

# **DETE Statutory Sick Pay Scheme Consultation: Submission on behalf of ICTU**

**December 2020**

## Introduction

The Irish Congress of Trade Unions is pleased to accept the invitation to share our observations on the design and operation of a statutory sick pay scheme to be introduced by Q4 2021.

Congress is the umbrella body for 44 unions and the largest civil society organisation on the island of Ireland. We represent the interests of some 700,000 workers and their families in all sectors of the economy both in the Republic and Northern Ireland.

Congress has long advocated for concrete action to address the low levels of occupational sick pay coverage, and supports in principle the introduction of statutory sick pay as a significant step towards achieving this end.

Our recommendations in this paper aim to deliver a fit-for-purpose scheme, one which will improve working conditions and protect workers' health and incomes; replace the current voluntary approach to sick pay with a statutory obligation on employers to provide a minimum period of paid sick leave; and bring workers' right in Ireland into line with European norms.

The key design and operational features of the new statutory sick pay scheme for Congress can be categorised under a number of headings:

- I. Enshrined in the law
- II. Financing mechanism
- III. Sustainability
- IV. Eligibility conditions
- V. Rate of payment
- VI. Duration of payment
- VII. Waiting days
- VIII. Roll out period
- IX. Enforcement and monitoring

Given the quick turnaround for comments, this list and the issues raised below are preliminary.

## Context

The pandemic has widely exposed the failings in how we protect workers' income when an interruption to earnings occurs, the lack of statutory sick pay being one of the most glaring examples.

Ensuring workers are well at work is a basic health and safety issue. When workers are sick or injured they need workfree time to rest and recover. When an unwell worker stays home they reduce the spread of infection and the risk of workplace accidents. They protect others.

Almost all of the EU27 member states require employers to provide a minimum period of paid sick leave to workers. In the group of high-income European countries, of which Ireland is a member, the duration of statutory sick pay ranges from two weeks to two years, and typically replaces all or nearly all of the worker's wage.

With few exceptions, workers in Ireland have no legal right to paid sick leave.<sup>1</sup> Sick pay is at the employer's discretion to include in a contract of employment. As a result, hundreds of thousands of workers mainly in the private sector, including many of our low-paid essential workers, are not covered for paid sick leave and face being forced out of financial necessity to continue going to work unwell or to rely on the social protection system, if eligible.

Illness Benefit is onerous to access and inadequate for the majority of workers. Moreover, as the Social Insurance Fund starts funding sickness payments from the outset, the current arrangement exposes the Exchequer to greater liabilities than countries with a statutory sick pay scheme.<sup>2</sup> Each week of employer-funded statutory sick pay would reduce the draw on the SIF by €35 million<sup>3</sup>- money that should instead be spent funding other social benefits for workers.

At the same time as employers shift responsibility for paying their sick workers exclusively to the State through the Social Insurance Fund, their contributions into the Fund are markedly below employer's contributions in wealthy Western European countries. Raising employer taxes, including social contributions to comparator averages would have collected nearly €9 billion in additional receipts in 2018.

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<sup>1</sup> No more than 100,000 workers in Ireland currently have a legal right to sick pay via a SEO or ERO.

<sup>2</sup> (June 2012) IMF Country Report No. 12/147 p.24

<sup>3</sup> (June 2020) DEASP Ministerial Brief Part B p.40

The trade union movement has long recognised that our voluntary sick pay provision isn't working. However, it took a pandemic to bring the longstanding flaws in the current arrangement to wider attention, in particular the urgent need to introduce the emergency Enhanced Illness Benefit payment and the spread of the virus among meat factory workers denied paid sick leave by highly profitable employers.

On foot of our calls for legislation to make sick pay mandatory in the significant public reaction that followed<sup>4</sup>, Government has committed to introduce a statutory sick pay scheme by the end of 2021 and commenced engagement with the social partners through the Labour Employer Economic Forum on the design and operational features of the new scheme.

Congress agrees in principle with the DETE's ambition to introduce statutory sick pay by Q4 2021, seeing the potential of such a scheme to improve working conditions and protect workers' health and income; replace the current voluntary approach to sick pay with a statutory obligation on employers to provide a minimum period of paid sick leave; and to bring workers' rights in Ireland into line with European norms.

The key design and operational features of the new scheme for Congress are as follows:

### **Enshrined in law**

A statutory sick pay scheme will establish a legal entitlement for all workers to sick pay for a time-limited period during absence from work due to sickness or injury.

Statutory sick pay will act as a floor rather than a ceiling. That is, while legislation will guarantee workers paid sick leave for a minimum period, collective arrangements may provide considerably better terms than those enshrined in the law. For instance, in Finland, legislation compels the employer to pay nine days of full salary but through sectoral collective agreements workers usually receive sick pay for between one and three months.

Safeguards against levelling down and displacement of existing occupational sick pay schemes that are more favourable to workers must be included in the provisions for the statutory scheme.

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<sup>4</sup> A nationally representative poll of 1,200 voters found just under 9 in 10 (87 per cent) people believe workers in Ireland should have a legal right to sick pay (September 2020) Ireland Thinks monthly poll.

## Financing mechanism

The most fundamental policy feature to be decided on is how the cost of statutory sick pay is to be shared between employers and the State.

It is common practice in European countries with a statutory sick pay scheme for employers to be responsible for the continued payment of the worker's wage, in full or in part, during the initial period of sickness. If the sickness lasts longer than the statutory sick pay entitlement, sickness benefit is then payable by the State from the health insurance scheme/ social insurance funds.

However, in France for example, the employer is responsible for paying only the difference between the worker's wage and the amount of the sickness benefit, similar to how voluntary occupational sick pay schemes are financed here. Equally, but less generous, employers covered by Employment Regulation Orders are only required to pay 20 per cent of the weekly wage (contract cleaning services) or a flat €120 per week (security services) on top of Illness Benefit. The Construction Workers Scheme pays at a daily rate of €44 on top of Illness Benefit.

Congress recommends the new statutory sick pay scheme should follow the EU practice of a double payment agreement, with employers paying for an initial period of absence followed by benefits paid from the Social Insurance Fund for the duration of sick leave. We further recommend the financial mechanism decided on must be designed to ensure the long-term sustainability of the statutory sick pay scheme, the Social Insurance Fund and existing voluntary sick pay schemes.

## Sustainability

Congress notes the merits in financial support measures for micro businesses, for sectors with above average rates of sickness, and for when there is a genuine inability to pay.

In the Netherlands, for example, an employer's sick pay insurance and a reimbursement fund from government are available to assist businesses meet their financial obligations and administrative requirements towards a sick worker.

The conditions and procedures for assessing an employer's inability to pay due to financial difficulty are already set out in the National Minimum Wage Act 2000.

## Eligibility conditions

Congress opposes the inclusion of a minimum length of service condition and earnings threshold to qualify.

A qualification period of unbroken services with an employer or in a sector will leave large numbers of the workforce without statutory sick pay cover, in particular seasonal workers and others, mostly vulnerable and low-paid workers, in insecure employment. It will also make workers reluctant to change jobs, thus stalling labour force mobility, while also creating a perverse incentive for employers to dismiss workers before they come into qualification.

The UK scheme includes a lower earnings limit to qualify.<sup>5</sup> Analysis conducted by our sister organisation, the TUC shows around one in ten women employees are not entitled to statutory sick pay due to this threshold.<sup>6</sup>

Congress recommends there be no lower earnings threshold as a feature of an Irish statutory sick pay scheme to ensure that the large share of workers working part-time, those with multiple low-paid jobs, and on non-standard contracts will be covered. On the employer side, it avoids creating an incentive to keep wages below the threshold so as not to incur the cost of their sick pay obligation.

If the new scheme is to succeed in shifting how sick pay is viewed in Ireland (a discretionary benefit) to how it is viewed across Europe (a normal part of the worker's compensation package) it must extend the legal right to sick pay to all workers.

## Rate of payment

In most European countries, statutory sick pay is calculated as a percentage of the worker's gross wage.

In contrast, in the UK scheme the income replacement level is around 20 per cent of the national average full-time wage (£94.25). A report by the European Committee of Social Rights (ECSR) has

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<sup>5</sup> In the UK, to qualify for statutory sick pay a worker's average weekly earnings over the previous eight weeks must be at least £118 a week.

<sup>6</sup> TUC (September 2020) Sick pay for all p.4

declared that statutory sick pay in the UK is “manifestly inadequate” in terms of the protection it offers workers during a sickness absence.<sup>7</sup>

A low wage replacement makes it more likely that some workers will be forced by financial necessity to continue to attend work unwell, undermining a key policy objective of the scheme. Therefore, Congress recommends the new scheme fully protects workers from any reduction in income during a temporary absence from work due to sickness or injury.

## Duration of payment

EU27 Member States with a statutory sick pay scheme can be divided into two groups, based on duration (see Table 1). In the first group, employers are required to continue payment of a worker’s wage for up to two weeks during a period of illness. Employers can voluntarily or by way of collective agreement provide additional paid sick leave. In the second group, the legal obligation period is for several weeks or months and up to two years in the Netherland.

**Table 1: Duration of statutory sick pay in the EU27**

Shorter than two weeks	LT, SE, BG, EE, RO, SK, LV, ES, CZ, HU
Longer than two weeks – up to two years	SI, FI, BE, PL, DE, HR, LU, AT, MT, FR, NL

The UK scheme requires employers to provide sick pay up to 28 weeks (paid at a flat 20 per cent of the national average full-time wage).

During the bailout, in 2012, the IMF “encouraged reforming sick leave policies by requiring employers to pay for the first two to four weeks of illness.”<sup>8</sup>

Congress will require clarification on how the cost of the new scheme is to be shared between employers and the State and the payment rate before taking a position on the duration of sick pay in the new scheme.

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<sup>7</sup> (January 2018) European Committee of Social Rights: Conclusions XXI-2 (2017) p.188

<sup>8</sup> (June 2012) IMF Country Report No. 12/147 p.24

Congress further recommends the entitlement is not limited to a total period in any year, as workers will face the risk of falling out of coverage towards the second half of the year.

## **Waiting Days**

The period of time between the onset of illness and the onset of sick pay, known as waiting days, varies from one to seven days and lasts on average three days in European statutory sick pay schemes.

Waiting days leave workers, especially those on low incomes, at risk of financial hardship and makes it more likely that some will continue to attend work unwell, undermining a key policy objective of the scheme. Also, rules around waiting and qualifying days in accessing sick pay adds to the administrative burden for employers and can be complex to understand for workers who do not work set days and hours.

Congress recommends no waiting days for statutory sick pay so as to ensure that it is available for shorter absences due to illness and to simplify the scheme for both workers and employers.

## **Roll out period**

Congress does not underestimate the scale of the economic fallout from Covid-19 and is acutely conscious of the significant challenges facing some businesses.

Congress views the DETE's proposal for a gradual introduction of the scheme, starting with a modest scheme that is improved on over time, as warranted in principle. Nonetheless, Congress recommends the pace of the introduction of the full scheme should not be unduly prolonged, as businesses with a genuine inability to pay can be supported in meeting their obligation through the support mechanisms discussed earlier.

## Enforcement and monitoring

Congress recommends effective enforcement mechanisms and an unambiguous definition of 'worker/ employee' in the drafting of the legislation to minimising the risk of the fraudulent misclassification of workers as self-employed, and to ensure that workers get their intended entitlement.

## Summary and Conclusion

Congress agrees in principle with the introduction of a statutory sick pay scheme as a means for improving working conditions and protecting workers' health and income; replacing the current voluntary approach to sick pay with a statutory obligation on employers to provide a minimum period of paid sick leave; and bringing workers' rights in Ireland more in line with European norms.

The key design and operational feature of the new scheme for Congress are as follows:

- I. Congress recommends safeguards against levelling down and displacement of existing occupational sick pay schemes that are more favourable to workers be included in the provisions for the new scheme.
- II. Congress recommends the new statutory sick pay scheme should follow the EU practice of a double payment agreement, with employers paying for an initial period of absence followed by benefits paid from the Social Insurance Fund for the duration of sick leave.
- III. Congress recommends the financial mechanism decided on must ultimately ensure the long-term sustainability of the statutory sick pay scheme, the Social Insurance Fund and existing voluntary sick pay schemes.
- IV. Congress notes the merits in including support measures for small businesses, for sectors with high rates of sickness, and for when there is a genuine inability to pay in the provisions for the new scheme.
- V. Congress rejects a minimum length of service condition to qualify.
- VI. Congress further rejects a lower earnings threshold to qualify.
- VII. Congress recommends no worker is left out of pocket during a temporary absence from work due to sickness or injury.

- VIII. Congress will require clarification on how the cost of the new scheme is to be shared between the employer and the State and the payment rate before taking a position on the duration of sick pay in the new scheme.
- IX. Congress recommends the entitlement is not limited to a total period in any year, as workers will face the risk of falling out of coverage towards the second half of the year.
- X. Congress recommends no waiting days for statutory sick pay so as to ensure that it is available for shorter absences due to illness and to simplify the scheme for both workers and employers.
- XI. Congress views the DETE's proposal for a gradual introduction of the scheme, starting with a modest scheme that is improved on over time, as warranted in principle.
- XII. Congress recommends effective enforcement mechanisms and an unambiguous definition of 'worker/employee' in the drafting of the legislation to ensure that workers get their intended entitlement.