

STATUTORY INSTRUMENT

S.I. No. 31 of 2007

Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007

**Published by the Stationery Office, Dublin
To be purchased directly from the
Government Publications Office,
Sun Alliance House, Molesworth Street, Dublin 2
Or by mail order from
Government Publications, Postal Trade Section,
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(Tel: 01 6476834/35/36/37; Fax: 01 6476843)
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Prn: A7/0059

Price € 3.81

Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007

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S.I. NO. 31 OF 2007

**HEPATITIS C COMPENSATION TRIBUNAL (INSURANCE SCHEME
FOR RELEVANT CLAIMANTS) REGULATIONS 2007**

I, Mary Harney, Minister for Health and Children, in exercise of the powers conferred on me by section 7 of the Hepatitis C Compensation Tribunal Act 1997 (No. 34 of 1997) (as amended by section 3 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006 (No.22 of 2006)) make the following Regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007.

(2) These Regulations shall come into operation on the day appointed under section 7(11) of the Act of 1997 (as amended by section 3 of the Act of 2006) as the establishment day for the purposes of the relevant insurance scheme.

Interpretation.

2. In these Regulations, unless the context otherwise requires -

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

“Act of 2002” means the Hepatitis C Compensation Tribunal (Amendment) Act 2002 (No. 21 of 2002);

“Act of 2006” means the Hepatitis C Compensation Tribunal (Amendment) Act 2006 (No. 22 of 2006);

“Scheme” means the insurance scheme set out in the Schedule;

“Scheme establishment day” means the day referred to in *Regulation 1(2)*.

Establishment, etc. of relevant insurance scheme.

3. (1) The Scheme is hereby established as the insurance scheme for the purpose specified in section 7(1)(d) of the Act of 1997 (as amended by section 3 of the Act of 2006).

(2) The operation, administration and supervision of the Scheme for the purpose referred to in *paragraph (1)* shall be carried out in accordance with the provisions of the Schedule.

Estimated budget and accounts of Scheme.

4. (1) The scheme administrator shall, not later than the 30th day of September in each year, submit to the Minister an estimated budget for the Scheme for the next financial year.

(2) The scheme administrator shall keep all proper and usual accounts of all moneys received or expended under the Scheme, including an income and expenditure account and balance sheet and such special accounts as the Minister may from time to time direct.

(3) The scheme administrator shall ensure that -

- (a) a statement of accounts of the Scheme is prepared for each financial year, and
- (b) the statement of accounts is audited by the Comptroller and Auditor General under section 5 of the Comptroller and Auditor General (Amendment) Act 1993 (No. 8 of 1993).

(4) In this Regulation, “financial year” means -

- (a) the period commencing on and including the Scheme establishment day and ending on and including 31 December 2007, and
- (b) thereafter, every period commencing on and including 1 January and ending on and including 31 December.

SCHEDULE

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 PAYMENT OF A HIGHER PREMIUM

PART 1

INTERPRETATION

Interpretation.

1. In this Schedule -

“Appeals Officer” means a person appointed under section 7A(3) of the Act of 1997 (as amended by section 4 of the Act of 2006);

“Approved Insurer” means an insurer the name of which is for the time being entered in the list referred to in *Article 3(1)*;

“category 1 Claimant” means a Claimant to whom *paragraph (b)(ii)(II)* of the definition of “Claimant” applies;

“category 2 Claimant” means a Claimant to whom *paragraph (b)(ii)(I)* of the definition of “Claimant” applies;

“Claimant” means a claimant -

- (a) falling within -
 - (i) section 4(1)(a), (b), (c), (f) or (g) of the Act of 1997 (as amended by section 4 of the Act of 2002), or
 - (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), and
- (b) 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 that class of insurers which offers insurance of that class in the ordinary course of carrying on insurance business, and
 - (ii) either -

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

“Initial Open Period” means the period of 12 months commencing on and including the date on which section 7(1A) of the Act of 1997 (as amended by section 3 of the Act of 2006) commenced and ending on but excluding the 1st anniversary of that day;

“Mortgage Protection Insurance” means a life assurance policy where the sum assured reduces in accordance with a schedule of capital repayments under a residential mortgage;

“Partner”, in relation to a Claimant, means -

- (a) a person married to the Claimant, or
- (b) a person who has been co-habiting 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 concerned.

PART 2

FUNCTIONS OF SCHEME

Eligibility.

2. (1) A proposal under the Scheme in respect of a Claimant may be submitted to an Approved Insurer at any time up until the Claimant attains 65 years of age or, during the Initial Open period only, up until the Claimant attains 75 years of age. The proposal should indicate that it has been submitted under the terms of the Scheme.

(2) All Claimants will cease to be eligible for any benefit under the Scheme on the date they attain 75 years of age, and all cover provided under the Scheme will cease with effect from that date.

(3) Where -

(a) a Claimant and the Claimant's Partner (not being a Claimant) apply jointly for a benefit under the Scheme, and

(b) the Partner has a medical condition or risk unrelated to Hepatitis C or HIV,

then the normal criteria applicable to insurance of the class into which the benefit falls will apply (including any medical examination) and, accordingly, any loadings arising in consequence of the Partner's medical condition or risk, as the case may be, will not be borne

by the Scheme except loadings arising in consequence of the risk to the Partner of contracting Hepatitis C or HIV, as the case requires, from the Claimant.

Approved Insurers.

3. (1) The scheme administrator shall establish and maintain a list of insurers -
 - (a) which are authorised to carry on insurance business in the State,
 - (b) which have applied to the scheme administrator to participate in the Scheme, and
 - (c) which are accepted by the scheme administrator for the purpose of the Scheme.
- (2) The scheme administrator may -
 - (a) set conditions for an Approved Insurer's participation in the Scheme that are consistent with the provisions of the Act of 1997 (as amended by the Act of 2006) and these Regulations,
 - (b) set, as such a condition, a condition which specifies the classes of insurance for which an Approved Insurer may participate in the Scheme.

(3) An Approved Insurer may cease to participate in the Scheme in respect of future proposals by giving 3 months notice in writing to the scheme administrator.

(4) The scheme administrator may require an Approved Insurer to cease to participate in the Scheme in respect of future proposals by giving 3 months notice in writing to the Approved Insurer.

Procedures for making application under Scheme.

4. (1) A Claimant may give notice in writing to the scheme administrator that the Claimant is applying for insurance pursuant to the Scheme.

(2) Where the scheme administrator is satisfied that a Claimant who has given a notice under *paragraph (1)* is eligible for a benefit under the Scheme, the scheme administrator shall give the Claimant a certificate in writing stating that the Claimant is eligible for that benefit.

(3) A Claimant may submit to an Approved Insurer a proposal for a benefit under the Scheme accompanied by a certificate given under *paragraph (2)* in respect of that benefit.

(4) The date on which a Claimant makes a submission under *paragraph (3)* to an Approved Insurer shall be deemed to be the date on which the Approved Insurer receives the proposal for a benefit under the Scheme that is the subject of that submission.

Underwriting of proposals.

5. (1) An Approved Insurer shall, after completing whatever underwriting it considers appropriate in respect of a proposal from a Claimant, determine whether the Claimant is a category 1 Claimant or a category 2 Claimant.

(2) Where an Approved Insurer accepts a proposal for a benefit under the Scheme, the Approved Insurer shall give the Scheme administrator notice in writing of that fact.

Proposals accepted subject to additional premium.

6. When a proposal from a category 1 Claimant is accepted by an Approved Insurer subject to the payment of the additional premium by the Scheme, the Approved Insurer shall give notice in writing to the scheme administrator advising of the position and requesting that the Scheme pay the amount of the additional premium. On receipt of a confirmation from the scheme administrator in respect of the proposal, the Approved Insurer shall advise the proposer that the policy has been accepted under the Scheme.

Proposals from uninsurable Claimants.

7. (1) Where a proposal from a category 2 Claimant is accepted by an Approved Insurer subject to the meeting of the cost of the mortality risk by the Scheme, the Approved Insurer shall give notice in writing to the scheme administrator advising of the position and requesting that the Scheme meet the cost of the mortality risk. On receipt of a confirmation from the scheme administrator in respect of the proposal, the Approved Insurer shall advise the proposer that the policy has been accepted under the Scheme.

(2) On the death of the Claimant who is the subject of a policy accepted pursuant to this Article, the Approved Insurer concerned shall pay out the full life cover and shall recover the cost of the mortality risk from the Scheme.

PART 3

FUNCTIONS OF SCHEME ADMINISTRATOR

Functions of scheme administrator.

8. The functions of the scheme administrator are, in accordance with these Regulations -

- (a) to establish and maintain a list of insurers for the purpose of the Scheme,
- (b) to maintain, update and make public a list of the benefits under the Scheme and the limits applicable thereto,
- (c) to determine the eligibility of Claimants and to advise them accordingly,
- (d) to decide whether benefits under the Scheme -
 - (i) shall be provided in full, provided only partially or provided only incrementally,
 - (ii) shall not be provided or shall cease to be provided,
- (e) to maintain a list of Claimants with particulars of their policies under the Scheme,

- (f) to arrange to make relevant payments under the Scheme to Approved Insurers in respect of policies under the Scheme,
- (g) to determine procedures to be adopted in the operation, administration and supervision of the Scheme, consistent with the provisions of the Act of 1997 (as amended by the Act of 2006) and these Regulations,
- (h) to specify the form of any document required for the purpose of the Scheme,
- (i) to maintain proper accounts and records for the administration of the Scheme, and to administer the receipt and payments of monies to and from Approved Insurers,
- (j) to provide an annual report of the activities of the Scheme to the Minister and to ensure that the report does not identify any Claimant,
- (k) to provide such information as is required to progress appeals under section 7A(1) of the Act of 1997 (as amended by section 4 of the Act of 2006),
- (l) to implement, or assist in the implementation of, decisions of the Appeals Officer on such appeals, and

- (m) to establish, operate, administer and supervise the provision of annual travel insurance as a benefit under the Scheme consistent with the provisions of the Act of 1997 (as amended by the Act of 2006) and these Regulations.

PART 4

BENEFITS UNDER SCHEME

Maximum sums assured.

9. (1) Subject to *paragraph (3)*, the maximum sum assured under the Scheme for life assurance for a Claimant is the greater of -

- (a) €420,000, or
- (b) 7 times the annual earned income of the Claimant, the Claimant's Partner, or the Claimant and the Claimant's Partner, in respect of the tax year in which the proposal is submitted, up to maximum of €525,000.

(2) Where cover is sought in excess of this maximum sum assured and is available subject to the payment of an additional premium, the additional premium will be paid directly by the Claimant and arrangements in relation to payment of premia and terms of the policy are a matter between the Claimant and the Approved Insurer concerned.

(3) The amounts of €420,000 and €525,000 referred to in *paragraph (1)* shall be index-linked to the Consumer Price Index compiled by the Central Statistics Office on an annual basis with effect from the Scheme establishment day.

(4) Subject to *paragraphs (5) and (6)*, on purchasing (including changing) a Claimant's principal residence, or renovating, refurbishing, extending or improving a Claimant's principal residence, or any combination thereof, mortgage protection insurance for the purpose thereof up to a maximum sum assured of the greater amount of -

(a) €394,000, or

(b) a sum equivalent to the average house price in the county borough of Dublin -

(i) on the commencement of section 7(1A) of the Act of 1997 (as amended by section 3 of the Act of 2006), in the case of the year 2006,

(ii) on the most recent anniversary of the date of that commencement in the case of any subsequent year,

as determined by the Permanent TSB/Economic and Social Research Institute (Dublin) House Price Index increased by 25 per cent.

(5) Mortgage protection insurance referred to in *paragraph (4)* shall only fall within the Scheme if the loan for which cover is being provided meets normal mortgage lending criteria and is solely used for the purpose referred to in that paragraph and the mortgage provider certifies that this is the case.

(6) The amount of €394,000 referred to in *paragraph (4)* shall be index linked to the permanent TSB/Economic and Social Research Institute (Dublin) House Price Index increased by 25 per cent on an annual basis with effect from the Scheme establishment day.

(7) For the Initial Open Period, a Claimant may release equity in any property of the Claimant to a maximum sum assured of €100,000 through remortgage. The scheme administrator shall refuse an application for this benefit made after the Initial Open Period.

(8) Where cover is sought in excess of these maximum sums assured and is available subject to the payment of an additional premium, this additional premium may be paid directly by the Claimant to the Approved Insurer concerned.

Conditions.

10. (1) Where a proposal is accepted under the Scheme for less than the maximum sum assured under the Scheme, additional proposals may be submitted subsequently, subject to the conditions of the Scheme and also to the overall limits not being exceeded.

(2) When a policy is taken out during the Initial Open Period by any Claimant, or when a policy is taken out at any time by a category 2 Claimant who is less than 30 years of

age at the time of making the application for the policy, the full sum assured will be payable on subsequent death regardless of when this occurs.

(3) When a policy is taken out after the Initial Open Period, the benefit payable shall be as follows:

- (a) on death by accident - the full sum assured,
- (b) on death within 2 years of the date of the policy if the Claimant is under age 50 at this date or within 3 years of the date of the policy otherwise - a proportion of the sum assured calculated from the following formula:

$$\frac{N \times \text{sum assured}}{T}$$

Where:

N is the number of completed months that the policy is in force at the date of death,

T is 24 when the policy is taken out before the Claimant has attained 50 years of age, and is 36 when the policy is taken out on or after the Claimant has attained that age,

- (c) on death in any other circumstances - the full sum assured.

(4) A category 2 Claimant must make an application to the scheme administrator for any benefit under the scheme (except a benefit referred to in *Article 8(m)*) -

- (a) in the case of a category 2 Claimant who is such a Claimant on the date on which section 7(1A) of the Act of 1997 (as amended by section 3 of the Act of 2006) commenced, before the 1st anniversary of that date,
- (b) in the case of any other category 2 Claimant, before the 3rd anniversary of the first date on which the Claimant has been diagnosed positive for Hepatitis C or HIV.

(5) The scheme administrator shall refuse an application for a benefit under the Scheme made -

- (a) by a Claimant who is not less than 65 years of age, and
- (b) on or after the 1st anniversary of the date on which section 7(1A) of the Act of 1997 (as amended by section 3 of the Act of 2006) commenced.

(6) No benefit under the Scheme shall -

- (a) be provided, or

(b) continue to be provided,

to a Claimant who is not less than 75 years of age.

(7) Category 1 Claimants with proposals that are accepted shall be eligible for the full benefit payable on death if the death occurs at any point during the term of their policies.

(8) Category 2 Claimants with proposals that are accepted during the Initial Open Period shall be entitled to the full benefit payable on death, regardless of when the death occurs during the term of their policies.

(9) After the Initial Open Period, for category 2 Claimants with proposals that are accepted and who have not attained 50 years of age, the full benefit payable on death will be paid if the death occurs 2 or more years after the date of the policy. For such Claimants who are not less than 50 years of age when taking out the policy, the full amount will be paid if the death occurs 3 or more years after the date the policy was taken out. For deaths within a shorter period, the benefit payable will be phased in as described in *paragraph (3)*.

(10) *Paragraphs (3), (4) and (9)* shall not apply to or in relation to applications from category 2 Claimants for benefits under the Scheme if they are less than 30 years of age at the time of making their applications.

(11) Critical Illness or Permanent Health Insurance cover is not available under the Scheme.

PART 5

OPERATION OF SCHEME

Participation in Scheme.

11. (1) To participate in the Scheme, a proposal in respect of a Claimant is submitted to an Approved Insurer.

(2) In respect of life assurance, the proposal can be for any of the standard regular premium life assurance policies (with or without a savings element) offered by the Approved Insurer at the date the proposal is submitted. The proposer will be responsible for paying the standard premium to the Approved Insurer.

Procedures on acceptance.

12. When an Approved Insurer accepts a proposal and reaches an underwriting decision in respect of a Claimant, the scheme administrator will be provided by the Approved Insurer with -

- (a) particulars of the policy, including the name, address and date of birth of the Claimant, the policy number and the amount of cover, and
- (b) the Approved Insurer's determination as to whether the Claimant is a category 1 Claimant or a category 2 Claimant.

Payment of premiums and loadings.

13. The scheme administrator shall arrange to make relevant payments under the Scheme to Approved Insurers, and for the management of uninsurable risk under the Scheme, in respect of policies under the Scheme.

End of policy.

14. (1) Cover under the Scheme will end when the term specified in the policy is reached.

(2) Cover under the Scheme will end on the death of the life assured.

(3) Subject to *paragraph (4)*, no policy will continue to remain in force under the Scheme after the Claimant has attained 75 years of age.

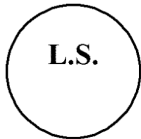
(4) Where a policy has been taken out by a Claimant and the Claimant's Partner jointly for a benefit under the Scheme -

(a) the policy shall not continue to remain in force under the Scheme in respect of the Claimant after the Claimant has attained 75 years of age,

(b) the policy shall not continue to remain in force under the Scheme in respect of the Partner after the Partner has attained 75 years of age.

(5) Cover under the Scheme will end if the policyholder ceases to meet the conditions specified by the Approved Insurer in respect of the policy concerned.

GIVEN under the Official Seal of the Minister
for Health and Children, this 25 day of
January, 2007.



Mary Harney
Minister for Health and Children

EXPLANATORY NOTE

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

These Regulations are made under section 7 of the Hepatitis C (Compensation Tribunal Act 1997 (No 34 of 1997) as amended by section 3 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006 (No. 22 of 2006). The Regulations establish 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 payment of a higher premium. The Regulations also specify how that insurance will operate, be administered and be supervised.

Regulation 1(1) specifies that the Regulations may be cited as the Hepatitis C Compensation Tribunal (Insurance Scheme for Relevant Claimants) Regulations 2007.

Regulation 1 (2) specifies that the Regulations shall come into operation on the day appointed under section 7 (11) of the Hepatitis C Compensation Tribunal Act 1997 as amended by section 3 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006.