



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

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[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
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Acts Referred to

Appropriation Act, 1995	1995, No. 34
Civil Liability Act, 1961	1961, No. 41
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HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

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

“award” means an award of compensation;

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

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

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

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

“Hepatitis C” means Hepatitis C antibodies or virus;

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

“the Minister” means the Minister for Health;

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- S.1 “the non-statutory scheme Tribunal” means the Compensation Tribunal for certain persons who have contracted Hepatitis C within the State from Anti-D Immunoglobulin, whole blood or other blood products established by the Minister on the 15th day of December, 1995;
- “prescribed” means prescribed by regulations made by the Minister;
- “provisional award” has the meaning assigned to it by *section 5(7)*;
- “relevant agency” means the Blood Transfusion Service Board or the Irish Medicines Board;
- “spouse” in relation to a person, includes a person with whom the person is or was at a material time cohabiting;
- “the Tribunal” means the Tribunal established under *section 3*.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactments including this Act.

Establishment day. **2.**—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

The Tribunal. **3.**—(1) On the establishment day there shall stand established a Tribunal to be known as the Hepatitis C Compensation Tribunal to award compensation to claimants referred to in *subsection (1) of section 4* in respect of the matters referred to in that subsection or in any regulations made under *section 9* in respect of matters referred to in those regulations, in accordance with this Act.

(2) The Tribunal may sit in divisions of itself to hear claims before it.

(3) The Tribunal shall consist of a chairman (“the Tribunal chairman”) and such number of ordinary members as may be prescribed.

(4) The members of the Tribunal shall be appointed by the Minister.

(5) The term of office of a member of the Tribunal shall be for such period as is specified by the Minister when appointing such member.

(6) (a) A member of the Tribunal may, by letter addressed to the Minister, resign her or his membership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Claims before
Tribunal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) A claimant may require—

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

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

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

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

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

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

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

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

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

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

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

Awards of Tribunal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dissolution of and
claims before non-
statutory scheme
Tribunal.

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

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

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

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

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

Regulations to give effect to Act.

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

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

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

Settlements.

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

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

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

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Special account.

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

(2) Subject to *subsection (3)*, the moneys in the special account may be used at any time but shall only be used for the purposes for which they were voted and shall be issued out of that account only by direction of the Minister for Finance.

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

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

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

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

(a) be an account with the Paymaster General,

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

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

Reparation Fund.

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

(2) Subject to *subsection (3)*, the moneys in the Fund may be used at any time but shall only be used for the purposes for which they were voted and shall be issued out of that account only by direction of the Minister for Finance.

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

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

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

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

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

(8) The account of the Fund shall—

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

(b) be an account with the Paymaster General,

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

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

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

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

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

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

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

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

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

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Expenses of
Minister.

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

Short title.

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