



ANNUAL REPORT
OF THE
HEPATITIS C AND HIV
COMPENSATION TRIBUNAL
2008

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS, CONTAE MHAIGH EO,
(Teil: 01 - 6476834/37 nó 1890 213434; Fax: 01 - 6476843 nó 094 - 9378964)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE,
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834/37 or 1890 213434; Fax: 01 - 6476843 or 094 - 9378964)
or through any bookseller.

(Prn. A9/1419)

€6.00

Contents

	<i>Page</i>
1. Introduction	5
2. Membership of the Tribunal	7
3. Entitlement to make a claim	9
4. Advertising	11
5. The operation of the Tribunal	13

Appendices

I Hepatitis C Compensation Tribunal Act, 1997 Hepatitis C Compensation Tribunal Act, 2002 Hepatitis C Compensation Tribunal (Amendment) Act, 2006 and Associated Statutory Instruments	17
II Settlement arrangements	
III Accounts 2008	
IV Summary of Awards, Appeals, Reparation Fund Payments and Legal Costs to date	
V Breakdown of Legal Costs	

Introduction

I am very pleased to introduce the Eleventh Annual Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2008.

The Tribunal has been hearing claims on a continuous basis since March 1996. 112 new claims were submitted in 2008 making a total of 4,208 to the end of 2008. While the Tribunal paid awards in 143 cases in 2008 approximately 1,020 claims are still awaiting hearing.

The Tribunal continues to be able to assign a hearing date without delay to any claim in which full supporting documentation has been lodged.

I wish to take this opportunity to express my appreciation to my fellow members of the Tribunal, to our Secretary Michael Ryan and to the staff attached to the Tribunal office.



Anthony G. Murphy
Chairman

Membership of the Tribunal

The membership of the Tribunal is as follows:

Mr. Anthony G. Murphy (Retired Judge) Chairman

Ms. Karen Fergus S.C.

Ms. Leonie Reynolds B.L.

Mr. James Devlin B.L.

Ms. Una McGurk S.C.

Ms. Mary Cantrell, Solicitor

Ms. Deirdre Hegarty, Solicitor

Mr. David Martin, Solicitor

Ms. Patricia McNamara, Solicitor

Ms. Bridget Barry B.L.

Ms. Ann O'Neill, Solicitor

Mr. Dara Hayes B.L.

Mr. Mark O'Connell B.L.

Ms Rachel Murphy B.L.

Ms Anne Rowland B.L.

Entitlement to Make a Claim

The categories of persons entitled to apply for compensation are set out in Section 4 (1) of the Hepatitis C Compensation Tribunal Act, 1997 as amended and in S.I. No. 432 of 1998 (extension of classes of Claimants before Tribunal) Regulations, 1998 and the onus of proof on a Claimant is set out in Section 4 (8) of the Act as amended. The Hepatitis C Compensation Tribunal Act, 1997, the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 and 2006, and associated Statutory Instruments are shown in Appendix I to this Report.

**POTENTIAL CLAIMANTS ARE
PARTICULARLY ADVISED
TO NOTE THE RELEVANT
TIME LIMITS WHICH ARE
SET OUT IN SECTION 4 (14) OF
THE ACT AS AMENDED.**

Advertising

To ensure public awareness of the Tribunal activities, advertisements are placed in national and provincial newspapers from time to time. The Tribunal is anxious that all those who might be entitled to apply for compensation are aware of its existence and how to apply.

The Tribunal Web site may be visited at: www.hepccomptrib.com. Application forms may be downloaded from the site and general information including a location map and frequently asked questions may be obtained.

Operation of the Tribunal

The Tribunal operated as a non-statutory Scheme of compensation from the date of its establishment on 16th December 1995 to 31st October 1997. On 1st November 1997 the Hepatitis C Compensation Tribunal Act, 1997 came into effect. On 9th October 2002, the Hepatitis C Compensation Tribunal (Amendment) Act 2002 became effective. Sections 1 and 2 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006 became effective on 20th June 2006.

Claims are dealt with by the Tribunal by way of an *in camera* oral hearing before at least two members of the Tribunal or by way of an offer of settlement. (Settlement arrangements — Appendix II).

Hearings are held in the offices of the Tribunal at Arran Court, Smithfield, Dublin 7. The Tribunal from time to time holds sittings in Áras na Mac Léinn, University College Cork in response to requests from Claimants in the Munster area.

Claimants are entitled to be legally represented at the hearings. In some cases the Tribunal may decide to appoint Counsel to assist it.

Awards

The Tribunal *paid* a total of €44,020,812 in respect of awards during the year 2008. This amount comprises €39,349,934 from 143 new awards of the Tribunal (including adjustments under Section 6.3 of the Act) and €4,670,878 from 10 increases in compensation awarded by the High Court on appeal from the Tribunal. (See Appendix III).

There were 134 awards *made* by the Tribunal during 2008. The total amount awarded was €30,410,581.88 with the average being €226,944.64. The awards ranged from €20,000.00 to €1,010,789.00 and may be summarised as follows:—

Interim Awards	4
Provisional Awards	20
Single Lump Sum Awards	110 (including 4 settlement awards)

Interim Awards are made generally in situations where a Claimant is not in a position to present the claim in full e.g. when he/she is undergoing treatment for the condition of Hepatitis C or HIV and a final prognosis is not immediately available.

In the provisional awards made to date the Tribunal has been of the view that on the evidence before it that there was a possibility, but no more than a possibility that the Claimant, as a result of having contracted Hepatitis C or HIV might suffer a particular serious consequence or consequences in the future. In addition the Tribunal has specified the time period within which the Claimant may apply for further compensation in the event of such consequence or consequences occurring.

Applications for Further Compensation Arising from a Provisional Award

During the year 2008 five such claims were heard resulting in additional awards of compensation to the Claimants.

Legal Costs

In 2008 the sum of €8,986,744 was paid in costs of which €8,413,723 was in respect of 116 Tribunal awards and €573,021 was in respect of 13 High Court Appeals. (See Appendix V for a complete breakdown of payments).

Reparation Fund

Section 11 (4) of the 1997 Act established a Reparation Fund whereby a Claimant who had accepted an award from the Tribunal or an offer of settlement would be entitled to apply to have an amount paid to her/him from the Fund in lieu of the Tribunal assessing and awarding aggravated or exemplary damages — with the amount from the fund to be fixed at 20% of the total award or settlement. The Government subsequently made arrangements to allow the legal personal representatives of deceased Claimants to apply for the Fund payment.

In addition, a person who, on appeal to the High Court under Section 5(15) or Section 6(3)(e) of the Act, is granted an award of general or special damages or both, has an amount paid to her or him from the Fund in lieu of the assessment of aggravated or exemplary damages.

In 2008, €8,531,391 was paid out by the Tribunal from the Fund in respect of 138 Tribunal awards and 10 High Court Appeals.

Withdrawn/Inactive Claims

Approximately 150 claims have been withdrawn to date. Cases where there has been no attempt to pursue the claim for some considerable time have been adjourned generally by the Tribunal, though each Claimant may apply to have his/her claim re-entered. There are 114 claims currently in this category.

Staff

A staff of three currently provides the administrative/clerical support for the operation of the Tribunal. A firm of stenographers is engaged on a commercial basis for all hearings in the Tribunal and transcripts of proceedings are made available to each Claimant through their Solicitor.

APPENDICES

APPENDIX I



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Establishment day.
 3. The Tribunal.
 4. Claims before Tribunal.
 5. Awards of Tribunal.
 6. Dissolution of and claims before non-statutory scheme Tribunal.
 7. Regulations to give effect to Act.
 8. Settlements.
 9. Extension by regulations of persons who may make a claim before Tribunal.
 10. Special account.
 11. Reparation Fund.
 12. Report of Tribunal.
 13. Power to remove difficulties.
 14. Laying of regulations.
 15. Expenses of Minister.
 16. Short title.
-

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

ACTS REFERRED TO

Appropriation Act, 1995	1995, No. 34
Civil Liability Act, 1961	1961, No. 41
Civil Liability (Amendment) Act, 1996	1996, No. 42
Medical Practitioners Act, 1978	1978, No. 4
Statutes of Limitation, 1957 and 1991	



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A TRIBUNAL TO BE KNOWN AS THE HEPATITIS C COMPENSATION TRIBUNAL TO AWARD COMPENSATION TO CERTAIN PERSONS WHO HAVE CONTRACTED HEPATITIS C WITHIN THE STATE FROM ANTI-D IMMUNOGLOBULIN, OTHER BLOOD PRODUCTS OR BLOOD TRANSFUSION AND TO PROVIDE FOR CONNECTED MATTERS. [21st May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“application form” means any form of application determined by the Tribunal under *section 4(5)*;

“award” means an award of compensation;

“claimant” means a person referred to in *section 4(1)* making a claim to the Tribunal in respect of any matter referred to in that subsection or a person referred to in any regulations made under *section 9* in respect of the matters referred to in those regulations;

“dependant” has the meaning assigned to it by *section 47(1)* (inserted by *section 1* of the Civil Liability (Amendment) Act, 1996) of the Civil Liability Act, 1961;

“the establishment day” means the day appointed to be the establishment day for the purposes of this Act by the Minister under *section 2*;

“the Fund” has the meaning assigned to it by *section 11*;

“Hepatitis C” means Hepatitis C antibodies or virus;

“medical practitioner” means a person registered in the General Register of Medical Practitioners established under *section 26* of the Medical Practitioners Act, 1978;

“the Minister” means the Minister for Health;

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

- S.1 “the non-statutory scheme Tribunal” means the Compensation Tribunal for certain persons who have contracted Hepatitis C within the State from Anti-D Immunoglobulin, whole blood or other blood products established by the Minister on the 15th day of December, 1995;
- “prescribed” means prescribed by regulations made by the Minister;
- “provisional award” has the meaning assigned to it by *section 5(7)*;
- “relevant agency” means the Blood Transfusion Service Board or the Irish Medicines Board;
- “spouse” in relation to a person, includes a person with whom the person is or was at a material time cohabiting;
- “the Tribunal” means the Tribunal established under *section 3*.
- (2) In this Act—
- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactments including this Act.
- Establishment day. **2.**—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.
- The Tribunal. **3.**—(1) On the establishment day there shall stand established a Tribunal to be known as the Hepatitis C Compensation Tribunal to award compensation to claimants referred to in *subsection (1)* of *section 4* in respect of the matters referred to in that subsection or in any regulations made under *section 9* in respect of matters referred to in those regulations, in accordance with this Act.
- (2) The Tribunal may sit in divisions of itself to hear claims before it.
- (3) The Tribunal shall consist of a chairman (“the Tribunal chairman”) and such number of ordinary members as may be prescribed.
- (4) The members of the Tribunal shall be appointed by the Minister.
- (5) The term of office of a member of the Tribunal shall be for such period as is specified by the Minister when appointing such member.
- (6) (a) A member of the Tribunal may, by letter addressed to the Minister, resign her or his membership.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

(b) A member of the Tribunal may be removed from office S.3
by the Minister.

(7) In the case of a member of the Tribunal filling a vacancy caused by the resignation, removal from office or death of a member before the completion of the term of office of the last-mentioned member, the member filling that vacancy shall hold office for the remainder of the term of office of the person who so resigned, was so removed from office or died.

(8) A member of the Tribunal shall be paid such remuneration (if any) and allowances (if any) as may be determined by the Minister with the consent of the Minister for Finance.

(9) The Minister may, with the consent of the Minister for Finance, appoint such employees of the Tribunal as the Minister considers necessary to assist the Tribunal in the performance of its functions, and such employees shall hold office on such terms and receive such remuneration as the Minister for Finance determines.

(10) (a) The Tribunal may in its own behalf or at the request of a claimant where a person has failed to comply with a requirement of the claimant under *section 4(11)*, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in relation to any matter referred to the Tribunal under this Act or to produce any documents in her or his possession, custody or control which relate to any such matter.

(b) A notice under *paragraph (a)* may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to such person at the address at which she or he ordinarily resides.

(c) A person to whom a notice under *paragraph (a)* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £500.

(11) Subject to this Act, the Tribunal shall determine its own procedures and, in so doing, shall as far as is practicable adopt procedures which are informal.

(12) The Tribunal shall conduct its hearings otherwise than in public.

(13) The Tribunal may appoint its own counsel who may call such expert witnesses to give evidence as the Tribunal may require.

(14) The Tribunal may appoint medical or other experts to advise it.

(15) In considering and assessing a claim before it, the Tribunal shall rely primarily on written medical or other written reports, and shall make such reports (other than reports submitted by the claimant) available to the claimant concerned at her or his request.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

S.3

(16) The Tribunal may, in addition to hearing counsel for a claimant, in respect of any matter before it seek the assistance of any or all of the following—

- (a) counsel for any body which represents any class of claimant,
- (b) counsel for any party against whom allegations alleged to warrant the award of aggravated or exemplary damages are made, or
- (c) counsel appointed by the Tribunal in relation to any matter which it regards as necessary.

(17) Nothing in *subsection (16)* permits the cross examination of any claimant.

(18) A claimant and any witness giving evidence on behalf of a claimant may be asked questions by the Tribunal or by counsel for the Tribunal or by both.

Claims before
Tribunal.

4.—(1) The following persons may make a claim for compensation to the Tribunal—

- (a) a person who has been diagnosed positive for Hepatitis C resulting from the use of Human Immunoglobulin Anti-D within the State,
- (b) a person who has been diagnosed positive for Hepatitis C as a result of receiving a blood transfusion or blood product within the State,
- (c) children or any spouse, of a person referred to in *paragraph (a)* or a person referred to in *paragraph (b)*, who have been diagnosed positive for Hepatitis C,
- (d) any person who is responsible for the care of a person referred to in *paragraph (a)*, *(b)* or *(c)*, and who has incurred financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted Hepatitis C,
- (e) where a person referred to in *paragraph (a)*, *(b)* or *(c)* has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death, any dependant of such person, and
- (f) a person referred to in *section 9* in accordance with that section.

(2) Where a person has received an award from any court or a settlement in respect of an action arising out of any circumstances which could give rise to a claim before the Tribunal, the person shall not be entitled to make a claim to, or be heard by, the Tribunal or receive any settlement under *section 8* in respect of those circumstances.

(3) The making of a claim to the Tribunal does not involve the waiver of any other right of action by the claimant.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

(4) A claim before the Tribunal may be heard before a sitting of S.4 the Tribunal consisting of a chairman (who may be a person other than the Tribunal chairman) and at least one other member of the Tribunal.

(5) An application shall be made to the Tribunal in such form and manner as the Tribunal may determine.

(6) A claimant shall state in any application form whether she or he is applying to the Tribunal to have aggravated or exemplary damages assessed by it or is opting to apply to have an amount paid out of the Fund.

(7) Subject to *section 5(3)*, a claimant shall not be required to produce to the Tribunal any evidence of negligence on the part of a relevant agency or other person in respect of her or his claim.

(8) A claimant shall, as the case may be, establish to the satisfaction of the Tribunal, on the balance of probabilities, that the Hepatitis C—

(a) in respect of which the claimant has been diagnosed positive resulted from the use of Human Immunoglobulin Anti-D within the State,

(b) in respect of which the claimant has been diagnosed positive resulted from a blood transfusion or a blood product received by the claimant within the State,

(c) was transmitted to the claimant from a person referred to in *paragraph (a)* or *(b)* following such use, transfusion or receipt, as the case may be, or

(d) where the claimant is a person referred to in *subsection (1)(d)* or *(e)*, was contracted in a manner referred to in this subsection by a person being cared for or who has died leaving a dependant.

(9) A claimant may appear in person or be represented by counsel or solicitor before the Tribunal.

(10) Oral evidence may be given to the Tribunal—

(a) by a claimant or her or his medical practitioner or both, or

(b) by any other person with the permission of or at the request of the Tribunal.

(11) A claimant may require—

(a) the attendance of any person to attend at a hearing of the Tribunal to give evidence in relation to the claimant's claim, or

(b) any person to produce to the claimant any document in relation to the claimant's claim.

(12) A claimant may adduce before the Tribunal written medical or other relevant written expert evidence on her or his behalf.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

S.4

(13) In making a claim for aggravated or exemplary damages, a claimant may rely on the facts found in the Report of the Tribunal of Inquiry into the Blood Transfusion Service Board or any other fact which the claimant establishes to the satisfaction of the Tribunal.

(14) Subject to *subsections (15) and (16)*, a claimant referred to in—

(a) *subsection (1)(a), (b) or (c)* may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first became aware of the fact that she or he may have been diagnosed positive for Hepatitis C or the establishment day, whichever is the later,

(b) *subsection (1)(d)* may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first began to incur such financial loss or expenses or the establishment day, whichever is the later,

(c) *subsection (1)(e)* may only make an application to the Tribunal within the period of 3 years of the date of the death of a person referred to in *subsection (1)(a), (b) or (c)* or the establishment day, whichever is the later,

(d) *subsection (1)(f)* may only make an application to the Tribunal within such period as may be prescribed.

(15) The Tribunal may, at its discretion and where it considers there are exceptional circumstances, extend the periods referred to in *subsection (14)*.

(16) The Tribunal shall extend the periods referred to in *subsection (14)* where it is satisfied a claimant was under a legal disability by reason of being a minor or of unsound mind at the time at which such claim should otherwise have been made and who makes an application to it within 3 years of the cessation of that disability.

Awards of Tribunal.

5.—(1) An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961), and including, subject to *section 11*, consideration of an award on the basis which reflects the principles of aggravated or exemplary damages.

(2) Notwithstanding *subsection (1)* of this section and section 2(2) of the Civil Liability (Amendment) Act, 1996, section 49(1)(b) of the Civil Liability Act, 1961 (as amended by section 2(1)(a) of the Civil Liability (Amendment) Act, 1996) shall have effect in respect of a claim made pursuant to *section 4(1)(e)* of this Act.

(3) An award in respect of aggravated or exemplary damages may be made by the Tribunal where a claimant establishes a legal entitlement to such against a relevant agency or the Minister.

(4) Subject to *subsection (8)*, the Tribunal shall decide upon the amount of any award it may make to a claimant.

(5) Where the Tribunal makes an award to a claimant it shall award to the claimant any reasonable costs and expenses the claimant has incurred in taking her or his claim.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

(6) The Tribunal shall assess and make any award for general or special damages on the basis of a single lump sum award or a provisional award as chosen by a claimant under *subsection (8)*. S.5

(7) (a) Where the Tribunal is of the view that there is a possibility, but no more than a possibility, that a claimant as a result of having contracted Hepatitis C may suffer particular serious consequences in the future, the Tribunal may make an award (“provisional award”) calculated in accordance with *subsection (1)* but assessed on the assumption that such serious consequences will not occur, identifying those consequences and specifying the period within which the claimant may apply in the event of such occurring.

(b) Subject to *paragraph (c)*, where the consequences referred to in this subsection do occur, the claimant may apply for an award of further compensation in accordance with the terms of the provisional award.

(c) Where an application is made under *paragraph (b)*, the Tribunal in awarding any further compensation shall not award any further amount in respect of aggravated or exemplary damages.

(8) A claimant shall choose, on making a claim to the Tribunal, whether she or he is seeking a single lump sum award or a provisional award. A claimant may, at the discretion of the Tribunal, alter her or his choice up to the commencement of the hearing of her or his claim.

(9) (a) Subject to *subsection (13)*, where the Tribunal makes an award to a claimant, the claimant shall have a period of one month or such greater period as may be prescribed from the date of receiving notice of the making of the award during which the claimant may decide in writing either to accept or reject the award or to appeal the award under *subsection (15)*.

(b) If a claimant neither accepts nor rejects an award or appeals the award under *subsection (15)* within the period referred to in *paragraph (a)*, the claimant shall be deemed to have rejected the award.

(10) (a) Where a claimant accepts an award (including a provisional award) of the Tribunal, the claimant must agree in writing to waive any right of action which the claimant may otherwise have had against any party and to discontinue any other proceedings instituted by the claimant arising out of the circumstances of the claimant’s claim before the Tribunal.

(b) An award of the Tribunal shall not be paid to a claimant unless she or he complies with this subsection.

(11) Where a claimant does not wish to receive the entire amount of an award made to her or him in a single payment, the Tribunal, having heard the claimant, may in its absolute discretion, direct that the award shall be paid to the claimant in instalments.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

S.5

(12) Where a claimant chooses to accept an award of the Tribunal, the amount of the award shall, subject to this section, be paid to the claimant within 28 days of receipt by the Tribunal of notification of acceptance of the award.

(13) In the case of an award to a claimant who is a minor or in the case of a settlement for a claimant who is a minor, the acceptance of the award shall be subject to the approval of the High Court, which approval shall be sought within one month of the notification of the making of the award, and the claimant shall have one month from the date of such approval within which to accept or reject such approved award. The High Court may direct that where it considers any part of such an award, in respect of aggravated or exemplary damages, is too low, that the claimant shall apply to have a payment made from the Reparation Fund in lieu of such damages.

(14) Where a claimant does not accept an award within the time and in the manner provided in this section, and proceeds with any right of action she or he may have, the Minister or a relevant agency will not in such proceedings to which it is a party rely for the purposes of the Statutes of Limitation, 1957 and 1991, upon the period between the date of the claimant's application to the Tribunal and the date upon which the claimant abandoned her or his claim, was adjudged not entitled to compensation under this Act, or was last entitled to accept any award made by the Tribunal (whichever of such dates is the later) in bar of any right of recovery under such proceedings.

(15) An appeal shall lie to the High Court by a claimant in respect of any decision made by the Tribunal and the Minister may cross-appeal any such appeal.

(16) An appeal shall lie to the High Court by the Minister or a relevant agency in respect of an award of aggravated or exemplary damages.

(17) (a) An appeal under this section shall be heard otherwise than in public at the request of the claimant making the appeal.

(b) Unless the claimant otherwise requests, an appeal by the Minister or relevant agency under *subsection (16)* shall be heard otherwise than in public.

(18) Where a claimant makes an appeal under *subsection (15)*, the claimant must agree in writing to waive any right of action which the claimant may otherwise have had against any party and to discontinue any other proceedings instituted by the claimant arising out of the circumstances of the claimant's claim before the Tribunal.

(19) A decision of the High Court on an appeal under this section shall be final, save that, by leave of the Court, an appeal from the decision shall lie to the Supreme Court on a specified question of law.

Dissolution of and claims before non-statutory scheme Tribunal.

6.—(1) On the establishment day the non-statutory scheme Tribunal shall stand dissolved.

(2) Any claim which, immediately before the establishment day, is pending before the non-statutory scheme Tribunal shall be heard and determined as if it was a claim made under this Act.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

(3) A person who has had a claim for compensation determined S.6
by the non-statutory scheme Tribunal may—

- (a) apply to the Tribunal to hear evidence at the discretion of the Tribunal which was not made available to the non-statutory scheme Tribunal in calculating the award made to that person,
- (b) apply to the Tribunal to hear evidence on any statutory or non-statutory benefits which she or he has received or is entitled to receive which were taken into account by the non-statutory scheme Tribunal in assessing an award to that person,
- (c) apply to the Tribunal for an award of aggravated or exemplary damages or an amount to be paid to her or him from the Fund,
- (d) apply to the Tribunal for the adjustment of any award made by the non-statutory scheme Tribunal to an award to which she or he would have been entitled had section 2(1)(a) of the Civil Liability (Amendment) Act, 1996, been in force at the time of the making of the award, or
- (e) appeal an award.

7.—(1) The Minister may make regulations giving effect to this Act and such regulations may, in particular but without prejudice to the generality of the foregoing, provide for all or any of the following matters—

Regulations to give effect to Act.

- (a) vouching of items of special damage,
- (b) matters in relation to costs and expenses,
- (c) an official seal of the Tribunal.

(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed or to be prescribed.

8.—(1) The Minister may make arrangements to provide for the settlement of claims in respect of general and special damages by a claimant.

Settlements.

(2) Any documents or papers submitted to the Tribunal in respect of a claim where a settlement is being negotiated under this section may be seen by persons involved in the settlement who shall not disclose the information contained in such documents or papers other than to any person involved in the settlement.

9.—The Minister may, with the consent of the Minister for Finance, by regulations extend the class or classes of persons who may make a claim for compensation before the Tribunal.

Extension by regulations of persons who may make a claim before Tribunal.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

Special account.

10.—(1) There shall be set up on the establishment day a special account, to be funded from moneys provided by the Oireachtas, to be used to pay awards made by the Tribunal and the non-statutory scheme Tribunal and to pay the costs of the Tribunal in administering this Act and of the Scheme administered by the non-statutory scheme Tribunal.

(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.

(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.

(4) On the establishment day the special account set up by section 3 of the Appropriation Act, 1995, shall stand dissolved and all moneys in that account shall be transferred on that day to the special account set up by this section.

(5) Any moneys provided by the Oireachtas for the special account set up by section 3 of the Appropriation Act, 1995, may be paid into the special account set up by this section.

(6) In this section “special account”, unless the context otherwise requires, means an account for the purposes of this Act and the Scheme administered by the non-statutory scheme Tribunal in the joint names of the Minister and the Minister for Finance, which account shall—

- (a) be an account with the Paymaster General,
- (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.

Reparation Fund.

11.—(1) There shall be established on the appointed day a fund to be known as the Reparation Fund (in this Act referred to as “the Fund”) comprising an account, to be funded from moneys provided by the Oireachtas, of such amounts as the Minister may, with the consent of the Minister for Finance, determine to enable payments to be made to claimants in respect of matters referred to in *subsection (4)*.

(2) Subject to *subsection (3)*, the moneys in the Fund 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.

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

(4) Where a claimant accepts an award from the Tribunal or accepts an offer of a settlement under *section 8*, in respect of general or special damages or both, the claimant may apply to have an amount paid to her or him from the Fund in lieu of the Tribunal assessing and awarding aggravated or exemplary damages.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

(5) Where a claimant has had an award of aggravated or exemplary damages made to her or him by the Tribunal, she or he shall not be entitled to apply for payment from the Fund. S.11

(6) The amount paid out of the Fund to a claimant shall amount to 20 per cent. of the total amount of the award or settlement referred to in *subsection (4)*.

(7) The Minister shall manage and control the Fund.

(8) The account of the Fund shall—

(a) be prepared in such form, in such manner and at such times as the Minister for Finance may direct,

(b) be an account with the Paymaster General,

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

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

(9) The Minister shall by order appoint a day to be the appointed day for the purposes of this section.

12.—(1) The Tribunal shall submit a report of its activities and particulars of its accounts to the Minister at such time as the Minister directs. Report of Tribunal.

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

(3) A report of the Tribunal shall not identify any claimant.

13.—(1) If in any respect any difficulty arises in bringing any provision of this Act into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to be necessary or expedient for the purposes of removing that difficulty, for bringing that provision into operation or for securing or facilitating its operation and any such regulations may modify any provision of this Act or any other enactment so far as may appear necessary or expedient for the purposes aforesaid. Power to remove difficulties.

(2) No regulations may be made under this section after the expiration of one year after the establishment day.

14.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. Laying of regulations.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(*Amendment*) Act, 2002.

Expenses of
Minister.

15.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided for by the Oireachtas.

Short title.

16.—This Act may be cited as the Hepatitis C Compensation Tribunal Act, 1997.



Number 21 of 2002

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT, 2002**

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Name of Tribunal.
 3. Amendment of section 3 of Principal Act.
 4. Amendment of section 4 of Principal Act.
 5. Amendment of section 5 of Principal Act.
 6. Amendment of section 9 of Principal Act.
 7. Amendment of section 10 of Principal Act.
 8. Amendment of section 11 of Principal Act.
 9. Power to remove difficulties.
 10. Saving.
 11. Short title, collective citation, construction and commencement.
-

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(*Amendment*) Act, 2002.

ACTS REFERRED TO

Civil Liability Act, 1961

1961, No. 41

Hepatitis C Compensation Tribunal Act, 1997

1997, No. 34



Number 21 of 2002

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT, 2002**

AN ACT TO AMEND AND EXTEND THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997, TO ENABLE THE TRIBUNAL TO AWARD COMPENSATION TO CERTAIN PERSONS WHO CONTRACTED HIV WITHIN THE STATE FROM CERTAIN BLOOD PRODUCTS AND TO PROVIDE FOR RELATED MATTERS. [29th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires—

Interpretation.

“HIV” means human immunodeficiency virus;

“the Principal Act” means the Hepatitis C Compensation Tribunal Act, 1997;

“relevant product” means a blood product or a blood component used to treat persons with haemophilia or other blood clotting disorders in respect of those conditions;

“the 1991 settlement” means the agreement made in 1991 in settlement of proceedings against the State and other parties relating to the infection with HIV of certain persons as a result of those persons receiving blood or blood products in the State;

“the Tribunal” means the Tribunal established by section 3 of the Principal Act and known, by virtue of *section 2*, as the Hepatitis C and HIV Compensation Tribunal.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other provision is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

- (c) a reference to any enactment is a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Name of Tribunal.

2.—The Tribunal established by section 3 of the Principal Act shall be known as the Hepatitis C and HIV Compensation Tribunal and references in that Act and any other Act of the Oireachtas and any instrument made under any Act of the Oireachtas to the Hepatitis C Compensation Tribunal shall be construed as references to the Hepatitis C and HIV Compensation Tribunal.

Amendment of
section 3 of
Principal Act.

3.—Section 3 of the Principal Act is hereby amended—

(a) in subsection (10)(b), by the insertion after “resides” of “or carries on any trade, business or profession”, and

(b) by the insertion of the following subsection after subsection (10):

“(10A) Where a person refuses or fails to comply with or disobeys a requirement of the Tribunal, the High Court may, on application to it in a summary manner in that behalf by the Tribunal, order the person to comply with the requirement and make such other (if any) order as it considers necessary and just to enable the requirement to have full effect.”.

Amendment of
section 4 of
Principal Act.

4.—Section 4 of the Principal Act is hereby amended—

(a) in subsection (1)—

(i) by the insertion in paragraph (c) after “who have” of “themselves”,

(ii) by the insertion in paragraph (d) after “who has incurred” of “or will incur”, and

(iii) by the substitution of the following paragraphs for paragraphs (e) and (f)—

“(e) where a person referred to in paragraph (a), (b) or (c) has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death, any dependant of such person,

(f) a person who has been diagnosed positive for HIV as a result of receiving a relevant product within the State,

(g) children or any spouse of a person referred to in paragraph (f) who have themselves been diagnosed positive for HIV,

(h) any person who is married to a person referred to in paragraph (a), (b) or (f), or who has been living with a person referred to in paragraph (a), (b) or (f) for a continuous period of not less than three

[2002.] *Hepatitis C Compensation Tribunal [No. 21.]*
(Amendment) Act, 2002.

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

(i) any person who is responsible for the care of a person referred to in paragraph (f) or (g) and who has incurred or will incur financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted HIV,

(j) where a person referred to in paragraph (f) or (g) has died as a result of having contracted HIV or where HIV was a significant contributory factor to the cause of death, any dependant of such person, and

(k) a person referred to in section 9 in accordance with that section.”,

(b) by the insertion of the following subsection after subsection (2):

“(2A) Subsection (2) shall not apply to a person who has received a payment under the 1991 settlement or an award from any court (including an award from a court on an appeal from the Tribunal) or a payment in respect of an action against a party other than the State or a relevant agency arising out of any circumstances which would give rise to a claim before the Tribunal.”,

(c) by the insertion of the following subsection after subsection (6):

“(6A) (a) A claimant shall state in any application to the Tribunal—

(i) whether he or she has previously made a claim to the Tribunal or, where the claimant is a dependant referred to in subsection (1)(j), whether the person whose death has given rise to the dependant’s claim had previously made a claim to the Tribunal, and

(ii) whether he or she received a payment under the 1991 settlement or, where the claimant is a dependant referred to in subsection (1)(j), whether the person whose death has given rise to the dependant’s claim received a payment under the 1991 settlement,

and the Tribunal may take such steps as it thinks fit to verify the statements made in the application.

(b) The Minister may, in relation to an application, furnish the Tribunal with particulars of the 1991 settlement relevant to the application.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(*Amendment*) Act, 2002.

- (c) Where a person infected with Hepatitis C and HIV who has not made a claim for compensation to the Tribunal before the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, makes a claim in respect of both conditions after such commencement, then, the Tribunal may, if it considers it appropriate to do so, hear and determine both claims together.
- (d) Where a person proposes to make a claim for compensation to the Tribunal after the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, and where that person had previously made a claim to the Tribunal which had not been determined before such commencement, then, the Tribunal may, if it considers it appropriate to do so, hear and determine both claims together.”,
- (d) in subsection (8), by the insertion after “A claimant” of “referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1)”,
- (e) by the insertion of the following subsection after subsection (8):
- “(8A) A claimant referred to in paragraph (f), (g), (h), (i) or (j) of subsection (1) shall, as the case may be, establish to the satisfaction of the Tribunal, on the balance of probabilities—
- (a) that the HIV in respect of which the claimant has been diagnosed positive resulted from a relevant product received by the claimant within the State,
- (b) that the HIV was transmitted to the claimant from a person referred to in paragraph (a) following such receipt,
- (c) that the HIV was transmitted to the person being cared for following such receipt, or
- (d) that the HIV was transmitted to the person in respect of whom the claimant is a dependant following such receipt.”,
- (f) by the insertion in subsection (13) after “Board” of “or in any report of the Tribunal of Inquiry into the infection with HIV and Hepatitis C of Persons with Haemophilia, and related matters”,
- (g) by the substitution in subsection (14)(d) of “(k)” for “(f)”,
- (h) by the insertion of the following subsection after subsection (14):
- “(14A) Subject to subsections (15) and (16)—
- (a) a claimant referred to in paragraph (f) or (g) of subsection (1) may make an application to the Tribunal only during the period of 3 years

[2002.] *Hepatitis C Compensation Tribunal (Amendment) Act, 2002.* [No. 21.]

from the date upon which he or she first became aware of the fact that he or she may have been diagnosed positive for HIV or from the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later,

(b) a claimant referred to in subsection (1)(i) may make an application to the Tribunal only during the period of 3 years from the date upon which he or she began to incur such financial loss or expenses or from the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later,

(c) a claimant referred to in paragraph (e) or (j) of subsection (1) may make an application to the Tribunal only during the period of 3 years from the date of the death of a person referred to in paragraph (a), (b), (c), (f) or (g) of subsection (1) or the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later, and

(d) a claimant referred to in subsection (1)(h) may make an application to the Tribunal only during the period of 3 years from the date of the loss of consortium of a person referred to in paragraph (a), (b) or (f) of subsection (1), including the impairment of the sexual relations with the person, arising from the risk of transmission of Hepatitis C or HIV or the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later.”,

(i) in subsection (15), by the insertion after “subsection (14)” of “and in subsection (14A)”, and

(j) in subsection (16), by the insertion after “subsection (14)” of “and in subsection (14A)”.

5.—Section 5 of the Principal Act is hereby amended—

Amendment of section 5 of Principal Act.

(a) by the insertion of the following subsection after subsection (2):

“(2A) Notwithstanding subsection (1)—

(a) section 49 of the Civil Liability Act, 1961, shall apply in relation to the assessment of the amount of the award to a dependant referred to in paragraph (e) or (j) of section 4(1) with the modification that the reference in subsection (1)(a)(i) of the said section 49 to the death shall be construed as a reference to the injury to the deceased and the death of the deceased,

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

(b) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of section 4(1) consisting of an amount equal to the amount of the general damages including damages for pain and suffering, personal injury, loss or diminution of expectation of life or happiness which the deceased suffered during his or her lifetime and to which the deceased would have been entitled if he or she had survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, the amount aforesaid of the award shall be divided among those dependants in such manner as the Tribunal thinks just, and

(c) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of section 4(1) in respect of aggravated or exemplary damages where the dependant establishes that the deceased would have had a legal entitlement to such damages against a relevant agency or the Minister had he or she survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, the amount aforesaid of the award shall be divided among those dependants in such manner as the Tribunal thinks just.”,

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) Where a dependant referred to in paragraph (e) or (j) of section 4(1) is the child, spouse, father or mother of the person who died (“the deceased”) as a result of having contracted HIV or Hepatitis C, or where HIV or Hepatitis C was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of post-traumatic stress disorder or nervous shock if he or she satisfies the Tribunal that he or she has suffered or is suffering from that condition as a result of the death.

(b) In determining whether to make an award under this subsection, the Tribunal shall have regard to any decisions of the High Court or the Supreme Court enunciating principles of law relating to the award of damages for post-traumatic stress disorder or nervous shock, as the case may be.

(3B) (a) The Tribunal may make an award to a person referred to in section 4(1)(h) in respect of the loss of consortium of a person referred to in paragraph (a), (b) or (f) of section 4(1), including the impairment of sexual relations with the person, if the Tribunal is satisfied that there has been such loss or impairment arising from the risk of transmission of Hepatitis C or HIV.

[2002.] *Hepatitis C Compensation Tribunal [No. 21.]*
(Amendment) Act, 2002.

(b) Where a dependant referred to in paragraph (e) or (j) of section 4(1) is the child, spouse or parent of the person who died ('the deceased') as a result of having contracted Hepatitis C or HIV, or where Hepatitis C or HIV was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of loss of society of the deceased including the loss of the care, companionship and affection of the deceased as a result of the death.

(3C) For the purposes of subsections (3A) and (3B) 'spouse' in relation to the deceased, means—

(a) a person who was married to the deceased, or

(b) a person who was not married to the deceased but who, until the date of the deceased's death, had been living with the deceased as husband or wife for a continuous period of not less than three years.

(3D) (a) In considering the claim of a person referred to in paragraph (f), (g) or (i) of section 4(1), the Tribunal may consider any payment made to the person under the 1991 settlement.

(b) In considering the claim of a dependant referred to in section 4(1)(j), the Tribunal may consider any payment made under the 1991 settlement to that dependant or to the person whose death has given rise to the dependant's claim for compensation to the Tribunal.",

(c) by the insertion of the following subsection after subsection (5):

"(5A) For the avoidance of doubt, it is hereby declared that the making of an award to a claimant under this section shall not revive any claims heretofore discharged or waived by the claimant pursuant to the 1991 settlement, and is without prejudice to any indemnity given by the claimant under the 1991 settlement.",

(d) by the insertion of the following subsection after subsection (6):

"(6A) The Tribunal may correct any clerical mistake or omission in a decision made by it within one month of the making of the decision.",

(e) in subsection (7)(a), by the insertion of "or HIV or both" after "Hepatitis C",

(f) in subsection (8), by the substitution of "before the conclusion" for "up to the commencement", and

(g) by the insertion in subsection (13) after "one month" of "or such longer period as may be prescribed" in each place where it occurs.

[No. 21.] *Hepatitis C Compensation Tribunal* [2002.]
(Amendment) Act, 2002.

Amendment of
section 9 of
Principal Act.

6.—Section 9 of the Principal Act is hereby amended by the substitution of “in respect of Hepatitis C or HIV and may by regulations amend or modify this Act for the purpose of enabling this Act to apply appropriately to the class or classes so extended” for “in respect of Hepatitis C and in so doing may by regulations amend or modify this Act to make such incidental or consequential change necessary to give effect to the extension or so that the extension complies with the provisions of this Act” (inserted by the Hepatitis C Compensation Tribunal Act, 1997, (Section 13) (No. 2) Regulations 1998 (S.I. No. 417 of 1998).

Amendment of
section 10 of
Principal Act.

7.—(1) Section 10(1) of the Principal Act is hereby amended by the insertion after “to pay awards made by the Tribunal” of “or by the High Court on an appeal from the Tribunal under section 5 or 6”.

(2) The Hepatitis C Compensation Tribunal Act, 1997, (Section 13) Regulations 1998 (S.I. No. 196 of 1998) are hereby revoked.

Amendment of
section 11 of
Principal Act.

8.—Section 11(4) of the Principal Act is hereby amended—

(a) by the insertion in subsection (4) after “an award from the Tribunal” of “or from the High Court on an appeal from the Tribunal under section 5 or 6”, and

(b) by the insertion of the following subsection after subsection (4):

“(4A) Where a claimant accepts an award of further compensation from the Tribunal under section 5(7) or from the High Court on an appeal from the Tribunal against that award, the claimant may apply to have an amount paid to him or her from the Fund.”.

Power to remove
difficulties.

9.—If in any respect any difficulty arises during the period of 12 months from the commencement of a provision of this Act or an amendment of another Act effected by this Act in bringing the provision or amendment into operation, the Minister may by regulations do anything which appears to be necessary or expedient for bringing the provision or amendment into operation and regulations under this section may, in so far only as may appear necessary for carrying the regulations into effect, modify a provision of this Act or such an amendment if the modification is in conformity with the purposes, principles and spirit of this Act.

Saving.

10.—Nothing in this Act or in section 5(10)(a) of the Principal Act shall be construed as preventing a person from instituting or continuing proceedings for damages against a party other than the State and the other parties to the 1991 settlement as a result of having contracted HIV.

[2002.] *Hepatitis C Compensation Tribunal* [No. 21.]
(Amendment) Act, 2002.

11.—(1) This Act may be cited as the Hepatitis C Compensation Tribunal (Amendment) Act, 2002.

Short title,
collective citation,
construction and
commencement.

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

(3) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.



Number 22 of 2006

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT 2006**

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.
-

[No. 22.] *Hepatitis C Compensation Tribunal* [2006.]
(Amendment) Act 2006.

ACTS REFERRED TO

Health (Amendment) Act 1996	1996, No. 15
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



Number 22 of 2006

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT 2006**

AN ACT TO AMEND THE HEPATITIS C COMPENSATION TRIBUNAL ACTS 1997 AND 2002, TO PROVIDE FOR THE ESTABLISHMENT OF AN INSURANCE SCHEME TO ENABLE CERTAIN PERSONS DIAGNOSED POSITIVE FOR HEPATITIS C OR HIV TO BE PROVIDED WITH CERTAIN CLASSES OF INSURANCE WHICH WOULD OTHERWISE BE EITHER UNAVAILABLE TO THEM OR AVAILABLE ONLY UPON THE PAYMENT OF A HIGHER PREMIUM AND TO MAKE A RELATED AMENDMENT TO THE HEALTH (AMENDMENT) ACT 1996.

[16th July, 2006]

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).

(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;

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

‘scheme administrator’ means the person appointed, pursuant to section 7(10), to administer the relevant insurance scheme;”

and

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

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

[No. 22.] *Hepatitis C Compensation Tribunal [2006.] (Amendment) Act 2006.*

- (a) the diagnosis is—
- (i) based on a positive test result arising from an enzyme - linked immunosorbent assay, or
 - (ii) in the case of a recombinant immunoblot assay which indicates antibodies to individual viral antigens on 4 different antibody bands identified as C-22, C-33, C-100 and NS-5, based on a positive test result—
 - (I) of not less than 2+ on the C-22 antibody band, or
 - (II) of not less than 3+ on each of any 2 of the other antibody bands,
 - or
 - (iii) based on a positive test result arising from a polymerase chain reaction (PCR) test,
- (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, or
- (c) the diagnosis is based on a positive test result arising from a test specified for the purposes of this subsection in regulations made under section 7(1)(e).

(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):

- “(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,
 - (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,
 - (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

- (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,

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.”.

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

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

(a) in subsection (1)—

- (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—

(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—

[No. 22.] *Hepatitis C Compensation Tribunal [2006.]
(Amendment) Act 2006.*

(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,

(e) specifying a test for the purposes of subsection (1A)(c) of section 1.”,

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 functions of the scheme administrator,

(b) subject to paragraphs (c) to (o) 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—

(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,

(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—

(I) subject to paragraph (d), €420,000, 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

- (D) the claimant and a person referred to in subclause (B) or (C),
 - (ii) subject to paragraph (d), €525,000 in any case where the greater amount referred to in subparagraph (i) exceeds €525,000,
 - (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),
 - (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—
 - (i) €394,000, 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,

[No. 22.] *Hepatitis C Compensation Tribunal [2006.] (Amendment) Act 2006.*

- (i) to provide, not later than 6 months after the day appointed under subsection (11) as the establishment day for the scheme, annual travel insurance as a benefit under the scheme for a relevant claimant,
- (j) subject to paragraph (m), to specify that a relevant claimant, in any case where subsection (1)(d)(ii)(II)(A) applies to the 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 in cases where subsection (1)(d)(ii)(II)(A) applies to the claimants,
- (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,
- (n) to specify that the scheme administrator shall refuse an application for a benefit under the scheme made—
 - (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—

(i) be provided, or

(ii) continue to be provided,

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

and

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

“(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 by virtue of which a person is a relevant claimant.

(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, except that, for the purposes of this section or those regulations being so construed, no regard shall be had to any other medical condition of the claimant.

(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 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,

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

(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.

[No. 22.] *Hepatitis C Compensation Tribunal [2006.]
(Amendment) Act 2006.*

(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).

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

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

(b) subject to section 7C(4), 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.

(8) It is hereby declared that—

(a) if a benefit under the relevant insurance scheme is provided to a relevant claimant, or a relevant claimant and the other person, 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

(b) any insurance provided to a relevant claimant, or a relevant claimant and the other person, 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 the relevant insurance scheme provided to the claimant, or the claimant and the other person, as the case may be.

(9) Where an application for a benefit under the relevant insurance scheme is made to the scheme administrator on or after the 1st anniversary of the day appointed under subsection (11) as the establishment day for the scheme, then the scheme administrator shall—

(a) subject to paragraphs (b) and (c), determine the application not later than 28 days after the day on which the scheme administrator received the application,

(b) subject to paragraph (c), if subsection (7) applies to the application, not later than 28 days after the day on which that subsection ceases to apply to the application,

(c) in any case where the scheme administrator fails to comply with paragraph (a) or (b), send a notice in writing to the applicant, not later than 7 days after that failure, setting out the scheme administrator's reasons for the failure.

(10) The Health Service Executive shall appoint a person (who may be an employee of the Executive) to administer the relevant insurance scheme.

(11) The Minister shall by order appoint a day to be the establishment day for the purposes of the relevant insurance scheme.

(12) 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.

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

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

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

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

"Appeals against relevant decisions of scheme administrator.

7A.—(1) A person may appeal against a relevant decision not later than 90 days after notice in writing of the decision was given to the person by the scheme administrator.

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

(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—

(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.

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

(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

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.

[No. 22.] *Hepatitis C Compensation Tribunal [2006.] (Amendment) Act 2006.*

by the Minister in respect of the procedure to be followed with respect to the consideration of any appeal under subsection (1),

- (c) consider any written or oral submissions made by or on behalf of the appellant and the scheme administrator in respect of the appeal,
- (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,
- (e) send a copy of the decision to the appellant and the scheme administrator together with the person's reasons for the decision, and
- (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—

- (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).

(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.

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

(8) The scheme administrator shall—

- (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,
- (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
 - (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.

[No. 22.] *Hepatitis C Compensation Tribunal [2006.]
(Amendment) Act 2006.*

Special
account for
relevant
insurance
scheme.

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 (including, subject to section 7(4), insurance premiums).

(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.

(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.

(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,
- (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.

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 (including a document to provide evidence for a decision which falls within subsection (4)(a), (b) or (c) or an opinion which falls within subsection (4)(d)).

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

- (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
- (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.

(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.

(4) Subject to subsection (5), the scheme administrator shall, for the purposes of determining whether or not a person is a relevant claimant—

- (a) accept any decision made by the Tribunal under section 5 which relates to the person and which has not been the subject of an appeal under that section to the High Court,
- (b) accept any decision made by the High Court on an appeal under section 5 which relates to the person and which has not been the subject of an appeal under that section to the Supreme Court,
- (c) accept any decision made by the Supreme Court on an appeal under section 5 which relates to the person, and
- (d) accept an opinion referred to in section 2(1) of the Health (Amendment) Act 1996 (as amended by section 6 of the *Hepatitis C Compensation Tribunal (Amendment) Act 2006*) which relates to the person.

(5) Subsection (4) shall not operate to prejudice the generality of—

- (a) subsections (1A) and (1B) of section 1 (as amended by section 1 of the *Hepatitis C Compensation Tribunal (Amendment) Act 2006*), or
- (b) subsections (1A) and (1B) of section 2 of the Health (Amendment) Act 1996 (as amended by section 6 of the *Hepatitis C Compensation Tribunal (Amendment) Act 2006*).

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

[2006.] *Hepatitis C Compensation Tribunal* [No. 22.]
(Amendment) Act 2006.

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

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

“(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).”.

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

Amendment of section 2 of Health (Amendment) Act 1996 (provision of health services without charge to certain persons who have contracted hepatitis C).

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

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

“(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—

(i) based on a positive test result arising from an enzyme - linked immunosorbent assay, or

(ii) in the case of a recombinant immunoblot assay which indicates antibodies to individual viral antigens on 4 different antibody bands identified as C-22, C-33, C-100 and NS-5, based on a positive test result—

(I) of not less than 2+ on the C-22 antibody band, or

(II) of not less than 3+ on each of any 2 of the other antibody bands,

or

(iii) based on a positive test result arising from a polymerase chain reaction (PCR) test,

(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, or

(c) the diagnosis is based on a positive test result arising from a test specified for the purposes of subsection (1A)(c) of section 1 of the Hepatitis C Compensation Tribunal Act 1997 as amended by *section 1* of the *Hepatitis C Compensation Tribunal (Amendment) Act 2006*.

(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.”.

[No. 22.] *Hepatitis C Compensation Tribunal* [2006.]
(Amendment) Act 2006.

Short title,
collective citation,
construction and
commencement.

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

(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.

(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.

S.I. No. 440 of 1997.

REGULATIONS

entitled

Hepatitis C Compensation Tribunal Act Regulations, 1997

Pn. No. 4564

**Price - 40p
Postage - 36p**

S.I. No. 440 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL REGULATIONS, 1997.

The Minister for Health and Children in exercise of the powers conferred on the Minister by section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Regulations 1997.
2. (1) A claimant shall, not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim, submit in writing medical or other relevant reports, on which a claimant intends to rely. The Tribunal may, at its discretion, accept such reports within a shorter time.

(2) Items of special damage shall be vouched by the claimant to the Tribunal not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim. The Tribunal may, at its discretion, accept such vouching within a shorter time.

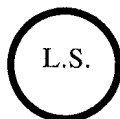
(3) If, in the opinion of the Tribunal, a claimant fails to comply with paragraph (1) or (2) of this Regulation or a claimant's case is presented at excessive length, the Tribunal may reduce the amount in respect of costs or expenses which might otherwise be awarded to such claimant by such amount as the Tribunal, in its sole discretion, may decide.
3. (1) The Tribunal shall as soon as may be after the establishment day provide itself with an official seal.

(2) The seal of the Tribunal shall be authenticated by the signature of the Tribunal chairman or such other member thereof as may be authorised by the Tribunal to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Tribunal and every document purporting to be an instrument made by the Tribunal and carrying the seal of the Tribunal shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.
4. (1) A claimant who has been awarded costs or expenses shall submit her or his bill of costs (or expenses) to the Chief State Solicitor who may agree the quantum of those costs or expenses. In default of agreement, the matter shall be re-entered before the Tribunal to determine the quantum of costs or expenses.

(2) In determining the amount of costs or expenses associated with a claim regard shall be had to:
 - (a) the amount of the award,
 - (b) the amount of work necessarily and properly undertaken by the claimant's lawyers referable to the application for compensation,

- (c) the informal nature of the Tribunal's proceedings,
- (d) the standard of proof required by the Tribunal,
- (e) the matters referred to in Regulation 2(3) of these Regulations,
- (f) any other factor which it considers relevant.



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 441 of 1997.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act (Number of Ordinary Members
of Tribunal) Regulations, 1997**

Pn. No. 4565

**Price - 40p
Postage - 36p**

S.I. No. 441 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL ACT (NUMBER OF ORDINARY MEMBERS OF TRIBUNAL) REGULATIONS, 1997.

The Minister for Health and Children, in exercise of the powers conferred on the Minister by sections 3(3) and 7(2) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of the 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of the 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Number of Ordinary Members of Tribunal) Regulations, 1997.
2. It is hereby prescribed that the number of ordinary members of the Tribunal shall be 14.



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 443 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day)
Order, 1997**

Pn. No. 4569

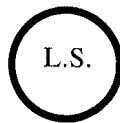
**Price - 40p
Postage - 36p**

S.I. No. 443 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (ESTABLISHMENT DAY)
ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 2 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the establishment day for the purposes of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 444 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund)
(Appointed Day) Order, 1997**

Pn. No. 4570

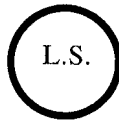
**Price - 40p
Postage - 36p**

S.I. No. 444 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (REPARATION FUND)
(APPOINTED DAY) ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 11(9) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund) (Appointed Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the appointed day for the purposes of section 11 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 195 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a))
Regulations, 1998**

Pn. No. 5787

**Price - 40p
Postage - 36p**

S.I. No. 195 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 5 (9)(a))
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 5(9)(a) and section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a)) Regulations, 1998.
2. It is hereby prescribed that a claimant shall, as well as the period referred to in section 5(9)(a) of the Hepatitis C Compensation Tribunal Act, 1997, have a period of not later than one month from the date of commencement of rules of court in relation to such appeals, during which the claimant may decide in writing either to accept or reject the award of the Tribunal or appeal the award under subsection (15) of that section.



GIVEN under the Official Seal of the Minister for Health and Children, this 9th day of June, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 196 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations,
1998**

Pn. No. 5788

**Price - 40p
Postage - 36p**

S.I. No. 196 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations, 1998.
2. In these Regulations
“the Act” means the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997);
“the Court” means the High Court.
3. Any award of general or special damages or both including costs, made by the Court on appeal under section 5(15) or section 6(3)(e) of the Act, may be paid from the special account set up under section 10 of the Act.
4. A person who, on appeal to the Court under section 5(15) or section 6(3)(e) of the Act, is granted an award of general or special damages or both, may apply to have an amount paid to her or him from the Reparation Fund in lieu of the assessment of aggravated or exemplary damages.



GIVEN under the Official Seal of the Minister for Health and Children, this 9th day of June, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 392 of 1998.

**Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C
Compensation Tribunal), 1998.**

Published by the Stationery Office, Dublin

**To be purchased from the
Government Publications Sale Office,
Sun Alliance House,
Molesworth Street,
Dublin 2**

or through any bookseller

Pn. No. 6296

**Price - £1.00
Postage - 48p**

S.I. No. 392 of 1998.

**RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C
COMPENSATION TRIBUNAL), 1998.**

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act, 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act, 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act, 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961, section 48), and the Courts (Supplemental Provisions) Act, 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the annexed Rules of Court.

Dated this 23rd day of July, 1998.

Frederick Morris
Ronan Keane
Kevin Lynch
Richard Johnson
Gordon Holmes
Eamon Marray

I concur in the making of the annexed Rules of Court.

Dated this 14th day of October, 1998.

JOHN O'DONOGHUE,
Aire Dlí agus Cirt
Comhionannais agus Athchóirithe Dlí.

S.I. No. 392 of 1998.

RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C COMPENSATION TRIBUNAL), 1998.

1. The following shall be inserted as Order 105A of the Rules of the Superior Courts immediately after Order 105 thereof:

ORDER 105A

APPEALS FROM THE HEPATITIS C COMPENSATION TRIBUNAL

1. An appeal to the High Court under section 5 (15) or under section 5 (16) of the Hepatitis C Compensation Tribunal Act, 1997 (“the Act”) shall be brought by way of originating notice of motion.
2. (1) Where an appeal against an award is brought by a claimant, such notice of motion shall be issued within one month from the date of receiving notice of the making of the award or within such greater period as may be prescribed by the Minister.
(2) Where an appeal against a decision of the Tribunal is brought (other than an award) such notice of motion shall be issued within one month from the date of the decision.
(3) Where an appeal is brought by a claimant, the Minister may cross-appeal within one month of the date of service of the notice of motion upon the Minister. Such cross-appeal shall be taken by way of a notice of motion. An appeal by any party shall put the matter appealed against fully in issue and a notice of cross-appeal shall not be required on that issue by any other party.
(4) Where an appeal is brought under section 5 (16) of this Act by the Minister or a relevant agency, such appeal shall be brought within one month of the date of the making of the award of aggravated or exemplary damages.
(5) Any appeal brought by a person pursuant to section 6 (3) (e) of the Act shall be brought by originating notice of motion within six months from the date of the commencement of these rules or within such further period as may be permitted by the Court under Order 122.
3. (1) Any notice of motion appealing any award or other decision or cross-appealing an appeal brought by a claimant shall be served by pre-paid ordinary post.
(2) Where an appeal is brought by a claimant or by a person who is appealing an award under section 6 (3) (e) it shall be served upon the Minister and also upon any relevant agency, where appropriate. The Minister and such relevant agency (if any) shall be the respondent(s) in the appeal.
(3) Where an appeal is brought by the Minister or by a relevant agency it shall be served upon the claimant and upon the Minister if he is not bringing the appeal or upon the relevant agency if it is not bringing the appeal, as appropriate.

- (4) In every appeal the person bringing the appeal shall serve a copy of the appeal on the Tribunal.
4. (1) There must be at least ten days between service of the notice of motion and the date specified therein for the hearing of the motion.
- (2) Every notice of motion bringing an appeal shall be grounded upon the affidavit of the appellant, and on such other affidavit or affidavits as appears appropriate and every cross-appeal by the Minister shall be grounded upon such affidavit or affidavits as may be filed on the Minister's behalf. Any respondent to an appeal may file an affidavit in reply thereto within 28 days of receipt of such notice of appeal or within such further time as the Court may allow.
- (3) In every appeal brought by a claimant or by a person appealing an award under section 6 (3) (e), such affidavit shall:
- (a) exhibit the application made to the Tribunal or to the non-statutory scheme Tribunal, as the case may be;
 - (b) exhibit the written, medical or other relevant written expert evidence adduced;
 - (c) exhibit any other relevant material adduced on behalf of such claimant or person;
 - (d) exhibit such written record (if any) of the proceedings and determination made by the Tribunal or non-statutory scheme Tribunal, as the case may be;
 - (e) exhibit a copy of the relevant award or decision of the Tribunal or the award of the non-statutory scheme Tribunal, as the case may be;
 - (g) exhibit the waiver of any right of action required by section 5 (18) of the Act and/or any notice of discontinuance of proceedings already instituted;
 - (h) state concisely the grounds upon which the appeal has been brought;
 - (i) specify where the claimant or person appealing an award under section 6 (3) (e) is requesting that the appeal be heard otherwise than in public.
- (4) Where a cross-appeal is brought by the Minister, it shall be verified by affidavit which shall set out concisely the grounds of any such appeal and shall exhibit the relevant material relating to such cross-appeal. The appellant may file a replying affidavit within 28 days of the receipt of notice of such cross-appeal.
- (5) Where an appeal is brought by the Minister or a relevant agency in respect of an award of aggravated or exemplary damages, such appeal shall be verified by affidavit which shall set out concisely the grounds of appeal and shall exhibit all relevant material relating to such appeal.
- (6) Where such appeal is brought by the Minister or the relevant agency under section 5 (16) of the Act the claimant may, within twenty eight days of the receipt of such appeal, file an affidavit or affidavits in reply thereto and the claimant may, either in any such affidavit or by letter in writing or at the hearing of such appeal request that such appeal be heard in public.

5. An appeal or cross-appeal brought pursuant to the Act shall be heard and determined upon affidavit provided that oral evidence may be given to the Court by a claimant or his or her medical practitioner or expert or both or by any other person with the leave of the Court. In relation to any appeal or appeals concerning a joint award made by the Tribunal to a claimant and to his or her spouse, such appeal shall be heard on a joint basis.
 6. Any person desiring to seek leave of the Court for an appeal pursuant to section 5 (19) of the Act shall, within twenty one days from the date of the decision of the Court, give notice to any other party of the specified question of law in respect of which leave is sought.
 7. The provisions of Order 22 rule 10 (10) shall apply *mutatis mutandis* to an application pursuant to section 5 (13) of the Act for the approval of the Court, which approval shall be sought by lodging all necessary papers within one month of the notification of the making of the award.
 8. The provisions of Rules 1 to 7 shall apply to any Appeals which are in existence at the date of the commencement of these Rules to such extent as the President of the High Court in his discretion may direct.
2. This rule shall come into operation on the 23rd day of October, 1998.
 3. This rule shall be construed together with the Rules of the Superior Courts, 1986 to 1998 and may be cited as the Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C Compensation Tribunal), 1998.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Rules which come into operation on 23rd October, 1998, prescribe procedures in relation to appeals against decisions (including awards) of the Hepatitis C Compensation Tribunal pursuant to the Hepatitis C Compensation Tribunal Act, 1997.

S.I. No. 417 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2)
Regulations, 1998**

Pn. No. 6349

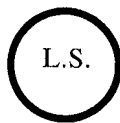
**Price - 40p
Postage - 36p**

S.I. No. 417 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13) (NO. 2)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by Section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2) Regulations, 1998.
2. Section 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997), is hereby amended by the insertion after “Tribunal” of “in respect of Hepatitis C and in so doing may by regulations amend or modify this Act to make such incidental or consequential change necessary to give effect to the extension or so that the extension complies with the provisions of this Act”.



GIVEN under the Official Seal of the Minister for Health and Children, this 28th day of October, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 432 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of
Claimants Before Tribunal) Regulations, 1998**

Pn. No. 6391

**Price - £1.00
Postage - 36p**

S.I. No. 432 of 1998.

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (EXTENSION OF CLASSES OF CLAIMANTS BEFORE TRIBUNAL) REGULATIONS, 1998.

The Minister for Health and Children, in exercise of the powers conferred on him by Sections 4 (14) (d) and 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), with the consent of the Minister for Finance, hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998.

2. In these Regulations—

“the Act” means the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997);

“diagnosed relative” means a parent, brother or sister, whether of the whole blood, the half blood or by affinity of a person referred to in section 4(1)(a) or (b) of the Act and who has been diagnosed positive for Hepatitis C.

3. It is hereby prescribed that—

(a) a diagnosed relative,

(b) a person who is responsible for the care of a diagnosed relative and who has incurred financial loss or expenses as a direct result of providing such care arising from the diagnosed relative being cared for having contracted Hepatitis C, and

(c) where a diagnosed relative has died as a result of having contracted Hepatitis C or where hepatitis C was a significant contributory factor to the cause of death, any dependant of the diagnosed relative,

may make a claim for compensation before the Tribunal.

4. It is hereby prescribed that—

(a) a diagnosed relative may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first became aware that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later,

(b) a person referred to in Regulation 3(b) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date upon which the diagnosed relative in her or his care first became aware that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later, and

(c) a person referred to in Regulation 3(c) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date of the death of the diagnosed relative, or the making of these Regulations, whichever is the later.

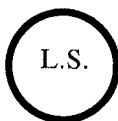
5. Section 4(8) of the Act is hereby amended by the insertion in paragraph (d) after “subsection (1)(d) or (e)” of “or paragraph (b) or (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.
6. Section 5 of the Act is hereby amended by the insertion in subsection (2) after “of this Act” of “or paragraph (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.

The Minister for Finance consents to the making of the foregoing Regulations.



GIVEN under the Official Seal of the Minister for Finance, this 31st day of October, 1998.

CHARLIE McCREEVY,
Minister for Finance.



GIVEN under the Official Seal of the Minister for Health and Children, this 28th day of October, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 473 of 2002.

ORDER

entitled

**Hepatitis C Compensation Tribunal (Amendment) Act,
(Commencement) Order, 2002.**

Pn. No. 12198

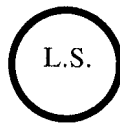
Price - 51c

S.I. No. 473 of 2002.

**HEPATITIS C COMPENSATION TRIBUNAL (AMENDMENT) ACT,
(COMMENCEMENT) ORDER, 2002.**

I, MICHEÁL MARTIN, Minister for Health and Children, in exercise of the powers conferred on me by Section 11 of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (No. 21 of 2002) hereby order as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (Commencement) Order, 2002.
2. The 9th day of October, 2002, is hereby fixed as the day on which the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (No. 21 of 2002) shall come into operation.



GIVEN under the Official Seal of the Minister for Health and Children, this 9th day of October, 2002.

MICHEÁL MARTIN,
Minister for Health and Children.

APPENDIX II

Settlement Arrangements made by the Minister for Health and Children under Section 8 of the Hepatitis C Compensation Tribunal Act 1997

Introduction

The settlement arrangements provide for the settlement of claims in respect of general and special damages only. The arrangements will operate as informally as possible and in a manner which ensures settlement offers are made as early as possible.

Supporting Documentation

Where a claimant advises the Secretary to the Tribunal that she or he wishes to settle, the claimant will be required to furnish to the Secretary a full brief of the documentation on which the claim is based including complete documentation in support of claims for general and special damages. A claimant may opt for a single lump sum award or a provisional award by way of settlement.

Causation

The claim together with all supporting documentation will be referred to a member of the Tribunal. The claimant will be required to establish to the satisfaction of the Tribunal member, that she or he meets the criteria set out in Section 4 of the Act.

Where the Tribunal member is not satisfied that the claimant meets the criteria set out in Section 4 of the Act, the claim will be referred to the Tribunal for a decision on causation and, if the claimant so wishes, for an award by the Tribunal, where appropriate. Where the claimant so wishes, a claim may be returned for settlement following a determination by the Tribunal on causation.

Where the Tribunal decides that the claimant is not entitled to compensation under the Act, the claimant may appeal that decision to the High Court.

Settlement Offer

Settlement offers will be based on the same criteria applied by the Tribunal under section 5 of the Act in relation to the level of awards. The Secretary to the Tribunal will advise the claimant of her/his legal representative in writing of the settlement offer.

Acceptance of Settlement Offer

The claimant will be requested to indicate, in writing, acceptance or rejection of the settlement within 28 days of the date of the offer.

Where the claimant accepts the offer, she or he will sign the necessary waivers in respect of any right of action which the claimant might otherwise have had.

The Secretary to the Tribunal will note that the offer has been accepted and will arrange for the Tribunal to make an award on consent of the settlement amount.

In the case of a claimant who is a minor, the acceptance of an award shall be subject to the approval of the High Court.

Rejection of settlement

Where the claimant does not advise the Secretary within 28 days of the date of the settlement offer it will be taken that the claimant has rejected the offer and is seeking a Tribunal hearing.

Where a claimant rejects an offer, or is deemed to have rejected an offer, the claim will be referred by the Secretary to the Tribunal for a hearing unless he is instructed otherwise by the claimant.

Where a claimant rejects a settlement or is deemed to have rejected a settlement, the claimant will be deemed to have exhausted the arrangements for settlement under Section 8.

Reparation Fund

A claimant who accepts a settlement offer may apply to the Secretary to have an amount of 20% of the settlement offer paid out of the Reparation Fund established under section 11 of the Act. Alternatively, the claimant may apply to have a claim for aggravated or exemplary damages decided by the Tribunal under section 5.

Representative Claim

The Secretary to the Tribunal may accept a claim representative of a class or group of claimants where the circumstances which have given rise to their claims are broadly similar. Similar arrangements to those set out above will apply in such cases. The rights of each individual claimant to accept or reject a settlement and the rights of each claimant under any other provision of the Act are preserved.

Costs

Where a Tribunal makes an award based on a settlement offer, costs will be awarded on the same basis and using the same procedures as if it had heard the claim under the Act. Similarly, the Tribunal will take into account costs incurred in opting for settlement where a claimant has rejected a settlement offer.

Confidentiality

In cases where the offer is not accepted by the claimant and the case is referred for a full hearing by the Tribunal, the Tribunal member who was involved in the settlement arrangements will not be a member of the division of the Tribunal hearing the claim. The Tribunal will not be made aware that the claimant applied for a settlement or that she/he rejected a settlement.

The confidentiality of the case is guaranteed under Section 8(2) of the Act which provides as follows:

“Any documents or papers submitted to the Tribunal in respect of a claim where a settlement is being negotiated under this section may be seen by persons involved in the settlement who shall not disclose the information contained in such documents or papers other than to any person involved in the settlement.”

This means that the Tribunal member who is involved in a settlement is not permitted to give any information (including details of any offer which was made to the claimant) to anyone who is not involved in the settlement, or to discuss the case with the other Tribunal members.

APPENDIX III

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31 DECEMBER 2008

ACCOUNTING POLICIES

Basis of Accounts

The accounts are a cash-based record of the Receipts and Payments in the period.

Reporting Period

The reporting period is the year ending 31 December 2008.

Receipts

Receipts for the period represent those monies claimed and received from the Special Account and the Reparation Fund established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997 and amended under Sections 7 and 8 of the Hepatitis C Compensation Tribunal (Amendment) Act 2002.

Payments

Payments consist of those sums which have been discharged during the period i.e. where the payable order has been drawn.

Suspense Account at Department of Health and Children

Payments are made by the Department of Health and Children on behalf of the Hepatitis C and HIV Compensation Tribunal at the direction of either, the Hepatitis C and HIV Compensation Tribunal or, in respect of legal costs only, the Office of the Chief State Solicitor. These payments are made from a suspense account, which forms part of the Appropriation Account of the Department of Health and Children and is subject to audit by the Comptroller and Auditor General.

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

<u>Accounts of Receipts and Payments for the year ended 31 December 2008</u>		2008		2007	
	Number	€	Number	€	
Payments					
Tribunal Awards					
Including New Awards	143	39,349,934	193	57,782,743	
High Court Appeals	10	4,670,878	15	3,242,913	
Total Awards		44,020,812		61,025,656	
Reparation Fund payments					
Including New Awards	138	7,597,215	170	11,146,133	
High Court Appeals	10	934,176	15	648,583	
Total Reparation Fund Payments		8,531,391		11,794,716	
Legal costs of Tribunal awards					
Including New Awards	116	8,413,723	181	7,623,179	
High Court Appeals	13	573,021	6	202,687	
Total Legal Costs		8,986,744		7,825,866	
<u>Administrative costs</u>					
Pay	Note 1	906,654		967,633	
Non-Pay	Note 2	298,811		291,688	
Total Payments		62,744,412		81,905,559	
<u>Receipts</u>					
Received from Special Account established under Section 10 of the Hepatitis C Compensation Tribunal Act 1997		64,258,000		82,600,000	
Received from Reparation Fund established under Section 11 of the Hepatitis C Compensation Tribunal Act 1997		10,544,000		13,000,000	
Total Receipts		74,802,000		95,600,000	
Surplus/(Deficit) for year		12,057,588		13,694,441	
Surplus/(Deficit) brought forward from previous year		(17,385,827)		(31,080,268)	
Surplus/(Deficit) carried forward to following year		(5,328,239)		(17,385,827)	
<u>Financed by</u>					
Suspense Account at Department of Health and Children					
This sum represents the amount to be drawn from the relevant accounts established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997 and amended under Sections 7 and 8 of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002.					

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

Accounts for the year ended 31 December 2008

Notes to the Accounts

		2008		2007
		€		€
Note 1 Pay				
Chairman's salary and Fees paid to				
Tribunal Members	Note 3	610,946	Note 3	737,159
Administration		295,708		230,474
Total Pay		906,654		967,633
Note 2 Non-Pay				
Confidential waste disposal		907		817
Contract Cleaning		4,368		4,319
Courier Services		5,000		6,849
Fees to Expert Witnesses		43,772		82,431
Heat, Power & Light		6,284		5,963
ICT		6,348		3,632
Legal fees		128,786		65,119
Maintenance		238		730
Miscellaneous		1,890		2,331
Office Supplies		4,085		3,268
Phones		3,783		3,905
Postage		399		333
Printing		4,572		3,405
Room hire		1,942		4,152
Stenography services		77,468		89,524
Travel and Subsistence		7,861		10,331
Vending machine and water supplies		1,108		4,579
Total Non-Pay		298,811		291,688

Note 3 Income Tax, Pay Related Social Insurance and Professional Services Withholding Tax deductions are included in the relevant suspense accounts at the Department of Health and Children. A total of €15,818 was withheld for payment to the Revenue Commissioners at 31/12/2008.

APPENDIX IV

Summary of Awards, High Court Appeals, Reparation Fund Payments and Legal Costs

Awards of the Tribunal

<u>Year</u>	<u>No. of Awards Paid</u>	<u>Amount Paid</u> €
1996	204	28,627,096
1997	327	56,672,735
1998	535	105,660,817
1999	214	43,221,011
2000	126	31,943,504
2001	71	23,646,314
2002	62	18,541,096
2003	108	27,964,437
2004	243	39,384,189
2005	287	42,186,950
2006	290	46,543,469
2007	193	57,782,743
2008	143	39,349,934
Total	2,803	561,524,295

High Court Appeals

<u>Year</u>	<u>No. of Appeals</u>	<u>Amount Paid</u> €
2000	41	6,053,486
2001	113	24,835,283
2002	52	17,762,094
2003	29	7,372,875
2004	43	7,954,150
2005	23	2,260,174
2006	26	5,249,856
2007	15	3,242,913
2008	10	4,670,878
Total	352	79,401,709

Reparation Fund Payments

<u>Year</u>	<u>No. of Payments</u>	<u>Award or Appeal</u>	<u>Amount Paid</u> €
1997	340	Awards	11,971,841
1998	686	Awards	25,249,850
1999	220	Awards	8,928,869
2000	136	Awards	6,692,662
2000	39	Appeals	1,124,269
2001	77	Awards	4,889,774
2001	115	Appeals	5,053,485
2002	67	Awards	3,800,910
2002	52	Appeals	3,552,419
2003	92	Awards	4,789,220
2003	29	Appeals	1,474,575
2004	240	Awards	7,723,198
2004	43	Appeals	1,590,830
2005	285	Awards	8,355,730
2005	23	Appeals	452,035
2006	288	Awards	9,296,865
2006	25	Appeals	1,028,715
2007	170	Awards	11,146,133
2007	15	Appeals	648,583
2008	138	Awards	7,597,215
2008	10	Appeals	934,176
Total	3,090		126,301,354

Legal Costs

<u>Year</u>	<u>No. of Claims</u>	<u>Amount Paid</u> €
1996	93	1,737,849
1997	275	7,518,688
1998	512	16,345,926
1999	315	9,984,938
2000	180	8,297,691
2001	183	8,605,772
2002	77	4,490,412
2003	131	6,859,157
2004	197	7,094,735
2005	307	13,180,987
2006	344	11,371,437
2007	187	7,825,866
2008	129	8,986,744
Total	2,930	112,300,202

APPENDIX V

LEGAL COSTS PAID IN 2008

COSTS	PAYEE	€
105,489.74	Anderson & Gallagher	
39,024.30	Arthur Cox & Co	
41,602.18	Arthur P McLean & Co	
37,631.56	Arthur P McLean & Co	
5,645.85	Arthur P McLean & Co	
23,044.10	Arthur P McLean & Co	
68,449.50	Arthur P McLean & Co	
82,185.14	Arthur P McLean & Co	
59,794.41	Arthur P McLean & Co	
23,022.00	Arthur P McLean & Co	
20,688.57	Arthur P McLean & Co	
9,904.00	Arthur P McLean & Co	
27,544.84	Arthur P McLean & Co	
19,301.25	Arthur P McLean & Co	
24,781.37	Arthur P McLean & Co	
22,293.31	Arthur P McLean & Co	
14,485.50	Arthur P McLean & Co	
20,393.78	Arthur P McLean & Co	
15,822.50	Arthur P McLean & Co	
24,727.34	Arthur P McLean & Co	
44,983.08	Augustus Cullen Law Solicitors	
4,089.07	Augustus Cullen Law Solicitors	
3,736.15	Augustus Cullen Law Solicitors	
3,736.15	Augustus Cullen Law Solicitors	
4,542.82	Augustus Cullen Law Solicitors	
4,688.92	Augustus Cullen Law Solicitors	
3,584.90	Augustus Cullen Law Solicitors	

COSTS	PAYEE	€
3,882.25	Augustus Cullen Law Solicitors	
3,736.15	Augustus Cullen Law Solicitors	
3,736.15	Augustus Cullen Law Solicitors	
8,218.08	Augustus Cullen Law Solicitors	
3,937.82	Augustus Cullen Law Solicitors	
19,522.67	Augustus Cullen Law Solicitors	
19,522.67	Augustus Cullen Law Solicitors	
4,089.07	Augustus Cullen Law Solicitors	
3,584.90	Augustus Cullen Law Solicitors	
29,424.50	Augustus Cullen Law Solicitors	
14,639.39	Augustus Cullen Law Solicitors	
39,817.00	Augustus Cullen Law Solicitors	
56,885.91	Beauchamps	
25,302.67	Beauchamps	
33,203.66	Beauchamps	
15,930.64	Beauchamps	
15,995.25	Beauchamps	
17,777.39	Beauchamps	
22,440.31	Beauchamps	
105,365.25	Bismilla & Co Solicitors	
20,021.25	Colgan & Co Solicitors	
253,149.75	Denis Murnaghan & Co Solicitors	
89,698.44	Denis Murnaghan & Co Solicitors	
72,032.33	Ernest J Cantillon & Co Solicitors	
57,800.05	Ernest J Cantillon & Co Solicitors	
173,678.54	Ernest J Cantillon & Co Solicitors	
21,993.39	Ernest J Cantillon & Co Solicitors	
726.00	Ernest J Cantillon & Co Solicitors	
178,573.86	Ernest J Cantillon & Co Solicitors	
77,627.91	Ernest J Cantillon & Co Solicitors	
53,446.33	Ernest J Cantillon & Co Solicitors	

COSTS	PAYEE	
		€
25,911.00	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
24,394.71	Ernest J Cantillon & Co Solicitors	
43,038.25	Gerard Jones & Co Solicitors	
22,833.00	Gleeson & Kean	
67,724.07	Ivor Fitzpatrick & Co	
55,000.00	Ivor Fitzpatrick & Co	
6,452.00	Ivor Fitzpatrick & Co	
30,000.00	Ivor Fitzpatrick & Co	
34,654.50	Ivor Fitzpatrick & Co	
45,000.00	Ivor Fitzpatrick & Co	
75,044.50	Ivor Fitzpatrick & Co	
220,000.00	Ivor Fitzpatrick & Co	
100,000.00	Ivor Fitzpatrick & Co	
40,927.50	Ivor Fitzpatrick & Co	
500,000.00	Ivor Fitzpatrick & Co	
25,000.00	Ivor Fitzpatrick & Co	
66,114.50	Ivor Fitzpatrick & Co	
28,809.39	Ivor Fitzpatrick & Co	
85,000.00	Ivor Fitzpatrick & Co	
31,401.05	Ivor Fitzpatrick & Co	
209,340.50	Ivor Fitzpatrick & Co	
20,000.00	Ivor Fitzpatrick & Co	
47,469.92	Ivor Fitzpatrick & Co	

COSTS	PAYEE	
		€
38,957.16	Ivor Fitzpatrick & Co	
23,050.50	Ivor Fitzpatrick & Co	
7,751.66	Ivor Fitzpatrick & Co	
15,000.00	Ivor Fitzpatrick & Co	
32,495.72	Ivor Fitzpatrick & Co	
27,953.65	Ivor Fitzpatrick & Co	
29,806.50	Ivor Fitzpatrick & Co	
88,145.50	Ivor Fitzpatrick & Co	
69,158.00	Ivor Fitzpatrick & Co	
60,000.00	Ivor Fitzpatrick & Co	
75,000.00	Ivor Fitzpatrick & Co	
40,000.00	Ivor Fitzpatrick & Co	
50,000.00	Ivor Fitzpatrick & Co	
60,000.00	Ivor Fitzpatrick & Co	
20,125.68	James D Aithken & Co	
23,187.06	Lavelle Coleman	
13,415.49	Lavelle Coleman	
37,469.31	Lavelle Coleman	
30,581.28	Lawline	
4,027.50	M P Black & Co	
300,784.97	Malcomson Law	
139,325.88	Malcomson Law	
266,717.60	Malcomson Law	
440,953.02	Malcomson Law	
104,911.41	Malcomson Law	
599,412.60	Malcomson Law	
168,989.83	Malcomson Law	
262,563.33	Malcomson Law	
166,189.71	Malcomson Law	
258,058.08	Malcomson Law	
31,184.88	Malcomson Law	

COSTS	PAYEE	€
33,331.42	Malcomson Law	
23,763.77	Malcomson Law	
25,481.92	Malcomson Law	
24,458.02	Malcomson Law	
17,984.96	Malcomson Law	
189,909.43	Malcomson Law	
15,899.22	Malcomson Law	
16,049.22	Malcomson Law	
16,019.42	Malcomson Law	
18,497.54	Malcomson Law	
18,644.24	Malcomson Law	
19,063.32	Malcomson Law	
20,074.20	Malcomson Law	
27,196.85	Malcomson Law	
46,725.02	Malcomson Law	
35,113.74	Malcomson Law	
32,334.31	Malcomson Law	
165,534.35	Malcomson Law	
28,177.21	Malcomson Law	
121,285.95	Malcomson Law	
53,274.24	Malcomson Law	
149,552.50	Malcomson Law	
37,056.66	Malcomson Law	
25,915.15	Malcomson Law	
15,868.00	Mannion Aird & Co	
19,947.08	O'Leary & Co	
44,669.83	Padraig J O'Connell Sol	
27,851.61	Smith Foy & Partners	
22,487.98	Staunton Caulfield & Co	
9,135.60	Tom Conlon Solicitors	
8,986,743.56		

