



**To: Higher Education Sectoral Oversight Group (HESOG)**

Re: Amendments to the Public Service Sick Leave Regulations (S.I. 124/2014)

03/07/2023

Dear Colleague(s),

I am writing to advise you of six upcoming changes to the Public Service Sick Leave Scheme. These changes are taking place via legislative amendment of **S.I. 124/2014 *Public Service Management (Sick Leave) Regulations***. The amendments enact the recommendations that emerged from a review of the Scheme (which took place in 2015-16 in collaboration between D/PENDPR, management representatives from across the public service and trade union representatives) and from the associated Labour Court Recommendation (LCR21812).

As you will be aware, the main aims of the amendments are to enhance equity through standardisation, simplify arrangements and reduce the costly administrative burden, while continuing to provide high levels of protection for staff.

This document provides a guide to the areas of the Regulations that are being amended, detailing any relevant old provisions, the new (superseding) provisions, and a brief explanatory note.

Kind regards,

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Andrew Conlon  
Principal Officer  
External Staff Relations



## **Summary of Amendments**

- *The waiting period for payment of Temporary Rehabilitation Remuneration (TRR) after full and half rates of sick pay have been exhausted should be three days.*
- *The rate of TRR should be 37.5%.*
- *For the purposes of the 'look-back' full account should be taken of periods of benefit under TRR.*
- *Extend the 'look-back' only for breaks in service of six months or more.*
- *Commence the Protective Year under the Critical Illness Protocol on the date of return to work.*
- *Standardise the service requirement for TRR to two years for all staff and remove requirement for ill-health retirement eligibility.*

### **1. Amendment 1**

*Provide that the waiting period for payment of Temporary Rehabilitation Remuneration (TRR) after full and half rates of pay have been exhausted be three days.*

#### ***i. Old Regulation***

None – the amendment will insert a new provision.

#### ***ii. New Regulation***

The Principal Regulations are amended by the insertion of the following Regulation after Regulation 15:

“3-day waiting period

- 15A. (1) Subject to paragraph (2), where a relevant person would, but for this paragraph, be eligible for temporary rehabilitation remuneration in respect of a period of sick leave in accordance with this Part, the relevant person shall not be paid temporary rehabilitation remuneration for the first 3 days of the period of sick leave or, in a case in which the period concerned is less than 3 days, that period.
- (2) Paragraph (1) shall not apply where—
- (a) the relevant person’s entitlement to be paid sick leave has been exhausted as a result of the current period of sick leave, or
  - (b) the relevant person satisfies the conditions specified in Regulation 14(2), but is not entitled to the payment of sick leave remuneration as a result of the relevant person ceasing to have any further entitlement to be paid sick leave remuneration under Part 4 for the current period of sick leave.”

#### ***iii. Explanation of Amendment***



This new regulation gives effect to *Labour Court Recommendation 1* and *2016 Review Recommendation 4* that, where full and half rates of sick pay have already been exhausted, a waiting period should apply to each new instance of absence before Temporary Rehabilitation Remuneration (TRR) can be paid. The waiting period will be three days. Where a transition from full or half pay to TRR occurs within a continuous absence, or where the public servant is availing of the Critical Illness Protocol, the three-day wait will not apply.

Please note the following:

- The three-day count restarts with each discrete absence and is not cumulative.
- Regulation 2(3) remains unchanged in this context.

## **2. Amendment 2**

*Provide that the rate of TRR be 37.5% of remuneration.*

### ***i. Old Regulation: 6(2)***

“Such temporary rehabilitation remuneration shall be paid at the same rate as the rate at which an ill health retirement pension would be paid to the relevant person concerned if such a pension were to be granted to him or her.”

### ***ii. New Regulation***

Regulation 6 of the Principal Regulations is amended--

(a) In paragraph (1), by the substitution of the following subparagraph for subparagraph (a):

“(a) the relevant person concerned has given not less than 2 years’ service as a public servant, and”,

(b) by the substitution of the following paragraph for paragraph (2):

“(2) Subject to paragraphs (3) and (4), temporary rehabilitation remuneration shall be paid at the rate of 37.5 per cent of the whole amount of remuneration that would otherwise accrue to the relevant person concerned.”,

(c) by the insertion of the following paragraphs after paragraph (2) (as substituted in accordance with subparagraph (b):

“(3) This paragraph shall apply—

(a) until the date that is 5 years from the date on which the Public Service Management (Sick Leave) (Amendment) Regulations 2022 come into operation, and

(b) to a relevant person—

(i) who is employed by or holds an office or other position in a relevant employer, and



- (ii) where the rate at which an ill health retirement pension would be paid to the relevant person, if such a pension was granted to that person, is higher than the rate at which temporary rehabilitation remuneration would, but for this paragraph (3), be paid to that person.
- (4) Where paragraph (3) applies, temporary rehabilitation remuneration shall be paid at the same rate as the rate at which an ill health retirement pension would be paid to the relevant person concerned if such a pension were to be granted to the person.”.

### **iii. Explanation of Amendment**

This amendment gives effect to *Labour Court Recommendation 2* and *2016 Review Recommendation 2* that the rate of TRR should no longer be based on a public servant’s ill-health retirement benefit and instead be a flat rate of 37.5% of remuneration.

Where relevant, this payment will be inclusive of any Illness Benefit payable to the public servant.

For those public servants whose rate of TRR is greater than 37.5%, they will (should the circumstances arise) retain their current arrangements for a transitional period of five years from the date of implementation of this amendment. Whether a public servant qualifies for this transitional arrangement will be determined by self-selection/application for the higher rate.

### **3. Amendment 3**

*Provide that the look-back take account of all periods of sick leave at full pay, half pay, and TRR.*

#### ***i. Old Regulation: 10 and 13***

(10) “Notwithstanding anything in Regulation 9, but subject to Parts 4, 5 and 6, if, in the period of 4 years preceding the first day of the relevant person’s current period of sick leave, there has occurred a period of sick leave that is in excess of 183 days (being a period of 183 days in respect of which remuneration at the full rate or the half rate has been paid) no sick leave remuneration shall be paid in respect of that part of that sick leave that exceeds 183 days.”

*and*

(13) “Notwithstanding anything in Regulation 12, but subject to Parts 5 and 6, if, in the period of 4 years preceding the first day of the relevant person’s current period of sick leave, there has occurred a period of sick leave that is in excess of 365 days (being a period of 365 days in respect of which remuneration at the full rate or the half rate has been paid) no sick leave remuneration shall be paid in respect of that part of that sick leave that exceeds 365 days.”

#### ***ii. New Regulation***

Regulation 10 of the Principal Regulations is amended—

- (a) by the renumbering of the existing Regulation as paragraph (1) thereof,



- (b) by the substitution in that paragraph (1) of “(being a period of 183 days in respect of which sick leave remuneration, or temporary rehabilitation remuneration, or a combination of such remuneration, has been paid)” for “(being a period of 183 days in respect of which remuneration at the full rate or the half rate has been paid)”

Regulation 13 of the Principal Regulations is amended—

- (a) by the renumbering of the existing Regulation as paragraph (1) thereof,
- (b) by the substitution in that paragraph (1) of “(being a period of 365 days in respect of which sick leave remuneration, or temporary rehabilitation remuneration, or a combination of such remuneration, has been paid)” for “(being a period of 365 days in respect of which remuneration at the full rate or the half rate has been paid)”

### ***iii. Explanation of Amendment***

This amendment modifies the above two regulations in order to give effect to *Labour Court Recommendation 3* and *2016 Review Recommendation 10*, whereby the look-back calculation will include all relevant periods of sick leave on full pay and half pay and periods of TRR, or a combination of the aforementioned, unless specifically stated otherwise. Periods of sick leave at nil pay will not be included in the look-back.

## **4. Amendment 4**

*Provide that only qualifying breaks in service of six months or more extend the look-back.*

### ***i. Old Regulation***

None – the amendment will insert a new provision after Regulations 10 & 13 respectively.

### ***ii. New Regulation***

Regulations 10 and 13 of the Principal Regulations are amended by the insertion of the following paragraph after that paragraph (1):

- (2) A period that is—
  - (a) 6 months or greater,
  - (b) not reckonable as a period of service for the purposes of the calculation of the superannuation entitlements of the relevant person,
  - (c) unpaid, and
  - (d) not a period in respect of which annual leave accrues,

shall not be taken into account when calculating the period of 4 years referred to in paragraph (1).

### ***iii. Explanation of Amendment***



This new provision gives effect to *2016 Review Recommendation 11* by the addition of new regulation to provide that the look-back should be extended in circumstances only where a break in service is a) greater than six months, and b) fulfils all three of the following criteria:

- Is unpaid
- Does not reckon for pension purposes
- Does not accrue annual leave

Once the break in service satisfies all the above criteria, then the whole period of that leave extends the look-back, not just that part which exceeds the six-month threshold.

## **5. Amendment 5**

*Provide that the Protective Year in the Critical Illness Protocol (CIP) commences upon the date of the relevant person's return to work.*

### ***i. Old Regulation: 14(2)***

"The conditions referred to in paragraph (1) are—

- (a) a period of sick leave on the part of a relevant person occurs, being a period of sick leave that (by reason of the illness, injury or condition concerned falling within Regulation 12(1)) results in the application of this Part,
- and*
- (b) in the 12 months following the commencement of the foregoing period of sick leave, a period of sick leave, occasioned by a non-critical illness or injury, occurs on the part of the relevant person."

### ***ii. New Regulation***

Regulation 14 of the Principal Regulations is amended, in paragraph (2), by the substitution of the following subparagraph for subparagraph (b):

"(b) in the 12 months commencing on the date on which the relevant person recommences the person's duties following the period of sick leave referred to in paragraph (a), a period of sick leave, occasioned by a non-critical illness or injury, occurs on the part of the relevant person."

### ***iii. Explanation of Amendment***

This amendment gives effect to the *2016 Review Recommendation 7* that the Protective Year afforded under CIP should commence on the date of the person's return to work from the relevant absence, not the date on which the absence commences.

## **6. Amendment 6**

*Provide for a standardised service requirement of two years for all staff before accessing TRR.*

### ***i. Old Regulation: 6(1)***



“In any of the cases in which these Regulations provide that there may be paid remuneration expressed to be temporary rehabilitation remuneration, such remuneration may only be paid if—

- (a) the relevant person concerned has given not less than the minimum length of service that is required under the relevant enactment for the person to be eligible for the grant of an ill health retirement pension, and
- (b) there is a reasonable prospect, on the person’s part, of resumption of duty with ability to render regular and effective service.”

**ii. New Regulation**

Regulation 6 of the Principal Regulations is amended—

- (a) in paragraph (1), by the substitution of the following subparagraph for subparagraph (a):

“(a) the relevant person concerned has given not less than 2 years’ service as a public servant,

**iii. Explanation of Amendment**

This amendment gives effect to the *2016 Review Recommendation 3* to standardise the service requirement for accessing TRR to two years. This will replace the current arrangement which is dependent on membership of a relevant pension scheme and its associated vesting period. These two years are calendar years and are not affected by work-share patterns.