



An Roinn Coimirce Sóisialaí
Department of Social Protection

Report on measures to include long COVID in the Occupational Injuries Benefit Regulations

November 2023

Contents

1. Requirement for this Report.....	1
2. Occupational Injuries Benefit scheme	1
a. Legislation	1
b. Benefits available under the Occupational Injuries Benefit scheme.....	2
c. Recipients and expenditure	2
3. Financial supports available for employees who cannot work due to illness or disability 4	
a. Supports in respect of COVID-19 and long COVID.....	4
b. The Department of Social Protection’s long-term illness and disability-related payments in more detail.....	5
4. The potential prescription of COVID-19 or long COVID for the purposes of the Occupational Injuries Benefit scheme	6
a. Distinguishing the recognition of COVID-19 from long COVID.....	6
b. Recognition as occupational accident or as occupational illness.....	7
5. Adding the term “virological” and “bacteriological” to the definition of medical examination associated with Occupational Injuries Benefit scheme legislation.....	8
6. Conclusions and recommendation	9
a. Recognition of COVID-19 for the purposes of the Occupational Injuries Benefit scheme.....	9
b. Inclusion of the terms “virological” and “bacteriological” to Section 69 of the Social Welfare Consolidation Act of 2005.....	10

1. Requirement for this Report

The Minister for Social Protection made a commitment at Committee Stage of the Social Welfare Bill 2022 to prepare a report to be laid before both Houses of the Oireachtas on measures to include long COVID under the Social Welfare (Consolidated Occupational Injuries) Regulations 2007 (S.I. 102 of 2007) as provided for in Section 87 of the principal act, within 180 days of enactment of the Social Welfare Bill 2022. The Minister also committed to reviewing the possible inclusion of the terms “virological” and “bacteriological” in the definition of medical examination associated with Occupational Injuries Benefit in the context of the report.

The Department of Social Protection is responsible for the Occupational Injuries Benefit scheme. This is a compensation and income support scheme that covers workers in insurable employment who have the required number of Pay Related Social Insurance (PRSI) contributions. The Minister for Social Protection has the power to prescribe diseases under the scheme. COVID-19 and long COVID are not on this list of prescribed diseases.

2. Occupational Injuries Benefit scheme

a. Legislation

The Occupational Injuries Benefit scheme is managed and administered by the Department of Social Protection. It is a social insurance scheme financed from the Social Insurance Fund. It provides a range of benefits to people who were injured or acquired a disease at work, or who were injured travelling to or from work.

The legislation that governs the scheme is:

- Chapter 13 of the Social Welfare Consolidation Act of 2005 as amended;
- Social Welfare (Consolidated Occupational Injuries) Regulations of 2007 (Statutory Instrument 102 of 2007 as amended).

The Minister for Social Protection has the power to prescribe a disease under the Act.

Section 87 (2) of the Act states that a disease or injury shall be prescribed for the purposes of this section in relation to any insured persons, where the Minister is satisfied that—

(a) it ought to be treated, having regard to its causes and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons, and

(b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

Covid-19 and long COVID are not recognised currently as occupational illnesses for the purposes of the scheme.

b. Benefits available under the Occupational Injuries Benefit scheme

The two main payments under this scheme are Injury Benefit and Disablement Benefit.

Injury Benefit is an income support payable for 6 months for people who are injured or contract a prescribed illness at work or while travelling to and from work and who lose their capacity to work temporarily.

Disablement Benefit is paid if a person loses certain physical or mental abilities as a result of an incident at work, or while they are travelling to or from work. This benefit is paid as a lump sum (Disablement Benefit Gratuity) or a regular pension (Disablement Benefit Pension), depending on the degree and the length of time the injury or illness is expected to last.

Other benefits under this scheme include:

- Incapacity Supplement – an additional payment to those in receipt of Disablement Benefit Pension with a loss of faculty of 20% or greater, who are permanently incapable of work as a result of a work-related injury or disease and do not have an entitlement to Illness Benefit, Invalidity Pension and Disability Allowance;
- Constant Attendance Allowance – for those on Disablement Pension who need someone to help them at home every day as a result of a work-related injury or disease;
- Medical Care – this refunds the cost of medical care not covered by the Health Service Executive or the Treatment Benefit scheme;
- Death Benefit – if a person dies because of an accident at work or an occupational disease, this may be paid to their surviving spouse or civil partner or dependent child. It may also be paid to someone who was getting a Disablement Pension assessed at 50% or more, regardless of the cause of death. The scheme includes:
 - o Widow's, Widower's or Surviving Civil Partner's Pension;
 - o Orphan's Pension;
 - o Funeral Grant.

c. Recipients and expenditure¹

Workers in insurable employment who pay PRSI under class A, B, D, J or M may qualify for Disablement Benefit and people under class A, D, J or M may qualify for Injury Benefit.

Disablement Benefit Pension recipient numbers have been increasing since 2019. As of September 2023, there were 14,643 people in receipt of payment.

While Disablement Benefit Pension can be granted for life, Injury Benefit is a short-term payment. There were 904 recipients as of September 2023. Increases can be paid for a Qualified Adult or for Qualified Children with Injury Benefit as it is an income support

¹ Source: [DSP Annual Statistical Report 2022](#), internal administrative data for 2023 and the [Department's SW 19 Booklet for rates](#)

payment. No increase is payable for dependants with Disablement Benefit Pension as it is a compensation payment.

Expenditure (€ million)	2016	2017	2018	2019	2020	2021	2022	2023*
Disablement Benefit	74.77	76.8	76.5	72.66	69.86	69.57	69.55	69.71
Injury Benefit	18.7	19.54	17.85	13.60	11.45	10.54	9.18	9.9
<i>*Estimates</i>								

	2016	2017	2018	2019	2020	2021	2022	2023*
Disablement Benefit recipients	14,342	14,733	14,675	13,938	14,665	14,454	14,356	14,643
<i>*September 2023 figures</i>								

	2016	2017	2018	2019	2020	2021	2022	2023*
Injury Benefit recipients ²	1,010	1,085	938	1,314	1,026	589	512	904
Qualified Adults	83	114	58	96	64	60	12	42
Qualified Children	282	297	170	237	170	162	97	100
All Beneficiaries	1,375	1,495	1,166	1,647	1,260	811	621	1,046
<i>*September 2023 figures</i>								

The rate of Disablement Benefit Pension depends on the level of capacity loss the person experienced as a result of the workplace injury.

Capacity Loss	Disablement Pension Weekly rate 2023
100% (maximum personal rate)	€251
90%	€225.90
80%	€200.80
70%	€175.70
60%	€150.60
50%	€125.50
40%	€100.40
30%	€75.30
20%	€50.20
Between 15% and 19%	Once-off lump sum benefit of €17,560

As of 31 October 2023, only 1% of recipients (177 people) were in receipt of Disablement Benefit at the 100% payment rate.

² Recipients are the number in receipt of a certain social welfare payments. Beneficiaries is the cumulative sum of recipients and qualified adults and qualified children.

50% of claimants in receipt of Disablement Benefit Pension fall between 20% and 30% of capacity loss. People on this pension are allowed to work or receive certain income support payments, so they can top up their Disablement Pension with income from work.

Injury Benefit has only one rate (€220 per week). Increases for Qualified Adult and Qualified Children can also be payable.

	Weekly rate 2023	
Injury Benefit Personal Rate	€220.00	
Increase for a Qualified Adult	€146.00	
Increase for each Qualified Child	Under 12 years	12 years and over
Full Rate	€42.00	€50.00
Half Rate	€21.00	€25.00

3. Financial supports available for employees who cannot work due to illness or disability

The Government provided other financial supports during the pandemic and continues to provide support to people who cannot work due to illness.

a. Supports in respect of COVID-19 and long COVID

The financial supports available vary according to where a worker is employed.

Insured workers: The Department of Social Protection provided Enhanced Illness Benefit to workers with COVID-19 from the start of the pandemic. Enhanced Illness Benefit offered a payment at a rate of €350 per week. This was higher than the standard rate of Illness Benefit. It had relaxed eligibility criteria in terms of both contributions and not requiring a certificate of incapacity for work in some cases, making it available to a wider cohort than would normally be eligible for standard Illness Benefit, including the self-employed. The payment sought to provide an incentive for employed and self-employed workers to self-isolate if they had COVID-19 or if they had symptoms. It was designed to mitigate financial hardship and support workers in all sectors by removing barriers for them to self-isolate. This has been particularly important in certain vulnerable categories, where workers may be on low pay, may not get paid sick leave, and may find it difficult to stay away from their workplace without adequate financial supports.

The development and successful roll-out of the vaccination programme led to a significant reduction in the public health risk of COVID-19. The Government announced the phased ending of restrictions from 22 January 2022. The Department of Health advised that, in line with the transition out of the emergency phase of the pandemic, the proposal to provide Illness Benefit for COVID-19 in a manner similar to that of any other infectious disease was an appropriate one.

Enhanced Illness Benefit for COVID-19 ³	2020	2021	2022
Claims	69,172	143,959	365,722
Expenditure (€million)	56.88	106.13	187.11

The payment of Enhanced Illness Benefit ceased on 30 September 2022. Since then, workers with the required number of contributions can access the standard Illness Benefit scheme which provides payment for up to two years. If the condition continues, they may be eligible for Invalidity Pension or Disability Allowance, provided they satisfy both the medical and the contributory or means testing conditions of those schemes. Entitlement to these income supports is generally not dependent on the nature of the illness or disability but on the extent to which a particular illness or disability impairs or restricts a working age person's capacity to work.

Statutory Sick Pay is available since 1 January 2023 for up to three days for anyone who has been employed for three months or more. This will increase to 10 days over the coming years. This scheme falls under the remit of the Department of Enterprise, Trade and Employment. A person's contract of employment may provide for additional paid sick leave – this is a matter between the employee and their employer.

Public sector workers:

Special Leave with Pay for COVID-19 (SLWP) was introduced and is still available (currently for five days) in lieu of sick leave to public sector workers, including frontline healthcare workers. This leave does not affect a person's sick leave record.

Health sector workers:

A Temporary Scheme of Paid Leave was developed by the Department of Health for certain public health sector employees who were unfit for work after a COVID-19 infection. This scheme was extended by the Minister for Public Expenditure, National Development Plan Delivery and Reform until 31 March 2024.

- b. The Department of Social Protection's long-term illness and disability-related payments in more detail

People who cannot work due to a long-term illness or disability may avail of the Department of Social Protection's long-term disability income supports.

People may qualify for these supports regardless of the nature of their illness or disability. What matters is the extent to which the illness or disability impacts the person's capacity to work.

The two main disability income support payments are Invalidity Pension and Disability Allowance. Invalidity Pension is a social insurance payment and Disability Allowance is a means-tested social assistance payment. There were over 56,000 Invalidity Pension

³ Source: [Statistical Information on Social Welfare Services Annual Report 2017 - 3bdd325b-db94-4daf-90c3-b6c00682a7d9.pdf \(www.gov.ie\)](https://www.gov.ie/publications/uploads/system/uploads/attachment_data/file/366222/Statistical-Information-on-Social-Welfare-Services-Annual-Report-2017-3bdd325b-db94-4daf-90c3-b6c00682a7d9.pdf); [Statistical Information on Social Welfare Services Annual Report 2017 - d474f67e-f392-4b48-99a6-bce9b0cf41a0.pdf \(www.gov.ie\)](https://www.gov.ie/publications/uploads/system/uploads/attachment_data/file/366222/Statistical-Information-on-Social-Welfare-Services-Annual-Report-2017-d474f67e-f392-4b48-99a6-bce9b0cf41a0.pdf).

recipients and over 161,000 Disability Allowance recipients in payment at the end of September 2023.

The Department's expenditure was over €2.8 billion on these payments in 2022.

		2016	2017	2018	2019	2020	2021	2022
Disability Allowance	Recipients	126,203	133,929	140,835	146,755	152,580	155,181	157,807
	Expenditure (€ million)	1,358	1,465	1,586	1,706	1,812	1,829	2,016
Invalidity Pension	Recipients	55,532	57,504	57,768	58,168	59,230	57,873	56,450
	Expenditure (€ million)	645	673	694	728	760	730	766

4. The potential prescription of COVID-19 or long COVID for the purposes of the Occupational Injuries Benefit scheme

The European Commission made a recommendation in November 2022 regarding recognition of COVID-19 as an occupational disease if 'caused by work in disease prevention, in health and social care and in domiciliary assistance, or, in a pandemic context, in sectors where there is an outbreak in activities in which a risk of infection has been proven.' This is a non-binding recommendation, and recognition of occupational diseases remains a Member State competence. This recommendation does not apply to long COVID. Twenty-five of the 27 EU member states have recognised COVID-19 as an occupational disease, with some recognising COVID-19 as a workplace accident for a limited number of employees. Ireland and Greece are the two countries that have not recognised it to date. Recognition as an occupational disease confers different entitlements in different Member States, with employers paying the compensation in some countries and social insurance systems paying in others. The level and duration of payment also vary greatly between Member States.

Most EU countries that recognise COVID-19 as an occupational injury categorise it as a prescribed illness. In some cases, it is considered a workplace accident. However, this depends on exposure to the virus and the circumstances of infection.

COVID-19 and long COVID are not recognised as prescribed illnesses in the United Kingdom.

a. Distinguishing the recognition of COVID-19 from long COVID

The question arises as to whether COVID-19 and long COVID should be distinguished in this context.

The European Commission recommendation relates to COVID-19, not long COVID. Most EU countries have not recognised long COVID. An independent report published in the

UK in 2022 did not recommend the prescription of long COVID due to the lack of evidence and the evolving nature of the illness.⁴

b. Recognition as occupational accident or as occupational illness

In Ireland, SI 102 of 2007 sets out what qualifies as an occupational accident or an occupational illness. The conditions included are very specific to certain professions, for example mining, foundry work, exposure to asbestos and certain chemicals that are not experienced by the general public.

COVID-19 and long COVID are currently not considered a prescribed illness or workplace accident under the Occupational Injuries Benefit scheme.

It is reasonable to determine that COVID-19 is not an accident for the purposes of Occupational Injuries Benefit as the legislation defines that:

(b) the accident—

(i) either is caused by another person's misconduct, negligence or misbehaviour, or by steps taken in consequence of any such misconduct, negligence or misbehaviour or by the behaviour or presence of an animal (including a bird, fish or insect), or

(ii) is caused by or consists in the insured person's being struck by any object or by lightning,

Under Section 87(2) of the Social Welfare Consolidation Act 2005, a disease or injury shall be prescribed for the purposes of entitlement to the Occupational Injuries Benefit scheme where the Minister is satisfied that —

(a) it ought to be treated, having regard to its causes and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons, and

(b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty. (emphasis added)

To date, this scheme has been used to include injuries that result in the loss of a body part or function (losing a limb, losing an eye); or diseases that are rare and/or can only be contracted in limited circumstances. For example, Anthrax is prescribed for occupations in which the person has contact with infected animals or animal products.

If COVID-19 were to become a prescribed disease, Disablement Benefit may be payable; however, it is contingent on a worker being able to establish a clear and measurable loss of faculty (typically a loss of limb or a loss of sensory function). It is not clear how such a

⁴ [Independent Report on COVID-19 and Occupational Impacts](#)

scheme could be applied in the context of COVID-19 where loss of limb or faculty is not a common result and where the long-term prognosis is not certain.

The statutory criteria laid out above specify that the disease or injury was caused as a risk of the person's occupation and is not a risk outside of that profession. While there is a reasonable assumption that healthcare and other frontline staff were more exposed to infection than people in other professions at the beginning of the pandemic, community transmission became dominant by the summer of 2020. Therefore, it has not been possible since then to establish "with reasonable certainty", that a worker has contracted the disease exclusively through their occupation.

In addition, and even in cases where it might be possible to attribute current or future COVID-19 infections to a person's occupation, there is no advantage to a worker in being granted access to the Injury Benefit payment over the standard Illness Benefit/Invalidity Pension/Disability Allowance payments. This is because the rate of payment of Injury Benefit is the same as that of Illness Benefit; however, the duration is much shorter - lasting 6 months rather than the 2-year duration of Illness Benefit and the possible indefinite duration of other disability payments.

Thus, in applying this statutory test, it is the Department's view that COVID-19 does not meet the criteria for recognition as an occupational illness or as an accident under the Act.

It must also be noted that backdating of payments and/or claims is not permitted for the Occupational Injuries Benefit scheme. This means that prescribing COVID-19 as a disease would only benefit those who contract it in the future after the date of recognition. Therefore, a limited number of people would benefit, many of whom would have been eligible for Illness benefit anyway.

In addition, prescribing it as a disease for the purpose of Occupational Injuries Benefit would be of limited value to most people working within the health and care settings, especially if they are public servants. There is a requirement to apply for the benefit within 6 weeks of the infection which would exclude workers who avail of Special Leave with Pay followed by their organisation's sick leave entitlements before seeking support from the Department of Social Protection. Pre-1995 public servants pay class B social insurance, which does not qualify them for Injury Benefit; furthermore, as outlined above, this cohort is unlikely to qualify for Disablement Benefit.

Thus recognition would only apply to cases where COVID-19 is contracted in the future and given the current public health position, this would be of limited value.

5. Adding the term "virological" and "bacteriological" to the definition of medical examination associated with Occupational Injuries Benefit scheme legislation

The Minister for Social Protection also committed to reviewing the possible inclusion of the terms "virological" and "bacteriological" in the definition of medical examination associated with Occupational Injuries Benefit in the context of the report.

Regarding the possible inclusion of the terms "virological" and "bacteriological", this report recommends that this should not be added. According to Section 69 of the Social Welfare Consolidation Act of 2005 in relation to Occupational Injuries Benefit:

“medical examination” includes bacteriological and radiographical tests and similar investigations, and references to being medically examined shall be read accordingly;

Certain viral infections are included in the list of prescribed illnesses in Schedule 4 of S.I. 102 of 2007 under the category of “biological agents”. The list is a mix of viruses, bacteria, and other organisms like hookworm. Bacterial, virological and other similar tests must be carried out in order to establish the infection with a prescribed illness. Adding the words “virological” would not add to the operation of the scheme. Virological tests, if required for the purposes of establishing the occupational nature of a disease, are covered in the Act under “similar investigations”.

6. Conclusions and recommendation

- a. Recognition of COVID-19 for the purposes of the Occupational Injuries Benefit scheme

It is the view of this Department that the illness should not be added to the list of occupational diseases.

COVID-19 does not meet the criteria for recognition as an occupational illness under the Social Welfare Consolidation Act 2005. Specifically, the presumptions about workplace transmission would not be sustainable on a general basis in the current environment when infection rates are low. From an international perspective, there has been no consensus regarding the supports provided to those with COVID-19, with a wide variety of responses adopted by Member States.

The Government acted early and without hesitation to support all workers who contracted COVID-19 during the pandemic. Workers outside the public service sector could avail of an Enhanced Illness Benefit payment and eligibility criteria were set to include the largest cohort of workers possible.

The Temporary Scheme of Paid Leave for Public Health Service Employees was introduced to provide for the specific needs of HSE workers. It is this Department’s view that this is the appropriate channel through which such a targeted sectoral support should be considered.

It is worth noting that Occupational Injuries Benefit would be of limited value or no value to people who already contracted COVID-19 in the past. As outlined in this paper, only Class A contributors would get full access to the Occupational Injuries Benefit scheme and the scheme would not apply retrospectively. With regard to public sector workers, the requirement to apply for the benefit within 6 weeks of the infection would exclude workers who avail of Special Leave with Pay followed by their organisation’s sick leave entitlements before seeking support from DSP. Pre-1995 health sector workers pay class B or class D social insurance – this class does not qualify them for the full range of benefits under the Occupational Injuries Benefit scheme.

- b. Inclusion of the terms “virological” and “bacteriological” to Section 69 of the Social Welfare Consolidation Act of 2005**

These terms are covered by existing legislation and therefore should not be added.

