



**AN BILLE UM BINSE CÚITIMH I nDÁIL LE HEIPITÍTEAS C
(LEASÚ) 2006
HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) BILL 2006**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Amendment of section 1 of Hepatitis C Compensation Tribunal Act 1997 (interpretation).
 2. Amendment of section 4 of Hepatitis C Compensation Tribunal Act 1997 (claims before Tribunal).
 3. Amendment of section 7 of Hepatitis C Compensation Tribunal Act 1997 (regulations to give effect to Act).
 4. Insertion of new sections 7A (appeals against relevant decisions of scheme administrator), 7B (special account for relevant insurance scheme), 7C (power of scheme administrator to specify forms) and 7D (confidentiality of matters relating to relevant claimants) into Hepatitis C Compensation Tribunal Act 1997.
 5. Amendment of section 10 of Hepatitis C Compensation Tribunal Act 1997 (special account).
 6. Amendment of section 2 of Health (Amendment) Act 1996 (provision of health services without charge to certain persons who have contracted hepatitis C).
 7. Short title, collective citation, construction and commencement.
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ACTS REFERRED TO

Health (Amendment) Act 1996	1996, No. 23
Hepatitis C Compensation Tribunal Act 1997	1997, No. 34
Hepatitis C Compensation Tribunal Acts 1997 and 2002	
Hepatitis C Compensation Tribunal (Amendment) Act 2002	2002, No. 21



AN BILLE UM BINSE CÚITIMH I nDÁIL LE HEIPITÍTEAS C
(LEASÚ) 2006
HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) BILL 2006

BILL

entitled

AN ACT TO AMEND THE HEPATITIS C COMPENSATION
TRIBUNAL ACTS 1997 AND 2002, AND TO MAKE A
RELATED AMENDMENT TO THE HEALTH
10 (AMENDMENT) ACT 1996.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—Section 1 of the Hepatitis C Compensation Tribunal Act 1997 is amended—

Amendment of
section 1 of
Hepatitis C
Compensation
Tribunal Act 1997
(interpretation).

15 (a) in subsection (1), by inserting the following after the definition of “relevant agency”:

“ ‘relevant claimant’ means a claimant to whom a class of insurance may be provided pursuant to the relevant insurance scheme;

20 ‘relevant insurance scheme’ means the insurance scheme established pursuant to regulations made under section 7(1)(d);

25 ‘scheme administrator’ means the person specified, pursuant to regulations made under section 7(1)(d) as read with section 7(1A)(a), to administer the relevant insurance scheme;”

and

(b) by inserting the following after subsection (1):

30 “(1A) Subject to subsection (1B), a person has not been diagnosed positive for Hepatitis C for the purposes of this Act unless—

(a) the diagnosis is based on a positive test result arising from the enzyme-linked immunosorbent assay, or

- (b) the person displays symptoms of acute infection by reference to the presence of jaundice, or raised alamine aminotransferase (ALT) levels, not later than 16 weeks after the person has been administered anti-D. 5

(1B) Subsection (1A) does not apply to or in relation to a claim for compensation to the Tribunal made before 20 June 2006.”.

Amendment of section 4 of Hepatitis C Compensation Tribunal Act 1997 (claims before Tribunal).

2.—Section 4(1) of the Hepatitis C Compensation Tribunal Act 1997 (as amended by section 4 of the Hepatitis C Compensation Tribunal (Amendment) Act 2002) is amended by substituting the following for paragraph (h): 10

“(h) any person—

- (i) who is married to a person who fell into paragraph (a), (b) or (f) before the commencement of this paragraph and was so married before that commencement, 15
- (ii) who is married to a person who fell into paragraph (a), (b) or (f) on or after the commencement of this paragraph and was so married before the person so fell into that paragraph, 20
- (iii) who has been living with a person who fell into paragraph (a), (b) or (f) before the commencement of this paragraph and has been so living with the person for a continuous period of not less than 3 years commencing before the commencement of this paragraph, or 25
- (iv) who has been living with a person who fell into paragraph (a), (b) or (f) on or after the commencement of this paragraph and has been so living with the person for a continuous period of not less than 3 years commencing before the person so fell into that paragraph, 30

in respect of the loss of consortium of that person, including impairment of sexual relations with the person, arising from the risk of transmission of Hepatitis C or HIV,”. 35

Amendment of section 7 of Hepatitis C Compensation Tribunal Act 1997 (regulations to give effect to Act).

3.—Section 7 of the Hepatitis C Compensation Tribunal Act 1997 is amended—

(a) in subsection (1)— 40

(i) in paragraph (c), by substituting “Tribunal,” for “Tribunal.”, and

(ii) by inserting the following after paragraph (c):

“(d) the establishment, operation, administration and supervision of an insurance scheme for the purpose of providing a class of insurance for a claimant— 45

(i) falling within—

(I) section 4(1)(a), (b), (c), (f) or (g),

(II) the definition of ‘diagnosed relative’ in regulation 2 of the Hepatitis C Compensation Tribunal Act 1997 (Extension of Classes of Claimants before Tribunal) Regulations 1998 (No. 432 of 1998), or

(III) a class of persons specified in regulations made under section 9 on or after the commencement of this paragraph if and only if the regulations specify that this paragraph shall apply to that class,

and

(ii) who is refused insurance of that class (or in respect of whom the scheme administrator reasonably believes would, if the claimant were to make an application therefor, be refused insurance of that class)—

(I) by an insurer belonging to a class of insurers specified in the regulations, and

(II) either—

(A) on the ground, or on one of the grounds, that the claimant has been diagnosed positive for Hepatitis C or HIV, or

(B) unless the claimant pays a premium that is higher than the premium that would generally be paid for insurance of that class by a person of the same age and gender who has not been diagnosed positive for Hepatitis C or HIV, as the case may be.”,

and

(b) by inserting the following after subsection (1):

“(1A) The regulations that the Minister may make under this section in respect of the relevant insurance scheme include regulations—

(a) to specify the person who will administer the scheme and the functions of the administrator,

- (b) subject to paragraphs (c) to (p) and subsection (3), to specify the conditions subject to which a benefit under the scheme will be provided, or not provided, or cease to be provided, to a relevant claimant based on— 5
- (i) the time when the claimant makes an application to the scheme administrator for the benefit, and
- (ii) the claimant's age at the time of making the application, 10
- (c) to provide, as a benefit under the scheme for a relevant claimant, life assurance to a maximum sum assured of—
- (i) subject to subparagraph (ii), the greater amount of— 15
- (I) subject to paragraph (d), €400,000, or
- (II) 7 times the annual earned income of—
- (A) the claimant,
- (B) a person married to the claimant,
- (C) a person who has been cohabiting with the claimant for a continuous period of not less than 3 years immediately before the claimant makes an application to the scheme administrator for the benefit, or 20 25
- (D) the claimant and a person referred to in subclause (B) or (C),
- (ii) subject to paragraph (d), €500,000 in any case where the greater amount referred to in subparagraph (i) exceeds €500,000, 30
- (d) to index-link the amounts referred to in paragraph (c)(i)(I) and (ii) to the Consumer Price Index compiled by the Central Statistics Office (or to the successor to that index), 35
- (e) subject to paragraph (f), to provide, as a benefit under the scheme for a relevant claimant, mortgage protection insurance in respect of the claimant's purchase of a principal residence, or mortgage protection insurance in respect of the renovation, refurbishment, extension or improvement of the claimant's principal residence, or any combination thereof, to a maximum sum assured of the greater amount of— 40 45
- (i) €375,000, or
- (ii) a sum equivalent to the average house price in the county borough of Dublin—

(I) on the relevant date in the case of the year 2006,

(II) on the most recent anniversary of the relevant date in the case of any subsequent year,

as determined by the Permanent TSB/Economic and Social Research Institute (Dublin) House Price Index (or by the successor to that index) increased by 25 per cent,

(f) to index-link the amount referred to in paragraph (e)(i) to the Permanent TSB/Economic and Social Research Institute (Dublin) House Price Index (or to the successor to that index),

(g) subject to paragraph (h), to provide, as a benefit under the scheme for a relevant claimant, for the release, through the remortgaging of any property of the claimant, to a maximum sum assured of €100,000 of the claimant's equity in the property,

(h) to specify that the scheme administrator shall refuse an application for a benefit referred to in paragraph (g) made on or after the 1st anniversary of the relevant date,

(i) to provide, as a benefit under the scheme for a relevant claimant, annual travel insurance,

(j) subject to paragraph (m), to specify that a relevant claimant must make an application to the scheme administrator for any benefit under the scheme (except a benefit referred to in paragraph (i))—

(i) in the case of a relevant claimant who is such a claimant on the relevant date, before the 1st anniversary of the relevant date,

(ii) in the case of any other relevant claimant, before the 3rd anniversary of the first date on which the claimant has been diagnosed positive for Hepatitis C or HIV,

(k) subject to paragraph (m), to specify that a relevant claimant who fails to comply with regulations falling within paragraph (j) but who still makes an application to the scheme administrator for a benefit under the scheme, may—

(i) have to wait a period ('waiting period') before the benefit is provided,

(ii) have the benefit provided only partially,

(iii) have the benefit provided only incrementally,

or any combination thereof, as specified in the regulations,

(l) to provide for a waiting period for relevant claimants over 50 years of age that is longer than the waiting period for relevant claimants under 50 years of age, 5

(m) to specify that regulations falling within paragraph (j) or (k) shall not apply to or in relation to an application to the scheme administrator for a benefit under the scheme made by a relevant claimant who is less than 30 years of age at the time of the application, 10

(n) to specify that the scheme administrator shall refuse an application for a benefit under the scheme made— 15

(i) by a relevant claimant who is not less than 65 years of age, and

(ii) on or after the 1st anniversary of the relevant date,

(o) to specify that no benefit under the scheme shall— 20

(i) be provided, or

(ii) continue to be provided,

to a relevant claimant who is not less than 75 years of age, 25

(p) to specify the basis for determining the insurance premiums to be paid by a relevant claimant.”;

and

(c) by inserting the following after subsection (2): 30

“(3) Regulations made under subsection (1A) shall not specify any conditions which require different treatment to be given to different relevant claimants based on their respective medical conditions except the medical condition, if any, by virtue of which a person is a relevant claimant. 35

(4) Nothing in this section, or in any regulations made under this section, shall be construed to entitle any relevant claimant to any benefit under the relevant insurance scheme without the payment of insurance premiums that would generally be paid for the benefit by a person of the same age and gender who has not been diagnosed positive for Hepatitis C or HIV, as the case may be. 40

(5) Where—

(a) a relevant claimant makes an application to the scheme administrator for a benefit under the relevant insurance scheme jointly with one or 45

more than one person ('other person') who is not a relevant claimant, and

- (b) the benefit is provided jointly to the relevant claimant and the other person,

5 then—

- (i) subject to subparagraph (ii), the other person shall be required to pay, in respect of the benefit and only insofar as the benefit is provided to the other person, that premium that would generally be paid for that benefit by a person of the same age, gender and health status as the other person, and

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- (ii) the relevant claimant and the other person shall not be required to pay, in respect of the benefit jointly provided to the relevant person and the other person, a premium that is higher than the premium that would generally be paid for the joint provision of the benefit to 2 persons of the same age and gender as the relevant person and the other person and neither of whom has been diagnosed positive for Hepatitis C or HIV.

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(6) The scheme administrator may determine the procedures to be adopted in the operation, administration and supervision of the relevant insurance scheme to the extent that the procedures are not inconsistent with any provision of this Act (including any provision of any regulations made under this Act).

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(7) The scheme administrator may refuse to consider or further consider an application for a benefit under the relevant insurance scheme if—

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- (a) the application is not in the form, if any, specified under section 7C, or

- (b) the applicant fails to provide the scheme administrator with such information in addition to the information provided by or with the application as the scheme administrator may reasonably require to enable the scheme administrator to determine the applicant's eligibility for the benefit.

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(8) It is hereby declared that—

- (a) if a benefit under the relevant insurance scheme is provided to a relevant claimant by means of 2 or more policies, a maximum sum prescribed in regulations made under this section in respect of the scheme shall apply to the policies collectively, and

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- (b) any insurance provided to a relevant claimant before, on or after the relevant date shall be disregarded for the purposes of determining a maximum sum prescribed in regulations made under this section in respect of a benefit under

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the relevant insurance scheme provided to the claimant.

(9) The scheme administrator of the relevant insurance scheme shall submit a report of the scheme administrator's activities and particulars of the scheme administrator's accounts to the Minister at such time as the Minister directs. 5

(10) The Minister shall cause copies of such reports to be laid before each House of the Oireachtas.

(11) A report of the scheme administrator shall not identify any relevant claimant. 10

(12) In this section, 'relevant date' means the date on which subsection (1A) commenced."

Insertion of new sections 7A (appeals against relevant decisions of scheme administrator), 7B (special account for relevant insurance scheme), 7C (power of scheme administrator to specify forms) and 7D (confidentiality of matters relating to relevant claimants) into Hepatitis C Compensation Tribunal Act 1997.

4.—The Hepatitis C Compensation Tribunal Act 1997 is amended by inserting the following after section 7: 15

"Appeals against relevant decisions of scheme administrator.

7A.—(1) A person may appeal against a relevant decision not later than 28 days after notice in writing of the decision was given to the person by the scheme administrator.

(2) An appeal under subsection (1) shall— 20

(a) be in a form specified under section 7C for the purposes of this section, and

(b) state the reasons for the appeal.

(3) The Minister shall appoint in writing a person or more than one person— 25

(a) who is a barrister or solicitor of not less than 5 years standing,

(b) to consider appeals under subsection (1), and

(c) subject to subsections (9)(a) and (10), on such terms and conditions as are specified in the appointment. 30

(4) A person appointed pursuant to subsection (3) to consider an appeal under subsection (1) shall— 35

(a) be independent in the performance of the person's functions under this Act as a person so appointed,

(b) subject to paragraph (a), comply with guidelines (if any) prepared and issued by the Minister in respect of the procedure to be followed with respect to the consideration of any appeal under subsection (1), 40

(c) consider any written or oral submissions made by or on behalf of the appellant and the scheme administrator in respect of the appeal,

5 (d) make a decision in writing determining the appeal as soon as is practicable in all the circumstances of the case and, if the appeal is allowed, in that decision award to the appellant any reasonable costs and expenses the appellant has incurred in making the appeal,

10 (e) send a copy of the decision to the appellant and the scheme administrator together with the person's reasons for the decision, and

15 (f) conduct the appeal otherwise than in public.

(5) A person affected by a decision under subsection (4)(d) may appeal to the High Court—

20 (a) on a point of law from the decision, and

(b) not later than 28 days after the appellant received a copy of the decision and the reasons for the decision pursuant to subsection (4)(e).

25 (6) A decision of the High Court following an appeal under subsection (5) shall, where appropriate, specify the period within which effect shall be given to the decision.

30 (7) The decision of the High Court on an appeal under subsection (5) shall be final and conclusive.

(8) The scheme administrator shall—

35 (a) if applicable, give effect to a decision under subsection (4)(d) as soon as is practicable after the period referred to in subsection (5) has elapsed without any appeal under subsection (5) having been made in respect of the decision,

40 (b) if applicable, give effect to a decision of the High Court on an appeal under subsection (5)—

(i) within the period, if any, specified in the decision, or

45 (ii) if subparagraph (i) is not applicable, as soon as is practicable.

(9) A person appointed pursuant to subsection (3)—

(a) shall be paid such remuneration and allowances as the Minister, with the consent of the Minister for Finance, determines,

(b) may be provided with such permanent or temporary staff (including medical or other experts), paid at such remuneration, as the Minister, with the consent of the Minister for Finance, determines as reasonably necessary to enable the person to perform the functions under this Act as a person so appointed, and

(c) may resign from the appointment by notice in writing given to the Minister.

(10) The Minister may revoke the appointment of a person appointed pursuant to subsection (3) for stated reasons.

(11) Each person appointed under subsection (3) shall, at such intervals as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the performance of the person's functions under this Act as a person so appointed during the period to which the report relates.

(12) The Minister shall cause copies of a report submitted under subsection (11) to be laid before each House of the Oireachtas.

(13) A report referred to in subsection (12) laid before each House of the Oireachtas shall not identify any relevant claimant.

(14) In this section—

'relevant decision', in relation to the relevant insurance scheme, means a decision of the scheme administrator—

(a) to refuse, pursuant to section 7(7), to consider or further consider an application for a benefit under the scheme,

(b) that a person is not a relevant claimant,

(c) to refuse to provide, or to cease to provide, a benefit under the scheme,

(d) to provide a benefit under the scheme only partially or incrementally, or a combination thereof, or

(e) as to the amount of the sum assured of a benefit provided under the scheme.

Special account for relevant insurance scheme.

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7B.—(1) There shall be set up, on the commencement of this section, a special account, to be funded from moneys provided by the Oireachtas, to be used to pay benefits under the relevant insurance scheme and to pay the costs of the scheme administrator in administering the scheme.

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(2) Subject to subsection (3), the moneys in the special account may be used at any time but shall only be used for the purposes for which they were voted and shall be issued out of that account only by direction of the Minister for Finance.

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(3) Any moneys, including interest (if any), in the special account may be paid into, or disposed of for the benefit of, the Exchequer in accordance with the directions of the Minister for Finance.

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(4) In this section ‘special account’, unless the context otherwise requires, means an account for the purposes of this Act in the joint names of the Minister and the Minister for Finance, which account shall—

(a) be an account with the Paymaster General,

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(b) be subject to such terms and conditions as the Minister for Finance, in consultation with the Minister, may determine, and

(c) be subject to audit by the Comptroller and Auditor General.

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Power of scheme administrator to specify forms.

7C.—(1) The scheme administrator may specify the form of any document required for the purposes of the relevant insurance scheme as the scheme administrator thinks fit.

(2) A form specified under this section shall be—

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(a) completed in accordance with such directions and instructions as are specified in the form,

(b) accompanied by such documents as are specified in the form, and

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(c) if the completed form is required to be provided to the scheme administrator or any other person, so provided in the manner, if any, specified in the form.

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(3) The scheme administrator’s power under subsection (1)—

(a) may be exercised in such a way as to require the person completing the form to make a statutory declaration as to whether the particulars contained

in the form are true and correct to the best of that person's knowledge and belief,

- (b) may be exercised in such a way as to specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the scheme administrator thinks fit.

Confidentiality of matters relating to relevant claimants.

7D.—(1) Except as may be necessary for the performance of any functions under this Act (including regulations made under this Act) relating to the relevant insurance scheme or for giving effect to the provisions of this Act, every person to whom this subsection applies—

- (a) shall preserve and aid in preserving confidentiality with respect to all matters relating to the affairs of any relevant claimant that come to the person's knowledge in the performance of any such functions,
- (b) shall not communicate any such matter to any person other than the relevant claimant to whom such matter relates, and
- (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of a person to whom this subsection applies and that relate to any such matter.

(2) Subsection (1) shall apply to any person who is or has been—

- (a) the scheme administrator,
- (b) an insurer,
- (c) a person appointed pursuant to section 7A(3), or
- (d) a person—
 - (i) employed by or assisting (in whatever capacity) a person to whom that subsection applies by virtue of paragraph (a), (b) or (c), and
 - (ii) who performs or has performed a function referred to in that subsection.

(3) A person who, without lawful excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months or both, or

5 (b) on conviction on indictment, to a fine not exceeding €25,000 or to imprisonment for a term not exceeding 2 years or both.”.

10 5.—Section 10 of the Hepatitis C Compensation Tribunal Act 1997 is amended by inserting the following after subsection (5):

“(5A) It is hereby declared that the special account shall not be used to pay the benefits and costs referred to in section 7B(1).”.

Amendment of section 10 of Hepatitis C Compensation Tribunal Act 1997 (special account).

6.—Section 2 of the Health (Amendment) Act 1996 is amended—

15 (a) in subsection (1), by substituting “Subject to subsection (1A), a” for “A”, and

(b) by inserting the following after subsection (1):

20 “(1A) Subject to subsection (1B), a person has not contracted hepatitis C for the purposes of subsection (1) unless the person has been diagnosed positive for hepatitis C and either—

(a) the diagnosis is based on a positive test result arising from the enzyme-linked immunosorbent assay, or

25 (b) the person displays symptoms of acute infection by reference to the presence of jaundice, or raised alamine aminotransferase (ALT) levels, not later than 16 weeks after the person has been administered anti-D.

30 (1B) Subsection (1A) does not apply in the case of a person who falls within subsection (1) by virtue of an opinion referred to in subsection (1) which was expressed before 20 June 2006.”.

35 7.—(1) This Act may be cited as the Hepatitis C and HIV Compensation Tribunal (Amendment) Act 2006.

Short title, collective citation, construction and commencement.

(2) The Hepatitis C Compensation Tribunal Acts 1997 and 2002 and this Act (except *section 6*) may be cited together as the Hepatitis C Compensation Tribunal Acts 1997 to 2006, and shall be construed together as one.

40 (3) The Health Acts 1947 to 2006 and *section 6* shall be construed together as one Act and the collective citation “the Health Acts 1947 to 2006” shall include *section 6*.

(4) This Act (except *sections 1(b), 2 and 6*) shall come into operation on such day or days as the Minister for Health and Children may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

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