



**AN BILLE UM BINSE CÚITIMH I nDÁIL LE
HEIPITÍTEAS C (LEASÚ), 2002
HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) BILL, 2002**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
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ACTS REFERRED TO

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Hepatitis C Compensation Tribunal Acts, 1997 and 2002	
Hepatitis C Compensation Tribunal Act, 1997	1997, No. 34



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BILL

entitled

AN ACT TO AMEND AND EXTEND THE HEPATITIS C COM-
PENSATION 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.

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

- (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. 5

Amendment of
section 3 of
Principal Act.

3.—Section 3 of the Principal Act is hereby amended— 10

(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.”. 15 20

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”, 25

(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, 30 35

(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, 40

(h) any person who is married to a person referred to in paragraph (f), or who has been living with the person referred to in paragraph (f) for a continuous period of not less than three years, in respect of the 45

loss of consortium of the person, including impairment of sexual relations with the person, arising from the risk of transmission of 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 subsections 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.

- (c) A person who has not made a claim for compensation to the Tribunal before the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, and who proposes after such commencement to make such a claim, shall, subject to section 5(7), make one claim only to the Tribunal. 5
- (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.”, 10 15
- (d) in subsection (8), by the insertion after “A claimant” of “referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1)”, 20
- (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— 25
- (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, 30
- (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 35
- (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”, 40
- (g) by the substitution in subsection (14)(d) of “(k)” for “(f)”,
- (h) by the insertion of the following subsection after subsection (14): 45
- “(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

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, and

(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,

(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 the person referred to in subsection (1)(f), including the impairment of the sexual relations with that person, arising from the risk of transmission of 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 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,

(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 the person referred to in section 4(1)(f), including the impairment of sexual relations with that person, if the Tribunal is satisfied that there has been such loss or impairment arising from the risk of transmission of HIV.

(b) Where a dependant referred to in section 4(1)(j) is the child or spouse of the person

who died ('the deceased') as a result of having contracted HIV, or where 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—

- (i) a person who was married to the deceased, or
- (ii) 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—

- (i) may consider any award previously made by it or by the High Court on an appeal from the Tribunal to the person, and
- (ii) 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—

- (i) may consider any award previously made by it or by the High Court on an appeal from the Tribunal to that dependant or to the person whose death has given rise to the dependant's claim for compensation to the Tribunal, and
- (ii) 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. 5

Amendment of
section 9 of
Principal Act.

6.—(1) 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)). 10 15

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”. 20

(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— 25

(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): 30

“(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.”. 35

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. 40 45

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.

Saving.

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.