



STATUTORY INSTRUMENTS.

S.I. No. 446 of 2007

CIRCUIT COURT RULES (HEALTH (REPAYMENT SCHEME)
ACT 2006) 2007

(Prn. A7/1282)

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CIRCUIT COURT RULES (HEALTH (REPAYMENT SCHEME)
ACT 2006) 2007

We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, and section 12 of the Courts of Justice Act 1947, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961) and section 27 of the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice, Equality and Law Reform, make the annexed Rules of Court.

Dated this 24th day of April, 2007.

(Signed): Matthew Deery
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Gerard J. Doherty

Ann Spaine

Noel Rubotham

Susan Ryan (Secretary).

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

Dated this 9th day of July 2007.

Signed: BRIAN LENIHAN
Minister for Justice, Equality and Law Reform

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 13th July, 2007.*

S.I. No. 446 of 2007

CIRCUIT COURT RULES (HEALTH (REPAYMENT SCHEME) ACT
2006) 2007

1. These Rules, which may be cited as the Circuit Court Rules (Health (Repayment Scheme) Act 2006) 2007, shall come into operation on the 6th day of August 2007.
2. These Rules shall be construed together with the Circuit Court Rules 2001.
3. The Circuit Court Rules are amended by the insertion immediately following Order 72 of the following:

“Order 72A

Applications under the Health (Repayment Scheme) Act 2006 (No. 17 of
2006)

1. In this Order,

“the Act” means the Health (Repayment Scheme) Act 2006 (No. 17 of 2006);

“account holder”, “connected person”, “Executive”, “prescribed repayment” and “relevant person” each has the same meaning as in the Act.

2. The notice to be published in accordance with section 9(4)(b) of the Act shall be in Form 49 of the Schedule of Forms. Where more than one application made by the Executive under section 9(2)(c) of the Act is returnable before the Court for the same day, the notices for the applications concerned may be included together in the same form.

3. An application to the Court by the Executive for directions under section 9(2)(c) of the Act shall be commenced by the issue of an originating Notice of Motion entitled in the matter of an application under section 9(2)(c) of the Act by the Executive and in the matter of certain account holders resident in the hospital or other institution concerned. The originating Notice of Motion shall be signed by or on behalf of the Executive and shall state the Sitting of the Court at which the application is to be made.

4. Where an originating Notice of Motion is issued under rule 3, the Executive shall lodge with the County Registrar not later than twenty-one days before the return date of the originating Notice of Motion a statement signed by a person authorised in that behalf by the Executive setting out separately in respect of each of the account holders residing in the hospital or other institution concerned to whom the application relates the following information:

- (i) particulars of the account holder;

- (ii) the circumstances and needs of that account holder which would be relevant for the purposes of the application under section 9(2)(c), and
- (iii) the proposals of the Executive as to the use of the excess money (referred to in section 9(2)(c) of the Act) for the benefit of that account holder.

5. The obligation of the Executive to give notice in writing under section 9(4)(a) of the Act to the account holders to whom the application relates of its intention to make an application shall be satisfied by delivering not later than twenty one days before the return date of the originating Notice of Motion to each account holder concerned a copy of the originating Notice of Motion and a copy of that portion of the statement referred to in rule 4 containing the information referred to in rule 4 concerning that account holder.

6. The Executive shall file in the Circuit Court office not later than four days before the return date of the originating Notice of Motion an affidavit or affidavits proving that notice in writing of its intention to make the application was given to the account holders to whom the application relates in accordance with section 9(4)(a) of the Act, vouching the placing of the notice in accordance with section 9(4)(b) of the Act and verifying the statement lodged in accordance with rule 4.

7. On the return date of the originating Notice of Motion issued under rule 3, the Court may, in addition to any other order it may make or direction it may give:

- (a) hear and determine an application by any interested person to be heard on the application so far as it affects a specified account holder, and direct or permit any such person to file an affidavit in answer to the application and to deliver a copy of that affidavit to the Executive;
- (b) direct that a copy of that portion of the statement lodged in accordance with rule 4 relating to a specified account holder or specified account holders be given to a person identified in such direction;
- (c) request the Executive to provide such information as is in its possession or procurement, or make inquiries and report to the Court on, the identity of the next of kin of any account holder concerned.

8. An application to the Court under section 9(6) of the Act by the Executive or another interested person for directions under section 9(7) of the Act shall be commenced by the issue of an originating Notice of Motion.

9. (1) In the case of an application under section 9(6) of the Act in respect of an account holder to whom section 9(3)(a) of the Act applies, the

Executive or other interested person shall be the applicant and the account holder concerned shall be respondent. Where the applicant is not the connected person referred to in section 9(3)(a) who has made the application for a prescribed repayment on behalf of the relevant person concerned, that connected person shall also be a notice party.

(2) In the case of an application under section 9(6) of the Act in respect of an account holder to whom section 9(3)(b) of the Act applies, where the application is made by an interested person other than the Executive, the interested person shall be the applicant and the Executive shall be a notice party.

(3) In the case of an application under section 9(6) of the Act in respect of an account holder to whom section 9(3)(b) of the Act applies, where the application is made by the Executive, the originating Notice of Motion shall not name any respondent and shall be entitled in the matter of an application under section 9(6) of the Act by the Executive.

10. The originating Notice of Motion issued under rule 8 shall be signed by or on behalf of the applicant and shall state the Sitting of the Court at which the application is to be made. The originating Notice of Motion shall be supported by a grounding affidavit setting out the facts relied upon in the application. In the case of an application in respect of an account holder to whom section 9(3)(b) of the Act applies, a copy of the certificate referred to in section 9(3)(b) of the Act shall be exhibited to such affidavit.

11. A copy of the originating Notice of Motion issued under rule 8 and a copy of the grounding affidavit and any exhibits thereto shall be served upon the respondent (if any) and notice party (if any) no later than twenty one days prior to the return date specified in the originating Notice of Motion by any of the modes by which Civil Bills may be served.

12. The respondent (if any) and notice party (if any) may deliver a replying affidavit not later than seven days before the return date of the originating Notice of Motion, or within such further time as may be agreed by the parties unless the Court shall otherwise direct.

13. On the return date of the originating Notice of Motion issued under rule 8 or any adjournment thereof, the Court may, in addition to any other order it may make or direction it may give, order that any person (including the Executive) whom the Court considers should be on notice of the application be made a notice party to the application, direct that copies of the originating Notice of Motion and grounding affidavit and exhibits be served upon such notice party and make orders for the delivery of any affidavit by such notice party.

14. Save where the Court otherwise permits, all applications under section 9(2)(c) or section 9(6) of the Act shall be heard upon affidavit evidence.

15. (1) Subject to sub-rule (2), the Court may make such Order as to costs on any application as may be appropriate, including an Order measuring the costs.

(2) In any application under this Order made by the Executive or to which the Executive has been made a notice party in accordance with this Order, the Executive shall bear its own costs.”

4. The Form annexed hereto shall be inserted in the Schedule of Forms annexed to the Circuit Court Rules in the appropriate sequence as Form 49.

Form 49

AN CHÚIRT CHUARDA

THE CIRCUIT COURT

CIRCUIT

COUNTY OF

In the matter of *an application *[applications] under section 9(2)(c) of the Health (Repayment Scheme) Act 2006 concerning holders of patients' private property accounts resident in

Take notice that on the day of 20 at o'clock, or as soon thereafter as the applicant will be heard, application will be made by the Health Service Executive to a Judge of the Circuit Court sitting at for directions, in respect of the patients' private property accounts of *[certain of] the account holders residing in [*specify name(s) and address(es) of hospital(s) or institution(s) concerned*] as to how the Health Service Executive may use any money in excess of *€5,000 *[or insert amount prescribed in regulations made under section 20(1)(c) of the Act] in any of those accounts for the benefit of the account holder in whose patient's private property account the excess is lodged. [Any person requiring further information concerning this application should contact

Dated 20

Signed:
Health Service Executive/Solicitor for the Health Service Executive

*Insert as appropriate

EXPLANATORY NOTE

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

These rules prescribe procedures in respect of applications to the Circuit Court under the Health (Repayment Scheme) Act 2006 (No. 17 of 2006).

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
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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