlled high blood pressure.

The Occupational Physician's Report would be as follows:

General type of injury, illness or condition

_Elective abdominal surgery

Q: Does this person meet any of the Medical Criteria for the award of CIP?

A: No

Further Information:

a) Standard recovery times for the condition where these exist having regard to the nature of the work (e.g. elective surgical procedures)?

A: 6-8 weeks approximately

b) Presence of additional medical conditions where relevant that prolong recovery time?

A: No This does not affect their recovery time

c) Presence of medical complications where relevant that prolong recovery time?

A: No

d) Any other information they consider relevant to assisting management in making a decision to award extended sick pay under Management Discretion" e.g. a hospital inpatient stay is close to the 10 day threshold?

A: No

15. I have received the Occupational Physician Report but more information is needed on the recovery time, medical conditions and /or complications, or The additional information supplied, should I contact the Occupational Physician?

Consider the information supplied carefully and if there are still outstanding questions and also bearing in mind the limits of medical confidentiality, it may occasionally be helpful for the Manager to liaise directly with the Occupational Physician.

16. What Factors are Relevant and Irrelevant when making a Decision?

The Guidelines set out the relevant information that should be taken into account when making the decision to award CIP.

The relevant factors are set out in the [Sick leave Regulations](#)¹, (Section 12(b), Sick Leave Provision for Critical Illness or Injury) which provide that in order to grant CIP on the basis of “exceptional circumstances” the following must be established:

- That there are “exceptional circumstances”;
- That those “exceptional circumstances” relate to the illness, injury or condition of the person and
- That those “exceptional circumstances” warrant the granting of the extended paid sick leave;

Other factors that are **not** relevant to the decision as they do not relate to the illness, injury or condition are set out in the Guidelines also i.e. the person’s financial position or the person’s performance at work.

The Manager should not consider the financial position of the public servant concerned or the person’s performance at work.

17. What information should I seek from the individual?

The Manager should consider whether further information may be required in relation to the individual and may wish to contact the public servant to make sure that they are aware of all of the circumstances that may amount to “exceptional circumstances” such as if the medical criteria are close to being met or consider the severity of the illness, injury or condition.

18. What are the Appeals Mechanisms?

There are two appeal mechanisms to the decision on the award of CIP.

1. APPEAL OF THE MEDICAL DECISION

2. APPEAL OF THE MANAGEMENT DECISION

These have not changed with the revised CIP, the details on the processes are contained in the CIP and the Guidelines.

¹ The Scheme is set out in the Public Service Management (Sick Leave) Regulations 2014 (S.I. 124 of 2014) and the Public Service Management (Sick Leave) (Amendment) Regulations 2015 (S.I. 384 of 2015), referred to as ‘the Regulations’ <http://www.irishstatutebook.ie/eli/2014/si/124/made/en/pdf>

19. How should the person be informed of the Decision on the Award of CIP?

As per the Guidelines, the person should be informed of the decision in writing and briefly what factors were considered. The person should also be informed of their Right to Appeal and the process for this.

Critical Illness Protocol FAQs

20. What are the Changes to the Critical Illness Protocol?

There are changes to the medical criteria that need to be met to qualify for the CIP on the basis of Medical Certification, when assessed by an Occupational Health Physician. For more information on this see question 21. What are the Changes to Medical Criteria?

There are also changes to the wording for the 'Decision to Award' for decision makers. For more information on this see question 22. What are the Other Changes to the Protocol – Revised Wording - Changes to the Advice on the Decision to Award?

21. What are the Changes to Medical Criteria?

The medical criteria are set out in the CIP and the Occupational Physician will advise if the nature of the illness have the characteristics of at least one of the criteria in a CIP application. There have been some changes to these medical criteria arising from the Review Process and these are as set out in the box below.



Revised wording of CIP Medical Criteria

- 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;
 - (c) Major physical trauma ordinarily requiring corrective acute operative surgical treatment;
 - (d) In-patient **or day hospital care of ten consecutive days** or greater(1) .

Footnote 1. In the case of pregnancy-related or assisted pregnancy-related illness, the requirement for hospitalisation of ten consecutive days will be reduced to two or more consecutive days of in-patient hospital / clinic care.

Previous wording of CIP Medical Criteria

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

Footnotes;

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.

- Previously there was a footnote that said ‘in circumstances where there is no medical intervention’ from criteria (b) ‘potential to reduce life expectancy’ and this has been removed in the revised medical criteria.
- The in-patient hospital care requirement has been reduced from 2 weeks to 10 consecutive days.
- The term ‘day hospital’ has been included to account for the fact that certain treatment facilities operate on this basis. The inclusion of term day hospital is to take account of this type of hospital care which is offered as an alternative in limited circumstances in the care of psychiatric disorders.

22. What are the Other Changes to the Protocol – Revised Wording - Changes to the Advice on the Decision to Award?

Criteria for ‘3. Decision to Award’ contained in the protocol were revised to reflect the changes in the approach to the use of management discretion contained in the Guidelines.

Revised Wording	Current Wording
<p>The “Regulations” provide that in order to grant CIP on the basis of “exceptional circumstances” the following must be established:</p> <p>That there are “exceptional circumstances”;</p> <p>That those "exceptional circumstances" relate to the illness, injury or condition of the person;</p> <p>That those "exceptional circumstances" warrant the granting of the extended paid sick leave; and</p> <p>Management should also confer with the Occupational Physician in such cases.</p>	<p>In this regard management should in particular consider the following:-</p> <p>the individual’s sick leave record;</p> <p>the potential impact of an early return on the workplace efficiency and effectiveness;</p> <p>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.</p> <p>That ‘Management should consider the potential impact of an early return on the workplace efficiency and effectiveness’.</p>

23. How has the Protective Year Provision Changed?

The ‘protective year’ was applied so that someone who had returned to work following CIP could avail of remaining CIP leave for subsequent non-critical illnesses/ injuries which occurred within one year of the **first date of absence**, due to the critical illness/injury for which CIP was granted.

This protective year period is being extended to begin **on the date of return** as this will enhance the support to those returning from a serious illness who may suffer from a routine illness in the following year.

Revised Protective Year Provision.

Within the 12 month period from the date of return to work after a civil servant suffers with a critical illness/ injury they can continue to access the extended sick pay limits normally given for critical illness/injury only (i.e. 365 days), even where they are not critically ill, provided that:

- the civil servant has previously been absent because of a critical illness/injury; and
- the civil servant suffers from a non-critical illness/injury during the 12 months following the **first day of the return to work following** a critical illness/injury absence.

24. How should Chronic Critical Illness's be treated?

Currently, the CIP is available for those who have a chronic condition or disease where the medical criteria are met and/or the characteristics of the illness are such that CIP is warranted under Management Discretion.

Prospective applicants should be encouraged to apply for CIP, and to do so in advance of sick pay thresholds being reached.

The CIP works on an annual basis, the limits are 365 days and CIP would expire after this period. In the case of chronic conditions, if the CIP is awarded for a year in all and after that period if it continues to be required then the situation would need to be assessed again to see if the condition(s) that led to the granting of the CIP are still valid. A further Occupational Health Physician referral would be required at this stage.