



AN BILLE SLÁINTE (SCÉIM AISÍOCA) 2006
HEALTH (REPAYMENT SCHEME) BILL 2006

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As initiated

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AN BILLE SLÁINTE (SCÉIM AISÍOCA) 2006
HEALTH (REPAYMENT SCHEME) BILL 2006

BILL

entitled

5 AN ACT TO PROVIDE FOR A SCHEME TO REPAY RECOVERABLE HEALTH CHARGES AND TO REGULATE PATIENTS' PRIVATE PROPERTY ACCOUNTS, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Health (Repayment Scheme) Act 2006.

Short title, construction, collective citation and commencement.

15 (2) The Health Acts 1947 to 2006 and this Act shall be construed together as one Act and the collective citation “the Health Acts 1947 to 2006” shall include this Act.

20 (3) This Act 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.

2.—In this Act, unless the context otherwise requires—

Interpretation.

“accept”, in relation to a prescribed repayment, shall be construed in accordance with *section 16(13)*;

25 “act” includes an omission;

“application” means an application under *section 5(1)*;

“applicant”, in relation to an application, means the relevant person or connected person who made the application;

“child” includes a step-child;

30 “connected person”, in relation to a relevant person, means—

- (a) a person who has been nominated in writing by the relevant person for the purposes of making an application,
- (b) the Registrar of Wards of Court if the relevant person is a ward of court,
- (c) a person with an enduring power of attorney in respect of the relevant person, 5
- (d) a next friend appointed by a court;
- (e) the Executive if—
 - (i) none of *paragraph (a), (b), (c) or (d)* is applicable to the relevant person, and 10
 - (ii) the relevant person is unable to make an application due to a physical or mental disability or ill-health,
- (f) the executor of the estate of the relevant person if the relevant person died on or after 9 December 1998 or, if there is no such executor, the legal administrator of the estate, or 15
- (g) a living spouse or living child of the relevant person who has paid, on behalf of the relevant person, the whole or part of the amount referred to in the definition of “recoverable health charge” by virtue of which the relevant person is a relevant person; 20

“Executive” means the Health Service Executive;

“ex gratia scheme” means that scheme, announced by the Minister on 16 December 2004, whereby ex gratia payments were made to persons in respect of charges paid for in-patient services under— 25

- (a) the Health (Charges for In-Patient Services) Regulations 1976 (S.I. No. 180 of 1976) as in force at any time before, on or after they were amended by the Health (Charges for In-Patient Services) (Amendment) Regulations 1987 (S.I. No. 300 of 1987), or 30
- (b) the Institutional Assistance Regulations 1954 (S.I. No. 103 of 1954) as in force at any time before, on or after they were amended by the Institutional Assistance Regulations 1965 (S.I. No. 177 of 1965),

when they had full eligibility; 35

“Minister” means the Minister for Health and Children;

“patient’s private property account” means so much of the money and personal property of—

- (a) a person provided with in-patient services referred to in section 53 of the Health Act 1970 (as amended by section 40 4 of the Health (Amendment) Act 2005),
- (b) a person provided with institutional assistance under section 54 of the Health Act 1953,
- (c) a person in a residence used wholly or partly as a setting to provide care for persons with a physical or mental disability, or 45

(d) a person otherwise being cared for by, or on behalf of, the Executive due to a physical or mental disability or ill-health,

5 that is managed, on behalf of that person, by the Executive or by another person under an arrangement with the Executive, whether before, on or after the commencement of *section 9*;

“prescribed cut-off date”, in relation to *section 5(3)(b)*, means the date prescribed in regulations made under *section 20(1)(a)* in respect of that section;

10 “prescribed repayment”, in relation to a recoverable health charge, means a payment under *section 6(1)(a)* or *(b)* in respect of the recoverable health charge;

“recoverable health charge” means that amount which has been paid of—

15 (a) a charge imposed on a person with full eligibility under the Health (Charges for In-Patient Services) Regulations 1976 (S.I. No. 180 of 1976), as in force at any time before 14 July 2005, including as so in force as amended by the Health (Charges for In-Patient Services) (Amendment) Regulations 1987 (S.I. No. 300 of 1987), or

20 (b) a contribution, for in-patient services only, required of a person with full eligibility under the Institutional Assistance Regulations 1954 (S.I. No. 103 of 1954), as in force at any time on or after the commencement of the Regulations referred to in *paragraph (a)*, including as so in force as amended by the Institutional Assistance Regulations 1965 (S.I. No. 177 of 1965);

“reject”, in relation to a prescribed repayment, shall be construed in accordance with *section 16(1)(b)*;

30 “relevant person”, in relation to a recoverable health charge, means the person referred to in *paragraph (a)* or *(b)* of the definition of “recoverable health charge” and whether or not that person was the person who paid all or any of the amount referred to in that definition;

35 “scheme administrator”—

(a) means, subject to *paragraph (b)*, the Executive,

(b) means, in relation to a provision of this Act the subject of a nomination under *section 3(2)*, the person the subject of that nomination;

40 “specified”, in relation to a form, means specified under *section 4*;

“spouse”, in relation to a relevant person, means a spouse within the meaning of *section 3(10)(c)* of the Social Welfare Consolidation Act 2005.

45 **3.—(1)** The Executive may enter into an arrangement with a person (including any public officer or public body) for the person to provide services, on behalf of the Executive, for the purposes of this Act (including making an application in the Executive’s capacity falling within *paragraph (e)* of the definition of “connected person”).

Executive may enter into arrangement with person to provide services for purposes of this Act, etc.

(2) The Executive may, in relation to a provision of this Act, nominate in writing a person who has entered into an arrangement referred to in *subsection (1)*, and subject to such conditions, if any, as the Executive thinks fit and specified in the nomination, to be the scheme administrator in relation to that provision.

5

Power of scheme administrator to specify forms.

4.—(1) Subject to *subsection (2)*, the scheme administrator may specify the form of any document required under this Act to be in the specified form and the form of such other documents required for the purposes of this Act as the scheme administrator thinks fit.

(2) Without prejudice to the generality of *subsection (1)*, an application shall contain a summary of—

- (a) the purpose of the application, and
- (b) the consequences of the determination of the application under *section 6(1)(a), (b) or (c)* (including the right to appeal under *section 16(1)* against a decision under *section 6(1)(a), (b) or (c)*).

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

- (a) completed in accordance with such directions and instructions as are specified in the form,
- (b) subject to *subsection (4)*, accompanied by such documents (including instruments, certificates, duplicates of the form and statutory declarations) 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.

(4) Without prejudice to the generality of *subsection (2)(b)*, an application made by an applicant falling within *paragraph (e)* of the definition of “connected person” and that is in respect of a living relevant person shall be accompanied by a certificate in a form specified under this section—

- (a) issued by a registered medical practitioner who has examined the relevant person not earlier than 6 months before the date on which the application was signed,
- (b) stating—
 - (i) the date of the examination, and
 - (ii) that, in the opinion of the practitioner, the relevant person—
 - (I) is of sufficient capacity to understand the summary referred to in *subsection (2)*, or
 - (II) is not of sufficient capacity to understand the summary referred to in *subsection (2)*,

and

- (c) signed by the practitioner.

(5) The scheme administrator's power under *subsection (1)*—

5 (a) shall 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,

10 (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.

PART 2

REPAYMENT SCHEME

15 **5.**—(1) A relevant person or a connected person may make an application in the specified form to the scheme administrator for a prescribed repayment in respect of a recoverable health charge. Application for prescribed repayment.

(2) The scheme administrator may refuse to consider or further consider an application if—

20 (a) the application does not comply with *subsection (1)*, or
(b) the applicant fails to provide the scheme administrator with such information in addition to the information provided by or with the application as the scheme administrator may reasonably require to enable the scheme administrator to determine the application under *section 6*.
25

(3) The scheme administrator shall refuse to consider an application made on or after—

(a) 1 January 2008, or
(b) the prescribed cut-off date,
30 whichever is the later.

6.—(1) Subject to *subsection (2)*, the scheme administrator shall determine an application— Determination of application.

(a) if the scheme administrator is satisfied—
35 (i) that the applicant is entitled under this Act to make the application,
(ii) that the purported recoverable health charge to which the application relates is a recoverable health charge, whether in whole or in part, and
40 (iii) as to the amount (“eligible amount”) of that purported recoverable health charge which is a recoverable health charge,

by causing a payment, equivalent to the sum of the eligible amount and the interest, if any, payable by virtue of regulations made under *section 20(1)(c)* which are applicable to this paragraph, to be made as soon as is practicable, 5

(b) if the scheme administrator is—

- (i) satisfied that the applicant is entitled under this Act to make the application,
- (ii) satisfied that the purported recoverable health charge to which the application relates is a recoverable health charge, whether in whole or in part, and 10
- (iii) not satisfied, for whatever reason, as to the amount of that purported recoverable health charge which is a recoverable health charge,

by causing a payment to be made, as soon as is practicable— 15

- (I) subject to *subparagraph (II)*, by reference to the income the relevant person had, the type of in-patient the relevant person was or the type of institutional assistance the relevant person received, as the case may be, and the nature of the charge imposed on, or the contribution required of, the relevant person, during the period in which the relevant person was an in-patient for the purposes of the regulations referred to in *paragraph (a)* or *(b)* of the definition of “recoverable health charge”, 20 25
 - (II) if the information referred to in *subparagraph (I)* is not available and subject to *subparagraph (III)*, that does not exceed 80 per cent of the maximum of the weekly rate of the old age (non-contributory) pension, within the meaning of the Social Welfare Acts, as applicable during the period to which the recoverable health charge relates, 30
 - (III) that takes into account the interest, if any, payable by virtue of regulations made under *section 20(1)(c)* which are applicable to this paragraph; 35
- (c) if neither *paragraph (a)* nor *(b)* applies, by refusing the application.

(2) Where the scheme administrator, not being the Executive, determines an application pursuant to *subsection (1)(a)* or *(b)*, then, subject to *section 16(12)*, the Executive shall make the prescribed repayment concerned as soon as is practicable. 40

Priority of living relevant persons over estates of relevant persons.

7.—The scheme administrator shall—

- (a) in considering and determining applications, and
- (b) in causing prescribed repayments to be made, 45

give priority to living relevant persons over the estates of relevant persons.

8.—(1) A prescribed repayment—

Operation of other enactments, etc. on prescribed repayments.

- (a) made to a living relevant person, or
- (b) made directly to a living spouse or living child of a relevant person by virtue of *section 9(8)*,

5 shall be disregarded for the purposes of income tax assessment under the Income Tax Acts within the meaning of the Taxes Consolidation Act 1997.

(2) A prescribed repayment—

- (a) made to a living relevant person,
- 10 (b) made to the spouse or former spouse of a living or deceased relevant person, or
- (c) made directly to a living child of a relevant person by virtue of *section 9(8)*,

15 shall be disregarded in the assessment under any enactment of a person's means for the purposes of determining, assessing or reviewing (or any words to the like effect) a person's entitlement, or level of entitlement, to a health or social welfare benefit.

20 (3) A prescribed repayment made in respect of a recoverable health charge shall not of itself be a ground for withdrawing any tax relief previously granted in respect of the recoverable health charge.

(4) A prescribed repayment made to any person shall be disregarded for the purposes of Chapter 1 of Part VI of the Finance Act 1993.

25 (5) Section 48(4) of the Capital Acquisitions Tax Consolidation Act 2003 shall not apply to a prescribed repayment.

(6) Without prejudice to any other method of recovery—

- (a) any payments made to or in respect of a relevant person under the *ex gratia* scheme, or
- 30 (b) any charge imposed under the Health (Charges for In-Patient Services) Regulations 2005 (S.I. No. 276 of 2005) on a relevant person and which has not been paid,

may be offset against any prescribed repayment to be made to or in respect of that relevant person.

35 9.—(1) Subject to *subsection (3)*, the Executive may pay a prescribed repayment—

Payment of prescribed repayments and operation of patients' private property accounts, etc.

- (a) into the relevant person's bank, building society, credit union or post office account or by cheque,
- (b) in the case of a living relevant person, into the relevant person's patient's private property account.

40 (2) The Executive—

- (a) may invest money—

- (i) held in any patient’s private property account—
 - (I) unless otherwise directed in writing by the account holder, or
 - (II) unless otherwise directed in writing by a next friend appointed by a court, 5

and

 - (ii) with such financial institutions as are authorised by the Irish Financial Services Regulatory Authority established by section 33B of the Central Bank and Financial Services Authority of Ireland Act 2003, 10
 - (b) may use money held in any patient’s private property account for the benefit of the account holder—
 - (i) unless otherwise directed in writing by the account holder, or
 - (ii) unless otherwise directed in writing by a next friend appointed by a court, 15

or
 - (c) may, in respect of the patients’ private property accounts of all or some of the account holders residing in the same hospital or other institution, make an application, not more than once in each calendar year, to a judge of the Circuit Court in whose circuit the hospital or other institution, as the case may be, is situated, for directions as to how the Executive may use any money in excess of €5,000 or the amount prescribed in regulations made under *section 20(1)(c)*, whichever is the greater, in any of those accounts for the benefit of the account holder in whose patient’s private property account the excess is lodged. 20 25
- (3) Where a prescribed repayment to be made—
- (a) is in respect of a living relevant person and arises from an application made by an applicant falling within *paragraph (a)* of the definition of “connected person”, then the Executive shall, subject to any directions under *subsection (7)* to the contrary, only pay the prescribed repayment into an account (which may be a patient’s private property account) of the relevant person, 30 35
 - (b) is in respect of a living relevant person the subject of a certificate falling within *section 4(4)(b)(ii)(II)*, then the Executive shall, subject to any directions under *subsection (7)* to the contrary, only pay the prescribed repayment into the relevant person’s patient’s private property account. 40
- (4) The Executive shall not make an application referred to in *subsection (2)(c)* until after it has—
- (a) given notice in writing of its intention to make such an application to the account holders to whom the application relates, and 45

(b) published a notice of its intention to make such an application in at least one daily newspaper circulating in the State.

5 (5) A judge of the Circuit Court shall determine an application under *subsection (2)(c)* by giving such directions as the judge considers in the best interests of the account holders to whom the application relates.

10 (6) Where *subsection (3)* applies to a prescribed repayment, then the Executive or any other interested person may make an application to a judge of the Circuit Court in whose circuit the relevant person to whom the prescribed repayment relates is residing for the prescribed repayment to be made otherwise than as specified in that subsection.

15 (7) A judge of the Circuit Court shall determine an application under *subsection (6)* by giving such directions as the judge considers in the best interests of the relevant person to whom the application relates, including a direction that the Executive pay the prescribed repayment to which the application relates into such account, or to such person, as is specified in the direction.

20 (8) The Executive shall not pay a prescribed repayment directly to a living spouse or living child of a relevant person except in so far as the spouse or child, as the case may be, has satisfied the Executive that the prescribed repayment relates to an amount referred to in the definition of “recoverable health charge”—

25 (a) paid by the spouse or child, as the case may be, on behalf of the relevant person, and

(b) by virtue of which the relevant person is a relevant person.

30 (9) In this section, “account holder”, in relation to a patient’s private property account, means the person for whom the account was established.

10.—(1) Subject to *subsection (2)*, the making of an application for a prescribed repayment in respect of a recoverable health charge does not waive any other cause of action the applicant may have in respect of the recoverable health charge. Settlements.

35 (2) A person who accepts a prescribed repayment in respect of a recoverable health charge (whether or not the prescribed repayment is for the whole or part of the amount sought in the application concerned) thereby waives—

40 (a) the person’s right to sue for any part of that recoverable health charge, and

(b) all other causes of action relating to the recoverable health charge.

(3) Where a person has received—

(a) an award from a court, or

45 (b) a settlement,

in respect of a recoverable health charge (whether or not the award or settlement is for the whole or part of the recoverable health

charge), the person shall not be entitled to make an application in respect of any part of that recoverable health charge.

(4) Notwithstanding any period of time specified in rules of court for the payment into court, by way of lodgement, of a sum of money in satisfaction of an application, where the applicant has rejected a prescribed repayment, then the Executive may pay the amount of the prescribed repayment, or such other sum of money as the Executive thinks fit in all the circumstances of the case, into the court concerned in respect of any civil proceedings in which the applicant is a party and which arise out of the same, or substantially the same, acts complained of in the application.

Donations of prescribed repayments, etc.

11.—(1) The Executive may establish a fund, to be known as the Repayment Scheme (Donations) Fund (“the Fund”), to be applied towards the provision of improvements in public health services provided to dependent older persons and persons with disabilities and the expenses of which are non-recurring.

(2) An applicant (other than an applicant falling within *paragraph (e)* of the definition of “connected person”) may give a direction in an application that any or all prescribed repayments arising from the application shall be paid into the Fund.

(3) Subject to *section 9(3)*, the Executive shall cause a direction referred to in *subsection (2)* to be complied with.

(4) The moneys of the Fund shall comprise—

(a) such prescribed repayments as are paid into the Fund pursuant to a direction referred to in *subsection (2)*, and

(b) such other moneys as are donated to the Fund by any other person.

(5) Any prescribed repayment, or other moneys referred to in *subsection (4)(b)*, that is or are paid into the Fund shall be disregarded for the purposes of Chapter 1 of Part VI of the Finance Act 1993.

(6) Any prescribed repayment, or other moneys referred to in *subsection (4)(b)*, that are paid into the Fund shall be treated as having been taken by a person as a benefit for public or charitable purposes and *section 76(2)* of the Capital Acquisitions Tax Consolidation Act 2003 shall apply accordingly.

(7) The Executive shall submit an annual report on the operation of the Fund, and particulars of the accounts of the Fund, to the Minister not later than 6 months after the expiration of each calendar year (which, in the case of the first such report, means that part of the calendar year commencing on the date on which the Fund was established up to and including the 31 December next following that date).

(8) The Minister shall cause copies of a report referred to in *subsection (7)* to be laid before each House of the Oireachtas.

Records.

12.—(1) The scheme administrator and, if different, the Executive, may each access and process any relevant records for the purposes of this Act.

(2) The Data Protection Acts 1988 and 2003 shall not apply in the case of the performance by the scheme administrator or the Executive of the function under *subsection (1)*.

5 (3) Section 4 of the Data Protection Act 1988 (as amended by section 5 of the Data Protection (Amendment) Act 2003) shall not apply to personal data provided to the scheme administrator while the data are in the custody of the scheme administrator or the Executive.

10 (4) Subject to *subsection (5)* and *section 14*, a person shall not disclose relevant information except for the purpose of the performance of a function by the person under this Act or the provision of services referred to in *section 3(1)*.

15 (5) A person may disclose relevant information to a member of the Garda Síochána if the person reasonably believes that the disclosure is necessary in order to prevent the continuance of an act constituting a crime.

20 (6) Documents that are prepared for the purpose of performing a function under this Act shall not constitute Departmental records within the meaning of section 2(2) of the National Archives Act 1986.

(7) The Executive shall determine the storage, retention or disposal of—

(a) applications (including any documents accompanying applications),

25 (b) documents referred to in *subsection (6)*, and

(c) relevant records which are in the possession of, or under the control of, the scheme administrator and, if different, the Executive.

30 (8) The scheme administrator may request in writing a person to provide the scheme administrator with access to, or copies of, relevant records which—

(a) are in the possession of, or under the control of, the person, and

35 (b) will or may assist the scheme administrator to perform the scheme administrator's functions under this Act.

(9) A person the subject of a request under *subsection (8)* shall comply with the request as soon as is practicable after the person receives the request.

40 (10) The Revenue Commissioners may request in writing the scheme administrator to provide them with such information in relation to prescribed repayments made to a person as will or may assist the Commissioners to perform their functions in relation to the assessment, charge, collection and recovery of any tax liabilities applicable to or in relation to the person (including, in the case of a
45 deceased person, the estate of that person).

(11) The scheme administrator shall comply with a request under *subsection (10)* as soon as is practicable after the scheme administrator receives the request.

(12) In this section—

“relevant information”, in relation to a person referred to in *subsection (4)*, means information that is provided under this Act to the scheme administrator, the Executive or a person appointed under *section 16(3)* and obtained by the first-mentioned person in the course of the performance of a function of the person under this Act or in the provision of services referred to in *section 3(1)*;

“relevant record” means any record which will or may assist the scheme administrator to determine an application under *section 6*.

Special account.

13.—(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 prescribed repayments and the costs of the Executive in administering this Act in so far as this Act relates to prescribed repayments.

(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” means an account for the purposes of this Act in the joint names of the Executive and the Minister for Finance, which account shall—

(a) be an account with the Paymaster General, and

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

Governance.

14.—(1) The Minister may make a request in writing to—

(a) the Executive or the scheme administrator to be provided with a report—

(i) on the general administration of this Act, or on any particular aspect of the administration of this Act, as specified in the request, and

(ii) within such period or, in the case of a series of reports, within such periods, as is or are specified in the request, being a period or periods, as the case may be, reasonable in all the circumstances of the case,

(b) the Executive to be provided with a report—

(i) on the operation of patient’s private property accounts generally, on the operation of a class of such accounts, or on any particular aspect of the operation of such accounts or class of such accounts, as the case may be, as specified in the request, and

(ii) within such period or, in the case of a series of reports, within such periods, as is or are specified in the

request, being a period or periods, as the case may be, reasonable in all the circumstances of the case.

5 (2) The Executive or the scheme administrator shall comply with a request made under *subsection (1)* of the Executive or the scheme administrator, as the case may be.

(3) The Minister may cause copies of a report provided to the Minister pursuant to a request made under *subsection (1)* to be laid before each House of the Oireachtas.

10 (4) The scheme administrator shall, in respect of every application not falling within *section 5(2)* or *(3)*, keep a record of—

(a) the name, address, date of birth, date of death (if applicable), periods of full eligibility, and Personal Public Service Number, if any, of the relevant person concerned,

15 (b) if the applicant is not the relevant person concerned, the name, address and Personal Public Service Number, if any, of the applicant,

(c) the name of the hospital or other institution to which the application relates,

20 (d) the period for which the relevant person concerned was resident in that hospital or other institution,

(e) the amount of prescribed repayments made, or to be made, in respect of that application and, if that amount has not been paid, or will not be paid, to the relevant person concerned, the name and address of the person to whom the amount has been, or will be, as the case may be, paid, and

25 (f) particulars of how an amount falling within *paragraph (e)* was calculated.

30 (5) The Minister may make a request in writing to the scheme administrator to have access to or make copies of any material falling within *paragraph (a), (b)* or *(c)* of *section 12(7)* or record kept under *subsection (4)*.

35 (6) The scheme administrator shall comply with a request made under *subsection (5)* as soon as is practicable after the scheme administrator receives the request.

40 (7) The Minister may appoint in writing a person (who may be a public officer) to examine, and to report back to the Minister, on the operation of patients' private property accounts generally, on the operation of a class of such accounts, or on any particular aspect of the operation of such accounts or class of such accounts, as the case may be, as specified in the appointment.

(8) The Executive shall provide a person appointed under *subsection (7)* with such assistance as the person may reasonably require to perform the examination specified in the appointment.

45 (9) Where any committee of either House of the Oireachtas requires the Chief Executive Officer of the Executive or a representative of the scheme administrator to give evidence before the committee in relation to the performance of any function under this Act,

the Chief Executive Officer or representative, as the case may be, shall comply with that requirement.

Notification of certain decisions.

15.—The scheme administrator shall, as soon as is practicable after making a decision under *section 5(2) or (3) or 6(1)(a), (b) or (c)*, give the applicant concerned and the Executive if the Executive is not the scheme administrator— 5

(a) notice in writing of the decision and the reasons for the decision, and

(b) a copy of *section 16*.

Appeals against certain decisions, etc.

16.—(1) A person may— 10

(a) appeal against a decision under *section 5(2) or 6(1)(c)* by giving notice in writing to the scheme administrator not later than 28 days after notice of the decision was given under *section 15*,

(b) appeal against a decision under *section 6(1)(a) or (b)* by rejecting the prescribed repayment concerned and giving notice in writing to the scheme administrator of the rejection not later than 28 days after notice of the decision was given under *section 15*. 15

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

(a) be in the specified form, 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, 25

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

(c) subject to *subsections (10)(a) and (11)*, on such terms and conditions as are specified in the appointment.

(4) The scheme administrator and, if different, the Executive shall each provide a person appointed pursuant to *subsection (3)* to consider an appeal under *subsection (1)* with such assistance and information as the person may reasonably require of the scheme administrator or Executive, as the case may be, in order to assist the person to determine the appeal. 30
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(5) 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 prepared and issued by the Minister in respect of the procedure to be followed with respect to the consideration of any appeal under *subsection (1)*, 40

- (c) consider any written or oral submissions made by or on behalf of the appellant, the scheme administrator and, if different, the Executive, in respect of the appeal,
- 5 (d) make a decision in writing determining the appeal as soon as is practicable in all the circumstances of the case, and
- (e) send a copy of the decision to the appellant and the scheme administrator and, if different, the Executive together with the person's reasons for the decision.
- 10 (6) A person affected by a decision under *subsection (5)(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 (5)(e)*.
- 15 (7) A decision of the High Court following an appeal under *subsection (6)* shall, where appropriate, specify the period within which effect shall be given to the decision.
- (8) The decision of the High Court on an appeal under *subsection (6)* shall be final and conclusive.
- 20 (9) The scheme administrator shall—
- (a) if applicable, give effect to a decision under *subsection (5)(d)* as soon as is practicable after the period referred to in *subsection (6)* has elapsed without any appeal under *subsection (6)* having been made in respect of the decision,
- 25 (b) if applicable, give effect to a decision of the High Court on an appeal under *subsection (6)*—
- (i) within the period, if any, specified in the decision,
- (ii) if *subparagraph (i)* is not applicable, as soon as is practicable.
- 30 (10) 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,
- 35 (b) may be provided with such staff, 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
- 40 (c) may resign from the appointment by notice in writing given to the Minister.
- (11) The Minister may revoke the appointment of a person appointed pursuant to *subsection (3)* for stated reasons.
- 45 (12) The Executive shall not pay a prescribed repayment required to be paid under this Act—

(a) until the period specified in *subsection (1)(b)* has expired without an appeal under that subsection having been made against the decision (“relevant decision”) under *section 6(1)(a)* or *(b)* which gave rise to the repayment,

(b) if an appeal under *subsection (1)* against the relevant decision is made, until the scheme administrator is required to give effect to that decision referred to in *subsection (9)(a)* or *(b)* which relates to the appeal. 5

(13) A prescribed repayment shall be deemed to have been accepted for the purposes of this Act when it has been paid in accordance with *subsection (12)*. 10

(14) 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. 15

(15) The Minister shall cause copies of a report submitted under *subsection (14)* to be laid before each House of the Oireachtas.

Recovery of payment of prescribed repayment procured through fraud or misrepresentation, etc.

17.—(1) Where the scheme administrator is satisfied that—

(a) all or part of the payment of a prescribed repayment to a person has been procured through fraud or misrepresentation, or 20

(b) there has been an overpayment of a prescribed repayment to, or in respect of, a person,

then the scheme administrator shall make a report thereon to the Executive and state in the report the reasons why the scheme administrator is so satisfied. 25

(2) Where the Executive is satisfied (whether or not pursuant to a report under *subsection (1)*) that—

(a) all or part of the payment of a prescribed repayment to a person has been procured through fraud or misrepresentation, or 30

(b) there has been an overpayment of a prescribed repayment to, or in respect of, a person,

then the amount of that prescribed repayment so procured, or of that overpayment, as the case may be, shall be repayable to the Executive on demand and, if not so repaid, the Executive may recover the amount, as a simple contract debt in any court of competent jurisdiction, from the person to whom the prescribed repayment or overpayment, as the case may be, was made or the estate of that person. 35 40

Audit by Comptroller and Auditor General.

18.—(1) The Comptroller and Auditor General shall be entitled to audit, for the purposes of this Act, the accounts of—

(a) the Executive,

(b) the scheme administrator,

(c) patients’ private property accounts, 45

- (d) the fund, if any, established under *section 11(1)*,
- (e) the special account within the meaning of *section 13*, or
- (f) any fund accrued, or operated or controlled by or for, or held in trust by or for, a Minister of the Government,

5 whether in each financial year, or such shorter period, as the Comptroller and Auditor General thinks fit in all the circumstances of the case.

(2) Accounts referred to in *subsection (1)* shall—

10 (a) be kept in such form as may be specified by the Minister after consultation with the Comptroller and Auditor General, and

15 (b) be submitted to the Comptroller and Auditor General for audit as soon as is practicable after the end of the financial year to which they relate but, in any case, not later than 6 months after the end of that year.

(3) A copy of the accounts referred to in *subsection (1)*, as audited by the Comptroller and Auditor General under this section, shall be presented to the Minister as soon as is practicable after being so audited and the Minister shall cause copies of the accounts as so audited to be laid before each House of the Oireachtas.

25 (4) The Executive and the scheme administrator shall each provide the Comptroller and Auditor General with such assistance as the Comptroller and Auditor General may reasonably require to perform the Comptroller and Auditor General's functions under this section.

PART 3

MISCELLANEOUS

30 **19.—(1)** Any person who knowingly gives the scheme administrator information which is false or misleading in a material particular in, or in connection with, an application shall be guilty of an offence and shall be liable— Offences and penalties.

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

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

(2) A person who, without lawful excuse, contravenes *section 12(4)* or *(9)* shall be guilty of an offence and shall be liable—

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

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

Regulations.

20.—(1) The Minister may make regulations giving effect to this Act and, without prejudice to the generality of the foregoing, such regulations may—

- (a) subject to *subsection (2)*, prescribe a date in respect of *section 5(3)(b)*, 5
- (b) provide for interest to be paid on a recoverable health charge by reference to—
 - (i) the consumer price index, and
 - (ii) whether or not an application for a prescribed repayment in respect of the recoverable health charge is 10 determined under *paragraph (a) or (b) of section 6(1)*,
- (c) subject to *subsection (3)*, prescribe an amount in respect of *section 9(2)(c)*,
- (d) enable the Executive to impose a charge for 15 administering—
 - (i) patients' private property accounts, or
 - (ii) a class of patients' private property accounts.

(2) The Minister shall not make regulations under *subsection (1)(a)* except after consultation with the Minister for Finance. 20

(3) The Minister shall only exercise the power under *subsection (1)(c)* to prescribe an amount referred to in that subsection such that the amount prescribed reflects the rate of inflation in the State.

Power to remove difficulties.

21.—(1) If in any respect any difficulty arises in bringing any provision of this Act into operation or in relation to the operation of 25 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.

(2) No regulations may be made under this section after the expiration of one year after the commencement of this section. 30

Laying of Regulations.

22.—Every regulation made under this Act shall be laid by the Minister 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 that House 35 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.